

BANQUE DU LIBAN

Basic Circular No 29 to Banks and Financial Institutions

Attached is a copy of Basic Decision No 6349 of October 24, 1996 relating to the Development of the Financial Market and Fiduciary Contracts.

Beirut, October 24, 1996

The Governor of the Banque du Liban

Riad Toufic Salamé

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BANQUE DU LIBAN

Basic Decision No 6349

The Governor of the Banque du Liban,

Pursuant to the Code of Money and Credit, notably Articles 26 and 174 thereof;

Pursuant to Law No 520 of June 6, 1996 relating to the Development of the Financial Market and Fiduciary Contracts;

After consulting with the Banking Control Commission and the Association of Banks; and

Pursuant to the Decision of the Central Council of the Banque du Liban, taken in its meeting of October 23, 1996,

Decides the following:

Article 1:

Any bank or financial institution registered with the Banque du Liban may immediately start fiduciary operations and acquire the fiduciary capacity, provided it meets the following conditions:

- 1- the tier-1 capital must not be inferior to 10 billion Lebanese pounds for a bank, and to 5 billion Lebanese pounds for a financial institution.
- 2- ¹
- 3- it must comply with the laws, regulations and circulars governing its work.
- 4- it must have allocated to the fiduciary operations an independent special body functioning according to internal regulations and a specific administrative structure.

Article 1 bis:²

None of the banks or financial institutions registered with the Banque du Liban is authorized to:

- Acquire the capacity of settlor of a fiduciary estate.
- Accept in a fiduciary capacity, whether directly or indirectly, fiduciary deposits constituted by and on behalf of resident or non-resident banks or financial institutions.

¹- This paragraph was repealed by Basic Decision No 7818 of May 18, 2001 (Basic Circular No 83 to Banks- old numbering system: 1912).

²- This Article was added by Article 1 of Intermediate Decision No 10269 of October 2, 2009 (Intermediate Circular No 204).

Article 2:

The total tier-1 capital of any bank or financial institution registered with the Banque du Liban and having acquired the fiduciary capacity, may not be inferior, at any time, to 10% of the constituted aggregate fiduciary estate.

Notwithstanding paragraph 1 of this Article, a request may be submitted to the Banque du Liban in order to reduce this percentage to 5%, in case the fiduciary estate has been settled for the purpose of performing fiduciary securitization operations.¹

Under this Article, fiduciary securitization operations are financial operations through which the settlor puts any of his/her/its assets (fiduciary estate) at the fiduciary's disposal, in accordance with the provisions of Law No 520 of June 6, 1996 relating to the Development of the Financial Market and Fiduciary Contracts, so as to enable the latter to issue financial instruments linked to these assets.¹

Article 3:

Fiduciary operations must be performed on the basis of a written and explicit contract concluded with the settlor. This contract must include the following elements at least:

- 1- An explicit indication stating that the fiduciary contract is prepared in accordance with the provisions of Law No 520 of June 6, 1996.
- 2- The name, place of residence, and profession of the contracting party and the beneficiary.
- 3- A detailed description of the fiduciary estate components
- 4- The investment opportunities for the fiduciary estate.
- 5- The nature and extent of the fiduciary's powers in using the fiduciary estate, with a specific indication on whether these powers are limited to management or right of disposal, or encompass both of them, and whether the mandate is general and unlimited, or specific and limited by certain conditions.
- 6- A detailed and clear declaration showing specifically whether the contracting party grants the fiduciary a mandate to invest the fiduciary estate in domains where the latter or any of the members of its Board of Directors or the persons in charge of its functioning, are partners or have a direct or indirect interest therein.
- 7- The contract duration.
- 8- The fiduciary's aggregate commissions and fees, and all other expenses that may be due to it, with the modality of their calculation and payment.

¹- This paragraph was added by Article 1 of Intermediate Decision No 8898 of November 26, 2004 (Intermediate Circular No 71).

Article 4:

It is forbidden for the fiduciary to use the fiduciary estate for the purpose of guaranteeing a personal obligation, including the obtaining of any credits for its own account.

Article 5:

The body entrusted with fiduciary operations must perform these operations according to internal regulations that stipulate specifically the following:

- 1- To determine the investment fields of funds regarding which a specialized committee has empowered the fiduciary to perform fiduciary operations.
- 2- To hold the accounting records of clients' fiduciary estates as an autonomous entity registered off the fiduciary's balance sheet, provided each fiduciary estate is recorded distinctly from any other account or fiduciary estate, and provided also the client's position appears in the new accounts, shown in the annex attached to this Decision, that must be recorded off-balance sheet in the banks and financial institutions' accounting plan.
- 3- To provide the settlor or the beneficiary, according to the methods they have chosen, with periodic statements on the operations performed and the related accounting statements.
- 4- To assign an executive not concerned with the management of fiduciary operations to the task of verifying, on a daily basis, the conformity of the fiduciary assets activity.
- 5- To specify the fiduciary assets given as a guarantee to the fiduciary.
- 6- Not to perform any fiduciary operations infringing public order or relating to a fiduciary estate that includes funds or assets resulting from operations whose executor has incurred a sanction for a crime or offence.

Article 6:

The fiduciary's internal audit unit must ascertain that the body entrusted with fiduciary operations complies with the afore-mentioned rules concerning the internal regulations and the distribution of powers within this body. This unit must also conduct a periodic audit of the fiduciary estates and assets and send approval requests thereon to the banks, financial institutions, financial intermediaries and other stakeholders with whom it deals.

Article 7:

Auditors at banks and financial institutions acting as fiduciaries, must audit fiduciary estates according to the rules and procedures applied for accounts recorded in balance sheets. They must also state the results of the applied procedures in the detailed annual report, in the annual report relating to internal

regulations and in the follow-up report stipulated in Circular No 21 to auditors, issued by the Banking Control Commission.

Article 8:

This Decision shall be notified as needed and shall be published in the Official Gazette.

Article 9:

This Decision shall come into force upon its notification or publication.

Beirut, October 24, 1996

The Governor of the Banque du Liban

Riad Toufic Salamé

Annex**New accounts to be recorded off balance sheet**

	Special number for automatic classification
<u>Fiduciary accounts and fund management</u>	
<u>Fiduciary accounts assets</u>	35000 ¹
- Deposits at banks	35110
- Treasury bills	35120
- Financial instruments traded	35130
- Credits	35140
- Other investments	35150
- Receivables	35160
<u>Fiduciary accounts liabilities</u>	35200
- Deposits pursuant to specific instructions	35210
- Deposits under discretionary investments	35220
- Retained profits	35230
- Charges against management commissions	35240

¹- This number has become 35100 in the currently- adopted Form 2010 (off balance sheet)