



Kingdom of Bahrain

Central Bank of Bahrain

Financial Trusts



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The King of Bahrain*



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The Crown Prince and
Commander-in-Chief of
the Bahrain Defence Force*

*Law No. (23) of the Year 2006
Regarding Financial Trusts*

*W*e, Hamad Ibn Isa Al-Khalifa, King of the Kingdom of Bahrain

Having examined the Constitution,

The Legislative Decree No. 14 of 1971, regarding the Authentication and Certification of Documents,

The Bahrain Monetary Agency Law, promulgated by Decree No. 23, of 1973, and the amendments thereof;

The Real Estate Registration Law, promulgated by Legislative Decree No. 15, of 1979,

The Civil Law promulgated by Legislative Decree No. 19, of 2001, and,

The Law of Commercial Companies, promulgated by Legislative Decree No. 21 of 2001.

The Shura Council and the Council of Representatives have approved the Law that follows hereunder, and

We hereby ratify it and order that it be promulgated.

Article (1)

Definitions

In applying the provisions of this law, the following words and expressions shall be given the meaning opposite each of them unless the context requires otherwise:

Agency:	The Bahrain Monetary Agency or any other legal entity or department to whom jurisdiction of the Bahrain Monetary Agency is transferred.
Settlor	The natural or legal entity creating a financial trust in accordance with this law.
Beneficiary:	A person having a personal right by virtue of the Trust Instrument.
Trustee:	The person to whom the ownership of the Trust Property is transferred in order to exercise the duties and powers specified in the Trust Instrument with a view to achieving the purpose of the trust or satisfying the interests of the beneficiary.
Trust Protector:	The person appointed to exercise the powers provided for in Article (9) of this Law.
Trust Instrument:	The written agreement between the Settlor and the Trustee by which the trust is created in accordance with this Law.
Trust Property:	Includes any form of property, transferable or intransferable or any financial right on an intangible asset transferred by the Settlor to the ownership of the Trustee in order to exercise the duties and powers specified in the Trust Instrument with a view to achieving the purpose of the trust or the interest of the Beneficiary.
Licensee:	A person licensed by the Agency to perform the activities of a Trustee pursuant to this law.

Dispute

Settlement Committee: The Committee provided for in Article (35) of this Law.

Person: A natural person or a legal entity

Article (2) Creation of the Trust

Without prejudice to Article (859) of the Civil Law, a financial trust shall be created by virtue of a 'Trust Instrument' transferring ownership of the Trust Property from the Settlor to the Trustee, to exercise in relation thereto the duties and powers specified in the Trust Instrument, with a view to achieving the purpose of the trust or the interest of the beneficiary.

Article (3) Duration of the Trust

The duration of the trust shall not exceed one hundred years from the date of its creation. If a longer period is specified, the trust shall be considered as constituted for a hundred years.

Article (4) The Trust Instrument

A- The Trust Instrument must be in writing and must be authenticated by a competent official authority.

B- The Trust Instrument shall contain:

- 1- Details of the identity of the Settlor and the Trustee.
- 2- Identification of the purpose of the trust, or the Beneficiary of the trust, or such information as enables the identification of the Beneficiary if the Beneficiary is a person not identified by name at the time of creating the trust. The Beneficiary may be a person to be in the future.
- 3- Identification of the Trust Property or such description of its basic characteristics as enables the identification of the Trust Property.

4- Specification of the duration of the trust.

5- Identification of the duties and powers of the Trustee.

The trust shall be void if any of the above is not included in the Trust Instrument.

C- The following may be included in the Trust Instrument:

1- Rules of dealing in the Trust Property.

2- The rights of the Beneficiary and the share allocated to each Beneficiary in case of multiple Beneficiaries.

3- The name by which the trust shall be known.

4- Appointment of a Trust Protector.

5- Consequences of the termination of the trust.

6- Any other provisions regulating the execution of the duties of the Trustee and the relationship between the Trustee and each of the Settlor, the Trust Protector, and the Beneficiary.

