

Discretionary Trust Deed



Discretionary Trust Deed

What is it?

A discretionary trust designed for use with life assurance plans including investment bonds. The settlor (the person creating the trust) cannot benefit from the trust. There can be more than one settlor of the trust. It is only suitable for those wanting to make outright gifts into trust.

Aims of the trust

To enable you (the settlor) to transfer the plan into trust to be held for the benefit of the trust beneficiaries.

To ensure that if the benefits of the plan are paid on your death, they will not be liable to inheritance tax as part of your taxable estate.

To ensure that if the benefits of the plan are paid on your death, they are paid into the trust without the delay that would arise from the need to obtain a grant of probate/ letters of administration on your estate. There will need to be at least one surviving trustee at the date of your death to avoid probate delay.

Placing your plan in trust is particularly important if you are applying for a joint life second death Adaptable Life Plan.

When should this trust not be used?

- If you want to retain any of the plan benefits for yourself. You (as 'Appointor' under the trust) cannot appoint the benefits back to yourself at any time.
- If your plan is a joint owner/joint life first death plan, because the surviving owner will not be able to benefit from the proceeds of the plan payable on death.
- If your plan is to be assigned as security for a loan.
- If you have, or are applying for, critical illness assurance, as a different type of trust will be more suitable. Please speak to your adviser.
- If your plan is to be used for business protection, as a different type of trust will be more suitable. Please speak to your adviser.

How does it work?

The Discretionary Trust enables you, and after your death your trustees, to appoint the plan benefits in favour of any of the trust beneficiaries, although if the appointment is in favour of your spouse or civil partner, it must be made by the trustees. If a trust beneficiary should die or if you or your trustees change the default beneficiaries in Box 'B' (see below) during the trust period (125 years from the start of the trust), there will be no adverse inheritance tax consequences.

How is the trust set up?

Completion of the form is very straightforward – see the notes about boxes 'B' and 'C' below. Your full name(s) must be written in the space provided (as the 'Settlor').

Box 'B' – you must write the full names of the default beneficiaries of the trust fund and the share each is to take (expressed as a percentage) in this box. Please ensure that the shares add up to 100%. The reason you should specify the amount of each beneficiary's share is so that it is clear how much each beneficiary should have if the trust fund has not been fully distributed by the time the trust must end – i.e. 125 years after it was set up. You, or after your death your trustees, can change these beneficiaries at any time during the trust period, provided no irrevocable appointments have already been made which relate to the whole of the trust fund. **Do not leave Box 'B' blank.**

In the boxes underneath the box marked 'B', you should sign and date the deed and your signature(s) must be witnessed by an individual who is neither a trustee nor a beneficiary under the trust, nor your spouse or civil partner.

Box 'C' – you should write in the full name and address of each additional trustee and each trustee should sign in the box. You can appoint up to four additional trustees in the boxes provided. We recommend that at least two additional trustees are appointed. You, the settlor, are automatically a trustee and so you should not be included in this box.

If you do not appoint any additional trustees, and if the benefits of the plan are paid on your death, we will need to delay payment until a grant of probate/ letters of administration on your estate has been obtained. This is because the claim will need to be made by your legal personal representatives or someone they have appointed to operate the trust. Also, some powers within the trust can only be exercised if there is at least one additional trustee (who is not your spouse or civil partner).

Trustees and trustee bank account

During your lifetime, you will (as 'Appointor') be in control of most of the decisions relating to who should benefit from the trust. The main exception to this is, in single settlor cases, where you wish to appoint any benefits in favour of your spouse or civil partner, in which case you must obtain the agreement of all the trustees. Decisions about the plan, which is the trust property, including reducing the payments or, depending on the type of plan, encashing it, will need to be taken by all the trustees. As Zurich will make any payment to all the trustees, they may need to set up a trustee bank account.

Inheritance tax

Inheritance tax (IHT) is a complex subject. These notes are not comprehensive and are intended only to give a broad outline of our understanding of the tax position on 1 January 2015.

What are the IHT consequences of setting up the trust?

Payments made to the plan will be transfers for IHT purposes although they may be covered by one or more exemptions (annual exemption and/or normal expenditure out of income exemption). To the extent that the transfers are not covered by exemptions, they will be chargeable lifetime transfers (CLTs) and may cause an immediate IHT liability – see below.

