

# DISCRETIONARY BYPASS TRUST

(PILOT TRUST)

**This document is a specimen discretionary trust that is suitable for use in conjunction with all Phoenix Wealth pension schemes (excluding Section 32 policies).**

If you have a:

- Phoenix Wealth Pension Funds only plan please write to Phoenix Wealth, Unit Linked Life & Pensions, PO Box 1393, Peterborough, PE2 2TP.
- Retirement Wealth Account - Self-invested plan please write to Phoenix Wealth, Self Invested Pensions, PO Box 1394, Peterborough, PE2 2TQ.

**This Trust relates to:**

(For example, Retirement Wealth Account)

The Retirement Wealth Account, The Executive Pension and The Personal Pension are provided by Phoenix Life Limited and, Family Suntrust is provided by Phoenix Wealth Services Limited.

This specimen Trust has been prepared in accordance with our understanding of the law of England and Wales and HM Revenue & Customs (HMRC) practice as at 6 April 2014, which might change in the future. The Trust document should be referred to an appropriate legal adviser for advice to ensure that such a Trust is appropriate to that for the scenario concerned. A trust that does not meet an individual client's requirements can cause serious problems to all parties and may not achieve the intended results.

Please ensure that as a financial adviser using this Trust you do not leave yourself open to any legal liability and that you have taken specific legal advice.

No Phoenix Group companies nor any of their representatives, officials or employees accept any responsibility for the Trust when it is used by a client and we strongly recommend that professional legal advice is taken as to the suitability of the Trust and the likely tax consequences for that client's circumstances.

Insert the full name(s) and current address of the Retiring Trustee.

This **Deed of Appointment** is made on the \_\_\_\_\_ of \_\_\_\_\_ in the year 20\_\_\_\_

between:

**1. The Parties**

A.	(‘the Settlor’) of the first part and
B.	(‘the first Trustee’) and
C.	(‘the second Trustee’)

(Parties B and C together referred to as ‘the Trustees’)

## 2. INTRODUCTION

- 2.1 The Settlor has joined a registered pension scheme issued by Phoenix Wealth as policy/plan/account number ..... (details of which appear in the Schedule to this deed) under which any lump sum benefits payable on the Settlor's death ('the Death Benefits') are payable at the discretion of the Pension Scheme Trustee.
- 2.2 The Settlor intends to notify the Pension Scheme Trustee that he/she wishes the Death Benefits to be paid to the Trustees to be held by them upon the trusts, and with and subject to the powers and provisions contained in this deed.
- 2.3 The Settlor has paid to the Trustees the sum of £10 or any other amount or other legal form of consideration to be held upon the following trusts. Further cash, investments or other property may be paid or transferred to the Trustees by way of addition.
- 2.4 This Trust is to be known as the .....Trust.

## 3. DEFINITIONS

In this deed:

- 3.1 The '**Pension Scheme Trustee**' shall mean the Trustee(s) of the pension plan from which the Death Benefits will become payable.
- 3.2 A '**Trustee**' of this trust shall mean any person who has attained the age of 18 and is of sound mind, or any other legal entity which can perform the duties in this deed.
- 3.3 The '**Trust Fund**' shall mean:
- the initial consideration used to establish the trust
  - such further cash, investments or other property as may be paid or transferred to the Trustees by way of addition
  - any accumulations of income and
  - the investments or property representing the same.
- 3.4 The '**Trust Period**' shall mean the period of 125 years commencing on the date of this deed or such longer period as allowed under statutory provisions applying to England and Wales at any time this deed is in existence.
- 3.5 The '**Beneficiaries**' shall mean:
- the Settlor's widow(er) or former Spouse
  - the Settlor's children and remoter issue and the Spouses, widows and widowers (whether or not such widows or widowers have remarried) of such children and remoter issue
  - any person (other than the Settlor and the Settlor's personal representatives) nominated by the Settlor by notice in writing addressed to and received by the Trustees not later than one month after the death of the Settlor and
  - any person entitled under the Settlor's will or (if the Settlor dies intestate) under the intestacy rules applicable to the Settlor's estate on his death.
- 3.6 "**Spouse**" includes any civil partner registered under the Civil Partnership Act 2004 and "**widow**" or "**widower**" includes any surviving civil partner so registered. Any references to marriage include a registered civil partnership.
- 3.7 References to "**child**", "**children**" and "**issue**" include any illegitimate, step, adopted or legitimated child, children or issue, whether adopted or legitimated before, on or after the date of this deed.

