

Loan Trust - Discretionary version (English Law)

Assistance with completing the trust deed



This guide is designed to assist with the completion of a loan trust deed, discretionary version (English law). This guide covers both the limited and unlimited liability versions of this trust. This trust deed allows a settlor to create a new discretionary trust and make an interest free loan to that trust, repayable on demand. Once this trust is established, the trustees can apply for a Collective Investment Bond.

Please note, neither Quilter Life & Pensions or its staff are authorised to provide legal advice and cannot be held responsible for any actions taken or refrained from being taken as a result of the guidance given in this document.

Tips for getting started

- ✓ You must choose between the Limited and Unlimited trust deed versions, which determine trustees' liability if the loan is recalled at a time when the value of the trust's assets is insufficient to meet the repayment. See section 3 of the respective deeds for full details of the loan agreement.
 - ➔ **Unlimited liability** - The trustees must repay the loan in full if it is demanded by the settlor. They're personally liable for meeting any shortfall if it cannot be covered by the trust fund. This ensures the settlor receives full repayment of their loan.
 - ➔ **Limited liability** – The trustees' liability for repaying the outstanding loan is limited to the value of the trust fund at the time the repayment is requested. This protects the trustees from a personal liability but means the settlor may not receive their full loan.
- ✓ Ensure you have the latest version of the trust deed: [Limited Liability version](#) or [Unlimited Liability version](#)
- ✓ An application for a Collective Investment Bond must be made using [the loan trust application form](#). Ensure you follow the instructions for dating the application, provided on page 1 of the form.

When you've completed the deed

- ✓ Remember to include the tax declaration and confirmation of identity forms which are attached to the loan trust application form.
- ✓ The settlor's financial adviser can deliver the deed to Quilter electronically via [PROMPT](#). Else, post the deed to Quilter, Sunderland, SR43 4JP
- ✓ The trust will need to be registered within 90 days of the settlement date or risk a £5,000 fine. *The trustees must send Quilter the proof of registration document.* [Our step-by-step guide](#) will assist with the process

Loan Trust (Discretionary Version)

Notice:

This draft document is provided strictly for consideration by the Settlor's legal advisers. Quilter Life & Pensions Limited accepts no responsibility for any loss of whatsoever nature occasioned by the adoption unamended or otherwise of this draft trust document.

Any advice given on completion of the Loan Trust (Discretionary version) is accordingly given on the basis that, having discussed the trust terms with legal advisers, the draft trust put forward for consideration is adopted duly completed but otherwise unamended.

1 - Introduction

This Settlement is made the

day of 20 (the Declaration Date) between

▶ See Note 1 regarding date.

The Settlor

Name

Address

▶ (The First Settlor) insert the full name and address of the First Settlor.

and Name

Address

▶ (The Second Settlor, if any) Insert the full name and address of the Second Settlor.

(the Settlor) of the one part (and where there are two persons identified then 'Settlor' means both of them jointly and the survivor of them after the death of the first to die), and

The Original Trustees

Name

Address

▶ See Note 2. Insert the full name and address of the first Trustee. If the Settlor is to be a Trustee, insert 'The Settlor'.

and Name

Address

▶ Full name and address of the additional Trustee (if any).

and Name

Address

▶ Full name and address of the additional Trustee (if any).

Settlement Date

- ➔ The settlor must date the deed on or after the day on which they raise a payment to Quilter in respect of the loan to the trust.

Cheque - Date the deed on or after the date on the cheque.

Bank transfer – Date the deed on or after the day which the instruction for payment is issued to the settlor's bank.

Enter the name and address of each settlor

The settlor is the person setting up the trust..

If there are two settlors, then any reference to 'the settlor' in this deed and guide means both of them.

Does it matter which settlor is listed first / second?

No, the order in which you write the settlors does not have any impact.

Enter the name and address of each trustee

- ➔ There is space for three trustees on this page, and a further space on the next page.
- ➔ If the settlor is a trustee, you can write 'the settlor' in name box. You do not need to repeat their address.

Does the settlor have to be a trustee?

No, though keep in mind that only the trustees are entitled to access details about the bond and will receive all correspondence.

