Does the UK recognize any trust in the world where the settlor chooses the UK as the governing law? Yep, and without any nexus to the UK.

Mark Morris
CRS and CARF expert. No, truly.

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Summary of this article

1. Hague Convention allows the settlor to choose any country as the governing law of trust as long as that country recognizes trusts, even if it's a Civil-law country like Switzerland. The jurisdiction choice must be expressed in the terms of the writing evidencing the trust.
2. UK as a Common law country legislated the Hague Convention Law Applicable to Trusts and on their Recognition, which was established in the Netherlands, a Civil law country.
3. HMRC, the UK tax authority permits trusts without any UK nexus (viz. non-UK trustees, non-UK settlors, non-UK assets or land & buildings, Non-UK income, not doing business in the UK)
4. The UK's Person of Significant Control register, i.e. the trust beneficial owner register is called the Trust Register Service (TRS). Non-UK trusts do not register on the TRS if they do not hold any UK income or assets.
5. Crociani v Crociani case deals with the resolution of non-UK trusts with no UK nexus, but conflicts with the place of administration when choosing the location of the governing law.

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UK voluntarily recognizes almost all foreign trusts, even
if they don't follow UK law, such as no beneficiaries
(e.g., purpose trusts)
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I. Hague Convention permits the settlor to choose the Governing law of any trust. Does the UK accept these trusts if no connection to the UK?

The Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition

Article 6

> A trust shall be governed by the law chosen by the settlor. The choice must be express or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of the circumstances of the case.

> Where the law chosen under the previous paragraph does not provide for trusts or the category of trust involved, the choice shall not be effective and the law specified in Article 7 shall apply.

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The settlor can only choose jurisdictions of governing law
if that state recognizes trusts. Most civil law countries,
eg Norway do not recognize trusts at all. If the chosen
state does not recognize trusts, then article 7 applies.
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Article 7

> Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected.

> In ascertaining the law with which a trust is most closely connected reference shall be made in particular to *a)* the place of administration of the trust designated by the settlor; *b)* the situs of the assets of the trust; *c)* the place of residence or business of the trustee; *d)* the objects of the trust and the places where they are to be fulfilled.

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If no jurisdiction is chosen by the settlor, or the chosen
jurisdiction does not recognize trusts then the governing
law of the trust shall be the jurisdiction where the trust
is situ.
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Article 8

> Trust law shall govern:

> 1. Appointment, resignation, and removal of trustees 2. Distribution of the trust assets. 3. Right of trustees to delegate in the discharge of their duties. 4. Power of trustees to administer or to dispose of trust assets, or to acquire new assets. 5. Powers of investment of trustees. 6. Power to accumulate income of the trust. 7. Relationship between the trustees and the beneficiaries. 8. Termination of the trust.

Article 13

> No State shall be bound to recognise a trust the significant elements of which, except for the choice of the applicable law, the place of administration and the habitual residence of the trustee, are more closely connected with States which do not have the institution of the trust or the category of trust involved.

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A state that does not recognize trusts shall not be
obligated to recognize the trust or be the Governing law.
Article 7 and 13 are effectively saying one can't choose
say a Civil-law State as the Governing law, if that State
does not recognize trusts. Switzerland as a Civil-law state
does recognize trusts, so Switzerland can be chosen as a
State Governing law of a trust.
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Article 14

> The Convention shall not prevent the application of rules of law more favourable to the recognition of trusts.

Article 15

Mandatory application of laws other than the trust law

Trusts governed by a trust law do not exist in a vacuum but can be affected by other laws, some of which may under Article 4 prevent the launching of a trust wholly or partly. Once a trust of property has come into existence, however, it may still be affected by other mandatory laws as catered for by Article 15 which states:

> The Convention does not prevent the application of provisions of the law designated by the conflicts rules of the forum, in so far as those provisions cannot be derogated from by voluntary act, relating in particular to the following matters -

> *a)* the protection of minors and incapable parties; *b)* the personal and proprietary effects of marriage; *c)* succession rights, testate and intestate, especially the indefeasible shares of spouses and relatives; *d)* the transfer of title to property and security interests in property; *e)* the protection of creditors in matters of insolvency; *f)* the protection, in other respects, of third parties acting in good faith.

