

MEMORANDUM

Comparison between Trusts and Foundations

1. **Creator:** Settlor of a Trust and Founder of a Foundation.
2. **Nature:** A Trust is a legal arrangement and not a registered legal entity. A foundation is a registered legal entity.
3. **Governing documents:** A Trust Deed governs the Trust. A Foundation is governed by a Charter and Rules.
4. **Control:** A Trust is managed and controlled by Trustee(s). A Foundation is managed and controlled by a Council.
5. **Ownership of assets:** The Trustee(s) hold the assets of the Trust for the Beneficiaries. A Foundation owns its own assets.
6. **Purpose:** A Foundation must have a purpose, which can include persons. Trusts can be for persons or purposes, whether charitable or not.
7. **Supervision:** A Foundation can have a Supervisory Person to supervise the Council. A Trust can have a Protector, who is a watchdog for the Beneficiaries. The Protector can be given powers under the Trust Deed such as to remove and appoint Trustees and add and remove Beneficiaries and create Excluded Persons, who can never benefit from the Trust.
8. **Reserved powers:** A Samoan Trust can have reserved powers to a Settlor and to a Protector and also have anyone give “prescribed directions” to the Trustees. A Founder of a Foundation or others can have powers reserved to him or them and can assign these powers. If there is a failure to assign the powers, they will vest in a Guardian and not be lost.
9. **Special structures:** Under Samoan law, a Trust or a Foundation may be combined with a Limited Partnership to give control to the General Partner of the Limited Partnership, while giving value to the Trust or the Foundation. The Trustees of the Trust and the Council and Participants of the Foundation are protected against the acts and omissions of the General Partner. A Foundation is already a registered legal entity. SISTA (Samoa International Special Trust Arrangement) permits the licensed Samoan Trustee Company, as Trustee of a Samoan Trust, to hold and retain the shares of a Samoan company and permit the directors to manage and control that company without the Trustee being liable.
10. **Liability:** Trustees are jointly and severally liable for the debts of a Trust: The liability for a Foundation’s debts is limited to the value of the Foundation’s assets from time to time.