

**Law No. (23) of the Year 2006  
Regarding the Regulation of:**

**Financial Trusts**

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

**Having regard to 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 House of Deputies have approved the text of 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.
- Settler** 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 (or persons) to whom the ownership of the Trust Property is transferred in order to exercise the powers and functions specified in the Trust Instrument with a view to achieving the purpose of the trust or the interests of the beneficiaries.
- Trust Protector:** The person appointed to exercise the powers and functions provided for in Article (9) of this Law.
- Trust Instrument:** The written Agreement between the Setter and the Trustee by which the trust is created in accordance with this Law.
- Trust Property:** Includes any form of property, moveable or immovable, tangible or intangible, transferred by the Settler to the ownership of the Trustee in order to exercise the powers and duties specified in the Trust Instrument with a view to achieving the purpose of the trust or the interests of the Beneficiary.
- Licensee:** A person licensed by the Agency to perform the functions 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, the Financial Trust shall be created by virtue of a 'Trust Instrument' transferring ownership of the Trust Property from the Settler to the Trustee, to exercise in relation thereto the powers and duties specified in the Trust Instrument, with a view to achieving the purpose of the Trust or the interests 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 concluded 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 'Settler' and the Trustee.
- 2 - Identification of the purpose of the trust, the Beneficiary of the Trust, or such information as enables to identify whether 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 to identify it.

- 4 - Specification of the duration of the Trust.
- 5 - Identification of the powers and duties 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 with 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 the Trust Protector.
- 5 - Consequences of the termination of the Trust.
- 6 - Any other provisions regulating the performance of the duties of the Trustee and the relationship between the Trustee and each of the Settler, the Protector of the Trust, 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 order (i.e., public policy) or public morality. Otherwise, the trust agreement shall be void and the situation shall be restored to what it was before the creation of the Trust.

**Article (6)**  
**Obligations of the 'Settler'**

A - The Settler 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 the preceding paragraph, 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 item (1) of this Paragraph.
- B - The Beneficiary may oblige the Settler to fulfill the obligations provided for in the preceding paragraph.

**Article (7)**  
**Retention of powers by the 'Settler'**

The Settler 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 Settler may add any properties to the Trust Property with a view to achieving the purpose of the Trust or the interests 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 'Settler' 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 'Settler' within the limits laid down in the Trust Instrument.

- 3 - Perform any other duties provided for in the Trust Instrument.

**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 has 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 practice commercial activities in the Kingdom of Bahrain, in accordance with the Law of Commercial Companies.
- C - The Licence to exercise the functions 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 Settler, and must exercise the powers and duties as defined in the Trust Instrument and this law, without interference or guidance from the Settler. The Trust shall be void if the Trust Instrument provided otherwise.
- B - The mere exercise by the Settler 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 an illegal intervention.

**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 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 expenses that were spent in order to achieve the profits.
- C - If the Trust Instrument does not specify the remuneration, 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 - Exercise his powers and perform his duties in good faith, in accordance with the terms and conditions of the Trust Instrument, and to take all necessary action as the nature of the case, the current practice, or the will of the parties, may require.
- 3 - Invest the Trust Property in a manner that does not conflict with the terms and conditions of the Trust Instrument. The Trustee may delegate the management of the investment of the Trust Property - in whole or in part - to a specialised agency, in which case, management costs shall be deducted from the Trust Property, unless the Trust Instrument stipulates otherwise.
- 4 - Abide by the terms and conditions of the Trust Instrument and perform his obligations honourably and honestly and exert in such performance the care of a careful person.
- 5 - Maintain the necessary records and account-books, and record in them, in a regular and orderly manner, all transactions and works 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 the profits and expenses resulting from his work as Trustee in his personal consolidated accounts.

- 7 - Notify the Settler, the Protector of the Trust and the Beneficiary, of any matter that has tangible effects on the value of the Trust Property or on investing the Trust Property.
- 8 - Take all necessary measures to have the Trust registered in the 'Register of Trusts ' provided for in Article (33) of this Law and inform the 'Agency' of any changes in the details recorded therein.
- 9 - Perform all other obligations provided for in this Law.

**Article (14)**  
**Independence of the Trust Property**

- A - The Trustee must keep the Trust Property separate and easily identifiable from his or any other property.
- B - No recourse shall be had on the Trust Property to recover a personal debt owed by the Trustee even if the Trustee is in violation of the obligation stipulated in the preceding paragraph.

The Trust Property shall not be part of a Trustee's bequest, bankruptcy or liquidation procedure.

**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 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 - Bank Transactions.
  - 3 - The signing of shipping documents, debt documents, or any non-negotiable instruments.
- B - The capacity of the Trustee shall be included when recording transactions in the official books of the Trust.

