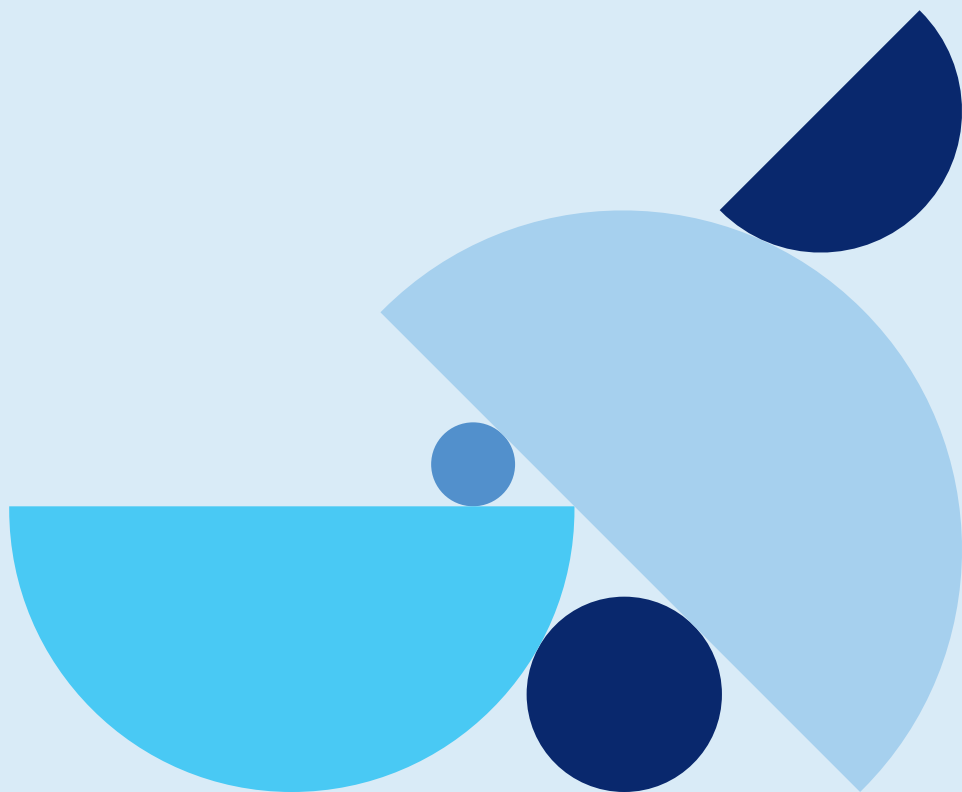


# Spousal By-pass Trust for Business Interests Trust Deed



The documentation for the Spousal By-pass Trust is provided in draft format for the approval of your legal advisers. The appropriateness of this trust will depend on the circumstances of each case. Advice is essential.

### What is it?

A discretionary “pilot” trust designed for use by a business owner (whether trading through a partnership, a limited liability partnership (‘LLP’) or a limited company) taking part in a business succession arrangement under which, following the owner’s death, his share(s) of/in the business (the Business Interest) will be purchased by the surviving co-owners. The trust is created with a nominal amount and the intention is that the Business Interest (or the proceeds of its sale) will pass on the death of the business owner to the trustees of this trust.

The By-pass Trust must not be confused with the Business Trust – the latter is necessary to ensure that the proceeds of an appropriate life assurance plan are made available quickly and tax effectively to purchase your Business Interest following death and is a separate part of a business succession arrangement with your co-owners. It is essential to seek further clarification of the relevant issues from your financial adviser before taking action.

### Aims of the trust

The aim of the By-pass Trust is to provide a flexible legal structure to receive the proceeds of the sale of the Business Interest following the death of the business owner. The trustees can use the funds to benefit a wide range of beneficiaries including the deceased business owner’s widow/er or surviving civil partner and dependants, whilst keeping the value of the funds outside of the taxable estate of the widow/er or surviving civil partner.

In most situations where the business owner is married (or in a civil partnership), it would be desired that, following their death, the surviving spouse at least has access to the proceeds of the sale of the Business Interest. However, in a case where the sale proceeds pass into the widow/er’s/ surviving civil partner’s estate on the business owner’s death, the full value would be included in the widow/er’s/surviving civil partner’s estate for IHT purposes. The By-pass Trust offers a solution to this problem. The By-pass Trust provides access for the widow/er/surviving civil partner (by means of loans or advancements of capital from the trust) whilst ensuring that the value of the trust fund remains outside the widow/er’s/surviving civil partner’s estate.