How many trustees should there be?

We recommend at least at least one trustee who is not also the settlor and a minimum of two trustees in total.

The Original Trustees (continued)

and
Name

Address

(the Original Trustees') of the other part.

2 - Definitions

- (1) **'The Trustees'** means the Original Trustees or the Trustees of this Settlement for the time being.
- (2) **'The Trust Fund'** means:
 - (i) the sum lent to the Trustees as a Loan specified in clause 3 below;
 - (ii) all money investments or other property paid or transferred by any person to the Trustees or placed under the control of the Trustees and (in either case) accepted by the Trustees as additions to the Trust Property under clause (3) below; and
 - (iii) all property from time to time representing the above.
- (3) **'Trust Property'** means any property comprised in the Trust Fund.
- (4) **'The Trust Period'** means the period of 125 years beginning on the Declaration Date, which is the applicable perpetuity period under the rule against perpetuities.
- (5) **'The Beneficiaries'** means:
 - (i) the children, step-children and descendants of the Settlor (or of either person constituting the Settlor where this is a Dual Settlor Trust);
 - (ii) the spouse, former spouses, widows, widowers, Civil Partners, former Civil Partners and surviving Civil Partners of any persons in (i) above;
 - (iii) the widow, widower or surviving Civil Partner of the Settlor;
 - (iv) any nieces or nephews of the Settlor (or of either person constituting the Settlor where this is a Dual Settlor Trust);
 - (v) the brothers and sisters of the Settlor (or of either person constituting the Settlor where this is a Dual Settlor Trust);
 - (vi) the persons added under clause 6 below;
 - (vii) the persons or objects named in the following box (if any):

and

(viii) at any time during which there are no Beneficiaries under any of (i) to (vii) above, any company, body or trust established for charitable purposes only.
- (6) **'Protector'** means the person (if any) shown in the First Schedule below, or such other person as is the Protector for the time being.
- (7) **'Civil Partner'** has the meaning given to it in the Civil Partnership Act 2004 of the United Kingdom (or any replacement legislation).
- (8) Unless the context otherwise requires, a reference to any gender includes a reference to the other genders and the singular includes the plural and vice versa.
- (9) If the Settlor comprises one person at the Declaration Date, this is a **'Single Settlor Trust'**. If the Settlor comprises two persons at the Declaration Date, this is a **'Dual Settlor Trust'**.

3 - The Loan

- (1) The Settlor agrees with the Original Trustees to lend them £_____ to hold on the trusts of this Settlement (hereinafter referred to as 'the Loan'). The Original Trustees requested that the Loan be made by payment of a cheque, or payment by electronic transfer (where appropriate), to Quilter Life & Pensions Limited or the Trustees of the Trust named in clause 4B below.
- (2) Where this is a Dual Settlor Trust the Loan shall be deemed to have been provided in equal shares and made as joint tenants.
- (3) The terms of the Loan are as follows:
 1. The Loan shall be free of interest.
 2. The Loan or any part of the Loan shall be repayable on written demand by the Settlor to the Trustees.

Enter the name and address of each trustee (continued)

→ There is space for one more trustees on this page

Enter the name of any additional beneficiaries

This box is optional. You can use it to nominate beneficiaries which are not already covered by the standard definition of beneficiary which given section 2(5) (as outlined here) of the deed.

When would I use this box?

This loan trust is structured as a discretionary trust, which defines the beneficiaries by describing classes.

For example 5 (i) includes children and descendants of the settlor. This means the children, grandchildren and great grandchildren of either settlor are automatically included. This is regardless of whether they're born after the trust's declaration date.

We strongly recommend reviewing the definition of beneficiary as given in the deed. If you would like to include a specific person who is not covered by these definitions, then use the box provided.

If you need more space:

You can write out a list separately. We recommend writing "Section 2(5)(vii) Continuation" and the name of your trust in the header.

Important – Section 3 'The Loan' outlines the terms of the settlor's loan agreement with the trustees. The wording differs depending on whether the Limited or Unlimited liability version of the deed has been used.

Please ensure you have chosen the correct version of the trust deed.

The Original Trustees (continued)

and
Name

Address

Full name and address of the additional Trustee (if any).

