

# TRUSTS AND FOUNDATIONS

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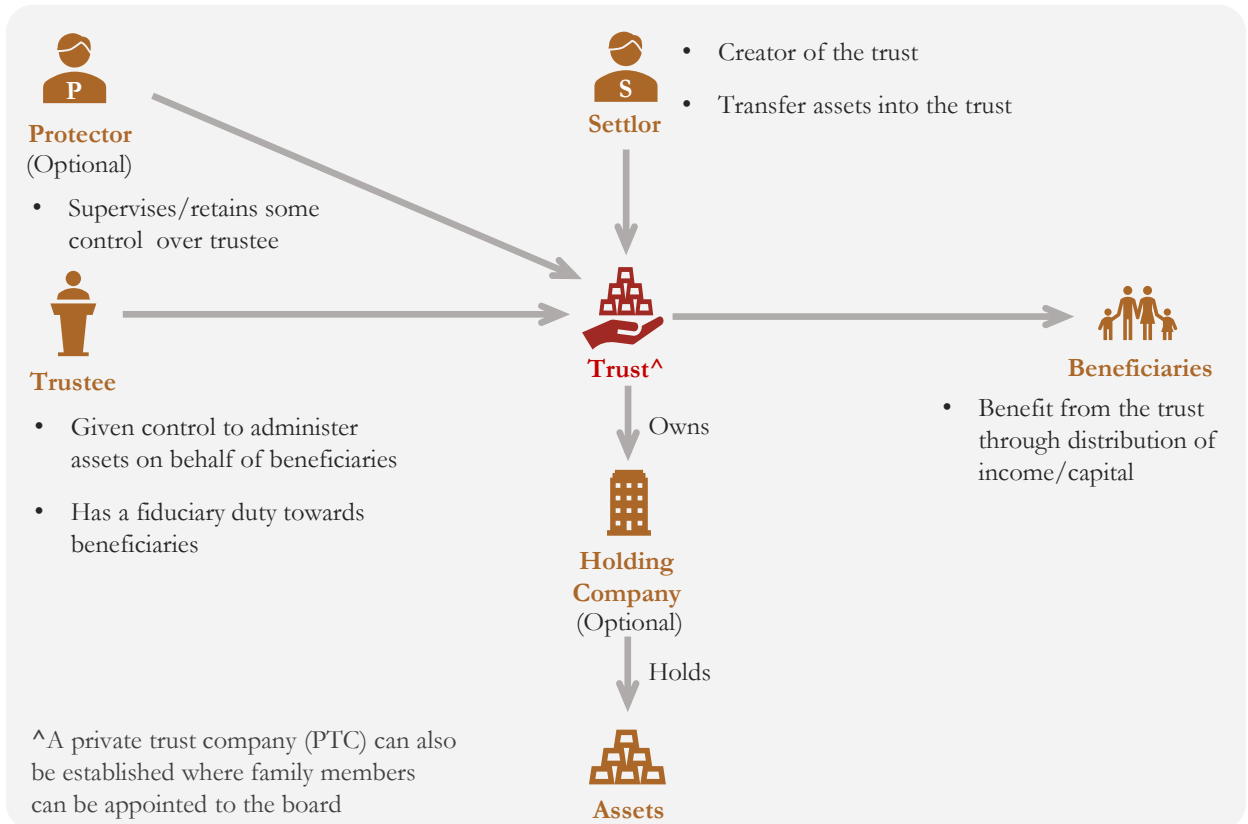


Depending on which part of the world you originate from or are based in, you may be more familiar with one concept than the other - trusts are more established in Anglo-Saxon jurisdictions, while foundations have had a long history in continental Europe, as far back as the medieval times. Given the set-up costs and cross-generation impact, there are many consideration factors to ascertain the most appropriate structure, such as one's place of residence, nationality, marital status, family structure, long-term plans, type and location of assets. It is important to note that different jurisdictions have different treatment of such wealth structures, and therefore it is essential to consult specialist advice to best suit your circumstances.

