

Scottish Mutual International DAC

and

Phoenix Life Limited

# TERMS OF BUSINESS

## I. GENERAL

- 1.1 This statement of Terms of Business sets out the conditions upon which Scottish Mutual International DAC ("SMI") and the Irish branch of Phoenix Life Limited (the Irish branch is herein referred to as "PLL") (collectively the "Companies") may accept and administer Business received from an Intermediary.

"the Acts" means the Irish Investment Intermediaries Act 1995, the Irish Insurance Act 2000, the Irish Central Bank and Financial Services Authority of Ireland Act 2003 and the United Kingdom Financial Services and Markets Act 2000, as each may be amended from time to time.

The Companies 'Administer' Business by carrying out instructions received from the Intermediary, or the Client or his Fund Adviser as appropriate, in relation to the Business, and 'Administration' shall be interpreted accordingly.

"Business" means all Life Assurance business (as comprised in Annex 1, Part A of the European Communities (Life Assurance) Framework Regulations 1991, enacted in Ireland, which

- a) The Companies have contracted with Clients,
- b) may be accepted by the Companies or any one of them as contractual increments to existing policies,
- c) SMI may accept from UK, Channel Islands or Isle of Man Intermediaries in respect of Clients resident in these jurisdictions,
- d) The Companies may in the future decide to accept.

"Client" means the owner of or prospective proposer for a policy with the Companies

A 'Fund Adviser' means someone appointed by a Client and accepted by the Companies as being suitable to give instructions regarding the composition of the assets allocated to the policy.

An 'Intermediary' is a) an Insurance Intermediary as defined in the Irish Insurance Act 1989 as amended (or its UK equivalent) or b) an individual or a group of individuals or an entity which is in the business of providing independent financial advice to investors.

An Intermediary 'Services' Business for a Client when he instructs the Companies in respect of Business on behalf of the Client, and 'Servicing' and 'Serviced' of Business shall be interpreted accordingly.

- 1.2 (a) The Intermediary shall be the agent of the Client in regard to all aspects of the Business and is not the agent or partner of the Companies. This does not however affect or limit the personal responsibilities of the Intermediary to the Companies as set out in these Terms of Business.

(b) Without limitation or restriction of the rights of the Companies against the Intermediary under this statement and in law, the Companies and their advisers may inspect, verify or examine or copy (as it may deem necessary to protect its interests) the Intermediary's procedures, records, books, accounts, literature and other business aspects as are reasonably relevant to the selling and administration of Business.

(c) The Intermediary accepts that it has no authority in any event to agree with a client any modification of the terms of the Companies' standard contracts issued to Clients or to agree on behalf of the Companies and for the benefit of a Client or other person any indulgence or favour.

(d) The Intermediary is not empowered to bind the Companies by any statement, written or oral unless expressly authorized in writing by the Companies.

