

# LONDON & COLONIAL DISCRETIONARY BY-PASS TRUST OF SIPP DEATH BENEFITS COMPLETION GUIDE

The Discretionary By-Pass Trust is provided as a draft.

If, after seeking legal advice, the Discretionary By-Pass Trust is to be completed unamended and in the same format the following parts of the document need to be completed as follows.

## PART 1 DECLARATION

- Insert the date the trust is made.
- The name and address of the Settlor (ie. the member of the pension scheme) and the name(s) and address(es) of the additional trustee(s) must be inserted.
- The amount of the sum of money to be transferred to the Trustees (ie. £10) should be inserted in paragraph (A).

## PART 2 DEFINITIONS

### (iii) "Discretionary Beneficiaries"

In paragraph (i) the Settlor should insert the name(s) or class of any other beneficiary they wish to include who is and not already covered under categories (a) – (h). The Settlor or Settlor's spouse should not be included.

### (iv) "Default Beneficiaries"

The name(s) of the beneficiary(ies) who will benefit in the unlikely event of an absence of any appointment being made by the end of the Trust Period should be inserted. The Default Beneficiaries will be entitled to any capital left in the trust at the end of the Trust Period which has not by that time been distributed to one or more of the Discretionary Beneficiaries.

If there is to be more than one Default Beneficiary then the percentage shares in which they are to benefit should be inserted. Please ensure that the shares add up to 100%. **At least one name must always be included in this Part.**

The Settlor or Settlor's spouse should not be a Default Beneficiary.

## PART 8 SIGNATURES

The Settlor and all Trustees should sign the document and each signature should be witnessed. If the Settlor is also a Trustee he/she need only sign once.

**LONDON & COLONIAL  
DISCRETIONARY BY-PASS TRUST OF  
SIPP DEATH BENEFITS**

**(Discretionary payment of death benefits to  
trustees of a personal trust)  
(April 2011)**

*This document is provided on the strict understanding that it is presented as a draft to be considered by the Settlor and his/her legal advisers. Ultimately, its legal and tax effects will depend on the circumstances of each particular case. Accordingly, neither London & Colonial Assurance Company Limited nor any associated or affiliated company nor any of their representatives, officials, employees or professional advisers can accept any responsibility for any loss occasioned as a result of its use in any circumstances whatsoever except as provided by law.*

**THE TRUST DEED**

**PART 1 DECLARATION**

**THIS TRUST DEED** is made the  day of  in the  
year 20

**BETWEEN**

of

(hereinafter called “**the Settlor**”) of the first part and  
**the Settlor** and

of

and   
of   
  
and   
of

(hereinafter called “**the Original Trustees**” which expression shall where the context so admits include the trustees or trustee for the time being of this Trust) **of the second part**

#### **WHEREAS**

- (A) The Settlor wishes to make this Trust and has transferred or delivered to the Trustees the sum of £\_\_\_\_\_ (hereinafter referred to as the “**Initial Sum**”). Further money, investments or other property may be paid or transferred to the Trustees by way of addition.
- (B) It is intended that this Trust shall be irrevocable.
- (C) It is intended that sums will be paid to the Trustees which originate from pension schemes of which the Settlor is or may be a member.

## **PART 2 DEFINITIONS**

In this Trust the following expressions shall have the following meanings and unless the context does not permit the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

- (i) “**Appointor**” means the Settlor while he is alive and of full capacity and subject thereto the Trustees.
- (ii) “**Beneficiaries**” means the Default Beneficiaries and the Discretionary Beneficiaries.
- (iii) “**Discretionary Beneficiaries**” means:-
  - (a) any widow or widower of the Settlor
  - (b) the children and remoter issue of the Settlor whenever born
  - (c) every spouse former spouse widow or widower of any such child or remoter issue

- (d) the brothers and sisters of the Settlor and their issue
- (e) any one or more persons beneficially entitled under the Will (or any codicil thereto) of the Settlor or who would be entitled to an interest in the Settlor's estate if the Settlor had died intestate
- (f) any person (other than the Settlor or Settlor's Spouse during the life of the Settlor) nominated in writing to the Trustees by the Settlor as a Discretionary Beneficiary
- (g) the Default Beneficiaries (as hereinafter defined)
- (h) any charity
- (i) \_\_\_\_\_

(iv) **“Default Beneficiaries”** means the one or more persons named in the boxes below

NAME		% SHARE IF MORE THAN ONE
	→	
	→	
	→	
	→	

(v) **“Excluded Person”** means the Settlor and, whilst the Settlor is alive, the Spouse of the Settlor. A widow/widower of the Settlor is not an Excluded Person.

