



# Family Business Leaders

Article

## Trusts & Foundations

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# Trusts And Foundations

## The Differences Between Trusts And Foundations

### Wealth and the Family Business

Frequently, founders of businesses or wealthy individuals will seek to establish or create long-term holding structures for their business or wealth. These structures are usually created to prevent fragmentation of the business or wealth upon the demise of the Founder. Their usefulness is without question as they have the capacity to perpetuate and indeed enhance wealth across generations. The aphorism below ought to be borne in mind. "Shirt sleeves to shirt sleeves, the first generation makes the money, the second generation saves the money, and the third generation squanders the money".

These structures often act as a bulwark against the invertible dissipation of wealth which takes place in the absence of a grounded wealth philosophy. Traditional trusts or foundation structures are often favoured over a common will. This is especially so where there is the need for sophisticated estate planning, or assets are in multiple jurisdictions. The choice of "structure or vehicle" will depend on the desired outcomes. The nature of the variables- dependencies - will drive the choice. Take for example the following dependencies:

- The nature of the assets;
- The geographical location of operations;
- The tax regime of the locations;
- The need to optimise the holding structure of the assets or operating entities if they are companies;
- The nationality of the Settlor or Founder and family;
- The residence and domicile of the Settlor or Founder;
- The religion of the Settlor or Founder;
- The profession of the Settlor or Founder;
- The marital status of the Settlor or Founder;
- Whether the Settlor or Founder comes from a royal household.

In truth, either of the structures can be used or tweaked to achieve most of a person's desired outcomes. However, heed must be paid to the individual and their very particularised needs. Thus, a broad-brush approach to the use of either of these structures may be problematic. See box 1 below.

Attributes	Trusts	Foundation
Set up by	Settlor	Founder
Documents	Trusts Deed	Consttution
Separate Legal Entity	No	Yes
Oversight Responsibility	Trustees	Council
Lifespan	Limited/Forever	Forever
Hold Assets	Yes	Yes
Created For A Purpose	Yes	Yes
Benefit Settlor/Founder	Yes	Yes
Hold Company	Yes	Yes
Asset Protection	Yes	Yes
Tax Minimization	Yes	Yes
Benefit Others	Yes	Yes

Trusts and Foundations are recognised legal structures in most countries. Jurisdictions such as England, Guernsey, British Virgin Islands (BVI) and Jersey provide the facility to explore both structures. They offer a range of benefits to individuals or corporate entities seeking to protect and manage their assets. The traditional purpose for the use of such a structure would be: asset protection; maintaining confidentiality; avoidance of forced heirship rules, see for example Sharia Law or Intestacy Rules; and tax mitigation.

Notwithstanding the similarities between Trusts and Foundations, there remain key differences between the two structures. These differences should be considered when choosing for best fit.

## Trusts

- Trusts are typically created by a person – Settlor- who transfers assets to a Trustee to hold on behalf of Beneficiaries. The terms of the Trust are set out in a Trust Deed, the governing document.
- The Trustee is responsible for managing the assets and ensuring that they are used in accordance with the wishes of the Settlor who established the Trust.
- The Trustee has a duty to act in the best interests of the Beneficiaries.
- The Settlor can specify a wide range of conditions for the use of the assets and can also appoint additional Trustees to manage the Trust if necessary.
- Trusts are a popular choice for individuals who want to protect their assets from creditors, or who want to ensure that their assets are used for a specific purpose (such as supporting a family member or funding a charitable cause).
- Trusts are also commonly used for estate planning purposes, as they can help to minimize tax liabilities and ensure that assets are distributed according to the Settlor's wishes.
- The conditions for the termination of a Trust will be set out in the Deed or by operation of law. The Settlor, or the Beneficiaries with the consent of the Trustees may in certain circumstances terminate the Trust. In other circumstances the Trustees may bring the Trust to an end.
- There are a variety of Trusts. Some of which last forever others which are created to last for a shorter period. Trusts in England lasts for one hundred and twenty-five years (125) while those in Guernsey can last forever. The creation of the Trust will depend on the nature of the solution sought. Here are a few:
  - **Discretionary Trust** – Trustees exercise their discretion on distributions.
  - **Bare Trust**- A basic trust created to hold assets for a beneficiary.
  - **Fixed Trust** – Trustees are bound with little or no discretion.
  - **Enforcer Trust**- Enables a third party to monitor Trustee activities.
  - **Protector Trust**- Enables a third party to ensure adherence to Settlor's wish.
  - **Will Trust**- Created within a Will.
  - **Purpose Trust**- Created for a specific purpose.

## Foundations

- Foundations are typically created by a Founder who provides- endows- the Foundation with assets. They are created to hold and manage assets for a specific purpose.
- The purpose of the Foundation will normally be set out in a document called the Charter.
- Unlike Trusts, Foundations are legal entities, that is they have a legal personality. They are legally considered as artificial persons. Much like a company but without shareholders.
- As a legal entity, it is established for specific purposes e.g. - charitable or educational purposes.
- Because Foundations have legal personality, they can enter into contracts, own property, and sue or be sued in their right or name much like a company.
- Foundations are typically governed by a council or board of directors. They will have responsibility for managing the Foundation's assets and ensure its use in accordance with the Foundation's objectives.
- Foundation may be terminated by the Founder or by the council or board of directors or at the end of the specified purpose.

Foundations are a popular choice for individuals who want to establish a long-term legacy for their assets, such as supporting a charitable cause or funding a scholarship programme. Just like Trusts, Foundations can also be used to protect assets from creditors, for purposes of confidentiality, forced heirship and minimisation of tax liability.

## Steps

In taking the first steps, towards extensive estate planning, the advice of a professional will be invaluable. Specialised professional advice ought to be taken because of the multiplicity of variables. The choice of a Trust or Foundation should only be made after evaluation and exploration. Often it is better to start with a very simple structure unless you have extensive wealth spread across the globe or have a multiplicity of dependencies requiring careful attention. Beyond simplicity, the premier jurisdictions- Guernsey, Jersey, London, Mauritius, BVI, Cayman Islands, will have a cadre of able professionals to offer support.

## Conclusion:

In summary, Trusts and Foundations are both useful legal structures for protecting and managing assets. The choice between the two structures will be driven by the dependencies of the individual or the family.



The Family Office Africa, operates as a multi-family office. It is a resource for Ultra High Net Worth Individuals (UHNWI's), family businesses, business families and C-suite executives. The firm, supports these entities with inter-generational wealth transfers, succession planning, leadership, governance and strategy. The firm seeks to help its valued clients thrive through innovation, to ensure continuity and sustainability in a world of constant evolution and unyielding competition.