



FIXED DATE CLAIM FORM



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO.

SU 2020 CD 00227

**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 2020 annual general meetings ("the Annual Meetings", which term includes Annual Meetings conducted following an adjournment or postponement) in accordance with this order and any Annual Meeting called or held in accordance with this order shall be valid.

2. An order that each Company is permitted to conduct its Annual Meeting 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 Annual Meeting, 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 an Annual Meeting 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 an Annual Meeting 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 Annual Meeting and shall not invalidate any resolutions passed or proceedings taken at that Annual 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. The Companies are listed on the stock exchange operated by the Claimant and the Claimant acts on their behalf in these proceedings.

- (2) On March 13, 2020, the Prime Minister of Jamaica, the Hon. Andrew Holness, by the Disaster Risk Management (Enforcement Measures) Order declared Jamaica a disaster area due to the effects of the SARS- CoV2 (Coronavirus COVID-19) on the island.
- (3) Since that date the Government has implemented several measures to limit the spread of SARS- CoV2 (Coronavirus COVID-19) by the promulgation of a series of orders under the Disaster Risk Management Act.
- (4) On June 1, 2020 the Disaster Risk Management (Enforcement Measures) (No. 7) Order, 2020 ("the Order") was brought into effect extending to June 30, 2020 the period for which Jamaica is deemed a disaster area.
- (5) Although the Order exempts annual general meetings from the prohibition of public gatherings of more than 10 persons, it imposes restrictions regarding the physical distancing of persons and other protocols for those attending annual general meetings.
- (6) The Order also prohibits persons over the age of sixty-five years old from leaving their place of residence except for specified purposes, none of which include attending a Company's annual general meeting.
- (7) Given the nature of the SARS CoV2 (Coronavirus 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

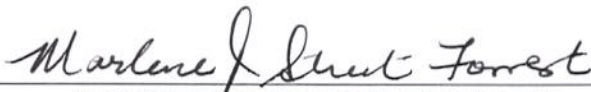
- (8) Section 126(1) of the Companies Act provides that **“Every company shall in each year hold a general meeting as its annual general meeting...; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next”**
- (9) The annual general meetings of the Companies are required to be held between June and November 2020.
- (10) At annual general meetings all shareholders are entitled to attend, be heard and vote.
- (11) The membership of each of the Companies is greater than 1,300 and in some cases exceeds 20,000 to 30,000, and there is no suitable venue which is an appropriate size to accommodate all shareholders entitled to attend at the required physical distance.
- (12) Unlike directors’ meetings in relation to which section 141 of the Companies Act provides that **“a director may if all the directors of the company, consent, 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”** there are no similar provisions in relation to annual general meetings and the Companies Act therefore does not appear to allow them to be held or conducted by electronic means..
- (13) Annual General meetings must therefore generally be held at a physical venue where shareholders attend in person.
- (14) In the circumstances, the Companies either have not been able to or will not be able to hold their annual general meetings as required by the Companies Act.

- (15) 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 accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted”.
- (16) In the present circumstances it is impracticable for the Companies to call and hold a meeting in the manner in which the annual general meetings are to be called.
- (17) In the absence of an order of the court allowing for an annual general meeting by electronic means the Companies would either be forced to hold an annual general meeting in breach of the Order and/or at risk to the health of their shareholders and officers who attend or to not hold a meeting which would breach the Companies Act.
- (18) The Claimant has been appointed as a representative party for the Directors and the Companies in applying to this Court pursuant to section 130(2) of the Companies Act.

(19) The relief sought in this claim is therefore appropriate and necessary so that the Companies may comply with both the Order and the requirements of the Companies Act to hold annual general meetings.

I certify that all facts set out in this Fixed Date Claim Form are true to the best of my knowledge, information and belief.


Dated the 8th day of June, 2020


MARLENE STREET FORREST
Managing Director
THE JAMAICA STOCK EXCHANGE

SETTLED


for B. St. MICHAEL HYLTON, Q.C.

And


KEVIN O. POWELL

HYLTON POWELL
ATTORNEYS-AT-LAW FOR THE CLAIMANT

PER 
for MELISSA S. MCLEOD

NOTICE OF HEARING:

THE FIRST HEARING of this claim will take place at The Supreme Court, Public Buildings, King Street, Kingston, on the 24th **day of June 2020 at 2:00 p.m. for 2 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 JUNE, 2020

Filed by Hylton Powell, 11A Oxford Road, Kingston 5 in the parish of Saint Andrew, Attorneys-at-Law for and on behalf of the Claimant (Attention: Melissa McLeod – Attorney # 4611), whose address for service is that of its Attorneys-at-Law. Telephone number: (876) 926-1672, facsimile number: (876) 929-7587 and email address: mmcleod@hyltonpowell.com.