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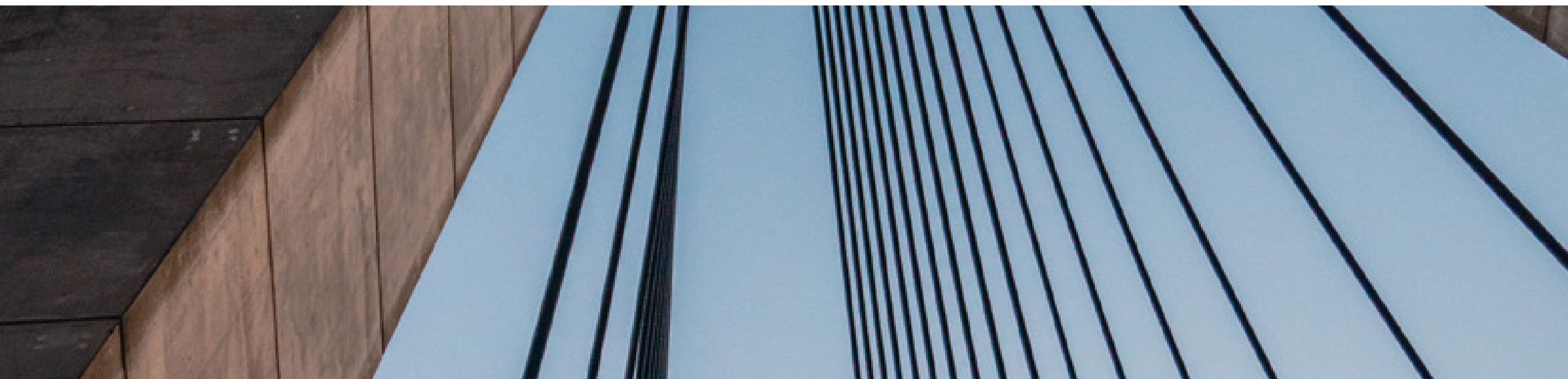
Know how Know you

Succession planning

A global guide to trusts and foundations for Family Office

June 2025



Over the next two decades, it is expected that trillions of dollars will be passed from older generations to their heirs. This 'Great Wealth Transfer' is set to be one of the most significant financial shifts in history.

As vast sums of wealth are transferred to younger generations, both challenges and opportunities emerge. While many people will have taken steps to ensure that their financial affairs are in order, they may have found that traditional succession planning tools such as wills and power of attorneys have their limitations, especially for families with complex, multi-jurisdictional holdings.

Given the complexity of the landscape, an increasing number of families are turning to trusts and foundations. These time-tested structures – which have evolved over the last few centuries to address the unique needs of those seeking wealth preservation and/or transfer – not only provide peace of mind but are highly adaptable, which is important in today's rapidly changing, inter-connected world.

There is also a growing interest in private funds, which we recently published a guide on. These structures enable sophisticated investors to channel interests into private assets such as family businesses, private equity, venture capital and real estate.

In this whitepaper, we look at the role that trusts and foundations can play in succession planning, examining their enduring relevance, their capacity to safeguard assets across generations and their ability to adapt to modern needs. We also explore some of the structures that are available across the world today.

We hope you find this guide useful. It has been prepared with the help of IQ-EQ colleagues globally, who I would like to thank for their valuable contributions.

Ilias Georgopoulos
Global Head of Private and Institutional Asset Owners

An introduction to trusts and foundations

Trusts and foundations have a well-acknowledged role to play in wealth management. They have survived many economic upheavals over the last nine centuries and will no doubt survive others that come along in the future.

Looking ahead, they are likely to be an important succession planning tool for the 'Great Wealth Transfer'. However, their use requires careful research and due diligence.

This document is designed to serve as a research guide for those interested in learning how trusts and foundations can be used to preserve wealth over multiple generations.

Aimed at families who are looking to embrace these sophisticated financial vehicles, it summarises both key information and new developments in the world of trusts and foundations and provides information on the leading jurisdictions worldwide.

Please note that this report does not represent legal, tax, investment and/or other advice. Our objective is to spur discussion around wealth succession using trusts and foundations, and its content is based on our experience.

This report has been written with the layperson in mind, however, certain areas of trust and foundation law are complex. Further, the appropriateness of any wealth-holding structure is highly dependent on a client's circumstances and objectives. Therefore, prior to proceeding with any trust or foundation structure or relying on any information contained in this report, specific legal and tax advice from an experienced, qualified and reputable adviser should be sought.

What is a trust?

A trust is a legal arrangement that involves the transfer of legal ownership of assets from the owner (settlor) to a trustee, who manages the assets for the benefit of the beneficiaries.

The key feature of a trust is the separation of legal ownership (held by the trustee) from the beneficial interest (enjoyed by the beneficiaries).

Trusts originated in 12th century English common law and are often used in estate planning today to protect wealth from risks such as creditors, family disputes, and taxes. They are typically not required to be registered and can be adapted over time.

For example, they can be adapted through the use of private trust companies (PTCs) or purpose trusts. These do not have beneficiaries but are created for specific purposes.

What is a foundation?

A foundation is a corporate-like entity with a separate legal personality meaning that it owns its own property and can transact in its own name.

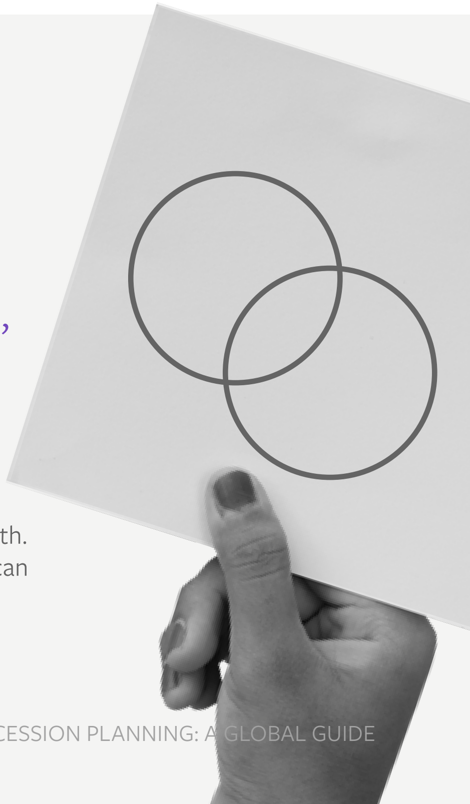
Unlike trusts, a foundation does not separate ownership; the foundation itself holds the assets.

Primarily found in civil law jurisdictions, foundations are a relatively new development. They are not generally bound by fiduciary duties to beneficiaries, and they are not required to provide information to beneficiaries unless it is specified in the foundation's charter. Foundations need to be registered locally to exist and are more commonly used in jurisdictions such as the Netherlands and France.

What are the similarities between trusts and foundations?

Both trusts and foundations can be used for asset protection, helping to preserve wealth from risks such as creditor claims, mismanagement and tax. They allow individuals and families to control how assets are managed over the long term.

Trusts and foundations are also commonly used in estate planning to help families preserve wealth. These structures can mitigate wealth depletion by separating ownership and beneficial use and can provide a way to pass assets smoothly between generations.



What are the main differences between trusts and foundations?

The main differences between trusts and foundations lie in their legal structures and obligations.

Trusts involve a fiduciary relationship whereby the trustee has a duty to manage the assets for the benefit of the beneficiaries. They also involve a separation of ownership between the legal titleholder (trustee) and the beneficiary. Foundations, by contrast, are corporate-like entities that do not separate ownership and do not typically have fiduciary duties toward beneficiaries. Foundations also do not require transparency unless specified in the charter, whereas trusts generally require more openness. Additionally, foundations must be registered locally to exist, while trusts typically do not require registration in most jurisdictions.

How to choose between a trust and a foundation

The choice between a trust and a foundation will depend on several factors. The jurisdiction where the family or assets are based is one key factor. For example, families in the U.S. might prefer trusts due to their clear legal recognition, while those in civil law countries such as France or the Netherlands may lean toward foundations. The specific goals of the family (e.g. asset protection, tax planning, succession planning) will also influence the decision.

In some cases, both structures may be used together, particularly when families are spread across jurisdictions with different legal systems. However, both trusts and foundations must be structured with careful attention to tax compliance to avoid issues such as double taxation or penalties.

The key characteristics of trusts and foundations

- The terms of a trust or foundation can be tailored to address a family's specific circumstances. Both can have fixed terms for beneficiary interests or be discretionary (meaning that trustees have the power to decide when assets are distributed)
- Both trusts and foundations can normally be set up for an unlimited duration (or at least a very long period), allowing flexibility for the continuation of wealth across multiple generations (often referred to as 'dynastic' vehicles)
- Trusts and foundations both offer privacy whilst being flexible enough to ensure compliance with relevant regulation and/or tax laws. There are generally no public registries of/for trusts. However, some limited information in relation to foundations is normally available publicly, depending on the jurisdiction (which is outlined later in this report)
- Both trusts and foundations can hold any asset that a living person can own. This includes family businesses, publicly traded securities, cash, alternative investments such as private equity, hedge funds and venture capital and luxury assets such as yachts, aircraft and artwork
- The power in relation to investment of the trust fund or foundation assets can rest either with the trustee or council respectively, or can be reserved or granted to the settlor of a trust, founder of a foundation or to a third party such as an investment committee
- Both trusts and foundations have safety mechanisms to protect beneficiaries, but this varies somewhat. For trusts, the trustee is the ultimate fiduciary in common law and has a legal and enforceable obligation to always act in the best interests of the beneficiaries, among other legal obligations enforceable by beneficiaries. For foundations, beneficiaries are not normally owed fiduciary duties by the foundation or its council, however, council members do have certain duties, similar to the good faith and prudent person duties of a company's directors
- Most reputable trust and foundation jurisdictions have regulators – governmental authorities charged with the supervision and regulation of trustees' and council members' activities. This oversight dictates the standards of conduct providers must adhere to, not only with regard to trust/fiduciary operational and governance matters, but also importantly with respect to adherence to anti-money laundering and related regulation

Choosing a jurisdiction

Selecting a jurisdiction for a trust or foundation can be challenging. Lawyers will usually have preferred jurisdictions based on their own personal experience and knowledge. Meanwhile, trustees located in only one or a limited number of jurisdictions tend to promote their own jurisdictions. Note that not all trust law requires the trustee to be located in the same jurisdiction as the trust law itself. Similarly, not all foundation legislation requires all foundation council to be in the same jurisdiction as the foundation itself.

In the chapters ahead, we look at the trusts and foundations available in different jurisdictions across the world.

Criteria for choosing jurisdictions

Ranking and reputation as a financial centre

- Financial ranking (e.g. GFCI index)
- Standard and quality of trustees and/or foundation providers located there
- The 'intangibles': reputation, perception, media reports, opening bank accounts, etc

Regulatory oversight

- Trustees or foundation providers are poorly regulated, licenced, and supervised
- Private Trust Companies (PTCs) permitted

Case law and courts

- Relative abundance of jurisprudence, and depth, reputation experience of judiciary

Robust and progressive legislation

- No law against perpetuities (allows 'dynastic' trusts or foundations)
- Non-charitable purpose trust and foundation legislation
- Statutory comfort for reservation or granting of trust or foundation powers
- Anti-forced heirship and provisions
- Fraudulent conveyance legislation (or clear case law on the subject)
- Statutory powers to restrict information to beneficiaries where desired
- Firewall provisions providing supremacy of local law over foreign law
- Private/non-charitable foundation legislation (if applicable)

Tax neutrality

- Tax neutral (but tax and related reporting may be required at settler/beneficiary level
- 'Whitelisted' in relevant countries (if applicable)
- Beneficial double tax treaties (if applicable)

Other criteria

- Relative abundance of supporting infrastructure and no f/x controls
- Bi-lateral investment treaties (if applicable)
- Time zone and ease of access
- Preferably no or little public registry of trusts, foundations or their beneficiaries

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Cayman

For over 50 years, the Cayman Islands have maintained their position as a leading global financial centre, with connectivity not only in the Americas but also extending to the UK, Asia and Africa. A self-governing British Overseas Territory, Cayman has a diverse financial industry that offers banking, fiduciary, funds, company formation, insurance, structured finance, and ship and aircraft registries.

Trusts

> Cayman has long been a leader, and indeed pioneer, in the advancement of trust legislation globally. Today, it has a sophisticated professional trust sector, modern trusts legislation and an effective judicial system.

The primary trust legislation in the Cayman Islands is the Trust Act (as revised) supplemented by the Fraudulent Dispositions Law (1996 Revision) and the Perpetuities (Amendment) Act 2024, which is supported by a body of case law from the Cayman courts. The depth of the Cayman judiciary has proven to be impressive over the years and there is a specialist Financial Services Division of the Grand Court in Cayman that handles trust matters and ultimate appeals to the Privy Council in the United Kingdom.

One example of Cayman's progressive approach to trust legislation is the popular 'STAR Trust'. The STAR trust regime is exceptionally flexible, allowing for both charitable and non-charitable purpose trusts, mixed trusts for charitable/non-charitable purposes and persons, perpetual trusts that are non-charitable, and trusts that restrict the rights of the beneficiaries to enforce the trust or obtain information about it from the trustee. These attributes are often difficult to achieve under more traditional trust law regimes. STAR trusts must have at least one enforcer, and at least one of the trustees must be a licensed trust company or registered as a private trust company in Cayman.

As in a number of other jurisdictions discussed in this guide, a settlor of a Cayman law trust may reserve (for himself/herself) or grant (to a third party or committee) certain powers including, for example, the power to revoke a trust in whole or in part, to amend the terms of a trust, to change trustees, and the power over investment of trust property. Importantly, Cayman law expressly provides that a settlor's reservation or granting of such powers does not invalidate the trust (nor would a trustee acting in accordance with powers represent a breach of trust). Naturally, the type/scope of powers so reserved or granted will depend on the U/HNW family's particular circumstances and objectives.

Cayman is also recognised as having balanced but robust fraudulent conveyance law in its Fraudulent Dispositions Law (1996 Revision). This repealed the centuries-old Statute of Elizabeth noted earlier and provides additional peace of mind in terms of asset protection. The effect of this legislation is only to render voidable a transfer/disposition made into a trust that both (a) has an intent to defraud a creditor, and (b) was done at undervalue. Claims in this regard are subject to a six-year limitation period and any such claims can only be made by creditors who existed at the time of such transfer/disposition into the trust. The corollary is that creditors whose claims arise after the transfer to the trust have no such rights to seek to set aside.

Firewall provisions are an important feature of the trust laws of many jurisdictions and Cayman is no different. The purpose of these is essentially to insulate trusts governed by Cayman Islands law from challenges under foreign laws or judgments on the basis of forced heirship or a personal relationship with the settlor or any beneficiaries of the trust. A number of judgments have confirmed the effectiveness of the Cayman firewall provisions.

Foundations

> Cayman was among the first group of common law jurisdictions to introduce private foundation legislation (found historically in civil law jurisdictions).

The Foundation Companies Law 2017 is not a stand-alone statute: effectively, it operates as an addition to the Companies Law, which applies to all Cayman foundations with necessary modifications.

In this jurisdiction, incorporation of a foundation takes place via the Registrar of Companies, which issues a special certificate of incorporation to the foundation declaring that the entity is a foundation. The documents needed to form a foundation are a memorandum and articles of association (together, 'the Constitution'). Additionally, founders may wish to have bylaws that do not need to be filed and are not public documents, but which effectively act like letters of wishes for trusts.

A Cayman foundation company is managed by a board of directors and has a separate legal personality. Therefore, it transacts with third parties in its own right. Like most other foundations, duties are owed only to the foundation itself as opposed to beneficiaries, and rights can be enforced against only the company and not the directors. Note that, at all times, there must be a secretary appointed who is a 'qualified person' – someone who is licensed in Cayman to provide company management services. The secretary's office will be the registered office of the Cayman foundation, where the statutory records regarding the Cayman foundation must be kept.

In the Cayman Islands, foundation companies benefit from the jurisdiction's company case law history and the 'firewall' feature noted above. Founders of foundations may also reserve or grant powers over the foundation in a similar manner as described for Cayman trusts noted above. Finally, any fraudulent claims as to transfers/dispositions to Cayman foundations also fall under the same Cayman fraudulent conveyance legislation and related tests noted above.

