



Trusts and foundations – introduction and comparison

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Trust fundamentals – 1/3

- Trust law
 - Combination of legislation and case law
 - Differs between jurisdictions, but common principles

- Trust exists where person (trustee) holds property
 - for the benefit of any person (beneficiary) and/or
 - for the attainment of any purpose

- Trust is not
 - a legal entity or
 - a contractual arrangement

Trust fundamentals – 2/3

- Trust parties
 - Settlor
 - Trustee
 - Beneficiaries
 - Others
 - » Protector
 - » Enforcer
 - » Appointor
 - » Core delegates/advisors/managers

Trust fundamentals – 3/3

- Trustee must
 - act with due diligence, as would a prudent person and to the best of his ability and skill
 - observe utmost good faith
 - administer the trust in accordance with its terms subject to compliance with mandatory law
 - act in the interests of the beneficiaries or achieving the purposes
 - not profit from trusteeship (unless expressly permitted)
 - avoid conflict of personal interest and trusteeship interest

- Beneficiaries
 - Right to enforce the trust
 - Right to information about the trust
 - Beneficial interest in the trust assets

Trust documentation

- Trust deed
 - Unilateral declaration by trustee
 - Bi-partite settlement by settlor and trustee
 - Beneficiaries not parties
 - Legally binding

- Letter of wishes
 - Usually only for private client matters
 - Unilateral statement by settlor to trustee
 - Not legally binding

- Trust rules
 - Usually only for unit trusts or employee benefit trusts
 - Specify way in which trustee will exercise certain of its powers and discretions

- No public filings of such documents under trust law

Common trust structures – 1/4

- Fixed trust
 - Interests of beneficiaries specified and fixed

- Discretionary trust
 - Interests of beneficiaries entirely unspecified and at discretion of trustee

- Reserved powers trust
 - Settlor reserves to himself (or to a third party) certain rights/powers

- Bare trust or nominee ship
 - Trustee holds specified property (and income from it) on trust for beneficiary until beneficiary instructs him to transfer it
 - Trustee has no other rights/powers

Common trust structures – 2/4

- VISTA trust
 - Only available under BVI law
 - Trustee holds shares in a BVI company and has very limited rights in relation to such BVI company (but full powers in other respects)
 - Effect similar to a reserved powers trust

- STAR trust
 - Only available under Cayman law
 - Beneficiaries have no power to enforce the trust
 - Enforcer has power to enforce
 - Can cover both beneficiaries and/or purposes

Common trust structures – 3/4

- Charitable trust
 - No beneficiaries
 - Established to achieve one or more “charitable” purposes
 - » Relief of poverty
 - » Advancement of education
 - » Advancement of religion
 - » Other charitable objects of public benefit

- Non-charitable purpose trust
 - Only under laws of certain jurisdictions
 - Established to achieve one or more stated purposes
 - Potential purposes usually unlimited
 - Beneficiaries sometimes permitted as well

Common trust structures – 4/4

- Unit trust
 - Established for beneficiaries
 - Interests of beneficiaries unitised and fixed

Foundation fundamentals – 1/4

- Foundation law
 - Combination of legislation and case law
 - Differs between jurisdictions (notably civil law and common law), but common principles
- Foundation exists where incorporated in accordance with relevant legislation
- Foundation is a legal entity
- Foundation may be established to
 - Benefit one or more beneficiaries and/or
 - Achieve one or more charitable or non-charitable purposes

Foundation fundamentals – 2/4

- Foundation parties
 - Founder
 - Council
 - Qualified member
 - Guardian
 - Beneficiary (optional)

Foundation fundamentals – 3/4

➤ Founder

- Causes foundation to be established
- May be council member
- May be guardian
- Has such powers as set out in foundation's charter
- May assign his powers to a third party

➤ Council

- One or more members
- Must include a qualified member
- Must administer foundation's assets and carry out its objects
- Must abide by foundation's charter and regulations, act honestly and in good faith and in best interests of the foundation and exercise the care, diligence and skill of a reasonably prudent person

Foundation fundamentals – 4/4

- Qualified member
 - One in office at all times
 - Licensed and regulated

- Guardian
 - Must not be council member (unless founder or qualified member)
 - Must ensure council carries out its functions
 - May have any further powers granted under foundation's regulations

- Beneficiaries (if any)
 - No right to or interest in foundation's assets
 - No right to enforce the foundation
 - No right to information

Foundation documentation

- Charter
 - Mandatory
 - Registered with the public registry
 - Open to public inspection
 - Mandatory content
 - » Objects
 - » Initial endowment (if any)
 - » Term and/or termination events (if any)
 - » Application of assets on termination

- Regulations
 - Mandatory
 - Not registered or open to public inspection
 - Mandatory content
 - » Establishment and operation of council
 - » Office and role of guardian

Trust and foundation comparison – 1/2

- Legal personality
 - Trust x
 - Foundation ✓

- Public registration and filing
 - Trust x
 - Foundation ✓

- Rights to information
 - Trust ✓
 - Foundation x

- Duties of council/trustee
 - Trust ✓
 - Foundation ✓

Trust and foundation comparison – 2/2

- Rights of enforcement of beneficiaries
 - Trust ✓
 - Foundation x

- Alienation of property ownership from settlor/founder
 - Trust ✓
 - Foundation ✓

- Division of property interests between legal and beneficial
 - Trust ✓
 - Foundation x

Trust and foundation uses – 1/2

- Potentially limitless

- Key common features
 - Alienation of property ownership
 - Ability to benefit third parties with varying degrees of certainty/flexibility

- Private wealth planning
 - Succession
 - Creditor protection
 - Anonymity

Trust and foundation uses – 2/2

- Corporate/commercial
 - Employee benefit structures
 - Settlement mechanism
 - Nomineeship
 - Orphan SPV ownership

- Investment funds

- Philanthropy

Conclusions

Our Global reach



Over 850 staff including 52 partners, 190+ lawyers and 285 professional administrators across 11 jurisdictions

Thank you

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