If the plan is already in force, the assignment of the plan to the trust will be a CLT which, in general, will be based on the market value of the plan at the time. If your plan is a term plan, this is likely to be negligible unless you are in serious ill health. However, if your plan is a whole of life plan, the value of the CLT will be the market value of the plan or the total of all the payments made to the plan (less any sums paid out previously by way of partial surrender) if greater. In the case of a unit linked plan, if the value of the units has reduced below the level of the payments made, an adjustment is made for this. In determining whether an IHT liability arises on a CLT, account must be taken of CLTs you made in the previous seven years.

If the value of the transfer on a payment made to the plan or on the transfer of an existing plan into trust (after taking account of any available exemptions and adding back CLTs in the previous seven years) is less than the nil rate band, there will be no tax to pay at that time. If it is more than the nil rate band, IHT will be payable on the amount that exceeds the nil rate band at the rate of 20%. If you pay IHT and die within seven years of setting up the trust, your trustees may pay additional IHT on the 'failed' CLT although taper relief will apply to reduce the tax if you survive by at least three years. Any failed CLTs will also be taken into account in calculating IHT on your estate on your death.

In some circumstances you may need to report the CLTs to HM Revenue & Customs (HMRC) Inheritance Tax on forms IHT100, IHT100a and D34. Please speak to your adviser for more information.

How does the 10 yearly (or periodic) charge work?

There is also a 10 yearly (or periodic) charge which can arise 10 years after the trust was set up and on every 10 year anniversary after that. The trustees are liable for this charge. The calculation can be quite complicated but, in very general terms, the amount that is charged to tax is based on the value of the trust fund immediately before the 10 year anniversary. If this amount does not exceed the nil rate band at that time (taking account of any CLTs you made in the seven years before you created the trust), there will be no IHT due. For term plans this value will be the market value of the plan at the time, which is likely to be negligible unless you are in serious ill health or unless the plan proceeds have already been paid but have not been distributed to the beneficiaries. However, if your plan is a whole of life plan then the value will be taken to be the total of all payments made if this is more than the market value of the plan. If the value of the trust fund (using the appropriate basis) is more than the nil rate band at the time, IHT will be payable.

How does the exit (or proportionate) charge work?

This charge arises when some or all of the trust property leaves the trust. The charge is measured by the amount of the loss to the trust. If the trustees pay the tax the amount charged to IHT is increased to take account of that tax.

Exit charge in first 10 years

Where the property leaves the trust before the first 10 year anniversary, IHT is payable at a fraction of the 'effective rate' of IHT that would have been paid when the trust was set up using the nil rate band in the tax year of exit (assuming it has increased). The fraction is 30% multiplied by the number of quarter years (40ths) that have elapsed since the trust was set up. This means that if the initial transfer into trust, plus the total amount of your CLTs in the seven years before you set up the trust (plus any added property), is less than the nil rate band at the time, there will be no exit charge. In general terms, if no IHT was paid when the trust was set up, there will be no IHT charge if property leaves the trust fund during the first 10 years.

Inheritance tax (continued)

Exit charge after the first 10 years

If the property leaves the trust after the first 10 year anniversary the rate of the exit charge will, in general, be the appropriate fraction of the rate of IHT that was charged at the last 10 year anniversary. However, this will be increased if any property has been added to the trust fund since the last 10 year anniversary. The appropriate fraction is 1/40th for each quarter year that has elapsed since the last 10 year anniversary. Therefore, if there was no IHT charge at the last 10 year anniversary and nothing has been added to the trust fund since then (payments to a plan which fall within your annual exemption and/or the normal expenditure out of income exemption are not taken into account for these purposes), there will be no exit charge. See above for information on how the 10 year periodic charge is calculated.

NB If you are transferring an investment bond to the trust, the IHT calculations in respect of the 10 yearly anniversary charge and the exit charge may be more complex and you should speak to your usual adviser or other professional advisers such as your solicitor or accountant.

Important note

We will send correspondence and notices relating to the plan to the first named trustee only. This will normally be the settlor of the trust.