> If recognition of a trust is prevented by application of the preceding paragraph, the court shall try to give effect to the objects of the trust by other means.

Lex situs (Law of the state where assets are located, for conflicts of law/jurisdictional disputes.

Paragraph (d) preserves the overriding impact of the lex situs as to the transfer of title to property, so protecting, for example, donees of English or other common law States' assets under gifts valid by the lex situs.

II. The UK legislates the Hague Convention on Trusts

UK Recognition of Trusts Act 1987

- The UK passed the Recognition of Trusts Act 1987, incorporating most of the Hague Convention on recognizing trusts. This ensured those arguing the Hague is set up in a Civil law country and perhaps Common law countries may not fully recognize the Convention
- No State shall be bound to recognize a trust the significant elements of which, except for the choice of the applicable law, the place of administration, and the habitual residence of the trustee, are more closely connected with States *that* do not have the institution of the trust or the category of trust involved." The language is non-discriminatory so that the Article is available to common law States as well as civil law States.
- **The UK, however, felt no need for the protection of Article 13** and so **excluded** it when otherwise implementing the Convention in the Recognition of Trusts Act 1987. Malta and Switzerland took the same approach.

III. HMRC on trusts that have no nexus to the UK - called non-UK trusts

HMRC defines non-UK trusts (also known as UK non-resident trusts)

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HMRC defines non-UK trust, includes inter alia, no UK-
resident trustees and no UK-resident settlors.
Bneneficiaries ar enot menetioned.
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Non-UK trust is where:

•   None of the trustees are resident in the UK for tax purposes, or

•   At least one of the trustees are resident in the UK

 and the **settlor** of the trust was one of the following when the trust was set up or funds added:

§ not ***resident*** or **normally resident** in the UK

 - a person is ordinarily or normally resident if they are living in the UK lawfully and voluntarily, as part of the regular order of their life for the time being, whether for a long or short duration

§ not ***domiciled*** or ***deemed domicile*** in the UK

 - **Domicile** *refers to the country where someone intends to make their permanent home. There can only be one place of domicile.*

 - **Deemed domicile** *since April 2017, is if either condition is met:*

· **Condition A** (not living in UK)

 - Born in the UK, ***and***

 - UK is their domicile of origin (where your father was domicile when you were born, or mother if divorced, or father if adopted, or mother if no adopting mother), ***and***

 - *UK resident for 2017-2018, or later year.*

· ***Condition B***

 - Has been UK resident for at least 15 of the 20 tax years before the tax year (even if under 18).

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Untaxed non-UK trusts do not register with HMRC. Non-UK
trusts do not register with HMRC for tax unless the trustee
is liable to pay taxes on UK assets or UK-sourced income:
income, capital gains, inheritance, stamp duty reserve tax,
stamp duty land tax.

This proves that non-UK trusts do not need any asset or
income nexus with UK
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IV. HMRC on registering non-UK trusts with Trust Register Service (TRS)

The Trust Registration Service (TRS) was introduced by the UK government in 2017 to prevent the misuse of trusts for illegal purposes. The TRS records the beneficial ownership of assets held in trust. So, if the trustee legally owns an asset, there is a separate record of who benefits from the asset. If registrable, trustees must provide information to the TRS regarding:

•   Settlors, trustees, beneficiaries, protectors, **and**

•   Assets held, such as money, buildings and land, company shares, partnerships, yachts, cars, jewelry, art, etc.

