



FIXED DATE CLAIM FORM



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE COMMERCIAL DIVISION
CLAIM NO. SU 2021 CD00033**

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

AND

**IN THE MATTER OF AN APPLICATION BY A
DIRECTOR OF TROPICAL BATTERY
COMPANY LIMITED FOR DIRECTIONS
PURSUANT TO SECTION 130(2) OF THE
COMPANIES ACT OF JAMAICA**

AND

**IN THE MATTER OF THE HOLDING OF THE
ANNUAL GENERAL MEETINGS OF
TROPICAL BATTERY COMPANY LIMITED**

The Claimant/Applicant, **ALEXANDER MELVILLE**, being a director of **TROPICAL BATTERY COMPANY LIMITED** of 30 Automotive Parkway, Western District in the parish of Saint Andrew, Jamaica, applies to this Honourable Court pursuant to section 130(2) of the Companies Act and Part 27.2 of the Civil Procedure Rules for orders/directions that the Annual General Meetings of **TROPICAL BATTERY COMPANY LIMITED** be called, held and conducted in such manner as this Honourable Court thinks fit and, to that end, seeks the following **ORDERS and/or DIRECTIONS THAT:**

1. This Fixed Date Claim Form shall be heard less than four weeks from the date it is issued.
2. That the first hearing of this application be treated as the final hearing.
3. Notwithstanding the provisions of the Companies Act, the provisions of its Amended Articles of Incorporation or any notice of a general meeting, information circular or other document that may be or have already been disseminated by Tropical Battery Company Limited regarding the holding of its general meetings, Tropical Battery Company Limited may call, hold and conduct its general

meetings, in accordance with this order, and any general meeting called, held or conducted in accordance with this order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

4. In addition to the manner prescribed in the Companies Act and in its Amended Articles of Incorporation, Tropical Battery Company Limited is permitted, alternatively, to conduct its general meetings by either:
 - a. Conducting live streamed general meetings using any digital software and/or platform that will allow participants to view and or hear the proceedings, ask questions, give feedback, and vote as they would during an in-person meeting; or
 - b. Conducting a Hybrid general meeting whereby some persons are permitted to attend in person, and the remaining individuals so entitled, are permitted to participate virtually through a live stream of the meeting which shall allow participants to view and or hear the proceedings, ask questions, give feedback, and vote as they would during an in-person meeting.
5. Tropical Battery Company Limited is permitted to provide its shareholders at any time with notices of general meetings, resolutions, drafts resolutions proposed to be passed, circulars, proxy forms, financial statements, and any other documents necessary or relevant to the conduct of a general meeting by one or more of the following means: electronic mail, pre-paid mail, posting to its website and/or that of the Jamaica Stock Exchange website that can be utilized to view and obtain a copy of the documents.
6. Any notice or document delivered or made in accordance with this order shall satisfy all requirements for serving documents for a general meeting or laying such documents before the company in general meeting notwithstanding any provision to the contrary in the Companies Act, Junior Market Rules, or the Amended Articles of Incorporation of Tropical Battery Company Limited.
7. Any vote in a general meeting may be made entirely by electronic means made available for that purpose. Accordingly, where a general meeting is held in

accordance with this Order, voting, whether by “show of hand” or poll will allow a member or proxy or representative thereof attending by electronic means to cast a vote live during the general meeting orally or via electronic means.

8. The failure or inability of a shareholder to attend or remain in a general meeting held in accordance with this Order shall not constitute a defect in the calling of the general meeting and shall not invalidate any resolutions passed or proceedings taken at that general meeting.
9. Liberty to apply is granted to any director or shareholder of Tropical Battery Company Limited.
10. The Applicant’s Attorneys-at-Law are to prepare and file this order.
11. Such further or other relief as this Honourable Court deems appropriate or which may be necessary to give effect to the order sought.

The Applicant is seeking the orders on the following grounds:

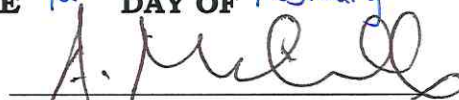
- a. The Court may, pursuant to Civil Procedure Rule 27.2(2), direct that the date fixed for the first hearing of this fixed date claim form be less than four weeks from the date of its issue.
- b. The Court may, pursuant to Civil Procedure Rule 27.2(8), treat the first hearing of this application as the final hearing.
- c. Tropical Battery Company Limited has already issued the notice calling for the holding of its Annual General Meeting (“AGM”) on March 5, 2021.
- d. The provisions for physical distancing and other protocols necessary for individual health and safety during the subsistence of the SARS-CoV-2 (Coronavirus COVID-19) (“Covid-19”) pandemic may render it impracticable for Tropical Battery Company Limited to hold its general meeting in the manner in which the meeting is ordinarily held or to conduct those meetings in the manner prescribed in the Companies Act or in the company’s Amended Articles of Incorporation.
- e. Given the uncertainty surrounding the pandemic, the Company is unable to determine whether they will be permitted to hold its AGM in person for the

foreseeable future while making reasonable accommodations for all individuals entitled to attend.

- f. Although it does not expressly prohibit them, legal opinions differ on whether or not the Companies Act permits the holding of electronic or hybrid general meetings.
- g. Default in holding the AGM in accordance with section 126 of the Companies Act makes the company and every officer of the company in default liable to a fine.
- h. While the Companies Act of Jamaica ("the Act") provides guidance for directors to participate in meetings by electronic means, there are no similar provisions for members or shareholders of a company. However, the Act empowers the Court to order that a meeting of the company be called, held and conducted in such manner as it thinks fit, either of its own motion or on the application of any director or member of the company who would be entitled to vote at the meeting.

The Applicant certifies that he believes the facts stated in this Fixed Date Claim Form are true.

DATED THE 12th DAY OF February 2021



ALEXANDER MELVILLE

DIRECTOR OF TROPICAL BATTERY COMPANY LIMITED

NOTICE TO THE RESPONDENTS

TO: The Registrar
Supreme Court
King Street
Kingston

AND TO: TROPICAL BATTERY COMPANY LIMITED
30 Automotive Parkway
Western District
Saint Andrew

The first hearing of this claim will take place at the Supreme Court, Public Building, King Street, Kingston, on the 24th day of February, 2021, at 10:00 a.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 Applicant's claim should be served on you with this Fixed Date Claim Form. If this has not been done and there is no order permitting the Applicant 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 Fixed Date Claim Form and deliver it to the registry (address below) so that they receive it within FOURTEEN days of service of this Fixed Date 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 Fixed Date 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 9:00a.m. to 3:00p.m. on Fridays except on Public Holidays.

RAMSAYSMITH

PER: 

CLAIMANT/APPLICANT'S ATTORNEYS-AT-LAW

Dated the 12th day of February, 2021

The Claimant/Applicant's address for service is that of its Attorneys-at-Law, RamsaySmith of Third Floor, 8 Lady Musgrave Road, New Kingston, Kingston 5 in the Parish of Saint Andrew. (Attention: Mr. Marc Ramsay).

FILED by **RAMSAYSMITH** of Third Floor, 8 Lady Musgrave Road, New Kingston, Kingston 5 in the Parish of Saint Andrew, Attorneys-at-Law for and on behalf of the Claimant/Applicant, whose address for service is that of his said Attorneys-at-Law. Attention: YM Fitz-Henley (Atty. No. 5880). Telephone No. 906-2616/876-906-3402; E-mail – fitz-henley@ramsaysmithjm.com.