

STATES OF JERSEY

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DRAFT LOI (200-) (AMENDEMENT No. 4) SUR LES TENEURES EN FIDÉICOMMIS ET L'INCORPORATION D'ASSOCIATIONS

**Lodged au Greffe on 3rd April 2007
by the Chief Minister**

STATES GREFFE



Jersey

DRAFT LOI (200-) (AMENDEMENT No. 4) SUR LES TENEURES EN FIDÉICOMMIS ET L'INCORPORATION D'ASSOCIATIONS

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister has made the following statement –

In the view of the Chief Minister the provisions of the Draft Loi (200-) (Amendement No. 4) sur les teneures en fidéicommiss et l'incorporation d'associations are compatible with the Convention Rights.

(Signed) **Senator F.H. Walker**

REPORT

1. Article 4 of the *Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations* empowers the Royal Court to grant acts of incorporation to certain associations and bodies. Incorporation under the Law of 1862 is an alternative to forming a limited liability company or petitioning Her Majesty (through the vehicle of a Law passed by the States) for the grant of what is effectively a Royal Charter of Incorporation. Applications to the Royal Court have first to be submitted to the Attorney General who must examine them and then present to the Court his 'conclusions'.
2. The jurisdiction of the Court under Article 4 is, however, restricted to granting acts of incorporation to the types of association listed in Article 1.2 of the Law, namely –

“. . . les associations commerciales ou industrielles et les sociétés de bienfaisance, des beaux-arts ou de sports”. [...industrial or commercial associations and organizations established for philanthropic purposes, the fine arts or for sport]
3. This leaves outside the jurisdiction of the Court the other objects referred to in Article 1 of the Law, namely, the objects of bodies –

“pour toute cause d'utilité publique; [for any public utility purpose]
pour servir au culte de l'Église Anglicane, ou à un autre culte religieux; [in furtherance of the Anglican Church, or of any other religious following]
pour l'établissement d'écoles et de maisons d'éducation. [to establish schools and places of learning] ”.

A *fidéicommiss* (a trust) may be established under the Law for these other categories, but an act of incorporation can only be obtained through a Law passed by the States subject to the sanction of Her Majesty in Council.
4. This brake on the jurisdiction of the Royal Court does not serve any vital purpose and creates artificial obstacles. For example, an application to incorporate a dog club could fail because, on the face of it, such a club is not necessarily established for commercial, industrial or charitable purposes or for sport as such – and obviously not in advancement of the fine arts!
5. In reality, such a club has been incorporated as a *société de bienfaisance*. A liberal construction the word “*bienfaisance*” was adopted so as not to stand in the way of an obviously harmless application.
6. But a similar difficulty might present itself in relation to organizations wishing to establish themselves for conservation and ecological purposes. They might not amount to a commercial or industrial association. They might not be charitable in the conventional sense nor, of course, dedicated to the fine arts. Rather they would be educational with elements, perhaps, of *utilité publique*. But, whatever legal label attached to them, there would be no good reason, objectively, for the Royal Court to refuse to grant an act of incorporation. And yet the limitations imposed by the Law of 1862 might require the Court to do just that.
7. In summary, there appears to be no good reason why the jurisdiction of the Royal Court has to be so limited that it cannot (even if it wants to) grant an act of incorporation to a body wishing to establish itself for a “*cause d'utilité publique*” or for a religious or educational purpose. At the moment (as already mentioned in paragraph 3 above) incorporation of such bodies can only be achieved by passing an Act of the States sanctioned by Order of Her Majesty in Council. A fairly recent example was the Beaulieu Convent School Trust for which a *projet de loi* had to be drafted, adopted by the States and sanctioned by Her Majesty in Council because the object – being one of education – was such that the Royal Court had no jurisdiction to entertain an application for incorporation under the Law of 1862.
8. The existing legal position was brought about in 1963 when the Law of 1862 was amended to expand the jurisdiction of the Royal Court which, up until then, had been able only to incorporate “*associations commerciales et industrielles*”. The 1963 amendment widened the Court's jurisdiction to include *sociétés de bienfaisance, des beaux-arts et de sports* (see paragraph 2 above).
9. The other categories listed in Article 1 of the Law (see paragraph 3 above) could of course continue to be the subject of a *fidéicommiss* (i.e. a trust) but, in so far as the grant of an act of incorporation was concerned,

a Law sanctioned by Her Majesty was required. Even so, the number of bodies since 1963 incorporated in that way has greatly reduced (from 27 between 1880 and 1963 to just two in the last 44 years).

10. The amendment in the *projet de loi* is a straightforward one. It would merely bring associations with the objects referred to in paragraph 3 above within the scope of Article 4 of the Law of 1862 i.e. the Article that empowers the Royal Court to grant acts of incorporation. Of course the amendment would not prevent the continued establishment of *fidéicommiss* (trusts) in relation to such objects.

There are no financial or manpower implications for the States arising from the adoption of this Draft Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a *Projet de Loi* to make a statement about the compatibility of the provisions of the *Projet* with the Convention rights (as defined by Article 1 of the Law). On 2nd April 2007 the Chief Minister made the following statement before Second Reading of this *Projet* in the States Assembly –

In the view of the Chief Minister the provisions of the Draft *Loi* (200-) (Amendement No. 4) sur les teneures er *fidéicommiss* et l'incorporation d'associations are compatible with the Convention Rights.

Re-issue Note

This *projet* has been re-issued as it inadvertently contained wording in English in the body of the Draft Law where the wording should have been in French.

Explanatory Note

Presently, it is only commercial, industrial, philanthropic, fine arts and sports bodies that may be granted incorporation under Article 4 of the Associations Law (la Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations).

This Law amends the Associations Law to widen the categories of associations that may be incorporated under Article 4 to include associations formed for any of the objects set out in Article 1. Effectively that means adding associations with objects of the public good, religion and education to the associations presently covered by Article 4.

English Translation

1 Article 4 amended

In Article 4 of the Trusts and Incorporation of Associations Law 1862, for the words “to associations referred to in item 2 of Article 1” there shall be substituted the words “to associations referred to in item 2 of Article 1, or to an association that is formed for an object set out in one or more of the other items of that Article”.

2 Citation and commencement

- (1) This Law may be cited as the Trusts and Incorporation of Associations (Amendment No. 4) Law 200.
- (2) This Law shall come into force 7 days after its registration.



Jersey

DRAFT LOI (200-) (AMENDEMENT No. 4) SUR LES TENEURES EN FIDÉICOMMIS ET L'INCORPORATION D'ASSOCIATIONS

LOI pour modifier en plus la Loi (1862) sur les teneures en fidéicommis et l'incorporation d'associations

Adoptée par les Etats

[date to be inserted]

Confirmée par Ordre de Sa Majesté en Conseil

[date to be inserted]

Enregistrée

[date to be inserted]

LES ETATS, moyennant la sanction de Sa Très Excellente Majesté en Conseil, ont adopté la Loi suivante –

1 Modification de l'Article 4

Dans l'Article 4 de la Loi (1862) sur les teneures en fidéicommis et l'incorporation d'associations^[1], aux mots "aux associations indiquées au 2e numéro de l'Article 1er" seront substitués les mots "soit aux associations indiquées au 2e numéro de l'Article 1, soit à une association qui s'est formée dans un but énoncé dans un ou plusieurs des autres numéros dudit Article,".

2 Intitulé et entrée en vigueur

- (1) La présente Loi pourra être citée comme la Loi (200-) (Amendement No. 4) sur les teneures et fidéicommis et l'incorporation d'associations.
- (2) La présente Loi entrera en vigueur 7 jours après le jour de son enregistrement.

