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**UNIFORM LAW CONFERENCE OF CANADA**

***UNIFORM ACT TO IMPLEMENT THE CONVENTION ON  
THE LAW APPLICABLE TO TRUSTS AND ON THEIR  
RECOGNITION (2020)***

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**Uniform Act to Implement the Convention on the Law Applicable to Trusts and on their Recognition (2020)**

**Comment:** This Uniform Act implements the *Convention on the Law Applicable to Trusts and on their Recognition*, which provides rules to determine the law applicable to trusts and requires the recognition of foreign trusts by Contracting States. Canada has been a party to this Convention since September 20, 1992.

The present Uniform Act is drafted in accordance with the 2014 *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* as well as the *Guidelines for Drafting Uniform Legislation Giving Force of Law to an International Convention* adopted by the ULCC in [2019]. The Uniform International Trusts Act (Hague Convention) (1989) was withdrawn by the ULCC with the adoption of this Uniform Act.

Canada has been a party to this Convention since September 20, 1992. This Uniform Act is addressed to jurisdictions which have not yet implemented the Convention.

The Convention permits Contracting States to make several reservations and a declaration. Article 29 is a standard provision in private international law conventions. It allows federal states to identify the territorial units to which the application of the Convention will extend by making a declaration to this effect either upon signature, ratification, acceptance, approval or accession or at any time thereafter. Canada will make declarations pursuant to Article 29 upon the request of provinces and territories that have enacted implementing legislation. The content of Article 29 is reflected in the force of law provision of this Uniform Act.

An enacting jurisdiction will have to indicate to Justice of Canada whether Canada shall make for that jurisdiction at the time of the deposit of the Article 29 declaration, any of the reservations permitted by Articles 16, 21 or 22 or the declaration permitted by Article 20 of the Convention. If the Article 20 declaration is deposited by Canada in relation to a jurisdiction following the enactment of the implementing legislation, the jurisdiction may amend its act to reflect the content of the declaration. In addition, any amendment by a jurisdiction of a provision giving effect to a substantive reservation or declaration would have to be coordinated with a subsequent declaration or a withdrawal of the reservation.

*Interpretation*

**[1(1) The word “fiducie” used in the French version of this Act has the same meaning as the word “trust” used in the French version of the Convention.]**

**Comment:** Jurisdictions that legislate bilingually will need to examine their law to determine whether the term "fiducie" should appear in the French version of their implementing legislation instead of the term "trust". If the term "fiducie" is not used, this rule of interpretation should be excluded.

**1(2) In interpreting the Convention, recourse may be had to the *Explanatory Report on the 1985 Hague Trusts Convention*.**

**Comment:** The Explanatory Report was prepared by Alfred E. von Overbock and is available on the Hague Conference on Private International Law. The purpose of this interpretation rule is to ensure that courts and parties will refer to the material set out in the provision before referring to domestic law to interpret the Convention. This provision is in addition to the treaty interpretation principles codified in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to supplementary sources of interpretation is reflected in the observation of Justice La Forest in *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at p. 578, that

[i]t would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

Section 1 is not intended to have the effect of excluding other possible sources of interpretation. It merely indicates the principal source to be used in interpreting the Convention. It is expected that over time other helpful resources will emerge.

***[Inconsistent Acts***

**2. In the event of any inconsistency between this Act and any other Act, this Act prevails to the extent of the inconsistency.]**

**Comment:** Legislation that is inconsistent with the act should be identified and amended to the extent of its inconsistency. If necessary, the act may contain the precedence rule set out by this provision; however, such a provision should be avoided as it imposes upon users the burden of determining the extent to which a provision of the act is inconsistent with the provisions of another act of the Legislative Assembly. A precedence rule may also create difficulties in interpreting subsequent acts dealing with the same subject-matter. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other acts with which this act might potentially be inconsistent, those other acts should be amended to give precedence to this act.

***Force of Law***

*Option A*

**3. The *Convention on the Law Applicable to Trusts and on their Recognition* set out in the Schedule has force of law in *[jurisdiction]* on the first day of the third calendar month after the notification by Canada of a declaration extending the application of the Convention to *[jurisdiction]* in accordance with subparagraph 30(2)(c) of the Convention.**

*Option B*

**3. The *Convention on the Law Applicable to Trusts and on their Recognition* set out in the Schedule has force of law in *[jurisdiction]*.**

**Comment:** The force of law provision gives force of law to the entire Convention. Giving force of law only to some articles of the Convention is not recommended as jurisdictions run the risk of omitting to give force of law to matters over which they have jurisdiction. Furthermore, it may be difficult to distinguish or to separate what is of federal or provincial jurisdiction.

