



**FIXED DATE CLAIM FORM**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE COMMERCIAL DIVISION**

**CLAIM NO. SU 2021 CD 00196**



**IN THE MATTER OF THE COMPANIES ACT OF JAMAICA**

**AND**

**IN THE MATTER OF AN APPLICATION BY THE  
JAMAICA STOCK EXCHANGE FOR DIRECTIONS  
PURSUANT TO SECTION 130(2) OF THE COMPANIES  
ACT OF JAMAICA**

The Claimant, **THE JAMAICA STOCK EXCHANGE** of 40 Harbour Street, in the parish of Kingston, claims for the following relief:

1. An order that notwithstanding the provisions of the Companies Act, the provisions of each of their articles of incorporation regarding the holding of annual general meetings and any notice of an annual meeting, information circular or other documents that may be or already have been disseminated by the companies identified in the list exhibited to the Affidavit in support of this Fixed Date Claim Form ("the Companies") may call and conduct their next general meetings ("the General Meetings", which term includes annual general meetings and/or extraordinary general meetings or any of them conducted following an adjournment or postponement) in accordance with this order and the General Meetings called or held in accordance with this order shall be valid.
2. An order that the Companies are permitted to conduct their General Meetings for the years 2021, 2022 and 2023 or for so long as Jamaica remains or is designated a disaster area pursuant to the Disaster Risk Management Act (whichever period is longer) by either:

- (a) Holding a meeting with one or more shareholders present at a physical venue with a live stream or broadcast of the meeting by electronic means or software (including webcasting, videoconferencing, teleconferencing, a combination of these and/or other electronic means) which allows all shareholders access to see and hear the proceedings, ask questions in such reasonable order and manner as the chairman may allow, and to vote electronically including before the meeting or by a proxy chosen from among the persons the company indicates will be physically present at the meeting; or
  - (b) Holding a meeting entirely by live stream or broadcast of the meeting by electronic means or software (including webcasting, videoconferencing, teleconferencing, a combination of these and/or other electronic means) which allows all shareholders access to see and hear the proceedings, ask questions in such reasonable order and manner as the chairman may allow, and to vote electronically including before the meeting.
- 3. An order that the Companies are permitted to provide their shareholders with notices of the General Meetings, resolutions, draft resolutions proposed to be passed, circulars, proxy forms, financials including profit and loss accounts, balance sheets and auditor's reports and any other documents necessary or relevant for the conduct of an annual general meeting by one or more of the following means: electronic mail, pre-paid mail, posting links to access the documents on their respective websites and/or the Jamaica Stock Exchange's website.
- 4. A declaration that any notice or document delivered in accordance with this order shall satisfy all requirements for serving documents for the General Meetings notwithstanding any provision to the contrary in the Companies Act or the Companies' articles of incorporation.

5. An order that the failure or inability of a shareholder to attend or remain in the General Meetings held in accordance with paragraph 2 above as a result of mistake or of events beyond the control of a Company shall not constitute a defect in the calling of the General Meetings and shall not invalidate any resolutions passed or proceedings taken at that General Meeting.
6. Liberty to apply.
7. Such further and other relief as this Honourable Court deems appropriate or which may be necessary to give effect to the orders sought.

**The Claimant is seeking the orders on the following grounds:**

- (1) The Claimant is a company incorporated under the Companies Act. Its objects include mobilizing capital to facilitate the growth and development of companies and promoting the development of the Jamaican stock market.
- (2) The Companies are listed on the stock exchange operated by the Claimant and the Claimant acts on their behalf in these proceedings.
- (3) On March 13, 2020, the Prime Minister of Jamaica, the Most Hon. Andrew Holness, by the Disaster Risk Management (Enforcement Measures) Order declared Jamaica a disaster area due to the effects of the novel Coronavirus COVID-19.
- (4) This order, which was made pursuant to the Disaster Risk Management Act, imposed various restrictions including restricting the size of public gatherings.

