

# Discretionary Trust Declaration form

## About this form

### How to fill out this form

Please use black ink and CAPITAL LETTERS or tick  as necessary.

Any corrections must be initialled; do not use correction fluid as this will invalidate your application.

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## Section 1 – The Settlor(s) and the Trustees

The Loan Agreement and this Declaration of Trust is made on the date shown at the start of Section 5 between:

- (1) the Settlor of the first part; and
- (2) the Initial Trustees of the second part.

## Section 2 – The loan agreement

1. The Settlor hereby agrees to make the loan to the Initial Trustees.
2. The Settlor and the Initial Trustees hereby agree as follows:
  - (a) The loan may be effected by a cheque or cheques payable to the Insurance Company for the bond(s) indicated in the First Schedule or in some other form which puts the money the Trustees are borrowing into the control of the Trustees.
  - (b) The bond(s) shown in the First Schedule must be applied for by the Trustees.
  - (c) The loan shall be interest free and repayable on demand.
  - (d) If there are two Settlers the right to repayment of the loan shall belong to both of them jointly while they are both alive and then to the survivor of them ("the Survivor").
  - (e) On the death of the Settlor (or the Survivor) the loan (or so much of the loan as has not been repaid) shall be cancelled if the box in Section 4 has been ticked.

This will be a transfer within the scope of Inheritance Tax.

## Section 3 – The trust

1. **The Trust Fund**
  - (1) Subject to the Settlor's right to repayment of the loan, the Trustees shall hold the Trust Fund upon the Trusts and with and subject to the powers and provisions declared and contained in the Trust Provisions for the benefit of the Beneficiaries.
  - (2) The Trust Provisions are hereby expressly incorporated in this Deed.
2. **Proper Law** – The proper law of this Trust (and of the Loan Agreement) shall be that indicated in the Third Schedule.

## Section 4 – The schedules

### The First Schedule: The bond(s) & the loan

Company: The Prudential Assurance Co Ltd/Prudential International Assurance plc  
(please delete as appropriate)

Type of bond

Please tick box if you wish the loan to be cancelled on the death of the Settlor (or the Survivor)

Date of Trustee application  
(which should be dated after the trust deed)

D	D	M	M	Y	Y	Y	Y
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Loan amount

£

This is the date on which the Trustees apply for the bond investment.

### The Second Schedule: Beneficiaries

For single Settlor trusts, the Settlor's spouse is included in the list of Beneficiaries unless the following box is signed by the Settlor.

Signature

This provision shall not exclude the Settlor's widow(er) from being a Beneficiary.

*This Schedule should only be completed if you want to extend the standard list of Beneficiaries contained in Part 1 of the Trust Provisions. If you are adding Beneficiaries please make sure you identify them in a way that makes it clear who they are.*

Do not add or include the Settlor(s)' name(s) as Beneficiaries. No person who is a Settlor may be a Beneficiary.

**Additional Discretionary Beneficiaries (full names or description, address and date of birth)**

### The Third Schedule: The proper law governing this Trust

If none of the boxes is ticked the Law of England and Wales will apply:

The Law of England and Wales

The Law of Northern Ireland

Scots Law

## Section 5 – Signatures & date: to be completed and signed by the Settlor(s), Additional Trustees and Witnesses

**Note:** There must be at least one Additional Trustee for single settlor trusts.

You should ensure that this document is executed in accordance with the legal requirements in the place where it is executed and the law governing the Trust. The trust should be executed on or before the date on which the application form is signed.

**In Witness Whereof** the parties have executed this document as a Deed on:

.	D	.	D	.	M	.	M	.	Y	.	Y	.	Y	.	Y
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

(the date should be the date you sign this form)

**(1) The Settlor** (the person(s) who is creating this Trust)

**(a) Signed as a Deed by the Settlor named below:**

**In the presence of the Witness named below:**

All witnesses must be over the age of 18 and independent of the trust – not a Settlor, Additional Trustee or Beneficiary.

Signature

Name

Address

<input type="text"/>
<input type="text"/>
Postcode

Signature

Name

Address

<input type="text"/>
<input type="text"/>
Postcode

Leave 1(b) below blank if there is only one Settlor

**(b) Signed as a Deed by the Settlor named below:**

(if there are two Settlers):

**In the presence of the Witness named below:**

Signature

Name

Address

<input type="text"/>
<input type="text"/>
Postcode

Signature

Name

Address

<input type="text"/>
<input type="text"/>
Postcode

**Section 5 – Signatures & date: to be completed and signed by the Settlor(s),  
Additional Trustees and Witnesses – continued**

(2) The Additional Trustee(s) (the person(s) who will be the Initial Trustee(s) of the Trust with the Settlor)

(a) Signed as a Deed by the Additional Trustee  
named below:

In the presence of the Witness named below:

Signature

Name

Address

<input type="text"/>
<input type="text"/>
Postcode

Signature

Name

Address

<input type="text"/>
<input type="text"/>
Postcode

Leave 2(b) below blank if there is only one Additional Trustee

(b) Signed as a Deed by the other Additional Trustee  
named below: (if there are two Additional Trustees)

In the presence of the Witness named below:

Signature

Name

Address

<input type="text"/>
<input type="text"/>
Postcode

Signature

Name

Address

<input type="text"/>
<input type="text"/>
Postcode

### Part 1: Definitions

#### 1. Introduction

In these Trust Provisions unless the context otherwise requires:

- (1) the singular shall include the plural (and vice versa) and the masculine shall include the feminine and neuter (and vice versa);
- (2) references to statutory provisions shall be taken as references to statutory provisions enacted in the United Kingdom as amended from time to time;
- (3) references to **“the Declaration of Trust”** shall be taken as references to a Declaration of Trust which incorporates the Trusts Powers and Provisions set out in these Trust Provisions so that they form an essential part of the Trust created by that Declaration of Trust.

#### 2. Definitions

**“the Initial Trustees”** means the settlor and additional Trustees.

**“the Trust Fund”** means (subject to the Settlor's right to repayment of the loan) the bond(s) referred to in the First Schedule to the Declaration of Trust and the property from time to time representing the same (and also includes any other property which may become Trust Property as a result of any loan to the Trustees or any addition by way of gift or any accumulation of income).

**“the Trust Period”** means the period starting on the date of the Declaration of Trust and ending on the Vesting Day.

**“the Vesting Day”** means the 125th anniversary of the date of the Declaration of Trust.

**“Trust Property”** means any property comprised in the Trust Fund.

**“the Settlement”** and **“this Settlement”** mean the Trust created by the Declaration of Trust.

**“Person”** includes a person anywhere in the world and includes a Trustee.

**“Civil Partner”** has the same meaning as in section 1 of the Civil Partnership Act 2004.

**“Spouse”** includes a Civil Partner.

**“Widow/Widower”** of a person includes the individual who was the Civil Partner of that person immediately before that person's death.

**“the Settlor”** means the person or persons shown under the heading “The Settlor(s)” at (1).

**“the Trustees”** means the trustees of the Trust from time to time.

**“the Trust Provisions”** means the “Discretionary Loan Trust Provisions” (appended to this Declaration).

**“the loan”** means whatever sum is due to the Settlor in accordance with section 4.

**“the Insurance Company”** means the Insurance Company shown in the First Schedule.

#### 3. The Settlor(s)

##### (1) Single Settlor Trust

The Settlement shall be a **“Single Settlor Trust”** if just one person is shown under the heading **“The Settlor(s)”** in the Declaration of Trust and **“the Settlor”** shall mean that person.

##### (2) Joint Settlers Trust

The Settlement shall be a **“Joint Settlers Trust”** if two persons are shown under the heading **“The Settlor(s)”** in the Declaration of Trust and:

- (a) **“the Settlers”** and **“the Settlor”** shall mean either or both of those persons;
- (b) **“a Settlor”** means either of those persons;
- (c) **“the First Settlor”** means the person shown first under that heading and **“the Second Settlor”** means the person shown second under that heading;
- (d) **“the Survivor”** means the later to die of the two Settlers.

#### 4. The Beneficiaries

**“The Beneficiaries”** means:

- (a) The children and remoter descendants of the Settlor and includes adopted or illegitimate children and remoter descendants.
- (b) The children and remoter descendants of any spouse or widow(er) of the Settlor.
- (c) Any persons or class of persons or object shown in the Schedule of Additional Beneficiaries in the Declaration of Trust (as set out in section 2).
- (d) Any person or class of persons added to the class of Beneficiaries from time to time by the Trustees in accordance with clause 3 of Part 2.
- (e) The spouses and widow(er) of the Beneficiaries at (a) and (b) above.
- (f) Any spouse of the Settlor unless the box in Section 4, schedule 2 has been signed.
- (g) Any widow(er) of the settlor.

### Part 2: Trust Provisions

#### 1. Trust income

Subject to the Overriding Powers in clause 2 below

- 1.1 The Trustees may accumulate the whole or part of the income of the Trust Fund. That income shall be added to the Trust Fund.
- 1.2 The Trustees shall pay or apply the remainder of the income to or for the benefit of any Beneficiaries, as the Trustees think fit, during the Trust Period.

### 2. Overriding powers

The Trustees shall have the following overriding powers which they may exercise at any time or times during the Trust Period:

#### (1) Power to pay out capital to Beneficiaries.

- (a) The Trustees may pay or apply any Trust Property to or for the advancement or benefit of any Beneficiary.

#### (2) Power to vary the Trusts (power of appointment)

- (a) The Trustees may appoint that they shall hold the Trust Fund or any part or parts of the Trust Fund and its income for the benefit of any of the Beneficiaries, on such terms as the Trustees think fit.
- (b) An appointment may create any provisions and in particular it may create:
  - (i) discretionary trusts
  - (ii) dispositive or administrative powers exercisable by the Trustees or any other person or persons.
- (c) Any appointment shall be made by deed and may be revocable during the Trust Period or irrevocable.

#### (3) Power to add or exclude Beneficiaries

- (a) The trustees may add a person or a class of persons (other than the Settlor(s)) to the Beneficiary class provided the addition is requested or agreed to in writing by the Settlor (or by one of the Settlers if there are two Settlers) or if no Settlor is living by at least two persons who are already Beneficiaries and at least 18 years old.
- (b) The Trustees may exclude a person or class of persons from being or becoming Beneficiaries in relation to the Trust Fund or in relation to any specified part of the Trust Fund.
- (c) Any exercise of this power to add or exclude shall be made by deed and may be revocable during the Trust Period or irrevocable.
- (d) If there is any change in the parties to the trusts eg any trustees or beneficiaries (including class of beneficiaries) change or a letter of wishes is received, the trustees must notify Prudential of the changes, the date it became effective and within 14 days from the date any of the trustees became aware of the change.

### 3. Default trusts

Subject to clause 1 and clause 2 of this Part the Trust Fund and income thereof shall be held on trust for the benefit of any one or more of the Beneficiaries and in such shares and for such interests as the Trustees may during the Trust Period appoint. Subject to and in default of any appointment at the end of the trust period the remaining trust fund shall be distributed absolutely between the children, and remoter

descendants of the Settlor(s) that are still living in equal shares per stripes provided that if no such persons are living the remaining trust fund shall be distributed to any company, body or trust established for charitable purposes chosen at the Trustees' absolute discretion.

### 4. Appointment, Retirement and Dismissal of Trustees

- (1) The power of appointing Trustees shall be exercisable by:
  - (a) the Settlor while living and of full mental capacity (and if there are two Settlers this shall mean both Settlers jointly while they are both alive, and then the Survivor).
  - (b) the Trustees (after the death of the Settlor or the Survivor).
- (2) Any appointment of new Trustees or retirement of existing Trustees shall be by deed.
- (3) Part II of the Trusts of Land and Appointment of Trustees Act 1996 shall not apply to this Settlement.
- (4) The Settlor, while living and of full mental capacity may dismiss by Deed any Trustee provided they remain at least one Trustee who is not the Settlor or the Settlor's spouse.
- (5) (a) Where the Settlor is alive and of full mental capacity, any Trustee may retire provided there remains at least one Trustee who is not the Settlor or the Settlor's spouse.  
(b) Where the Settlor has died or is not of full mental capacity and provided there is not a single Trustee, any Trustee may retire.

### 5. Settlor exclusion clause

- (1) Notwithstanding anything else in this Settlement (but subject to (2) below) the Trust Fund shall be possessed and enjoyed to the entire exclusion of the Settlor and of any benefit to him by contract or otherwise and no provision of this Settlement and no discretion or power shall operate so as to allow any of the capital or income of the Trust Fund to become payable to or applicable for the benefit of the Settlor in any circumstances whatsoever.
- (2) Nothing in this clause shall apply or operate so as to prohibit repayment of any loan from the Settlor to the Trustees.

### Administrative Provisions

- (1) The Trustees may administer the Trust Fund for the benefit of the Beneficiaries in whatever manner they may determine and to that end shall have the widest possible powers (which they may exercise or omit to exercise from time to time at their absolute discretion) of managing and dealing with the Trust Fund and of carrying out any transaction in connection therewith in all respects as if the Trustees were the absolute beneficial owners thereof.

## Discretionary Loan Trust – continued

- (2) Without prejudice to the generality of paragraph 1, the Trustees shall have the power:
- (i) to invest any money requiring investment in any property of whatever nature (including any policies of assurance or capital redemption contracts) and wherever situated whether producing income or not and upon such security (if any) as the Trustees shall in their absolute discretion think fit.
  - (ii) to borrow money on such terms as to interest repayment and otherwise as they may think fit and whether upon the security of the whole or any parts of the Trust Fund or upon personal security only.
  - (iii) to delegate any power or powers in making, managing, realising or otherwise dealing with any property included in the Trust Fund to any person or persons (but excluding the Settlor or the Settlor's spouse) upon such terms as to remuneration or otherwise as the Trustees may think fit and no Trustee shall be responsible for the default of any such agent of the Trustees in question employed or incurred expense in employing him in good faith.
  - (iv) to pay or transfer any capital or income to be paid to or applied for the benefit of a Beneficiary who is under a legal disability to any parent or guardian of that Beneficiary or to such person on behalf of such Beneficiary as the Trustees shall think fit and the receipt of such person shall be a complete discharge to the Trustees who shall be under no obligation to see to the proper application thereof.
- (3) The Trustees shall have the power by deed or deeds revocable during the Trust Period or irrevocable wholly or partly to release or restrict the future exercise of any power hereby conferred on them as if the same were not conferred on them in a fiduciary capacity and so as to bind their successors.
- (4) The Trustees shall have power to deal with any policy of assurance or insurance as if they were the absolute owners of it and in particular may surrender, convert or exchange the same in whole or in part and exercise any power of election or option under a policy and borrow on its security and the receipt by the Trustees for any money payable under the said policy shall be a full and sufficient discharge.
- (5) A Trustee (other than the Settlor or Settlor spouse) carrying on a business which consists of or includes the management of Trusts or advising Trustees may charge for work done by him or his firm in connection with the trust.
- (6) A Trustee shall not be liable for a loss to the Trust Fund unless that loss was caused by his own fraud or negligence.

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