

For investors

Discretionary Loan Trust

Trusts establish legal entitlements and have material financial and taxation implications.

This draft Trust Deed has been drawn up based on our understanding of current law and HM Revenue & Customs practice.

The Trust Deed is presented as a draft only and anyone intending to create a trust is strongly advised to consult their own legal and tax advisers to make sure that the draft Trust Deed meets their requirements.

Aegon cannot accept any responsibility for the consequences arising from the use of this draft Trust Deed.

Important Notes

- This draft Discretionary Loan Trust Deed should only be completed with the assistance of an FCA registered adviser and with appropriate legal and tax advice. This draft Discretionary Loan Trust Deed is **NOT SUITABLE** for use by an investor without advice.
- This draft Discretionary Loan Trust Deed and draft Loan Agreement are suitable for use only when an investor wishes to establish a trust by making a loan to the Trustees with the intention that those Trustees then make an investment on the Aegon or Aegon Retirement Choices Platforms. The Trustees will hold the investments for the benefit of any one or more Beneficiaries excluding the Settlor (the person declaring the Trust). The Settlor (as Lender) and the Trustees also execute a Loan Agreement (a draft of which is also provided) under which the Settlor can request repayment of their loan at any time.
- The Discretionary Loan Trust is a settlement and has important legal and tax consequences. For a full explanation of the features and the legal and tax implications of this trust, investors should refer to their tax and legal advisers. A brief explanation can be found by referring to The investor's guide to the Discretionary Loan Trust. A more comprehensive guide for advisers can be found in A guide to the Discretionary Loan Trust.
- The main purpose of the Discretionary Loan Trust arrangement is to allow the Settlor access to the initial investment at any time whilst allowing for the growth on the investment to accumulate outside of the Settlor's estate, and therefore not be subject to inheritance tax (IHT).
- To ensure that the trust is effective for IHT the Settlor is excluded from all benefit so as to avoid the "reservation of benefit" provisions. However, there is an option to include the spouse of the Settlor among the Beneficiaries – this should only be done after taking advice as, while it will have no adverse IHT consequences, it will have income tax implications.
- If, having obtained legal advice, the investor wishes to execute the draft as a deed, the Settlor and the Trustees should follow the completion instructions in the margin of the document.
- After the trust deed has been executed, the Settlor as Lender and the Original Trustees as borrower should execute the Loan Agreement. A draft is also provided for this purpose.
- The trust is only appropriate for an individual settlor ie. not for joint settlors.
- Any amendments should only be made after proper advice has been sought and taken and before the deed is signed. Any amendments should be initialled by all the parties to the deed. No alterations should be made after the deed has been signed.

Contents

| | | |
|---------|---|---|
| Part 1 | Trust Declaration | 3 |
| Part 2 | Definitions | 4 |
| Part 3 | Trust Income | 5 |
| Part 4 | Overriding Powers | 5 |
| Part 5 | Trustees' further powers over Income and Capital | 5 |
| Part 6 | Exclusion of the Settlor | 6 |
| Part 7 | Default Clause | 6 |
| Part 8 | Administrative Powers | 6 |
| Part 9 | Appointment, Retirement and Dismissal of Trustees | 6 |
| Part 10 | Trustee Remuneration | 7 |
| Part 11 | Liability of Trustees | 7 |
| Part 12 | Governing Law | 8 |
| Part 13 | Signatures | 8 |

Part 1 | Trust Declaration

This Trust Deed is made the

Insert here the date this Deed is signed and the name and address of the Settlor.

day of in the year

between

of

(hereinafter called the **Settlor**) of the first part [and the Settlor] and

Insert here the name(s) and address(es) of the additional Trustee(s). At least one additional Trustee must be appointed. If the Settlor is not to be a Trustee, please delete the words [and the Settlor] from this section. The Settlor and the Trustees should initial the deletion. The maximum number of Trustees should not exceed four in total (including the Settlor if applicable).

of

and

of

and

of

and

of

(hereinafter together called the **Original Trustees**) of the second part

As follows:

The Settlor hereby declares his intention to make an interest-free loan to the Original Trustees so that the monies lent shall be held by the Trustees (subject only to the right of the Settlor to be repaid the principal amount of the loan on demand) on the trusts and subject to the powers and provisions contained in this Trust Deed.

