



**AFFIDAVIT OF PAUL FACEY IN SUPPORT OF FIXED DATE
CLAIM FORM AND OF URGENCY**

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

CLAIM NO. S42021 0000103

**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 PANJAM INVESTMENT LIMITED

I, PAUL FACEY, being duly sworn make oath and say as follows:

1. I am a Director of PanJam Investment Limited (“the Company”) and my address for the purposes of these proceedings is 60 Knutsford Boulevard in the parish of St. Andrew, which is also the registered office of the Company.
2. The facts herein are within my 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, 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. As at the date of this Affidavit the public gathering limit is 10. Further, on March 21, 2021, the Prime Minister indicated that all Annual General Meetings (“AGMs”) of companies are not to be held during the period March 23, 2021 to April 23, 2021, unless the court authorizes a fully virtual meeting. It is uncertain whether this order will be extended beyond April 23, 2021.
7. Moreover, there is a prohibition on persons over the age of sixty years old leaving their places of residence except in specified circumstances, mainly for the necessities of life, which do not include the attending of Annual General Meetings.
8. Within the last month, there has been an increase in the number of cases of the virus in Jamaica 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 March 2021, the total cases of COVID-19 in Jamaica is in excess of 35,000.
9. I am advised by the Company’s Attorneys-at-Law and verily believe that the Companies Act requires that Companies hold annual general meetings within 15 months of their last general meeting (“the Annual Meeting”).
10. 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 the next.”

11. I am further advised by the Company's Attorneys-at-Law and verily believe that the Companies Act appears to require that 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.
12. The Company's last Annual General Meeting was September 1, 2020. This meeting was held virtually pursuant to an order of this Honourable Court made on the 10th day August 2020 in **Claim No. SU2020CD00299**.
13. At the 2020 AGM the members approved a special resolution to amend the Company's Articles of Incorporation to permit the holding of general meetings wholly by electronic means or partly by electronic means and partly at a physical location with members attending in person on the approval of the directors by a simple majority. A copy of an extract from the Amended Articles of Incorporation is exhibited and marked "**PF-1.**"
14. The 2021 Annual General Meeting is scheduled for May 20, 2021.
15. The Company is a publicly listed company and the number of shareholders is 4646.
16. In light of the Order, it is impracticable for the Company to hold its Annual General Meeting in accordance with the Companies Act and comply with the Orders.
17. 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.
18. 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.


19. The Company is minded to call, hold and conduct its Annual General Meetings using technology or electronic means that will allow the shareholders to participate in a similar manner as in person meetings.
20. 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.
21. 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.
22. 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. Accordingly, it is unclear as to when the prohibition on the physical hosting of AGMs will be removed, even after April 2021. It is for this reason directions are being sought as to the virtual or partially virtual hosting of the Company's 2021 and 2022 AGMs and any EGM that may be necessary.
23. This application is urgent as the 2021 AGM is scheduled for May 20, 2021 and unless this matter is heard as soon as possible, the directors of the Company will not be able to obtain the directions to proceed with the AGM as requested in the Fixed Date Claim Form.

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

Sworn to by **PAUL FACEY**)
At 60 KNUTSFORD BLDG, KCN. 10)
This 29th day MARCH 2021)
Before me:)



PAUL FACEY



JUSTICE OF THE PEACE FOR
THE PARISH OF:- St. Andrew

Carlette A. DeLeon, JP
ST. Andrew
D01489

FILED by MAYHEWLAW (Attention: Lesley - Ann Stewart, 5771), Unit 11 Seymour Park 2 Seymour Avenue, Kingston 10, Telephone number (876) 927-8505 Facsimile 927-8663, email: mayhewlaw@gmail.com for and on behalf of the Applicant herein whose address for service is that of the said Attorney-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
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IN THE MATTER OF PANJAM INVESTMENT LIMITED

This is the document mentioned and referred to in the Affidavit of Paul Facey Support of Fixed Date Claim Form dated the *23rd* of *March* 2021.