(vi) **“Trustees”** means the trustee or trustees as appropriate for the time being of this Trust and at the commencement of this Trust the Trustees are the Original Trustees.

(vii) **“Trust Fund”** means

- (a) the Initial Sum;
- (b) all money investments or other property paid or transferred by any person or persons to or so as to be under the control of and

(in either case) accepted by the Trustees as additions, any capital accretions and accumulations of income;

- (c) the money, investments and other property from time to time representing the said Initial Sum, money, investments, other property additions, capital accretions and accumulations of income; and
  - (d) any sums that may be paid to the Trustees as a result of trustees or scheme administrators (as appropriate) of any registered or non-registered occupational or personal pension scheme of which the Settlor has been a member exercising their discretion to pay a lump sum death benefit to the Trustees on the Settlor's death and all property from time to time representing the foregoing which is held by the Trustees upon these trusts.
- (viii) **“Trust Period”** means the period commencing on the date of this Deed and ending on the expiry of 125 years beginning on the date of this Deed provided that the Trust Period applicable to any property (and property representing it) transferred into this Trust from a pension scheme of which the Settlor was a member shall if it would end earlier be the period ending on the date that the perpetuity period applicable to such property under the trusts applicable to that property immediately prior to its transfer into this Trust shall end
- (ix) **“Accumulation Period”** means the period commencing on the date of the death of the Settlor and ending 21 years after the date of the death of the Settlor.
- (x) In this Trust **“child”** **“children”** and **“issue”** includes any illegitimate step adopted or legitimated (whether adopted or legitimated before or after the date hereof) child, children or issue.
- (xi) **“Spouse”** includes any civil partner registered under the Civil Partnership Act 2004 and widow(er) includes any surviving civil partner so registered. Any references to marriage include registered civil partnership.

### **PART 3 PRINCIPAL TRUST TERMS**

1. The Trustees shall hold the Trust Fund and its income on the trusts and subject to the powers and provisions set out in this Trust Deed and shall have power by deed or deeds revocable (whether by the person(s) making the deed or some other person(s)) during the Trust Period or irrevocable to appoint the whole or any part or parts of the Trust Fund and the income thereof for such one or more of the Discretionary Beneficiaries in such one or more shares and for such interests and subject to such trusts powers and provisions (including protective trusts and discretionary trusts or

powers operative or exercisable at the discretion of the Trustees or any other persons) as the Trustees shall in their absolute discretion think fit Provided Always that no such appointment shall infringe the rule against perpetuities (where this is relevant) or affect the entitlement of any person to any payment made or asset already transferred to him.

Provided Also that no appointment shall be made in favour of a Beneficiary who is one of the Trustees unless there is at least one other Trustee who does not benefit directly or indirectly from the appointment.

2. Subject to any exercise of the power of appointment conferred by paragraph 1 of this Part 3:
  - (i) The Trustees may accumulate the whole or any part of the income of the Trust Fund during the Trust Period but in relation to any property transferred into this Trust from a pension scheme of which the Settlor was a member and under which income cannot be accumulated for the duration of the Trust Period applicable to this Trust, the Trustees may accumulate the income from such property for the period permitted under the trusts applicable to such property immediately prior to its transfer into the Trust and such accumulation shall be added to that part of the Trust Fund.
  - (ii) The Trustees shall pay or apply the remainder of the income to or for the benefit of such of the Discretionary Beneficiaries as the Trustees think fit during the Trust Period.
3. Subject to any exercise of the power of appointment conferred by paragraph 1 of this Part 3 the Trustees shall during the Trust Period:
  - (i) Have power to pay transfer or apply the whole or any part or parts of the capital of the Trust Fund as they in their absolute discretion think fit to or for the benefit of any Beneficiary.
  - (ii) Have power to lend with or without security to any Beneficiary the whole or any part of the Trust Fund upon such conditions as to interest (if any) and 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.
4. Subject to the preceding trusts and to any exercise of the powers conferred above the Trustees shall at the end of the Trust Period hold the Trust Fund upon trust for such of the Default Beneficiaries as are living at the end of the Trust Period and if more than one in the shares shown in paragraph (iv) of Part 2 and if no shares are shown in equal shares absolutely.
5. Subject as above and to any or every exercise of the Trustees' powers, the Trust Fund and its income so far as not otherwise disposed of shall be held in trust for the Default Beneficiaries in equal shares absolutely.