Article (5)

Object and Purpose of Obligation in the Trust

The object of the trust must be feasible and adequately defined, and the object and purpose of the trust must not violate the law or public policy or public morality. Otherwise, the trust shall be void and the situation shall be restored to what it was before the creation of the trust.

Article (6)

Obligations of the 'Settlor'

A - The Settlor shall be obliged to:

1- Deliver the Trust Property to the Trustee within a period not exceeding six months from the date of creating the trust, unless agreed otherwise.

2- Do all that is necessary on his part to transfer the ownership of the Trust Property and deliver it to the Trustee within the period referred to in Sub-Article 6(A)-1, and refrain from any action that has the effect of making

such transfer difficult or impossible.

3- Deliver to the Trustee all deeds and documents and provide him with all the necessary information relating to the Trust Property within the time limit specified in Sub-Article 6(A)-1.

B -The Beneficiary may oblige the Settlor to fulfill the obligations provided for in Sub-Article 6(A).

Article (7) Retention of certain powers by the 'Settlor'

The Settlor may reserve for himself, by the Trust Instrument, the right to exercise certain powers, provided that this does not prejudice the independence of the Trustee provided for in Article (11) of this law.

Article (8) Addition to the Trust Property

A- Unless the Trust Instrument provides otherwise, the Settlor may add any property to the Trust Property with a view to achieving the purpose of the trust or satisfying the interest of the Beneficiary,

B- Any products, revenue, profits or growth generated by the Trust Property shall be added to the Trust Property.

Article (9) The Trust Protector

The Trust Instrument may provide for the right of the Settlor to appoint a person to be called 'Trust Protector' to undertake the following:

- 1- Supervise and question the Trustee regarding the performance of his duties as provided for in the Trust Instrument and oblige the Trustee to perform such duties.
- 2- Exercise the powers of the Settlor within the limits laid down in the Trust Instrument.
- 3- Perform any other duties provided for in this law.

Article (10) The Trustee

- A- The trust may have one or more Trustees. In any case, at least one of the Trustees must be licensed in accordance with this law; otherwise the trust shall be void.
- B- If a natural person, the Trustee must have full legal capacity, be of good character and reputation, and have not been convicted in a final judgment, of a felony or misdemeanour relating to honour or dishonesty, unless he has been rehabilitated. If a legal entity, the Trustee must take one of the forms of commercial companies established in the Kingdom of Bahrain, or a subsidiary of a foreign company licensed to undertake such activities in the Kingdom of Bahrain, in accordance with the Commercial Companies Law.
- C- The Licence to exercise the activities of a Trustee shall be granted in accordance with the procedures and conditions determined by a resolution to be issued by the Governor of the Agency.

Article (11) Independence of the Trustee

- A- The Trustee must be independent of the Settlor, and must exercise the duties and powers as set out in the Trust Instrument and this law, without interference or guidance from the Settlor. The trust shall be void if the Trust Instrument provides otherwise.
- B- The mere exercise by the Settlor of his right to question the Trustee and remove him from the trusteeship, if he exceeds the limits stipulated in the Trust Instrument or if he violates the provisions of this law, shall not be regarded as a prohibited interference.

Article (12) Remuneration of the Trustee

- A- The Trustee shall be entitled to remuneration for the performance of the duties

provided for in the Trust Instrument and this law, unless the Trust Instrument or a subsequent written agreement clearly stipulates otherwise.

- B- The remuneration may be calculated as a percentage of the annual net profits achieved by the trust after deducting all expenses, commissions and other amounts that were incurred in order to achieve the profits. This may be specified in the Trust Instrument.
- C- If the Trust Instrument does not specify the remuneration of the Trustee, it may be specified by a subsequent written agreement.
- D- Remuneration of the Trustee may be increased or decreased by a written agreement.