## 4. POWER TO RECEIVE ADDITIONAL PROPERTY

The Trustees may, during the Trust Period, accept additional money, investments or other property paid or transferred to them by the Settlor or any other person. Such additional money, investments or other property shall be held upon the trusts with and subject to the powers and provisions of this deed.

## 5. VALID RECEIPT

The receipt of the Trustees for any payment made to them in respect of the Death Benefits shall be a full and sufficient discharge to the payer of the Death Benefits who shall not be concerned with the application of the Death Benefits.

## 6. POWER OF APPOINTMENT

- 6.1 The Trustees shall hold the income or the capital or both for the benefit of the members of the class of beneficiaries in such proportions as the trustees shall, in their absolute discretion, think fit.
- 6.2 During the Trust Period, the Trustees may create trusts over all or part of the Trust Fund for the benefit of any of the Beneficiaries. They must create these trusts by deed. That deed may:
- a) include any terms the Trustees consider appropriate
  - b) be revocable during the Trust Period or irrevocable
  - c) give to any person
    - (i) discretionary powers and duties and
    - (ii) dispositive and administrative.

6.3 During the Trust Period the Trustees may transfer all or part of the Trust Funds to the trustees of another trust wherever established, to be held on the terms of that trust, released from the trusts in this deed.

The Trustees:

- a) must exercise this power by deed
  - b) may not use this power unless the only persons who can benefit from the transfer are one or more of the Beneficiaries
- or
- c) may not use this power unless
    - (i) the persons who can benefit from the transfer include at least one Beneficiary, even if others can also benefit and
    - (ii) it is not possible for any person excluded from benefit under clause 9 to benefit in any circumstances.

## **7. TRUSTS IN DEFAULT OF APPOINTMENT**

Subject to and in default of any appointment under Clause 6 and during the Trust Period, the Trustees shall hold the capital and income upon the following trusts:

- 7.1 The Trustees may, during the Trust Period, accumulate the whole or part of the income by adding it to the Trust Fund and investing it in investments permissible by this deed or by law.
- 7.2 Any income not accumulated shall be paid or applied to or for the benefit of any of the Beneficiaries as the Trustees think fit.
- 7.3 The Trustees may apply any income accumulated in previous years, as if it were income arising in the current year.
- 7.4 The Trustees may pay any capital of the Trust Fund to, or apply to or for the benefit of any of the Beneficiaries, in such shares and in such manner as the Trustees shall think fit.

## **8. ULTIMATE DEFAULT TRUST**

At the end of the Trust Period, and subject to any appointment made under Clause 6:

- 8.1 The Trustees shall hold the Trust Fund on trust for the Beneficiaries who are alive at the end of the Trust Period in equal shares absolutely and
- 8.2 If none of the Discretionary Beneficiaries shall then be living, the Trustees shall hold the Trust Fund on trust for the State Beneficiaries who are alive at the date of this deed in equal shares absolutely.

## **9. EXCLUSION OF SETTLOR AND SPOUSE**

No power conferred by this deed shall be exercisable, and no provision shall operate, so as to allow any part of the capital or income of the Trust Fund to be paid or lent or applied to or for the benefit of the Settlor, or, during the Settlor's lifetime, the Settlor's Spouse in any circumstances whatsoever.

## **10. APPOINTMENT OF ONE OR MORE TRUSTEES**

- 10.1 The power to appoint any Trustees shall be exercisable by the Settlor during his lifetime (or until the Settlor shall in writing renounce this power) and after the Settlor's death the power will be exercisable by the Trustees.
- 10.2 The Trustees may act by majority provided that at least one of the Trustees in the majority does not stand to benefit from this decision.
- 10.3 Any Trustee may act even if they have an interest in the Trust or in any actions or decisions taken in relation to it.

## **11. REMOVAL OF ONE OR MORE TRUSTEES**

- 11.1 Subject to the following provisions of this clause, the Settlor shall have power to remove any one or more of the Trustees as a Trustee of this Trust.
- 11.2 A Trustee shall be removed when the Settlor sends a written removal notice to the Trustee at the Trustee's last known address. The sending of such notice by post will be deemed due service of the removal notice.

The removed Trustee shall without expense to him co-operate in executing any documents or giving any consents to ensure a termination of his trusteeship and the vesting of the Trust Fund in the continuing Trustees and any new Trustee that is appointed.
- 11.3 There shall at all times be at least two Trustees unless a trust corporation is a Trustee.