**Article (16)**  
**The Duty to Declare Interest**

- A - Whenever the Trustee has a direct or indirect personal interest in a deal that conflicts with the requirements of his office 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 and from taking part in discussing it. If the Trustee is a sole Trustee, he must declare such interest to each of the Settler, the Protector of the Trust and the Agency, immediately as he becomes aware of such interest.
- B - If, in the case referred to in the preceding paragraph, the Trustee making the declaration is sole Trustee, or if he is the only licensed Trustee of all others, the Governor of the Agency must appoint one or more licensee to undertake the transaction that is the subject of declaration, unless the Trust Instrument provides otherwise.

**Article (17)**  
**Confidentiality**

Without prejudice to Article (24) of this Law, the Trustee must not disclose to a third party, any accounts or data or information, or deliver any documents relating to the Trust, 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 Resolution Committee.

**Article (18)**  
**Void Dealings**

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 contradicts good intention practices and the Trustee was aware of such contradiction. Both parties shall return to the situation before such action.

**Article (19)**  
**Prohibited Use and Benefit from the Trust Property**

The following are prohibited for the Trustee:

- 1 - Use of the Trust Property for himself, or to his personal benefit, directly or indirectly, in violation of the terms of the Trust Instrument.
- 2 - Enabling others to use the Trust Property for themselves or to their benefit, directly or indirectly, in violation of the terms of the Trust Instrument or in a manner not required by the transactions relating to the Trust.

**Article (20)**  
**The Personal liability of the Trustee**

If a third party suffered damages because the Trustee exceeded his powers under the Trust Instrument, or because of his intentional error or gross negligence or violation of Article (15) of this Law, the Trustee shall be liable for compensation out of his personal property, without right of recourse on the Trust Property.

And if the Trust Property suffered damages for any of the reasons mentioned in the preceding paragraph, the Trustee must pay fair compensation to the Trust. Such compensation shall be added to the Trust Property.

**Article (21)**  
**Liability in case of Delegation**

- A - If the Trust Instrument authorizes the Trustee to appoint a deputy (or Agent) without naming the person to be appointed, the Trustee shall not be held personally liable for the deputy's action other than his liable for error in choosing the deputy, and for any wrong instructions issued to the deputy.
- B - The Trustee may use the services of lawyers, engineers, experts, middlemen, or other specialist practitioners, if the case so required. The responsibility of the Trustee for the actions of such persons shall be the same as in the preceding paragraph.
- C - If the Trustee delegates to another person the performance of some of his duties in violation of the Trust Instrument, he shall be liable for the action of his deputy as though the action was his own. The Trustee and his deputy in such a case shall be jointly responsible.

**Article (22)**  
**Multiple Trustees**

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

**Article (23)**  
**Responsibility in Case of Multiple Trustees**

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

The Trustees, although jointly responsible, shall not be liable for the damage caused by any of them if the wrongdoer exceeded his authority under the Trust instrument, or behaved arbitrarily.

**Article (24)**  
**Exemption from Responsibility**

Any Agreement exempting the Trustee from his responsibility - whole or in part - for intentional wrong or gross negligence shall be null and void.

**Article (25)**  
**The Right to Question the Trustee**

Any one of The Settler, the Protector of the Trust, the Beneficiary or the Agency has 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 within the first three months of the following year, unless the Trust Instrument or a subsequent agreement or the nature of dealing with the Trust Property require otherwise.

**Article (26)**  
**Rejection of the Trust by the Beneficiary**

If the Beneficiary rejected the Trust, the Trust Property shall revert to the Settler, unless the Trust Instrument provides otherwise.

**Article (27)**  
**The Share of each beneficiary from 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 Settler may be one of the beneficiaries.

**Article (28)**  
**Resignation of the Trustee**

The Trustee may resign from the office of Trustee in accordance with the procedures, rules and conditions stipulated in the Trust Instrument.

If the Trust Instrument does not regulate the right of the Trustee to resign, the Trustee may request the Dispute Settlement Committee to issue an order (to the Trust) to accept the resignation of the Trustee.

**Article (29)**  
**Disqualification as Trustee**

- A - A Trustee is disqualified 'as Trustee' upon his death, loss of his legal competence, removal from trusteeship, liquidation, rescinding his licence or declaring his bankruptcy. The Trust shall then be transferred to the other Trustees in case of multiple Trustees, 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 temporary management of the Trust to one or more licensee until such time as a new Trustee is appointed to succeed his predecessor. This shall be so, if the disqualified Trustee was sole Trustee, or if he was the only licensed Trustee out of all others.
- C - Unless otherwise specified in the Trust Instrument, the Settler shall appoint a new Trustee within six months of the date the Trustee was disqualified.
- D - The Trust Property shall be transferred to the New Trustee by virtue of a written authenticated agreement, 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 dealings in any of the Trust Property.

