

COMMERCIAL • PRIVATE CLIENT • PENSIONS & BENEFITS

# Supporting structures

TRUSTS AND FOUNDATIONS  
fundamental differences and similarities



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## TRUSTS AND FOUNDATIONS

Carey Group has extensive knowledge and specialism in assisting individuals with the management of their wealth. We are experts in designing and implementing trust arrangements. In this short document we look at the fundamental differences and similarities of trusts and foundations.

### Similarities

- Assets can be transferred, or donated to both;
- They can both be revocable;
- Both can be created during the founder's / settler's lifetime or on death;
- Both can be unlimited in duration;
- Both provide for the appointment of a Protector or Enforcer;
- A Foundation can have the Founder as member of the Council, and as such the Founder can exercise control over the assets of the Foundation, in a similar way that with a trust the Settlor can retain certain powers e.g. the power to direct investments;
- Both trusts and foundations are created, inter alia, for the purposes of asset protection and succession planning.

### Differences

- A Foundation is a separate legal person, and therefore like a company owns the assets in its own right. Proof of



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## TRUSTS AND FOUNDATIONS



- this existence is a registered number. By contrast a trust is an arrangement involving property, but is not a separate legal person. For a trust to exist, there must be an intention on the part of the settler to create the trust, trust assets, clearly defined beneficiaries, or objects;
- The Trustees of a Trust contract personally in their own name, whereas the Council Members of a Foundation have a similar function to that of a Director of a Company i.e. they contract in the name of the Foundation. All liabilities are liabilities of the Foundation;
  - With Foundations there is no issue of trustees indemnities on retirement and distribution of assets, and the associated administration and time costs;
  - The Foundation Charter is a public document, but the Articles are private. All Trust documents are private;
  - A Trust is more easily transferable, whereas a Foundation has to be redomiciled, as is the case with a company;
  - The powers of a Foundation Council, whilst being quite wide, are generally more limited than the powers of a Trustee, the latter having potentially unlimited capacity, provided the Trustee acts in the interests of the beneficiaries.

For further information please contact: Glenn Mellor,  
Geneva Office

T: + 41 22 718 75 80 E: [glenn.mellor@careynova.ch](mailto:glenn.mellor@careynova.ch)

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