

This is a translation of the

Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations

(Chapter 04.120)

as in force on 1 January 2019

This is not an authoritative translation of the Law. Whilst it is believed to be correct, no warranty is given that it is free of errors or omissions or that it is an accurate translation of the French text. Accordingly, no liability is accepted for any loss arising from its use.

LAW (1862) ON HOLDINGS¹ ON TRUST AND THE INCORPORATION OF ASSOCIATIONS

A LAW on the holding of immovable property on trust, and on the incorporation of commercial and industrial associations

1

It shall be lawful to take, acquire, hold and possess by the medium and in the name of trustees and in trust, for the objects specified in this Article, all manner of immovable property, subject to complying with the provisions of this Law, the said objects being –

1. for any cause of public utility;
2. for the use and benefit of the following associations, namely, commercial and industrial associations and charitable,² fine-arts or sporting organisations;
3. in the service of Anglican worship or that of any another religion;
4. for the founding of schools and places of learning.

2

No trust³ shall be created and no acquisition shall be made by virtue of this Law except by a Contract of lease, sale, or gift *inter vivos*.⁴

Any acquisition which results from a devise or testamentary disposition is excluded therefrom, and shall be governed by the customary law.⁵

Notwithstanding the foregoing provisions of this Article, corporations constituted by virtue of Article 4 shall have the right to receive, hold and possess all manner of movable and immovable property that may be left to them by will.

¹ *i.e.* holdings of immovable property

² *bienfaisance* (of good or useful effect)

³ *i.e.* trust of immovable property

⁴ *entre vifs*

⁵ *Le droit commun* in this context denotes Jersey customary law

3

Parties wishing to create a trust by virtue of Article 1 shall be required to present a request to this effect to the Royal Court and to obtain its authorisation. The applicants shall attach to the request the draft Contract and other documents by means of which they propose to establish the trust.

These documents must be delivered in advance in good time to His Majesty's Attorney General; who shall be required to move conclusions to the Court on any objections that might be taken to the objects of the trust, or to the form or effects of the contract.

After the approval of the Court has been given, no change may be made to the content or to the conditions of the contract; and the Act⁶ giving approval shall be inserted with the Contract in the Public Registry.

In the event of the appointment of a new trustee, declaration thereof shall be made to the Royal Court and registered in the Public Registry. Once the declaration has been made and registered, the new trustee shall join the ranks of the other trustees.

4

The Royal Court, at the request of the interested parties and in accordance with the formalities set out in Article 3, may grant, either to an association mentioned in paragraph 2. of Article 1, or to an association formed with one of the aims mentioned in one or more of the other numbered paragraphs of the said Article, an Act of Incorporation, which shall authorise the incorporated association to take, acquire, hold and possess, in its collective name and within specified limits, all manner of immovable property situated in this Island.

The Act shall designate the position of the officer by which the incorporated association is to be represented before all courts and elsewhere, in all matters affecting the immovable property which the association possesses or may possess.

No Act of Incorporation shall be granted in by virtue of this Article unless the constitution⁷ of the association has been approved by the Court and, once approved, the constitution may not be amended without the permission of the Court.

5

As soon as the corporation referred to in Article 4 has been constituted, a declaration shall be made to the Royal Court, stating the name of the person charged to represent the association.

The same requirement shall apply whenever the person named in the declaration is replaced.

Any omission in these formalities shall render the association liable to a fine of level 1 on the standard scale per day, for as long as it remains in breach thereof.

6

The trustees authorised by virtue of Article 3, and the corporations constituted by virtue of Article 4, may re-sell, dispose of, exchange or hypothecate⁸ the property acquired for the benefit of the trust, or of the incorporated association; the whole within the limits of the authority conferred upon them by the trust deed,⁹ or by the constitution of the association,¹⁰ as the case may be.

⁶ *i.e.* Act of the Royal Court

⁷ *l'objet et les règles de l'association*

⁸ Hypothec/hypothecation: equivalent to mortgage

⁹ *les conditions du fidéicommiss*

¹⁰ *les statuts de l'association*

Provided that no change relating to the objects of the trust or of the association shall be valid for the purposes of this Law if the requirements of Article 3, or of Article 10, have not been met.

7

All immovable property comprised in a trust shall be exempt from the personal debts of a trustee, and from any hypothecs¹¹ charged on his or her own property, and from any legal or judicial hypothecs to which his or her property may be subject, as well as from the dower rights of a widow, or widower, of a trustee and of the dower rights of a civil partner of a trustee, and from all demands or claims which do not stem from the trust itself. Furthermore, in the case of a *décret*¹² on any property belonging to a trustee, the contract constituting the trust shall not be the subject of an insertion in the *décret* register.

8

If an entity created under this Law becomes insolvent or fails to meet its commitments, the creditor who has obtained a definitive judgment or other enforceable Act against his or her debtor, and wishes to proceed against the property of the debtor, may proceed after a period of 15 days, in the manner prescribed by Article 3 of the *Loi (1832) sur les décrets*, without needing to resort to an *Acte de prison*¹³ and to execute the same.

The notification required by the said Article shall be served either on trustees, or on the representative of the entity in default, as the case requires.

If it is an incorporated association, and at the time of its insolvency it has no officer charged to represent it in relation to its immovable property, it shall suffice to insert the notification during 2 consecutive weeks in 2 newspapers which are published in Jersey on a Saturday, one in the French language and the other in the English language.¹⁴

Once the Court has granted an Act authorising the Viscount to serve notice upon a company or corporation, established by virtue of this Law, that it must pay the claim of a creditor on pain of having its property deemed renounced and liable to forfeiture, the company or corporation may neither pay one creditor to the prejudice of the others, nor alienate its movable property to the prejudice of the creditors of the said organisation, on pain of those who have so alienated its property having to pay a minimum of double and a maximum of four times the value of that which they have so alienated.

8A

The personal property either –

- (a) of a trustee of a trust created; or
- (b) of a member or an officer of an association (other than a commercial or industrial association) incorporated,

under the provisions of this Law shall be exempt from the debts and hypothecs of the trust or of the association, as the case may be, unless it has been made subject thereto by express agreement, or the said trustee or the said member or officer of the association has undertaken personal responsibility therefor.

9

The Royal Court shall have power and authority and shall give effect to the conditions, agreements and stipulations of every trust and of every corporation established under the

¹¹ See footnote 8

¹² *Décret* is an old form of foreclosure applying to property before 1880

¹³ See now Royal Court Rules 2004: Rule 11/1

¹⁴ See now Official Publications (Jersey) Law 1960: Article 2

provisions of this Law, and shall maintain them and cause them to be observed, notwithstanding any Law or custom to the contrary.

10

If the object for which a trust or a corporation has been established, in accordance with Article 3 or 4 of this Law, can no longer be fulfilled either wholly or in part, or if circumstances necessitate a change in the original trust deed or constitution, the Royal Court shall have the power, on the application of the interested parties, having heard the conclusions of the Attorney General,¹⁵ to allow the immovable property and the funds belonging to the trust or the corporation to be applied to another object, preferably an object related to that for which the trust or association was originally constituted, or to the intentions of the founder or founders.

The Court, before ruling on the application, must ensure that the intention of the interested parties to apply to the Court has been made public by announcements placed at least 6 times in the Jersey Gazette¹⁶ and in the case of a trust, that the trustees have been notified thereof; and, in either case, that there has been notice of the day on which the application is to be made to the Court.

11

In the case of a trust in the name of an industrial or commercial company or corporation, the members of the company or corporation shall be responsible for any deficit in the immovables placed in trust. If the company or corporation has been established under the provisions of the Law governing limited liability companies, the company or association and the members of the company or corporation shall be responsible to the extent provided by and subject to the conditions of the Law enacted relating to such Companies.

12

The person who is appointed by virtue of Article 4 shall also represent the company or corporation in any cause relating to movable property, whether as plaintiff or defendant.

17

The Royal Court may, on application being made to it, the conclusions of the Attorney General having been heard, extend the benefit of the present Law to trusts established before this Law was enacted and of Article 10 to trusts established otherwise than in accordance with Article 3 or 4.

¹⁵ *Ministère Public*

¹⁶ *See now* Official Publications (Jersey) Law 1960: Article 2