

# Market Bulletin

Ref: Y5126

<b>Title</b>	Funds at Lloyd's – new trust deeds
<b>Purpose</b>	To advise members of the introduction of new trust deeds under which Funds at Lloyd's (FAL) are held
<b>Type</b>	Event
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<b>Date</b>	18 October 2017
<b>Deadline</b>	
<b>Related links</b>	<a href="https://www.lloyds.com/the-market/operating-at-lloyds/regulation/lloyds-trust-deeds">https://www.lloyds.com/the-market/operating-at-lloyds/regulation/lloyds-trust-deeds</a>

The purpose of this Bulletin is to provide details of the introduction of new (17) forms of trust deeds under which members' Funds at Lloyd's ("FAL") are held. Copies of the deeds can be found on [www.lloyds.com](http://www.lloyds.com) at the link above.

Earlier in the year Lloyd's issued a consultation document on the proposed introduction of new forms of FAL trust deed. The consultation document was sent to the LMA, the ALM and the members' agents, and notified to the PRA and FCA. No substantive comments were received from the market in response to the consultation, and all the proposed amendments (with one exception) have been incorporated into the new form deeds.

The new forms of trust deed (as listed in Appendix 1) have now been prescribed by the Council pursuant to paragraph 16 of the Membership Byelaw. The majority of the

amendments are only of relevance in the case where the member (or depositor) providing the FAL is a natural person, and as such will be of most interest to private capital participants. Further details of the amendments are set out in Appendix 2.

The new deeds will be available for use in relation to this year's Coming into Line exercise. Members which have already completed a new trust deed in the (14) form will be given the opportunity to replace that with a new (17) deed if they wish, although deeds executed in the (14) form will remain valid. There is no obligation on members/depositors party to a (14) (or earlier) form of trust deed to transfer to the new (17) form, however, members/depositors that are natural persons may wish to do so given the increased flexibility that exists under the new deed in the case where the member/depositor subsequently dies.

For queries on the wording of the new deeds, please contact Simon Hardy in the Legal Department ([simon.hardy@lloyds.com](mailto:simon.hardy@lloyds.com) tel: 020 7327 5264), or for operational queries contact Anne Cooper ([anne.cooper@lloyds.com](mailto:anne.cooper@lloyds.com) tel: 01634 392576).

**FAL TRUST DEEDS – NEW (17) VERSIONS**

<b><u>New prescribed forms of FAL Trust Deed</u></b>	
<i><u>Non-Interavailable Deeds</u></i>	<u>Reference</u>
Deposit Trust Deed (General business)	DTD (GEN) (17)
Deposit Trust Deed (Third Party Deposit) (General business)	DTD (TP) (GEN) (17)
Security and Trust Deed (General business)	STD (GEN) (17)
Deposit Trust Deed (Life business)	DTD (LIFE) (17)
Deposit Trust Deed (Third Party Deposit) (Life business)	DTD (TP) (LIFE) (17)
Security and Trust Deed (Life business)	STD (LIFE) (17)
<i><u>Corporate Interavailability Deeds</u></i>	
Deposit Trust Deed (Interavailable – Corporate Member) (General business)	DTD (IA – CM) (GEN) (17)
Deposit Trust Deed (Third Party Deposit) (Interavailable – Corporate Member) (General business)	DTD (TP) (IA – CM) (GEN) (17)
Security and Trust Deed (Interavailable – Corporate Member) (General business)	STD (IA – CM) (GEN) (17)
Deposit Trust Deed (Interavailable – Corporate Member) (Life business)	DTD (IA – CM) (LIFE) (17)
Deposit Trust Deed (Third Party Deposit) (Interavailable – Corporate Member) (Life business)	DTD (TP) (IA – CM) (LIFE) (17)
Security and Trust Deed (Interavailable – Corporate Member) (Life business)	STD (IA – CM) (LIFE) (17)
<i><u>Name's Interavailability Deeds</u></i>	
Deposit Trust Deed (Interavailable – Individual Member) (General business)	DTD (IA – IM) (GEN) (17)/ CM401 (17)
Deed of Application (re STD (10)/(14)) (General business)	CM402 (17)
Deed of Application (re STD G92) (General business)	CM402 (17) (re G92)
Security and Trust Deed (Interavailable – Corporate Member) (General business)	STD (IA – IM) (GEN) (17)/ CM412 (17)
Deposit Trust Deed (Interavailable – Individual Member) (Life business)	DTD (IA – IM) (LIFE) (17)/ CM421 (17)
Deed of Application (re STD (10)/(14)) (Life business)	CM420 (17)
Deed of Application (re STD L92) (Life business)	CM420 (17) (re L92)

