

Trust the White Elephant

by David Wallace Wilson, Schellenberg Wittmer, Geneva, Switzerland.

Abstract:

Background In the words of David Hayton, “like an elephant, a trust is difficult to describe but easy to recognise.” Trusts are often misunderstood and – thus? – suffer from a negative bias in politics and in the media. Part of such misunderstanding may result from the difficulty in translating typical trust concepts, such as grantor, trustee, potential beneficiaries, enforcer or trust fund.

Results An analysis of multilingual texts concerning trusts, especially the recent ones issued by such international bodies as the OECD, the FATF, the Wolfsberg Group or the Basel Committee on Bank Supervision, has shown a tendency to convert typical trust concepts into contractual or corporate terms, partially because these are better understood in civil law jurisdictions (e.g. *fiducie*, *Treuhand*). This in turn muddles the concept of common law trusts and may actually emphasize the negative bias. Given the extent of some conversions, one may even wonder whether such muddling is purely fortuitous or politically motivated.

Conclusions / recommendations Translators should stick to the original trust concepts and/or favour the use of more-specialised and politically-neutral texts, such as the Hague Trust Convention.