	Trust	Foundation
Primary legislation	The Trusts Law (as revised), the Fraudulent Dispositions Law (1996 Revision) and the Perpetuities (Amendment) Act 2024.	The Foundation Companies Law 2017.
Founding document	Trust Deed: The trust deed is the main legally binding document, which must be complied with and outlines the parties to the trust and its broader terms including administrative and dispositive provisions and powers. Letter of Wishes: In addition, the trust deed is often (but not necessarily) followed by a non-binding letter of wishes from the settlor outlining his/her general wishes as to the future administration of the trust. This letter provides useful insight and context for trustees as to the rationale/purpose of the trust, which in turn, whilst not legally binding, is normally used by the trustees in the discharge of their powers and duties under the trust deed.	Constitution: Comprises a memorandum and articles of association. Bylaws: Not part of the constitution of the Cayman foundation, but contemplated as the blueprint for how the Cayman foundation is operated and managed and who may draw on its assets and income.
Manager	The trustee.	The foundation company's management will be carried out by its directors. Company management services can only be provided by those licensed or allowed by the Companies Management Law, known as 'qualified persons'. The foundation company must appoint a secretary who is a qualified person to maintain fully and properly records of all activities, meetings and inquiries.
Ownership type	Separation of legal and beneficial ownership.	The Cayman foundation is a body corporate with a legal personality distinct from its members, directors and other connected persons.
Publicly filed?	The trust instrument does not have to be filed with any public body in the Cayman Islands, and information relating to the trust is not accessible by the general public.	Cayman foundations are subject to the same requirements regarding documentation and filings as any other Cayman exempted companies. Information available to the public (upon payment of a fee) includes type of company (in this case foundation), its date of incorporation, company number, status (i.e. active or dissolved), the location of its registered office, the date of the end of the company's financial year and the names of its current directors.

	Trust	Foundation
Taxation	There are no gift, estate, income or capital taxes in the Cayman Islands for individuals or companies.	The Cayman Islands has no corporation tax, income tax, capital gains tax, inheritance tax, gift tax, wealth tax or any other tax applicable to a foundation company. Stamp duty is payable on certain documents, generally at a nominal rate. Foundation companies carrying out their objects mainly outside of the Cayman Islands can also apply to register as an exempted company and will then be able to obtain a tax undertaking certificate from the Cayman Islands government, guaranteeing no change to their tax status for a period of up to 30 years from the date of the undertaking.
Duration	The Perpetuities (Amendment) Act 2024, passed by the Cayman Islands Parliament in July 2024 and in effect as of the 22 August 2024 disapplies the previous rule against perpetuities in relation to Cayman Islands ordinary Trust, Cayman Islands STAR trust continue not to be subject to the rule against perpetuities.	A foundation is not subject to the rule against perpetuities and can therefore carry on indefinitely / in perpetuity.
Regulator	Cayman Islands Monetary Authority (CIMA).	Cayman Islands Monetary Authority (CIMA).

Curaçao

Part of the Kingdom of the Netherlands, Curaçao is an autonomous country in the Caribbean. The island's history as an international financial centre spans more than 70 years and has its origins in World War II, when Dutch companies seeking protection moved their assets there.

Today, Curaçao offers a diverse range of financial services including family office services, investment funds, trust services, intellectual property rights management, wealth preservation and asset protection, shipping and aircraft registry and international trade services, including e-commerce. It has a highly skilled and multilingual workforce, as well as a favourable time zone for dealings with U.S. and Latin American markets.

Trusts

The main body of civil law in Curaçao is the Civil Code. Here, most laws are based on their Dutch equivalent. In book three of the Civil Code, a section was added in 2012 allowing the creation of a common law style trust.

To date, Curaçao is the only country within the Kingdom of the Netherlands (and one of just a few civil law jurisdictions globally) that have directly introduced the common law trust into its law. Curaçao has a Court of First Instance and a Court of Appeal, however, its Supreme Court is the Supreme Court in The Hague in the Netherlands.

A Curaçao trust has a number of potential benefits including no exchange controls, tax neutrality, privacy, asset protection, and English language. So, it can be an attractive option for high-net-worth individuals and families seeking to establish a robust and flexible wealth planning structure.

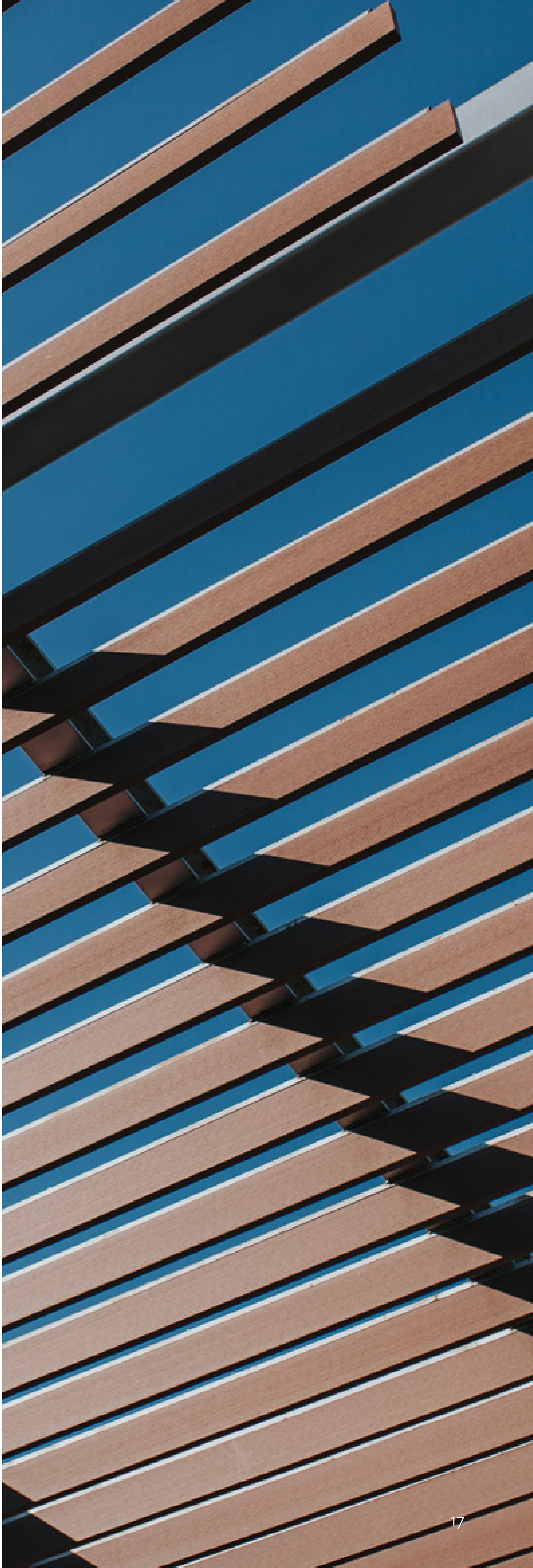
A distinguishing feature of Curaçao is its wide network of Bilateral Investment Treaties (BITs). Currently, Curaçao has BITs with over 90 countries. In today's age of globalisation and cross-border investment activity, BITs are becoming more and more important, especially in the context of investments in emerging countries, which often carry increased political risk. BITs can help mitigate this risk by protecting investments in countries where investor rights are not already protected through existing agreements (such as free trade agreements). BITs not only obligate host countries to provide certain protections for foreign investments but also create a powerful private right of action for investors against a host government if it falls short of those obligations. For example, BITs establish clear limits on the expropriation of investments and entitle foreign investors to seek compensation, including the right to submit a dispute with the host government directly to international arbitration.

Foundations

A Curaçao private foundation, known in Dutch as a 'Stichting Particulier Fonds' or 'SPF', is a separate legal entity designed to hold assets and provide succession planning solutions for private individuals and families.

The SPF Law enacted in 1998 governs the formation, operations and liquidation of private foundations in the jurisdiction. This is mostly modelled after the Liechtenstein 'Stiftung' outlined later in this report.

A Curaçao private foundation has several benefits provided it does not engage in operating a business. These benefits include no taxes on passive income, profits or capital gains, and no withholding taxes. Additionally, there are no local taxes on contributions or distributions. The SPF also offers the option to apply for 10% tax on passive income to meet any applicable threshold taxation requirements. Benefitting from Curaçao's network of BITs, a SPF can be a good option for those seeking estate planning solutions that offer privacy and asset protection.



	Trust	Private Foundation
Legislation	The national ordinance of 15 December 2011 supplementing Book 3 of the Civil Code with provisions with respect to trusts, National Gazette (P.B.) 2011, no. 67 and the explanatory memorandum to the legislative proposal for the national ordinance of 15 December 2011 supplementing Book 3 of the Civil Code with provisions with respect to the trust, no. 3.	The National Ordinance of 19 October 1998.
Founding document	Formed by a notarial trust deed executed before a civil-law notary practicing in Curaçao	Established by means of a notarial deed executed before a notary practising in Curaçao.
Manager	A trustee.	Private foundations have a board of directors, which is the administrative body of the private foundation. Additional appointment of a supervisory board and/or a protector is also possible.
Ownership type	Separation of legal and beneficial ownership, as is the case in common law trusts.	A private foundation is a separate legal personality and is considered the legal and economic owner of its assets.
Publicly filed?	Trusts are currently not registered. However, there is pending legislation that will require registration with the commercial registry in its trust section. Public information will include name and date of trust deed, name(s) of trustee and protector, and beneficiary OR purpose (naming a class of beneficiaries will allow further flexibility).	Private foundations are registered with the Commercial Register of the Curaçao Chamber of Commerce and Industry, deed of incorporation and board members. Publicly accessible information includes certain limited details such as the name of the private foundation, its formation date and registered office. The founder and beneficiaries are not named in public records.
Taxation	Trusts not engaging in trade, commercial or other business activities are exempt from all taxes like corporate tax, income tax, capital gains tax, gift tax and inheritance tax. In addition, the beneficiaries receiving dividends or other payments from the trust's income are not subject to a dividends or capital gains tax in Curaçao. Also, distributions of assets to non-resident beneficiaries will not subject them to a gift tax or income taxes. If a trust actively participates in a trade, business or other commercial enterprise, it will be subject to the current corporate tax rate of 22%. But, just like a Curaçao private foundation, a trust can opt for a taxation of 10% to meet the minimum tax threshold.	The private foundation receives 100% tax exemption from all taxes including corporate tax, income tax, gift tax and inheritance tax. However, this tax exemption will not apply if the private foundation actively engages in profit-making businesses. Passive income from investments or acting as a holding company of corporate shares or interests in private or public companies will not be taxed. If a private foundation chooses to engage in active business enterprises, it will be taxed at the normal corporate tax rate of 22%. A private foundation can opt for a taxation of 10% to meet the minimum tax threshold.
Duration	There is no rule against perpetuity limiting the lifespan of a Curaçao trust, allowing for 'dynastic' trusts.	A private foundation may choose an unlimited (perpetual) lifespan or establish a definite time period for termination.

Cyprus

Cyprus is one of the top 10 financial centres in Eastern Europe and Central Asia. Located close to Europe, Africa and the Middle East, it is renowned for cross-border structuring as well as ship management services. While Cyprus is an independent country today, it was previously a British colony from 1925 until 1960. So, its legal system is closely connected with that of England and English common law.

Trusts

Given Cyprus' longstanding common law connectivity, the use of trusts in the jurisdiction goes back many years. And with its progressive and flexible trust law and tax neutral environment, the EU country is an attractive trust jurisdiction today.

Cyprus trust law is largely modelled on the English Trustee Act of 1925, but was modernised under the Cyprus International Trust Law 1992, which was subsequently amended in 2012. The requirements with respect to residency for establishing a trust in Cyprus are that the settlor cannot be a tax resident of Cyprus in the year preceding the year of establishment of the trust and that at least one trustee must be resident in Cyprus. As in a number of other jurisdictions that have progressive trust legislation, the Cypriot trust statute specifically provides for the reservation or granting of powers over the trust, including the powers to revoke or amend the trust, to appoint and remove trustees, or to direct investment decisions.

A Cyprus International Trust (CIT) may last for an indefinite period and the income of a CIT may be accumulated without limitation. CITs also provide for tax neutrality, provided there are no Cypriot resident beneficiaries nor Cypriot source income or gains (this is similar to a number of other jurisdictions). Additionally, Cyprus trusts can leverage the network of double tax treaties Cyprus has entered into.

It's worth noting that Cyprus legislation provides helpful clarity as to fraudulent conveyance claims. A CIT will not be void or voidable and no claim may be made in respect of the assets that have been transferred to the CIT in the event of the settlor's bankruptcy or liquidation, unless the transfer to the CIT was made with the intent to defraud the creditors of the settlor at the time of the transfer. Furthermore, there is a statutory time limit of two years as to when such action can be brought.

Foundations

Under Cypriot law there is no specific legislation for foundations. However, two other Cypriot entities can be used that effectively mirror and replicate many elements of foundation legislation found in other jurisdictions.

These entities are:

- Associations, governed by the Societies and Associations Law 57/72
- Companies Limited by Guarantee, governed by the Companies Law, Chapter 113

Associations can pursue both public and private benefit purposes as specified in their articles of association. These purposes may be amended at any time by amending the articles of association. Like a foundation, they are created by a founder and have members instead of beneficiaries. They are run by a board member whose fiduciary duties and obligations are normally specified in the articles of association. There is a requirement that the accounts of the association must be audited by a certified auditor, whose report is filed with the local registrar.

Companies Limited by Guarantee (CLG) are a special type of company that must comply with the Companies Law in Cyprus. Like a foundation, a CLG does not have share capital, but it does have members (analogous to beneficiaries of a foundation). Members may be admitted (or removed) in accordance with the rules laid down in the articles of association. On that note, the articles of association of the CLG can be customised in several ways, which is analogous to a foundation's charter in other jurisdictions.

Both types of foundation-like entities above have separate legal personalities like most foundations do and also enjoy double tax treaty protection like any other Cyprus company.

	Trust
Primary legislation	The Trustees Law (Cap 193), which largely adopts the text of the English Trustee Act of 1925, and The International Trusts (Consolidated) Law of 1992 and 2012.
Founding document	Trust Deed: The trust deed is the main legally binding document, which must be complied with and outlines the parties to the trust and its broader terms including administrative and dispositive provisions and powers. Letter of Wishes: In addition, the trust deed is often (but not necessarily) followed by a non-binding letter of wishes from the settlor outlining his/her general wishes as to the future administration of the trust. This letter provides useful insight and context for trustees as to the rationale/purpose of the trust, which in turn, whilst not legally binding, is normally used by the trustees in the discharge of their powers and duties under the trust deed.
Manager	The trustee.
Ownership type	Separation of legal and beneficial ownership between trustees and beneficiaries.
Publicly filed?	No requirements for registration and publication of constitutional documents and financial statements of the CIT. What is to be disclosed is the name of the CIT, the date of its settlement and the trustee's name. This information is disclosed to the supervisory authorities of Cyprus, such as the Cyprus Securities and Exchange Commission, the Cyprus Bar Association or the Cyprus Association of Certified Accountants, but is not publicly available.
Taxation	Taxation of a CIT is determined largely on the basis of the beneficiaries' residence. Where a beneficiary is resident in Cyprus, the income and gains of an international trust from sources within and outside of Cyprus are subject to any form of taxation that is imposed in Cyprus. On the other hand, where the beneficiaries are not resident in Cyprus, only the income and gains of an international trust from sources within Cyprus will be subject to taxation in Cyprus. Any income (interest, dividends, gains on sale of assets etc.) that comes from non-Cyprus sources would be considered exempt.
Duration	A CIT has no limit on its duration and may be valid and enforceable without containing a fixed maturity date.
Regulator	Cyprus Securities and Exchange Commission (CySEC).

France

Home to five of the 20 largest asset managers in the world, Paris is one of the top five financial centres in Western Europe and Europe's leading asset management centre. Its financial industry supports a range of financial activities including banking, insurance, asset management, FinTech and market infrastructure. France is a founding member of the EU and Strasbourg is one of the three official seats of the European institutions.

Trusts

France does not have trust law as it is a civil law country. The country does, however, offer the 'fiducie' whose characteristics very closely resemble many of the attributes of the common law trust.

Although not as flexible or widely used as the common law trust, the fiducie is a viable asset preservation tool for those in France. And interest in it has increased as a result of France's introduction of rather punitive taxation and reporting rules relating to foreign trusts over the last decade. Another factor contributing to domestic demand for the fiducie has been a sharp increase in the number of high-net-worth families in France in recent years. It's worth noting here that the accumulated wealth of French billionaires is higher than in any other country in Europe.

Broadly speaking, there are two main types/uses of the fiducie: (i) the fiducie 'gestion', which is for estate management/planning, corporate shareholder structuring and escrow arrangements, and (ii) the fiducie 'sûreté', which is for secure repayment of a financing facility. The focus here is on the first type.

The fiducie was introduced into law in France in 2007. It is defined in French law as follows:

"The fiducie is the process by which one or more entities transfer property, rights or securities, or a combination of property, rights or securities, present or future, to one or more fiduciaries who hold them separately from their own property, acting with a specific purpose for the benefit of one or more beneficiaries."