"PF-1"	Extract from the Company's Articles of Incorporation as amended
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**JUSTICE OF THE PEACE FOR
THE PARISH OF:-** *St Andrew* Carlette A. DeLeon, JP
ST. Andrew
D01489

PAUL FACEY

FILED by MAYHEWLAW (Attention: Lesley - Ann Stewart, 5771), Unit 11 Seymour Park 2 Seymour Avenue, Kingston 10, Telephone number (876) 927-8505 Facsimile 927-8663, email: mayhewlaw@gmail.com for and on behalf of the Applicant herein whose address for service is that of the said Attorney-at-Law.

"PF-1"

Certified to be a true copy of the Amended Articles of Incorporation adopted by the shareholders of PANJAM Investment Limited by resolution passed at a duly convened Annual General Meeting held on September 1, 2020.



Director



Director/Secretary

THE COMPANIES ACT, 2004

PUBLIC COMPANY LIMITED BY SHARES

Amended ARTICLES OF INCORPORATION

of

PANJAM INVESTMENT LIMITED

1. The following shall be the Articles of the company.
2. In these Articles:

"the Act" means the Companies Act of Jamaica 2004 as amended from time to time;

"the Articles" means the Articles of Incorporation of the Company as originally hereby framed or as altered by Special Resolution;

"Auditor" means the Auditors of the Company, appointed by the Company, from time to time;

"Branch Register" means a Branch Register to be kept in a foreign country established by the Directors pursuant to Article 14 (1) hereof;

"the Company" means the above-named Company;

"the Directors" means the person for the time being occupying the position of directors or any of them, by whatever name called;

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, photographic or similar capabilities including but not limited to technology utilized by computer, scanning devices and/or devices of every description

used for the transmission of audio-only material, still or moving visual-only and/or audiovisual material, data and/or textual material;

“Electronic Format” means any communication technology, medium or device in which audio-only material, still or moving visual-only and/or audiovisual material, data and/or textual material or other data are embodied so as to be capable (with or without the aid of some other device or equipment) of being reproduced therefrom;

“Electronic Means” mean any method of dispatch or communication of audio-only material, still or moving visual-only and/or audiovisual material, data and/or textual material or other data which involves the use of communications technology or equipment having electrical, digital, magnetic, wireless, optical, electromagnetic, photographic or similar capabilities;

“Electronic Signature” means so much of anything in Electronic form incorporated into, contained in, attached to or logically associated with a document, which uniquely identifies and authenticates the maker, is used by him to indicate his adoption of the content of that document and is produced or transmitted by Electronic means. For the avoidance of doubt, for the purpose of these Articles, an Electronic Signature includes but is not limited to any signature produced by facsimile machine or scanning device;

“Local Committee” means in relation to any country, any Local Committee, which may be appointed by the Directors pursuant to Article 102 hereof to operate in that country;

“Member” means a shareholder of the Company;

“the Office” means the registered office for the time being of the Company;

“the Register of Members” means the Register of Members to be kept pursuant to the Act;

“Register” means the Register of Members or a Branch Register;

“the Rules of any Stock Exchange” means the rules of the Stock Exchange and any other recognized stock exchange on which the Company’s shares or other securities are listed;

“the Seal” means the Common Seal of the Company;

“the Secretary” means any person appointed to perform the office of Secretary of the Company;

- “Stock Exchange” means the Jamaica Stock Exchange;
- “Subsidiary” means a subsidiary as defined by Section 151 of the Act;
- “Transfer Secretary” means and includes any person, firm or Company appointed to perform the duties of Transfer Secretary in any country in which a Register is kept.
- “In Writing” shall include printed, lithographed, typewritten and visibly presented or reproduced by any other mode;

3. Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form. Unless the context otherwise requires words or expressions contained in the Articles shall bear the same means as in the Act.

4. The Company shall not have the power to issue share warrants to bearer.

ALTERATION OF ARTICLES

5. The Company may from time to time alter or add or any of these Articles by passing and registering a special resolution in the manner prescribed by law. No Member of the Company shall be bound by any alteration made in the Articles after the date on which he become a Member, if an so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increased his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the Company, unless such Member agrees in writing to be bound by the alteration either before or after it is made.