## **PART 4 ADMINISTRATIVE POWERS**

The Trustees shall in the management and administration of the Trust Fund 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 in all respects as if the Trustees were the absolute beneficial owners thereof and without prejudice to the generality of the foregoing the Trustees shall have the following powers:

- (i) Power to accept payments from trustees or administrators of pension schemes of which the Settlor is a member.
- (ii) Power to sell or otherwise liquidate and deal with any asset whatsoever comprised in the Trust Fund and to invest in any property of whatsoever nature and wheresoever situate and whether producing income or not, including investment in any policies of assurance and capital redemption policies as the Trustees may in their absolute discretion think fit.
- (iii) With regard to any policy of assurance or capital redemption policy held subject to this Trust, the power:
  - (a) to effect and pay premiums on any such policy and to borrow from any person (including any of themselves) the moneys required for any such premium upon such terms as to repayment interest and otherwise as they may think fit
  - (b) to exercise any of the elections powers options and privileges conferred by any such policy and to alter the amount of any periodic premiums payable thereunder or the period during which such premiums are payable and to alter the terms of any such policy in any manner by agreement with the insurer and to do any of the foregoing notwithstanding that the sum assured may thereby be reduced or increased
  - (c) to convert any such policy into a fully paid up policy free from payment of future premiums
  - (d) to surrender wholly or partially any such policy
  - (e) to appoint in writing such person or persons as the Trustees think fit to act as agent of the Trustees for the purpose of receiving moneys from any person and to apply the said moneys as premiums under any such policy already in force or under any such policy which is about to come into force and to become comprised in the Trust Fund
  - (f) to recover receive or give valid receipts for all moneys due or to become due under any such policy so that the receipt by the Trustees of any moneys payable under or deriving from any dealing with any such policy shall be a full and sufficient discharge to the insurance company making the payment who shall not be concerned to see to the application of any such moneys.

- (iv) Power 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 part or parts of the Trust Fund or upon personal security only and to use such money in purchasing or subscribing for investments or property to be held as part of the Trust Fund or otherwise for any purchase for which capital moneys forming part of the Trust Fund may be used.
- (v) Power to pay or transfer any capital or income to be paid transferred or applied for the maintenance education or benefit of a Beneficiary who is under the age of legal capacity or otherwise under a legal disability to any parent or guardian of that Beneficiary or to such other 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.
- (vi) Power revocably or irrevocably to delegate any power or powers in making managing realising or otherwise dealing with any property comprised in the Trust Fund to any person or persons (including nominees) 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 if the Trustee in question employed or incurred expense in employing him in good faith.
- (vii) Power at any time or times by deed or deeds to confer on themselves any administrative power not conferred on them by this Deed or the general law which the Trustees may consider necessary or expedient.

<p style="text-align: center;"><b>PART 5      APPOINTMENT, DISMISSAL, RETIREMENT AND REMUNERATION OF TRUSTEES</b></p>
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1. The Appointor shall have power to appoint by deed new or additional trustees and where necessary the Trustees will complete any necessary documentation to complete such appointment.
2. The Settlor shall have power to dismiss by deed any Trustee during his lifetime and the said power shall be exercisable notwithstanding that as a result of its exercise the sole Trustee is a corporation which is not a Trust Corporation for the purpose of section 37 of the Trustee Act 1925, where relevant, or a single individual but not so as to result in the Settlor and/or the Settlor's spouse for the time being becoming the only Trustee(s).
3. Any Trustee may retire at any time provided he gives 30 days written notice to the Appointor Provided Always that no retirement of any Trustee shall take effect so as to result in the Settlor or the Settlor's spouse for the time being becoming the only Trustee(s).
4. Any corporate body which is empowered to act as a trustee may at any time be appointed as a Trustee and may act by its proper officers in the discharge of its duties

as such Trustee and in the exercise of the powers and discretions conferred hereby or by law.

5. Every corporate Trustee shall be entitled to remuneration upon such terms as may be agreed by the Appointor at the time of its appointment and in the absence of such agreement every corporate Trustee shall be entitled to remuneration in accordance with its normal scale of charges (if applicable) at the time of its appointment Provided Always that the Settlor and the spouse for the time being of the Settlor shall not in any capacity or in any way be entitled to remuneration as a Trustee.
6. Any Trustee other than the Settlor and any spouse for the time being of the Settlor
  - (a) who, not being a body corporate, is engaged in any profession business or trade may be employed by the Trustees and any Trustee so engaged and employed may charge and be paid all reasonable professional business or trade costs and charges for business transactions and time expended and acts done by him (or any partner or employee of his) in connection with this Trust including acts which a Trustee not being engaged in any profession business or trade could have done personally and whether or not in the usual scope of his profession business or trade
  - (b) may exercise or concur in exercising all powers and discretions given to him by this Trust or by law notwithstanding that he has a direct or other personal interest in the mode or result of any such exercise but any of the Trustees may nevertheless abstain from acting except as a merely formal party in any matter in which he may be so directly or personally interested and may allow his co-trustees to act alone in relation thereto.

## **PART 6 FURTHER TRUST PROVISIONS**

1. No Trustee who is an individual shall be liable for any loss to the Trust Fund or the income arising from it by reason either of
  - (i) any investment made in good faith by him or any other Trustee; or
  - (ii) any mistake or omission made in good faith by him or any other Trustee except in the case of negligence by a paid Trustee; or
  - (iii) the negligence or fraud of any delegate or agent employed in good faith by him or any other Trustee although the delegation to or employment of such agent was not strictly necessary or expedient; or
  - (iv) any other matter or thing except individual fraud on the part of the Trustee whom it is sought to make liable or, in the case of a paid Trustee, negligence.

2. The Trustees shall have power by deed or deeds revocable (whether by the person making such deed or some other person) during the Trust Period or irrevocable wholly or partially to release or restrict the future exercise of any power hereby conferred on them (including this power) whether or not of a fiduciary nature and whether dispositive or administrative and so as to bind their successors.
3. Notwithstanding any of the foregoing provisions an Excluded Person shall not be capable of taking any direct or indirect benefit of any kind by virtue or in consequence of this Trust Deed and in particular but without prejudice to the generality of this paragraph:
  - (a) the Trust Fund and its income shall be held and enjoyed to the entire exclusion of any Excluded Person and to the entire exclusion of any direct or indirect benefit to any Excluded Person by contract or otherwise;
  - (b) no part of the capital or income of the Trust Fund shall be paid to or held by any Excluded Person (except in a fiduciary or parental capacity) or lent to or applied for the direct or indirect benefit of any Excluded Person; and
  - (c) no power or discretion conferred on the Trustees shall be capable of being exercised or operated in any manner so as to confer any benefit whether directly or indirectly on any Excluded Person in any manner or circumstances whatsoever.
4. In the interests of certainty, it is hereby confirmed that the Settlor's widow(er) can benefit under this Trust and that the term Settlor's spouse relates to any such person only whilst the Settlor is alive.

<b>PART 7    PROPER LAW</b>
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The proper law of this Trust shall be that of England and Wales and all rights under this Trust and its construction and effect shall be subject to the jurisdiction of the courts and construed according to the laws of England and Wales



SIGNED AS A DEED AND \_\_\_\_\_ )  
DELIVERED by the said \_\_\_\_\_ )  
(Second Original Trustee)

\_\_\_\_\_  
(Second Original Trustee's  
signature)

In the presence of :

Witness Name \_\_\_\_\_ )

\_\_\_\_\_  
(Witness' signature)

Occupation \_\_\_\_\_ )

Address \_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )

SIGNED AS A DEED AND \_\_\_\_\_ )  
DELIVERED by the said \_\_\_\_\_ )  
(Third Original Trustee)

\_\_\_\_\_  
(Third Original Trustee's  
signature)

In the presence of :

Witness Name \_\_\_\_\_ )

\_\_\_\_\_  
(Witness' signature)

Occupation \_\_\_\_\_ )

Address \_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )