



FIXED DATE CLAIM FORM

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



CLAIM NO. SU 2021 CD00073

IN THE MATTER OF THE COMPANIES ACT OF JAMAICA

AND

**IN THE MATTER OF AN APPLICATION BY 138 STUDENT
LIVING JAMAICA LIMITED FOR DIRECTIONS
PURSUANT TO SECTION 130(2) OF THE COMPANIES
ACT OF JAMAICA**

The Applicant, **138 STUDENT LIVING JAMAICA LIMITED** of 2 Castries Drive, UWI Mona Campus, Kingston 7 in the parish of St. Andrew, 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 annual general meetings and any notice of an annual meeting, information circular or other documents that it may disseminate or have already disseminated, 138 Student Living Jamaica Limited (“138 Student Living”) may call and conduct its next due annual general meeting (“the Annual Meeting”, which term includes an annual meeting conducted following an adjournment or postponement) in accordance with this order and the Annual Meeting called or held in accordance with this order shall be valid.

2. An order that 138 Student Living is permitted to conduct the Annual Meeting by either:
 - (a) Holding a meeting with one or more 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 company 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 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.

3. An order that 138 Student Living is permitted to provide its shareholders with notices of the Annual Meeting, 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 by one or more of the following means: electronic mail, pre-paid mail, posting links to access the documents on its website <https://138studentliving.com/> and/or the website of the Jamaica Stock Exchange at www.jamstockex.com.
4. A declaration that any notice or document delivered in accordance with this order shall satisfy all requirements for serving documents for the Annual Meeting notwithstanding any provision to the contrary in the Companies Act or 138 Student Living's Articles of Incorporation.

5. An order that the failure or inability of a shareholder to attend or remain in the Annual Meeting held in accordance with paragraph 2 above because of mistake or of events beyond the control of 138 Student Living shall not constitute a defect in the calling of the Annual Meeting and shall not invalidate any resolutions passed or proceedings taken at that Annual 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 Applicant is seeking the orders on the following grounds:

- (1) 138 Student Living is a company incorporated under the Companies Act which is a developer and operator of student and young professional accommodation.
- (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) On February 10, 2021 the Disaster Risk Management (Enforcement Measures) (No. 2) Order, 2021 (“the Present Order”) was brought into effect extending the period for which Jamaica is deemed a disaster area to March 1, 2021.
- (6) Although the Present Order exempts annual general meetings from the prohibition of public gatherings of more than 10 or 15 persons, it imposes restrictions regarding the physical distancing of persons and other protocols for those attending annual general meetings.
- (7) The Present Order also prohibits 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 annual 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 months shall elapse between the date of one annual general meeting of a company and that of the next.”**
- (10) 138 Student Living is required to hold its next annual general meeting no later than June 12, 2021 and all shareholders are entitled to attend, be heard and vote at that meeting.
- (11) There are approximately 570 shareholders of 138 Student Living and there is no suitable venue which is an appropriate size to accommodate all shareholders entitled to attend at the required physical distance to comply with the Present Order (or any likely further order) and to reduce the health risks associated with COVID-19.

- (12) Section 141 of the Companies Act provides that in relation to directors' meetings **"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 directors by means of such telephone or other communicating facilities as permit all persons participating in the meeting to hear each other"**.
- (13) There is no similar provision 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.
- (14) Annual general meetings must therefore generally be held at a physical venue where shareholders attend in person.
- (15) In the circumstances, 138 Student Living will not be able to hold its next annual general meeting as required by the Companies Act.
- (16) 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"**.
- (17) In the present circumstances it is impracticable for 138 Student Living to call and hold a meeting in the way annual general meetings are to be called.

- (18) In the absence of an order of the court allowing for an annual general meeting by electronic means 138 Student Living would likely either be forced to hold an annual general meeting in breach of the Present Order (or any likely extension of it) and/or at risk to the health of its shareholders and officers who attend or to not hold a meeting, which would breach the Companies Act.
- (19) The relief sought in this claim is therefore appropriate and necessary so that 138 Student Living may comply with any further or updated orders issued under the Disaster Risk Management Act and the requirements of the Companies Act to hold annual meetings.

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

Dated the 24th day of February 2021



IAN PARSARD
Director
138 STUDENT LIVING JAMAICA LIMITED

SETTLED



KEVIN O. POWELL

HYLTON POWELL
ATTORNEYS-AT-LAW FOR THE APPLICANT

PER



KERRI-ANNE MAYNE

NOTICE OF HEARING:

THE FIRST HEARING of this claim will take place at The Supreme Court, Public Buildings, King Street, Kingston, on the _____ day of _____ 2021 at _____ a.m./p.m. for _____ 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 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 ^{4th} DAY OF ^{March} ~~FEBRUARY~~ 2021

FILED by **HYLTON POWELL**, Attorneys-at-Law, 11A Oxford Road, Kingston 5 in the parish of Saint Andrew, Attorneys-at-Law for the Applicant whose address for service is that of its said Attorneys-at-Law (Attention: Kerri-Anne Mayne 5683). Telephone: 926-1672; Facsimile: 929-7587.