## **12. NON-RESIDENT INDIVIDUAL TRUSTEES**

12.1 Any Trustee may be resident in the United Kingdom, or elsewhere.

12.2 Absence from the United Kingdom for more than 12 months shall not be a reason for a Trustee to be removed.

## **13. ADMINISTRATIVE PROVISIONS**

The standard provisions of the Society of Trust and Estate Practitioners (1st Edition) shall apply with the deletion of paragraph 5 as shown below.

## **14. LIMIT TO EACH TRUSTEE'S LIABILITY**

A Trustee shall not be liable for any loss to the Trust Fund unless that loss was caused by the Trustee's own fraud or gross negligence.

## **15. GOVERNING LAW**

The trusts declared by this deed shall be governed by and interpreted in accordance with the laws of England and Wales and the courts of England and Wales are to have exclusive jurisdiction in any proceedings involving rights or obligations under these trusts.

## **16. IRREVOCABLE**

These trusts shall be irrevocable.

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# SOCIETY OF TRUST AND ESTATE PRACTITIONERS STANDARD PROVISIONS (1ST EDITION)

## 1. INTRODUCTION

- 1.1 These provisions may be called the standard provisions of the Society of Trust and Estate Practitioners (1st Edition).
- 1.2 These provisions may be incorporated in a document by the words:  
“The standard provisions of the Society of Trust and Estate Practitioners (1st Edition) shall apply” or in any manner indicating an intention to incorporate them.

## 2. INTERPRETATION

- 2.1 In these provisions, unless the context otherwise requires:
  - 2.1.1 ‘Income beneficiary’, in relation to Trust Property, means a person to whom income of the Trust Property is payable (as of right or at the discretion of the Trustees).
  - 2.1.2 ‘Person’ includes a person anywhere in the world and includes a Trustee.
  - 2.1.3 ‘The Principal Document’ means the document in which these provisions are incorporated.
  - 2.1.4 ‘The Settlement’ means any settlement created by the Principal Document and an estate of a deceased Person to which the Principal Document relates.
  - 2.1.5 ‘The Trustee’ means the personal representatives or Trustees of the Settlement for the time being.
  - 2.1.6 ‘The Trust Fund’ means the property comprised in the Settlement for the time being.
  - 2.1.7 ‘Trust Property’ means any property comprised in the Trust Fund.
  - 2.1.8 ‘A Professional Trustee’ means a Trustee who is or has been carrying on a business which consists of or includes the management of trusts or the administration of estates.
- 2.2 These provisions have effect subject to the provisions of the Principal Document.

## 3. ADMINISTRATIVE POWERS

The Trustees shall have the following powers:

- 3.1 Investment
  - 3.1.1 The Trustees may invest Trust Property in any manner as if they were beneficial owners. In particular the Trustees may invest in unsecured loans.
  - 3.1.2 The Trustees may decide not to diversify the Trust Fund.
- 3.2 Management

The Trustees may effect any transaction relating to the management administration or disposition of Trust Property as if they were beneficial owners. In particular:

  - 3.2.1 The Trustees may repair and maintain Trust Property.
  - 3.2.2 The Trustees may develop or improve Trust Property.
- 3.3 Joint property

The Trustees may acquire property jointly with any Person.
- 3.4 Income and Capital

The Trustees may decide not to hold a balance between conflicting interests of Persons interested in Trust Property. In particular:

  - 3.4.1 The Trustees may acquire
    - a) wasting assets and
    - b) assets which yield little or no income for investment or any other purposes.
  - 3.4.2 The Trustees may decide not to procure distributions from a company in which they are interested.
  - 3.4.3 The Trustees may pay taxes and other expenses out of income although they would otherwise be paid out of capital.
- 3.5 Accumulated income

The Trustees may apply accumulated income as if it were income arising in the current year.

### 3.6 Use of Trust Property

The Trustees may permit an Income Beneficiary with or to occupy or enjoy the use of Trust Property on such terms as the Trustees think fit. The Trustees may acquire any property for this purpose.

### 3.7 Application of Trust Capital

The Trustees may:

3.7.1 lend money which is Trust Property to an Income Beneficiary without security, on such terms as they think fit or

3.7.2 take a charge over Trust Property as security for debts or obligations of an Income Beneficiary or

3.7.3 pay money which is Trust Property to an Income Beneficiary as his income, for the purpose of augmenting his income

Provided that:

a) the Trustees have power to transfer such property to that beneficiary absolutely or

b) the Trustees have power to do so with the consent of another Person and the Trustees act with the written consent of that Person.