The fiducie contract creates an autonomous estate ('patrimoine fiduciaire') that is separate and distinct from the settlor's, the beneficiary's and the fiduciaire's own estates. And the opening of insolvency proceedings against the fiduciaire does not affect the assets in the fiducie. The assets in the fiducie property are held and exclusively reserved for the beneficiaries which means they cannot be seized other than by creditors whose rights arose out of the actual administration of the fiducie.

The contract that sets up the fiducie must contain certain details and must be registered with the Registre National des Fiducies (the national fiducie registrar) and the Service des Impôts (the French tax authorities). The assets are transferred by the settlor of the fiducie and are managed by the fiduciaire in accordance with the mission provided for in the contract, in the interest of a beneficiary. The trustee (fiduciaire) of a fiducie must be a financial institution, a lawyer, an insurance company or any other regulated entity that is subject to the regulatory constraints of the Code Monétaire et Financier.

Having said that, in practice, not all such trustee options normally have both the required technical and administrative capabilities to properly oversee and administer the fiducie and its assets, particularly when alternative assets such as private equity, venture capital, real estate and luxury assets are involved.

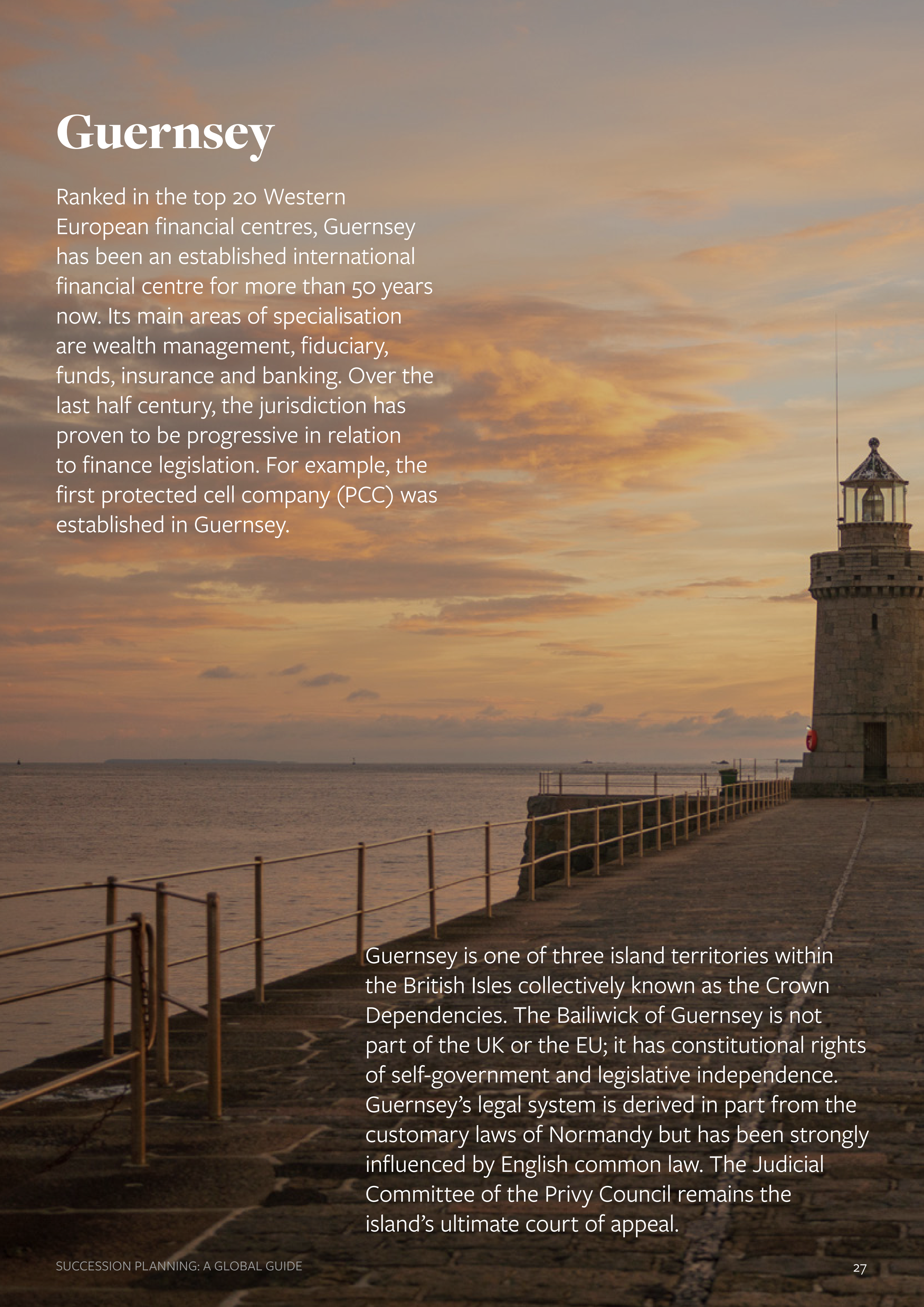
When the fiducie was created, it had to comply with the fundamental concepts under French civil law, namely the principle of the unicity of property rights and the absence of distinction between legal ownership and beneficial ownership. And today, legislation limits the fiducie's scope, maintaining its tax-neutral position.

However, the fiducie continues to be used for other non-tax estate planning objectives such as providing for special needs of minor children or incapacitated adults, protecting spendthrift heirs who are not qualified to properly manage an estate or to take over a business, or to ensure that a business or an estate is wound up at the best possible time and under the best market conditions. It also acts as a vehicle for outsourced professional wealth administration, especially where such expertise does not exist within the family (or may not exist in future). Note that the use of the fiducie in private wealth structuring is normally undertaken by French residents as the vehicle has less attraction to non-French residents given the other trust and foundation alternatives available – many of which are described in this guide.

Foundations

Foundations in France can only be set up for cultural, scientific or charitable purposes and thus cannot be considered as a substitute for private foundations found in other jurisdictions, except to a limited extent in the case of charitable foundations.

	Fiducie
Primary legislation	Loi n° 2007-211 du 19 février 2007 instituant la fiducie, JORF n°44 du 21 février 2007.
Founding document	*Fiducie* agreement (*contrat de fiducie*).
Manager	Trustee (*fiduciaire*).
Ownership type	Similar to a common law trust with separation of legal ownership from beneficial use and enjoyment.
Publicly filed?	Registered with the *Registre National des Fiducies*, which is the same registry with which foreign trusts established by or for French residents are also supposed to be registered. This register is only accessible to certain specific French authorities, such as the French financial intelligence unit (FIU), the judicial authorities and the tax and customs administrations.
Taxation	Fiscally/tax transparent. The transfer of assets into a fiducie should entail no tax consequences.
Duration	Maximum duration of 99 years.
Regulator	Varies depending on the type of trustee selected, however the most common is the *Autorité des Marchés Financiers* (AMF).



Guernsey

Ranked in the top 20 Western European financial centres, Guernsey has been an established international financial centre for more than 50 years now. Its main areas of specialisation are wealth management, fiduciary, funds, insurance and banking. Over the last half century, the jurisdiction has proven to be progressive in relation to finance legislation. For example, the first protected cell company (PCC) was established in Guernsey.

Guernsey is one of three island territories within the British Isles collectively known as the Crown Dependencies. The Bailiwick of Guernsey is not part of the UK or the EU; it has constitutional rights of self-government and legislative independence. Guernsey's legal system is derived in part from the customary laws of Normandy but has been strongly influenced by English common law. The Judicial Committee of the Privy Council remains the island's ultimate court of appeal.

Trusts

Trusts are governed by the Trusts (Guernsey) Law, 2007 (as amended), and supported by a wide body of case law from the island's courts and other common law jurisdictions.

In Guernsey, important regulatory oversight and standards are provided by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, which imposes minimum standards on professional trustees and requires them to be licensed by the Guernsey Financial Services Commission (GFSC). The licencing requirements are rigorous and include 'fit and proper' tests and requirements to put in place adequate capital, insurance, liquidity, internal controls, codes of conduct and risk management frameworks along with related policies and procedures that are tested from time to time by the GFSC.

Guernsey has a large, well-developed professional trust sector, both in terms of trust practitioners and the supporting legal and accounting ecosystem, as well as in terms of the depth, reputation and experience of its judiciary. Like many other leading jurisdictions, it also offers fiscal neutrality for trusts established for non-Guernsey resident beneficiaries.

As in a number of other jurisdictions with progressive trust legislation, the Guernsey trust statute specifically provides for the reservation or granting of powers over trusts, including the powers to revoke or amend a trust, to appoint and remove trustees, and to direct investment decisions. The legislation also makes it clear that such reservation or granting of powers will not invalidate a Guernsey trust nor would a breach occur where a trustee is required to act in accordance with such reserved or granted powers. Guernsey's robust firewall provisions provide its trusts with a high degree of protection against possible interference from other jurisdictions (e.g. forced heirship claims) and the Guernsey Royal Court has an overall supervisory jurisdiction over trusts established under Guernsey law.

A fraudulent disposition claim in Guernsey (and Jersey) may be brought by way of a 'Pauline Action' – the essential elements of which were set out in the judgement of Re Esteem Settlement [2002] JLR 53, a decision of the Royal Court of Jersey that has been followed by Guernsey. These elements include that the person bringing the claim must have been a creditor at the time of the transfer, and that the settlor to the trust was insolvent either at the time of the transfer or because of the transfer. Essentially, a solvency (balance sheet) test is applied. Further, the creditor must show that the settlor carried out the transfer into trust with the intention of defrauding his/her creditor and such intention must have been the 'substantial purpose' of the transfer.

Foundations

Guernsey is one of only a few common law jurisdictions that have introduced foundations law over the past decade. The Guernsey Foundations Law of 2012 is the main legislation in this regard.

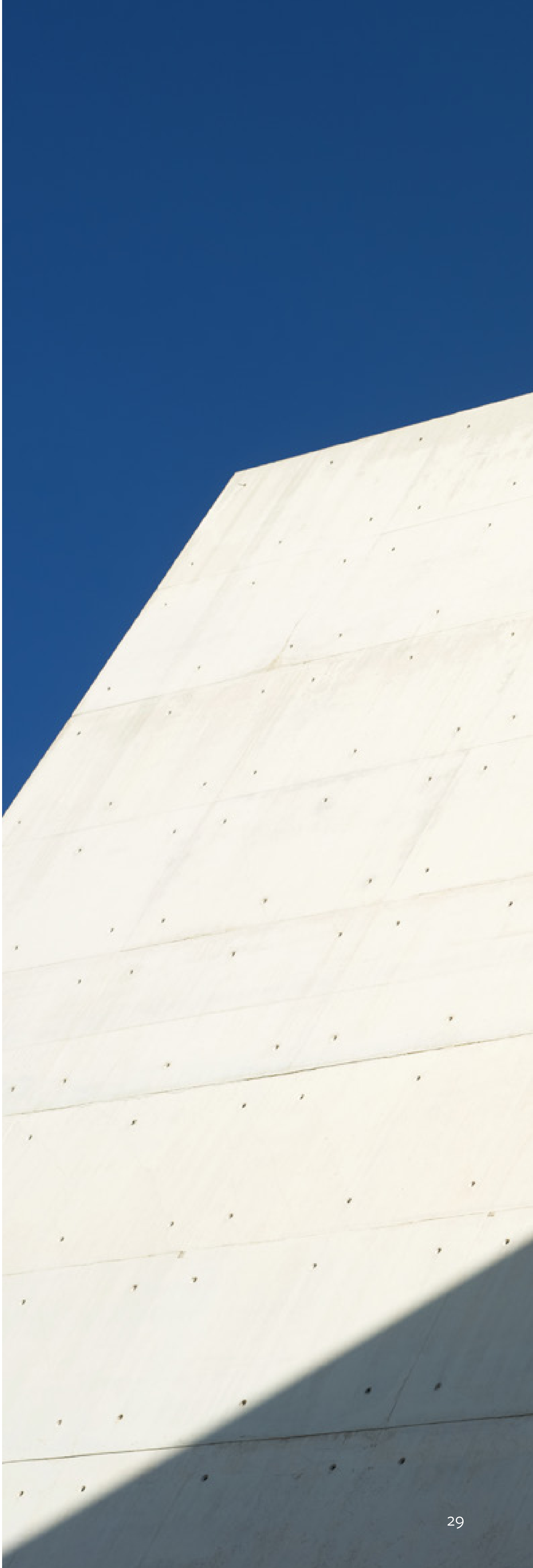
The Guernsey foundation has a separate legal personality and is broadly similar to foundations found in civil law and other common law jurisdictions. However, there are some unique facets of the Guernsey foundation, the most notable of which is the ability to distinguish between 'enfranchised' and 'disenfranchised' beneficiaries, with the main difference being entitlement to documents and information pertaining to the foundation.

A foundation is established by a founder and administered by a council that acts like the board of a company, making decisions on behalf of the foundation. A council is made up of councillors and, in some cases, guardians (if there are disenfranchised beneficiaries or a purpose). Councillors, who must act in good faith, have several duties, such as the duty not to profit, to provide information, to preserve assets, maintain records and act impartially. Their duties are owed to the foundation and not the beneficiaries, similar to the way that company director duties are owed to the company. A guardian owes a fiduciary duty to the beneficiaries and founder of the foundation by including the duty of care and duty to act 'en bon père de famille' (like a good father to a family), analogous to Guernsey's trust legislation.

A foundation is administered in accordance with its charter and rules, much like the memorandum and articles of a company or trust deed (when looked at collectively). The charter will set out basic information, including the name, purpose, duration and initial capital/endowment. The rules will include more detailed information including the role of councillors, retirement and remuneration, and beneficiaries. They can also include more bespoke provisions like addition and exclusion of beneficiaries or conditions on benefitting.

Similar to the Guernsey trust law equivalent, the foundations law in Guernsey includes a 'firewall provision' meaning that all questions arising in relation to a Guernsey foundation are to be determined in accordance with Guernsey law. Foundation law also provides for the reservation or granting of powers similar to that outlined above for Guernsey trusts.

The formation, management or administration of foundations is subject to regulation and licensing by the GFSC under the same regulation noted above for trusts. The GFSC has released a Code of Practice for Foundation Service Providers, which came into force in September 2013. Currently, there are around 114 foundations in Guernsey.



	Trust	Foundation
Legislation	The Trusts (Guernsey) Law of 2007	The Guernsey Foundations Law of 2012.
Founding document	Trust Deed: The trust deed is the main legally binding document, which must be complied with and outlines the parties to the trust and its broader terms including administrative and dispositive provisions and powers. Letter of Wishes: In addition, the trust deed is often (but not necessarily) followed by a non-binding letter of wishes from the settlor outlining his/her general wishes as to the future administration of the trust. This letter provides useful insight and context for trustees as to the rationale/purpose of the trust, which in turn, whilst not legally binding, is normally used by the trustees in the discharge of their powers and duties under the trust deed.	A Guernsey foundation's constitution consists of charter and rules. Every foundation must have a charter, which includes basic limited information about the foundation. Rules set out the operative provisions of the foundation.
Manager	Trustee.	Foundation council, which acts like a corporation's board of directors. Under the law, at least two councillors must be appointed. The law requires the appointment of a guardian for purpose foundations or when one or more beneficiaries become disenfranchised.
Ownership type	Separation of legal and beneficial ownership between trustees and beneficiaries.	There is no ownership of a foundation and it is a separate legal entity, although it may have beneficiaries that it can benefit.
Publicly filed?	There is no requirement under Guernsey law to register trust documents with any governmental office or agency in Guernsey.	A foundation's charter is filed with the Guernsey registry and is viewable by the general public, but its rules are a private document not filed with the registry nor viewable by the public.
Taxation	Where all of the beneficiaries are resident outside of Guernsey, a Guernsey trust will be exempt from Guernsey tax.	A foundation is taxed as a company under the Income Tax (Guernsey) Law, 1975 at the company standard rate of 0%.
Duration	A Guernsey trust may exist for an indefinite period or for any stated fixed period.	A Guernsey foundation might have a limited or unlimited duration.
Regulator	Guernsey Financial Services Commission (GFSC).	Guernsey Financial Services Commission (GFSC).

Hong Kong

Hong Kong is one of the most established international financial centres in the world. Home to the Hong Kong Stock Exchange – one of the largest stock exchanges in the world by market capitalisation – it has a reputation as a leading infrastructure investment hub. It is also seen as the gateway to China due to its unique relationship as a Special Administrative Region of the People's Republic of China. This provides enhanced access to the world's second largest economy.

