



**FIXED DATE CLAIM FORM**



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE COMMERCIAL DIVISION  
CLAIM NO. SU 2021 CD 00162**

**IN THE MATTER OF** the Companies Act of  
Jamaica

**AND**

**IN THE MATTER OF** an application by John  
Mahfood for directions pursuant to section  
130(2) of the Companies Act of Jamaica

The Claimant, **JOHN MAHFOOD**, director of Jamaican Teas Limited, a limited liability company incorporated under the laws of Jamaica and listed on the Jamaica Stock Exchange, with registered address at 2 Bell Road, Kingston 11, Jamaica, West Indies, of QWI Investments Limited, a limited liability company incorporated under the laws of Jamaica and listed on the Jamaica Stock Exchange, with registered address at 2 Bell Road, Kingston 11, Jamaica, West Indies, and of KIW International Limited, a public limited liability company incorporated under the laws of Jamaica, with registered address at 2 Bell Road, Kingston 11, Jamaica, West Indies, seeks the following Orders/Relief:

1. An Order that notwithstanding the provisions of the Companies Act, the provisions of the articles of incorporation of Jamaican Teas Limited ("**JAMT**"), QWI Investments Limited ("**QWI**"), and KIW International Limited ("**KIW**") (together, the "**Companies**"), regarding the holding of annual general meetings or extraordinary ordinary general meetings, and any notice of an annual general meeting or extraordinary general meeting, information circular or other documents that may be or already have been disseminated by the Companies or are by law or the articles of incorporation of the Companies required to be disseminated by the Companies to their respective shareholders, JAMT, QWI, and KIW may each call and conduct its annual general meetings and any extraordinary general meeting

## COMMERCIAL DIVISION

(the “**Meetings**”, which term includes meetings conducted following an adjournment or postponement of the Meetings) in accordance with this order, until further order.

2. A Declaration that the Meetings called or held in accordance with this order shall be valid.
3. An Order that the Companies are each permitted to conduct the Meetings by either:
  - (1) holding a meeting with one or some 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 Companies indicate will be physically present at the meeting; or
  - (2) 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.
4. An Order that the Companies are permitted to provide their shareholders with notices of the Meetings, resolutions, draft resolutions proposed to be passed, circulars, proxy forms, financial statements including profit and loss accounts, balance sheets and auditor’s reports and any other document necessary or relevant for the conduct of the Meetings by one or more of the following means, namely: electronic mail, pre-paid mail, posting links to access the documents on

## COMMERCIAL DIVISION

their respective websites, and/or on the website of the Jamaica Stock Exchange in the case of JAMT and QWI.

5. A Declaration that any notice or document delivered in accordance with this Order shall satisfy all requirements for serving or delivering documents for the Meetings notwithstanding any provision to the contrary in the Companies Act or the articles of incorporation of the Companies.
6. An Order that the failure or inability of a shareholder to attend or remain in any of the Meetings held in accordance with paragraph 2(1) or 2(2) above as a result of mistake or events beyond the control of the Companies shall not constitute a defect in the calling or holding of the Meetings and shall not invalidate any resolution passed or proceedings taken at the Meetings.
7. Liberty to apply.
8. Such further and/or other relief as the Court deems fit.

The Claimant seeks the above orders and relief on the following **GROUND**S which are not exhaustive:

- (1) Pursuant to section 130(2) of the Companies Act this Court is empowered to either of its own motion or on the application of any director of a company or any member of the company who would be entitled to vote at a meeting, order a meeting of a company to be called, held, and conducted in such manner as this Court thinks fit, and where any such order is made may give such ancillary or consequential orders as it thinks expedient.
- (2) The Claimant is a director of each of the Companies, which are all public companies within the Jamaican Teas Group of companies.

## COMMERCIAL DIVISION

- (3) On 13<sup>th</sup> March 2020, the Prime Minister of Jamaica, the Honourable Andrew Holness, by the Disaster Risk Management (Enforcement Measures) Order declared Jamaica a disaster area due to the effects of SARS-CoV-2 (Coronavirus COVID-19) (“**COVID-19**”) in Jamaica.
- (4) Since that date the Government of Jamaica has implemented measures to limit the spread of COVID-19 through a series of orders under the Disaster Risk Management Act.
- (5) As recently as 13<sup>th</sup> April 2021, the Disaster Risk Management (Enforcement Measures) (No. 5) Order, 2021 (“**Order**”) was made extending the period for which Jamaica is deemed a disaster area.
- (6) Pursuant paragraph 23 and the Fourth Schedule to the Order annual general meetings and any extraordinary general meeting are generally prohibited and may only be held with the written permission of a Medical Officer (Health) and only if there are extenuating circumstances which apply, or where held solely by electronic means, if a court grants the entity concerned an order for such a meeting to be held solely by electronic means.
- (7) Given the nature of COVID-19 the Ministry of Health has published various advisories for persons to limit social contact, including public gatherings, as much as possible and it is unknown as to when COVID-19 will end or be brought under control.
- (8) The number of shareholders of each of the Companies far exceed 1,000.
- (9) Pursuant to section 126(1) of the Companies Act, every company is required to hold in each year a general meeting as its annual general meeting, in addition to any other meetings in that year, and not more than fifteen (15) months shall elapse between the date of one annual general meeting of a company and that of the next.