Article (13) Obligations of the Trustee

The Trustee is obliged to:

- 1- Endeavor to complete the transfer of the Trust Property to himself.
- 2- Perform his duties in good faith, in accordance with the conditions and powers provided for in the Trust Instrument, and to take all necessary consequent action required as per those duties and powers in accordance with the nature of each case, best practice, and the will of both parties.
- 3- Invest the Trust Property in a manner that does not conflict with the terms of the Trust Instrument. The Trustee may delegate the management of the investment of the Trust Property, in whole or in part, to specialised parties, in which case, management costs shall be deducted from the Trust Property, unless the Trust Instrument stipulates otherwise.
- 4- Abide by the terms stipulated in the Trust Instrument and perform his obligations with integrity and honesty and exert due care in such performance.
- 5- Maintain the necessary accounting books and records , and record in them in an accurate and regular manner all transactions and work relating to the trust.

- 6- Keep the accounts and records of the trust separate from the accounts and records of any other business he may be undertaking. This, however, is without prejudice to his right to record his remuneration and the expenses arising from his work as Trustee in his personal consolidated accounts.
- 7- Notify the Settlor, the Trust Protector and the Beneficiary, of any matter that may have an important effect on the value of the Trust Property or on investing the Trust Property.
- 8- Carry out the trust registration procedures in the Register of Financial Trusts provided for in Article (33) of this law and inform the Agency of any changes in the information recorded therein.
- 9- Perform all his other obligations provided for in this law.

Article (14) Independence of the Trust Property

- A- The Trustee must keep the Trust Property separate in order to easily identify it from his or any other property.
- B- There shall be no recourse to the Trust Property to settle a personal debt owed by the Trustee even if the Trustee is in violation of the obligation stipulated in Sub-Article 14(A).
- C- The Trust Property shall not be included in the Trustee's estate upon death, bankruptcy or liquidation of his business.

Article (15) Declaration of capacity as 'Trustee'

- A- The Trustee must declare his capacity as Trustee whenever he undertakes any transaction in relation to the trust. Other parties to the transaction must record the declaration in their records that must be kept in accordance with the terms of the law. Such transactions, in particular, include the following:
 - 1- Transactions whose legal validity is contingent on being authenticated or recorded in an official register.

2 - Banking transactions.

3 - The signing of shipping documents, debt documents, or documents pertaining to any non-negotiable instruments.

B The parties undertaking the authentication or registration of a transaction in official records, must prove the capacity of the Trustee upon authenticating or registering transactions related to the financial trust.

Article (16) The Duty to Declare

A- Whenever the Trustee has a direct or indirect personal interest in a transaction that conflicts with the requirements of his duty as Trustee, he must declare that interest to the other Trustees (in case of multiple Trustees) and to the Agency, in writing. And he must refrain from expressing any view on the matter or from taking part in the discussion of it. If the Trustee is a sole Trustee, he must declare such interest to each of the Settlor, the Trust Protector and the Agency, immediately as he becomes aware of such interest.

B- Unless the trust instrument provides otherwise, the Governor of the Agency must in the case referred to in Sub-Article 16(A), appoint one or more Licensee to undertake the transaction that is the subject of the declaration. This shall be the case if the Trustee is a sole Trustee or if he is the only licensed Trustee among others.

Article (17) Confidentiality

Without prejudice to Article (24) of this law, the Trustee is prohibited from disclosing any accounts, data and information, and from delivering the documents relating to the trust to others, except as provided by the law, or required by agreement or by the nature of the transaction relating to the trust, or imposed by an order issued by a competent court or by the Dispute Settlement Committee.

Article (18) Void Actions

Without prejudice to the provisions of the Civil Law, any action taken by the Trustee in connection with the Trust Property shall be null and void if such action is contrary to acting in good faith and if the other person involved in the action was aware of such contrary action. In such circumstances, both parties must restore the situation to what it was before such action arose.

Article (19) Prohibition of Using and Benefiting from the Trust Property

The Trustee is prohibited from the following :

- 1- Use of the Trust Property for himself, or to his personal benefit, directly or indirectly, in violation of the provisions of the Trust Instrument.
- 2- Enabling others to use or benefit from the Trust Property directly or indirectly, in violation of the provisions of the Trust Instrument or in a manner contradicting the requirements of the transactions relating to the trust.

