



AMENDED FIXED DATE CLAIM FORM

Form 2 [Rule 8.1(4)]

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

CLAIM NO.

SU2021 CD00 331



IN THE MATTER OF THE COMPANIES
ACT OF JAMAICA

AND

IN THE MATTER OF AN APPLICATION BY
THE CARIBBEAN COMMUNITY OF
RETIRED PERSONS LIMITED FOR
DIRECTIONS PURSUANT TO SECTION
130(2) OF THE COMPANIES ACT OF
JAMAICA

AND

IN THE MATTER OF CALLING, HOLDING
AND CONDUCTING THE 2021-2023
GENERAL MEETINGS OF THE
CARIBBEAN COMMUNITY OF RETIRED
PERSONS LIMITED



The Claimant, **THE CARIBBEAN COMMUNITY OF RETIRED PERSONS LIMITED (CCRP)**
of 2 Phoenix Avenue, Kingston 10 in the parish of St Andrew, claims for the following relief:

1. An order that notwithstanding the provision of the Companies Act and the provisions in the Claimant's Articles of Incorporation regarding the holding of Annual General Meetings, the Claimant may call and conduct its next due Annual General Meeting and/or other general meetings (which term shall include annual, and extraordinary general meetings including adjourned or postponed annual or extraordinary meetings) for the years 2021-2023 in accordance with this order and the general meetings called or held by the Claimant in accordance with such order shall be valid.
2. An order that in addition to the manner prescribed in the Companies Act and in its articles of incorporation, the Claimant be permitted to conduct its general meetings for the years 2021-2023 by either:
 - (a) Holding a general 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/or 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 Claimant indicates will be physically present at the meeting: or

- (b) Holding a general 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/or 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 Claimant be permitted to provide its members with notices of the general meeting, and where appropriate, 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 general meetings for the years 2021-2023 by one or more of the following means: electronic mail, pre-paid mail, posting links to access the documents on the Claimant's website.

4. A declaration that any notice or document delivered in accordance with this order shall satisfy all requirements for serving documents for general meetings notwithstanding any provision to the contrary in the Companies Act or the Claimants' Articles of Incorporation.

5. A declaration that the failure or inability of a member to attend or remain in general meetings held in accordance with paragraph 2 above as a result of mistake or of events beyond the control of the Claimant 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 promoting the well-being of retired persons and providing diverse services to retired persons.
- (2) On March 13, 2020, the Disaster Risk Management (Enforcement Measures) Order was promulgated by the Prime Minister of Jamaica, the Most Hon. Andrew Holness and, by Order declared the whole of Jamaica to be a disaster area, due to the threat of the SARS-CoV-2 (Coronavirus COVID-19) pandemic.
- (3) After a series of other orders, the Honourable Prime Minister announced that commencing July 1, 2021, the Disaster Risk Management (Enforcement

Measures) (No. 8), Order, 2021 (hereinafter called "the Order") would be in effect, further extending the period for which Jamaica is deemed a disaster area.

- (4) The Order under Paragraph 23 (1) prohibits the holding of annual general meetings or extraordinary general meetings unless "solely by electronic means, if a court grants the entity concerned an order for such a meeting to be held solely by electronic means" (Paragraph 23(2)(a)), and "with no more than 100 persons in physical attendance, whether or not additional persons participate by electronic means, if a court grants the entity concerned an order for such a meeting to be held" (Paragraph 23 (2)(b)).
- (5) The Order under Paragraph 11 (4) also prohibits persons over the age of sixty years old from leaving their places of residence except in specific circumstances which do not include the attending of annual general meetings.
- (6) Given the nature of the SARS-CoV-2 (Coronavirus -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.
- (7) Section 126(1) of the Companies Act provides that "Every company shall in each year hold a general meeting as its annual general meetings...; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next."
- (8) The Claimant is required to hold its 2021 annual general meeting on or before October 19, 2021.
- (9) At annual general meetings, all shareholders are entitled to attend, be heard and vote.
- (10) The Claimant's membership exceeds the number permitted for in-person meetings and primarily comprises the age range of persons who have been advised by the Government not to leave their places of residence except for specific circumstances which do not include the attending of annual general meeting. There is also an absence of suitable venues which is an appropriate size to accommodate all members entitled to attend at the required physical distance.
- (11) 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 director 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.
- (12) Annual general meetings must therefore generally be held at a physical venue where shareholders attend in person.
- (13) In the circumstances, the Claimant has not been able to or will not be able to hold their annual general meetings as required by the Companies Act.
- (14) 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."

- (15) In the present circumstances, it is impracticable for the Claimant to call and hold a meeting in the manner in which the annual general meetings are to be called.
- (16) Based on the information available on the SARS-CoV-2 (Coronavirus COVID-19) from the public medical authorities, it appears likely that the restrictions on public gatherings and physical distance requirements will continue for several more months and even beyond this year. Such continuing restrictions are likely to affect the holding and conduct of future general meetings.
- (17) In the absence of an order of the court allowing for general meetings by electronic means, the Claimant would be forced to either hold its Annual General Meeting and/or other general meetings in breach of the Order and/or at the risk to the health of its members who attend, or to not hold a meeting which would breach the Companies Act.
- (17) The relief sought in this claim is therefore appropriate and necessary so that the Claimant may comply with both the Order, and the requirements of the Companies Act to hold annual general meetings.

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


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JEAN LOWRIE CHIN


Chairman

THE CARIBBEAN COMMUNITY OF RETIRED PERSONS LIMITED

The first hearing of this Claim will take place at The Supreme Court, Public Buildings, King Street, Kingston on the ^{26th} day of August 2021 at 10 a.m./p.m. for 1/2 hours.

The Registry of the Court is at King Street, Kingston, telephone numbers (876) 922-8300-9, fax (876) 967-0669. The office is open between 9:00 a.m. to 4:00 p.m. Mondays to Thursdays and 9:00a.m. to 3:00p.m. on Fridays, except on public holidays. When corresponding with the Court, please address forms or letters to the Registrar and quote the claim number.

Dated the ^{13th} day of August 2021


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Philippa Davies

Attorney at law for the Claimant

FILED by Philippa Davies, c/o 9 Cecelio Avenue, Kingston 10 Attorney -at-law, (No. 3342) for and on behalf of the Applicant whose address for service is that of its Attorney-at-Law, Telephone: (876)779-6219 & Email: padavieslaw@gmail.com.