- 1.3 The Intermediary warrants that it has full authority from the Client and all the necessary official, regulatory and other authorizations under the Acts and/or other relevant legislation and regulation in the jurisdiction where the Business is or was sold, as applicable, or from which it is Serviced and otherwise for acting on behalf of the Client with the Companies and all incidental and consequential acts, operations and events.
- 1.4 In connection with all transactions with the Companies the Intermediary hereby undertakes that:
- During the term of these Terms of Business, the Intermediary shall immediately notify the Companies in writing of any criminal conviction (except minor driving offences) of the Intermediary or any director, partner, principal, manager, advisor or member of staff of the Intermediary.
  - The Intermediary shall comply with such provisions of the Acts as apply to his operations and with any and all applicable codes of conduct prescribed or issued from time to time pursuant to the Acts.
  - The Intermediary shall forthwith advise the Companies in writing if it no longer qualifies as an Insurance Intermediary (as that term is defined in the Irish Insurance Act 1989 and equivalent UK legislation as amended) and if it cancels or has cancelled an appointment with any other insurer from which it has an appointment as an Intermediary at the date of signing of these Terms of Business.
  - The Intermediary shall advise the Companies immediately in writing if the Intermediary becomes aware of circumstances which could give rise to a claim under any of the policies sold through the Intermediary under these Terms of Business.
  - To help prevent money laundering, evidence of the identity of all Clients introduced by the Intermediary shall be obtained and recorded (prior to the placing of Business with the Companies) under procedures maintained by the Intermediary in accordance with the provisions of the European Council Directive 91/308/EEC as amended, where applicable, and all other legislative and official regulations and guidance. The Intermediary shall also comply with any additional requirements of the Companies from time to time: notified to the Intermediary.
  - Without detracting from the obligations immediately above the Intermediary shall forward to the Companies with the documents for the Business transaction such duly completed forms relating to verification of third party identity as the Companies may require from time to time.
  - Business submitted by the Intermediary shall be lawfully sold or procured under the legislation and regulations applicable in all relevant jurisdictions.
- 1.5 The Intermediary shall indemnify the Companies against any loss or expense sustained by the Companies as a consequence of the Intermediary failing to act or acting outside or in breach of the provisions of any of the Terms of Business or any applicable law or regulation.
- 1.6 The Intermediary will promptly notify any change of name or restructuring of its firm or company to the Companies.
- 1.7 The Companies shall be entitled (without identifying any Client or Intermediary) to disclose and/or use any information or data supplied by the Intermediary to the Companies for the purposes of exchanging information, conducting market research, preparing strategic or other marketing plans or gauging product sales or product performance with any organization with which the Companies have a contractual relationship or otherwise to any party as is consistent with the effecting of the above approved uses of such information.

## **2. COMMISSION**

- 2.1** For Business submitted where the Client is a resident of the United Kingdom or of Ireland all matters relating to the payment of commission by the Companies and all product and commission disclosure made by the Companies or the Intermediary shall be governed respectively by the Acts to the extent that such principles and rules are applicable.
- 2.2** The foregoing matters covered in Clause 2.1 (including where Client is not resident in the United Kingdom) shall also be regulated by the laws and regulations of any other jurisdiction as applicable provided that the liabilities of the Companies shall not be increased thereby in excess of those liabilities which would apply were such matters solely regulated by Irish Law and the Acts.
- 2.3** The Companies shall pay to the Intermediary named in these Terms of Business commission (in accordance with these Terms of Business) on all Business submitted to the Companies and accepted by them and not cancelled by or on behalf of the client during a "cooling off" or "cancellation" period. It shall be open to an Intermediary not to accept the Companies' offer of commission, or to accept an amount of commission which is less than the full amount offered, whereupon the Companies shall apply the amount of the commission offered, reduced by such amount, if any, as has been accepted by the Intermediary, in providing enhanced benefits under the policy.
- 2.4** On acceptance of the Companies' offer of commission, the Intermediary will be entitled to an amount of commission at rates set from time to time by the Companies. A note of the rates applicable at any time shall be available on request and the rates may be varied by the Companies without notice subject to all necessary disclosures required by law. All payments of commission to Intermediaries are subject to prior payment of the premiums to which they relate.
- 2.5** In the event of the Intermediary ceasing to be authorized as stated in Clause 1 above and/or where the Client or Intermediary notifies the Companies that the Intermediary is no longer the agent of the Client (or such cessation of agency may be reasonably inferred) and/or the Intermediary is no longer permitted to act in relation to the Business due to any applicable law or regulation, the Companies shall not pay and shall cease to pay commission other than any unpaid initial commission.
- 2.6** The Companies' statement of account (which may as agreed with the Intermediary be contained in writing, disk, tape, direct on-line communication to computer terminal or any other method of communication) shall be the prime record of commission due to the Intermediary and of any money due to the Companies from the Intermediary.
- 2.7** Commission shall be paid, unless otherwise agreed, to the Intermediary monthly in arrears on the later of the date of receipt of the completed Business proposal and the clearance of the first premium or revised premium cheque. The Companies may however defer payment of commission until there is due to the Intermediary a total of at least 100 (or the equivalent in other currency), or such other amount as the Companies may notify, is due to the Intermediary.
- 2.8** Commission shall be payable either in Euro or in pounds sterling at Dublin unless the parties agree otherwise, when payment shall be subject to such terms as are agreed in writing in respect of the Business.
- 2.9** The Companies may from time to time make such relevant searches and checks in respect of the Intermediary and its owners/principals (including in relation to credit worthiness) as it sees fit.
- 2.10** One commission only will be paid by the Companies in respect of any policy secured and if two or more Intermediaries claim commission in relation to the same policy the commission shall be paid to the Intermediary who has submitted to the Companies the original proposal

