



FIXED DATE CLAIM FORM

FORM 2 [Rule 8.1(4)]



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE COMMERCIAL DIVISION
CLAIM NO. SU 2021 CD 0046**

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

AND

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

AND

**IN THE MATTER OF THE HOLDING OF THE
GENERAL MEETINGS OF CARIBBEAN CEMENT
COMPANY LIMITED**

The Claimant/Applicant, Yago Castro Izaguirre, being the managing director of **CARIBBEAN CEMENT COMPANY LIMITED**, a company duly incorporated in Jamaica, with Registered Office at **Rockfort, Kingston 2, in the Parish of Kingston**, applies to this Honourable Court pursuant to section 130(2) of the Companies Act for orders/directions that general meetings (which term includes annual and extraordinary general meetings including adjourned or postponed annual or extraordinary general meetings) of **CARIBBEAN CEMENT 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. The first hearing of the Fixed Date Claim Form is the Final Hearing of the claim.
2. **CARIBBEAN CEMENT COMPANY LIMITED** may call, hold and conduct its shareholder meetings in accordance with its Articles of Incorporation, as amended on September 17, 2020.

3. Alternatively, notwithstanding the provisions of the Companies Act, the provisions of its Amended Articles of Incorporation or information contained in any notice of a general meeting, information circular or other document that may be or have already been disseminated by **CARIBBEAN CEMENT COMPANY LIMITED** regarding the holding of its general meetings, **CARIBBEAN CEMENT COMPANY LIMITED** may call, hold and conduct its general meetings, for so long as Jamaica remains a declared Disaster Area on account of the SARS-CoV-2 (Coronavirus COVID-19) ("Covid-19") pandemic, 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, **CARIBBEAN CEMENT COMPANY LIMITED** is permitted, alternatively, to conduct its general meetings for so long as Jamaica remains a declared Disaster Area on account of the Covid-19 pandemic by either:
 - a. Conducting a Virtual or Electronic general meeting;
 - b. Conducting a Hybrid general meeting;as those processes at a and b above are described by the Companies Office of Jamaica in its published ***"Guidance on Holding Annual General Meetings During Covid-19"***, as updated, on April 28, 2020.
5. **CARIBBEAN CEMENT COMPANY LIMITED** is permitted, in addition to the manner prescribed in the Companies Act and in its Amended Articles of Incorporation, to provide its shareholders at any time during which Jamaica remains a declared Disaster Area on account of the Covid-19 pandemic with notices of general meetings, resolutions, draft 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, facsimile, posting to its website, posting to its regulators' website,

publishing in the daily newspapers links that can be utilized to view and obtain a copy of the documents.

6. Any notice or document delivered or made available in accordance with this order shall satisfy all requirements for serving documents for a general meeting or laying such documents before the company in a general meeting notwithstanding any provision to the contrary in the Companies Act or the Amended Articles of Incorporation of **CARIBBEAN CEMENT 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 poll or “show of hands” 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 paragraph 3 above 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 **CARIBBEAN CEMENT 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 orders sought.

The Applicant seeks the orders on the following grounds:

- a. The provisions for physical distancing and other protocols necessary for individual health and safety during the subsistence of the Covid-19 pandemic may render it impracticable for **CARIBBEAN CEMENT COMPANY LIMITED** to hold its general meetings in the manner in which those meetings

- are ordinarily held or to conduct those meetings in the manner prescribed in the Companies Act or in the company's Articles of Incorporation.
- b. Although it does not expressly prohibit them, legal opinions differ on whether the Companies Act permits the holding of electronic or hybrid general meetings.
 - c. Default in holding an Annual General Meeting in accordance with section 126 of the Companies Act makes the company and every officer of the company who is in default liable to a fine.
 - d. Default in laying before the company in general meeting at least once in every calendar year a profit and loss account and a balance sheet as at the date to which the profit and loss account is made up (together with a directors' report with respect to the state of the company's affairs, etc.) in accordance with section 145 of the Companies Act renders the directors liable on summary conviction before a Parish Court Judge to imprisonment or to a fine.

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

Dated the 24th day of September 2021

X 
YAGO CASTRO IZAGUIRRE
MANAGING DIRECTOR OF CARIBBEAN CEMENT COMPANY LIMITED

NOTICE TO THE DEFENDANT

TO: The Registrar Supreme Court of Jamaica King Street Kingston	AND TO: CARIBBEAN CEMENT COMPANY LIMITED Rockfort Kingston 2
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THE APPLICANT ESTIMATES THE LIKELY LENGTH OF THE HEARING TO BE: 30 MINS.