## Trusts

The concept of trusts can be traced back to the 12<sup>th</sup> century. It is in essence a relationship between the settlor and trustee, whereby the former transfers legal ownership of his assets to the latter for the benefit of beneficiaries. For a trust to exist, it must encompass the three fundamental elements of integrity, benevolence and ability.

### At a glance



### Key documents

Trust documents are not made public, thus are private arrangements preserving confidentiality.

#### Trust Deed

- Primary document
- Outlines the type of assets to be held and designating the beneficiaries
- Contains name and objective of trust, date and country of establishment, name of settlor, trustees and protectors

#### Letter of Wishes

- Supplementary document prepared by settlor
- Not legally binding
- Provides insights to settlor's opinions on distribution, purpose of the trust and issues that may arise with beneficiaries

## Common types of trusts

### Irrevocable

- Assets cannot be removed or amended after placement into the trust.
- Protection from possible estate taxes since control of assets has effectively been relinquished from estate e.g. gifting, asset protection, charitable, life insurance, special needs trust

### Revocable

- Creator can cancel and reclaim assets held by the trust at any time before death, as long as one is mentally competent.
- Does not offer the same level of asset protection as irrevocable trusts.

### Discretionary

- Control of distributions is placed in the hands of the trustees, guided by the settlor's letter of wishes.
- This more flexible and common setup allows trustees to make decisions based on circumstances that may arise e.g. bankruptcy, divorce, minor children, disabled adults.

### Fixed

- The trust schedules distributions to designated heirs in specific amounts, according to terms of the trust set by the settlor.

### Testamentary

- Created after death according to terms of will.
- Lower upfront setup costs. However, as assets may be subjected to probate and other potential problems, this is seldom advised unless expected estate is relatively small.

### Living (or "inter-vivos")

- Originated and funded by an individual during their lifetime.

### Charitable

- An irrevocable trust established for charitable purposes, which generates goodwill for social causes, and also receives tax deductions for eligible assets set aside.
- Can be structured as a split-interest trust: A charitable lead trust is designed to donate to charities over a fixed time period, after which the remaining assets are distributed to the family and/or other beneficiaries. A charitable remainder trust is the inverse.