Creating a trust is an important matter and has lasting legal and tax consequences. These notes are for your general information only and cannot cover every situation. The trust is provided in draft form for consideration by your legal advisers. They are responsible for ensuring that it takes into account your individual circumstances and requirements. The trust, once created, is irrevocable and the plan and its benefits must be held according to the terms of the trust. The trustees will be in control of the operation of the trust which means that they may need to set up a trustee bank account. Any options available under the plan and any further policies that are issued as a result of the exercise of any options will also be held subject to the trust.

The draft trust and these notes are based on our understanding of current law and HMRC practice (1 January 2015). Although every care has been taken in the preparation of these notes and the draft trust, neither Zurich Assurance Ltd nor any of its officers, employees or agents accept responsibility for the operation of the trust which should be referred to your own legal advisers to ensure it meets your requirements.

This page forms part of the Trust Deed and must be submitted to Zurich.

Discretionary Trust Deed

Plan number

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- This is a discretionary trust for use with life assurance plans including investment bonds.
- Not to be used with joint owner/joint life first death plans, critical illness assurance, business assurance, income protection plans or plans to be assigned to secure mortgages.

Person(s) declaring this trust (full name(s) in BLOCK CAPITALS please):

(the 'Settlor')

The terms of the trust are set out below.

A Potential Beneficiaries – Box 'A'

- (a) Any Spouse, Civil Partner, widow, widower or surviving Civil Partner of the Settlor provided that a Spouse, Civil Partner, widow, widower or surviving Civil Partner of the Settlor who is also a Settlor shall not be a Beneficiary or potential Beneficiary.
- (b) Children, Grandchildren, Great Grandchildren (and the Spouse or Civil Partner of any of these) of the Settlor.
- (c) Any person (other than the Settlor) whom the Settlor has notified to the Trustees in writing.
- (d) Any charity.
- (e) The person(s) named in Box 'B'.

B Default Beneficiaries – Box 'B' (do not leave blank)

(see 'How is the trust set up?' on page 2. If there is more than one Beneficiary, also state their share, making sure the total comes to 100%):

Full name (BLOCK CAPITALS)	Share %	Full name (BLOCK CAPITALS)	Share %

To create a trust you need to sign here. Your signature(s) must be witnessed. If two people are declaring this trust, both need to sign.

Signed and delivered as a Deed by the Settlor(s):	In the presence of:
	Signature of witness
	Full name of witness
	Address of witness
Date	

C Additional Trustees – Box 'C'

We do not recommend more than four Additional Trustees. However, if there are more than four, please provide their details and signatures on a sheet of paper marked with the Plan number, and sign it.

Title	Surname	Title	Surname
Full forenames		Full forenames	
Address		Address	
	Postcode		Postcode
Date of birth		Date of birth	
Signature in acceptance of appointment as Trustee		Signature in acceptance of appointment as Trustee	
Title	Surname	Title	Surname
Full forenames		Full forenames	
Address		Address	
	Postcode		Postcode
Date of birth		Date of birth	
Signature in acceptance of appointment as Trustee		Signature in acceptance of appointment as Trustee	

Trust provisions

1 Definitions

'Beneficiary' and **'Beneficiaries'** means any person or persons described in Box A or named in Box B.

'Child' includes illegitimate, legitimated, adopted and/or step-children and **'Grandchild'** and **'Great Grandchild'** are to be interpreted in the same way.

'Civil Partner' means someone who has formed a civil partnership with the person referred to in accordance with the Civil Partnership Act 2004. It includes surviving Civil Partners but it does not include former Civil Partners if the civil partnership has been ended.

'Company' means Zurich Assurance Ltd.

'Plan' means the policy of assurance identified above and any other life assurance policy included in the Trust Fund. Where the policy is a bond, it includes all the policies which make up the bond. It also includes any other policies set up in the exercise of rights under that policy and any property derived from that policy.

'Settlor' means the person or persons declaring this trust and where two persons are named, the term Settlor shall refer to them both and the survivor of them.

'Spouse' means the husband or wife or widow or widower of the person referred to at the relevant time. It does not include divorced persons who were previously married to each other.

'Trustee(s)' means the Settlor and the Additional Trustee(s) named in Box C or the Trustee(s) for the time being of this trust.

'Trust Fund' means:

- (a) the Plan
- (b) any policies of assurance that are held by the Trustees subject to this trust
- (c) any policies effected in accordance with any option in any policy subject to this trust
- (d) all monies, investments and property paid to or transferred to the Trustees as additions to the Trust Fund
- (e) any property representing the above.