Trusts

Hong Kong has a well-established trust industry. Today, trusts are an important part of Hong Kong's financial services sector, which is one of the four pillars of its economy.

In terms of its legal system, Hong Kong follows English common law together with Chinese customary law (in matters of family and land tenure).

The Trust Law (Amendment) Ordinance 2013 amended the Trustee Ordinance of 1934 and the Perpetuities and Accumulation Ordinance of 1970 and brought in much needed improvements to the legal infrastructure for Hong Kong Law Trusts. This new law:

- Abolished the rule against perpetuity for non-charitable trusts so that they can be set up for an indefinite period
- Established clear standards of care for trustees
- Protects against forced heirship and other succession laws found in other countries by declaring that movable properties will not be subject to foreign inheritance laws
- Prevents a trust from being declared invalid when a settlor retains the power to direct investments and manage assets
- Limits exculpatory provisions for trustees in order to better protect beneficiaries from trustee misconduct. Trustees cannot be exempt from liability for committing fraud, gross negligence or misconduct
- Provides greater administrative powers for trustees

In March 2018, the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) came into force which introduced a licensing regime for trust and company service providers. With this, Hong Kong trustees must satisfy a 'fit-and-proper' test and comply with certain statutory due diligence and record-keeping requirements.

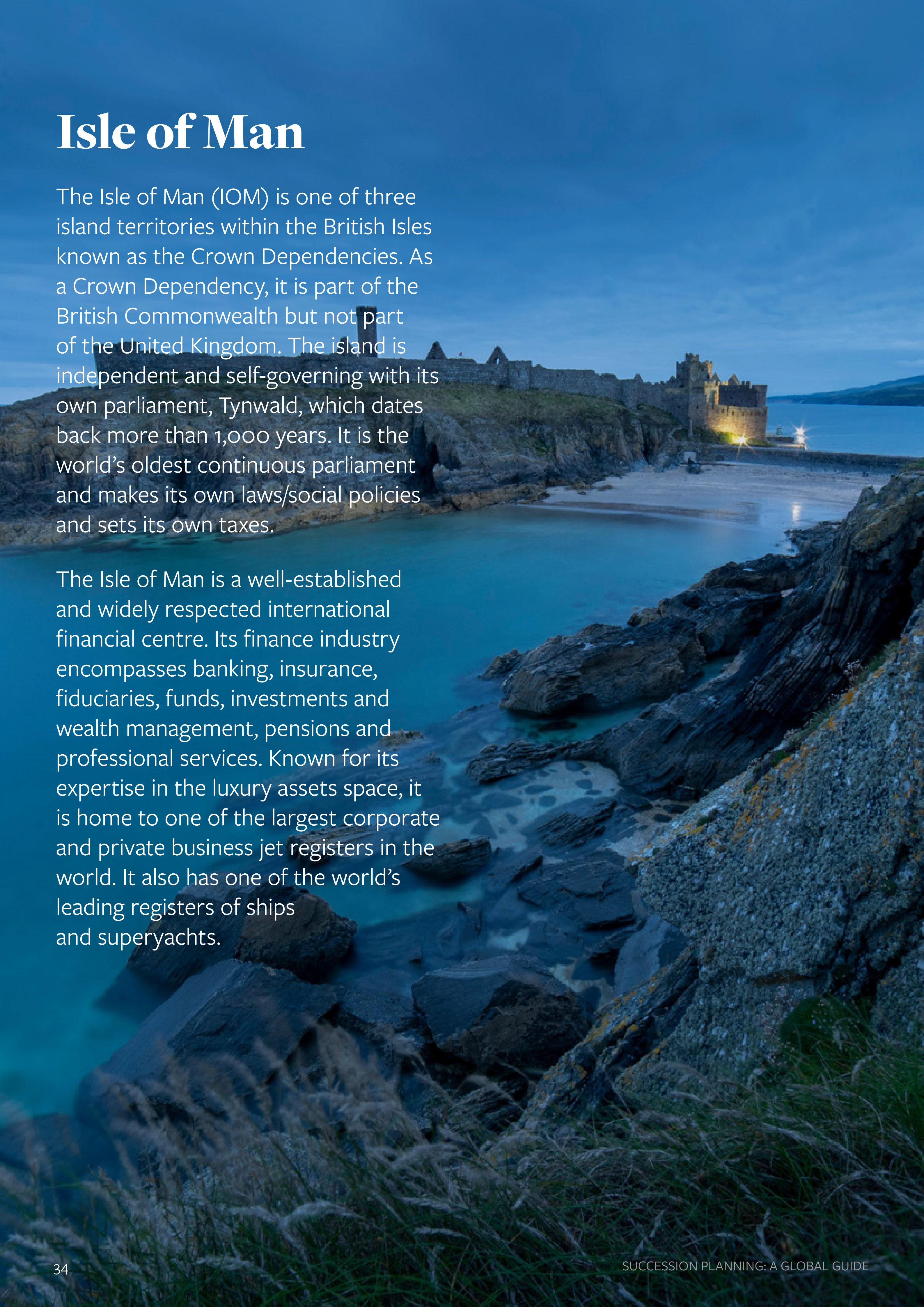
In relation to tax, Hong Kong offers a good treaty network with more than 50 double taxation agreements in place. This can be useful in some circumstances.

Of course, no discussion about Hong Kong's trust sector is complete without mention of China. Mainland China has an important influence on the trust industry in Hong Kong due to the fast growth of its U/HNW population. The knock-on effect of higher demand for estate planning and succession planning solutions will no doubt continue to benefit Hong Kong.

Foundations

Foundations are not a legal arrangement under Hong Kong law.

	Trust
Primary legislation	On 17 July 2013, the Trust Law (Amendment) Bill 2013 was passed. This amended Hong Kong's Trustee Ordinance (Cap. 29) and the Perpetuities and Accumulations Ordinance (Cap. 257), which date back respectively to 1934 and 1970.
Founding document	Trust deed: The trust deed is the main legally binding document that must be complied with and outlines the parties to the trust and its broader terms including administrative and dispositive provisions and powers. Letter of wishes: In addition, the trust deed is often (but not necessarily) followed by a non-binding letter of wishes from the settlor outlining his/her general wishes as to the future administration of the trust. This letter provides useful insight and context for trustees as to the rationale/purpose of the trust, which in turn, whilst not legally binding, is normally used by the trustees in their considerations in the discharge of their powers and duties under the trust deed.
Manager	The trustee.
Ownership type	Separation of legal and beneficial ownership between trustees and beneficiaries.
Publicly filed?	Hong Kong does not require its trusts to register with the government, nor any registrar. As such, information is not publicly available.
Taxation	Tax-efficient legislation with a treaty network of more than 30 double taxation agreements; There is no capital gains tax levied in Hong Kong; Taxation of income in Hong Kong is assessed on a territorial basis and only income arising in or derived from Hong Kong is subject to tax in Hong Kong; No estate duty for locals as well as foreigners.
Duration	In Hong Kong, there is no rule against perpetuities so trusts can exist indefinitely.
Regulator	Hong Kong Registrar of Companies.



Isle of Man

The Isle of Man (IOM) is one of three island territories within the British Isles known as the Crown Dependencies. As a Crown Dependency, it is part of the British Commonwealth but not part of the United Kingdom. The island is independent and self-governing with its own parliament, Tynwald, which dates back more than 1,000 years. It is the world's oldest continuous parliament and makes its own laws/social policies and sets its own taxes.

The Isle of Man is a well-established and widely respected international financial centre. Its finance industry encompasses banking, insurance, fiduciaries, funds, investments and wealth management, pensions and professional services. Known for its expertise in the luxury assets space, it is home to one of the largest corporate and private business jet registers in the world. It also has one of the world's leading registers of ships and superyachts.

Trusts

IOM trust law is closely modelled on English trust law. Being a common law jurisdiction, there is a considerable amount of case law, which is persuasive authority for the well-respected IOM courts.

IOM trusts are governed by a combination of judicial precedent and statute, most notably the Trusts Act 1961, the Variation of Trusts Act 1961, the Perpetuities and Accumulations Act 1968, the Trusts Act 1995 and the Trust and Trustee Act 2023. The Judicial Committee of the Privy Council is the final court of appeal for litigants in the Isle of Man.

As is common in leading jurisdictions, the IOM has enacted robust 'firewall' laws that seek to help ensure that IOM trusts are shielded against attack by another party (including a court in an overseas jurisdiction) on the grounds that the trust offends or denies rights arising under foreign law (e.g. rights of inheritance or rights arising through a former marriage). Additionally, the perpetuity period of IOM trusts has recently been abolished. Therefore, a trust can now have an indefinite lifespan. However, a perpetuity period can be included within the trust deed if desired.

The Purpose Trust Act 1996 makes provision for the creation of a purpose trust – a valid trust for a specific non-charitable purpose. Purpose trusts are often used in PTC structures, philanthropic trusts/purposes and securitisation structures.

In terms of tax, the IOM has a network of 25 double taxation agreements. This can be beneficial for those seeking to minimise their global tax liabilities.

Foundations

Since the enactment of the Foundation Act 2011, it has been possible to use foundations as an alternative to trusts in the IOM. As in other jurisdictions, the IOM foundation is often seen as a hybrid between a trust and a company.

Benefits of a foundation include:

- Full legal capacity and title – In contrast to the division of legal and equitable capacities within a trust
- Limited liability – As a result of the foundation's legal identity, any liability attaches to the foundation itself, not to the members, as is the case for a trustee
- Indefinite existence – Foundations are not subject to any limitations on the perpetuity period
- The ability for the founder to influence its operation through specific powers within the charter or by being a member of the council

The main constitutional document of the IOM foundation is the foundation instrument or 'charter'. This defines the purpose for which the foundation has been established, or the foundation's 'objects'. The objects can be for a specified purpose or for the benefit of a person or class of persons and are permitted but not required to be charitable. The foundation 'rules' then outline the more detailed provisions of the foundation.

The foundation is managed by its council, which is similar to the board of directors with a company. The foundation council may consist of one single member or more, with no requirement for the member to be located in the IOM (although like a limited company, a foundation must have a registered agent in the IOM). The council's role is to administer the foundation's property and ensure that its objects are met. The foundation may also have an enforcer, who acts much like a protector of a trust, providing oversight of the actions of the council.

Where the foundation has a specified non-charitable purpose, the appointment of an enforcer is mandatory.

	Trust	Foundation
Legislation	Trusts Act 1961, Variation of Trusts Act 1961, Perpetuities and Accumulations Act 1968, Trusts Act 1995, Trustee Act 2001, Trustee Act 2023.	Foundation Act 2011.
Founding document	Trust deed: The trust deed is the main legally binding document that must be complied with and outlines the parties to the trust and its broader terms including administrative and dispositive provisions and powers. Letter of wishes: In addition, the trust deed is often (but not necessarily) followed by a non-binding letter of wishes from the settlor outlining his/her general wishes as to the future administration of the trust. This letter provides useful insight and context for trustees as to the rationale/purpose of the trust, which in turn, whilst not legally binding, is normally used by the trustees in the discharge of their powers and duties under the trust deed.	The foundation instrument (a relatively short document often referred to as a 'charter' in other jurisdictions) and the foundation rules (the longer document that outlines the broader details).
Controller	Trustee Controller	Foundation council, which acts like a corporation's board of directors.
Ownership type	Separation of legal and beneficial ownership between trustees and beneficiaries.	There is no ownership of a foundation and it is a separate legal entity, although it may have beneficiaries that it can benefit.
Publicly filed?	There is no register of trusts in the IOM, nor is there a requirement for trust documents to be filed or made available for public access.	The foundation instrument is available to be viewed by the public (but not the rules).
Taxation	There are no income taxes for trusts with nonresident (non-IOM) beneficiaries and where there is no IOM source income.	For IOM tax purposes a foundation is taxed as if it were a company. In the majority of cases this is a nil rate.
Duration	There is no limit to the duration of a IOM trust.	There is no limit to the duration of a IOM foundation.
Regulator	Isle of Man Financial Services Authority (IOMFSA).	Isle of Man Financial Services Authority (IOMFSA).

Jersey

Jersey has been a leading international financial centre for over 50 years. Among the top 20 Western European financial centres today, and with over 13,600 professionals working in its finance sector, the island offers access to wealth management, trusts, funds, capital markets and banking plus specialist areas such as Islamic finance, FinTech, philanthropy and socially responsible investing.

The Bailiwick of Jersey is not part of the United Kingdom but instead is one of three island territories within the British Isles known as the Crown Dependencies. Therefore, it has constitutional rights of self-government and legislative independence.

Trusts

With circa £400 billion of private wealth assets held by Jersey trusts, the trust industry in Jersey is amongst the most advanced in the world. Indeed, Jersey was one of the first jurisdictions to comprehensively supervise and regulate trust company business.

Given that trusts have been around for centuries, there is extensive case law in both Jersey and the UK on which the judgments of Jersey authorities can rely. The Trusts (Jersey) Law 1984 removed many uncertainties in relation to administration and establishment of Jersey trusts, but the law is not entirely exhaustive, and courts continue to consider English and other common law jurisdictions' judgments as part of its wide body of case law. The Royal Court of Jersey is the principal court in Jersey and is generally viewed as stable and reliable. The Judicial Committee of the Privy Council is the final court of appeal for litigants in Jersey.

As in several other jurisdictions with progressive trust legislation, Jersey trust statute specifically provides for the reservation or granting of powers over trusts, including the powers to revoke or amend the trust, to appoint and remove trustees, and to direct investment decisions. The legislation also makes it clear that such reservation or granting of powers will not invalidate a Jersey trust nor would a breach occur where a trustee is required to act in accordance with such reserved or granted powers.

Robust 'firewall' legislation provides Jersey trusts with a high degree of protection against possible interference from other jurisdictions (e.g. forced heirship claims) and the Jersey Royal Court has an overall supervisory jurisdiction over trusts established under Jersey law. There is clarity in relation to fraudulent conveyance rules, as there is in Guernsey and the Isle of Man.

Jersey offers fiscal neutrality for trusts established for non-Jersey resident beneficiaries. This is a similar tax policy approach to other leading jurisdictions.

Foundations

Foundations were introduced into law in Jersey in 2009 via its Foundations (Jersey) Law 2009.

Like several other common law jurisdictions, Jersey introduced foundations to enhance its appeal as an international financial centre. At the time, it incorporated the best features of foundations from other jurisdictions but also added Jersey-specific features to ensure that its foundations are both flexible and well regulated. Since their launch, foundations in Jersey have increased in popularity. To date, over 400 foundations have been formed.

In Jersey, a foundation has a separate legal personality and can be created for beneficiaries or purposes or both. Every foundation is required to have a guardian to oversee the carrying out of the functions of the council. Meanwhile, the council of a Jersey foundation is required to have a 'qualified member'. This must be a person licensed to act as a council member of foundations under the relevant provisions of the Financial Services (Jersey) Law 1998.

In much the same way that a settlor of a Jersey trust is permitted to reserve certain powers for himself or another, the charter of a foundation may provide for certain powers to be reserved by the founder or granted to a third party in respect of the foundation and its assets. As per most other jurisdictions' foundations law, council members do not have a fiduciary duty to beneficiaries, but they do have duties towards the foundation itself. It's worth noting that Jersey law has 'firewall' provisions for foundations similar to those noted above for trusts in Jersey.

	Trust	Foundation
Legislation		
Founding document	Trust deed: The trust deed is the main legally binding document that must be complied with and outlines the parties to the trust and its broader terms including administrative and dispositive provisions and powers. Letter of wishes: In addition, the trust deed is often (but not necessarily) followed by a non-binding letter of wishes from the settlor outlining his/her general wishes as to the future administration of the trust. This letter is a living document that as updated provides useful insight and context for trustees as to the rationale/purpose of the trust, which in turn, whilst not legally binding, is normally used by the trustees in the discharge of their powers and duties under the trust deed.	Charter: The law requires certain basic information in the charter (e.g. name, purpose, council members). Regulations: The majority of governing terms and details are included in the regulations, which is a private document.
Manager	Trustee(s).	Foundation council.
Ownership type	Separation of legal and beneficial ownership.	It has a legal personality.
Publicly filed?	There is no register of Jersey trusts.	The charter is filed with the registrar and available for public inspection at the registry, but regulations do not need to be filed.
Taxation	Trusts with no Jersey resident beneficiaries are only liable to tax on Jersey source income (if any). There are no inheritance, wealth, gift or capital gains taxes levied in Jersey, nor is there any stamp duty, value added tax or equivalent forms of indirect taxation charged on the creation or transfer of assets to a trust.	A foundation is treated as being similar to a company structure for the purpose of taxation in Jersey and is therefore liable to Jersey taxation at 0% under the 0/10 system of corporate taxation. Capital gains are exempt from taxation.
Duration	May exist for a limited or unlimited period of time.	Unlimited duration permitted but a time period can be specified in the charter.
Regulator	Jersey Financial Services Commission (JFSC).	Jersey Financial Services Commission (JFSC).