The Original Trustees hereby agree to receive the loan from the Settlor and to hold the monies received from the Settlor on the terms stated above.

It is intended that the Original Trustees invest the loan money on the Aegon or Aegon Retirement Choices Platforms.

Further money, investments or other property may be paid or transferred to the Trustees by way of addition.

This Trust shall be known as:

Insert here the name of the Trust e.g. The 2015 John Smith Discretionary Loan Trust.

Part 2 | Definitions

In this Trust Deed in addition to the terms defined above the following expressions shall have the following meanings and unless the context does not permit the singular shall include the plural and the masculine shall include the feminine and vice versa.

- (i) **Appointor** means the Settlor while he is alive and of full capacity and the appointment is not in favour of the Settlor's spouse, and subject thereto the Trustees.
- (ii) **Beneficiaries** means:
 - (a) the children and remoter issue of the Settlor whenever born,
 - (b) any spouse, former spouse, widow or widower of any such child or remoter issue,
 - (c) any person (other than the Settlor) who shall upon the death of the Settlor become beneficially entitled to the whole or any part of the estate of the Settlor whether by virtue of any will or codicil or under the rules of intestacy or by virtue of survivorship or otherwise,
 - (d) any person (other than the Settlor and, where paragraph (g) below does not apply, the spouse of the Settlor) nominated in writing to the Trustees by the Settlor as a Beneficiary,
 - (e) the Default Beneficiaries (as defined in paragraph (v) below),
 - (f) the widow, widower or surviving registered civil partner of the Settlor,
 - (g) any spouse of the Settlor but only if the Settlor has placed his initial in the box next to this paragraph,
 - (h)
 - (i) any charity recognised as such under English law.
- (iii) **Capacity** means mental capacity within the provisions of the Mental Capacity Act 2005 or any Act which supersedes that Act.
- (iv) **Child, Children and Issue** includes any illegitimate, step, adopted or legitimated (whether adopted or legitimated before or after the date hereof) child, children or issue.
- (v) **Default Beneficiary(ies)** means the one or more persons named in the boxes below:

| Name(s) | Share if more than one (%) |
|---|--|
| <input data-bbox="408 1507 1002 1559" type="text"/> | <input data-bbox="1067 1507 1517 1559" type="text"/> |
| <input data-bbox="408 1588 1002 1639" type="text"/> | <input data-bbox="1067 1588 1517 1639" type="text"/> |
| <input data-bbox="408 1668 1002 1720" type="text"/> | <input data-bbox="1067 1668 1517 1720" type="text"/> |

- (vi) **Person** includes a person anywhere in the world and includes a Trustee.
- (vii) **Spouse** includes a Civil Partner within the meaning of Section 1 of the Civil Partnership Act 2004.
- (viii) **Trustees** means the Original Trustees or the Trustees for the time being hereof.
- (ix) **Trust Fund** means all the money, investments or other property paid or transferred by any person or persons to or so as to be under the control of and (in either case) accepted by the Trustees as being held on the trusts and subject to the powers and provisions contained in this Trust Deed, any assets at any time added thereto by way of further settlement, capital accretion, accumulation of income or otherwise and all assets from time to time representing the same.

Initial the box next to paragraph (g) if you wish your spouse to be included as a Beneficiary.

In the box next to paragraph (h) insert the name(s) or class of any other Beneficiary you wish to include and not already covered under categories (a) – (g) above.

In the boxes under paragraph (v) insert the name or names of the person(s) you wish to benefit at the end of the Trust Period if no appointment has been made by then. If more than one person is named state the percentage shares in which they are to benefit. At least one person must be specified here. The shares must add up to 100%.