Article (20) The Personal liability of the Trustee

If others suffer damage because the Trustee exceeded the limits stipulated in the Trust Instrument, or because of his intentional error or gross negligence or violation of the terms of Articles (15) or (16) of this law, the Trustee shall be liable to compensate out of his personal property and to rectify such damage without right of recourse to the Trust Property.

And if the Trust Property suffers damage for any of the reasons mentioned in the preceding paragraph, the Trustee shall be liable for fairly compensating the trust. Such compensation shall be added to the Trust Property.

Article (21)

Liability in case of Delegation

- A- If the Trust Instrument permits the Trustee to appoint a delegate without specifying the person to be appointed, the Trustee shall not be held personally liable except for his negligence in appointing the delegate, or for any erroneous instructions issued to the delegate by the Trustee.
- B- The Trustee may use the services of lawyers, engineers, experts, brokers, or other specialist practitioners, if the situation so requires. The liability of the Trustee for the actions of such persons shall be the same as in Sub-Article 21(A).
- C- If the Trustee delegates another person to perform some of his duties in violation of the terms provided for in the Trust Instrument, he shall be liable for the action of his delegate as though the action was his own. The Trustee and his deputy in such a case shall be jointly liable.

Article (22)

Multiple Trustees

In case of multiple Trustees, without provision being made in the Trust Instrument for any of them to act individually, they must act jointly, unless such action does not require an exchange of views, such as collecting or paying a debt.

Article (23)

Liability in Case of Multiple Trustees

In case of multiple Trustees, without a provision being made in the Trust Instrument for them to act Individually , they shall be held jointly liable for any damage suffered by the trust as a result of their collective error.

The Trustees, although jointly liable, shall not be liable for the damage caused by any one of them if he exceeds the authority provided for in the Trust instrument, or has exercised such authority oppressively .

Article (24)

Exemption from Liability

Any agreement exempting a Trustee from personal liability, in whole or in part, for intentional error or gross negligence shall be null and void.

Article (25)

The Person having the Right to Question the Trustee

The Settlor, the Trust Protector, the Beneficiary and the Agency shall have the right to question the Trustee. He must allow them to access the accounts, documents and records of the trust, and must submit to them audited annual accounts of the Trust Property within three months of the beginning of the financial year, unless the Trust Instrument or a subsequent agreement or the nature of dealing with the Trust Property requires otherwise.

Article (26)

Disclaiming of the Trust by the Beneficiary

If the Beneficiary disclaims the trust, the Trust Property shall revert to the Settlor, unless the Trust Instrument provides otherwise.

Article (27)

The Share of each beneficiary in the Trust

If the Trust Instrument gave rights to the beneficiaries without specifying the share of each of them, such rights shall be divided equally among them.

The Settlor may be one of the Beneficiaries.

Article (28)

Resignation of the Trustee

- A- The Trustee may resign from his duty as Trustee in accordance with any rules, conditions and procedures stipulated in the Trust Instrument.
- B- If the Trust Instrument does not provide for the right of the Trustee to resign, the Trustee may request the Dispute Settlement Committee to issue an order accepting his resignation.

Article (29)

Disqualification as Trustee

- A- A Trustee is disqualified as a Trustee upon his death, loss of his legal capacity, removal from trusteeship, liquidation, annulment of his licence to act as a Trustee or declaration of his bankruptcy. The trust shall then be transferred to the other Trustees (in case of multiple Trustees) provided that one of them is a licensed Trustee, unless the Trust Instrument provides otherwise.
- B- When a Trustee is disqualified, the Governor of the Agency shall, unless the Trust Instrument provides otherwise, entrust the management of the trust to one or more licensee on a temporary basis until a new Trustee is appointed to succeed his predecessor. This shall be the case if the disqualified Trustee was an individual Trustee, or in the case of multiple Trustees, there is no licensed Trustee among them.
- C- The Settlor must appoint a successor to the Trustee within six months of the date of disqualification of the Trustee, unless otherwise provided for in the Trust Instrument.
- D- The ownership of the Trust Property shall be transferred to the new Trustee by virtue of a written and authenticated document, or by an order issued by the Dispute Settlement Committee. This shall be without prejudice to any obligation imposed by any other law regarding the legal validity of actions taken on the Trust Property.