Luxembourg

Luxembourg is a global financial hub with a long and respected history in private wealth. Its areas of specialisation include banking, investment funds and other holding vehicles, and today, it has second largest fund sector in the world. A European leader in international securities listings, Luxembourg has the only exchange platform (LGX) dedicated to sustainable green and social securities. It also has LuxSE – the international market leader in the listing of Dim Sum bonds – and was the first jurisdiction to open an Islamic fund centre in Europe. A founding member of the EU, it is one of the three official seats of the European institutions and a key gateway into Europe.

Trusts and fiducies

Like most other civil law jurisdictions, Luxembourg does not have a trust law. However, in 2003, Luxembourg revised and updated the legal framework governing fiduciary agreements called 'fiducies', which were originally introduced in 1983. This marked the first attempt to replicate and codify the common law trust in a civil law environment.

The fiducie is a contract by which a person known as the 'fiduciant' (akin to settlor of a trust) agrees with another person known as the 'fiduciaire' (akin to trustee of a trust) that the latter will, within the obligations set out by the parties, become the owner of the assets forming a fiducie estate. There is also normally a third party, known as the 'beneficiary' who, similar to a trust beneficiary, is the one who will benefit from the fiducie assets held by the fiduciaire. The 'fiducie-gestion' and the 'fiducie-libéralité' are the two types of fiducie in terms of private wealth holding structures.

Each fiducie contract/agreement gives rise to a fiducie estate, which is legally segregated from the personal estate/ balance sheet of the fiduciaire. This provides that its assets may only be attacked by creditors whose rights have arisen in connection with that separate fiducie estate. In the case of liquidation or bankruptcy of the fiduciaire, however, or in any other situation affecting the rights of its personal creditors, the assets comprising the fiducie estate are not affected. This separation of estates and creation of a fiducie estate is also the main criterion enabling a Luxembourg fiducie to be recognised under the Hague Convention, as mentioned below.

Also in 2003, Luxembourg adopted the Hague Convention on the Law Applicable to Trusts and on their Recognition, 1985. This did two things:

- It allowed the Luxembourg fiducie to be recognised as a similar instrument to the trust for the purpose of the Hague Convention
- It opened the door for Luxembourg-based trustees to act as trustees of trusts established under the law of another (normally common law) jurisdiction with the comfort that such trusts will be recognised, and their terms respected, in Luxembourg (similar to policy adopted for many years in Switzerland). In short, this provided for more clarity and scope for a trustee or fiduciaire in Luxembourg to act for a (foreign) trust or a (Luxembourg) fiducie, respectively

With a Luxembourg trust, non-resident beneficiaries with all of the trust's (or fiducie's) assets located outside of Luxembourg are exempt from taxation in Luxembourg, although there may be taxation in their jurisdictions of residence. As with most reputable jurisdictions, companies in Luxembourg acting as trustees/fiduciaries must be licensed by the local regulator (the CSSF).

In 2020, the Luxembourg parliament introduced a register of fiducies and trusts whereby trustees and fiduciaries in Luxembourg (or foreign trustees having a business relationship with a Luxembourg professional) must file information on fiduciary contracts and trusts, including certain details on the beneficial owners of any fiduciary contracts and trusts. A Register of Fiduciary Contracts and Trusts ('Registre des fiducies et des trusts') was created for this purpose by the Registration Duties, Estates and VAT Authority (AED). The new law set outs the different access rights to the register and includes unrestricted access for national authorities and self-regulated bodies, as well as certain professionals under the AML law when carrying out due diligence checks.

Finally, limited access may be granted to any person demonstrating a 'legitimate interest' in preventing the use of a trust for money laundering or the financing of terrorism. However, there can be restrictions established to restrict access to such information (e.g. where there is a risk of fraud, kidnapping, extortion or if the beneficial owner is a minor). For clarity, the new registry does not apply to a foreign trust acting as shareholder of a Luxembourg entity.

Foundations

Whilst a civil law jurisdiction and leading financial centre, Luxembourg has never introduced private foundations into its law. It's worth pointing out that in 2013, there was a draft law created with the aim of introducing private foundations into Luxembourg law. However, this has never been adopted, nor are there (at least currently) signs that it or something similar will be implemented anytime soon.

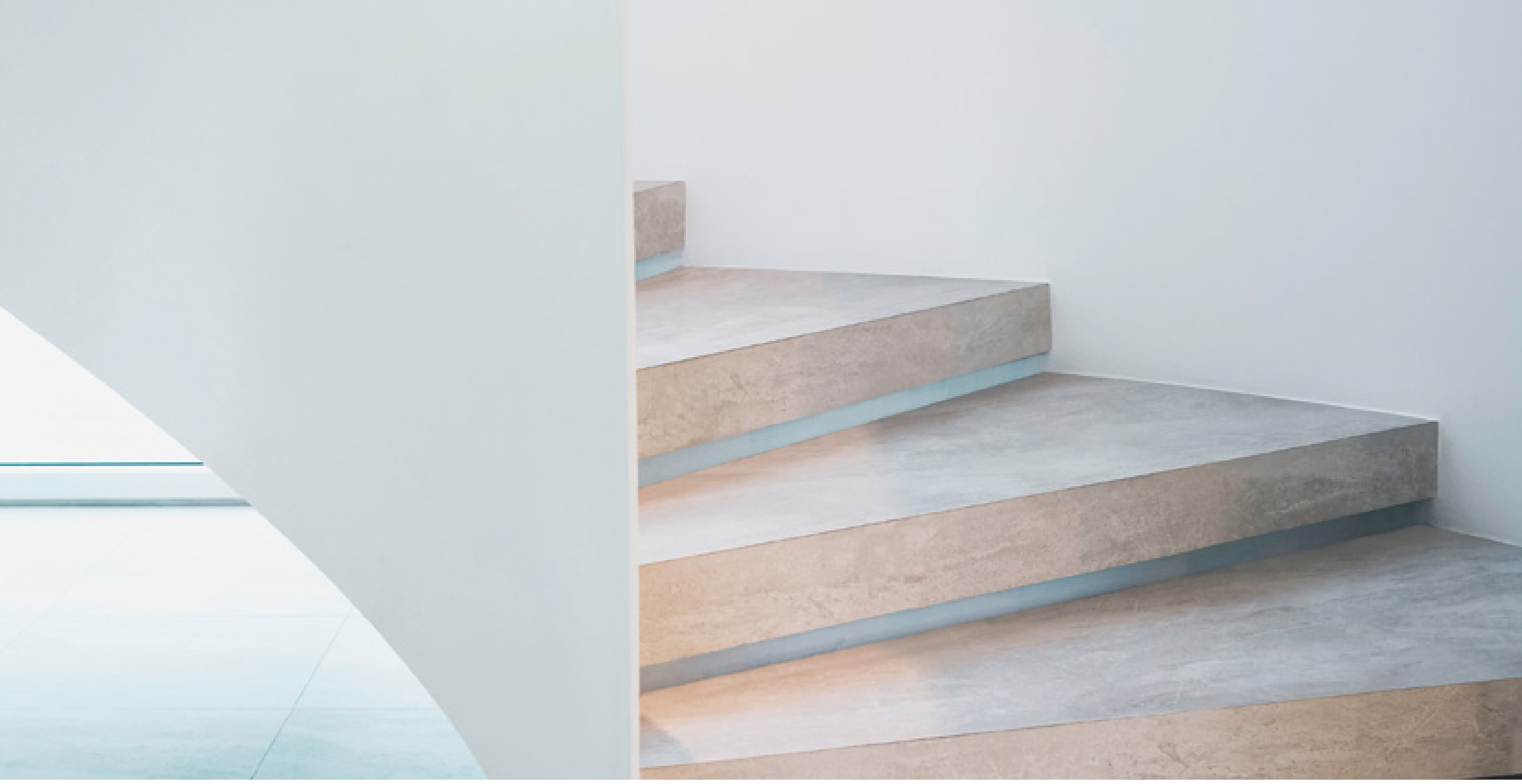
	Fiducie
Primary legislation	
Founding document	*Fiducie* contract.
Manager	*Fiduciaire* (must be a regulated financial institution, but the law also recognises the possibility for an agent to be a foreign entity subject to regulatory supervision and located in the EU or the EEA).
Ownership type	The *fiduciaire* is the legal owner of the *fiducie*'s assets. Upon termination of the agreement, the assets are transferred back to the *fiduciant* or to a third party (beneficiary).
Publicly filed?	Register of Fiduciary Contracts and Trusts (*Registre des fiducies et des trusts*), established mid-2020.
Taxation	If the *fiduciant* and the beneficiary(ies) are all non-resident(s) of Luxembourg, no Luxembourg taxation should apply other than to Luxembourg source income.
Duration	No specific time limitation.
Regulator	Financial Sector Supervisory Commission, or *Commission de Surveillance du Secteur Financier* (CSSF).

Mauritius

Conveniently located in the Indian Ocean between Asia and Africa, Mauritius has forged a strong reputation as a premier international financial centre. Known for corporate structuring, funds and wealth management, it offers a wide array of private wealth holding structures.

Mauritius has a hybrid legal system inherited from the French and English legal systems and as a result the Mauritian courts often follow the judicial precedents and decisions of the UK and other Commonwealth courts. The country has retained the Judicial Committee of the Privy Council as its final court of appeal.

Mauritius is a member of various inter-governmental organisations. including the African Union, the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA). This membership provides opportunities for trade, investment and political cooperation with other African nations.



Trusts

The Mauritius Trusts Act 2001 (the ‘Trusts Act’) is an innovative legislative act that regulates both domestic and non-resident trusts and contains most of the desirable features prevailing in other jurisdictions. It provides a good level of asset protection in relation to assets settled by a settlor in a trust.

For example, a Mauritian trust is not void or does not become voidable in the event of the settlor’s bankruptcy or as a result of action by creditors, subject to certain safeguards against abuses if the intent was to defraud. Furthermore, the Mauritian courts cannot enforce a foreign judgment against a Mauritian trust in respect of forced heirship or marital disputes. Finally, under the Trusts Act, no action can be taken against trustees in relation to a transfer of assets to a Mauritian trust after more than two years from the date of transfer or disposal of the assets to the Mauritian trust notwithstanding that the trust could have been established with the intent to defraud the settlor’s creditors. Note that there may be up to four trustees, at least one of which must be a qualified trustee licensed by the Mauritius Financial Services Commission (FSC) to provide trusteeship services in Mauritius.

Under the Mauritius Income Tax Act, a trust is considered to be resident in Mauritius if:

- The trust is administered in Mauritius and the majority of the trustees are resident in Mauritius, or
- The settlor of the trust was resident in Mauritius at the time the instrument creating the trust was executed

A trust can be tax resident or non-resident, depending on whether its central management and control (CMC) is in or outside of Mauritius. A trust would have its CMC in Mauritius when:

- The trust is administered in Mauritius and the majority of the trustees are resident in Mauritius
- The settlor of the trust was resident in Mauritius at the time the instrument creating the trust was executed or at such time as the settlor adds new property to the trust, and
- The majority of the beneficiaries or class of beneficiaries appointed under the terms of the trust are resident in Mauritius

Where a trust’s CMC is outside Mauritius, the trust would be treated as non-resident for tax purposes. A non-resident trust is only subject to tax on income derived from Mauritius. By contrast, a tax resident trust is taxable on its worldwide income and foreign tax suffered is available as foreign tax credit. A trust may claim partial exemption of 80% on specified income streams subject to meeting the prescribed substance requirements. Corporate Climate Responsibility Levy may also apply if the trust has a turnover exceed MUR 50m (USD 1.1m) and a chargeable income.

A resident trust has access to Mauritius’ large number of global double taxation agreements (DTAs). To date, Mauritius has concluded 54 tax treaties and is party to a number of additional treaties under negotiation. Mauritius also offers a wide network of bilateral investment treaties (BITs) that is available to tax resident Mauritian trusts. Currently, Mauritius has BITs with 48 countries, including a number of African countries. In this age of globalisation and cross-border investment activity, BITs are becoming more and more important, especially in the context of investments in emerging countries, which often carry increased political risk. BITs help mitigate such risk by protecting investments in countries where investor rights are not already protected through existing agreements (such as free trade agreements). BITs not only obligate host countries to provide certain protections for foreign investments but also create a powerful private right of action for investors against a host government if it falls short of those obligations. For example, BITs establish clear limits on the expropriation of investments and entitle foreign investors to seek compensation, including the right to submit a dispute with the host government directly to international arbitration.

Private Trust Companies (PTC)

A PTC is a bespoke legal entity designed to act as trustee for one or more family trusts. In Mauritius, PTCs offer greater flexibility in investment decisions, allowing families to have a more hands-on approach to managing their investment portfolio, especially when they have specific investment goals or strategies.

PTCs are also often established for the investor's specific needs and preferences, allowing for a high degree of customisation in the governance structure and operational aspects of the trust.

A PTC is generally incorporated as a private limited company. Like any other company in Mauritius, a PTC is run by its board of directors, which will be empowered to make decisions as trustee of a trust or as advisors / consultants to the trust. The board of directors often includes family members, allowing them to retain significant control over trust decisions.

A common structure involves setting up a purpose trust to hold shares of the PTC. This trust will have beneficiaries, thus avoiding ownership claims and potential tax implications. The PTC then acts as trustee for various family trusts, each holding different types of assets.

PTCs can either hold a Global Business Licence (GBL) issued by the Financial Services Commissioner or be licensed as or an Authorised Company.

Mauritius is well-known for its favourable tax regime and has emerged as a prominent hub for foreign investors. By establishing a PTC in Mauritius, foreign investors are entitled to a range of tax benefits, including zero capital gains tax, the absence of inheritance tax, as well as low corporate tax rates.

Family Office

Family offices are specialised entities that manage the wealth and financial affairs of high-net-worth individuals and families. Mauritius has positioned itself as an ideal hub for family offices, offering a favourable environment, both political and regulatory wise within a well-established financial sector.

Wealth management is one of the core pillars of the Mauritius International Financial Centre and in its bid to growing that segment, the family office licence was launched in Mauritius. It offers two types of family o¬ffice licences namely the Family O¬ffice (Single) Licence ("SFO") which allows for the management of the financial affairs of a single family and the Family O¬ffice (Multiple) Licence ("MFO") which allows for the management of the financial affairs of multiple families, thereby benefiting from economies of scale.

A SFO is dedicated to managing the wealth of one family. It provides personalised services tailored to the specific needs of the family, including investment management, estate planning, tax advisory, and philanthropic activities.

A MFO serves multiple families, providing a broader range of services and leveraging economies of scale. MFOs offer comprehensive wealth management solutions, including investment advisory, estate planning, tax optimization, and administrative support.

A family offiice, according to its needs, may be established in any legal form and can organised in the form of limited liability company or also as a trust or a foundation.

Family Office as a Variable Capital Company (VCC)

The VCC is a modern and versatile investment structure launched in Mauritius in 2022. It is set to become popular with family offices due to its capacity to accommodate multiple sub-funds and special purpose vehicles (SPVs) within one legal entity, providing notable benefits in cost-efficiency, flexibility, and asset protection.

This structure is particularly beneficial for family offices, as it allows for the segregation of assets and liabilities between different sub-funds, enhancing risk management and investor protection.

The FSC oversees the regulation of VCCs in Mauritius. Family offices structured as VCCs must comply with the Variable Capital Company Act 2022, which ensures robust investor protection and streamlined regulatory processes.

Foundations

Private foundations (charitable or non-charitable) were introduced in Mauritius in 2012 and are governed by the Mauritius Foundations Act 2012 (the 'Foundations Act').

In Mauritius, a foundation is required to have a qualified secretary resident that is regulated by the Mauritius FSC and a council that shall conduct the affairs of the foundation, administer the property and carry out the objects of the foundation. At least one member of the foundation council must be ordinarily resident in Mauritius. Mauritian foundations typically enjoy the asset protection benefits noted above for Mauritian trusts.

Similar to Mauritian trusts, a Mauritius foundation can be resident or non-resident in Mauritius for tax purposes. Tax resident foundations can access DTAs and BITs. Under the Mauritius Income Tax Act 1995, a foundation resident in Mauritius, means a foundation that:

- Is registered in Mauritius, or
- Has its central management and control in Mauritius

A foundation would have its CMC in Mauritius if:

- The founder is resident in Mauritius, and
- The majority of the beneficiaries appointed under the terms of a charter or are resident in Mauritius

Where a foundation's CMC is outside Mauritius, the foundation would be treated as non-resident for tax purposes. A non-resident foundation is only subject to tax on income derived from Mauritius, while a foundation resident in Mauritius is liable to tax on its worldwide income. A foundation may claim partial exemption of 80% on specified income streams subject to meeting the prescribed substance requirements.

