

**first direct**

**Flexible Trust**

# Important Notes

**Before completing the Flexible Trust, please read the following notes.**

- 1. This documentation has been produced for consideration by you and your legal advisers and is intended for use with life policies. The legal and tax effects of the Trust will depend on your individual circumstances and first direct, HSBC Bank plc and HSBC Life (UK) Limited (“HSBC Life”) and their advisers accept no responsibility for ensuring that the Trust meets your requirements or for you failing to take legal or tax advice. This document is provided without any representation or warranty that it is suitable for use in your circumstances.**
2. Ensure that you fully understand the terms of the Trust and how it works: see further the Technical Guides. If you are in any doubt about the terms, it is your responsibility to seek legal or tax advice as appropriate.
3. Ensure that you have read and understood all the literature relating to your chosen policy for this Trust before you proceed.
4. A letter of wishes may supplement the Trust to provide guidance to the Trustees.
- 5. first direct, HSBC Bank plc and HSBC Life and their advisers cannot accept any responsibility for loss, damage or other claim that may arise from the use of this Trust or the way in which you complete it. We therefore strongly recommend that you consult your own legal or tax adviser before proceeding.**

## **What is a trust?**

A trust is simply a way in which a person gives assets to another person to look after for the benefit of, usually, someone else. It allows the intended beneficiary to benefit from those assets without also giving that person control of them. The asset in this case is a life policy but it could be almost anything.

## **Setting up a trust**

A trust is usually set up by a written statement of what you are doing. Whatever is written in the instrument creating the trust, together with the general principles of trust law, governs who will look after the trust assets (in this case the policy), how they will do it and for whose benefit they will hold them.

The person who creates the trust will not usually be a beneficiary of it.

## **Explanatory Notes**

The Explanatory Notes provided on the right hand side of the document should be read before the trust document is completed.

# The Flexible Trust (Declaration)

This Declaration of Trust is made by the person(s) named below ("the Settlor(s)")

Title	<input type="checkbox"/> Mr	<input type="checkbox"/> Mrs	<input type="checkbox"/> Miss	<input type="checkbox"/> Ms
Other (please specify)	<input type="text"/>			
Surname	<input type="text"/>			
All Forenames	<input type="text"/>			
House name and/or number	<input type="text"/>			
Street or road name	<input type="text"/>			
District (if any)	<input type="text"/>			
Village, town or city	<input type="text"/>			
Country	<input type="text"/>			
Postcode	<input type="text"/>			
Title	<input type="checkbox"/> Mr	<input type="checkbox"/> Mrs	<input type="checkbox"/> Miss	<input type="checkbox"/> Ms
Other (please specify)	<input type="text"/>			
Surname	<input type="text"/>			
All Forenames	<input type="text"/>			
House name and/or number	<input type="text"/>			
Street or road name	<input type="text"/>			
District (if any)	<input type="text"/>			
Village, town or city	<input type="text"/>			
Country	<input type="text"/>			
Postcode	<input type="text"/>			

## Explanatory Notes

Please insert full name(s) and address(es) of the Settlor(s). **DO NOT USE INITIALS.**

These should be the owners as shown on the Policy Schedule or the person(s) applying for the new Policy. So if there are joint owners of the policy there will be two Settlers.

**(For joint policies only) put a line through these boxes if there is only one Settlor.**

**If the Policy is in existence:**

The Settlor(s) is (are) the legal and beneficial owner(s) of the policy(ies) of assurance specified in Schedule C below (“the Original Policy(ies)”) which the Settlor(s) wish(es) to hold as Trustee(s) in accordance with the trusts set out below.

**AND/OR** (as appropriate)

**If the Policy is being applied for:**

The Settlor(s) has(have) submitted a proposal to the Company for a policy of assurance specified in Schedule C below (“the Original Policy(ies)”) and the Settlor hereby requests and directs that the Company shall issue the Policy to the Settlor(s) as Trustee(s) to be held in accordance with the trusts set out below.