Article (30)

Effects of Removal of the Trustee

The Trustee, in case of removal, whether by resignation or by any reason other than death, must submit to the Settlor, the Trust Protector, the Beneficiary and the Agency, a final audited account of the trust supported by all the data, paper work and documents related to the work he has done for the benefit of the trust.

If the Trustee dies, his heirs, if they are legally competent and are aware of the trust, shall inform the Agency of his death. The Agency shall in turn notify the Settlor, the Trust Protector, and the Beneficiary, of the death of the Trustee, and shall take such measures as the interests of the trust may require, until the appointment of a new Trustee.

If the heirs are not legally competent, their legal guardian shall carry out the obligations provided for in the preceding paragraph.

Article (31)

Auditing of Trust Accounts

Without prejudice to the provisions of Legislative Decree No. (26) of 1996, with respect to Auditors, the Trustee must appoint at the beginning of each year one or more qualified and experienced auditors, to audit the accounts of the trust, unless the Trust Instrument or a subsequent agreement or the nature of dealing with the Trust Property requires otherwise.

The fees of the auditors shall be paid out of the Trust Property.

Article (32)

Supervision and Monitoring of Financial Trusts and Licensed Trustees by the Agency

Financial trusts and licensed Trustees shall be subject to the monitoring and supervision of the Agency. The Governor of the Agency shall issue a Resolution organizing the monitoring and supervision of financial trusts and activities of licensed Trustees.

Article (33)

Register of Financial Trusts

- A- The Agency shall establish a register to be called 'Register of Financial Trusts'. In this register, detailed data on each financial trust shall be recorded, including the identities of the Settlor, the Trustee, the Trust Protector, if any, and the Beneficiary if identified by name in the Trust Instrument or such data leading to his identification, as well as an adequate summary of the data and information provided for in Article (4) of this law and any resolutions or judgments issued in relation to the trust.
- B- It is a requirement for registration in the Register of Financial Trusts that the Trustee must apply to the relevant Directorate at the Agency for registration, by an Application Form specifically prepared for this purpose. The application must be supported by an identical copy of the Trust Instrument and all such data, information and documents, as shall be specified in a resolution of the Governor of the Agency.
- C- The Trustee shall be granted a Certificate of Registration in the Register of Financial Trusts according to a form specifically prepared by the Agency for this purpose. The trust shall be legally valid only after the registration in the Register of Financial Trusts.
- D- The Trustee and the Trust Protector must inform the Agency of any modification to the data, and information recorded in the Register of Financial Trusts. Any concerned party may report this to the Agency.

Article (34)

Viewing the Register and Obtaining an Official Certificate Thereof

- A- The Settlor, the Trust Protector, the Trustee and the Beneficiary, may view the information relating to the Trust which has been recorded in the Register of Financial Trust and each of them has the right to obtain an official certificate of the data or information, recorded in this register.

B- The Agency may not disclose to any person, other than those referred to in Sub-Article 34(A), any data or information recorded in the Register of Financial Trusts, except pursuant to an order issued by a competent court or by the Dispute Settlement Committee.

Article (35) Dispute Settlement Committee

There shall be established in the Agency, a Dispute Settlement Committee to be formed by a resolution of the Governor of the Agency, every three years. The Committee shall consist of two judges of the Civil High Court of Appeal appointed by the High Judicial Council; the longer serving of the two judges shall be President of the Committee. The other member of the Committee shall either be a high-ranking official of the Agency, or a person well qualified and experienced in financial matters.

The Dispute Settlement Committee shall have exclusive jurisdiction in matters assigned to it by this law, and in settling disputes that arise between any of the Trustee, the Settlor, the Trust Protector and the Beneficiary.

