



Trust & Foundation Services

TRUST & FOUNDATION FACT SHEET

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IN BRIEF

The most efficient and widely used asset protection vehicle is the **Trust** which could hold immovable (real estate property, factory, plants, land) and movable assets (bank accounts, shares, investment portfolios, bonds, securities, insurance policies, art collections, gold, intellectual property) while **Foundation** (separate legal entity without shareholders which is established to reflect in its bylaws the wishes of the individual or corporate founder to be followed by the foundation's council of which the founder could be part of in case he wants to reserve a high level of control) is mostly used for wealth preservation and structuring.

“Succession, governance and Asset protection planning are paramount objectives to sustain conservation, protection and increase of private or business wealth”

1. COMPARATIVE CHART TRUST & FOUNDATION

	Trust	Foundation
LEGAL BACK GROUND	Common Law	Civil Law
DEFINITION	A trust is a legal obligation or relationship between the settlor (the person who creates the trust) and the trustee (the person in charge of the trust) and the beneficiary (the person who receives benefits from the trust).	A foundation is similar to a corporation as it is a legal entity that can enter into contracts, can have bank accounts and can be used for a wide range of investment (and limited commercial activities). The foundation has no shareholders, instead, there is a management body (board).
TYPES	<p>There are four main types of international trusts:</p> <p>Charitable Trusts are set up to benefit charitable causes or organizations. These trusts may have access to beneficial tax treatment depending on the local laws under which the trust operates.</p> <p>Non-Charitable or Purpose Trusts are set up to provide asset protection (the assets are transferred to the trust and not attached to owner). Trusts are used for estate or succession planning in the absence of a will. A trust can dispense its assets entirely according to your wishes.</p> <p>Spendthrift Trusts are trusts set up to protect the beneficiaries from themselves. When, for whatever reason, (illness, addiction, and bad habits) the beneficiary is incapable of managing his own financial affairs.</p>	<p>There are three main forms of foundations:</p> <p>Charitable Foundations are set up for the sole benefit of approved charitable causes or charitable organizations.</p> <p>Private Foundations, also called Private Interest Foundations are used for succession planning in place of a will. Used also for personal asset protection to protect assets from potential threats such as spouses and creditors.</p> <p>Corporate Foundations are used by corporations to manage employee based schemes (pension plans, retirement plans)</p>

	Trust	Foundation
PURPOSES AND USES	<p>The purposes of a trust may be drawn up as broadly as the settlor wishes, but generally used for:</p> <p>Asset protection to protect your assets from excessive taxation (death tax, inheritance tax) and from settlements against you, arising from divorce or lawsuits. NB: In this case, the settlor of the trust cannot be the trustee, as the assets belong to the trustee and become open to claims.</p> <p>Estate planning To avoid forced heirship (which is where the law (not you) decides who inherits): the assets are out of reach and not subject to heirship ruling. In addition, a trust can be used in place of a will. You have control over how your estate is divided and avoid hefty probate costs and save time.</p> <p>Estate planning privacy The terms of a will are public; the terms of a trust are not. You may use a trust to divide your assets without the public ever having access to your instructions.</p> <p>Spendthrift protection To protect beneficiaries from themselves.</p> <p>Investment purposes: Although the trust is prohibited from commercial activity, the trustee can invest on behalf of the trust</p>	<p>The purposes of a foundation may be drawn up as broadly as the Founder wishes, but generally used for:</p> <p>Asset protection to protect your assets from excessive taxation (death taxes, inheritance taxes), from settlements against you arising from divorce or lawsuits, from political instability.</p> <p>Estate planning To avoid forced heirship (which is where the law (not you) decides who inherits): the assets are out of reach, and not subject to heirship ruling. Moreover, a foundation can be used in place of a will. You have control over how your estate is divided and avoid hefty probate costs and save time.</p> <p>Estate planning privacy The terms of a will are public; the terms of a foundation are not. You may use a foundation to divide your assets without the public ever having access to your instructions.</p> <p>Investment purposes — the foundation can be used as a vehicle for commercial and investment activity.</p> <p>Charitable purposes Foundations are often used for philanthropic, humanitarian, educational or other similar purposes, or used to manage assets for such purposes.</p>

	Trust	Foundation
ESTABLISHMENT	The trust is established when the settlor (the person creating the trust) prepares a Trust Deed also known as Deed of Trust or Declaration of Trust and transfers assets (of any kind) to the trustee for the benefit of the beneficiary. In order for the trust to be valid, the assets must be transferred to the trust. Settlor, trustee, protector, beneficiary, trust deed, assets/property, registered agent and office Letter of Wishes/Memoranda of Wishes	When a founder (the person who gives the assets) registers the particulars of the Foundation charter or the Declaration of the Memorandum of establishment at the Public Registry. Unlike the trust, there is no immediate requirement to transfer the assets to the foundation for it to be valid.
COMMERCIAL AND INVESTMENT ACTIVITY	Investment activity is permitted, but scope can be limited by jurisdictional laws or the letter of wishes.	Foundations are not really intended to carry out day-to-day commercial activities, but it can undertake investment and commercial activity as set out in laws of the foundations. To conduct daily business activity, an offshore company that is owned by the foundation could carry out all of your commercial activities. Of particular good use is the Multiform Foundation which is a foundation that can change its form (type) at any time to suit objectives. For instance, if initially you need a foundation to protect current assets, but also need to continue to engage in commercial business activity, then a company foundation is suitable. If after a few years you have achieved the commercial objectives, you may then convert that company foundation to a trust foundation to meet your estate planning and asset protection needs.
LEGAL ENTITY	Under common law, a trust is NOT a legal person in its own right. Therefore, the trust cannot be sued or take legal action as a corporation or a foundation can. The Trustee must be acting on its behalf.	A foundation is a legal entity formed by registering a document called the Foundation Charter or Declaration of Establishment. As a legal body, it can be sued or can sue, enter into contracts and agreements with companies or persons, open bank accounts and conduct commercial activities.

