



**AFFIDAVIT OF MARK WILLIAMS IN SUPPORT OF  
FIXED DATE CLAIM FORM  
IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE COMMERCIAL DIVISION**



**CLAIM NO.** Su 2021 CD 00086

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

**AND**

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

**AND**

**IN THE MATTER OF KINGSTON WHARVES LIMITED**

**I, MARK WILLIAMS,** being duly sworn make oath and say as follows:

1. I am a Director of Kingston Wharves Limited ("the Company") and my address for the purposes of these proceedings is 195 Second Street, Newport West, Kingston 13 in the parish of Saint Andrew which is also the registered office of the Company.
2. The facts herein are within my personal knowledge and are true and in so far as they are not within my personal knowledge, they are true to the best of my information and belief.
3. On March 9, 2020, Jamaica registered its first case of the SARS-CoV 2 (Coronavirus COVID-19).
4. 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 due to the effects of the Coronavirus. The order which was made pursuant to the Disaster Risk Management Act, and imposed various restrictions including restricting the size of public gatherings.

5. There have been several other orders made since the initial order. On January 15, 2021, the Prime Minister issued the Disaster Risk Management (Enforcement Measures) Order 2021 ("the Order"), which is the first order to be issued for this calendar year and extends the directions and restrictions regarding COVID-19 protocols and public gatherings respectively.
6. On February 10, 2021, the Prime Minister issued the Disaster Risk Management (Enforcement Measures) (No. 2) (Amendment) Order 2021 ("the Amendment Order") which reduced the public gatherings limit to:
  - i. 15 persons at a time, during the period from February 1, 2021, to February 9, 2021;
  - ii. 10 persons for the period of February 10, 2021 – February 23, 2021 and
  - iii. 15 persons for the period of February 24, 2021 – February 28, 2021.
7. On February 24, 2021 and February 28, 2021, the Prime Minister further amended the order to indicate that the public gathering limit should remain at 10, instead of 15 persons.
8. Although the Order permits annual general meetings from the prohibition on public gatherings of more than specified numbers as indicated by paragraph 6 herein, there are still restrictions in place regarding the physical distancing of persons attending annual general meetings.
9. The Order also prohibits persons over the age of sixty five years old from leaving their places of residence except in specified circumstances, mainly for the necessities of life and which do not include the attending of annual general meetings. Notwithstanding, that the Order and the Amendments do not address directives concerning this age group after January 2021, this class of persons is extremely vulnerable to the virus.
10. The Prime Minister and the public medical authorities have indicated repeatedly that there is no certainty as to when the risks caused by the

Coronavirus will end or be brought under control, and therefore when the restrictions will be lifted.

11. Since the conclusion of the Christmas season, there has been an increase in the number of cases of the virus and at the date of this Affidavit the health authorities have reported an increase in the positivity rate for new infections. It appears likely that the restrictions on public gatherings and physical distance requirements will continue for several more months. As at February 2021, the total cases of COVID-19 in Jamaica is in excess of 20,000.
12. Further, even after the restrictions have been lifted, it appears to be prudent to not host large public gatherings.
13. I am advised by the Company's Attorneys-at-Law and verily believe that the Companies Act requires that the Companies hold annual general meetings within 15 months of their last general meeting ("the Annual Meeting").
14. The Company's Articles of Incorporation also provide that:

*"not more than 15 months shall elapse between the date of one annual general meeting of the Company and that of the next."*

Exhibited herewith marked **"MW-1"** is the relevant extract from the Company's Articles of Incorporation.

15. I am further advised by the Company's Attorneys-at-Law and verily believe that the Companies Act appears to require that the annual general meetings must be held at a physical venue where shareholders attend in person and that all shareholders are entitled to attend these meetings, participate and vote.
16. The Company's last Annual General Meeting was June 18<sup>th</sup>, 2020. This year, the Company's Annual General Meeting is scheduled to be held on June 17, 2021.
17. The number of shareholders of the Company is 4,354.



18. In light of the Order, it is impracticable for the Company to hold its Annual General Meeting in accordance with the Companies Act and its Articles of Incorporation.
19. It is impracticable because of the number of shareholders entitled to attend and the absence of a suitable venue to accommodate all attendees at the required physical distance. It would also expose the shareholders, the officers of the Company and all persons associated with hosting the Annual General Meeting to the increased risk of exposure to the Coronavirus.
20. I am advised by the Company's Attorneys-at-Law and verily believe that where it is impracticable to hold an Annual General Meeting in the manner prescribed, a director or member of a company may apply to the court pursuant to section 130(2) of the Companies Act for the court to order the manner in which the meeting may be called, held and conducted.
21. The Company is minded to call, hold and conduct its Annual General Meeting for 2021 using technology or electronic means that will allow the shareholders to participate in a similar manner as in person meetings and intend to use such service providers as are necessary and financially prudent in order to achieve this objective.
22. If the Company calls, holds and conducts the Annual General Meeting in the manner set out in the orders sought in the Fixed Date Claim Form, I believe the shareholders will have an opportunity to attend, participate and vote in the Annual General Meeting and that they are unlikely to be prejudiced.
23. In the absence of an order of the court allowing for the Annual General Meetings by electronic means, the Company will be forced to either hold an Annual General Meeting in breach of the Order and/or at risk to the health of their shareholders and officers who attend, or to not hold a meeting which may breach the Companies Act. Further, persons who may wish to attend in person may elect not to attend the meeting out of fear of exposure to the virus at a large gathering.

