

JAMAICA

No. 19 – 2021

I assent,

[L.S.]

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*Governor-General.*

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AN ACT to Amend the Companies Act.

[ ]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Companies (Amendment) Act, 2021, and shall be read and construed as one with the Companies Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title  
and  
construction.

Amendment  
of section 2  
of  
principal Act.

**2. Section 2 of the principal Act is amended—**

- (a) in subsection (1), by inserting in their correct alphabetical sequence the following definitions—

““attendee” includes

- (a) a member;
- (b) a proxy appointed in accordance with the articles of the company;
- (c) an officer attending a meeting of the company; and
- (d) an auditor appointed in accordance with section 154 of the Act;

“computer” has the meaning assigned to it by section 2 of the Cybercrimes Act;

“computer service” has the meaning assigned to it by section 2 of the Cybercrimes Act;

“disaster” has the meaning assigned to it by section 2 of the Disaster Risk Management Act;

“electronic” has the meaning assigned to it by section 2 of the Electronic Transactions Act;

“electronic communication system” has the meaning assigned to it by section 2 of the Electronic Transactions Act;

“hybrid meeting” means a meeting held, simultaneously, by electronic means, as well as at a physical venue in which attendees, whether by electronic means or present in-person, simultaneously attend and participate in the proceedings of the meeting in real-time;

“in-person meeting” means a meeting in which all attendees—

- (a) are physically present together in one location; and
- (b) participate in the business of the meeting and interact with each other, face to face;

“poll” includes a poll through or by electronic means;

“show of hands” includes a show of hands through or by electronic means;

“virtual-only meeting” means a meeting in which the attendees participate from numerous physical locations, whether inside or outside of Jamaica, through the facility of the internet or intranet by use of integrated audio and video, chat and messaging tools, and application-sharing software, by electronic means.”; and

(b) inserting next after subsection (9) the following—

“ (10) Where the provisions of this Act require a member to be present in person or by proxy at a general meeting, or the casting of votes, whether by a show of hands by members or a poll by members and proxies, present at the meeting, such requirement is satisfied if the member or proxy attends and participates through or by electronic means at a general meeting held as a hybrid meeting or virtual-only meeting, in accordance with the provisions of this Act, and such a person shall count to constitute a quorum.

(11) The provisions of this Act shall apply, with any necessary modification, to hybrid meetings and virtual-only meetings.”.

Amendment  
of section  
130 of  
principal Act.

**3.** Section 130 of the principal Act is amended in subsection (1)(c), by deleting the words “personally present” and substituting therefor the words “present in-person or participating by electronic means”.

Insertion of  
new sections  
133A, 133B,  
133C, 133D,  
133E and  
133F in  
principal Act.

**4.** The principal Act is amended by inserting next after section 133 the following—

“ Companies  
may hold  
virtual-only  
or hybrid  
meeting.

**133A.—**(1) Subject to subsection (2), unless prohibited by the articles of a company, a company may hold a general meeting as a virtual-only meeting or a hybrid meeting.

(2) A company shall not cause a general meeting to be held as a hybrid meeting or a virtual-only meeting, unless satisfied that each attendee is able to attend and fully participate in the meeting, if held in such manner.

Hybrid and  
virtual-only  
meeting of  
same effect  
as in-person  
meeting, *etc.*

**133B.—**(1) For the purposes of sections 133B to 133F, the laws of Jamaica shall apply to a hybrid meeting or virtual-only meeting held by a company.

(2) Subject to subsection (3) and section 133E, a hybrid meeting or virtual-only meeting shall have full effect, in all respects and to the same extent, as if that hybrid meeting or virtual-only meeting was held in Jamaica, as an in-person meeting.

(3) Subsection (2) shall not apply to a hybrid meeting or a virtual-only meeting that is not conducted in a manner so as to enable—

- (a) each attendee to participate in the conduct of the business of the company at that meeting, including voting by members entitled to attend and vote;
- (b) each attendee to see, to be seen by, to hear, to be heard by, to be identified by, and to be able to identify other attendees;

- (c) effective communication with the chairman or other officer, and among attendees during the meeting;
- (d) communication between an attendee and the chairman or other officer of any failure of any electronic communications system or computer service enabling virtual participation, which deprives the attendee of the ability to—
  - (i) participate in the meeting;
  - (ii) identify other attendees;
  - (iii) be identified by others; or
  - (iv) effectively communicate under paragraphs (a) and (b);
- (e) confirmation of the attendees and quorum required for the meeting; and
- (f) a proper record, including an electronic record, of the business of the meeting to enable and verify compliance with the requirements of the articles of the company and the provisions of this Act.