(the Original Trustees) of the other part.

2 - Definitions

- (1) **'The Trustees'** means the Original Trustees or the Trustees of this Settlement for the time being.
- (2) **'The Trust Fund'** means:
 - (i) the sum lent to the Trustees as a Loan specified in clause 3 below;
 - (ii) all money investments or other property paid or transferred by any person to the Trustees or placed under the control of the Trustees and (in either case) accepted by the Trustees as additions to the Trust Property under clause (3) below; and
 - (iii) all property from time to time representing the above.
- (3) **'Trust Property'** means any property comprised in the Trust Fund.
- (4) **'The Trust Period'** means the period of 125 years beginning on the Declaration Date, which is the applicable perpetuity period under the rule against perpetuities.
- (5) **'The Beneficiaries'** means:
 - (i) the children, step-children and descendants of the Settlor (or of either person constituting the Settlor where this is a Dual Settlor Trust);
 - (ii) the spouse, former spouses, widows, widowers, Civil Partners, former Civil Partners and surviving Civil Partners of any persons in (i) above;
 - (iii) the widow, widower or surviving Civil Partner of the Settlor;
 - (iv) any nieces or nephews of the Settlor (or of either person constituting the Settlor where this is a Dual Settlor Trust);
 - (v) the brothers and sisters of the Settlor (or of either person constituting the Settlor where this is a Dual Settlor Trust);
 - (vi) the persons added under clause 6 below;
 - (vii) the persons or objects named in the following box (if any):

and

- (viii) at any time during which there are no Beneficiaries under any of (i) to (vii) above, any company, body or trust established for charitable purposes only;
- (6) **'Protector'** means the person (if any) shown in the First Schedule below, or such other person as is the Protector for the time being.
- (7) **'Civil Partner'** has the meaning given to it in the Civil Partnership Act 2004 of the United Kingdom (or any replacement legislation).
- (8) Unless the context otherwise requires, a reference to any gender includes a reference to the other genders and the singular includes the plural and vice versa.
- (9) If the Settlor comprises one person at the Declaration Date, this is a **'Single Settlor Trust'**. If the Settlor comprises two persons at the Declaration Date, this is a **'Dual Settlor Trust'**.

See Note 3. The Settlor's spouse or Civil Partner is not specifically included as a beneficiary under the Settlement.

If a person or entity you wish to benefit from the trust is not already covered by the definition of beneficiary in clause 2(5), enter their details here. For example, a friend or a specific charity.

3 - The Loan

- (1) The Settlor agrees with the Original Trustees to lend them £ to hold on the trusts of this Settlement (hereinafter referred to as 'the Loan'). The Original Trustees requested that the Loan be made by payment of a cheque, or payment by electronic transfer (where appropriate), to Quilter Life & Pensions Limited or the Trustees of the Trust named in clause 4B below.
- (2) Where this is a Dual Settlor Trust the Loan shall be deemed to have been provided in equal shares and made as joint tenants.
- (3) The terms of the Loan are as follows:
 1. The Loan shall be free of interest.
 2. The Loan or any part of the Loan shall be repayable on written demand by the Settlor to the Trustees.

Insert the amount of the Loan to be made by the Settlor to the Trustees.

Enter the amount of the settlor's loan

This is the amount which the settlor is lending to the trust and repayable on demand.

Important - if there will be an initial advice fee facilitated by Quilter you must refer to part 5 of the Collective Investment Bond application form when completing this box.

An initial fee may impact the value of the loan and amount repayable, depending on the reason for the fee. The application form provides two options.

Option A - An advice fee has been agreed by the settlor of the trust in relation to the advice given prior to making the loan to the trustees.

Example: John has received IHT planning advice which has led to his adviser recommending a Quilter loan trust. John will use £100,000 to fund the trust and has agreed a fee for the IHT planning advice of £1,000, which he would like Quilter to facilitate.

John writes a cheque to Quilter for £100,000 and completes the loan trust deed specifying a £99,000 loan. The amount repayable to John on demand is £99,000. £1,000 is paid by Quilter to his adviser. John must sign part 5 of the Collective Investment Bond application form to authorise the fee.