The First Hearing of this claim will take place at the Supreme Court, Public Buildings, King Street, Kingston, on the 8th day of November, 2021 at 3:00 a.m./ p.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 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 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 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)

The Registry is at King Street, Kingston, telephone numbers (876) 922-8300 - 9, fax (876) 967-0669. The office is open between 9:00 a.m. and 4:00 p.m. Mondays to Thursdays and 9:00 a.m. to 3:00 p.m. on Fridays except on Public Holidays.

MYERS, FLETCHER & GORDON

PER:


CLAIMANT/APPLICANT'S ATTORNEYS-AT-LAW

Dated the 24th day of September, 2021

The Claimant/Applicant's address for service is that of its Attorneys-at-Law Myers, Fletcher & Gordon of 21 East Street, Kingston; Telephone Number: 922-5860-8; Facsimile Number: 922-4811.

FILED by **MYERS, FLETCHER & GORDON** of 21 East Street, Kingston, Attorneys-at-Law for the Claimant whose address for service is that of its said Attorneys-at-Law. Attention: Mrs. Alexis Robinson, Attorney No 4112, Telephone No. (876) 922-5860-8; Fax No. 922-4811. Email: alexis.robinson@mfg.com.jm



PRESCRIBED NOTES FOR DEFENDANT

Form 2A [Rule 8.16(1)(c)]

This Form is important.

When you get this document you should consider getting legal advice.

The Claimants are seeking an order from the court as set out in the Fixed Date Claim Form on the basis of the facts or evidence set out in the Affidavit which was served with it. The Claimants will not be entitled to enter judgment against you without a hearing.

You may:

A. Admit the Claim

If so, you should complete and return the form of Acknowledgement of Service to the registry within **FOURTEEN DAYS** stating this. You may attend the first hearing if you wish to do so.

B. Dispute the Claim

If so, you should complete and return the form of Acknowledgement of Service as under A. You should also file at the registry and serve on the Claimant's Attorneys-at-Law (or the Claimant if it has no Attorneys-at-Law):

- a. an Affidavit in answer if the Fixed Date Claim Form was accompanied by an Affidavit sworn by or on behalf of the Claimant. See Rule 8.8 (2)

within **TWENTY-EIGHT DAYS** of the day on which the Fixed Date Claim Form was served on you. Your Affidavit must set out briefly **ALL** the facts on which you will rely to dispute the claim made against you.

C. Make a claim against the Claimant

If so, you should complete and return the form of Acknowledgement of Service as under A. You must file a Particulars of Claim (a counterclaim) setting out full details of what you claim against the Claimant and the facts on which you will rely. This must be done within **FORTY-TWO DAYS** of the date on which the Fixed Date Claim Form was served on you. The Particulars of Claim should set out **ALL** the facts on which you rely in disputing any part of the Claimant's claim against you.

YOU SHOULD ALSO ATTEND THE FIRST HEARING. IF YOU DO NOT THE JUDGE MAY DEAL WITH THE CLAIM IN YOUR ABSENCE.



**ACKNOWLEDGEMENT OF SERVICE
OF FIXED DATE CLAIM FORM**

Form 4 [Rule 8.16(1)(a)]

**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 CARIBBEAN CEMENT COMPANY
LIMITED FOR DIRECTIONS PURSUANT TO
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JAMAICA**

AND

**IN THE MATTER OF THE HOLDING OF THE
GENERAL MEETINGS OF CARIBBEAN CEMENT
COMPANY LIMITED**

WARNING: This form should be completed and returned to the registry at the address below within **FOURTEEN DAYS** of service of the Fixed Date Claim Form on you. See Rule 9.3 (1). However, the Claimants will not be entitled to have judgment entered against you except at the first or subsequent hearing of the claim.

1. Have you received the Fixed Date Claim Form with the above number? YES/NO
2. If so when did you receive it? ___/___/___
3. Did you also receive the Claimants' Affidavit(s) in support? YES/NO
4. If so, on what date did you receive them? ___/___/___
5. Are your names properly stated on the Fixed Date Claim Form? YES/NO
If not what are your full names?

6. Do you want to defend the claim? YES/NO
If so you should file an Affidavit
in answer within 28 days of the service of the
Fixed Date Claim Form on you.
See Rule 8.8(2)

7. Do you admit the whole claim? YES/NO

8. Do you admit any part of the claim? YES/NO

9. If so what do you admit?

10. What is your own address? _____

11. What is your address for service?

If you are acting in person you must give an
address to which documents may be sent
either from other parties or from the court. You
should also give your telephone number and
fax number if any.

Dated _____ day of _____ 2021

Signed _____
[Defendant in person]
[Defendant's attorney-at-law]

FILED by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing
Acknowledgment of Service).