



FIXED DATE CLAIM FORM

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



CLAIM NO. 2021 SU CD 00187

IN THE MATTER OF THE COMPANIES ACT OF JAMAICA

AND

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

The Claimant, **JAMAICAN BAR ASSOCIATION**, a company limited by guarantee and incorporated in Jamaica with its principal office at 78 Harbour Street, in the city and parish of Kingston claims for the following relief:

1. An order that notwithstanding the provisions of the Companies Act, the provisions of its Articles of Incorporation regarding the holding of general meetings and any notice of a general meeting, information circular or other documents that it may disseminate or may have already disseminated, JAMAICAN BAR ASSOCIATION (“JBA”) may call and conduct its next general meetings (“the General Meetings”), which term includes an annual general meeting and/or extraordinary general meeting 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 JBA is permitted to conduct General Meetings for so long as Jamaica remains or is designated a disaster area pursuant to the Disaster Risk Management Act or alternatively for the year 2021 by either:

- (a) Holding a meeting with one or more members 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 members 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 JBA 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 members 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 JBA is permitted to provide its members 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 and/or an extraordinary general meeting by one or more of the following means: electronic mail, pre-paid mail, posting links to access the documents on its website at www.jambar.org.
- 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 JBA's 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 because of mistake or of events beyond the control of JBA 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) JBA is a company limited by guarantee and incorporated in Jamaica with its principal address at 78 Harbour Street, in the city and parish of Kingston. It is a membership organization comprising Attorneys-at-Law on the Roll of Attorneys in Jamaica.
- (2) 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 because of the SARS-CoV-2 ("Coronavirus COVID-19").
- (3) This order, which was made pursuant to the Disaster Risk Management Act, imposed various restrictions including restricting the size of public gatherings.
- (4) Since that date the Government has implemented several measures to limit the spread of Coronavirus COVID-19 by the promulgation of a series of orders under the Disaster Risk Management Act.

- (5) In accordance with Section 23 of **THE DISASTER RISK MANAGEMENT (ENFORCEMENT MEASURES) (NO. 5) ORDER, 2021**, no Annual General Meetings can be held between April 13, 2021 and May 4, 2021.
- (6) As a consequence, the Annual General Meeting of the Jamaican Bar Association, originally fixed for April 17th 2021 was postponed until further notice.
- (7) The Order also maintains the prohibition against 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 General Meeting.
- (8) Given the nature of the 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.
- (9) 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 (15) months shall elapse between the date of one Annual General Meeting of a company and that of the next..."**
- (10) JBA's next annual general meeting must be held within the next five (5) months.
- (11) JBA's members are entitled to attend, be heard and vote at its upcoming General Meetings.
- (12) There are approximately 2000 members of JBA and there is no suitable venue which is an appropriate size to accommodate all members entitled to attend at the required physical distance.

- (13) 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, 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”**.
- (14) 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.
- (15) General Meetings must therefore generally be held at a physical venue where members attend in person.
- (16) In the circumstances, JBA will not be able to hold its next General Meetings as required by the Companies Act and its Articles of Incorporation.
- (17) 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”**.
- (18) In the present circumstances it is impracticable for JBA to call and hold a meeting in the way General Meetings are to be called.

- (19) In the absence of an order of the court allowing for General Meetings by electronic means JBA would likely either be forced to hold General Meetings in breach of the Order (which is very likely to be extended) and/or at risk to the health of its members, officers and all persons associated with hosting General Meetings who attend or to not hold its upcoming General Meetings, which would contravene the Companies Act.
- (20) The relief sought in this claim is therefore appropriate and necessary so that JBA may comply with any further or updated orders issued under the Disaster Risk Management Act, and the requirements of the Companies Act to hold General Meetings.

I certify that I believe the facts stated in this Fixed Date Claim Form are true.

Dated the 29th day of April 2021



EMILE G.R. LEIBA
President
JAMAICAN BAR ASSOCIATION

DUNNCOX
ATTORNEYS-AT-LAW FOR THE CLAIMANT

PER 

NICKARDO LAWSON

NOTICE OF HEARING:

THE FIRST HEARING of this claim will take place at The Supreme Court, Public Buildings, King Street, Kingston, on the 20th day of May 2021 at 9:30 a.m./~~p.m.~~ for 1/2 hr hour(s).

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 Fixed Date 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 29th DAY OF APRIL 2021

FILED BY DUNNCOX Attorneys-at-Law of 48 Duke Street, Kingston, Attorneys-at-Law for and on behalf of the Claimant whose address for service is that of its said Attorneys-at-Law. (Attention: Mr Nickardo Lawson Attorney no. 6061 Nickardo.lawson@dunncox.com)



**PRESCRIBED NOTES FOR DEFENDANTS
(FIXED DATE CLAIM FORM)
FORM 2A [Rule 8.16(1)(c)]**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

This Form is important.
When you get this document you should consider getting legal advice.