**Article (30)**  
**Effects of Disqualification of the Trustee**

The Trustee, in case of disqualification, whether by reason of resignation or by any reason other than death, shall submit to the Settler, the Trust Protector, the Beneficiary and the Agency, a final audited account 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 is disqualified by reason of death, his heirs, if they are legally competent and are aware of the Trust, shall inform the Settler, the Trust Protector, the Beneficiary and the Agency, of the death of their testator, and shall take such measures as the interests of the Trust may require, until the appointment of a new Trustee.

If the heirs are 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 well 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 require otherwise.

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

**Article (32)**  
**Supervision and Control by the Agency**

The Trustees shall be subject to the supervision and control of the Agency. The Agency's powers of 'supervision and control' of the work of Trustees shall be regulated by a resolution to be issued by the Governor of the Agency.

**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 details of the Identities of the Settler, the Trustee, the Protector of the Trust - if any, and the Beneficiaries if they were identified by name in the Trust Instrument. If the Beneficiary was not identified by name, data leading to his identification shall be recorded, as well as a full summary of the data and information provided for in Article (4) of this Law and any resolution 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 competent Directorate of 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 issued with 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 Protector of the Trust must inform the Agency of any modification of 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 Official Attestation Thereof**

The Settler, the Protector of the Trust, the Trustee and the Beneficiary, may view the recorded information relating to the Trust and each of them may obtain an official attestation of the recorded data or information.

The Agency may not disclose to any person, other than those referred to in the preceding paragraph, 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 Resolution Committee.

**Article (35)**  
**Dispute Resolution Committee**

There shall be established in the Agency, a Dispute Resolution 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 commissioned 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 officer of the Agency, or a person well qualified and experienced in financial transactions.

The Dispute Resolution Committee shall have exclusive jurisdiction in matters assigned to it by this Law, and in settling disputes that arise between the Trustee, the Settler, the Trust Protector and the Beneficiary.

Decisions of the Committee shall be reasoned and adopted by the majority of opinions, and shall be binding to the parties to the Dispute.

Matters relating to the procedures for bringing a dispute before 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 regulated by a resolution to be issued by the Minister of Justice.

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

**Article (36)**  
**Other Powers of the Dispute Resolution Committee**

A - The Settler, The Trust Protector and the Beneficiary may request the Dispute Settlement Committee to issue a decision to:

- 1 - Terminate the Trust and transfer 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 certain period of time to complete a dealing he had commenced before the matter was brought before the Committee if this dealing was purely beneficial to the Trust.

- 2 - Remove the Trustee from trusteeship if he becomes unable to exercise the powers and perform the duties of his office provided for in the Trust Instrument; or if he failed to fulfill one or more of the qualifying conditions for trusteeship provided for in this Law; or if he was in grave breach of his obligations under this Law or under the Trust Instrument. This shall be without prejudice to the right of the aggrieved to get compensation.
  - 3 - Appoint a successor to the Trustee after his death or removal from office or resignation or liquidation or annulment of his licence or declaration of his bankruptcy.
  - 4 - Appoint one or more Trust Protectors if the Trust Instrument provided for one but no one was appointed.
- B - The Trustee may apply to the Dispute Settlement Committee for permission to complete a deal that is purely beneficial to the Trust, if he had no express authority to do the deal and the Trust Instrument did not expressly prohibit the conclusion of such a deal.

**Article (37)**  
**Expiry and Termination of the Trust**

- A - The Trust shall be terminated in either of the following cases:
- 1 - Expiry of the term for which the Trust was created.
  - 2 - If the purpose of the obligation in the Trust becomes impossible or unlawful. .
- B - A Trust may be terminated in either of the following cases:
- 1 - If the Settler, the Trustee and the Beneficiary agree to terminate the Trust in a written authenticated Agreement.
  - 2 - If the Trust Instrument provides for terminating the Trust before the expiry of its term.

**Article (38)**  
**Ownership of Trust Property after Termination of the Trust**

Upon the termination of the Trust, the Trust Property shall be transferred to the Settler, unless the Trust Instrument provides otherwise.

**Article (39)**  
**Devolution of the Trust Legacy**

Effects of the Trust legacy shall devolve upon the death of the Settler or the Beneficiary to the heirs of each of them, unless the Trust Instrument provides otherwise.

**Article (40)**  
**Agreements subsequent to the creation of the Trust**

Any provisions in this Law regarding the Trust Instrument shall apply to any subsequent agreement between the Settler and the Trustee in relation to the Trust.

**Article (41)**  
**Supplementary Provisions**

Matters relating to Financial Trusts and not specifically provided for in this law shall be governed by the Provisions of the Civil Law, but with due regard to the nature of the Trust.

**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 - Bringing 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 this Law**

The Ministers and the Governor of the Bahrain Monetary Agency - each in their respective jurisdiction - shall execute this Law, which shall come into force, the next day after its publication in the Official Gazette.

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

Issued at Riffa Palace

On 15 Jamadah Al AKher 1427 Hijria

Corresponding to 11<sup>th</sup> July 2006 AD