



ARTICLE • MARCH 2024

TRUST LAW

Comprehensive Guide to Establishing Trusts in the UAE

I. INTRODUCTION

Federal Decree by Law No. (31) of 2023 on trusts (the “Law”) was issued on September 25, 2023. The Law repeals its predecessor, Federal Law No. (19) of 2020 related to trusts.

The Law provides the UAE with a robust legal framework allowing individuals and businesses to establish trusts. The flexibility of this Law allows for different types of trusts to be established based on respective needs. In accordance with this Law, trusts are movable or immovable properties owned by a trust and include interests and rights inside or outside the UAE.

Takeaway: Generally, trusts are acknowledged for their role in strategic asset management and wealth preservation against potential risks. They ensure confidentiality in financial affairs, and facilitate transfers to beneficiaries, thus promoting intergenerational wealth growth while safeguarding the interests of vulnerable parties.

II. LEGAL FRAMEWORK

Scope and applicability of the UAE trust law.

The Law governs all trusts that are established under its guidelines, except those within financial-free zones with their own regulations. Trusts are recognized by the Law and by their trust instruments and have a legal personality. The legal personality of the trust allows it to have financial autonomy and litigation rights represented by trustees. Crucially, the property within the trust, which includes dividends, does not become part of the personal estates of settlors and trustees.

Takeaway: The Law has a broad scope of application and grants trusts a full legal personality.

III. CREATION OF A TRUST

To establish a trust in the UAE, the property must be owned and unencumbered by the settlor, including future assets identifiable at the time of transfer.

The trust instrument is mandatorily written and preferably in Arabic (or accompanied by a certified translation) and requires approval and registration by the relevant Emirate authority. It should include the intention of the settlor, the identification of the beneficiaries, the description



of the property, the duration of the trust, the name of the trust, and the appointment and powers of the trustee. The absence of these elements, excluding duration, voids the instrument.

Takeaway: In consideration of all involved parties' best interests, especially beneficiaries, the Law sets strict formal and substantive conditions for the validity of trust instruments.

IV. SETTLORS

Settlors are defined as natural or legal entities and play a pivotal role in establishing trusts by transferring property into them. Settlers can also assume roles as trustees and beneficiaries. For natural persons, legal capacity is a prerequisite under the Federal Civil Transactions Law, while legal entities must have the authority to manage their assets in accordance with the applicable regulations.

Decision-making must be unanimous in scenarios involving multiple settlors unless the trust document outlines a different approach. Multiple settlors are expected to work within the limits of their powers in the trust document and may delegate these powers unless there are explicit restrictions against the same.

Settlors face certain obligations to be fulfilled within six months after the registration of the trust or as per its instrument's provisions. This includes the transfer of property to the trust, the empowerment of trustees with the required authorities, and the provision of all required documentation and information relevant to the trust property.

The trust instrument may also grant the settlor certain powers like modifying the terms of the trust, its purpose, the rights of beneficiaries, or the appointment or removal of trustees or trust protectors.

Takeaway: The trust instrument must expressly set out the settlor's powers and responsibilities.

V. TRUSTEES

Trustees, also natural or legal entities, are appointed by virtue of the trust instrument and manage the trust. Their roles and powers are delineated by the trust instrument and the Law. Natural persons must be legally competent and of a good and sound reputation, and legal entities must be professional and licensed legal trustees.

Multiple trustees may be appointed. The trust instrument sets out their roles, responsibilities, and decision-making mechanisms. They are individually accountable for their actions within the scope of their authority and are collectively accountable for damages unless their actions exceed the granted powers.



ARTICLE • MARCH 2024

TRUST LAW

Trustees may accept or decline their roles within a specified timeframe or within ten working days post-registration.

Trustees can resign or be relieved from duty with due notice and procedures observed.

The powers of trustees terminate upon death, bankruptcy, or the end of their term, and a temporary trustee manages the trust in the interim.

Takeaway: The strict conditions involving trustees and their accountability are essential in maintaining the affairs of the trust.

VI. BENEFICIARIES

Beneficiaries are individuals or entities granted personal rights by the trust instrument. They must be identified explicitly or through a specific process.

Beneficiaries' rights to dividends are safeguarded and allow them to demand trustees to fulfill their obligations as outlined in the trust document and Law.

Distribution of dividends can be specified or equal if not defined, and their rights may be subject to legal or financial conditions.

Beneficiaries also have the right to relinquish their rights to dividends under certain circumstances.

Takeaway: Being the core of trusts, beneficiaries are given a wide array of rights in relation to trusts that include the ability to relinquish dividend rights under certain conditions.

VII. MANAGEMENT AND TERMINATION OF TRUSTS

Trust instruments may be withdrawn from or amended by settlors or their representatives.

They may be nullified by courts for different reasons including fraud or to evade financial responsibilities.

Trusts end through various means including withdrawal of the settlor, achievement of the purpose of the trust, upon the unanimous request of the beneficiaries, or via a court decision.

Following termination, the trust property will need to be properly disposed of as stipulated in the trust instrument, and all financial obligations need to be settled before distribution.

Takeaway: The preservation of all concerned parties' rights is taken into consideration by the Law in all levels of trusts, with the Law setting various ways for amendment, withdrawal, or ending. It also sets conditions for settling financial obligations before distribution following termination.



VIII. ENFORCEMENT AND PENALTIES

The Law imposes penalties for harming the trust, settlor, or beneficiary. Penalties include imprisonment and fines up to AED 1,000,000.

IX. CONCLUSION

In conclusion, Federal Decree-Law No. 31 of 2023 represents another significant advancement in the UAE legal landscape, offering a robust framework in the realm of trusts. The legislation facilitates asset protection, wealth management, and estate planning while maintaining a clear set of requirements for trust, settlors, trustees, and beneficiaries. By providing the mentioned and granting trusts a legal personality, the Law has ensured transparency, accountability, and safeguarding of assets. Furthermore, additional stipulations on management, amendment, termination, and penalties for violations underscore the commitment of the UAE to secure a legal environment. This enhances the UAE's appeal as a destination for international investors and individuals seeking structured financial and real estate planning procedures.

Should you have any queries or require further clarification, please do not hesitate to reach out to our team at: patrick.khoury@blkpartners.com; or brian.onaissy@blkpartners.com.