This trust deed is appropriate for a single settlor only. It must not be used for joint settlors.

This trust should not be used unless an option agreement between co-owners is in place.

### How does it work?

- First, you and your co-owners enter into a double option agreement for the sale and purchase of your Business Interest on death. The purchase price would normally be funded through a life assurance plan on your life subject to a business trust. Zurich can provide a draft business trust and draft option agreements for your consideration.
- Next, having established with your legal advisers that the By-pass Trust is appropriate for your circumstances, you set up the trust by transferring a nominal sum, normally £10, to the trustees – see below for more information on this.
- Finally, you also need to include a legacy in your will (if you are making a new will) or a codicil to your will leaving your Business Interest to the By-pass Trust. A draft copy of which has been included at the back of this document (Legacy of Business Interest to a Spousal By-Pass Trust) for this purpose which you should take to your legal advisers. It is essential that the will (or the codicil) is made only after you have entered into the option agreement and created the By-pass Trust.
- On your death the rights to your Business Interest (or the proceeds of the sale of your Business Interest by your executors) will pass to the By-pass Trust under the terms of your will/codicil.
- Access via the trustees (by loans or advancements of capital) is secured for your widow/er/surviving civil partner as well as any other beneficiaries you specify in the By-pass Trust.

### How does the By-pass Trust achieve its aims?

The By-pass Trust is a discretionary trust and can continue for up to 125 years from the date it is set up.

The deceased’s surviving spouse (as widow or widower/ surviving civil partner) will be one of the potential beneficiaries and the trustees (of whom the surviving spouse could be one) can make appointments of capital, if necessary, to the widow/er/surviving civil partner without the trust fund being treated as forming part of their estate.

Where the estate of the widow/er/surviving civil partner is already substantial but perhaps illiquid, the trustees could consider, as an alternative to an outright appointment of benefits, making a loan to the widow/er/surviving civil partner. Such a loan would normally be interest-free and repayable on demand. To the extent that the loan is still outstanding on the death of the widow/er/ surviving civil partner the outstanding amount would represent a debt on the deceased widow/er’s/surviving civil partner’s estate which could reduce his or her estate for inheritance tax purposes. This reduction in the value of the widow/er’s/ surviving civil partner’s estate may be restricted if the widow/er/surviving civil partner had made gifts to the settlor/business owner prior to that person’s death.

## How is the trust set up?

Completion of the form is very straightforward – see the notes below about boxes ‘A’ ‘B’ and ‘C’.

The trust is set up using only a nominal £10.

The trust deed is executed by you and the additional trustees you must appoint.

The date the trust deed is signed must be included.

Your full name and address must be written in the space provided (as the ‘settlor’).

### **Box ‘A’ –**

This sets out the classes of potential beneficiaries. You may add any other person or class not already included in (i).

### **Box ‘B’ –**

Here you should name the individuals or a charity who will benefit at the end of the trust period (125 years) if no earlier appointment is made. Please ensure that the shares add up to 100%. At least one person must be named here.

### **Box ‘C’ –**

Full names and addresses of the additional trustees must also be included in the spaces provided. You should consider appointing as trustees the same individuals that you appoint as executors under your will.

You can appoint up to four additional trustees using this draft. You, the settlor, are automatically a trustee of your trust and so you should not be included in this box.

At the end of the document you and the additional trustees must sign the deed and all your signatures must be witnessed by an individual who is neither a trustee nor a beneficiary under the trust, nor your spouse or civil partner.

# Frequently asked questions

## Can I remove a trustee?

Yes. This trust does allow you, as the settlor, to remove a trustee provided at least one trustee remains other than you and your spouse/civil partner. After your death the trustees can only remove a trustee if he/she is missing and cannot be found.

## Can I change the trust provisions once the trust has been set up?

No. The trust is irrevocable and generally any changes can only be made with the agreement of the court. However, remember that this is a fully discretionary trust and there is therefore a considerable amount of flexibility. You can, for example, appoint further beneficiaries in the future. However it is important that the trust terms should not be changed (e.g. by the trustees exercising their power of appointment) after you have made a will leaving your business asset to this trust. If the trust terms were changed, a new will or codicil will have to be made to ensure that your Business Interest passes to the trust.