- (5) Since that date the Government has implemented several measures to limit the spread of COVID-19 by the promulgation of a series of orders under the Disaster Risk Management Act.
- (6) On April 13, 2021 the Disaster Risk Management (Enforcement Measures) (No. 5) Order, 2021 ("the Order") was brought into effect extending the period for which Jamaica is deemed a disaster area to June 30, 2021.
- (7) The Order prohibits public gatherings exceeding 10 persons including specifically annual general meetings and extraordinary general meetings.
- (8) The Order also maintains the prohibition against persons over the age of sixty years from leaving their place of residence except for specified purposes.
- (9) Given the nature of COVID-19 it is likely that there will be further extensions and orders and even if there are no further extensions, the medical advisory is for persons to limit social contact, including public gatherings, as much as possible.
- (10) Section 126(1) of the Companies Act provides that **"Every company shall in each year hold a general meeting as its annual general meeting...; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next"**
- (11) Most of the Companies are required to hold their annual general meetings prior to December 2021.
- (12) At General Meetings, all shareholders are entitled to attend, be heard and vote.

- (13) The membership of each of the Companies is greater than 300 and, in some cases, exceeds 5,000 to more than 29,000, and there is no suitable venue which is an appropriate size to accommodate all shareholders entitled to attend at the required physical distance.
- (14) In relation to directors' meetings in relation to which section 141 of the Companies Act provides that **"a director may if all the directors of the company, consents, participate in a meeting of directors of the company or of a committee of the directors by means of such telephone or other communicating facilities as permit all persons participating in the meeting to hear each other"**.
- (15) There are no similar provisions in relation to General Meetings and the Companies Act therefore does not appear to allow them to be held or conducted by electronic means.
- (16) General Meetings must therefore generally be held at a physical venue where shareholders attend in person.
- (17) In the circumstances, it is not feasible for the Companies to safely hold their next General Meetings as required by the Companies Act and their Articles of Incorporation in a manner that properly facilitates participation by their large number of shareholders.
- (18) Section 130(2) of the Companies Act provides that **"If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in a manner prescribed in the company's articles, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in**

**NOTICE OF HEARING:**

**THE FIRST HEARING** of this claim will take place at The Supreme Court, Public Buildings, King Street, Kingston, on the 31 day of May 2021 at 12:00 a.m./p.m. for 72 hours.

If you do not attend at that hearing, judgment may be entered against you in accordance with the claim.

A Particulars of Claim or an Affidavit giving full details of the Claimant's claim should be served on you with this Claim Form. If this has not been done and there is no order permitting the Claimant not to serve the Particulars of Claim or Affidavit you should contact the court immediately. You should complete the form of Acknowledgement of Service served on you with this Claim Form and deliver it to the registry (address below) so that they receive it within **FOURTEEN (14) days** of service of this Claim Form on you. The form of Acknowledgement of Service may be completed by you or an Attorney-at-Law, acting for you. See Rules 9.3(1) and 9.4(3).

**You should consider obtaining legal advice with regard to this claim. See notes in form 2A served with this Claim Form.**

**This Claim Form has no validity if it is not served within six months of the date below unless it is accompanied by an order extending that time. See Rule 8.14(1).**

[SEAL]

The Registry is at King Street, Kingston, telephone numbers (876) 922-8300 – 9, fax (876) 967-0669. The office is open between 9:00a.m. and 4:00p.m. Mondays to Thursdays and 9:00 a.m. to 3:00p.m. on Fridays except on Public Holidays.

DATED THE            DAY OF MAY 2021

**FILED** by **HYLTON POWELL**, Attorneys-at-Law, 11A Oxford Road, Kingston 5 in the parish of Saint Andrew. Attorneys-at-Law for the Claimant whose address for service is that of its said Attorneys-at-Law (Attention: Kerri-Anne Mayne 5683). Telephone: 926-1672; Facsimile: 929-7587. Email: [kamayne@gmail.com](mailto:kamayne@gmail.com)