Note that Corporate Climate Responsibility Levy may also apply if the foundation has a turnover exceed MUR 50m (USD 1.1m) and a chargeable income.

With a Mauritian foundation, certain limited elements of the charter are required to be provided to the local registrar. However, only an extract of the charter needs to be provided to the registrar and therefore the charter itself remains confidential. Furthermore, the records maintained by the registrar are not available for public inspection. There is no requirement for the registration of a trust, nor are there local filing requirements for trust unless it holds a Global Business Licence (GBL).

	Trust	Foundation
Primary legislation		Foundation Act 2012.
Founding document	Trust deed: The trust deed is the main legally binding document, which must be complied with and outlines the parties to the trust and its broader terms including administrative and dispositive provisions and powers. Letter of wishes: In addition, the trust deed is often (but not necessarily) followed by a non-binding letter of wishes from the settlor outlining his/her general wishes as to the future administration of the trust. This letter provides useful insight and context for trustees as to the rationale/purpose of the trust, which in turn, whilst not legally binding, is normally used by the trustees in the discharge of their powers and duties under the trust deed.	The foundation's charter is a written document setting forth the rules and procedures, administration, management, appointment of interested parties, acceptance of assets, distribution of income and assets to the beneficiaries, and all other important functions. Where the charter of a Mauritius foundation so provides, the council may have articles. These may include provisions in respect of distribution of assets, identification of any initial or additional beneficiaries, identification of the remaining beneficiaries on a winding-up and the distribution of assets to the remaining beneficiaries, and provisions as to how the affairs of the council should be regulated.
Manager	The trustee(s).	The council.
Ownership type	Distinction drawn between equitable and legal ownership.	It enjoys a legal personality and can exercise all the functions of an incorporated body.
Publicly filed?	There is no requirement for the registration of a trust, nor are there local filing requirements for trust unless it holds a Global Business Licence (GBL).	Certain limited elements of the charter are required to be provided to the local registrar. However, only an extract of the charter needs to be provided to the registrar and therefore the charter itself remains confidential. Furthermore, the records maintained by the registrar are not available for public inspection.
Taxation	Mauritius law makes a distinction between a resident trust and a non-resident trust. A resident trust is subject to an income tax of 15% in Mauritius, whereas a non-resident trust is subject to tax only on income derived from Mauritius. Corporate Climate Responsibility Levy may also apply if the trust has a turnover exceeding MUR 50m (USD 1.1m) and a chargeable income. A trust may claim partial exemption of 80% on specified income streams subject to meeting the prescribed substance requirements. A resident trust may access the DTAs in force.	Mauritius law makes a distinction between a resident foundation and a non-resident foundation. A non-resident foundation is subject to tax only on income derived from Mauritius, while a foundation resident in Mauritius is liable to tax at 15% on its chargeable income. Corporate Climate Responsibility Levy may also apply if the foundation has a turnover exceeding MUR 50m (USD 1.1m) and a chargeable income. A foundation may claim partial exemption of 80% on specified income streams subject to meeting the prescribed substance requirements. A resident foundation may access the DTAs in force.

	Trust	Foundation
Duration	Mauritius sets at a maximum life of 99 years from the date of formation. However, an exception exists for a purpose trust, which can have perpetual existence.	No time limitation.
Regulator	Financial Services Commission (FSC) if the trust holds a GBL.	Financial Services Commission (FSC) if the foundation holds a GBL.

Singapore

Singapore is one of the top five international finance centres in the world and a premier global wealth management hub. A regional gateway to the wider Asian region, it offers a broad range of financial services including banking, insurance, funds, family offices, trust/fiduciary and capital markets.

Singapore boasts a stable, competitive and open economy with a pro-business environment and today it has a very high level of GDP per capita. Its legal system is based on English common law and is therefore transparent and predictable.

Trusts

Given Singapore's common law basis, trusts are well established in Singapore. The building blocks of Singapore trust law are the English common law and Singapore statutes such as the Trustees Act (Cap. 337) and the Trust Companies Act (Cap. 336). The Trustees Act was last amended in 2004 to modernise Singapore's trust law as part of wider efforts to promote wealth management in Singapore.

The Trustees Act provides statutory comfort by stating that a trust shall not be deemed invalid if the settlor retains all or any investment or asset management authority. As in other jurisdictions outlined in this report, a Singapore trust will not be void or voidable in the event of the settlor's bankruptcy or liquidation and is protected from foreign forced heirship regimes. Transfers of assets to a Singapore trust will be voidable if there is proven intent to defraud a creditor who existed at the time of the transfer of assets. In all other cases, creditors may raise a claim under the Bankruptcy Ordinance, where the creditor must prove that the debtor became insolvent as a result of the transfer and that there was an intention to defraud the creditor. Any such action must be brought within five years of the transfer in question.

The Trust Companies Act provides for the licensing and regulation of trust companies, and its licensing regime is governed by the Monetary Authority of Singapore (MAS). As with other reputable trust jurisdictions, licensed trust companies are subject to strict anti-money laundering requirements, minimum capital requirements, insurance coverage and adherence to standards of conduct.

A tax exemption is available for specified income from designated investments that is derived by Qualifying Foreign Trusts (QFTs) and their eligible underlying holding companies. A QFT is a trust where all of the settlors and beneficiaries are neither citizens nor residents of Singapore and where the trust is administered by a Singapore licensed trust company.

Foundations

Foundations are not a recognised legal entity in Singapore.

	Trust
Primary legislation	The Trust Companies Act of 2005 (Revised in 2006), Business Trusts Act of 2004 (Revised in 2020), Civil Law Act and Trustees Act (modernised in 2004).
Founding document	Trust deed: The trust deed is the main legally binding document, which must be complied with and outlines the parties to the trust and its broader terms including administrative and dispositive provisions and powers. Letter of wishes: In addition, the trust deed is often (but not necessarily) followed by a non-binding letter of wishes from the settlor outlining his/her general wishes as to the future administration of the trust. This letter provides useful insight and context for trustees as to the rationale/purpose of the trust, which in turn, whilst not legally binding, is normally used by the trustees in the discharge of their powers and duties under the trust deed.
Manager	The trustee.
Ownership type	The ownership of a property is divided between two parties, such that one person is entrusted with the legal title to the property (the trustee) whilst another person (the beneficiary) retains the beneficial (or equitable) ownership of the property.
Publicly filed?	Trusts are not required to register with the MAS nor any other registry or government agency.
Taxation	The most commonly applied tax exemption is for Qualifying Foreign Trusts (QFTs). Key details are as follows: • Neither the settlor nor beneficiary is a Singapore resident, citizen or Singapore resident company, and where the trust is administered by a licensed Singapore trust company • QFTs and their eligible holding companies are exempt from Singapore tax on certain income, including: - Interest, dividends and rental income derived from outside Singapore in relation to certain investments - Gains derived from the sale of certain investments • Distributions to beneficiaries are normally exempted from Singapore taxes
Duration	In Singapore, trusts created on or after 15 December 2004 can continue for a maximum period of 100 years. Subject to this new statutory rule against perpetuities, the duration of a trust is otherwise determined: • According to the provisions in the trust deed • When all the trust assets have been distributed to the beneficiaries • When all the beneficiaries unanimously consent to the termination
Regulator	Monetary Authority of Singapore (MAS).

Switzerland

Renowned for its wealth management and banking industries, Switzerland is home to two of the top 10 financial centres in Western Europe – Zurich and Geneva. Offering political and economic stability, access to worldwide financial markets, a well regulated environment and supervision, a central time zone location, high standards of confidentiality, and exceptional client service, it is a popular jurisdiction among the U/HNW community.

Switzerland is not an EU or EEA member but it is part of the European Free Trade Association (EFTA) and a signatory of the Schengen Agreement. It has a civil law legal system and is a confederation of 26 cantons (states).

Trusts

> As with most civil law jurisdictions, Switzerland does not have its own trust law. However, the country does have a large and growing trust industry today.

The trust industry in Switzerland dates back to 1985 when Switzerland signed up to the Hague Convention on the Law Applicable to Trusts and on their Recognition. This provided welcome recognition of trusts in Switzerland.

As a consequence of this move, official recognition was given to the separation between the trust assets and the trustees' assets, which was not a given before such ratification. Further, risk of having a trust (re)interpreted into a domestic Swiss entity was removed and clarity was provided that a trust is indeed valid under Swiss law provided the trust was validly settled according to the chosen (foreign) governing trust law.

It is therefore now very common to have a Swiss trustee of a trust governed under the law of a common law jurisdiction such as Jersey, Cayman, Guernsey or Singapore. In fact, many U/HNW individuals have embraced this sort of 'midshore' hybrid approach to trust structuring; having one's trustee in a well-recognised onshore location but at the same time utilising progressive and modern trust law from an offshore jurisdiction.

In Switzerland, Swiss resident persons or entities are subject to Swiss income tax on their worldwide income at the federal, cantonal and communal level. And each signatory state to the Hague Convention has sovereignty over tax matters within its jurisdiction. Currently, there are no provisions under Swiss tax law dealing with the taxation of trusts. However, the Swiss Federal Tax Administration (FTA) released Circular Letter No. 20, published in March 2008, which provides guidelines on the taxation of trusts and clarity as to tax consequences related to trusts. The circular provides that a trust itself is not subject to taxation given that it lacks legal personality and is regarded as fiscally transparent. In short, where the settlor and all beneficiaries are not resident in Switzerland, there will be no exposure to Swiss taxation other than in relation to Swiss source income and gains. The situation is different in situations where there are Swiss settlors and/or beneficiaries, where elements of Swiss taxation and reporting do apply.

In recent years, regulation of trustees has been introduced in Switzerland; a welcome development for the Swiss trust industry that provides more peace of mind for settlors and beneficiaries of trusts with Swiss trustees. Under the Swiss Association of Trust Companies (SATC), introduced on 1 January 2020, trustees are subject to a number of requirements, including an annual audit, fit and proper tests and effective management that is in Switzerland and exercised by at least two qualified persons. Trustees must also show good corporate governance, providing internal risk and control mechanisms and documentation, and entities providing trustee services must have a minimum paid-up share capital. Additionally, since 1 January 2023, trust businesses must operate under a license.

Note that there is no requirement to register trusts in Switzerland, nor is there a public trust registry. However, the usual anti-money laundering rules found in most jurisdictions apply to trustees in Switzerland.

It's worth pointing out that Switzerland is currently working on its own trust law. This could be published within the next couple of years.

Foundations

Switzerland has one of the highest concentrations of philanthropic foundations globally, with over 13,000 foundations managing assets totalling approximately 100 billion Swiss Francs. Swiss foundations play a vital role in advancing key sectors such as education, healthcare, environmental conservation, social welfare and scientific research, both domestically and internationally.

Foundations in Switzerland fall into two categories: public benefit foundations, which focus on charitable initiatives and contribute significantly to societal development, and private foundations, typically used for estate planning and asset protection.

Notably, Switzerland does not have a widely used private-use foundation regime, with fewer than 500 family foundations across the country. However, foundations that serve the public interest or promote third-party welfare may be eligible for substantial tax exemptions, incentivising philanthropic efforts and attracting contributions from individuals and corporations.

All Swiss foundations are required to be registered with the country's Commercial Register, which includes details about the board of trustees. Foundations are subject to the supervision of the Swiss Federal Supervisory Authority for Foundations, with additional oversight potentially provided by cantonal or regional authorities to ensure accountability and compliance with established guidelines.

Foundations are created through a public deed and must include a charter that clearly defines their purpose, specifying whether they will operate at an international, cantonal, regional or communal level.

The Netherlands

The Netherlands is one of four countries that make up the Kingdom of the Netherlands. A founding member of the EU, it boasts a rich history of financial innovation, having established the world's the first stock exchange, the first publicly traded company and the first European option exchange. Today, its capital, Amsterdam, is one of the top 10 international finance centres in Western Europe and a major hub for asset management and FinTech. It is home to the Euronext Stock Exchange, a pan-European exchange spanning the Netherlands, Portugal, Belgium, France, Ireland and the UK.

Recognised globally for its reliable and effective system of law, the Netherlands was ranked fifth in the Rule of Law Index 2020. Its system of law is based on the French Civil Code with influences from Roman law and traditional Dutch customary law.

The Netherlands has long been a jurisdiction of choice for private clients looking to structure their wealth or invest in Europe and beyond via a reputable European financial hub.

Trusts

As with most civil law jurisdictions, the common law trust has never been introduced into law in the Netherlands. However, since 1996, the Netherlands has been a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition, of 1 July 1985.

This is similar to Luxembourg and Switzerland, neither of which have local trust laws but both of which have ratified the Hague Convention. This approach allows Dutch trustees to safely act as trustees of trusts governed under another (normally common law) jurisdiction.

In 2010, legislation was introduced to address Dutch authorities' unclear approach to the taxation of trusts. This resulted in the introduction of a new term, the 'separate private fund' (in Dutch: the 'afgezonderd particulier vermogen', or 'APV'). An APV is a fund with a particular private objective, meaning that it could be an alternative to a discretionary trust, foundation or other similar entities.

With an APV, the trust's assets are attributed to the settlor during their lifetime (then to their heirs after their death). Consequently, the settlor is taxed on those assets as if owned directly, for both Dutch personal income tax purposes and gift and estate tax purposes. It's worth noting that it is relatively uncommon for a Dutch resident to set up a trust. So, in the absence of any Dutch resident settlor and beneficiaries, a trust's exposure to Dutch taxation is often limited to Dutch source income and/or gains (if any).

Currently in the Netherlands, trusts are not formally registered, meaning that a formal definition of these arrangements does not exist in Dutch law. However, in November 2022, a trust register was introduced for trusts with Netherlands-based trustees and/or other trusts that acquire real estate or have certain professional relationships in the Netherlands. The registration includes limited, publicly accessible information about the trust terms (e.g. name, date established) as well as its ultimate beneficial owners (UBOs) (e.g. names, nationalities, residency). Similar to the existing Dutch corporate-focused UBO registry, UBOs of a trust can request shielding of their information from the public if access to such information would expose the UBO to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation.

Foundations

> Dutch foundations date back to the 15th century and today are amongst the most widely used foundation entities globally.

There is only one type of foundation ('stichting') but these entities can be created for different purposes (e.g. a private foundation (SPF), charitable organisation, family foundation). The Dutch STAK ('stichting administartiekantoor') is amongst the most popular foundations as its legal form provides for a wide scope of applications including asset protection, estate planning, succession, family office governance and protection against hostile takeovers.

The use of Dutch STAKs is not a new phenomenon. Indeed, this form of foundation was first made famous back in the 1980s, when Swedish billionaire and IKEA founder Mr Ingvar Kamprad set up the Stichting INGKA Foundation. Other well-known listed companies with closely connected family ownership that have used the STAK include Heineken and Anheuser-Bush InBev. In recent years, the STAK has been popular with U/HNW families, particularly from or with connections to civil or Sharia law countries.

A Dutch STAK, whilst a type of foundation, can issue depository receipts that give rights to the income and/or gains from the assets that are legally owned by the foundation. This results in a split between the economic and legal rights of the underlying asset(s), which is analogous to the (common law) trust's legal and beneficial interest separation. The STAK has limited liability and there is no minimum or maximum capital requirement. Establishment takes place via incorporation (analogous to a company incorporation) by execution of a notarial deed of incorporation, followed by registration with the local Dutch trade register. There is no requirement to file any financial information with the Dutch Chamber of Commerce.

Holding investments in a STAK is not considered a 'business activity' and as a result, a STAK is not subject to Dutch income tax. In addition, contributions by foreign residents (i.e. non-Dutch tax residents) to a STAK are not subject to Dutch taxation. If the depository receipt holders do not live or conduct business in the Netherlands and their investments are not located in the Netherlands, they are not subject to Dutch taxation on profits or capital gains.

For international clients, the most common and effective use of STAKs is for estate, succession and asset protection planning, as these vehicles enable families to efficiently and safely transfer beneficial ownership to heirs. It's worth pointing out that that STAKs are quite flexible and can provide scope for families to retain control or influence over the underlying assets (often shares in a family company or private equity interests) by having such family member(s) sit on the board of the STAK.

The board can consist of one or more family members or trusted persons and often includes an independent professional fiduciary for governance, objectivity, administrative and continuity reasons. This enables a (gradual) transfer of beneficial ownership of, say, a family business to a large number of family members, whereby only a limited amount of family members or trusted persons will have direct oversight over the business. It also allows the transfer of economic (or 'beneficial') ownership of a company from the parents to their children, as depository receipt holders, whereby the parents (normally alongside with third party fiduciary stewards), as board members, stay in control of the business.