form in relation to which the first premium has been paid or has made the original request to exercise an option under a policy unless that Intermediary shall authorize the Companies in writing to divide any commission payable in relation to a policy or policies proportionately between two or more Intermediaries.

### **3 REPAYMENT OF MONEY TO THE COMPANIES**

- 3.1 Where money is to be paid, repaid or reimbursed to the Companies, according to Clause 2 and whether debited to the commission account or not, it shall be due and payable in terms of this agreement without any formal demand for payment being issued by the Companies unless otherwise stated in the Terms of Business.
- 3.2 If payment arrangements, satisfactory to the Companies are not made to clear a debt within 28 days of a written demand by the Companies, the Companies may notify credit reference agencies and other financial institutions of details of the commission account.
- 3.3 Where commission is paid or overpaid in error the Companies reserve the right to recover that commission directly or by means of debiting the relevant amount of commission owed by the Intermediary from any monies due to the Intermediary under these Terms of Business or any related contract held with any company associated directly or indirectly with the Companies.
- 3.4 If the Intermediary shall at any time be deemed to be acting as the agent of the Companies pursuant to the provisions of the Acts then the Companies reserve the right to seek reimbursement in full from the Intermediary of all loss, damage or liability incurred or sustained by the Companies or either of them (including without limitation or legal fees, costs, disbursements and expenses) which result from the professional negligence or misconduct of the Intermediary or any director, principal, partner, manager, sales person, advisor, consultant, employee, servant or agent of the intermediary.

### **4 DOCUMENTATION**

- 4.1 According to all applicable laws and regulations the Intermediary must pass on immediately, without amendment, any documentation which is either supplied by the Companies for the benefit of or for completion by the Client, or provided by the Client in relation to the Business.
- 4.2 The Intermediary must show the name of the authority or regulatory body by which the Intermediary has been authorized and his authorization number on each Business proposal submitted to the Companies.
- 4.3 The Companies may send communications directly to the Client.
- 4.4 All books and documents, computer hardware and software belonging to the Companies and in the possession of the Intermediary must at all times be available to the Companies for inspection and be delivered in good condition (fair wear and tear excepted) to the Companies by the Intermediary on demand.
- 4.5 Other than by using standard material supplied by the Companies for this purpose, the Intermediary must not publish, circulate, issue or release any advertisement or literature relating to the business of the Companies or make use of the Companies' names in similar promotional activities without previous written authorization by an officer of the Companies.

### **5 PAYMENT OF PREMIUMS THROUGH THE INTERMEDIARY**

- 5.1 If the Intermediary undertakes to the Client to pass monies to the Companies he must do so promptly and without deduction unless previously agreed in writing with the Companies. In so doing, the Intermediary is not acting as an agent of the Companies.
- 5.2 The Intermediary is not authorized to issue evidence of payment on behalf of the Companies.

## **6 VARIATION**

- 6.1 The Companies may vary the Terms of Business contained in this statement subject to one month's notice being given to the Intermediary, except in circumstances where changes in the rules of a relevant regulatory organisation or any applicable law or regulation are such as to require the changes to the Terms of Business to take effect earlier than that date, in which event such changes shall have effect on such earlier date and notice of variation shall be given as soon as is reasonably practicable. Such variation shall not affect contracts in force or requests made in relation to Business received by the Companies before the variation to the Terms of Business takes effect.

## **7 TERMINATION**

- 7.1 Without affecting or restricting the general powers of the Companies under Clause 6.1 above, these Terms of Business may be terminated at any time by either party after one month's written notice to the other party so that no instructions from the Intermediary shall be accepted by the Companies after the expiration of such notice.
- 7.2 These Terms of Business may be terminated by the Companies with immediate effect so that no instructions from the Intermediary in respect of the submission or Servicing of Business shall be accepted by the Companies, and without liability on the Companies' part, by written notice to such effect to the Intermediary on the occurrence of any one or more of the following:
- (a) any material breach by the Intermediary of any of the provisions contained within these Terms of Business;
  - (b) misconduct on the part of the Intermediary which is or could be prejudicial to the Companies' business or reputation;
  - (c) Revocation or suspension of the Intermediary's authorisation by any relevant regulatory body;
  - (d) Cessation or suspension or intended cessation or suspension of the Intermediary's operation;
  - (e) litigation or reconstruction involving the Intermediary including (without limitation of the foregoing) bankruptcy, dissolution, administration, liquidation, receivership, examinership, compounding with creditors, winding up or seizure of assets;
  - (f) if the Intermediary purports to assign the burden or benefit or charge the benefit of these Terms of Business.
- 7.3 Any termination of these Terms of Business by the Companies shall be without prejudice to any other remedies that the Companies may be able to pursue against the Intermediary including remedies that the Companies may be able to pursue against the Intermediary in respect of accrued rights under these Terms of Business.
- 7.4 The Intermediary shall keep the Companies advised in writing of any facts known to it within the scope of 7.2(a) to (f) above.

## **8. CONSEQUENCES OF TERMINATION**

- 8.1 Subject to the Companies having given written notice (if any) of termination to the Intermediary in terms of Clause 7 above the Intermediary shall on termination of these Terms of Business:

- (a) return to the Companies forthwith any property belonging to the Companies;
- (b) repay all sums then outstanding to the Companies;
- (c) be entitled to any unpaid initial commission falling due before the date of such written notice, if any.

Subject to clause 2.5 above, the Intermediary shall be entitled to renewal commission after the termination date (or the date of written notice where applicable) only in the following circumstances:

- where the Business commenced prior to such date,
- for as long as such Business remains in force and has not matured or been surrendered,
- if the Intermediary has at all times complied with these Terms of Business,
- if the Intermediary remains the appointed intermediary for the particular Client(s) to whom the relevant payment relates.

(d) the Companies may communicate notice of such termination to any the Intermediary's Clients/ policyholders associated through these Terms of Business with the Intermediary.

## **8 APPLICABLE LAW AND JURISDICTION ETC**

- 9.1 These Terms of Business are subject to, and shall be construed in accordance with Irish law.
- 9.2 The Intermediary irrevocably agrees that the Courts of Ireland shall have non-exclusive jurisdiction to hear and determine any suit, action or procedure and to settle any disputes which may arise out of or in connection with the Terms of Business.
- 9.3 Submission to the jurisdiction of the Courts of Ireland shall not, however, limit the right of the Companies to take proceedings against the Intermediary in any other Court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction.
- 9.4 Any document to be served by one party on the other shall be sent to its address for correspondence in the case of the Companies and to its head office in the case of the Intermediary or such other address as has been notified by the party to receive the notice as the proper address for service.
- 9.5 Any failure or delay by the Companies to exercise their rights under these Terms of Business and/or in law shall not be deemed to operate as a waiver of any such rights of the Companies nor prejudice their enforcement in any way.
- 9.6 These Terms of Business embody the entire understanding of the Companies and the Intermediary and there are no promises, terms, conditions or obligations oral or written expressed or implied other than those herein contained. Any previous agreements or arrangements made between either of the Companies and the Intermediary are hereby terminated.
- 9.7 An appointment of an Intermediary under these Terms of Business means that the Intermediary holds an appointment with both SMI and PLL and termination of the appointment held by the Intermediary with either SMI or PLL automatically terminates the appointment in respect of the other entity.

Scottish Mutual International Designated Activity Company is regulated by the Central Bank of Ireland and is registered in Ireland (Company No. 242244). The company's registered office is Block 2, Harcourt Centre, Harcourt Street, Dublin 2, Ireland. An up-to-date list of its directors, containing the particulars required by paragraphs (a), (b) and (c) of Section 151(1) of the Companies Act 2014, is available upon request from the company's registered office.

Address for correspondence: 16 Joyce Way, Park West Business Park, Dublin 12. Ireland. Telephone:

(00 353-1) 804 4000.

Fax: (00 353-1) 804 4005. Website address: [www.smi.ie](http://www.smi.ie)

Scottish Mutual International Designated Activity Company (Company No. 242244) trading as Phoenix Ireland is regulated by the Central Bank of Ireland. Phoenix Life Limited, trading as Phoenix Ireland, is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority in the United Kingdom and is regulated by the Central Bank of Ireland for conduct of business rules. Scottish Mutual International Designated Activity Company's registered office is Block 2, Harcourt Centre, Harcourt Street, Dublin 2, Ireland. An up-to-date list of its directors, containing the particulars required by paragraphs (a), (b), and (c) of section 151(1) of the Companies Act 2014, is available upon request from the company's registered office. Phoenix Life Limited is incorporated in England (Company No. 1016269) and has a registered branch in Ireland (Branch No. 906073). Phoenix Life Limited's registered office is 1 Wythall Green Way, Wythall, Birmingham B47 6WG United Kingdom. Its directors are A B Davidson (UK), J P Evans (UK), M J Merrick (UK), A Moss (UK), M D Ross (UK), W Snow (UK), W R Treen (UK), S True (UK) and M N Urmston (UK).



# Scottish Mutual International/ Phoenix Life Limited

## TERMS OF BUSINESS AGREEMENT

To be completed and returned to:

Scottish Mutual international DAC or Phoenix Life Limited as appropriate, both at 16 Joyce Way, Park West Business Park, Dublin 12, Ireland.

1. (a) Name under which you have received authorisation to give independent advice (b)

Trading name (if different)

Please list all local authorisations, permits and licences issued by governmental professional bodies around the world in respect of your business. Please give the name of body through which authorisation/permits/licences have been granted and authorisation numbers if any. *(Please include proof of your authorisation status).*

If not authorisation is required- please give reasons.

- 2 (a) Business profession or occupation

(b) Sole Trader/Partnership/Limited Company/Other? (if other, please clarify legal status)

3 Registered address & Business address if different from registered address

Country

Post Code

4 Tel no (including all local dialing codes)

Fax no (including all local dialing codes)

Main contact person for telephone and written enquiries:

5 If a firm, year established

(Please enclose a copy of previous years Accounts)

6 (a) Are all sales consultants engaged by you on an "employed" basis as opposed to a "self employed basis"?

Yes / No

(b) What are the main activities undertaken by the business?

(c) In what countries are your customers predominantly resident and are they local nationals?

(d) Do you undertake discretionary management functions on behalf of clients?