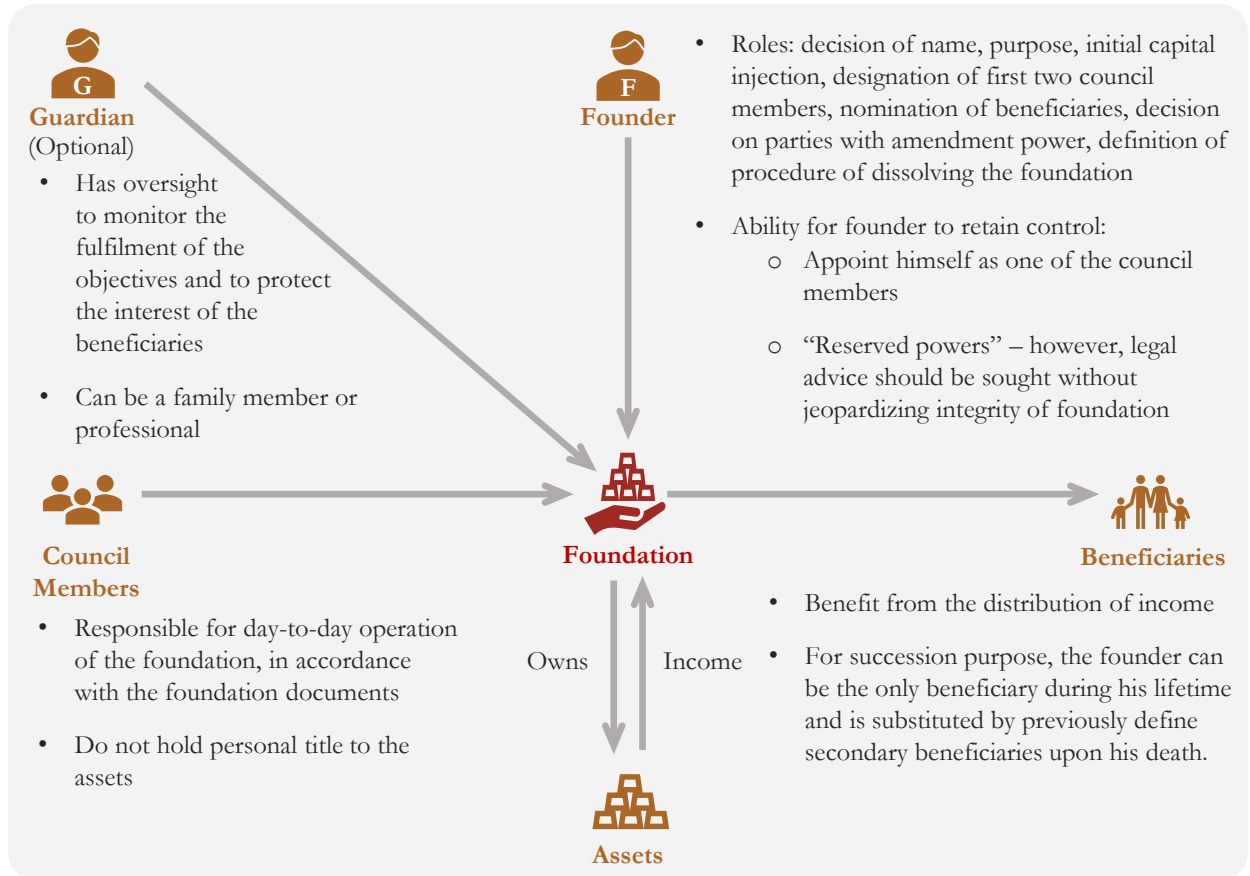
### Asset Protection

- Offers strongest protection against creditors, lawsuits or any judgements against the estate.
- Assets ownership is transferred to a trust that is controlled by a trustee and separate from the settlor.

## Foundations

Foundations can be likened to a body corporate with directors but without shareholders. It is fully autonomous with its own legal personality, and can have its own bank account, sue and be sued in its own name. Though conduct of commercial activities is disallowed, it can be structured to receive dividends and profits from a company that it owns. It is not subjected to audits, nor does it pay tax.

### At a glance



### Key documents

#### Foundation charter

- Primary document
- Main provisions governing the foundation, its initial assets and objectives
- May contain name and domicile of the foundation, with basic description of organization and management
- No disclosure of protector and beneficiaries

#### Regulations/By-laws

- Private formal document drafted by the founder detailing the beneficiaries, the assets, and any instruction for administration and distribution

#### Letter of wishes

- Some private foundations may forgo the above in favor of this more informal document which may be changed at any point in time by its author (founder/guardian)

## Common types of foundations

### Private

- While also dedicated to support charitable causes, it is funded and controlled by an individual, family or corporation.
- Tax-exempted and offers donors tax deduction for their contributions.

### Corporate

- Derives its funds mostly from the contributions of a profit-making business, and often maintains close ties with the donor company.

### Operating

- Majority of the community, typically making grants to public charities.

### Public Charity

- Typically, non-profit organizations which rely on public donations to fund operations and programs.

### Independent

- Not governed by the benefactor, the benefactor's family or corporation even though they might not have started otherwise.

### Non-operating

- Engage primarily in direct charitable activities by running their own programs instead of making grants to others.