The STAK is also commonly used to retain control of family businesses, including listed companies, because they allow voting and economic rights in family businesses to be split. For example, voting rights could remain with the board of the STAK (e.g. family members).

	Foundation
Primary legislation	The Dutch Civil Code (*Burgerlijk Wetboek*), Book 2 Art 285-304 governs the formation, activities and termination of foundations.
Founding document	Two legal documents: the articles of association and the deed of formation. Both documents are signed in front of a public notary and don't require government approval. The articles of association (foundation charter) are similar to a corporation's, setting forth the activities and administration of the foundation. The deed of formation is similar to a corporation's memorandum, establishing the creation of the foundation.
Manager	The only governing body prescribed by law is its board (council), which administers the purpose and objectives while managing its assets. However, there is flexibility to provide for additional governing bodies in the foundation's articles, such as a supervisory board. The articles may also provide that a third party may appoint or dismiss board members.
Ownership type	It has full legal personality under Dutch law. It does not have an owner (no shareholders) and is often referred to as an 'orphan' entity.
Publicly filed?	The directors of a foundation are responsible for the registration of the foundation and of the name, surname and residence or last residence of the founder(s) in the commercial register, and must deposit a certified copy or authentic extract of the notarial deed of incorporation at the office of that register (Chamber of Commerce).
Taxation	A STAK (*Stichting Administratiekantoor*) for tax purposes is regarded almost as being non-existent because the foundation is not beneficially entitled to the funds entrusted to it.
Duration	A Dutch foundation can be incorporated for an undefined and unlimited period of time.
Regulator	The Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*).

United Arab Emirates

The United Arab Emirates (UAE) is home to major financial centres today. The Dubai International Financial Centre (DIFC), established in 2004, has grown into a thriving financial ecosystem with a large network of financial institutions, a global financial exchange, a tax-efficient regime, a common law-based legal framework, and an independent, internationally recognised regulator and judicial system. It consistently ranks among the top financial hubs globally. Similarly, the Abu Dhabi Global Market (ADGM), established in 2013, has developed its own independent judicial system, regulatory framework, and financial services regulator. ADGM is highly regarded today and continues to enhance its reputation as a significant financial centre in the region.

The UAE legal system is mixed. The country is primarily a civil law jurisdiction with great influence from Egyptian law. As a result, personal affairs matters are governed by Sharia law, which is the primary source of Islamic law based on the Quran and the Sunna (sayings of the Prophet Mohammed), which serves as a complementary source to the Quran. Being independent, common law-based jurisdictions formed under the Constitution of the UAE, they have certain laws and regulations that govern business activities and provide comfort to the global investing community. The goal of free zones is to stimulate economic growth, promote trade, and encourage innovation.

It's worth noting that UAE is a founding member of the Gulf Cooperation Council (GCC) and through its participation in the GCC has signed preferential trade agreements with Singapore (2008) and the European Free Trade Association (EFTA) (2009). Meanwhile, the UAE is a party to the Pan Arab Free Trade Agreement (PAFTA/GAFTA) (1998).

Historically, wealth preservation strategies in the Middle East often involved capital outflows to other regions. However, these two international financial free zones have started to change things. Whilst still relatively 'young' compared to other jurisdictions discussed in this guide, there has been massive investment in these financial centres in recent years. And looking ahead, the DIFC and ADGM could be important jurisdictions for U/HNW families seeking estate and succession planning solutions.

In recent years, the UAE has signed a range of bilateral and multilateral investment treaties that apply to trusts and foundations in the DIFC, including 90 signed BITs with developed and developing countries, of which 56 are currently in force. In addition, the UAE has over 100 double taxation treaties in place, which DIFC trusts and foundations may also access.

The balance of this section will focus on the DIFC, but similar attributes apply to the ADGM.

Trusts

> While trusts are normally considered a common law creation, the Islamic world is no stranger to the concept as the 'waqf' has been in place for many centuries now.

This is essentially a charitable endowment in Islamic law. Every waqf has a 'waqif' (founder), 'mutawillis' (trustee), 'qadi' (judge) and beneficiaries – similar roles to that of the settlor, trustee and beneficiary in common law trusts. The key principle is that the original asset in the waqf remains intact, while the income or profits generated from it are used for the designated charitable purposes.

In 2005, not long after the establishment of the DIFC, the DIFC Trust Law No 11 of 2005 (the Trust Law 2005) was introduced. This legislation marked a significant step towards modernising trust law in the region and establishing the DIFC as a prominent jurisdiction for trusts. Then, in March 2018, the DIFC updated its trust law and also introduced private foundations. Today, the DIFC free zone continues to be the only location in Dubai where a trust or foundation can be established.

As in a number of other jurisdictions with progressive trust legislation, the DIFC trust statute specifically provides for the reservation or granting of powers over trusts, including the powers to revoke or amend the trust, to appoint and remove trustees, and to direct investment decisions. The legislation also makes it clear that such reservation or granting of powers will not invalidate a DIFC trust, nor would a breach occur where a trustee is required to act in accordance with such reserved or granted powers.

In terms of the possible conflict between Sharia law and trust law in the DIFC, this is dealt with directly in the trust statute. In short, it says that neither a DIFC trust nor any transfer valid under the laws of the DIFC is void, voidable, liable to be set aside or defective in any manner by reference to a 'foreign law'. And foreign law is specifically defined to include any jurisdiction other than the DIFC. Therefore, the implication is that neither existing UAE (non-DIFC) law nor Sharia principles can invalidate the trust or transactions lawfully undertaken by it.

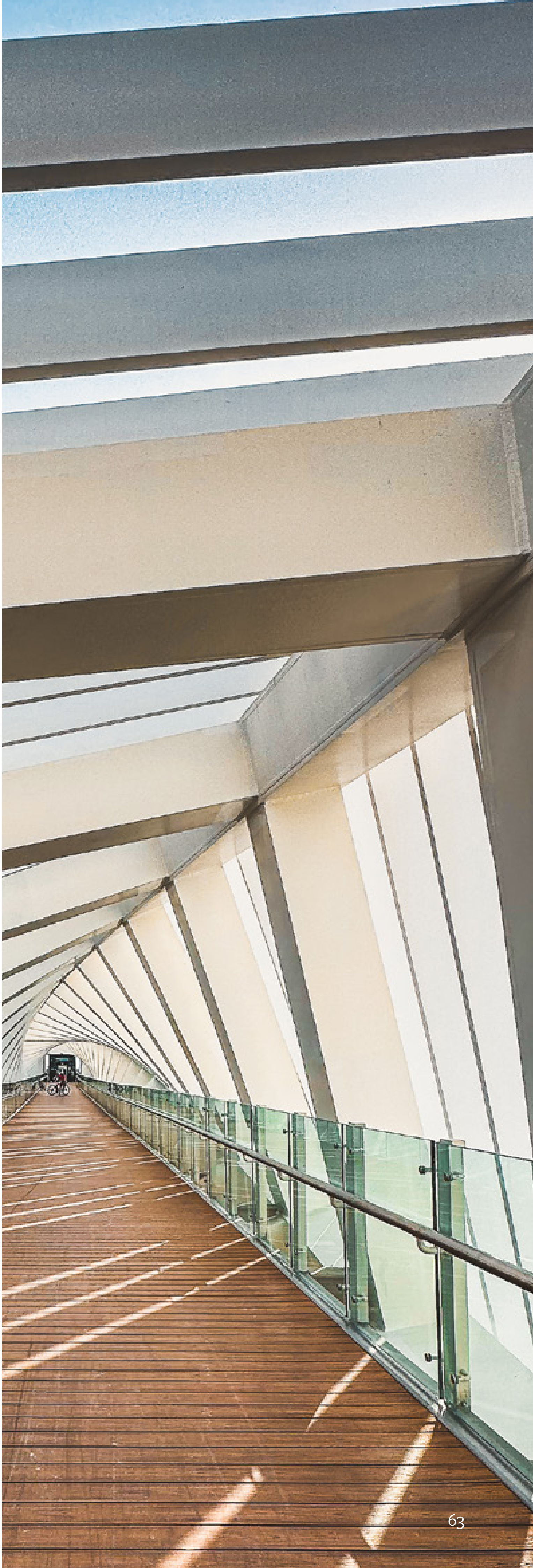
Of course, the DIFC trust law is still relatively 'young' and hasn't been tested as extensively as trust law in some other jurisdictions. However, it is likely that jurisprudence will build as the trust industry continues to grow.

Foundations

A DIFC foundation is an independent legal entity with own legal personality that can enter into contracts and hold assets in its own name. It does not have shareholders or members, is managed by the foundation council and may be supervised by a guardian.

The DIFC foundation is quite similar to a number of other private foundations outlined in this report. In fact, the DIFC foundations regime took inspiration from best-in-class jurisdictions such as Liechtenstein, Jersey, Guernsey and the Netherlands, adapting it where needed for evolving demand.

The law has 'firewall' provisions for foundations similar to those noted above for trusts in DIFC. Also, in much the same way that a settlor of a DIFC trust is permitted to reserve certain powers to himself or another, the charter and/or regulations of a foundation may provide for certain powers to be reserved by the founder or granted to a third party in respect of the foundation and its assets. The law is perceived as a great tool for succession planning, provides for great flexibility in structuring the charter and by-laws, and is very popular with the global and local HNW and U/HNW community.



	Trust	Foundation
Legislation	Trust Law No. 4 of 2018.	Foundations Law No. 3 of 2018.
Founding document	Trust deed: The trust deed is the main legally binding document, which must be complied with and outlines the parties to the trust and its broader terms including administrative and dispositive provisions and powers. Letter of wishes: In addition, the trust deed is often (but not required to be) followed by a non-binding letter of wishes from the settlor outlining his/her general wishes as to the future administration of the trust. This letter provides useful insight and context for trustees as to the rationale/purpose of the trust, which in turn, whilst not legally binding, is normally used by the trustees in the discharge of their powers and duties under the trust deed.	The constitution of a foundation consists of two parts: 1. Charter (public document), which outlines the object(s) and duration of the foundation 2. By-laws (private document), which describe how the foundation will be governed and operated
Manager	The trustee.	The council.
Ownership type	Distinction drawn between equitable/beneficial and legal ownership.	Separate legal personality.
Publicly filed?	The Trust Law does not require trusts to be registered with the registrar.	The charter is filed with the local register and is publicly accessible.
Taxation	5% VAT on goods and services is levied in the DIFC and it has 94 DTAs currently in force. UAE corporate tax applies across the UAE and to the DIFC and ADGM. However, exemptions and tax efficiency options are available, subject to conditions.	5% VAT on goods and services is levied in the DIFC and it has 94 DTAs currently in force. UAE corporate tax applies across the UAE and to the DIFC and ADGM. However, exemptions and tax efficiency options are available, subject to conditions.
Duration	No time limit and no rule against perpetuities.	No time limit.
Regulator	Not regulated.	Not regulated.

United Kingdom

England, the 'bastion' of common law, is the origin of trusts and the country upon which all trust jurisdictions around the world have adopted and expanded their own trust laws. Therefore, any discussion of trust jurisdictions would be incomplete without discussing trusts in this country.

Trusts

In the UK, the main legislation relating to trusts and trustees is found under the Trustee Act 1925 and the Trustee Act 2000. So, the UK, whilst the origin of trusts, has not been as progressive or innovative as other trust jurisdictions outlined here when it comes to new trust legislation – at least in terms of private wealth structuring.

The UK also does not really provide for tax neutrality, which can complicate non-UK ultra-/high-net-worth (U/HNW) estate planning, especially where multi-jurisdictional family fact patterns are involved. UK domestic trusts can still be attractive to domestic U/HNW families when it comes to non-tax estate planning, succession planning and asset preservation. For UK resident and domiciled U/HNW individuals, however, setting up a foreign/non-UK trust can have negative tax implications.

Taxation of trusts is complex in the UK. In short, trustees are responsible for paying UK tax on income received with tax rates (up to 45% depending on type of income) broadly aligned to individual tax rates depending on the type of trust. UK Inheritance Tax (IHT) may also be payable in certain circumstances, including a 20% charge for transfers into trust, and a 6% charge every 10 years for trusts, or when transferring assets out of such domestic UK trusts. While this 6% charge is unappealing, the prospect of beneficiaries becoming entitled to significant assets at an early age is often unpalatable, so many decide to accept what is effectively an IHT charge of 0.6% for every year the assets remain in trust as the cost of flexibility.

Regarding the potential duration of UK trusts, before 2009, trusts were limited to a fixed term of 80 years or a 'life in being' plus up to 21 years. However, following legislative changes in 2009, trusts may now last for 125 years, and an existing trust can be extended for this full period. This can often provide the impetus for an application under the Variation of Trusts Act 1958 (VTA), which enables the UK court to provide consent on behalf of beneficiaries. The court may only sanction a variation if this would be for the benefit of the relevant beneficiaries. The 'accumulation period' is the period during which the trustees may accumulate trust income by adding it to capital, rather than paying it out to (or for the benefit of) beneficiaries. Before 2009, accumulation periods were generally limited to 21 years. From 2009 onwards, this limitation was removed, so trustees can in principle accumulate income for the entire lifetime of the trust.

Other vehicles: FICs and FLPs

Whilst the tax implications of establishing a UK trust have become increasingly unattractive, the need for a vehicle to pass assets to the next generation in a controlled manner has not diminished.

This has led many UK families and their advisers to consider alternative option such as family investment companies (FICs) and family limited partnerships (FLPs).

A FIC provides a mechanism for retaining control of assets while their value, or most of it, is transferred to heirs in an efficient manner. In addition to offering estate planning, succession and IHT benefits, FICs can also offer income and capital gains tax (CGT) benefits. In other jurisdictions like Canada and the USA, this type of common estate planning is often referred to as an 'estate freeze'.

In terms of how a FIC works, it typically involves both a UK company and a UK trust. The parents provide funds to the FIC in the form of either interest-free loans or by subscribing for fixed value preference shares. The parents also typically subscribe for voting shares in the FIC, which give control of the company at shareholder and board level (or the preference shares can carry voting rights instead). The parents then often subscribe for a class(es) of non-voting 'growth' shares for which the growth of underlying FIC assets accrue to going forward, and gift them to their heirs. This is most often done via a discretionary trust to obtain even greater succession and asset preservation benefits. Provided the transferring parent lives for a further seven years, there will be no IHT charge, and the initial transfer will attract only a small CGT charge. The value of the 'growth' common shares will be under the nil-rate band.

Income and gains accruing to FICs are subject to UK Corporation Tax at current applicable rate 17%. And with no requirement to distribute profit to shareholders, FICs provide UK residents with effective tax deferral from Income Tax with the resulting benefit of 'time value of money'.

Another common alternative to trusts in the UK is the FLP. Similar to FICs, FLPs allow parents to pass on assets to heirs in an efficient way whilst also retaining control whilst alive, albeit under a different legal form and with slightly different tax and compliance implications. It's worth noting that the use of a partnership as an estate planning vehicle is not new; it is a common structure in many countries including the USA.

With a FLP, a parent (or an existing UK trust established by such parent) typically transfers assets into a limited partnership in which limited partner (LP) interests are issued to next generation heirs. This normally crystallises a charge for IHT to the extent that value is not taken back (say in the form of LP interest and/or promissory notes). Control of the FLP rests with the general partner (GP), a role analogous to that of a trustee. This is usually a UK company owned by members of the first generation in the family.

This strategy enables parents to retain control and management of the underlying assets. At a suitable time in the future, more direct control of the assets can be passed to the younger generations of the family by appointing them as directors of the GP company. The next generation LPs (analogous to beneficiaries), may not draw out their contribution during the continuance of the partnership and may not take part in the day-to-day management of the FLP.

The relationship between partners of an FLP should be set out in a partnership agreement, which can be amended over time (new partners can join as the family grows and expands). Unlike trusts, there is no rule against perpetuities for FLPs. Of course, the needs and wishes of wealthy dynastic families can change over time. And a downside to FLPs with specific limited partnership interests is that they are not always as flexible as discretionary trusts with widely drawn dispositive powers when it comes to addressing changing family circumstances.

Unlike UK trusts, FLPs are not subject to the upfront IHT charge on creation or the charges to IHT (6%) every 10 years. FLPs are regulated by the Financial Conduct Authority (FCA), however, the costs of regulation can compare favourably with the effective annual 0.6% IHT charge for trusts.

