



Filed on behalf of:	Applicant
Deponent:	A. Melville
Affidavit No:	1
Exhibits:	
Sworn to:	
Filed on:	

**AFFIDAVIT OF ALEXANDER MELVILLE IN SUPPORT OF  
FIXED DATE CLAIM FORM AND OF URGENCY**



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE COMMERCIAL DIVISION  
CLAIM NO. SU 2021 CD 00033**

**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**

I, **ALEXANDER MELVILLE**, being duly sworn make oath and say as follows:

1. My address for the purpose of this application is 30 Automotive Parkway, Western District in the parish of Saint Andrew, Jamaica, and I am the Applicant herein.
2. I am a director of Tropical Battery Company Limited (hereinafter referred to as "the Company"), and I am authorized to give evidence in this Affidavit. A copy of the Certificate of Incorporation and Amended Articles of Incorporation of the Company are exhibited marked "**AM 1**" and "**AM 2**" respectively.
3. The facts deponed to herein are true to the best of my knowledge, information and belief, and so far as they not within my knowledge, I state the source and say they are true to the best of my information and belief.
4. The SARS-CoV-2 (Coronavirus COVID-19) ("Covid-19") pandemic has made it impractical for the Company's Annual General Meeting (AGM) to be held in person and facilitate all persons entitled to attend the


event. Since becoming listed on the Jamaica Stock Exchange on October 15, 2020, about 3,000 shareholders and directors have become entitled to attend the Company's general meetings.

5. Further, a number of shareholders reside overseas, and Orders issued by the Office of the Prime Minister under the Disaster Risk Management Act (DRMA) provide that any person entering the island from a foreign country is required to quarantine for a period of 14 days, and that during all public gatherings (including AGMs), each person is required to maintain a six-foot distance from each other. Consequently, these persons will have difficulty attending a meeting held in person. The Covid-19 restrictions therefore inhibit the Company from holding the AGM in a manner that is conducive to as many shareholders and/or directors exercising their right to be present.
6. In light of this, the most reasonable solution available to the Company, in order to accommodate all interested parties at the AGM, is to offer either:
  - a. a hybrid AGM whereby some individuals may attend, vote, and otherwise participate in person, and the remainder participates by electronic means; or
  - b. a completely virtual AGM in which all are required to attend by electronic means.
7. I have been advised by the Attorneys-at-Law for the Company and do verily believe that 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.
8. The said Attorneys-at-Law further advised that the Act requires every company to hold an AGM within 15 months following the date of its last AGM.
9. The Company held its last AGM on or around August 25, 2020, and accordingly, the deadline for the calling of the 2021 AGM is November 25, 2021.

10. If the Company defaults in holding an AGM within 15 months of the last meeting, the Company and every officer of the company who is in default will be liable to a fine.
11. 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. We are therefore preparing for a "new normal" in which electronic means will play a greater role in corporate governance and shareholder participation.
12. There are numerous electronic softwares and platforms by which the AGM may be conducted, and each individual allowed to participate to the full extent that they would if they attended in person. These include Zoom, Google Meet and other similar platforms which facilitate orderly visual and audio communication in a secure, private meeting.
13. In the absence of an order by the Court allowing the Company to hold its AGM partially or entirely through electronic means, the Company will be compelled to either hold its AGM in breach of the Orders by the Office of the Prime Minister and/or at the risk of the health and safety of the Company's shareholders and directors who attend, or to not hold an AGM, which would be in breach of the Act.
14. In light of the foregoing, I pray that this Honourable Court will grant the Orders sought in the Fixed Date Claim Form which this Affidavit supports.

**SWORN** to by the said **ALEXANDER )**  
**MELVILLE** )  
 at 8 LADY MUSGRAVE ROAD, KINGSTON )  
 in the parish of SAINT ANDREW )  
 this 12<sup>th</sup> day of February, 2021 )  
 2021 )

  
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**ALEXANDER MELVILLE**

before me: 

**JUSTICE OF PEACE FOR THE**  
**PARISH OF:** KAMEKA S-A. TAYLOR, JP  
 ST. ANDREW  
 D01853

**FILED** by **RAMSAYSMITH ATTORNEYS-AT-LAW** (ATTENTION: **Mr. Yakum Fitz-Henley, Attorney No. 5880**) on behalf of the Applicant, whose address for service is that of **RamsaySmith Attorneys-at-Law** AT Third Floor, 8 Lady Musgrave Road, New Kingston, Kingston 5 in the Parish of Saint Andrew with Telephone No. 906-2616/876-906-3402; E-MAIL - [fitz-henley@ramsaysmithjm.com](mailto:fitz-henley@ramsaysmithjm.com).



**CERTIFICATE OF EXHIBITS**

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

**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**


I, **ALEXANDER MELVILLE**, hereby certify that the following exhibits are included and referred to in the **Affidavit of Alexander Melville in support of Fixed Date Claim Form** sworn to on the *12<sup>th</sup>* day of *February*, 2021:

**Exhibit      Document**

**AM 1**      Copy of Certificate of Incorporation for the Company.

**AM 2**      Copy of Articles of Incorporation for the Company.

  
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**ALEXANDER MELVILLE**

  
\_\_\_\_\_  
**JUSTICE OF THE PEACE**  
KAMEKA S-A. TAYLOR, JP  
ST. ANDREW  
D01853

**FILED** by **RAMSAYSMITH ATTORNEYS-AT-LAW** (ATTENTION: **Mr. Mr. Yakum Fitz-Henley, Attorney No. 5880**) on behalf of the Applicant, whose address for service is that of **RamsaySmith Attorneys-at-Law** AT Third Floor, 8 Lady Musgrave Road, New Kingston, Kingston 5 in the Parish of Saint Andrew with Telephone No. 906-2616/876-906-3402; E-MAIL - fitz-henley@ramsaysmithjm.com.