'Trust Period' means the period of 125 years from the trust's commencement. This is the perpetuity period of the trust.

Unless the context indicates otherwise, words in the singular will be deemed to include the plural and the masculine to include the feminine and vice versa.

2 Creation of the Trust

The trust will commence on the date shown immediately below the Settlor's signature or, if later, the date the above numbered Plan is issued to the Trustees.

(1) If the Plan is not issued:

the Settlor states that, in submitting the application for the above numbered Plan to the Company, he is acting with the intention of making himself and the Additional Trustees specified above Trustees for the Beneficiaries named or referred to above upon the trusts and subject to the powers set out below. The Settlor directs the Company to issue the above numbered Plan to the Trustees to hold on the terms of this trust and requests that the Plan should be endorsed to this effect.

(2) If the Plan is issued:

the Settlor holds the above numbered Plan as Trustee for the Beneficiaries named or referred to above upon the trusts and subject to the powers set out below. The Settlor wishes to appoint the Additional Trustees specified above as Additional Trustees of the Plan and declares that he holds the Plan in trust as set out above and appoints the Additional Trustees as Trustees of the Plan jointly with him and assigns the Plan to the Additional Trustees and himself jointly.

3 Exclusion of Settlor from Benefit

The Trust Fund must always be enjoyed to the absolute exclusion of the Settlor and of any benefit to him, whether under a contract or in any other way.

Trust provisions (continued)

4 Beneficiaries

- (1) The Trustees hold the capital and income of the Trust Fund upon the trusts and (subject to 3 above) with and subject to the powers and provisions set out below for whoever the 'Appointor' (defined in 5(1) below) in his absolute discretion chooses from amongst the persons in Box A on such terms as the Appointor thinks fit and in the shares and subject to the trusts powers discretions and conditions as the Appointor appoints. The conditions for 'appointments' are set out in 5(2) below.
- (2) Subject to 4(1) above, the Trustees also have an absolute discretion to accumulate the whole or part of the income of the Trust Fund during the Trust Period and that income shall be added to the capital of the Trust Fund. The Trustees shall pay or apply the remainder of the income to or for the benefit of any of the person(s) in Box A as the Appointor thinks fit.
- (3) Subject as above and if and so far as not wholly disposed of for any reason whatsoever by the above provisions, the Trustees shall hold the capital and income of the Trust Fund on trust at the expiry of the Trust Period for the persons in Box B in the shares specified in Box B and if no such shares are specified and there is more than one Beneficiary, in equal shares absolutely.

5 Power of Appointment

- (1) The Appointor is the Settlor unless either he has released his power of appointment, or has died, or the appointment is to be made in favour of his Spouse or Civil Partner. In these cases appointments have to be made by the Trustees. If the appointment is in favour of the Settlor's Spouse or Civil Partner then, unless the only Trustee is a trust corporation, to make the appointment there must be at least two Trustees and one of them must be neither the Settlor nor the Settlor's Spouse nor Civil Partner.

- (2) Appointments have to be made by deed. The Appointor can make them irrevocable, but otherwise they can be changed during the Trust Period. If the terms of any revocable appointment have not been revoked at the end of the Trust Period, the appointment will become irrevocable at that time. Appointments can be subject to conditions and give powers and discretions.

6 Appointment and Removal of Trustees

- (1) The Settlor has the power to appoint new Trustees. After the death of the Settlor (or both Settlers), the Trustees for the time being may appoint new Trustees.
- (2) During the Settlor's lifetime the Settlor has the power to remove any Trustee provided that there are at least two Trustees remaining after the removal and one of the remaining Trustees is neither the Settlor nor the Settlor's Spouse nor Civil Partner.
- (3) As long as there are at least two other Trustees, if a Trustee cannot be found, after reasonable efforts have been made to find him, the remaining Trustees can discharge the missing Trustee. It is up to the remaining Trustees to decide whether reasonable efforts have been made to find the missing Trustee and no other person shall be under any duty to ensure that it was proper for the Trustees to have exercised their power to discharge the missing Trustee.