Option B - An advice fee has been agreed between the trustees in relation to the advice given to the trust.

Example: Anna has chosen to create a loan trust by lending her chosen trustees £100,000 who will invest the sum via a Collective Investment Bond. Her appointed trustees have been advised over how best to investment money, they have agreed an initial advice fee of £1,000 which they would like Quilter to facilitate.

Anna writes a cheque to Quilter for £100,000 and completes the loan trust deed specifying a loan of £100,000. The amount repayable to Anna is £100,000. £1,000 is paid by Quilter to the trustee's adviser. The trustees invest the remaining £99,000

3 – The Loan (continued)

- (4) The Original Trustees acknowledge receipt of the cheque, or bank instruction letter for an electronic transfer, in respect of the Loan and agree to the terms of the Loan by signing the Trust Deed.
- (5) 1. The Trustees and any former trustees of this Trust are (without limiting their rights) entitled to discharge their obligations under or in connection with the Loan using Trust Property.
2. Following his retirement, removal or replacement as a trustee of this Trust, no person is bound to release, assign or transfer Trust Property to the Trustees or any person unless any obligations of his under or in connection with the Loan are first discharged or extinguished or adequate security is given to him to secure their discharge.
3. In this clause 3:
- (i) 'obligations' includes (without limitation) existing, contingent and future obligations; and
 - (ii) an obligation is (without limitation) in connection with the Loan if it is in connection with:
 - the Loan; or
 - a loan, agreement or obligation entered into by trustees of this Trust to secure the discharge or extinguishment of the obligations of a person who ceases, or has ceased, to be a trustee of this Trust, such obligations arising under or in connection with (a) the Loan or (b) any successor loan, agreement or obligation entered into by any trustee or former trustee of this Trust that ultimately replaces liability of the Original Trustees under the Loan or secures the discharge or extinguishment of the liability of another trustee or former trustee of this Trust under the Loan or such a successor loan, agreement or obligation.

4 – The Trust

Now this Deed witnesses as follows:

- A. The Settlor has made a Loan as set out in clause 3 above to the Original Trustees. The Trustees shall hold the Trust Fund on the following Terms.
- B. This Settlement shall be known as

▶ Give the name of the trust eg. 'The A N Other family trust'

5 – Power to receive additional property

The Trustees may, during the Trust Period, accept additional money, investments or other property, of whatever nature and wherever situate, paid or transferred to them by any person. Such additional money, investments or other property shall, subject to any contrary direction, be held upon the trusts and with and subject to the powers and provisions of this Deed.

6 – Power of addition of Beneficiaries

- (i) Where this is a Single Settlor Trust, the Settlor during his lifetime; or
 - (ii) where this is a Dual Settlor Trust, the persons constituting the Settlor during their joint lifetimes; or
 - (iii) the survivor of the persons constituting the Settlor (where this is a Dual Settlor Trust), during his lifetime; or
 - (iv) any two Beneficiaries after the death of (i) the Settlor (where this is a Single Settlor Trust) or (ii) both persons comprising the Settlor (where this is a Dual Settlor Trust)
- may by deed or deeds and with the written consent of the Trustees at any time or times during the Trust Period add any persons to the Beneficiaries other than the Settlor or the Settlor's spouse or Civil Partner.

7 – Trust income

Subject to the overriding powers below:

- (1) The Trustees may accumulate the whole or part of the income of the Trust Fund during the Trust Period. That income shall be added to the Trust Fund.
- (2) The Trustees shall, subject to the prior written consent of the Protector (if any), pay or apply the remainder of the income of the Trust Fund to or for the benefit of any Beneficiaries, as the Trustees think fit, during the Trust Period.

Enter the trust's name

You can give the trust any name you like but keep in mind that this name will be used by Quilter as the addressee for all correspondence – so it should be a name which you don't mind the postal service seeing.