The Committee shall issue justified decisions adopted by majority opinion, and shall be binding on the parties to the Dispute.

Matters relating to the procedures for raising a dispute to the Committee and settlement of the dispute; the place of Committee meetings; the manner of notifying the parties to a dispute of the Committee's decisions; and determining the remuneration due to members of the Committee; shall be specified by a resolution to be issued by the Minister of Justice.

Appeal against decisions of the Committee may be made to the Court of Cassation (Supreme Court) within thirty days of issue of the decision.

Article (36) Other Powers of the Dispute Settlement Committee

A- The Settlor, the Trust Protector and the Beneficiary may request the Dispute

Settlement Committee to issue a decision concerning the following:

- 1- Termination or expiry of the Trust and transfer of the Trust Property to the rightful owners in accordance with the Trust Instrument and the provisions of this law. The Trustee in such a case may request the Dispute Settlement Committee to allow him a specified period of time to complete an action already commenced before the matter was remitted to the Committee if this action is of benefit to the trust.
 - 2- Remove the Trustee from trusteeship if he becomes unable to exercise the powers and perform the duties provided for in the Trust Instrument; or if he fails to fulfill one or more of the qualifying conditions for trusteeship provided for in this law; or if he was in serious breach of his obligations under this law or under the Trust Instrument. This shall be without prejudice to the right of the aggrieved party to be compensated.
 - 3- Appoint a successor to the Trustee after his death or removal from trusteeship or resignation or liquidation of his business or annulment of his licence to act as Trustee or declaration of his bankruptcy.
 - 4- Appoint one or more Trust Protectors if none were appointed, provided that this is permitted under the Trust Instrument.
- B- The Trustee may request the Dispute Settlement Committee for permission to complete an action that is of benefit to the trust, if he had no express authority to do so under the provisions of the Trust Instrument or if the Trust Instrument did not expressly prohibit the performance of such an action.

Article (37)

Termination and Expiry of the Trust

- A- The Trust shall expire in either of the following cases:
- 1- Expiry of the term for which the trust was created.

2- If the obligations in the trust becomes impossible or unlawful.

B- A trust may be terminated in either of the following cases:

1 - If the Settlor, the Trustee and the Beneficiary agree to terminate the trust by virtue of an authenticated written document.

2- If the Trust Instrument expressly provides for termination of the trust before the expiry of its term.

Article (38) Ownership of Trust Property after Expiry of the Trust

Unless the Trust Instrument provides otherwise, upon the expiry of the trust, the Trust Property shall be transferred to the Settlor.

Article (39) Transfer of Rights under the trust

Unless the Trust Instrument provides otherwise all rights under the trust shall be transferred upon the death of the Settlor or the Beneficiary to the heirs of each of them.

Article (40) Agreement subsequent to the creation of the Trust

Any provisions in this law regarding the Trust Instrument shall apply to any subsequent agreement between the Settlor and the Trustee in relation to the trust.

Article (41) Supplementary Provisions

Provisions of the Civil Law shall apply to financial trusts in matters which have not been provided for specifically in this law.

Article (42) Fees

There shall be a fee for the following:

- 1- Issuing a licence to the Trustee pursuant to Paragraph (c) of Article (10) of this law.
- 2- Raising a dispute to the Dispute Settlement Committee provided for in Article (35) of this law.
- 3- Registration in the Register of Financial Trusts provided for in Article (33) of this law.

Amounts of such fees shall be determined by a Resolution to be issued by the Governor of the Agency after the approval of the Board of Directors of the Agency.

Article (43) Execution of the Provisions of the Law

The Ministers and the Governor of the Bahrain Monetary Agency - each in their respective jurisdiction - shall execute the provisions of this law, which shall come into effect, the day following its publication in the Official Gazette.

King of the Kingdom of Bahrain
Hamad Bin Isa Al-Khalifa

Issued at Riffa Palace

On 15 Jamadi Alakhira 1427 Hijria
Corresponding to 11th July 2006