Technical

Trust versus foundation

For financial advisers only

What is a trust?

The origin of trusts dates back thousands of years and they are recognised in most Common Law jurisdictions. They are a mechanism for individuals to transfer assets or property to others who then hold it legally in trust for the benefit of beneficiaries. The trustees are legally required to look after the assets or property which has been transferred to them and they must also comply with the terms laid out in the trust document.

What's involved?

The person who creates a trust is called the "settlor". The person(s) that the settlor transfers the assets to are called "trustees". The trustees legally hold the assets in trust for person(s) called the "beneficiaries". The trustees should act and administer the trust in accordance with the terms of the trust document. Trustees have unlimited liability in respect of the trust.

Privacy

A trust does not need to be registered and the trust deed remains private.

Beneficiaries rights

Where a beneficiary has a fixed right under the trust, they can enforce its terms and if necessary bring matters before a court where trustees are refusing to act or acting inappropriately. Once the asset is transferred into trust, the settlor no longer owns it, albeit that depending on the terms of the trust they may still be able to benefit.

What is a foundation?

A foundation is an incorporated, self-owning, legal entity. They are a method of transferring assets into a structure for a specific purpose or objective. They are traditionally used in Civil Law jurisdictions where trusts are not recognised under law, however, many Common Law jurisdictions have also introduced legislation in recent years to deal with foundations.

What's involved?

Similar to a trust, a foundation has someone who establishes it. They are called a founder.

The founder establishes a foundation by registering it in an applicable jurisdiction.

Like a trust, once the assets are transferred to the foundation, the founder no longer owns them although depending on the jurisdiction, they can reserve certain powers.

Whereas a trust has trustees, a foundation has a Council of Members who administer the foundation in accordance with its purpose and/or for those intended to benefit.

Privacy

Unlike trusts, foundations must be registered and certain details relating to it are publically available. Although these details are fairly limited, individuals who are extremely concerned about privacy may find this unattractive.

Beneficiaries rights

Unlike trusts, beneficiaries of a foundation have no direct rights to the foundations assets and therefore, have no proprietary remedies available to them to secure their share of the assets unless the law of the foundation states otherwise.

For more information on Isle of Man foundations, please view https://www.gov.im/categories/business-and-industries/companies-registry/registries/foundations/

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Quick comparison

Key facts	Trust	Foundation
Recognised in common law or civil law jurisdictions?	Mostly common law, but some civil law jurisdictions are beginning to change their legislation to recognise trusts .	Mostly civil law, but a number of offshore common law jurisdictions are changing their laws to recognise foundations.
Structure	A legal obligation held by the trustees for the benefit of the beneficiaries	An independent, self-governing legal entity.
Creation	Created by a settlor during lifetime or on death.	Created by founder during lifetime or on death.
Legal owner and control	Trustees. Settlor can reserve powers (depending on jurisdiction) but should not have too much control.	Council Members have control but founder can reserve powers.
Privacy	Do not require registration and can be kept private.	Have to be registered in the established jurisdiction and certain details will be on public record.
Duration/time limit	Limited: As specified in the trust deed or in line with the trust jurisdictions perpetuity period	Unlimited
Beneficiaries rights	Depending on the type of trust, beneficiaries have certain rights to the trust income/capital and information.	Beneficiaries have no automatic rights to the assets within a foundation (unless stipulated under local laws).
Assets	A trust has to have assets transferred into it to exist. Only the settlor can transfer assets he/she legally owns into trust	A foundation can be created and have assets transferred into it at a later date. Assets placed into a foundation may come from the founder and/or others
Purposes	Trusts are mainly used as a vehicle to hold business and personal assets for succession, tax planning and asset protection purposes.	Foundations are predominately used for succession planning in Civil Law jurisdictions and less so for tax planning.

Important note

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