## Is it essential that I make a Will?

Yes. And this must provide that your Business Interest will pass to the By-pass Trust on your death. The will (or a codicil) must be executed after you have created the By-pass Trust and after you have entered into the option agreement with your co-owners.

## Why is the trust set up with £10?

A small “establishing” sum is recommended so as to ensure that while there is the all important trust property to legally establish the trust (see below) there will be no adverse tax implications during your lifetime (although, in principle, the trust could be set up with any amount).

## Why is the gift of £10 important?

To create a valid trust there must be some property vesting in the trustees. The transfer of property to the trustees also fixes the start date of the settlement for tax purposes. It is therefore essential that a £10 note is handed over to the trustees and, preferably, pinned to the trust deed.

## What happens if at the time of my death I no longer own my Business Interest?

If you dispose of your Business Interest during your lifetime you should change your will to reflect the then current circumstances. It is always advisable to keep your will up to date. Obviously, if your will does not provide for the Business Interest to pass to the By-pass Trust, or the Business Interest no longer exists, the Trust will be redundant. The trustees can pay out the £10 (assuming no other assets have been transferred to the trust in the meantime) to the beneficiaries and terminate the trust.

## Is it necessary that all business owners execute a By-pass Trust?

No. The By-pass Trust is separate from the business succession arrangement. Whether it will be suitable for any particular owner will depend on their circumstances. This should be discussed with your financial adviser.

## Does the By-pass Trust affect in any way the option agreement and the Business Trusts established by the business owners?

No. This is a separate and independent part of the planning. Of course, having an option agreement as well as funding via a life assurance plan subject to a Business Trust is necessary to ensure that the By-pass Trust will, in the appropriate circumstances, receive the proceeds of the sale of the Business Interest.

# Tax implications of the By-pass Trust

## Inheritance tax

Inheritance tax (IHT) is a complex subject. These notes are not comprehensive and are intended only to give a broad outline of our understanding of the tax position on 1 August 2018.

### What are the IHT consequences of setting up the trust?

The creation of the trust will give rise to a transfer of value by the settlor for IHT purposes. However, on the basis that only a nominal gift is made, this should fall within the annual exemption and be exempt from IHT.

It is also not intended that any additional gifts are made to the By-pass Trust by the settlor by adding to the trust fund during lifetime, as this could have adverse IHT consequences. If the settlor wishes to make lifetime gifts to trusts, separate trusts should be used, after taking suitable legal advice.

### What are the IHT implications whilst the trust is in existence?

As this is a discretionary trust, this means that special IHT charging rules apply. Under these rules there may be potential IHT charges

- on every ten-year anniversary of the trust – “the periodic charge” or
- whenever property leaves the trust (e.g. when capital is advanced to a Beneficiary) – “the exit charge”

#### (i) Before your death

Provided no assets are added to the trust after it has been created with a nominal amount, there will be no IHT charges while you (the settlor) are alive.

#### (ii) Death of the settlor transfer of the Business Interest (or the proceeds of the sale of the Business Interest) to the By-pass Trust

Provided the Business Interest qualifies for 100% business property relief there will be no IHT on the transfer to the By-pass Trust on your death – regardless of the sale to take place under the option agreement (as long as it is a true option agreement and not a binding agreement for sale).

Assuming the sale/purchase of the Business Interest takes place as anticipated under the option agreement, the Business Interest will be sold by your executors to the surviving owners.

Therefore it will be the sale proceeds rather than the Business Interest that will pass to the trustees under your will or codicil.

This will represent an addition of property to the trust, which, until then, would normally still only hold the nominal amount of £10. This addition may have tax consequences if the settlor has created more than one trust, as explained below.

#### (iii) After the death of the settlor

The following assumes that following the death of the settlor the Business Interest is sold in accordance with the option agreement and the proceeds of the sale are transferred to the trust.

Since 2016 for the purpose of calculating IHT charges in relation to a discretionary trust, if the settlor has created more than one trust (including any trust created in his will) and value is added to the trust on the same day (e.g. at the time of death) (referred to as the same day addition (SDA)) it is now necessary to take account not only of the value in the original trust but also the values of the SDAs to the other trust(s) and if necessary the original sums settled in those trusts.

The following assumes that the settlor has not made any other trusts (including in his will). If the settlor has made more than one trust and the SDA rules apply the trustees will need to obtain specialist advice as the rules for calculating charges in such cases are complex.

#### Exit charge in first 10 years and the 10-year periodic charge

First, let's consider payments made by the trustees to the beneficiaries during the first 10 years of the trust's existence.

As long as you have not made chargeable transfers in excess of the available nil rate band (£325,000 in the tax year 2018/19) in the 7 years leading up to the establishment of the trust there will be no exit charges in the first 10 years.

A periodic charge will arise at the 10-year anniversary if the value of the trust property is then in excess of the then available nil rate band. The trust will have its own nil rate band for this purpose.

For the purpose of the periodic charge it is the total of chargeable transfers made in the 7 years before the transfer of the Business Interest to the By-pass Trust that is taken into account if this amount is higher than the amount of chargeable transfers made in the 7 years before the establishment of the By-pass Trust, and so care should be exercised if the settlor has made any chargeable transfers in the 7 years before his death (including any potentially exempt transfers (PETs) that become chargeable).

The maximum liability will be 6% of the value of the trust property in excess of the nil rate band at the ten-year anniversary but, frequently, it will be much less or even nil.

#### Exit charge after the first 10 years

Because exit charges between the 10-year anniversaries are calculated by reference to the tax charge at the previous 10-year anniversary, then as long as there was no tax at the previous 10-year anniversary there will be no potential tax charges on any payments out of the trust before the next 10-year anniversary.

If it is likely that your own circumstances may result in a potential liability to tax you should ask your adviser to explain the full tax implications and whether any periodic or exit charges are likely to arise in your circumstances.

## Income tax

No income tax implications should arise until the proceeds of the sale of the Business Interest are paid to the trustees after the death of the Settlor and invested. This assumes the initial asset of the trust is only £10 and that this does not produce any income.

Following receipt of the proceeds of the sale of your Business Interest after your death and investment by the trustees, assuming the trustees do not wish to immediately distribute funds, any income arising to the trust (received by the trustees or reinvested) will be assessed on the trustees at 38.1% (dividend income) or 45% (other investment income). However, to the extent that income falls within the trustees' standard rate tax band (usually set at £1,000), it will be subject to basic rate tax, i.e. 7.5% for dividends and 20% for other income. If income is distributed to a beneficiary the trustees must first have paid 45% tax on that income and the beneficiary will receive an equivalent tax credit. Distributed income will then be assessed to tax on the beneficiary at that beneficiary's marginal rate(s) of income tax, due account having been taken of the tax paid by the trustees.

This means that if the beneficiary is not an additional (45%) rate taxpayer the beneficiary will be able to recover excess income tax paid from HMRC. However, neither personal savings allowance nor dividend allowance will be available to offset against this income.

### **Will this trust be affected by the pre-owned assets tax legislation?**

No. As you cannot benefit from this trust in any circumstances, the pre-owned assets income tax provisions introduced by Schedule 15 of the Finance Act 2004, which apply to certain settlements, will not apply to the By-pass Trust.

## Capital gains tax

Any capital gains arising after the Trustees of the By-pass Trust have invested the proceeds of sale of the Business Interest will be assessed to tax on the trustees. The tax position of the beneficiaries is irrelevant. The trustees are entitled to their own annual CGT exemption, equal to one half of that available to individuals (i.e. £5,850 for the tax year 2018/19), but reduced if the Settlor has created more than one settlement – see next paragraph.

Any gains arising on the disposal of any chargeable assets held in the trust that exceed the available annual exemption would give rise to a capital gains tax liability at the rate of 20% (28% for disposals of residential property).

If there were more than one trust created by the Settlor after 6 June 1978, the trustee exemption will be apportioned between the trusts but it will not fall below £1,170 per trust.

## Important note

Creating a trust is an important matter and has lasting legal and tax consequences. These notes are for your general information and cannot cover every situation.

The trust is provided in draft form for consideration by your legal advisers. They are responsible for ensuring that it takes into account your individual circumstances and requirements and the terms of any documents and agreements relating to your business.

Accordingly, the trust should not be completed without the confirmation of your advisers that it is appropriate to your circumstances and objectives.

The draft trust and these notes are based on our understanding of the current law and Her Majesty's Revenue and Customs' practice (1 August 2018). Although every care has been taken in the preparation of these notes and the draft trust, neither Zurich Assurance Ltd nor any of its officers, employees or agents accept responsibility for the operation of the trust which must be referred to your own legal advisers to ensure it meets your requirements.

# Spousal By-pass Trust Deed

Date

The

day of

in the year 20

Initial sum: £10

Person declaring this trust (full name in BLOCK CAPITALS please):

(the 'Settlor')

A. Potential Beneficiaries – Box ‘A’

- (a)

any widow or widower/surviving civil partner of the Settlor
- (b)

the children and remoter issue of the Settlor whenever born
- (c)

every spouse former spouse widow or widower or civil partner 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) nominated in writing to the Trustees by the Settlor as a Potential Beneficiary
- (g)

the Default Beneficiaries (as hereinafter defined)
- (h)

any charity
- (i)

B. Default Beneficiaries – Box ‘B’

See 'How is the trust set up?' on page 3 for information on whether you should complete this box or whether you should leave it blank.

|                            |         |                            |         |                            |         |
|----------------------------|---------|----------------------------|---------|----------------------------|---------|
| Full name (BLOCK CAPITALS) | Share % | Full name (BLOCK CAPITALS) | Share % | Full name (BLOCK CAPITALS) | Share % |
|                            |         |                            |         |                            |         |
| Full name (BLOCK CAPITALS) | Share % | Full name (BLOCK CAPITALS) | Share % | Full name (BLOCK CAPITALS) | Share % |
|                            |         |                            |         |                            |         |
| Full name (BLOCK CAPITALS) | Share % | Full name (BLOCK CAPITALS) | Share % | Full name (BLOCK CAPITALS) | Share % |
|                            |         |                            |         |                            |         |

## Spousal By-pass Trust Deed (continued)

| C. Additional Trustees – Box ‘C’ |         |
|----------------------------------|---------|
| Title                            | Surname |
| Full forenames                   |         |
| Address                          |         |
| Postcode                         |         |
| Title                            | Surname |
| Full forenames                   |         |
| Address                          |         |
| Postcode                         |         |
| Title                            | Surname |
| Full forenames                   |         |
| Address                          |         |
| Postcode                         |         |

## Creation of the trust

THIS TRUST DEED is made on the date stated above

BETWEEN the Settlor of the first part and

the Settlor and the Additional Trustees as Trustees of the second part.

WHEREAS

- (A) The Settlor wishes to create this trust and has transferred or delivered to the Trustees 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 further assets will be transferred to the Trustees from the estate of the Settlor following the death of the Settlor.
- (C) It is intended that this trust shall be irrevocable.



# Trust provisions

## 1. Definitions

**'Beneficiary'** and **'Beneficiaries'** means any Default or Potential Beneficiary.

**'Default Beneficiary'** and **'Default Beneficiaries'** means the person(s) named as Default Beneficiaries in Box 'B'

**'Potential Beneficiary'** and **'Potential Beneficiaries'** means the person(s) described in Box 'A'.

**'Respective Share'** means, in respect of each of the Beneficiaries in Box 'B', the share specified therein.

**'Settlor'** means the person declaring this trust.

**'Trustees'** means the Settlor and the Additional Trustee(s) named in Box 'C' or the Trustees for the time being of this trust.

**'Trust Fund'** means:

- (a) the Initial Sum
- (b) all monies, investments and property paid to or transferred to the Trustees as additions to the Trust Fund and in particular any assets or sums that may be paid to the Trustees from the estate of the Settlor following the Settlor's death
- (c) any property representing the above.

**'Trust Period'** means the period of 125 years from the date of this trust.

Unless the context indicates otherwise, words in the singular will be deemed to include the plural and the masculine to include the feminine and vice versa.

## 2. Beneficiaries

- (1) The Trustees shall hold the capital and income of the Trust Fund upon the trusts and with and subject to the powers and provisions set out below for whoever the 'Appointor' (defined in 3(1) below) in his absolute discretion chooses from amongst the persons in Box 'A' on such terms as the Appointor thinks fit and in the shares and subject to such terms, trusts, powers, restrictions, limitations and conditions as the Appointor appoints. The conditions for 'appointments' are set out in 3(2) below.
- (2) Subject as above and in default of and in the absence of any appointment under 2(1) above and subject to 2(3) below the Trustees shall hold the capital and income of the Trust Fund on trust for the Default Beneficiaries in their Respective Shares absolutely.
- (3) Subject to paragraph 1 of this Part 2:
  - (i) The Trustees may accumulate the whole or part of the income of the Trust Fund during the Trust Period. Such income shall be added to the Trust Fund.

- (ii) The Trustees shall pay or apply the remainder of the income to or for the benefit of such of the Potential Beneficiaries as the Trustees think fit during the Trust Period.

## 3. Power of Appointment

- (1) The Appointor is the Trustees.
- (2) Appointments have to be made by deed. The Appointor can make them irrevocable, but otherwise they can be changed during the Trust Period. If the terms of any revocable appointment have not been revoked at the end of the Trust Period, the appointment will become irrevocable at that time. Appointments can be subject to conditions and give powers and discretions.

## 4. Appointment and Removal of Trustees

- (1) The Settlor has the power to appoint new Trustees. After the death of the Settlor the Trustees for the time being may appoint new Trustees.
- (2) The Settlor during his lifetime shall have the power to dismiss any Trustee by deed provided that at least two Trustees remain at least one of whom is not the Settlor or the spouse or civil partner of the Settlor for the time being.
- (3) After the Settlor's death, as long as there are at least two other Trustees, if a Trustee cannot be found, after reasonable efforts have been made to find him, the remaining Trustees can discharge the missing Trustee. It is up to the remaining Trustees to decide whether reasonable efforts have been made to find the missing Trustee and no other person shall be under any duty to ensure that it was proper for the Trustees to have exercised their power to discharge the missing Trustee.

## 5. General Powers

- (1) The Trustees have all powers conferred by the law. In addition they have the powers in 5(2) and 5(3) below.
- (2) The Trustees may at any time or times during the Trust Period pay or apply the whole or any part or parts of the capital of the Trust Fund for the advancement or benefit of any Beneficiary entitled to such whole or part.
- (3) The Trustees can:
  - (a) borrow for the purposes of the trust on whatever terms they think appropriate;
  - (b) deal with any life assurance plan or any other asset held subject to the terms of this trust as if they were absolute owners thereof;
  - (c) subject to 6 below release any powers or discretions which can be exercised by the Trustees (including this power). The Trustees can do this wholly or partly and impose whatever conditions they think are appropriate;

## Trust provisions (continued)

- (d) invest the Trust Fund as though they owned it beneficially and absolutely. The Trustees can invest in income producing or non-income producing assets (including life assurance plans);
- (e) subject to 6 below lend to any Beneficiary on whatever terms about interest and repayment as they think fit. To avoid any doubt, it is made clear that this includes the power to make interest-free loans;
- (f) delegate the exercise of any of their investment or management powers, in relation to the Trust Fund, to any person they think fit, even if the delegate is resident or situated outside the United Kingdom. The Trustees can transfer the ownership of any property in the Trust Fund for these purposes;
- (g) pay or transfer any capital or income to be paid transferred to or applied for the benefit of a Beneficiary who is under a legal disability to any person on behalf of that Beneficiary as they think fit and the receipt of that person shall be a valid discharge to the Trustees. The Trustees do not have any duty to ensure that the payment is paid to, or applied for the benefit of, the relevant Beneficiary.

### 6. Limiting Exercise of Powers

Unless the Trustee is a trust corporation the powers in 5(3) (c) and (e) can only be exercised if there are at least two Trustees, one of whom is not the Settlor nor his spouse nor civil partner for the time being.

### 7. Administration of Trust outside the UK

All or part of the administration of this trust can be transferred outside the United Kingdom and persons resident outside the United Kingdom can be Trustees.

### 8. Settlor's Incapacity

If any Settlor becomes mentally incapable as defined by the Mental Capacity Act 2005 or any Act of Parliament which supersedes that Act, his powers under this trust will be exercisable as if he is dead at that time.

### 9. Charging by Trustees

Apart from the Settlor and his spouse or civil partner for the time being, any Trustee who is in a profession, business, or trade can charge his usual fees and charges for work done on behalf of the trust. This applies even where a Trustee who is not in the relevant profession, business or trade, could have done the work personally.