### 3.8 Trade

The Trustees may carry on a trade, in any part of the world, alone or in partnership.

### 3.9 Borrowing

The Trustees may borrow money for investment or any other purpose. Money borrowed shall be treated as Trust Property.

### 3.10 Insurance

The Trustees may insure Trust Property for any amount against any risk.

### 3.11 Delegation

A Trustee may delegate in writing any of his functions to any Person.

A Trustee shall not be responsible for the default of that Person (even if the delegation was not strictly necessary or expedient) provided that the Trustee took reasonable care when selecting and supervising that person.

### 3.12 Deposit of documents

The Trustees may deposit documents relating to the Settlement (including bearer securities) with any Person.

### 3.13 Nominees

The Trustees may vest Trust Property in any Person as nominee, and may place Trust Property in the possession or control of any Person.

### 3.14 Offshore administration

The Trustees may carry on the administration of the trusts of the Settlement outside the United Kingdom.

### 3.15 Payment of tax

The Trustees may pay tax liabilities of the Settlement (and interest on such tax) even though such liabilities are not enforceable against the Trustees.

### 3.16 Indemnities

The Trustees may indemnify any Person for any liability properly chargeable against Trust Property.

### 3.17 Security

The Trustees may use Trust Property as security for any liability properly incurred by them as Trustees.

### 3.18 Supervision of Company

The Trustees are under no duty to enquire into the conduct of a company in which they are interested, unless they have knowledge of circumstances which call for enquiry.

### 3.19 Appropriation

The Trustees may appropriate Trust Property to any Person or class of Persons in or towards the satisfaction of their interest in the Trust Fund.

### 3.20 Receipt by charities

Where Trust Property is to be paid or transferred to a charity, the receipt of the treasurer or appropriate officer of the charity shall provide a complete discharge to the Trustees.

### 3.21 Release of powers

The Trustees may, by deed, release any of their powers wholly or in part so as to bind future Trustees.

### 3.22 Ancillary powers

The Trustees may do anything which is incidental or conducive to the exercise of their functions.

#### **4. POWERS OF MAINTENANCE AND ADVANCEMENT**

Sections 31 and 32 of the Trustee Act 1925 shall apply with the following modifications:

- 4.1 The Proviso to section 31(1) (The power to apply income for education and maintenance and to accumulate surplus income before a beneficiary reaches the age of majority) shall be deleted.
- 4.2 The words "one-half of" in section 32(1)(a) (money so paid or applied for the advancement or benefit of any person) shall be deleted.

#### **5. MINORS**

- 5.1 Where the Trustees may apply income for the benefit of a minor, they may do so by paying the income to the minor's parent or guardian, or to the minor if he has attained the age of 16. The Trustees are under no duty to enquire into the use of the income unless they have knowledge of circumstances which call for enquiry.
- 5.2 Where the Trustees may apply income for the benefit of a minor, they may do so by resolving that they hold that income on trust for the minor absolutely and:
  - 5.2.1 The Trustees may apply that income for the benefit of the minor before the beneficiary reaches the age of majority.
  - 5.2.2 The Trustees shall transfer the residue of that income to the minor on attaining the age of majority.
  - 5.2.3 For investment and other administrative purposes that income shall be treated as Trust Property.

#### **6. DISCLAIMER**

A Person may wholly or partly, disclaim his interest under the Settlement wholly.

#### **7. APPORTIONMENT**

Income and expenditure shall be treated as arising when payable, and not from day to day, so that no apportionment shall take place.

#### **8. CONFLICTS OF INTEREST**

- 8.1 In this paragraph:
  - 8.1.1 A fiduciary means a Person subject to fiduciary duties under the Settlement.
  - 8.1.2 An Independent Trustee, in relation to a Person, means a Trustee who is not:
    - a) a brother, sister, ancestor, descendant or dependant of the Person
    - b) a spouse or civil partner of the Person or of (a) above or
    - c) a company controlled by one or more of any of the above.
- 8.2 A fiduciary may:
  - 8.2.1 enter into a transaction with the Trustees, or
  - 8.2.2 be interested in an arrangement in which the Trustees are or might have been interested, or
  - 8.2.3 act (or not act) in any other circumstances even though his fiduciary duty under the Settlement conflicts with other duties or with his personal interest

Provided that:

  - a) the fiduciary first discloses to the Trustees the nature and extent of any material interest conflicting with his fiduciary duties, and
  - b) there is an Independent Trustee in respect of whom there is no conflict of interest, and he considers that the transaction arrangement or action is not contrary to the general interest of the Settlement.
- 8.3 The powers of the Trustees may be used to benefit a Trustee (to the same extent as if he were not a Trustee) provided that there is an Independent Trustee in respect of whom there is no conflict of interest.