A non-UK trust should only register with the TRS if:

•   it acquires, directly or indirectly, UK land and buildings, unless it's a co-ownership express trust **A or**

•   is liable for taxes relating to UK assets or UK-sourced income (income, capital gains, inheritance, stamp duty reserve tax, stamp duty land tax) **or**

•   at least one trustee is a UK resident and the trust enters a relationship **B** with UK relevant persons **C**

A Money Laundering and Terrorist Financing (Amendment) Regulation 2020 Part II Beneficial Ownership Schedule 3A9.

B Business, professional, or commercial relationship.

C Financial Institutions, Credit institutions, Auditors, Insolvency Practitioners, External Accountants, Tax Advisers, Legal Professionals, Trust or Company Service Providers, Estate Agents, High-Value Dealers, and Casinos.

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HMRC permits non-UK trusts without any tax liabilities,
i.e. no UK income or UK assets to bypass registering on the
TRS
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V. Major court case on forum, proper law, and jurisdiction clauses

- Crociani vs Crociani, a breach of trust claim brought by Cristiana Crociani against the defendant's trustee mother, Mme Edoarda Crociani of Bahamian Trusts. The mother trustee was splurging much of the assets even though the daughter was the beneficiary. The 5 years of litigation ended in a successful USD 200m outcome for daughter Cristiana.
- In 1987, Mme Edoarda Crociani created the Grand Trust, governed by the laws of **The Bahamas** and with The Bahamas as the forum for administration. Cristiana Crociani claims that she is the principal beneficiary of Cristiana's Fund. Under the terms of the Grand Trust, the trustees are not authorized to distribute funds to Mme Edoarda Crociani.
- Non- Bahamian trustees were appointed in 1992 and the governing law was changed twice before 2007. In 2007, a Jersey trustee was appointed ('BNP') to act as a trustee with Mme Edoarda Crociani and the governing law changed to Jersey.
- In 2012 Mme Edoarda Crocianito appointed Appleby Trust (Mauritius) Limited as the sole trustee of the Grand Trust and changed the governing law of the trust to **Mauritius**.
- The Mauritian trustee (Appleby), refused to submit to the jurisdiction of the Royal Court of Jersey and indemnified by Mme Edoarda Crociani, joined with her in what the Plaintiffs asserted was a strategy of attrition and delay.

Princess could be fined 'millions' after refusing to reveal whereabouts of £50m Gauguin painting to Jersey Royal Court

- In 2011, the relationship between Mme Crociani and Cristiana deteriorated. In 2013, Cristiana commenced proceedings in Jersey seeking to set aside various appointments and distributions from which Mme Edoarda Crociani had benefitted.
- Shortly after Cristiana began to enunciate her claims, by a deed in 2012 ('the 2012 Deed of Retirement'), the Grand Trustees purported to retire in favor of a Mauritian trust company. In her Order of Justice, Cristiana challenged the validity of the 2012 Deed of Retirement on the basis that the Grand Trustees made it with the improper motive of forestalling the claims of a beneficiary to hold them to account, and it was, therefore, a fraud on power.
- The Royal Court's decision in 2013 was appealed unsuccessfully to the Court of Appeal and then to the Privy Council. The Privy Council upheld the Royal Court's decision that **Jersey was the proper forum** for this dispute.
- On 11 September 2017, the Royal Court delivered judgment for the Plaintiffs and Mme Edoarda Crociani, and the trustees were ordered to pay an initial USD 100 million to the new trustee of the Grand Trust.

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This case shows how easy it is to select new governing law
of a trust with no nexus to that country.
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In Conclusion

A UK lawyer I spoke to opines that a settlor cannot choose the UK as the Governing law of a trust (a non-UK trust, I may add) if the trust has no nexus with the UK. He states...

"There are no cases in the English Chancery Division (specializes in civil disputes, including disputes relating to business, property or land, intellectual property issues, insolvency, bankruptcy, tax and the validity of wills) relating to non-UK assets and non-UK parties that have purported **English Tenancy in Common or bare trusts** and there's a good reason for that, there is zero nexus."

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Mark Morris
CRS and CARF expert. No, truly.

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