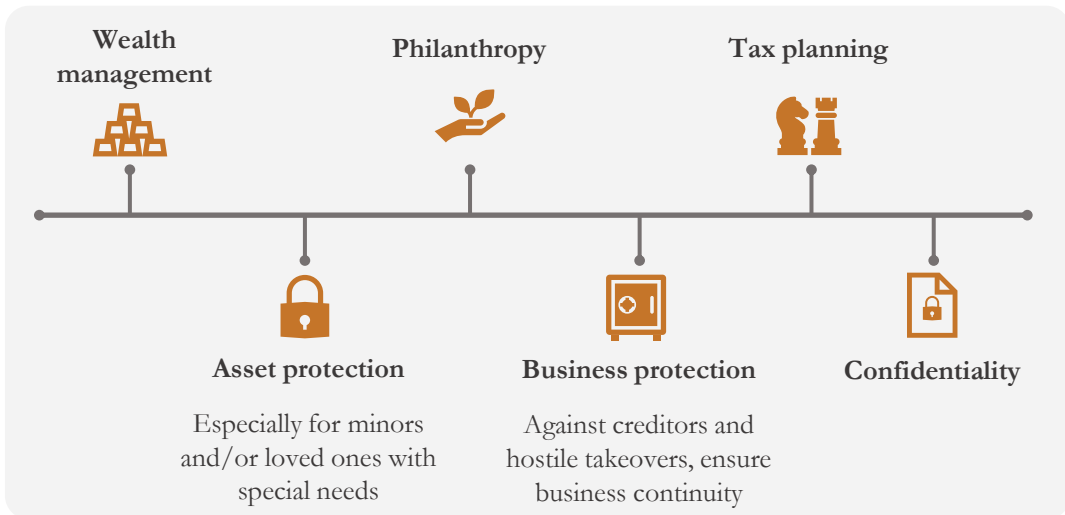
## Key differences between trusts and foundations

Trusts	vs.	Foundations
Common law	<b>Jurisdiction</b>	Civil law
No	<b>Separate legal entity</b>	Yes
Initial transfer of assets	<b>Comes into existence upon</b>	Registration
Trustees	<b>Legal ownership of assets</b>	Foundation
Beneficiaries	<b>Beneficial ownership of assets</b>	Foundation
Relatively easy to establish	<b>Procedure</b>	More formalities
Have a legitimate expectation of disclosure	<b>Beneficiaries' rights to information</b>	Very little
Depends on jurisdiction (100 years in Singapore)	<b>Time period</b>	Perpetual (by default) Finite (optional)
Trustees can move to another jurisdiction and continue running the trust	<b>Portability</b>	Formed based on the legislation of the country establishment
[Trustee name], as trustee of [name of trust]	<b>Naming convention</b>	In the name of foundation

## Role of a fund manager within the structure

<b>Aim</b>	<ul style="list-style-type: none"> <li>• Assets settled into the structure often sit within it for some time before a one-off or regular distribution</li> <li>• Essential for the assets to continue growing or at least beat inflation to ensure that beneficiaries can still enjoy the same or higher purchasing power upon disbursement.</li> </ul>
<b>Appointment &amp; Role</b>	<ul style="list-style-type: none"> <li>• Trustee/council would compare a few proposals to seek the most suitable fund manager</li> <li>• Fund manager may advise on level of the trust/foundation, or the holding company above/beneath</li> <li>• Once target return and risk tolerance are ascertained, fund manager will invest within the agreed parameters while optimizing risk-adjusted returns</li> <li>• Cash projections of underlying investments can also be provided to ensure the trust is able to distribute sufficient funds to satisfy the beneficiaries lifestyles into the future</li> </ul>
<b>Ongoing</b>	<ul style="list-style-type: none"> <li>• Regular monitoring and audit to ensure compliance</li> <li>• Estate practitioners may also compare the asset performance with industry benchmarks to measure the fund manager’s effectiveness and safeguard beneficiaries’ interests.</li> </ul>

Ultimately, trusts and foundations are both excellent vehicles for wealthy families to achieve various objectives, such as:



To set your goals in action, consult professional help to structure a suitable vehicle to facilitate succession planning and a lasting legacy. It is never too early to start, especially in such uncertain times as now.



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