The Convention should be annexed to the Uniform Act. Simply referring to an external publication which contains the Convention, such as the website of the international organization which adopted it may not be sufficient to allow a court to take judicial notice of the Convention. The legislation governing evidence of some jurisdictions provides that a court shall take judicial notice of conventions that are printed by the Queen's Printer or the official printer of the jurisdiction in question.

The Uniform Act offers two options with respect to the force of law provision. Each jurisdiction should determine which option is the most appropriate. Because of the short period of time set out in subparagraph 30(2)(c) between the deposit by Canada of a declaration extending the application of the Convention to a jurisdiction and the application of the Convention to the jurisdiction at international law, the time required to take measures necessary to bring the act into force will be relevant in deciding which option to select.

Together, option A of the force of law provision and option A of the commencement provision allow jurisdictions to bring their act into force without giving force of law to the Convention until it applies to their jurisdiction at international law. A jurisdiction may select these options to avoid problems linked to coordinating the day on which the act enters into force with the day on which the Convention applies to it at international law.

Option A is also useful when a jurisdiction has legislation that provides for the repeal of legislation that is not in force within a certain period of time. Option A would thus allow the jurisdiction to bring its implementing act into force to avoid the application of such legislation, but the Convention would not have force of law until it applies to the jurisdiction at international law.

Each jurisdiction should ensure that its act is in force when the Convention starts applying to it at international law (see the comment accompanying the commencement provision). Where this has not been possible and the Convention starts applying to the jurisdiction at international law before the act comes into force, option A should not be used as it may raise issues with respect to the retroactive effect of the Convention. In such a case, it would be expected that the act would be brought into force as soon as it had been adopted and so option B would be used.

A jurisdiction selecting option A of both the force of law and the commencement provisions should note that this approach is not entirely transparent: on the face of the act it is not apparent if the Convention has started applying to the jurisdiction at international law. The jurisdiction may wish therefore to provide notice to the public when the Convention starts applying. This may be done, for instance, by publishing a notice in the jurisdiction's official publication. Ideally the notice would be available indefinitely, so that people would be able to determine the effective date years later. Additionally, according to the jurisdiction's practice, a reference to the date on which the Convention applies could be included in the published version of the act. The publication of the notice in the jurisdiction's official publication or the inclusion of the application date in its act must not be a condition precedent to the application of the Convention.

The wording of option A can be limited to referring to subparagraph 30(2)(c) of the Convention which prescribes the mechanism for calculating the date on which the Convention starts applying to the jurisdiction internationally:

***The Convention on the Law Applicable to Trusts and on their Recognition set out in the Schedule has force of law in [jurisdiction] from the date determined in accordance with subparagraph 30(2)(c) of the Convention.***

Option B allows a jurisdiction to give force of law to the Convention from the day on which its act comes into force. Option B may be needed by those jurisdictions where additional steps are necessary such that option A is problematic or where the Convention already applies to the jurisdiction at international law. Paired together, option B of this section and option B or C of the commencement provision ensure that the Convention will not have effect in the jurisdiction by legislation before it applies to the jurisdiction at international law.

Jurisdictions selecting option B must be able to bring their act into force on the day on which the Convention applies to their jurisdiction at international law. They should communicate with Justice Canada to coordinate these events.

*Application of the Convention*

**4(1). This Act does not apply to conflicts solely between the laws of the provinces and territories of Canada.**

**4(2). Paragraph 16(2) of the Convention does not apply in [jurisdiction].**

**4(3). Chapter III of the Convention applies only to trusts the validity of which is governed by the law of a Contracting State.**

**4(4). This Act does not apply to trusts created [or declared] before the Convention has force of law in [jurisdiction].**

**OR**

**4(4). Article 22 of the Convention is not to be construed as affecting the law to be applied in relation to anything done or omitted under a trust before the Convention has force of law in [jurisdiction].**

**4(5). The Convention is extended to trusts declared by judicial decisions including constructive trusts and resulting trusts.**

**4(6). Nothing in this Act is to be construed as requiring that recognition or effect be given to a trust declared by judicial decision in another state or a severable aspect of such a trust, if [the appropriate court in jurisdiction] is satisfied that there is a substantial reason for refusing to give recognition or effect to the trust or aspect.]**

**Comment:** Subsection 4(1) makes it clear that the Convention does not apply between jurisdictions in Canada that have implemented the Convention and removes the discretion of courts to apply the Convention between jurisdictions in Canada. Article 24 of the Convention provides that “[a] State within which different territorial units have their own rules of law in respect of trusts is not bound to apply the Convention to conflicts solely between the laws of such units.”