- (x) **Trust Property** means any property comprised in the Trust Fund.
 - (xi) **Trust Period** means the period of 125 years from the date of this Deed which period shall be the applicable perpetuity period (as specified by Section 5(1) of the Perpetuities and Accumulations Act 2009).
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Part 3 | Trust Income

Subject to the Overriding Powers specified in Part 4 below:

- (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 Beneficiaries, as the Trustees think fit, during the Trust Period.
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Part 4 | Overriding Powers

- (i) The Appointor shall have power by deed revocable (whether by the person making the deed or some other person) during the Trust Period or irrevocable to appoint that they shall hold the Trust Fund for the benefit of any Beneficiary or Beneficiaries on such terms as the Appointor in their absolute discretion thinks fit and any such appointment may create any provisions and in particular discretionary trusts, protective trusts and dispositive or administrative powers exercisable by any Person.
- (ii) The Appointor shall have power by deed to declare that the Trustees hold any part of the Trust Fund on trust to transfer it to the trustees of another settlement wherever established to hold on the terms of that settlement freed and released from the terms of this Trust provided every person who may benefit is (or would, if living, be) a Beneficiary.

Provided that:

- (a) no appointment shall infringe the rule against perpetuities or affect the entitlement of any person to any payment made or asset transferred to him previously, and
 - (b) where the Appointor is a Trustee, no appointment shall be made in favour of a Beneficiary who is also a Trustee, or a spouse of a Trustee, unless there is at least one other Trustee who does not, and whose spouse does not, benefit directly or indirectly from the appointment.
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Part 5 | Trustees' further powers over Income and Capital

- (i) The Trustees shall have power to pay, transfer, or apply the whole or any part of the capital of the Trust Fund to which a Beneficiary is entitled for or towards the advancement or maintenance, education or benefit of such Beneficiary.
 - (ii) The Trustees may lend money which is Trust Property to any Beneficiary without security, on such terms as they think fit.
 - (iii) Where the Trustees wish to pay, transfer, or apply any capital or income to or for the benefit of a Beneficiary who is under a legal disability they may do so by paying the income or capital to any parent or guardian of that Beneficiary or to such other person on behalf of such Beneficiary as the Trustees shall think fit and the receipt of such person shall be a complete discharge to the Trustees who shall be under no obligation to see to the proper application thereof.
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Part 6 | Exclusion of the Settlor

Other than by way of repayment of any loan made by the Settlor to the Trustees, none of the trust powers or provisions hereof 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, where paragraph (g) in Part 2(ii) above does not apply, the spouse of the Settlor for the time being, or of either of them where appropriate.

Part 7 | Default Clause

Subject to the provisions in Parts 3 and 4 above the Trust Fund shall be held on trust for the Default Beneficiaries absolutely and if more than one in the shares set out in paragraph (v) of Part 2.

Part 8 | Administrative Powers

In addition to any powers conferred upon them by law the Trustees shall have the following powers:

- (i) All the powers of an absolute owner in respect of any asset forming part of the Trust Fund including the power to exercise any option or to sell or realise any such asset.
 - (ii) Power to borrow money for investment or any other purpose of the Trust. Money borrowed shall be treated as Trust Property.
 - (iii) Power to mortgage, surrender or otherwise deal with the said asset in such manner as the Trustees shall in their absolute discretion consider appropriate.
 - (iv) Power to invest or apply the Trust Fund in the purchase or acquisition of either income or non-income producing assets including life assurance policies or such stocks, funds, shares, securities or other investments or property of whatever nature and wherever situated and whether involving liabilities or not with or without security as the Trustees in their absolute discretion shall think fit with the intention that the Trustees shall have the same powers as absolute owners who are beneficially entitled.
 - (v) Power to appoint solicitors, investment managers, stockbrokers, accountants, nominees or agents in any other capacity including any company or corporation to manage or assist with the management of this Trust and to delegate to them such powers to hold and manage in their own names or otherwise the Trust Property subject only to reporting to the Trustees in such manner and at such intervals as they may be required by the Trustees and to allow the persons so appointed, whether of their own number or not, suitable remuneration at their usual professional rates at the time of acting.
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Part 9 | Appointment, Retirement and Dismissal of Trustees

- (i) The power to appoint by deed new or additional trustees shall vest in the Appointor. The number of Trustees should not exceed four in total.
- (ii) The Settlor whilst alive and of full capacity shall have power to dismiss a Trustee by deed provided at least one Trustee remains after such dismissal who is not the Settlor or the spouse of the Settlor for the time being. The dismissed Trustee shall co-operate (without expense to him, save in respect of any default in the function of trusteeship) in executing any documents or consents required to remove his involvement with the Trust Property and to vest it in the continuing Trustees.
- (iii) A Trustee may be discharged even though there is neither a trust corporation nor two Persons to act as Trustees provided that there remains at least one Trustee who is not the Settlor or the spouse of the Settlor for the time being.