SHARES

6 (a) Any un-issued shares in the capital of the Company at the date of adoption of this Article and any further shares in the capital of the Company created in accordance with Article 44 may (subject to paragraph (b) of this Article) be allotted or otherwise disposed of to such persons for such consideration and upon such terms and conditions as the Directors may determine. Without prejudice to any special rights previously conferred on the holders of existing shares, the Directors may attach to any shares any preferential, deferred, qualified or special rights, privileges or conditions, whether in regard to dividend, voting, return of capital or otherwise, and may make arrangements on the issue of any shares for a difference between the holders of such shares in the amounts of calls to be paid and the times of payment of such calls, and the Directors may give to any person an option on any shares either at par or at a premium or (subject to the provisions of the Act) at a discount and for such time and on such terms and conditions as the Directors may think fit.

(b) The powers of the Directors under paragraph (a) of this Article are subject to any specific directions contained in the resolution of the Company creating the shares in question or any other resolution of the Company in general meeting.

addition to any other meetings in that year, and shall specify the meeting as such in the notices 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. Provided that so long as the Company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation, or in the following year. The annual general meeting shall be held at such time and place as the Directors shall appoint.

52. All general meetings other than annual general meetings shall be called extraordinary general meetings.

53. (a) The Directors may, whenever they think fit, convene an extraordinary general meeting, and they shall, on the requisition of Members representing not less than one-tenth of such of the paid-up capital of the Company as at the date of the requisition carries the right of voting at a general meeting, forthwith proceed to convene an Extraordinary meeting of the Company. If at any time there are not within Jamaica sufficient Directors capable of acting to form a quorum, any Director or any 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 Directors.

(b) In the case of such requisition as aforesaid the following provisions shall have effect:

- (i) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the office.
- (ii) If the Directors do not, within twenty-one days from the date of the requisition so deposited, proceed to convene a meeting, the requisitionists may themselves convene the meeting.
- (iii) Any meetings convened under this Article 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.

NOTICE OF GENERAL MEETINGS

54. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the Company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by 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, whether physical or virtual (electronically), 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 the Articles, entitled to receive such notices from the Company and to the Auditors: Provided that a meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in this Article, be deemed to have been duly called if it is 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; and

- (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95 per cent in nominal value of the shares giving that right.

55. When it is proposed to pass a special resolution the two meetings may be convened by one and the same notice, and it shall be no objection to such notice, that it only convenes the second meeting contingently on the resolution being passed by the requisite majority at the first meeting.

56. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive such notice shall not invalidate the proceedings at that meeting. When all Members in person or by proxy sign the minutes of an ordinary or extraordinary Meeting, the same shall be deemed to have been duly held, notwithstanding that there may have been technical defects in the proceedings. And a resolution in writing in one or more parts, signed by all the Members (or being Corporations by their duly authorised representatives) shall be as valid and effectual as if it had been passed and a meeting of the members duly called and constituted.

PROCEEDINGS AT GENERAL MEETINGS

57. No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business; save as herein otherwise provided, two or more members present in person or by proxy and holding, or representing by proxy, not less than five percent of the issued capital of the Company, shall be a quorum. Subject to the approval of a simple majority of the Directors and insofar as permitted by law, a general meeting may be held wholly by Electronic Means or partly by Electronic Means and partly at a physical location with Members attending in person. A Member who participates in a general meeting that is held either wholly or partly by Electronic Means is deemed to be present at the general meeting and shall count to constitute a quorum. Any general meeting which is held wholly or partly by Electronic Means shall be deemed to have been convened and held in Jamaica and shall be governed by the laws of Jamaica.

58. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the Directors and Auditors, the election of Directors in the place of those retiring and the appointment of and the fixing of the remuneration of, the Auditors. All reports of the Auditors contained in the Company's annual report, or set out otherwise, shall be treated as having been read at an annual general meeting insofar as is permissible by the Act (or otherwise at law) from time to time or as is permissible otherwise. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Members present shall be a quorum.

59. The Chairman, if any, of the Board of Directors shall preside as chairman at every general meeting of the Company, or if there is no such Chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to

act, the Directors present shall elect one of their number to be Chairman of the meeting.

60. If at any meeting no Director is willing to act as Chairman or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be Chairman of the meeting.

61. The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

62. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- (a) by the Chairman; or
- (b) by at least two Members present in person or by proxy; or
- (c) by any Member or Members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting; or
- (d) by a Member or Members holding shares in the Company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll be so demanded a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

63. Except as provided in Article 65, if a poll is duly demanded it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

64. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

65. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be preceded with pending the taking of the poll.