Note that UK FLPs are often used by non-residents of the UK seeking to obtain the benefits of UK law. FLPs are generally tax neutral if the LPs are all non-resident and the income does not have a UK source (no liability to UK tax should arise in such circumstances). Scottish limited partnerships have proved popular, in particular, given their separate legal personality characteristics.

Finally, from a UK regulatory perspective, the prevailing view seems to be that a FLP falls under the definition of a 'collective investment'. To get around this, FLPs often contract out operations to an FCA authorised provider.

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Recent changes for UK non-domiciles

In the 2024 Autumn Budget, the new government announced changes to the taxation rules for non-domiciled individuals. These take effect from 6 April 2025.

The new regime will provide 100% relief on foreign income and gains for new arrivals to the UK in their first four years of tax residence, provided they have not been UK tax resident in any of the 10 consecutive years prior to their arrival (4-year foreign income and gains regime).

The protection from tax on foreign income and gains arising within settlor-interested trust structures will no longer be available for non-domiciled and deemed domiciled individuals who do not qualify for the 4-year foreign income and gains regime.

Any foreign income and gains that arose on or before the 5 April 2025, while an individual was taxed under the remittance basis, will continue to be taxed when remitted to the UK under the current rules. This includes remittances of by those who are eligible for the new 4-year foreign income and gains regime.

A new Temporary Repatriation Facility will be available for individuals who have previously claimed the remittance basis. They will be able to designate and remit at a reduced rate foreign income and gains that arose prior to the changes. This includes unattributed foreign income and gains held within trust structures. The Temporary Repatriation Facility will be available for a limited period of 3 tax years, from 2025 to 2026. The Temporary Repatriation Facility rate will be 12% for the first 2 years and 15% in the final tax year of operation.

The previous domicile-based system of Inheritance Tax will be replaced with a new residence-based system. This will affect the scope of non-UK property brought into UK Inheritance Tax for individuals and trusts. An individual is long-term resident (and in scope for Inheritance Tax on their non-UK assets) when they have been resident in the UK for at least 10 out of the last 20 tax years and then remain in scope for between 3 and 10 years after leaving the UK. Subject to transitional points, any non-UK assets a person put into a settlement will be subject to Inheritance Tax charges at times when the settlor is long-term resident.

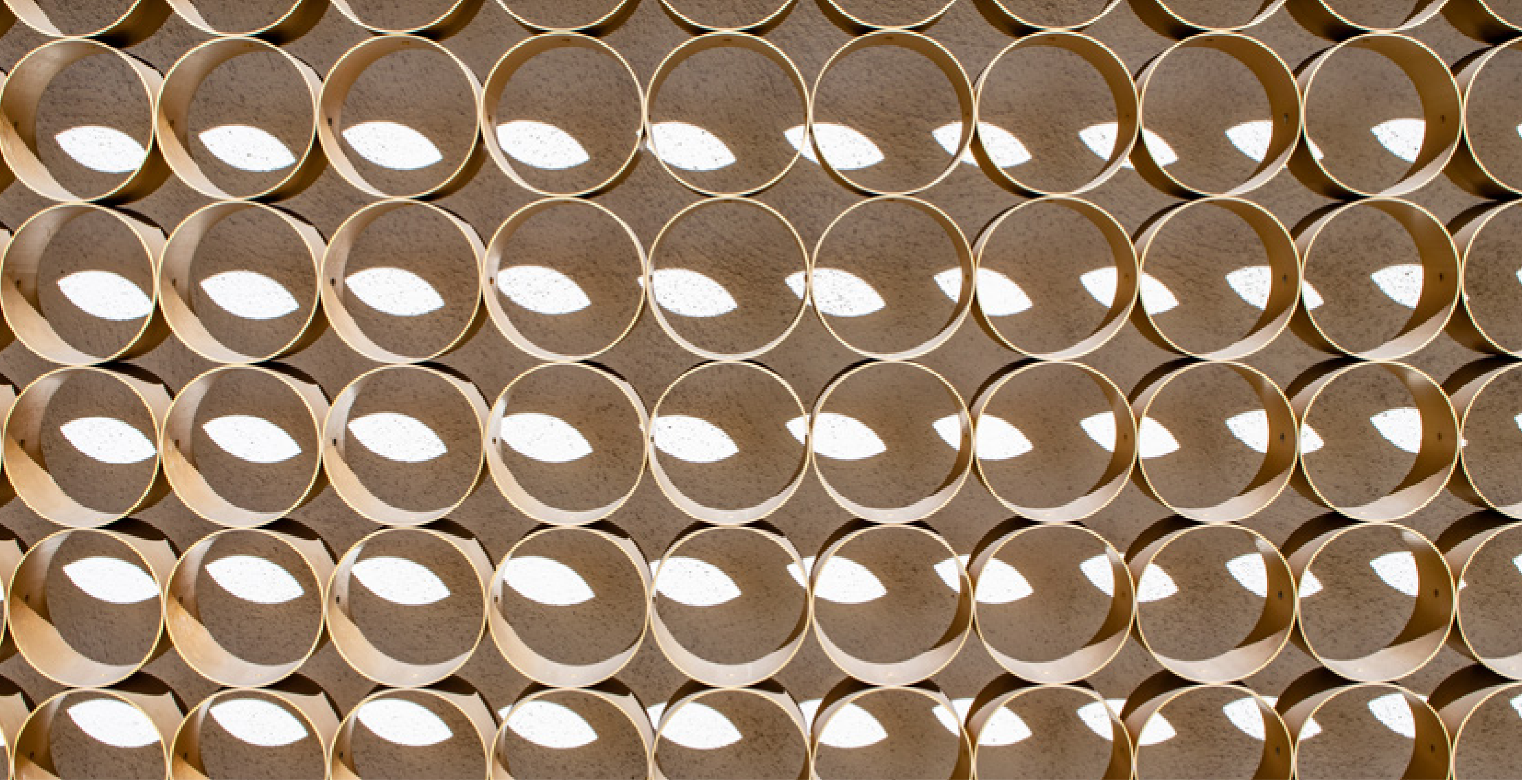
	Trusts	FICs	FLPs
Primary legislation	Trustee Act 1925, Trustee Act 2000.	Companies Act 2006.	Limited Partnerships Act 1907, Partnership Act 1890 (Scotland).
Founding document	Trust deed: The trust deed is the main legally binding document, which must be complied with and outlines the parties to the trust and its broader terms including administrative and dispositive provisions and powers. Letter of wishes: In addition, the trust deed is often (but not necessarily) followed by a non-binding letter of wishes from the settlor outlining his/her general wishes as to the future administration of the trust.	Articles of association (normally also includes restrictions on who can own shares and who can control the company).	Partnership agreement (contractual arrangement).
Manager	The trustee.	Board of directors.	General partner.
Ownership type	Beneficial and legal ownership separated between the trustee and beneficiaries.	Separate legal personality (corporate).	Limited partnership, not a separate legal personality under English law but is considered a separate legal personality under Scottish law.
Publicly filed?	There is no central public registry of trusts in the UK. However, all trusts that have UK tax liabilities (income tax, capital gains tax, inheritance tax or stamp duty) are liable to register (whether or not the trustees are UK resident or nonresident). The register is not public and the information is only available to government authorities.	An FIC, like other UK companies, must be registered with the Registrar of Companies in one of the UK nations. Limited information is provided and this is open to public inspection, upon payment of a small fee.	A limited partnership must be registered with the Registrar of Companies in one of the UK nations. Limited information is provided and this is open to public inspection, upon payment of a small fee.

	Trusts	FICs	FLPs
Taxation	Trustees are responsible for paying UK tax on income received with tax rates (reaching up to 45% depending on type of income). UK inheritance tax up to 40% may also be payable in certain circumstances, including transfers into trust, 10 year anniversaries of trusts or when transferring assets out of domestic UK trusts.	Income and gains accruing to UK companies such as the FIC are subject to corporation tax at 17%.	Transparent for UK tax purposes (i.e. FLP income is taxable on the partners in the proportions determined in the partnership agreement); If the limited partners are all nonresident and the income does not have a UK source, no liability to UK tax should arise.
Duration	May last up to 125 years.	No limitation.	No limitation.
Regulator	Professional trustees are currently not regulated in the UK.	Directors of FICs are not regulated in the UK, however AML, UBO and KYC requirements are regulated via the Financial Conduct Authority (FCA)(DFSA).	Generally considered a ‘collective investment scheme’ and as such regulated by the Financial Conduct Authority (FCA).

United States of America

The United States has the world's largest economy and remains a global leader in financial services. It is home to five of the world's top 20 international finance centres – New York, Boston, San Francisco, Los Angeles and Chicago – and also has the two largest stock exchanges by market capitalisation globally, the New York Stock Exchange (NYSE) and the NASDAQ.

America's global economic strength is reflected in its wealth management industry, which is second to none. Driving forces behind this pole position include the huge size of the domestic economy as well as the significant global economic and social interests in or connected with the U.S. These factors have also been critical in driving the continued growth of its very well established and fast-growing trust industry, both in a domestic and international context. Today, the U.S. is a global leader in trust and estate planning, with a sophisticated legal and regulatory framework that supports a wide range of trust structures.



Trusts

The U.S., like most former British colonies, is an heir to the common law legal tradition of English law. Furthermore, all U.S. states except Louisiana have common law as the state law. Over time, however, state legislation has expanded, overruling or modifying the common law, meaning that the laws of any given state today invariably differ from those of its sister states. This trend has also been seen within the country's trust industry.

Today, most laws governing the creation and administration of trusts in the U.S. are now statutory at the state level as is regulation of trustees. In other words, the U.S. should be viewed as 50 different trust jurisdictions rather than one (federal) jurisdiction.

In 2004, the National Conference of Commissioners on Uniform State Laws attempted to codify generally accepted common law principles in English/U.S. law regarding trusts into a uniform statutory code for the 50 states. This framework was called the Uniform Trust Code (UTC). However, many states have resisted signing up to the UTC, including states that have the kind of progressive and modern trust laws that both domestic and international clients demand. To date, only slightly more than half of all U.S. states have adopted some form of the UTC. As a result, the trust laws of different states continue to vary widely.

The general consensus amongst trust lawyers is that there are six top-tier U.S. states that have adopted progressive trust laws. We are going to highlight two of those states here – New Hampshire and South Dakota – on the basis that these tend to be preferred jurisdictions for both U.S./domestic and international U/HNW clients. However, many of the attributes of these two states also apply to the other four states not covered here.

Use of trusts in domestic succession, estate, protection and tax planning is common in the U.S., perhaps more so than any other country in the world. In fact, various acronyms have emerged over the years for U.S. domestic trusts, including grantor retained annuity trusts (GRATs), intentionally defective grantor trusts (IDGTs), asset protection trusts (APTs) and irrevocable life insurance trusts (ILITs).

Given the U.S.' reputation as the most litigious environment in the world, with lawyers' contingency ('no win no fee') fee arrangements and frivolous claims commonplace, asset protection is often a key consideration when evaluating state trust laws in the U.S. Protection is normally sought from future, currently unforeseen creditors, which brings consideration of and focus towards balanced fraudulent conveyance law; a topic also considered in many U.S. states' trust law (as is the case in a number of other jurisdictions noted in this report).

In this regard, the Uniform Fraudulent Conveyance Act (1984) has been adopted in many U.S. states. This is largely based on the centuries-old Statute of Elizabeth previously discussed. However, similar to other jurisdictions noted herein (e.g. Cayman and Bermuda), some U.S. states felt the need to update and better balance their own fraudulent conveyance law.

For example, South Dakota did so in 1987 while New Hampshire did so in 2008. Statute in these two states requires 'clear and convincing evidence', 'preponderance', or similar burden of proof standard to overturn a transfer onto a trust. This means that any party seeking to reach the trust assets must prove that the purpose of the transfer into trust was 'substantially' (or similar term) intended to avoid the debt owed to the creditor bringing the claim (again a similar test as in several jurisdictions noted in this report). The respective statute(s) of limitation for claims of fraudulent conveyance into trusts is two years for South Dakota and four years for New Hampshire. These legislative updates also allowed for so-called 'self-settled' trusts repealing prior doctrine in that regard.

Similar to other jurisdictions in this report, both states have introduced legislation providing clarity around reservation or granting of certain powers over the trust. Reservation of investment power over the trust fund has been by far the most commonly reserved power in practice. Legislation in these states provides robust protection for trustees when relying on and following such investment directions (often referred to as 'directed trusts'). The judiciaries in these U.S. states have good and proven experience in dealing with trust matters, however, New Hampshire has gone further and established a specialty trust focused court; the first of its kind in the United States.

Taxation in the U.S. must be considered both from a federal and state perspective. The first consideration is tax residency. Tax residency of U.S. trusts was clarified with new federal legislation introduced in 1996 whereby a trust is a foreign trust for U.S. tax purposes unless both of the following are true:

1. A U.S. court can exercise primary supervision over the administration of the trust (the 'court test')
2. One or more U.S. persons have the power to control all substantial decisions of the trust (the 'control test')

Related regulations outline a list of the types of decisions considered to be 'substantial decisions', including removal/replacement of a trustee.

If a U.S. domestic resident trust (for federal tax purposes), then the next question would be in relation to residency from a state perspective. Most U.S. states have introduced definitions of a 'resident trust', which determines whether a trust is liable for state tax on its worldwide income and gains (non-resident trusts are normally only subject to tax on income sourced from that state).

Currently, many U.S. states base (state) tax residency on the domicile of the trustee and the place of administration, whilst some also consider residency of the settlor (grantor) and/or beneficiaries. Having said that, a number of U.S. states do not impose income and/or capital gains tax, or only impose tax where there are settlors and beneficiaries resident in the state. So, if a U.S. domestic trust is considered resident in one of these U.S. states (with all settlors and beneficiaries in another state), only federal taxation would normally apply (assuming the 'home' residency state of the settlor does not have different rules).

If the result of the federal U.S. tax residency test is a non-resident (foreign) trust, then the trust is not subject to any form of U.S. taxation (other than U.S. tax on U.S. source income and some gains, which is normally withheld at source). However, it would of course be subject to relevant anti-money laundering and related regulation. Where U.S. persons are involved (U.S. residents and citizens), U.S. taxation of domestic and foreign trusts can be quite complex, depending on the circumstances. For example, trusts are normally classified as 'grantor' or 'non-grantor' trusts, whether domestic or foreign, with each having different U.S. tax and reporting implications. This is normally only relevant where there is (or may in future be) U.S. persons connected to the trust (e.g. as settlor/grantor or beneficiaries).

Finally, it should be noted that the United States has not signed up to the Common Reporting Standard (CRS), a global standard for the automatic exchange of financial account information between tax authorities. All the other jurisdictions covered in this report have signed up.

Foundations

Non-charitable private use foundations, normally found in civil law (and some common law) jurisdictions, have historically not been found in U.S. federal or state law. And U.S. individuals with interests in foreign/non-U.S. foundations have often experienced complex tax issues given the lack of recognition of such entities.

Having said that, two U.S. states, New Hampshire and Wyoming, have recently established law to recognise foundations. In the case of New Hampshire, the Foundation Act marries elements of the New Hampshire Trust Code, the New Hampshire Business Corporations Act and the New Hampshire Revised Limited Liability Company Act. Commentators have indicated that a foundation formed under the New Hampshire Foundation Act would most likely be classified as a trust for U.S. tax purposes.

	Trust
Primary legislation	Federal: The Uniform Trust Code (signed by only half of the 50 U.S. states) South Dakota: Title 55: Fiduciaries and Trusts New Hampshire: New Hampshire Trust Code, adopted the Uniform Trust Act Delaware: Trust Act 2019, Delaware Code, Title 12
Founding document	Trust deed: The trust deed is the main legally binding document, which must be complied with and outlines the parties to the trust and its broader terms including administrative and dispositive provisions and powers. Letter of wishes: In addition, the trust deed is often (but not necessarily) followed by a non-binding letter of wishes from the settlor outlining his/her general wishes as to the future administration of the trust. This letter provides useful insight and context for trustees as to the rationale/purpose of the trust, which in turn, whilst not legally binding, is normally used by the trustees in the discharge of their powers and duties under the trust deed.
Manager	The trustee(s).
Ownership type	Beneficial and legal ownership separated between the trustee and beneficiaries.
Publicly filed?	There are no federal or state public registries of trusts in the United States.
Duration	Different in each state. South Dakota: Abolished the rule against perpetuities, so no time limit Delaware: Abolished the common law rule against perpetuities applicable to trusts in 1986 and enacted legislation allowing perpetual trusts in 1995, so no time limit New Hampshire: Repealed the rule against perpetuities in 2004, so no time limit
Regulator	South Dakota: South Dakota Division of Banking Delaware: Trust Act 2019, Delaware Code, Title 12 New Hampshire: The Office of the State Bank Commissioner

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