**Trust Terms:**

The Trustee or Trustees for the time being (“the Trustees”) shall hold the Policy as defined in Trustee Powers and Provisions 1(e) and all monies which may become payable under the terms thereof and investments for the time being representing such monies and all monies, rights, opportunities, property and/or assets which may be exercised, become payable or may be received by reason of or in respect of the Policy (“the Trust Fund”) and the income thereof upon the following trusts:

**A. Retained Benefits Fund**

The Retained Benefits Fund as defined in Trustee Powers and Provisions 1(g) and the income thereof shall be held upon trust for the absolute and indefeasible benefit of the Settlor (or if the Settlor is two persons for the benefit of that Settlor in respect of whose illness or disability the benefit is payable).

**B. Gifted Benefits Fund**

- I The Gifted Benefits Fund as defined in Trustee Powers and Provisions 1(i) shall be held upon trust for the Beneficiaries as defined in Trustee Powers and Provisions 1(b) or any one or more of them to the exclusion of the other or others in such manner in such shares and upon such trusts and with such powers (including protective or discretionary trusts and powers exercisable from time to time at the discretion of the Trustees or any other person) for their benefit as the Appointor as defined in Trustee Powers and Provisions 1(a) may appoint revocably or irrevocably during the Trust Period as defined in Trustee Powers and Provisions 1(k). Provided that any appointment made by the Appointor who is a Settlor shall not be valid unless notified in writing to the Trustees.
- II Subject to and in default of any appointment made under Clause B.I. of these Trust Terms above and to the extent that any such appointment shall fail or not extend for any reason the Trustees shall hold the Gifted Benefits Fund and the income thereof absolutely for the Named Beneficiaries in the shares specified in Schedule B and if there is more than one Named Beneficiary and no shares are specified then in equal shares absolutely. If the shares so specified do not total 100% the excess to be shared proportionately between the Named Beneficiaries and similarly reduced proportionately where the allocated percentages exceed 100%.

**Explanatory Notes**

The Trustees hold the Gifted Benefits Fund (subject to the Appointor’s power of appointment) for the Named Beneficiaries. Any Terminal Illness Benefit will be held as part of the Gifted Benefits Fund.

The Appointor(s) has(ve) complete control over the choice of beneficiary.

If the power of appointment is not exercised during the Trust Period then the named beneficiaries in schedule B will benefit. The Named Beneficiaries will be entitled to any income from the trust.

**Schedule A – Potential Beneficiaries**

1. The Spouse/Civil Partner, Widow/Widower or Surviving Civil Partner of (either of) the Settlor(s) but excluding any Settlor.
2. The Children and remoter issue of the Settlor(s).
3. Any person (other than the Settlor(s)) nominated by the Settlor(s) (or the survivor of them) in writing to the Trustees.
4. Any person named in Schedule B.
5. Any person(s) entitled under the will or intestacy of the Settlor(s).

**Explanatory Notes**

SCHEDULE A

Please note that if persons other than those mentioned in 1- 5 inclusive are to be included as potential beneficiaries, their full names, and date(s) of birth should be inserted in the spaces provided in 6.

You may wish to name your partner, parents, siblings, nieces, nephews, godchildren, etc. in the spaces provided, since these people are not automatically included as potential beneficiaries.

6. First Name(s)	Surname	Date of Birth (dd/mm/yyyy)

**Schedule B – Named Beneficiaries**

**Note: This Schedule MUST be completed.**

**The percentages allocated MUST total 100%**

First Name(s)	Surname	Date of Birth (dd/mm/yyyy)	%
		D D M M Y Y Y Y	
		D D M M Y Y Y Y	
		D D M M Y Y Y Y	
		D D M M Y Y Y Y	
		D D M M Y Y Y Y	
		D D M M Y Y Y Y	

**III The above trusts shall carry any intermediate income.**

SCHEDULE B

The initial beneficiaries will be the persons you name in Schedule B. You should not include yourself as a Named Beneficiary.

Please insert the full names and dates of birth, of the Named Beneficiaries and the percentages of the Policy proceeds you wish them to receive. If percentages are specified, these MUST add up to 100% in order to protect the IHT efficiency of the Trust. If no percentages are specified, the beneficiaries will share equally. If the shares so specified do not total 100% the excess to be shared proportionately between the Named Beneficiaries and similarly reduced proportionately where the allocated percentages exceed 100%.

The Appointor(s) has (ve) the power to deprive these people of benefit but may only choose from the Potential Beneficiaries.