	Trust	Foundation
REVOCABLE OR IRREVOCABLE	The revocability of the trust is up to the Settlor, but a trust will be deemed irrevocable if it is not expressed as revocable.	Foundation may be revocable or irrevocable.
LEGAL OWNER OF ASSETS	The trustee is the manager of assets, held for and on behalf of beneficiaries. Once they are transferred to the trust, these assets no longer belong to the settlor. This means that the endowment cannot be seized, or subject to any claims or legal actions of the settlor or the beneficiaries.	The assets owned by the foundation are independent of the founder. Once they are transferred to the foundation, these assets no longer belong to the founder, but belong to the foundation only. This means that the endowment cannot be seized, or subject to any claims or legal actions on the founder, or the beneficiaries.
ACCOUNTABILITY	The trustees ultimately answer to the beneficiaries or trust protector.	The foundation council members answer to the foundation.
MANAGEMENT	The trust may have a protector, but the trustee and settlor have overall charge of the assets as defined by the trust deed/letter of wishes or the memorandum of wishes.	The foundation is managed by a board or council made up of one or more persons; corporate bodies are permitted.
LIABILITIES	The trustee is wholly responsible for the liabilities of the trust, unless there is a protector who accepts that liability.	Foundations have limited liability hence the personal assets of the beneficiaries and members of council are protected. The Founder no longer has legal claim to assets.
LIMITATIONS/RESTRICTIONS	Other than the limitations placed on the trustees pertaining to investment activity, there are no specific restrictions placed on the trusts.	Other than the limitations placed on the council members in the laws and declaration there are no specific restrictions placed on the foundation.
MAXIMUM DURATION OF ENTITY	Trusts are established for a definite period, generally 100 years. Charitable Trusts may have indefinite periods.	A foundation can be established for an indefinite period. But there are cases when the duration of the foundation can be more specific and set to a specific number of years.
TYPE OF ASSETS (THAT CAN BE PUT INTO ENTITY)	Any kind	Any kind

	Trust	Foundation
INFORMATION ENTERED ON THE REGISTER/ ON PUBLIC RECORD	The trust's name, name of Trustee and the registered office address (identity of settlor is not recorded) The deed is not filed.	Only a limited amount of information is placed on public record- the name of foundation, date of establishment, registration number, name of members and the endowment value.
MAINTENANCE REQUIREMENTS	Entities must be renewed each year. A certificate of good standing is available as evidence that the entity is still in existence, has all files up to date, has paid all fees and penalties required under the act.	
ADVANTAGES OF ENTITIES	Arbitration settlement -Proceedings (legal but non-criminal) relating to trusts could be heard in private and no details are published without court permission..	Foundations could choose to have disputes settled through arbitration rather than go through courts. Clients can have matters resolved in a confidential and efficient way, and have the option to select the method and place of dispute resolution.
OTHER INFORMATION	<p>Before any creditor can bring actions against a trust, that creditor must pay a bond of US\$25,000 as a security deposit.</p> <p>Quicker distribution of assets Reduce or eliminate estate taxes Difficult to contest Prevents courts control over assets</p>	<p>A creditor who wants to bring a court action against a foundation or its founder or the member or the beneficiary must first purchase a bond (between \$25,000 and \$50,000) and deposit it with the Minister of Finance/Registry to cover all costs should the action prove unsuccessful.</p> <p>Nevis Multiform foundations can take on one of several forms (trust, company, partnership and ordinary private foundation) and can convert from one form to another at any time, without cause or penalty.</p>

LET'S GET INTOUCH

If you wish to discuss the Trust & Foundation Services, or any other legal entity, feel free to **contact us**.

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**ABOUT WINCORE ADVISORY GROUP**

Wincore Advisory Group is a multi-disciplinary aggregate of tax planning, corporate services, corporate finance and wealth structuring advisory services provider. Our group was founded by prior executives and directors of major banks, trust, CSP and law firms to provide unmatched on-the-ground competences in the Middle East, Africa, US and Europe.

Under a private and independent ownership, our goal and commitment is to provide high quality pragmatic, confidential, flexible and efficient solutions to address our clientele's specific needs in the fast-moving international business and tax law environment.

Our corporate, finance and tax structuring team comprises multidisciplinary experts who have gained significant experience in the GCC, Africa and Europe in large and reputable international firms and financial institutions.

To keep pace with the changing international marketplace, we also continuously work to strengthen our international networks to deliver seamless and first-class services.