Now proceed to page 6

12 – Appointment of Trustees

- (1) A person may be appointed Trustee of this Settlement even though he has no connection with the British Isles.
- (2) The power of appointing new Trustees is exercisable by the following:
 - (i) the Protector (if any); or
 - (ii) if there is no Protector or there is no Protector able and willing to act, the Settlor;
 - (iii) in the absence of a Settlor and a Protector able and willing to act, the Trustees.
- (3) For the purposes of (2)(ii) above, the Protector shall be deemed to be unable or unwilling to act if he fails to respond to a written request from the Trustees within the period of time stated in sub-clauses 10(5) and 11(3) above.

13 – Retirement and removal of Trustees

- (1) Any Trustee may retire at any time provided 30 days' written notice is given to the person who currently has the power to appoint new Trustees.
- (2) The Protector may dismiss a Trustee by giving 30 days' notice in writing to such Trustee. Any person removed as Trustee shall (subject to any lien that he may have) take such steps as may be required for the vesting without delay in the continuing or new Trustees of all Trust Property in his name or under his control.
- (3) Neither the retirement nor dismissal described in this paragraph shall take effect unless and until there remain at least two Trustees or a Trustee which is a company carrying on a business which consists of or includes the management of trusts.

► See Note 4.

14 – Irrevocability

This Settlement is irrevocable.

15 – Further provisions

The provisions set out in the Second Schedule below shall have effect.

16 – Exclusion of the Settlor

Notwithstanding anything else in this Deed, no power conferred by this settlement shall be exercisable and no provision shall operate so as to allow the Trust Fund or its income to become payable to or applicable for the benefit of the Settlor in any circumstances whatsoever, except, for the avoidance of doubt, repayment of the Loan in accordance with clause 3.

17 – Law of the Trust

The governing law of this Settlement (including the Loan), and of its validity, construction, effects and administration, shall be that of England and Wales. All rights or obligations under this Deed shall be subject to the jurisdiction of the English Courts.

The First Schedule: The Protector

Protector's full name	
Address	

► See Note 5. Insert the full name and address of the Protector, (if any).

The Second Schedule: Administrative provisions

1. Additional powers

The Trustees have the following additional powers:

(1) Investment

- (a) The Trustees may make any kind of investment that they could make if they were absolutely entitled to the Trust Fund. In particular the Trustees may invest in land in any part of the world and in unsecured loans.
- (b) The Trustees are under no obligation to diversify the Trust Fund.
- (c) The Trustees may invest in speculative or hazardous investments but this power may only be exercised at the time when there are at least two Trustees, or the Trustee is a company carrying on a business which consists of or includes the management of trusts.

Enter the name and address of the protector (if any)

The protector is an optional role which can provide additional oversight of the action of the trustees. For example:

- ➔ The protector has the power to dismiss a trustee with 30 days' notice.
- ➔ The trustees must obtain the consent of the protector to exercise certain powers, such as power of appointment in section 6.

Who can be the protector?

Any person aged 18+, including anyone who is already a settlor or trustee.

However, we recommend using a person who is not otherwise party to the trust to ensure independence.

Now proceed to page 10

The Second Schedule: Administrative provisions (continued)

11. Change of governing law

The Trustees may during the Trust Period by deed with the consent of the Protector (if any) or otherwise the Settlor during his life, or of two Beneficiaries after his death, declare that from the date of such declaration:

- The law of any Qualifying Jurisdiction governs the validity of this Settlement, and its construction, effects and administration, or any severable aspects of this Settlement; and
- The courts of any Qualifying Jurisdiction have exclusive jurisdiction in any proceedings involving rights or obligations under this Settlement.

This power does not, however, permit the Trustees to change the governing law of the Loan, its construction or effects.

In this paragraph a "Qualifying Jurisdiction" is one which recognises trusts (as defined in the Hague Convention on the Law Applicable to Trusts and on their Recognition).

The Settlor's signatures and witnesses

Signed as a Deed and delivered by

First Settlor

In the presence of:

Witness signature

Witness full name

Witness address

Signed as a Deed and delivered by

Second Settlor (if any)

In the presence of:

Witness signature

Witness full name

Witness address

The Original Trustees' signatures and witnesses

Signed as a Deed and delivered by

Trustee

Date of birth

(dd/mm/yyyy)

In the presence of:

Witness signature

Witness full name

Witness address

All signatures must be made in blue or black ink. Digital signatures are not permitted.