7 Powers and Rights under the Plan

- (1) The Settlor can exercise any rights or powers under the Plan except where 9(3) below states specifically that the Trustees have the relevant power. However, the Settlor must exercise these powers under the Plan in his capacity as, and subject to the duties of, a Trustee.
- (2) The Settlor's power under 7(1) above ends if he ceases to be a Trustee, dies or releases that power by deed.

Trust provisions (continued)

8 Exclusion of Beneficiaries

The Trustees can exclude any Beneficiary from benefit under the trust. This must be done by deed. There must be at least one Beneficiary remaining under the trust after the relevant Beneficiary has been excluded.

9 General Powers

- (1) The Trustees have all powers conferred by the law. In addition they have the powers in 9(3) below. The Company cannot be held accountable for, and is under no duty to investigate, the exercise of any of their powers by the Trustees, or how they apply any part of the Trust Fund.
- (2) Subject to 10(1) below, section 32 of the Trustee Act 1925 will apply, but will be modified so that the Trustees can advance all, rather than half, of a Beneficiary's prospective share of capital.
- (3) The Trustees can:
 - (a) borrow for the purposes of the trust on whatever terms they think appropriate. They can use any part of the Trust Fund as security. The lender is under no duty to check that they use the money properly;
 - (b) make the Plan paid-up even if the sum assured is reduced as a result;
 - (c) surrender or partially surrender the Plan;
 - (d) sell any part of the Trust Fund (including the Plan);
 - (e) subject to 10(1) below, exercise rights under the Plan which can reduce the benefits payable under it or, with the Company's consent, reduce the sum assured or premiums payable under the Plan;
 - (f) subject to 10 below, release any powers or discretions which can be exercised by the Trustees (including this power). The Trustees can do this wholly or partly and impose whatever conditions they think are appropriate;

- (g) invest the Trust Fund as though they owned it beneficially and absolutely. The Trustees can invest in income producing and non-income producing assets (including life assurance policies);
- (h) subject to 10(2) below, lend to any Beneficiary on whatever terms about interest and repayment as they think fit. To avoid any doubt, it is made clear that this includes the power to make interest-free loans;
- (i) delegate the exercise of any of their investment or management powers in relation to the Trust Fund, to any person they think fit, even if the delegate is resident or situated abroad. The Trustees can transfer the ownership of any property in the Trust Fund for these purposes;
- (j) accept as a valid discharge any receipt, for any payment by the Trustees, given by a parent or guardian of a Beneficiary who is a minor. The Trustees do not have any duty to ensure that the payment is paid to, or applied for the benefit of, the relevant Beneficiary.

10 Limiting Exercise of Powers

- (1) If the Settlor is alive, the powers in 9(2) and 9(3)(e) and (f) can only be exercised with his agreement.
- (2) Unless the Trustee is a trust corporation, the powers in 9(3)(f) and (h) can only be exercised if there are at least two Trustees, and at least one of them is neither the Settlor nor his Spouse nor Civil Partner.

11 Administration of Trust outside the UK

All or part of the administration of this trust can be transferred outside the United Kingdom and persons resident outside the United Kingdom can be Trustees.

Trust provisions (continued)

12 Settlor's Incapacity

If any Settlor becomes mentally incapable as defined by the Mental Capacity Act 2005 or any Act of Parliament which supersedes that Act, his rights and powers under this trust will be exercisable as if he is dead at that time.

13 Charging by Trustees

Apart from the Settlor and his Spouse or Civil Partner, any Trustee who is in a profession, business or trade can charge his usual fees and charges for work done on behalf of the trust. This applies even where a Trustee who is not in the relevant profession, business or trade could have done the work personally.

14 Liability of Trustees

A Trustee shall not be liable for a loss to the Trust Fund unless that loss was caused by his own fraud or negligence. The duty of reasonable care set out in section 1, Trustee Act 2000, or any Act of Parliament which supersedes that Act and which sets out a Trustee's duty of care, applies to all the functions of the Trustees.

15 No Duty to Investigate Exercise of Power

Where the agreement or consent of any person is needed for the exercising of a power by the Trustees, no person dealing with the Trustees needs to be concerned whether that agreement or consent has been obtained.

16 Choice of Law and Jurisdiction

This trust is subject to the law of England. The parties are subject to the jurisdiction of the English Courts.

Please let us know if you would like a copy of this in large print or braille, or on audiotape or CD.