24. In these circumstances, I seek the orders set out in Fixed Date Claim Form.

Sworn to by **MARK WILLIAMS** )  
At 195 Second Street, Newport West, Kgn 13 )  
This 12<sup>th</sup> day March 2021 )  
Before me: )

  
**MARK WILLIAMS**  
**JUSTICE OF THE PEACE FOR  
THE PARISH OF:-**

**GEORGE S. REYNOLDS**  
**JUSTICE OF THE PEACE**  
**B00504**  
**KINGSTON**

**FILED by MAYHEWLAW**, Attorneys-at-Law of Unit 11 Seymour Park, 2 Seymour Avenue, Kingston 6,  
Telephone numbers 927-8505/927-8663 Email: [mayhewlaw@gmail.com](mailto:mayhewlaw@gmail.com), Attorneys-at-Law for and on behalf  
of the Applicant herein whose address for service is that of the said Attorneys-at-Law.



**EXHIBIT SHEET**

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

**IN THE COMMERCIAL DIVISION**

**CLAIM NO.**

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

**AND**

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

**AND**

**IN THE MATTER OF KINGSTON WHARVES LIMITED**

This is the document mentioned and referred to in the Affidavit of Mark Williams in Support of Fixed Date Claim Form dated the 12<sup>th</sup> of March 2021.

<b>"MW-1"</b>	Extract from the Company's Articles of Incorporation
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**JUSTICE OF THE PEACE FOR  
THE PARISH OF:**

**GEORGE S. REYNOLDS  
JUSTICE OF THE PEACE,  
B00504  
KINGSTON**

  
**MARK WILLIAMS**

**FILED by MAYHEWLAW**, Attorneys-at-Law of Unit 11 Seymour Park, 2 Seymour Avenue, Kingston 6, Telephone numbers 927-8505/927-8663 Email: [mayhewlaw@gmail.com](mailto:mayhewlaw@gmail.com), Attorneys-at-Law for and on behalf of the Applicant herein whose address for service is that of the said Attorneys-at-Law.

"mw-1"

1

These are the AMENDED Articles of Incorporation of KINGSTON WHARVES LIMITED as amended by SPECIAL RESOLUTION dated the 23<sup>rd</sup> day of June 2016.

  
DIRECTOR

SCHEDULE ~~III~~ <sup>II</sup> 

JAMAICA  
COMPANIES ACT  
ARTICLES OF INCORPORATION  
OF  
KINGSTON WHARVES LIMITED  
PRELIMINARY

1. In these articles, unless the context otherwise requires:-

- "The Act" shall mean the Companies Act 2004 and every other Act incorporated therewith, or any Act or Acts substituted therefor, and in case of any such substitution the references in these articles to the provisions of the Act shall be read as references to the provisions substituted therefor in the new Act or Acts.
- "Articles" shall mean the Articles of Incorporation of the Company as originally framed or as from time to time altered by it by special resolution.
- "bankrupt" shall include a person becoming bankrupt or entering into or making any composition or arrangement statutory or otherwise with or without assignment of all his property for the benefit of his creditors generally, and "bankruptcy" shall have a corresponding meaning.
- "the Board" shall mean the Board of Directors for the time being in forum.
- "chairman" shall mean the Chairman of the Board, being such person appointed in accordance with the Articles.



"the Company"	shall mean <b>KINGSTON WHARVES LIMITED</b> .
"director"	unless otherwise stated and as the context admits or requires shall mean a director of the Company.
"Extraordinary Resolution"	shall mean a resolution passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.
"the Holder"	in relation to shares shall mean the member whose name is entered in the Register as the holder of the shares.
"in writing"	shall include printed, lithographed, typewritten, photographed, xeroographed or partly one and partly another and other modes of representation or representing or reproducing words in a visible form.
"Jamaica"	shall mean the Island of Jamaica.
"member"	unless otherwise stated and as the context admits or requires shall mean a member of the Company.
"month"	shall mean calendar month.
"office"	shall mean the registered office for the time being of the Company.
"paid up"	shall include credited as paid up.
"the presents"	shall mean the Articles of Incorporation of the Company for the time being in force.
"the Register"	shall mean the Register of Members to be kept as required by the Act.
"seal"	shall mean the Common Seal of the Company.



"secretary" shall include any joint assistant or deputy Secretary and any person appointed to perform the duties or any particular duty of the Secretary temporarily.