The First Settlor's signature

Each Settlor, Trustee and Protector signature must be witnessed. A witness must be age 16 or over and cannot be a Settlor, Beneficiary, Trustee or Protector. One person may act as witness for all signatures. For each witness signature, provide full name and address.

The Second Settlor's Signature (if any).

Trustee signature and date of birth.

See Note 2: Where the Settlor is also a Trustee they must sign this deed twice. Once in each capacity.

Signatures and witnesses - General guidance

The deed must be signed by the settlor, protector (if any) and all trustees. Each signature requires an independent witness.

- All signatures must be made in ink. Digital signatures are not permitted.
- Where the settlor is also a trustee they must sign the deed twice. If they're also the protector, then they must sign in this capacity as well.
- An independent witness is any adult who is not otherwise a settlor, protector, trustee or potential beneficiary of the trust.
- The same witness may be used for multiple signatures.

Settlor signs

Settlor's witness signs

Settlor's witness name

Settlor's witness address

Second Settlor signs

Second Settlor's witness signs

Second Settlor's witness name

Second Settlor's witness address

Trustee signs

Trustee date of birth

Trustee's witness signs

Trustee's witness name

Trustee's witness address

The Original Trustees' signatures and witnesses (continued)

Signed as a Deed and delivered by _____ Trustee
 Date of birth: [][][][][][] (dd/mm/yyyy)

In the presence of:
 Witness signature: _____
 Witness full name: _____
 Witness address: _____

Signed as a Deed and delivered by _____ Trustee
 Date of birth: [][][][][][] (dd/mm/yyyy)

In the presence of:
 Witness signature: _____
 Witness full name: _____
 Witness address: _____

Signed as a Deed and delivered by _____ Trustee
 Date of birth: [][][][][][] (dd/mm/yyyy)

In the presence of:
 Witness signature: _____
 Witness full name: _____
 Witness address: _____

The common seal of the Original Trustees has been affixed on this date: [][][][][][] (dd/mm/yyyy)

In the presence of:
 Director/Secretary/Authorised Signatory Name of person signing: _____
 Place of sealing and signing: _____
 and the Protector signifies consent to act as Protector of this Settlement (if applicable)

Additional Trustee signature and date of birth (where applicable)

Additional Trustee signature and date of birth (where applicable)

Additional Trustee signature and date of birth (where applicable)

Where a company is to be appointed as a Trustee, the common seal of the company may be affixed here. If the company does not use a common seal, the authorised signatory(ies) should sign in the Trustee signature boxes above.

Trustee signs
Trustee date of birth
Trustee's witness signs
Trustee's witness name
Trustee's witness address

Trustee signs
Trustee date of birth
Trustee's witness signs
Trustee's witness name
Trustee's witness address

Trustee signs
Trustee date of birth
Trustee's witness signs
Trustee's witness name
Trustee's witness address

Corporate trustee's seal

A corporate trustee may sign the deed by placing the company's seal here. You must include:

- ➔ Date on which the seal was applied
- ➔ Signature of a director / secretary or other authorised signatory
- ➔ Address where the seal was applied (usually the company's address)

If the corporate trustee does not use a seal, the signatory(ies) may sign in the trustee signature boxes above.

The Protector's signature and witness

Signature of Protector Protector

Date of birth (dd/mm/yyyy)


In the presence of:

Witness signature

Witness full name

Witness address

[Reset](#)



[See here's signature and date of birth of the Protector \(if any\).](#)

Protector signs
Protector's date of birth
Protector's witness signs
Protector's witness name
Protector's witness address

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Please be aware that calls and electronic communications may be recorded for monitoring, regulatory and training purposes and records are available for at least five years.

Quilter is the trading name of Quilter Investment Platform Limited which provides an Individual Savings Account (ISA), Junior ISA (JISA) and Collective Investment Account (CIA) and Quilter Life & Pensions Limited which provides a Collective Retirement Account (CRA) and Collective Investment Bond (CIB).

Quilter Investment Platform Limited and Quilter Life & Pensions Limited are registered in England and Wales under numbers 1680071 and 4163431 respectively.

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