### 10. Liability of Trustees

A Trustee shall not be liable for a loss to the Trust Fund unless that loss was caused by his own fraud or negligence. The duty of reasonable care set out in section 1, Trustee Act 2000, or any Act of Parliament which supersedes that Act and which sets out a Trustee's duty of care, applies to all the functions of the Trustees.

### 11. No Duty to Investigate Exercise of Power

Where the agreement or consent of any person is needed for the exercising of a power by the Trustees, no person dealing with the Trustees needs to be concerned whether that agreement or consent has been obtained.

### 12. Exclusion of the Settlor from all benefit

Notwithstanding any of the foregoing provisions none of the trusts powers or provisions of this Trust Deed shall operate or be exercised so as to allow any part of the Trust Fund or the income thereof to be paid transferred or applied to or for the benefit of the Settlor or whilst the Settlor is alive, the Settlor's spouse or surviving civil partner. In the interests of certainty, it is hereby confirmed that the Settlor's widow(er) can benefit under this trust.

### 13. Choice of Law and Jurisdiction

This trust is subject to the law of England. The parties are subject to the jurisdiction of the English Courts.

# Trust provisions (continued)

## 14. Signatures

IN WITNESS whereof the parties have hereunto executed this deed the day and year first above written.

|                                   |         |
|-----------------------------------|---------|
| Signed as a deed and delivered by |         |
| in the presence of                |         |
| Witness                           |         |
| Signature                         | Address |
|                                   |         |
| Name                              |         |
| Occupation                        |         |

|                                   |         |
|-----------------------------------|---------|
| Signed as a deed and delivered by |         |
| in the presence of                |         |
| Witness                           |         |
| Signature                         | Address |
|                                   |         |
| Name                              |         |
| Occupation                        |         |

|                                   |         |
|-----------------------------------|---------|
| Signed as a deed and delivered by |         |
| in the presence of                |         |
| Witness                           |         |
| Signature                         | Address |
|                                   |         |
| Name                              |         |
| Occupation                        |         |

|                                   |         |
|-----------------------------------|---------|
| Signed as a deed and delivered by |         |
| in the presence of                |         |
| Witness                           |         |
| Signature                         | Address |
|                                   |         |
| Name                              |         |
| Occupation                        |         |

# Legacy of Business Interest to a Spousal By-pass Trust

Suggested draft wording for inclusion in a will or a codicil

Strictly a draft for consideration of client's legal advisers

All the formalities required to execute a valid testamentary document would need to be observed.

It is essential that the will or codicil is executed only AFTER an option agreement for the sale/purchase of the business interest has been entered into and AFTER the Spousal By-pass Trust has been created

|     |   |   |     |
|-----|---|---|-----|
| 1.  | Legacy to (name of trust)   | Settlement                                  | (1) |
| 1.1 | In this clause:   |   |     |
| (a) | the "Settlement" shall mean the settlement made on  | (date trust was declared)                   | (2) |
|     | between myself  |   |     |
|     | and   | (names of the original additional trustees) | (3) |
|     | and   |   | (3) |
| (b) | the "Settlement Trustees" shall mean the trustees for the time being of the Settlement; and   |   |     |
| (c) | my "Business Interest" shall mean [all my shares in   | (name of limited company)                   | (4) |
|     | [all the share and interest owned by me at the date of my death as partner in the firm of   | (name of firm)                              | (4) |
|     | and for the purpose of this clause the term "Business" shall include any successor partnership, LLP or limited company to which the entire business of the Business named above has been transferred.   |   |     |
| 1.2 | I give, free of inheritance tax, my Business Interest to the Settlement Trustees to hold upon the trusts and with and subject to the powers and provisions contained in the Settlement as an addition to and as one fund for all purposes with the Trust Fund as defined in the Settlement. |   |     |
| 1.3 | For the avoidance of doubt I declare that:  |   |     |
| (a) | the above legacy shall exclude the proceeds of sale of my Business Interest if sold before my death but   |   |     |
| (b) | the above legacy shall include the proceeds of sale of my Business Interest if sold by my executors in accordance with any option agreement for sale entered into by me before the date of this will/codicil.   |   |     |

Where indicated above please insert:

- (1). Name of the trust
- (2). The date the trust was declared
- (3). The names of the original additional trustees.
- (4). In the description of the Business Interest insert the name of the limited company/firm and delete as appropriate.

Please let us know if you would like a copy of this in large print or braille, or on audiotape or CD.

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