**Schedule C – Identification of the Original Policy(ies)**

1. Date of proposal (if policy applied for)   
 Policy Number (if existing policy)

Type of Policy

Life/Lives Assured

Insurer

2. Date of proposal (if policy applied for)   
 Policy Number (if existing policy)

Type of Policy

Life/Lives Assured

Insurer

SIGNED  
 by the Settlor (1)

Date

SIGNED  
 by the Settlor (2)

Date

I/we have read the trust powers, provisions and notes in this document

# Trustees Powers and Provisions

This Trust shall be subject to the law of England and Wales and to the following powers and provisions which shall be in addition to all relevant powers conferred by law:

## Definitions

- 1 (a) "Appointor" means the Settlor during his lifetime and where the Settlor is two persons both of them jointly during their joint lives and thereafter the survivor of them and subject thereto the Trustees, provided that a Settlor shall cease to be Appointor on becoming incapable by reason of mental disorder within the meaning of the Mental Health Act 1983 of exercising his functions as the Appointor.
- (b) "Beneficiaries" means the Named Beneficiaries and the Potential Beneficiaries.
- (c) "Potential Beneficiaries" are the persons indicated in Schedule A above.
- (d) "Named Beneficiaries" means the one or more persons named in Schedule B above or such other person or persons as are appointed to be Named Beneficiaries by the Appointor.
- (e) "The Policy" means (as the case may be):
  - i) the Original Policy(ies); and
  - ii) all other (if any) policies of assurance for the time being held on the trusts of this Trust.
- (f) "The Retained Benefits Fund" means the Retained Benefits and any property from time to time representing the same.
- (g) "The Gifted Benefits" means any benefits arising under the Policy other than the Retained Benefits.
- (h) "The Gifted Benefits Fund" means the Trust Fund to the exclusion of the Retained Benefits Fund.
- (i) "The Company" means the Insurer(s) identified in Schedule C as the context requires.
- (j) "Trust Period" means the period beginning on the date this deed takes effect and ending on the day before the 125th anniversary of that date.

## Explanatory Notes

The Settlor can change Beneficiaries during his lifetime and after his death this power passes to the Trustees.

Details of Named and Potential Beneficiaries are included in Schedules A and B earlier on.

The policy is the asset of the Trust and legally owned by the Trustees. If there is any inconsistency between the Policy and the terms of this Trust, the terms and conditions of the Policy shall override.

Any Terminal Illness Benefit will be held on trust for the Beneficiaries as part of the Gifted Benefits.

The Trust is capable of lasting for up to 125 years, should this be necessary

## **Provisions in relation to The Policy**

- 2 The Trustees shall have the right to recover, receive and to give valid receipts for all monies due or to become due under the Policy and to surrender the Policy in whole or in part or to exercise any option or elect any privilege contained therein or to borrow on the security of the Policy.
- 3 No person shall acquire any lien or right to reimbursement in respect of any premium on the Policy paid by such person from his or her own resources.
- 4 The receipt by the Trustees of any monies payable under the Policy shall be a full and sufficient discharge to the Company who shall not be concerned to see to the application of any such monies.

## **Powers of investment**

- 5 a) All monies liable to be invested under the provisions of this trust may be invested by the Trustees in the purchase of such investments whether or not income producing (including policies of life assurance) and whether or not authorised by law for the investment of trust funds which they may in their absolute discretion think fit in all respects as if they were absolute beneficial owners of such investment.
  - (b) The Trustees may from time to time vary such investments at their absolute discretion and shall be free of any obligation to diversify investments.

## **Power to delegate**

- 6 The Trustees may delegate in any way and to any extent to any persons or corporations wherever situated or resident the exercise of the powers of investment or management of the property for the time being forming the whole or any part of the Trust Fund whether conferred by this Trust or by law and to transfer title to any such trust property to such persons or corporations for the purposes of such investment or management.

## **Power to apply income and capital for beneficiaries**

- 7 This Trust shall carry intermediate income and Section 31 of the Trustee Act 1925 shall not apply. Whilst any Beneficiary entitled to income under this Trust is a minor the Trustees shall pay or otherwise apply for or towards his maintenance education or benefit so much of the income from his presumptive share in the Trust as the Trustees may in their absolute discretion think fit and the Trustees shall retain the balance of any income on trust for that Beneficiary absolutely.
- 8 The Trustees shall have power to pay or apply any part or the whole of the Gifted Benefits Fund for the advancement or benefit of any Beneficiary entitled to such part or whole.

## **Explanatory Notes**

The Trustees have power to deal with all aspects of the Policy. They may even borrow money using the Policy as security.

The Company only needs to seek a discharge for Policy monies from the Trustees.

The Trustees have wide investment powers, which may be used if the Policy proceeds are paid or bond encashed but the cash is retained in the Trust.

The Trustees may delegate their investment powers to a professional fund manager.

If the Beneficiary is a minor then his/her income may be paid out for his benefit or kept accumulated for his absolute benefit until a later date.

The Trustees may advance capital from the Gifted Fund to any Beneficiary.



### **Receipt clause**

- 9 The Trustees shall have power to pay to the parent or guardian of any minor any sum of income payable to that minor or any sum of capital intended to be applied for the advancement or benefit of that minor so that the receipt of such parent or guardian shall be a complete discharge to the Trustees.

### **Explanatory Notes**

The Trustees may accept the receipt of a parent or guardian for income or capital paid to a child.

### **Power to transfer to another settlement**

- 10 (a) In exercise of the power conferred by Clause B.I the Appointor shall have power in his or her absolute discretion to direct the Trustees to transfer the Gifted Benefits Fund or any part or parts of it (subject always to any relevant rule against perpetuities or duration of trusts) into the names or under the legal control of the trustees or trustee of any other trust ("the New Trust") provided that the New Trust satisfies the following conditions:
- i) that it is constituted under the laws of any legal system which recognises and enforces trusts;
  - ii) the New Trust is irrevocable and enforceable under the laws of the legal system under which it is constituted;
  - iii) that one or more of the Potential Beneficiaries named in Schedule A above are or is beneficially interested under the New Trust whether or not other persons are so interested;
- (b) Upon any such transfer or assignment the property transferred or assigned shall be held upon the trusts powers and provisions of the New Trust freed and discharged from the trusts powers and provisions of this trust instrument. The Trustees shall also be discharged from the terms of this Trust.
- (c) The power hereby conferred shall not be exercisable so as to permit any part of the Gifted Benefits Fund or the income thereof to be paid or transferred to the trustees of any trusts in which the Settlor(s) (or either of them) is (are) or may be beneficially interested whether under the trusts thereof or as an object of any power or discretion.

The Trustees at the direction of the Appointor may transfer part of all of the Gifted Benefits fund to other trusts.

### **Power to borrow**

- 11 The Trustees shall have power to borrow for any purpose of this trust (including the payment of premiums on the Policy and investment) on such terms as they think fit and to charge the Policy or any other assets for the time being comprised in the Trust Fund with repayment of any such borrowing.

The Trustees have power to borrow.

### **Power to lend**

- 12 The Trustees shall have power to lend with or without security to any Beneficiary the whole or part of the Gifted Benefits Fund upon such conditions as to interest (if any) repayment and generally upon such terms as the Trustees in their absolute discretion think fit provided always that any such loan must be repayable before the end of the Trust Period.

The Trustees have power to lend money held by them to the Beneficiaries.

### **Power to appropriate trust property**

13 The Trustees shall have power (exercisable expressly or by implication) to appropriate, partition, allot or apportion any property for the time being comprised in the Trust Fund or forming part of the income thereof in or towards satisfaction of any interest or share (and without prejudice to the generality thereof any vested or contingent share) of any person in the Trust Fund or the income from it at such value and in such manner as the Trustees think fit (without the necessity of obtaining any consent) and without limiting or being limited by the foregoing power also power to treat any income as accruing at the date of its actual receipt and not to apportion it pursuant to statute or otherwise.

### **Explanatory Notes**

The Trustees do not need to realise cash to make payments. They may instead apply assets from the Trust Fund.

### **Trustees' charges**

14 Any Trustee hereof (other than the Settlor(s)) being a person engaged in any profession or business shall be entitled to charge and be paid all the usual professional or other charges for business done by him time spent and acts done by him or his firm in the execution of or otherwise in relation to the trusts of this Trust and other provisions of this Trust.

Any professional Trustee can charge for work transacted in relation to the trust.

Any Corporation being a Trustee may act upon its terms and conditions (if any) prevailing at the date of its appointment and shall be entitled to charge and retain such fees for remuneration in accordance with such Corporation's published scale of fees for the time being in force. In the absence of a published scale of fees such Corporation shall be entitled to charge in accordance with the terms as may from time to time be agreed between such Corporation and the Appointor.

### **Exclusion of Settlor(s) from the Gifted Benefits Fund**

15 The Settlor(s) shall have no beneficial interest whatsoever in the Gifted Benefits Fund or its income and no power may be exercised to benefit the Settlor(s) (or either of them) save as provided in Clause A of this Trust.

The Settlor(s) cannot receive any benefit from the trust except for the Terminal Illness Benefit, where applicable.

### **Power of appointing new Trustees**

16 The power of appointing new or additional Trustees shall vest in the Settlor(s) (or the survivor of them) and thereafter in the Trustees and shall be exercisable by deed.

The Settlor(s) has (have) the right to appoint new Trustees.

### **Power to remove a Trustee**

17 The Settlor during his lifetime will have power by deed to remove any Trustee (and where two persons are the Settlor this power shall be exercised by them jointly during their lives and thereafter by the Survivor) provided at least two Trustees remain after such dismissal at least one of whom is not a Settlor. Provided also that this power shall cease to apply on the Settlor becoming incapable by reason of mental disorder within the meaning of the Mental Health Act 1983 of exercising his or her functions.

The Settlor(s) also has/have the right to dismiss a Trustee as long as two Trustees remain.

### **Trust administered outside the United Kingdom**

18 The Trustees may transfer the general or any part of the administration of this Trust outside the United Kingdom and persons who are resident outside the United Kingdom may be appointed and remain in office as Trustees of this Trust.

### **Explanatory Notes**

The Trust may be exported outside the UK if circumstances require. We would recommend that tax advice is taken before taking any such step.

### **Trustees' exoneration**

19 In the execution and administration of this Trust no Trustee shall be liable for any loss to the Trust Fund arising by reason of any investment made in good faith by any Trustee or by reason of any other matter or thing except wilful fraud or wrongdoing committed by the Trustee who is sought to be made liable.

Trustees have no personal liability for breach of trust unless they act in bad faith.

### **Alteration of Trustee Powers and Provisions**

20 The Trustees may at any time or times during the Trust Period by Deed vary the Trustee Powers and Provisions contained in this Trust or any of them to such extent and in such manner in all respects as they think fit

The Trustees have the ability to alter their powers and provisions if circumstances require.

PROVIDED that:

- (a) the Deed shall set out the precise terms of the variation (which may be by way of deletion or addition to or substitution for any of the Trustee Powers and Provisions contained in this Trust) and the date from which the variation is to operate (not being a date earlier than the date of the Deed) so that from the stated date this Trust shall have effect as varied; and
- (b) no such variations shall be made so as to affect Provision 17 (excluding Settlor(s) from benefit). The Trustees shall not be required to seek any consents but a copy of the deed shall be supplied to the Company.

### **Trustee beneficiary: exercise of powers**

21 A Trustee who is or may be a Beneficiary may exercise the power of appointment or any other power under the trust for his or her benefit provided at the time of exercise there is an additional Trustee who is not benefiting directly or indirectly as a result of such exercise.

Any Trustee who is also a Beneficiary may only make an appointment for his/her own benefit if there is also a Trustee who will not benefit from that appointment.

### **Paragraph headings and Explanatory Notes**

22 Paragraph headings and Explanatory Notes are for reference only and do not affect the meaning of the provisions.

# Trust Completion Checklist

1. Have all names been completed in full?  
(Remember that you should not use initials)
2. Has the address been completed in full?
3. Have the named beneficiaries been added?
4. Do all the percentages add up to 100?
5. Have all the signatures been obtained?
6. Have any amendments been clearly initialled?

**Note: Please ensure that you return all pages of the document. The original will be returned to you for safe keeping once we have recorded the trust. The original trust document will be needed in the event of a claim.**

Please return this deed to your local branch or direct to

Customer Services Centre  
HSBC Life (UK) Limited  
PO Box 6176  
Coventry  
CV3 9HN.

**After recording the details the original deed will be returned to you and should be kept by the Trustees with the rest of the policy documentation.**