

For customers

# Business protection trust

Scots Law

This draft trust has been drawn up based on our understanding of current law and HM Revenue & Customs practice. The Trust is presented as a draft only and anyone intending to make a policy subject to a trust is strongly advised to consult their own legal advisers to ensure that the draft trust meets their requirements. This is of particular importance if benefits other than life protection benefits have been selected. Accordingly AEGON cannot accept any responsibility for the consequences arising from the use of this draft.

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## Part 1 Request

I

of

(‘the Settlor’)

### Hereby request and direct that:

the life protection Policy shown in Part 2 of this Trust Request issued as a result of the Settlor’s proposal (‘the Policy’, which expression shall, where there is more than one such Contract, include all such Contracts) be issued by the Company (as defined later) in such manner as to constitute the Settlor and the Additional Trustees (as defined below) as the Trustees of the Policy to hold from outset subject to the following trusts and I expressly authorise and require the Company immediately on the Policy being prepared to deliver the Policy to the Additional Trustees or one of them as confirmation of the trust for the purpose of the law of Scotland.

## Part 2 Policy subject to trust

Policy type

Date of proposal (dd/mm/yyyy)

## Part 3 Definitions

- (i) ‘Beneficiary(ies)’ means any person capable of benefiting under Part 4 of this Trust.
- (ii) ‘Trust Fund’ means the Policy, the full benefit of the Policy and all property at any time held by the Trustees upon the trusts created in this Trust Request whether by way of further settlement, accumulation of income, capital accretion or otherwise and all property from time to time representing the foregoing respectively.
- (iii) ‘Gifted Benefits’ means any benefits arising under the Policy.
- (iv) ‘Relevant Date’ means the earlier of the date of payment of any claim in respect of critical illness protection or total and permanent disability benefit under the Policy, the date of death of the Settlor and the date of termination of the Policy (for any reason other than payment of the terminal illness benefit under the life protection benefit).
- (v) ‘Additional Trustees’ means the persons named in Part 8 of this Trust.
- (vi) ‘Trustees’ means the Settlor and the Additional Trustees or such other Trustees if any as are appointed in writing and in accordance with the terms of the Trust.
- (vii) ‘Trust Period’ means the period of seventy-nine years from the date of this Request.
- (viii) ‘Appointment Period’ means the period expiring on the earlier of:
  - (a) the expiry of the Trust Period; and
  - (b) twenty-five months and one day following the Relevant Date.
- (ix) ‘Company’ means Scottish Equitable plc.
- (x) ‘Partnership’ shall have the same meaning as in the Partnership Act 1890 except where the partnership is a Limited Liability Partnership in which case it shall have the same meaning as Limited Liability Partnership under the Limited Liability Partnerships Act 2000, and the decision of the Trustees as to whether any person is carrying on business in partnership with the Settlor, or as to whether the Settlor has ceased to carry on business or to be a partner or member, shall be final and binding.
- (xi) Where the context of the Trust permits, words importing the singular shall include the plural and the masculine shall include the feminine and vice versa.

## Part 4 Principal trusts

### A. Gifted Benefits

The Trustees shall hold the Trust Fund and the income from it on the following trusts:

- (i) Subject to the provisions of sub-clauses (iii) and (iv) of Part 4 below, the Trustees shall have power to appoint during the Appointment Period the whole or such part or parts of the Trust Fund and the income from it as they think fit for the benefit of such one or more of

(a) **Partners or Members**

the partners or members from time to time (including the Settlor) in the Firm known as

and their successors in carrying on the business of that firm in partnership ('the Firm')

(b) **Shareholders**

all those persons (including the Settlor) owning ordinary shares in the Company known as

Limited ('the Limited Company')

in such shares and proportions and subject to such terms and conditions and with and subject to such provisions for forfeiture in respect of bankruptcy or otherwise and with such discretionary trusts and powers exercisable by such persons as the Trustees in their absolute discretion think fit.

An appointment in favour of the Settlor can only be made by a minimum of two Trustees.

If the terms of any revocable appointment have not been revoked at the end of the Appointment Period, such appointment shall become irrevocable at that time.

The appointment of benefits from the Trust Fund by the Trustees must be by deed (or deeds) and may be revocable (whether by the person(s) making the deed or some other person(s)) or irrevocable.

- (ii) Subject to any appointments made under sub-clause (i) above and to sub-clauses (iii) and (iv) below (and so far as any such appointment shall not extend or fail for any reason), the Trustees shall hold the Trust Fund and the income from it for the benefit of the person or persons (other than the Settlor) who are, immediately before the Relevant Date:

(a) **Partners or Members**

the partners or members in the Firm (other than the Settlor) and if more than one then in shares bearing the same ratio to each other as the ratio of their entitlement to share in the Firm's capital (excluding the share of the Settlor and any partner or any member excluded from benefit by virtue of sub-clause (iv) below).

(b) **Shareholders**

the beneficial owners of the issued ordinary shares in the Limited Company (other than the Settlor and any shareholders excluded from benefit by virtue of sub-clause (iv) below) in the same proportions as each such person's shareholding in the Limited Company bears to the aggregate of the shareholdings of all such persons in the Limited Company.

(iii) **Provided always that:**

(a) **Partners or Members**

if the Firm should be dissolved (other than as a result of the death of the Settlor) or if the Settlor should resign or retire from the Firm before the occurrence of the event upon which the Policy proceeds become payable then for the benefit of the Settlor absolutely.

