

# Trust or Foundation?

## A Guide to Key points for International Wealth Planning

Mishcon de Reya

It's business. But it's personal.  
[mishcon.com](http://mishcon.com)



Disclaimer:

This is a very basic summary of a complex area of law and taxation. It is not to be taken as legal advice. Before acting or omitting to act in relation to your UK tax position, you should always take specialist tax advice.

© Mishcon de Reya LLP 2017

---

Trusts are a relatively familiar concept in the UK. Foundations are more of an unknown. Both are useful as a structure for succession planning and philanthropy for international individuals. Both can be used to receive and hold assets for the benefit of an individual and their wider family, whether during the individual's lifetime or on their death.

---

It is important to remember that both Trusts and Foundations can be treated in different ways from one offshore jurisdiction to another and that the summary below is necessarily simplistic.

#### Trusts: Main Points

A Trust is broadly a relationship between three parties:

- the settlor who creates the Trust with assets;
- the Trustee who holds the assets; and
- the beneficiaries for whose benefit the Trustee holds the assets.

The three certainties must be present: certainty of intention by the settlor to create the Trust, certainty of the subject matter (Trust assets) within the Trust and certainty of the objects (beneficiaries) under the Trust.

A Trust is not a separate legal entity and cannot hold assets or enter into contracts in its own name. Trusts are not normally required to be registered and therefore remain private.

The Trust is governed by a Trust deed. The Trustee owes a fiduciary duty to the beneficiaries to act in their best interests and, in some cases, to release Trust assets and/or information to the beneficiaries. Trusts can be limited in duration.

A settlor cannot normally retain much in the way of control over their assets once they have been transferred into a Trust. However, a protector can be appointed by the settlor to introduce a degree of indirect control over the Trustee.

In some countries a Trust cannot be created for a specific aim without specified beneficiaries (a "private purpose Trust") unless the aim is charitable.

Trusts are offered by many jurisdictions, including all of the main offshore centres.

---

## Foundations: Main Points

A Foundation is in many ways more like a company than a Trust. A Foundation will differ from country to country, but broadly it is an incorporated vehicle set up on the instructions of an individual or company (the Founder). It must normally be registered and the register of Foundations can usually be searched by the public. It can enter into contracts and hold assets in its own name.

The Foundation is governed by constitutional documents. These are a Foundation Charter, which can be open to public inspection, and Regulations, which are like a company's articles of association and remain private.

There is a Council which administers the Foundation's assets and carries out its aims in accordance with its constitution. It must act in good faith. It can have one or more members and is in many ways like a board of directors. A Guardian can be appointed to ensure that the Council does what it is meant to do and is similar in role to a Trust protector.

The Foundation is created for specific aims which can be charitable and/or non-charitable and can be to benefit people and/or to carry out a set purpose.

The people who potentially benefit under the Foundation do not normally have any rights to assets held by the Foundation or any rights to information about the Foundation unless its constitution allows for this.

A Foundation does not have shareholders or any other form of owner. A corporate body may act as Founder, Council member or Guardian. A Foundation is not limited in duration.

The Founder can retain flexible powers over the assets in the Foundation if this is allowed for in the constitution.

In some cases the tax treatment of Foundations can be unclear.

The following jurisdictions offer Foundations (this is not an exclusive list): Liechtenstein, Jersey, Guernsey, Isle of Man, Cyprus, Anguilla, Panama, St Kitts, Nevis, Austria, Monaco, Malta, Netherlands Antilles, Antigua and Switzerland.

## Trusts v Foundations: Comparison table

	Trust	Foundation
Does it have a separate legal identity like a company?	No	Yes
Can it enter into contracts in its own name?	No	Yes
Does it hold assets in its own name?	No	Yes
Might the assets be held in a different name in the future?	Yes	No
Can assets be transferred to it?	Yes	Yes
Can it be used to receive assets for the benefit of individuals?	Yes	Yes
Can it be used for succession planning and/or philanthropy?	Yes	Yes
Can it exist for a particular purpose, rather than for the benefit of individuals?	Yes – but only sometimes	Yes
Can it be created in someone's lifetime?	Yes	Yes
Can it be created on someone's death?	Yes	Yes
Can the person setting it up continue to control the assets?	Yes – but in a limited way	Yes – the Founder can be a Council member and/or the Guardian of the Foundation
Are any of the documents which created it in the public domain?	No	Yes
Are there rules about what name it can be called?	No	Yes
Does there always have to be a local agent involved in running it?	Yes – if it is run by an offshore Trust or company	No – not always
Can it be attacked as a sham?	Yes – sometimes	No
Can the corporate veil be pierced?	No – not applicable	Yes – sometimes

## Trusts v Foundations: Comparison table

	Trust	Foundation
Can it be revoked in some circumstances?	Yes	Yes
Does it always require an initial financial contribution to set it up?	Yes – but can be nominal	No – not always
Do the people who can potentially benefit have rights to receive assets?	Yes – sometimes	No
Do the people who can potentially benefit have rights to information about the assets?	Yes – sometimes	No – not unless this is wished
Are the people who can potentially benefit owed a fiduciary duty?	Yes	No
Can the people who benefit wind it up and distribute the assets to themselves?	Yes – sometimes	No
Can it be unlimited in duration?	No – not always	Yes
Can a safeguard such as a protector or enforcer be included?	Yes	Yes – known as a “Guardian”
Is it easy to change the law governing it?	Yes – in most cases	No – not always
Is it run by a Council of members?	No	Yes
Does it have to be registered in the country where it has been created?	No	Yes
Can it be used to act as a Trust protector?	No	Yes
Can you trade in its name or use it for commercial purposes?	Yes	No
Does it work for Sharia law purposes to avoid forced heirship?	Yes	No
Is it governed by established tax laws?	Yes – in most cases	No – not always
Should tax issues be considered on creation?	Yes	Yes

---

For further information, or to make an appointment, please contact:



Andrew Goldstone  
Partner, Head of Tax  
T +44 20 3321 7205  
E [andrew.goldstone@mishcon.com](mailto:andrew.goldstone@mishcon.com)  
Twitter [@GoldstoneTweets](https://twitter.com/GoldstoneTweets)



Kassim Meghjee  
Partner, Tax Group  
T +44 20 3321 6295  
E [kassim.meghjee@mishcon.com](mailto:kassim.meghjee@mishcon.com)

Africa House  
70 Kingsway  
London  
WC2B 6AH

T +44 20 3321 7000  
F +44 20 7404 5982  
E [contactus@mishcon.com](mailto:contactus@mishcon.com)

[www.mishcon.com](http://www.mishcon.com)

**Mishcon de Reya**