"Special Resolution" shall mean a resolution passed by such majority as is required for the passing of an Extraordinary Resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been given:

Provided that, if ninety-five per centum of the members entitled to attend and vote at such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

Unless the context otherwise requires words or expressions contained in these Articles shall bear the same meaning as in the Act.

Words importing the singular number only shall include the plural, word importing the masculine gender only shall include the feminine and neuter gender, words importing individuals shall include corporations and the converse of each of the foregoing shall also apply.

The headings are inserted for convenience only and shall not affect the construction of these Articles.

#### **EXCLUSION OF TABLE A**

2. The Regulations in Table A in the First Schedule to the Act shall not apply to the Company except in so far as they are repeated or contained in these Articles.

#### **SHARE CAPITAL, CERTIFICATES AND VARIATION OF RIGHTS**

3. The shares of this company shall be issued without a nominal or par value.
4. Without prejudice to any special rights previously conferred on the holders of existing shares in the Company, any share in the Company may

53. The Company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner authorised by the Act.
54. Subject to section 71 of the Act, the Company may by special resolution:
- (a) extinguish or reduce a liability in respect of an amount unpaid on any shares;
  - (b) reduce its stated capital by an amount that is not represented by realizable assets; or
  - (c) return to its shareholders any of the assets which are in excess of the wants of the Company.

### **GENERAL MEETINGS**

55. The first annual general meeting shall be held at such place and time (within a period of not more than eighteen months from the date of the Company's incorporation) as the directors may determine.
56. The Company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notice calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of the Company and that of the next. The annual general meeting shall be held at such time and place as the directors shall appoint. All general meetings other than annual general meetings shall be called "extraordinary general meetings".
57. The directors may, whenever they think fit, and they shall on the requisition of members of the Company holding at the date of the deposit of the requisition not less than one tenth of such of the paid up capital of the Company as at the date of the deposit carries the right of voting at general meetings of the Company convene an extraordinary general meeting. The requisition shall state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the Company and may consist of several documents in like form each signed by one or more requisitionists. If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting the requisitionists or any of them representing more than one-half of the total voting rights of all of them may themselves convene a meeting but any meeting so convened shall not be held after the expiration of three months from the said date. A meeting convened under this clause by the requisitionists shall be convened in the same manner as



nearly as possible as that in which meetings are to be convened by directors. Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the Company and any sum so repaid shall be retained by the Company out of any sums due or to become due from the Company by way of fees or other remuneration in respect of their services to such of the directors as were in default. If at any time there are not within the Island sufficient directors capable of acting to form a quorum, any director or two members of the Company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

58. In the case of an extraordinary general meeting called in pursuance of a requisition, unless such meeting shall have been called by the directors, no business other than that stated in the requisition as the objects of the meeting shall be transacted.

#### NOTICE OF GENERAL MEETINGS

59. An annual general meeting and a meeting called for the passing of a special resolution shall be called by at least twenty-one days' notice in writing. All other extraordinary general meetings shall be called by at least fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under these Articles of the Company, entitled to receive such notices from the Company. In the case of an annual general meeting, the notice shall specify the meeting as such.
60. A meeting of the Company may be deemed to have been duly called notwithstanding that it was called by shorter notice than that specified in the last preceding Article, if it so agreed:-
- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; or
  - (b) in the case of any other meeting, by a majority in number of the members having the right to attend and vote at the meeting, being a majority together holding not less than ninety-five per centum in nominal value of the shares giving that right.



61. The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled under these Articles to receive notice of a meeting, shall not invalidate the proceedings at that meeting.

### PROCEEDINGS AT GENERAL MEETINGS

62. The business of any annual general meeting shall be to receive and consider the accounts and balance sheets, the reports of the directors and auditors and any other documents required by law to be attached or annexed to the balance sheets, to elect directors in place of those retiring, to elect auditors and fix their remuneration and to declare a dividend. All other business transacted at general meetings, and all business (save as above) transacted at an extraordinary general meeting, shall be deemed special.
63. No business shall be transacted at any general meeting unless a quorum of members is present and such quorum shall consist of three members present in person or by proxy or a duly authorised representative in the case of an association or body.
64. If within half an hour from the time appointed for the meeting a quorum is not present, or if during a meeting such a quorum ceases to be present, the meeting, if convened by or on the requisition of members, shall be dissolved. In any other case the meeting shall stand adjourned to the same day in the next week, at the same time and place or to such time and place as the directors may determine and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, that member or those members who are present shall be deemed to be a quorum, and may do all business which a quorum might have done.
65. The chairman, if any, of the Board of Directors shall preside as chairman at every general meeting of the Company. If there be no such chairman, or if there is no chairman present within fifteen minutes after the time appointed for holding the meeting and willing to act as chairman, the members present shall choose one of the directors present to be chairman; or if no director is present and willing to act as chairman the members present shall choose one of their number to be chairman of the meeting.
66. The chairman may, with the consent of a general meeting at which a quorum is present (and shall be if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall