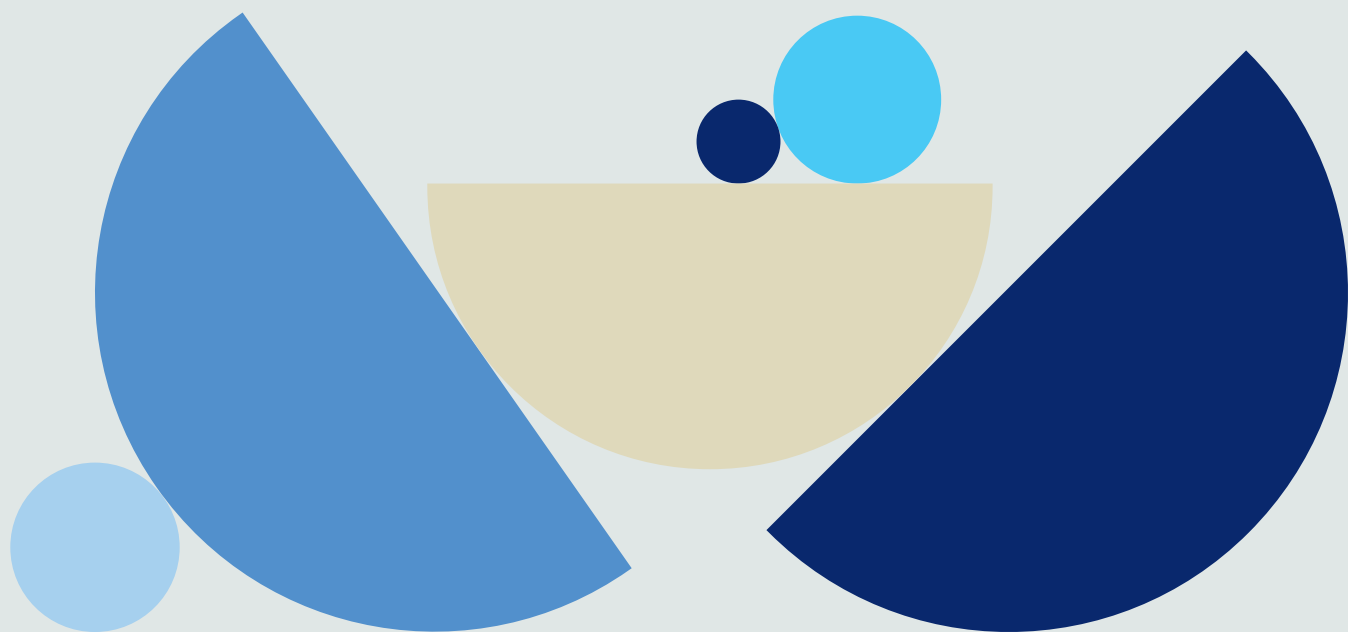


Partnership Keyperson Trust Deed



This is a Partnership Keyperson Trust for use by a traditional partnership with either a Business Protection Policy or Business Whole of Life Policy. This trust is not to be used with any other policies or with policies that are already in force.

The documentation for the Partnership Keyperson Trust is provided in draft format for the approval of your legal advisers. The appropriateness of this draft trust will depend on the circumstances of the case under consideration. Advice is essential to determine appropriateness.

What is it?

A trust for partners designed for use with a life assurance (life and/or critical illness cover) policy, effected on the life of a 'keyperson', which is intended to be owned by all the partners as a partnership asset. It can only be used to hold a life assurance policy which is intended to be held for the benefit of a traditional partnership as a whole as a partnership asset.

A 'keyperson' is an individual whose death or critical illness is likely to result in a financial loss to, or a need for funds by, the partnership. The keyperson could be you or another partner or an employee of the firm.

If two persons are declaring the trust, 'you' means both of them.

If the keyperson to be insured is a partner the partner would normally take out the policy on their own life to be issued from the outset subject to the Partnership Keyperson Trust. If the keyperson is an employee then the policy would normally be applied for by one or two of the partners on the life of the keyperson.

Aims of the trust

To ensure that, if the keyperson dies or suffers from a critical illness, funds will be available to the partnership (firm) for the purpose for which the policy is effected. The purpose of the policy could be:

- To provide cover for loss of profits (or other financial loss) arising from the keyperson's death or critical illness – this is normally referred to as 'keyperson cover' – hence the name of this trust.
- To provide funds to repay a debt owed by the business – this can be referred to as 'loan cover', but as the policy will be effected on the life of a keyperson, the same trust provisions will be appropriate.

In all cases the aim is to provide funds to the firm as a whole.

The use of this trust will also ensure that, if the benefits of the policy are paid on death, they are paid into the trust without the need to wait for a grant of probate/letters of administration on the deceased's estate. Therefore funds can be made available to the firm quickly (but as a partnership asset) to enable them to repay the partnership loan or to use as required by the firm. There will need to be at least one surviving trustee to avoid probate delay but because normally all the partners will be the trustees this should not be a problem. Payment of any benefits following critical illness will also be made to the trustees on acceptance of the claim.

When should this trust not be used?

- If you are taking out a policy for your own personal needs or for the benefit of persons you are not in business with.
- If your business is not a traditional partnership.
- If your partnership is a Limited Liability Partnership (LLP).
- If the intention is that your co-partners (surviving partners on your death) should benefit personally so that the funds are outside the business and not treated as partnership property.
- If you and your co-partners are each taking out a policy to provide funds for share purchase on death or critical illness – a special 'business trust' is available for this.
- If the policy is already in force.

How does it work?

A trust is a legal method of holding a life assurance policy for the benefit of the person or persons (called the 'beneficiaries') who are to benefit under the policy. In the case of the Partnership Keyperson Trust this will be the partnership.

A policy made subject to the Partnership Keyperson Trust belongs, legally, to the trustees. The person or persons taking out the policy will automatically be a trustee. It would be normal to appoint co-partners to act as additional trustees with you.

A trust is necessary when effecting partnership keyperson cover or partnership loan cover as under English law a partnership is not a legal person (such as a limited company or a limited liability partnership) which means that the firm cannot take out a policy in its own name.

How is the trust set up?

It is essential that you take appropriate legal advice to make sure that the trust is suitable for you. Once the appropriateness of the draft trust has been determined, completion of the form is very straightforward – see the notes below.

- The policy number should be inserted.
- Your full name(s) must be written in the space provided (as the 'settlor').
- You must insert the name of the partnership.
- In the boxes underneath the box with the partnership name, you should sign and date the trust. If there are two of you, you both must sign.
- Your signature(s) must be witnessed by an individual who is neither a trustee, nor a partner in the firm, nor your spouse or civil partner.
- You must insert the name of the life assured (keyperson) if different from the settlor.

In the next set of boxes you must write in the full name and address of each additional trustee and each trustee should sign in the box. This will normally be all the other partners, although this is not strictly necessary. The appointed trustees must act for the benefit of the firm in any event. However, it could be difficult to administer the trust if no additional trustees are appointed. If there is a need to appoint more than four trustees, you can provide their details on a sheet of paper, marked with the policy number, which should be signed by you. The settlor is automatically a trustee of this trust and so your name should not be included in this box.

Frequently asked questions

Can the trust provisions be changed once the trust deed has been signed?

The trust is irrevocable and generally any changes can only be made with the agreement of the Court. Remember that this trust is effected specifically so that the policy will be treated as a partnership asset. All partners will have a share in it just as they have a share in all the partnership property. How partnership property is dealt with should be covered in your partnership deed and, if not, then the Partnership Act 1890 will apply. Your adviser will be able to explain this in detail if you so wish.

Can any of the settlor's family be a beneficiary?

As the policy will be a partnership asset, no one other than the partners can benefit. Therefore unless a member of your family is also a partner in the firm they will not be able to benefit under the trust.

Can the trust be used if the policy is effected jointly?

Yes, in this case both applicants will be the settlors.

Can the trust be used if the policy is effected on the life of another person?

Yes, provided this person (the life assured) is a keyperson to your business – see page 2 for an explanation of what we mean by a 'keyperson'.

Can the trust be used if the policy is effected on a joint life first death basis?

Yes, but remember that if the policy benefits are payable on the death of the first of the two lives assured to die and the policy is subject to a trust, the benefits would still be paid to the surviving trustees and belong to the firm as a whole.

Can I remove a trustee?

This trust does not allow you, as the settlor, to remove a trustee. However, if one of the trustees ceases to be a partner in the firm the other trustees have the power to remove them. In addition, if a trustee cannot be found, the remaining trustees can discharge the missing trustee.

Is a separate trustee bank account needed?

As Zurich will make any payment to all the trustees you should consider setting up a trustee bank account before the proceeds are paid.

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 July 2022.

This trust is intended for use by partners in a fully commercial arrangement with no intention of making gifts.

Although the settlor would not be excluded from benefit there should be no adverse inheritance tax (IHT) consequences:

- provided the partnership makes the payments to the policy and debits those payments to the accounts of the partners appropriately so as to corroborate arm's length commerciality, and
- provided the policy is held on trust as a partnership asset (as intended under this Partnership Keyperson Trust) and the partners' respective interests in the partnership qualify in full for IHT Business Property Relief. Your adviser can help you establish whether your partnership share qualifies for this relief.

If the policy proceeds are paid to the firm – via the trustees, they will increase the asset value of the firm and with it the value of each partnership share (although while the policy is in force, the value on the balance sheet would usually be low or nil) as a result. However the increase in the value of the partnership would be countered by any debt that the sum assured may be intended to repay and any reduction in the value of the business resulting from the loss of the keyperson.

Income tax

While the only trust asset is a life assurance policy there will be no trust income and no income tax implications. If the policy proceeds are not used by the partnership immediately, any interest that will arise will be taxed in the same way as any other income of the partnership.

Will this trust be affected by the taxation of pre-owned assets (POAT) legislation?

Provided there is an absence of any gratuitous intent and the trust is not a settlement then the POAT provisions will not be relevant.

Capital gains tax

As long as the Partnership Keyperson Trust is effected at the same time as the policy is effected and not later, there should be no capital gains tax implications resulting from the policy being held in trust.

Trust registration

Trust registration is a complex subject. These notes are not comprehensive and are intended only to give a summary of our understanding of the position on 1 July 2022.

A Partnership Keyperson Trust holding a protection policy (whether term or whole of life) which **only** pays out on the death, terminal illness, critical illness, or disablement of the person assured is excluded from registering on HM Revenue & Customs' (HMRC) Trust Registration Service (TRS). That is providing benefits are distributed as summarised below:

For a death claim

The benefit is paid to the beneficiary (the business) within **two years** of the date of death.

For a terminal illness, critical illness or disablement claim

The benefit is paid **directly** to the beneficiary (the business).

A trust must **always** be registered should it become liable for tax.

Should a trust need to be registered, it is the trustees' responsibility to do so. Zurich may require proof of registration and the trustees can obtain this by downloading a PDF output from the TRS.

The trustees may need to seek professional advice about their registration responsibilities.

Important note

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.

Creating a trust is an important matter and has lasting legal and tax consequences. Accordingly, the trust should not be completed without the confirmation of your advisers that it is appropriate to your circumstances and objectives.

These notes are for your general information only and cannot cover every situation. The trust, once created, is irrevocable and the policy and its benefits must be held according to the terms of the trust. The trustees will be in control of the operation of the trust which means that they may need to set up a trustee bank account and are responsible for understanding and complying with any applicable trust registration requirements. Any options available under the policy and any further policies that are issued as a result of the exercise of any options will also be held subject to the trust.

The draft trust and these notes are based on our understanding of current law and HMRC practice (1 July 2022). 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.

Partnership Keyperson Trust Deed

- This is a Partnership Keyperson Trust for use with either a Business Protection Policy or Business Whole of Life Policy issued by Zurich.
- This trust is not to be used with any other policies or with policies that are already in force when the trust is signed.

Policy number:

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

(the 'Settlor')

The terms of the trust are set out below

Partnership

Insert name of firm

To create a trust you need to sign here. Your signature(s) must be witnessed. If two people are declaring this trust, both need to sign. Your signature must be witnessed by an individual who is neither a trustee, nor a partner in the firm, nor your spouse or civil partner.

Signed and delivered as a Deed by the Settlor(s):

Date

D

D

M

M

Y

Y

Y

Y

In the presence of:

Signature of witness

Full name of witness

Address of witness

Life assured (keyperson) if different from the Settlor

Insert name of the life assured if the Policy is not on your life

Additional Trustees

We do not recommend more than four Additional Trustees. However, if there are more than four, please provide their details and signatures on a sheet of paper marked with the Policy number, and sign it.