#### **9. POWERS OF TRUSTEES**

The powers of the Trustees may be exercised:

- 9.1 at their absolute discretion and
- 9.2 from time to time as occasion requires.

**10. TRUSTEE REMUNERATION**

- 10.1 A Trustee who is a solicitor or an accountant or who is engaged in a business may charge for work done by him or his firm in connection with the Settlement, including work not requiring professional assistance. This has priority over any disposition made in the Principal Document.
- 10.2 The Trustees may make arrangements to remunerate themselves for work done for a company connected with the Trust Fund.

**11. LIABILITY OF TRUSTEES**

- 11.1 A Trustee (other than a Professional Trustee) shall not be liable for a loss to the Trust Fund unless that loss was caused by his own fraud or negligence.
- 11.2 A Trustee shall not be liable for acting in accordance with the advice of counsel of at least five years standing, with respect to the Settlement, unless, when he does so:
  - 11.2.1 he knows or has reasonable cause to suspect that the advice was given in ignorance of material facts or
  - 11.2.2 proceedings are pending to obtain the decision of the court on the matter.

**12. APPOINTMENT AND RETIREMENT OF TRUSTEES**

- 12.1 A Person may be appointed a Trustee of the Settlement even though he has no connection with the United Kingdom.
- 12.2 A Professional Trustee who is an individual who has reached the age of 65 shall retire if:
  - 12.2.1 he is requested to do so by his Co-Trustees, or by a Person interested in Property and
  - 12.2.2 he is effectually indemnified against liabilities properly incurred as Trustee.

On that retirement a new Trustee shall be appointed, if necessary, to ensure that there will be two individuals or a Trust Corporation to act as Trustee.

In this sub-paragraph Trust Corporation has the same meaning as in the Trustee Act 1925.

This sub-paragraph does not apply to a Professional Trustee who is:

- a) a personal representative or
- b) the Settlor of the Settlement or
- c) a spouse, civil partner, former spouse or former civil partner of the Settlor or Testator.

**13. PROTECTION FOR INTEREST IN POSSESSION AND ACCUMULATION AND MAINTENANCE SETTLEMENTS**

These Provisions shall not have effect:

- 13.1 so as to prevent a Person from being entitled to an interest in possession in Trust Property (within the meaning of the Inheritance Tax Act 1984)
- 13.2 so as to cause the Settlement to be an accumulation or discretionary settlement (within the meaning of section 5 Taxation of Chargeable Gains Act 1992)
- 13.3 so as to prevent the conditions of Section 71(1) Inheritance Tax Act 1984 from applying to Trust Property.

**TRUSTEE DETAILS**

	First Trustee	Second Trustee
<b>Full name</b> (inc title)		
<b>Permanent home address</b> (inc postcode)		
<b>Date of birth</b>	<input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	<input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>



## SCHEDULE

Policy/plan/account number	Type of plan

## SIGNATURES

### Settlor(s)

<b>Signed as a Deed and Delivered</b> by the said		(the Settlor)
<b>Settlor's signature</b>	×	
<b>In the presence of:</b>		
<b>Witness name</b>		
<b>Witness address</b> (inc postcode)		
<b>Witness occupation</b>		
<b>Witness signature</b>	×	

**Trustee(s)**

<b>Signed as a Deed and Delivered</b> by the said		(the First Trustee)
<b>Trustee's signature</b>	×	
<b>In the presence of:</b>		
<b>Witness name</b>		
<b>Witness address</b> (inc postcode)		
<b>Witness occupation</b>		
<b>Witness signature</b>	×	

<b>Signed as a Deed and Delivered</b> by the said		(the Second Trustee)
<b>Trustee's signature</b>	×	
<b>In the presence of:</b>		
<b>Witness name</b>		
<b>Witness address</b> (inc postcode)		
<b>Witness occupation</b>		
<b>Witness signature</b>	×	

Phoenix Life Limited, trading as Phoenix Wealth, is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. Phoenix Life Limited is registered in England No. 1016269 and has its registered office at: 1 Wythall Green Way, Wythall, Birmingham, B47 6WG.

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