COMMERCIAL DIVISION

- (10) JAMT is required to hold its next annual general meeting by 20<sup>th</sup> June 2021.
- (11) QWI is required to hold its next annual general meeting by 20<sup>th</sup> June 2021.
- (12) KIW is required to hold its next annual general meeting by 20<sup>th</sup> June 2021.
- (13) Before the 1<sup>st</sup> March 2021 when the Disaster Risk Management (Enforcement Measures) (No. 3) Order, 2021 was made that commenced generally prohibition of the holding of annual general meetings and any extraordinary general meeting:
- (a) JAMT had scheduled, and given notice of its annual general meeting, for 30<sup>th</sup> March 2021;
  - (b) QWI had scheduled, and given notice of its annual general meeting, for 30<sup>th</sup> March 2021;
  - (c) KIW had scheduled, and given notice of its annual general meeting, for 30<sup>th</sup> March 2021.
- (14) It is also likely that extraordinary general meetings of the Companies will need to be called, held, and conducted for the purpose of obtaining shareholders' approval in respect of matters which affect the Companies' operations, and which must be urgently addressed.
- (15) At annual general meetings and extraordinary general meetings shareholders are entitled to attend, be heard, and vote.
- (16) Unlike directors' meetings under section 141 of the Companies Act which allows directors to participate in directors' meetings by means of telephone or other communication facilities which permit all persons participating in that meeting to hear each other, there are no similar provisions in the Companies Act which appear to allow the conduct of annual general meetings and extraordinary general meetings by electronic means.

COMMERCIAL DIVISION

- (17) Annual general meetings and extraordinary general meetings must therefore generally be held at a physical venue where shareholders attend in person.
- (18) Each of the Companies' articles of incorporation does not allow the conduct of annual general meetings and extraordinary general meetings by electronic means.
- (19) In the present circumstances it is impracticable for the Companies to call and hold meetings including annual general meetings and extraordinary general meetings in the manner required by the Companies Act and their respective articles of incorporation.
- (20) It is highly likely, in absence of the Orders/reliefs sought, the Companies are at risk of breaching the provisions of the Companies Act and/or the Order or any further order made under the Disaster Risk Management Act and at the same time pose risks to the health of their shareholders and officers.
- (21) The Orders and reliefs sought are necessary for the Companies to comply with the Order and the requirements of the Companies Act to hold annual general meetings and any extraordinary general meeting.
- (22) The declaration, orders, and reliefs sought are necessary for the effective and just disposal of these proceedings.

The Claimant will rely upon the Affidavit of John Mahfood which sets out the particulars of the Claimant's claim, and such further affidavits that may be filed in support of this claim.

I, **JOHN MAHFOOD**, 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 21<sup>st</sup> day of April 2021

  
\_\_\_\_\_  
**JOHN MAHFOOD**  
**CLAIMANT**

**NOTICE TO THE DEFENDANT**

The first hearing of this claim will take place at The Supreme Court, Public Buildings, King Street, Kingston, on the 13<sup>th</sup> day of May 2021, at 2:00 a.m./p.m.

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

If you do attend, the judge may (a) deal with the claim, or (b) give directions for the preparation of the case for a further hearing.

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 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 9:00a.m. to 3:00p.m. on Fridays except on Public Holidays.

Dated the 21<sup>st</sup> day of April 2021

The Claimants' address for service is that of their Attorney-at-Law, Hart Muirhead Fatta of Victoria Mutual Building, 2<sup>nd</sup> Floor, 53 Knutsford Boulevard, Kingston 5. Tel. 929-7432; fax 929-5755. Ref: WOD. (Attorney No. 3956).

**FILED** by **HART MUIRHEAD FATTA** of Victoria Mutual Building, 2<sup>nd</sup> Floor, 53 Knutsford Boulevard, Kingston 5, Attorneys-at-Law for the Claimant, the address for service of which is that of his said Attorneys-at-Law. Tel. 929-7432; fax 929-5755. Ref: WOD. (Attorney No. 3956).