Title	Surname
Full forenames	
Address	
Postcode	
Nationality	
Date of birth	<div>D</div> <div>D</div> <div>M</div> <div>M</div> <div>Y</div> <div>Y</div> <div>Y</div> <div>Y</div>
Signature in acceptance of appointment as Trustee	

Title	Surname
Full forenames	
Address	
Postcode	
Nationality	
Date of birth	<div>D</div> <div>D</div> <div>M</div> <div>M</div> <div>Y</div> <div>Y</div> <div>Y</div> <div>Y</div>
Signature in acceptance of appointment as Trustee	

Title	Surname
Full forenames	
Address	
Postcode	
Nationality	
Date of birth	<div>D</div> <div>D</div> <div>M</div> <div>M</div> <div>Y</div> <div>Y</div> <div>Y</div> <div>Y</div>
Signature in acceptance of appointment as Trustee	

Title	Surname
Full forenames	
Address	
Postcode	
Nationality	
Date of birth	<div>D</div> <div>D</div> <div>M</div> <div>M</div> <div>Y</div> <div>Y</div> <div>Y</div> <div>Y</div>
Signature in acceptance of appointment as Trustee	

Trust provisions

1. Definitions

'Company' means Zurich Assurance Ltd.

'Partnership' means the firm named as such in this trust and any successor business carrying on the entire operation of the Partnership.

'Partnership Property' has the same meaning as in the partnership agreement (if any) of the Partnership or, where there is no such agreement, as under section 20 Partnership Act 1890.

'Policy' means the policy of assurance identified above and any other life assurance policy included in the Trust Fund. It also includes any other policies set up in the exercise of rights under that policy and any property derived from that policy.

'Settlor' means the person or persons declaring this trust and where two persons are named, the term Settlor shall refer to them both and the survivor of them.

'Trustee(s)' means the Settlor and the Additional Trustee(s) named above or the Trustee(s) for the time being of this trust.

'Trust Fund' means:

- (a) the Policy
- (b) any policies of assurance that are held by the Trustees subject to this trust
- (c) any policies effected in accordance with any option in any policy subject to this trust
- (d) all monies, investments and property paid to or transferred to the Trustees as additions to the Trust Fund
- (e) any property representing the above.

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. Creation of the Trust

- (1) The Settlor states that, in submitting the application for the above-numbered Policy to the Company, they are acting with the intention of making themselves and the Additional Trustees specified above Trustees of the Trust Fund and the income thereof upon the trusts and subject to the powers set out below. The Settlor directs the Company to issue the above-numbered Policy to the Trustees to hold on the terms of this trust and requests that the Policy should be endorsed to this effect.
- (2) The trust will commence on the date the above-numbered Policy comes into force.
- (3) The Trustees will be bound by the Terms and Conditions of the Policy as policyholder.

3. Beneficiaries

The Trustees shall hold the Trust Fund and the income thereof upon trust for the partners in the Partnership as Partnership Property.

4. Powers in relation to Income and Capital of the Trust Fund

- (1) The income of the Trust Fund will be paid to the Partnership.
- (2) The Trustees can advance all or any part of the capital of the Trust Fund to the Partnership as they think fit.

5. Appointment and Removal of Trustees

- (1) The Trustees for the time being have the power to appoint new Trustees.
- (2) Where a Trustee has ceased to be a partner in the Partnership, then the Trustees, or a majority of them, can remove that Trustee from the trust provided that there are at least two Trustees remaining after the removal. No other person shall be under any duty to ensure that it was proper for the Trustees to have exercised their power in this way.
- (3) 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.

6. General Powers

- (1) The Trustees have all powers conferred by the law. In addition they have the powers in 6(2) below. The Company cannot be held accountable for, and is under no duty to investigate, the exercise of any of their powers by the Trustees, or how they apply any part of the Trust Fund.
- (2) The Trustees can:
 - (a) borrow for the purposes of the trust on whatever terms they think appropriate. They can use any part of the Trust Fund as security. The lender is under no duty to check that they use the money properly;
 - (b) make the Policy paid-up even if the sum assured is reduced as a result;
 - (c) surrender or partially surrender the Policy;
 - (d) sell any part of the Trust Fund (including the Policy);

- (e) exercise rights under the Policy which can reduce the benefits payable under it or, with the Company's consent, reduce the sum assured or premiums payable under the Policy;
- (f) release any powers 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;
- (g) invest the Trust Fund as though they owned it beneficially and absolutely. The Trustees can invest in income-producing and non-income-producing assets (including life assurance policies);
- (h) 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 abroad. The Trustees can transfer the ownership of any property in the Trust Fund for these purposes.

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 Charging by Trustees

Any Trustee who cannot benefit under this trust but 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.

9 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.

10 The Law and Jurisdiction applicable to this Trust

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

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in large print, braille or audio.

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