### **DETAILS OF THE AMENDMENTS TO THE FAL TRUST DEEDS**

*References to clause numbers below are to the clauses of the new Deposit Trust Deeds in the form DTD (GEN) (17) or DTD (TP) (GEN) (17). Except where otherwise stated, the same amendments will be made to the equivalent clauses in the other FAL trust deeds.*

<u>Clause</u>	<u>Description of and rationale for amendment</u>
2	The change from “individual Member” to “Member who is an individual” simply clarifies that the wording is referring to a Member who is a natural person. The same change has been made in respect of the reference to the Depositor in the DTD (TP) (GEN) (17).
4(a)	The addition of the words “(or after the death of a Member who is an individual any person who is mentioned in clause 6(c)(ii) below)” clarifies for whose benefit the Trust Fund and its income is held following the death of the Member. In the DTD (TP) (GEN) (17) this clause refers to the Depositor (as the residual beneficiary of the Trust Fund) rather than the Member.
4(b)	The change from “whether made by the Member” to “whether made in respect of the underwriting business at Lloyd’s of the Member” removes any uncertainty that a transfer to a Deposit Trust Deed (Third Party Deposit) to which the Member is a party is permitted.
4(b)(ii)	<p>Clause 4(b) sets out the power of transfer, which provides for all or part of the Trust Fund to be transferred to another Trust Fund of the same or a different member. The amendment to sub-clause (ii), which removes the wording requiring the Society to satisfy itself that the Beneficiaries will be capable of benefitting under the trust deed to which the Trust Fund is transferred, is designed to make the power less restrictive. In this regard, it should be noted that it will still be necessary for the Society, before exercising the power, to satisfy itself that the transfer will not materially disadvantage any of the Beneficiaries.</p> <p>The revised wording is already found in some of the existing FAL deeds (e.g. those used for interavailability arrangements) so this amendment brings all the trust deeds into line.</p>
6(c)	<p>The power of advancement as currently drafted cannot be used in the case where the Member is deceased, because any transfer cannot said to be for his ‘benefit’. Additional wording has therefore been included at sub-clause (ii) (with the existing wording now at sub-clause (i)) to allow the power to be used following death, to provide for the transfer of all or part of the Trust Fund for the benefit of the persons entitled to it, as determined by the Member’s will or under the intestacy rules.</p> <p>In the case of the third party Deposit Trust Deed, it would be the death of the Depositor that is addressed in clause 6(c)(ii).</p>
14	This clause addresses death of the Member. Clause 14 provides how certain provisions of the deed will be exercised following the Member’s death – in particular, the power of transfer in clause 4(b) of the deed will now be exercisable with the consent of the Member’s personal representatives after the Member has died. Under the current form of deed this power ceases to be available once the Member is deceased, because he cannot consent to its exercise.

	<p>In the case of the DTD (TP) (GEN) (17), clause 14 has been drafted to cater for the death of the Depositor <u>or</u> the Member. Accordingly:</p> <ul style="list-style-type: none"> <li>• under clause 14(a), notification of the exercise of the power to vary under clause 3 should be to the personal representatives of a Member or Depositor who is deceased;</li> <li>• under clause 14(b), the power of transfer in clause 4(b) can be exercised with the consent of the personal representatives of the deceased Member or Depositor, and the power of advancement under clause 6(c)(i) may be exercised in favour of the Member with the consent of the Depositor's personal representatives;</li> <li>• under clause 14(c), the power of substitution under clause 6(d) can be exercised with the consent of the personal representatives of the deceased Member or Depositor;</li> <li>• under clause 14(d), references to the Depositor in clause 9 should, following the Depositor's death, be read as references to the Depositor's personal representatives.</li> </ul>
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### **Scope of Amendments**

As the amendments principally concern the death of an individual Member (or Depositor), there are some FAL trust deeds to which certain of the changes would not be relevant (because there are no circumstances in which the Member/Depositor would be a natural person). As such, only certain of the above revisions have been made to the following deeds:

- Deposit Trust Deed (Interavailable – Corporate Member) – Life and General business versions;
- Security and Trust Deed (Interavailable – Corporate Member) – Life and General business versions.

In the Deposit Trust Deed (Third Party Deposit) (Interavailable – Corporate Member) – Life and General business versions, the amendments that cater for the death of the Depositor would be included, but not those that cater for the death of the Member (as this deed is only used for members in corporate form).