Part 10 | Trustee Remuneration

- (i) A Trustee acting in a professional capacity is entitled to receive reasonable remuneration out of the Trust Fund for any services that he provides to or on behalf of the Trust.
- (ii) For this purpose, a Trustee acts in a professional capacity if he acts in the course of a profession or business which consists of or includes the provision of services in connection with:
 - (a) the management or administration of trusts generally or a particular kind of trust, or
 - (b) any particular aspect of the management or administration of trusts generally or a particular kind of trust.
- (iii) (a) A trust corporation (within the meaning of the Trustee Act 1925) or company authorised to undertake trust business, may act as Trustee on the basis of its standard terms as published at the date of its appointment, or as published from time to time.
 - (b) The trust corporation or authorised company, is entitled to receive remuneration and other charges in accordance with those terms.

Part 11 | Liability of Trustees

- (i) A lay Trustee (within the meaning of Section 28 Trustee Act 2000) shall not be liable for a loss to the Trust Fund unless that loss or damage was caused by his own actual fraud or dishonesty or conscious wrongdoing.
- (ii) A Trustee who is not a lay Trustee (within the meaning of Section 28 Trustee Act 2000) shall not be liable for a loss to the Trust Fund unless that loss or damage was caused by his own actual fraud or dishonesty or conscious wrongdoing or negligence.
- (iii) A Trustee shall not be liable for any loss arising out of acting in accordance with the advice of counsel, of at least five years' standing, with respect to the Trust. The Trustees may in particular conduct legal proceedings in accordance with such advice without obtaining a Court Order. A Trustee may recover from the Trust Fund any expenses where he has acted in accordance with such advice.
- (iv) The above sub-paragraph (iii) does not apply:
 - (a) if the Trustee knows or has reasonable cause to suspect that the advice was given in ignorance of material facts;
 - (b) if proceedings are pending to obtain the decision of the court on the matter;
 - (c) in relation to a Trustee who has a personal interest in the subject matter of the advice, or
 - (d) in relation to a Trustee who has committed a breach of trust relating to the subject matter of the advice.
- (v) The Trustees may distribute Trust Property or income in accordance with this Trust but without having ascertained that there is no Person who is or may be entitled to any interest therein by virtue of a relationship unknown to the Trustees. The Trustees shall not be liable to such a Person unless they have notice of his claim at the time of the distribution.

Part 12 | Governing Law

This Trust shall be irrevocable and shall be governed by and construed in accordance with the law of England.

Part 13 | Signatures

IN WITNESS whereof the parties hereto executed this deed the day and year stated above

SIGNED AS A DEED AND DELIVERED by the said Settlor:

Name of Settlor

Signature of Settlor

The Settlor should sign here and their signature should be witnessed.

In the presence of
(name and address of Witness):

A witness should be someone over 18 and not party to this Deed or a Beneficiary.

Signature of Witness

SIGNED AS A DEED AND DELIVERED by the said Trustee(s):

Name of Trustee

Name of Second Trustee

Signature of Trustee

Signature of Second Trustee

The Additional Trustee(s) should sign here. Each signature should be witnessed.

In the presence of
(name and address of Witness):

In the presence of
(name and address of Witness):

A witness should be someone over 18 and not party to this Deed or a Beneficiary.

Signature of Witness

Signature of Witness

Part 13 | Signatures continued

The additional Trustee(s) should sign here. Each signature should be witnessed.

A witness should be someone over 18 and not party to this Deed or a Beneficiary.

Name of Third Trustee

Signature of Third Trustee

Full name of Witness

In the presence of
(name and address of Witness):

Signature of Witness

Name of Fourth Trustee

Signature of Fourth Trustee

Full name of Witness

In the presence of
(name and address of Witness):

Signature of Witness

