



trusts v. foundations - a comparison

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trusted to deliver

Trusts v. Foundations - a comparison

	Trust	Foundation
Definition	A trust is an obligation whereby a person (the Settlor) transfers property and the ownership of it to another person (the Trustee) to deal with that property for the benefit of a third party (beneficiary).	A foundation is an independent legal entity which holds assets separately from the Founder's personal wealth. A Foundation is not a company; it does not issue shares or any other legal title of ownership. A foundation is governed by its Article and/or by-laws.
Typical Purpose	<ul style="list-style-type: none"> Tax Planning Succession Planning Preservation of assets Confidentiality and continuity Flexibility Charitable purposes 	<ul style="list-style-type: none"> Succession planning Legal separation of assets from Founder's personal estate Charitable purposes
Working	The trustee holds the assets in question for the benefit of individuals or institutions known as the beneficiaries. The trustees will legally own and hold in the own name the assets transferred by the Settlor. The trust assets are normally held by underlying companies.	Assets donated by the founder to the Foundation are owned by the Foundation in its own name. These assets may be held directly by the Foundation or consist of shares in an underlying company. A Foundation is governed by regulations which are issued according to the desires of the economic founder.
Settlor (Founder)	The Settlor separates himself from the assets he previously owned. In a discretionary trust arrangement the settlor may express his wishes as to the administration and beneficiaries to the trustees. Whilst the settlor may make recommendations and requests to the trustees he cannot formally instruct the trustees.	The Founder maintains control over the Foundation through a written mandate. The Founder frequently acts as Principal and instructs the Foundation board on all relevant matters.
Trustee (Board of Foundation)	The trustee will normally be located in an Anglo-Saxon jurisdiction where the legal system has a tradition of trusts and expansive case law. The trustee, as the legal owner of the assets, has a fiduciary duty to act in the interests of the beneficiaries.	The Foundation is managed and administered by a Foundation board appointed by the Founder. Such board can comprise natural or corporate members. The Foundation board acts in the interests of the Founder and the beneficiaries.

	Trust	Foundation
Beneficiaries	The beneficiaries may include the Settlor. The beneficiaries are defined in the trust deed and may be natural persons, companies or charities. Distributions are made by the Trustees in accordance with the Trust Deed and the wishes of the Settlor	The Founder may be a beneficiary. Beneficiaries are appointed by the Foundation Board and may be natural persons, companies or charities. Distributions are typically made in accordance with the instructions of the Founder
Forced heirship laws	Established and planned correctly, a trust can present a way of escaping the forced heirship provisions of civil law countries. Situs of assets and place of trusteeship are important.	Civil law foundation jurisdictions will generally respect the forced heirship laws of the founders domicile.
Revocability	A trust may be revocable or irrevocable. If irrevocable, the settlor has relinquished control of the assets in favour of the Trustee. Revocable trusts imply retention of control by the Settlor	In the presence of a civil law mandate, revocability is assured; the Foundation can be dissolved and liquidated on the instruction of the Founder
Lifespan	Depends on trust jurisdiction; Isle of Man is 150 years	Unlimited life span
Registration	A trust is a confidential arrangement; there is no register of trusts	The foundation is registered on a register in the country of domicile
Portability	Can easily be transferred between Anglo-Saxon jurisdictions	Not so portable- generally tied to one civil law jurisdiction
Flexibility	Highly flexible in terms of the way the trust operates over time	Limits to flexibility due to articles and by-laws
Body of law and precedent	Case law and precedent developed over many centuries	Less developed body of law and consequently less practical precedent
Management	Settlor's ability to choose trustees at outset and his freedom to appoint/involve trusted advisors both during lifetime and post-death (through appointment of Protector).	Management is usually restricted as to who may act as a member of the Foundation board
Protection for Beneficiaries	Trustees must act in accordance with Trust law and precedent and at all times in the best interests of the beneficiaries.	Directors of the Foundation do not owe direct fiduciary duty to beneficiaries and must act in accordance with by-laws

Additional Considerations:

The establishment of a Private Trust Company arrangement is commonly seen as the Anglo-Saxon version of the Foundation – bringing all the benefits of the Discretionary Trust arrangement but introducing a greater element of control and influence to the Settlor and his/her advisors/family. Further information on the Private Trust Company arrangement is available from SMP Partners.

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