Giving force of law to the Convention gives force of law to its provisions on declarations and reservations, which will, in many cases, operate to make the declarations or



reservations made by Canada effective in internal law. Nonetheless, in the interest of transparency, clarity and legal certainty, it might be advisable to reflect their content in the act, especially a reservation that narrows or widens the scope of application of the Convention.

Subsection (2) refers to the reservation permitted by Article 16, subsection (3) provides the content of a reservation permitted by Article 21, subsection (4) of a reservation permitted by Article 22 and subsection (5) of a declaration permitted by Article 20. Subsection (6) specifies the scope of subsection (5). For a reservation under Article 22, "or declared" should be deleted from subsection (4) if the Convention is not extended under Article 20 to trusts declared by judicial decisions including constructive trusts and resulting trusts. At the time of adoption of this Uniform Act by the ULCC, the reservation provided at subsection (2) applied only to one Canadian jurisdiction and the declaration under subsection (5) applied to all of jurisdictions in which the Convention applies.

***[Minister Responsible for the Administration of the Act***

**5. The Minister of [*Ministry/Department*] is responsible for the administration of this Act.]**

**Comment:** Specifying which minister is responsible for the administration of an act in the act depends on the practice of jurisdictions.

***[Binding on Crown/Government/State***

**6. This Act binds the [*Crown/Government/State [of jurisdiction]*].**

**Comment:** If a jurisdiction's interpretation legislation already provides that the Crown is bound unless otherwise stated in the particular act, there is no need to include this section.

***Commencement***

*Option A – Commencement on assent before the Convention applies to jurisdiction*

**7. This Act comes into force on [*assent / insert the date of assent to this Act*].**

*Option B – Commencement on proclamation on day on which the Convention applies to jurisdiction*

**7. This Act comes into force on [proclamation / the date or dates to be set by the Government].**

*Option C – Commencement on a specified day which is the day on which the Convention applies to jurisdiction*

**7. This Act comes into force on [insert day on which the Convention applies to jurisdiction].**

**Comment:** There is a need to ensure that the Convention has force of law in the implementing jurisdiction when it starts applying to the jurisdiction at international law. The force of law and commencement provisions offer options which help avoid issues linked to coordinating the occurrence of these two events.

Three options are available with respect to the commencement provision in the Uniform Act. The points set out below should be considered by jurisdictions in deciding which option to select.

Option A can be combined with the option A of the force of law provision so that the Convention will only have force of law on the day on which it applies to the jurisdiction at international law.

- Option A combined with option A of the force of law provision avoids the necessity for the federal and provincial or territorial governments to coordinate the application of the Convention to a jurisdiction and the commencement of the act, therefore eliminating the risk that it will not have commenced when the Convention starts applying to a jurisdiction.
- As stated in the comment to the force of law provision, jurisdictions selecting this option should publish the date on which the Convention starts applying to their jurisdiction.

Under option B, the jurisdiction must proclaim its act on the same day that the Convention applies to the jurisdiction at international law.

- When the act commences on proclamation on the date on which the Convention applies to the jurisdiction, option B would be combined with option B of the force of law provision.
- A jurisdiction that adopts this approach faces some risk. If the date on which the Convention will apply to the jurisdiction is not yet known, the jurisdiction must ensure that the proclamation will be issued on the date on which the Convention will start applying once the date is known. Proclaiming the act into force may be difficult to achieve in practice because the time between learning the effective date that the Convention will apply to the jurisdiction and the date itself may be too short to issue a proclamation.
- As stated in the comment to the force of law provision, a jurisdiction may choose option B if additional steps are necessary such that it is problematic to bring the act into force with option A.
- Option B would be combined with option A of the force of law provision if proclamation is issued before the Convention starts applying to the jurisdiction.

Option C allows the act to commence on the day specified in the commencement provision which is the day on which the Convention applies to the jurisdiction at international law.

- This option would be combined with option B of the force of law provision.
- Enacting jurisdictions can select this option if the day on which the Convention will apply to their jurisdiction is known at the time of the adoption of the act.

**Schedule:** [*Insert the full text of the Convention. It is available on the treaty depositary's website at:*

[https://treatydatabase.overheid.nl/en/Verdrag/Details/000066/000066\\_Gewaarmerkt\\_0.pdf](https://treatydatabase.overheid.nl/en/Verdrag/Details/000066/000066_Gewaarmerkt_0.pdf) ]