The Claimant is seeking an order from the court as set out in the Claim Form on the basis of the facts or evidence set out in the Particulars of Claim or Affidavit which was served with it. The Claimant will not be entitled to enter judgment against you without a hearing.

You may:

A. *Admit the Claim*

If so, you should complete and return the form of Acknowledgement of Service to the registry within **FOURTEEN DAYS** stating this. You may attend the first hearing if you wish to do so.

B. *Dispute the Claim*

If so, you should complete and return the form of Acknowledgement of Service as under A. You should also file at the registry and serve on the Claimant's Attorney-at-Law (or the Claimant if he has no Attorney-at-Law):

- (a) a Defence if the Claim Form was accompanied by the Claimant's Particulars of Claim, or
- (b) an Affidavit in answer if the Claim Form was accompanied by an Affidavit sworn by or on behalf of the Claimant. See Rule 10.2(2)

within **FORTY TWO DAYS** of the day on which the Claim Form was served on you. Your Defence or Affidavit must set out briefly **ALL** the facts on which you will rely to dispute the claim made against you.

You should also attend the first hearing. **If you do not the judge may deal with the claim in your absence.**

C. *Make a claim against the Claimant*

If so, you should complete and return the form of Acknowledgement of Service as under A. You must file a Particulars of Claim (a counterclaim) setting out full details of what you claim against the Claimant and the facts on which you will rely. This must be done within **FORTY TWO DAYS** of the date on which the claim form was served on you.

The Particulars of Claim should set out ALL the facts on which you rely in disputing any part of the Claimant's claim against you.

You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.

Copies of forms may be obtained from the registry or at www.sc.gov.jm



**ACKNOWLEDGEMENT OF SERVICE OF FIXED DATE
CLAIM FORM
FORM 4 [Rule 8.16(1)(a)]**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO.

2021 SU CD

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AND

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

WARNING: This form should be completed and returned to the registry at the address below within **FOURTEEN** days of service of the Fixed Date Claim Form on you. See Rule 9.3(1). However, the Claimant will not be entitled to have judgment entered against you except at the first or subsequent hearing of the claim.

1. Have you received the Fixed Date Claim Form with the above number? YES/NO

2. If so when did you receive it? _/_/___

3. Did you also receive the Claimant's Particulars of Claim or Affidavit in Support? YES/NO

4. If so, on what date did you receive them? _/_/___

5. Are your names properly stated on the Claim Form? YES/NO
If not what are your full names?
.....

6. Do you want to defend the claim? YES/NO

If so you should file a Defence or Affidavit in answer within 42 days
of the service of the Fixed Date Claim Form on you. See Rule 10.3(1)

7. Do you admit the whole claim? YES/NO

8. Do you admit any part of the claim? YES/NO

9. If so what do you admit?

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10. What is your own address?

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11. What is your address for service?

If you are acting in person you must give an address to which documents may be sent either from other parties or from the court. You should also give your telephone number and fax number if any.

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.....
.....

Dated day of 20

Signed.....
[Defendant in person]
[Defendant's attorney-at-law]

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the Acknowledgement of Service).



DEFENCE
FORM 5 [Rule 8.16(1)(b)]

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DEFENCE

I dispute the claim on the following grounds -

I certify that all the facts set out in my Defence are true to the best of my
knowledge information and belief.

Dated day of 20

NOTES:

- (a) The Defendant may set out his defence in any way he chooses - it is not necessary to use this form.
- (b) The Defendant must state-
 - which allegations in the claim he admits
 - which he denies
 - which he neither admits or denies because he does not know whether they are true
 - identify any documents which he considers necessary to his case
- (c) The Defendant must give his reasons for denying any allegations made by the Claimant.
- (d) The Defendant must set out clearly all the facts on which he relies to dispute the Claim and must set out any different version of the events on which he relies.
- (e) The Defendant may not be allowed at the trial to give evidence about any fact which is not set out in the defence.
- (f) If the Defendant wishes to counterclaim he must-
 - specify any remedy that he seeks against the claimant
 - include a short statement of all facts on which he relies
 - identify any documents which he considers necessary to his case
- (g) Where the Defendant is represented by an attorney-at-law, he must also sign the Form and give his address for service.
- (h) A Defendant who defends in a representative capacity must say:-
 - what that capacity is and
 - whom he represents.