7 Names, private addresses (including country) and Qualifications of Principal(s)/Director(s); Executive Managers; partners; shareholders; sole proprietors (whichever is applicable):

Country

Post Code

Qualifications

Country

Post Code

Qualifications

Country

Post Code

Qualifications

**8** Name and address of your bank

Country

Post Code

Tel no (including all local dialing codes) Fax

no (including all local dialing codes)

Main contact person for telephone and written enquiries

**9** Please give details of your Accountants:

Name of firm

Address

Country

Post Code

Tel no (including all local dialing codes)

Fax no (including all local dialing codes)

Main contact within the firm

**10** Please give the name of two insurance/financial companies prepared to give references in regard to your business's good standing:

Name of Company

Address

Country

Post Code

Contact Person

Fax no (including all local dialing codes)

Name of Company

Address

Country

Post Code

Contact Person

Fax NO (including all local dialing codes)

**11** Have you / your firm or any of the people named in (7) above ever:

- been charged with or convicted of any offence under any law relating to dishonest or fraudulent conduct? Yes No
- been convicted of any offence or subject to regulatory penalty/sanction etc. under any law relating to financial services or companies? Yes No
- been the subject of legal proceedings in relation to bankruptcy, insolvency, receivership, liquidation or inability to continue trading or failure to pay debts due or made an arrangement with creditors? Yes No
- been a Director of a company which has been wound up other than for solvent amalgamation or reconstruction? Yes No
- been refused an agency with any financial institution, insurance society or company in any particular country? Yes No

*If the answer to any of these questions is "yes" or cannot be given as "no", please give details in respect of the relevant Questions below:*

**12** Do you hold Terms of Business Agreements (or Agencies) with other Insurance Societies or Companies?  
If so, please state with whom and in which jurisdictions.

**13.** Please state the currency you wish to be paid in. If you do not complete this section, commission will be paid in Euro if you are based in Ireland. Otherwise, in £ sterling.

I/We have read the terms of the Scottish Mutual International and Phoenix Life Limited Terms of Business

Statement

We agree to observe and be bound by the terms of that document as it may be amended from time to time. We acknowledge that acceptance of this agreement is at the discretion of Scottish Mutual International DAC. And Phoenix Life Limited and that neither Scottish Mutual International DAC nor Phoenix Life Limited is obliged to give reasons for a refusal to enter into a Terms of Business Agreement.

We declare that all answers given in this application are true and complete and agree to Scottish Mutual International DAC and Phoenix Life Limited seeking a reference from anyone mentioned or referred to in this form. We acknowledge that Scottish Mutual International DAC and Phoenix Life Limited will not release the contents of any reference received.

To be signed by a director, sole trader or all partners as appropriate.

On behalf of (*Intermediary name*)

Scottish Mutual International Designated Activity Company is regulated by the Central Bank of Ireland and is registered in Ireland (Company No. 242244). The company's registered office is Block 2, Harcourt Centre, Harcourt Street, Dublin 2, Ireland. An up-to-date list of its directors, containing the particulars required by paragraphs (a), (b) and (c) of Section 151(1) of the Companies Act 2014, is available upon request from the company's registered office.

Address for correspondence: 16 Joyce Way, Park West Business Park, Dublin 12. Ireland. Telephone: (00

353-1) 804 4000.

Fax: (00 353-1) 804 4005. Website address: [www.smi.ie](http://www.smi.ie)

Scottish Mutual International Designated Activity Company (Company No. 242244) trading as Phoenix Ireland is regulated by the Central Bank of Ireland. Phoenix Life Limited, trading as Phoenix Ireland, is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority in the United Kingdom and is regulated by the Central Bank of Ireland for conduct of business rules. Scottish Mutual International Designated Activity Company's registered office is Block 2, Harcourt Centre, Harcourt Street, Dublin 2, Ireland. An up-to-date list of its directors, containing the particulars required by paragraphs (a), (b), and (c) of section 151(1) of the Companies Act 2014, is available upon request from the company's registered office. Phoenix Life Limited is incorporated in England (Company No. 1016269) and has a registered branch in Ireland (Branch No. 906073). Phoenix Life Limited's registered office is 1 Wythall Green Way, Wythall, Birmingham B47 6WG United Kingdom. Its directors are A B Davidson (UK), J P Evans (UK), M J Merrick (UK), A Moss (UK), M D Ross (UK), W Snow (UK), W R Treen (UK), S True (UK) and M N Urmston (UK).