(b) **Shareholders**

if the Settlor ceases to hold ordinary shares beneficially in the Limited Company otherwise than by reason of his death before the occurrence of the event upon which the Policy proceeds become payable then for the benefit of the Settlor absolutely.

- (iv) No person shall be capable of benefiting under sub-clauses (i)-(ii) above unless he has taken out a life protection policy on his own life on trusts similar to and for the same commercial purpose as those contained in this Trust for the Beneficiaries.

### B. Trust income

**It is hereby further declared that:**

the trusts of the Trust Fund as declared in Part 4A above shall carry any intermediate income. The right to such income shall be vested in the Beneficiary or Beneficiaries who would, at the time the income arises, have been beneficially entitled under Part 4A above (whether under the terms of an appointment under Part 4A(i) or in default of appointment) to the part of the Trust Fund from which such income arises:

- (i) if the Relevant Date has not yet occurred then as if the Relevant Date had occurred immediately prior to the income arising;
- (ii) in any other case as if the Trust Period had ended and the Trustees have no power to make any further appointments.

Such Beneficiaries shall be so entitled to receive the said income in the same proportions as they would have been beneficially entitled to the Trust Fund in the said circumstances.

### **Part 5 Appointment and Resignation of Trustees**

- (i) The Settlor shall, during his lifetime, have the power to appoint new or Additional Trustees. After the Settlor's death, the Trustees shall have the power to appoint new or Additional Trustees.

Any such appointment or addition of a Trustee must be made in writing. The Company shall not be bound by the appointment of a new or Additional Trustee until notice in writing of such appointment is received at its Head Office.

- (ii) Any Trustee may resign office at any time notwithstanding any benefit under these Trusts provided that no such resignation shall take effect unless it is in writing and immediately after it (whether by virtue of a new appointment by the same or simultaneous instrument or otherwise) there will be either a Trust Corporation or at least two individuals to act as trustees hereof.

### **Part 6 Trustees' powers**

The Trustees shall have the following powers and any money received by the Trustees as a result of the exercise of their powers must be held by them subject to the terms of this trust.

- (i) The Trustees may exercise full powers of:
  - (a) borrowing upon the security of;
  - (b) cashing in or converting into a paid-up Policy (if the Policy has a cash-in or paid-up value);
  - (c) otherwise dealing with the Policy or other assets including the exercise of any options under the Policy held on trust, in all respects as if they were the absolute beneficial owners of the Policy.

- (ii) The receipt by the Trustees of any money payable under (or deriving from) any dealing with 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 money.
- (iii) Any money for the time being representing the Trust Fund may be invested or applied in the purchase of or at interest upon the security of such stocks, funds, shares, securities or other investments or property of whatsoever nature and wheresoever situate and whether producing income or not, including investment in life assurance policies and the purchase or improvement of heritable property, and whether involving liability or not or upon such personal credit with or without security as the Trustees may in their absolute discretion think fit to the intent that the Trustees shall have the same full and unrestricted powers of investing and varying investments in all respects as if they were absolutely and beneficially entitled.
- (iv) The Trustees may at any time or times advance or apply, freed from the trusts in this Trust Request, any part or parts or the whole of any money payable under the Trust Fund or otherwise held on these trusts to any Beneficiary who is entitled absolutely or contingently to such part or parts or the whole.

### **Part 7 Trustees' remuneration and liability**

- (i) Any Trustee, other than the Settlor, who shall be a Solicitor or an Accountant or engaged in any profession or business shall be entitled to and be paid all usual and proper professional and other reasonable charges for any business or work done by him or his firm in relation to the trusts in this Trust Request.
- (ii) No Trustee shall be liable for any loss to the Trust Fund arising by reason of any investment made in good faith or by reason of any mistake or omission made in good faith by any Trustee or by reason of any other matter or thing except wilful and individual fraud or wrongdoing on the part of the Trustee who is sought to be made liable.

## Part 8 Appointment of Additional Trustee(s)

The Settlor appoints

of

and

of

and

of

to be the Trustees of this Trust with the Settlor to the effect that the Policy shall be held by the Trustees subject to the terms and powers set out in this Trust.

## Part 9 Acceptance and acknowledgement

The Settlor declares and confirms that any money received by the Trustees must be held by them for the purposes of this Trust.

The Additional Trustee(s) appointed in Part 8 above accept(s) appointment as Trustee(s) of this Trust and undertake(s) to hold the Trust Fund subject to the terms and provisions of it.

This Trust shall be irrevocable and shall be governed by and construed in accordance with the Law of Scotland.

The Settlor hereby certifies that this instrument falls within Category N of the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987.

**Part 10 Attestation**

**In witness whereof** the Settlor and the Additional Trustees have executed this Deed at

(place)

on this

day of  (month)  (year)

before the Witnesses hereto subscribing, as follows:

**Signed**

by the Settlor

in the presence of:

Signature of Witness

Name, address and occupation of Witness

**Signed**

by the Additional Trustee

in the presence of:

Signature of Witness

Name, address and occupation of Witness

**Signed**

by the Additional Trustee

in the presence of:

Signature of Witness

Name, address and occupation of Witness

**Signed**

by the Additional Trustee

in the presence of:

Signature of Witness

Name, address and occupation of Witness