Proceedings  
for hybrid or  
virtual-only  
meeting.

133C. Without prejudice to section 130, where a general meeting is to be held as a hybrid meeting or a virtual-only meeting, the company—

- (a) may cause any document, including the notice referred to in paragraph (b), required for the conduct of the business of the company at the meeting to be delivered by electronic means; and

(b) shall give notice of the meeting and the notice shall—

- (i) provide instructions for attendance and participation, including voting by members and proxies entitled to attend and vote, electronically, and an electronic link for attendees; and
- (ii) in the case of a hybrid meeting, specify the venue.

Verification of identity of attendees, etc.

133D. Where a company holds a hybrid meeting or virtual-only meeting, the company shall—

- (a) cause the identity of all attendees participating in the meeting to be verified and the participatory acts, including a vote cast by any attendees participating in the meeting, electronically, to be confirmed, to ensure that the conduct of the business of the company is in compliance with the articles of the company and prescribed requirements; and
- (b) establish procedures and restrictions to secure the conduct of the business of the meeting, including voting.

Effect on quorum of inability to participate in hybrid or virtual-only meeting.

133E.—(1) Subject to subsections (2) and (4), where a general meeting is held by a company as a hybrid meeting or virtual-only meeting and during the meeting a number of the attendees participating, by electronic means, cease to be able to participate in the meeting, at any time and for any period during the meeting, in such numbers that the quorum requirement

for that meeting is not met, the chairman of the meeting shall adjourn the meeting to a date and time, consented to by the attendees, who are able to fully participate in the meeting.

(2) Unless otherwise stated in the articles of a company, where a general meeting is held by a company as a hybrid meeting or virtual-only meeting, the inability of the attendees to participate by electronic means in the meeting, due to the failure of any electronic communication system or computer service, enabling virtual participation, shall not affect the quorum of the meeting, if such attendees are reconnected to the meeting within such reasonable period that the reconnected attendees are able to fully participate in the meeting.

(3) The chairman of the meeting shall determine the reasonableness of the period referred to in subsection (2), upon consideration of the business being conducted at the time of the failure of the electronic communication system or computer service and the duration of the absence of the attendees, who have ceased to fully participate in the meeting, and the chairman shall notify all attendees of his decision.

(4) Where the quorum requirement for a meeting is not met, all business transacted at that meeting, including matters put to a vote and any resolutions passed, shall be void.

Application  
for extension  
of time for  
holding  
annual  
general  
meeting.

133F.—(1) Notwithstanding anything contained in this Act or the articles of a company, where an annual general meeting is due to be held and cannot be held, as a result of events and conditions that are the subject of—

- (a) an order under section 26(2) of the Disaster Risk Management Act declaring the area

in which the meeting is to be held to be a disaster area or a threatened area, as the case may be; or

- (b) a Proclamation under section 20 of the Constitution of Jamaica, declaring a period of public disaster or a period of public emergency,

a director of the company or a member who is entitled to vote at the meeting, may cause an application to be made, in writing, to the Registrar, in the form set out as Form 26 in the Seventeenth Schedule, for approval to hold such meeting, as soon as practicable, or at a later proposed date.

Seventeenth  
Schedule.

(2) Subject to subsection (3), an application for the postponement of an annual general meeting under subsection (1), shall be submitted to the Registrar not less than thirty days prior to the date on which the annual general meeting is due to be held, or such shorter period as the registrar may determine.

(3) The applicant may propose a later date for the holding of the annual general meeting, which shall be a date within a period of not less than one hundred and twenty days, or within such longer period as the Registrar may determine, after the date due for holding the annual general meeting.

(4) On receipt of an application made under subsection (1), the Registrar may—

- (a) approve the application; or
- (b) refuse to approve, giving the reasons therefor.”.



5. The First Schedule to the principal Act is amended—

Amendment  
of First  
Schedule to  
principal Act.

(a) in Part I of Table A—

(i) by inserting next after article 47 the following—

“ 47A. The general meeting may be held as a hybrid meeting or virtual-only meeting.”;

(ii) in article 50, by renumbering that article as paragraph (1) thereof and inserting next after paragraph (1), as renumbered, the following—

“ (2) Where a general meeting is called under paragraph (1), the notice of the meeting may be served, in writing, electronically, in accordance with article 131(3) and, in the absence of any notification of failure of delivery, shall be deemed to have been received not less than twenty-four hours from the time the notice was served.

(3) In the case of a notice served, electronically, pursuant to paragraph (2), the twenty-one days’ and fourteen days’ notification shall be exclusive of the day on which the notice was received and the day on which the meeting is to be held.

(4) Notwithstanding the provisions of paragraph (1), where the general meeting is called as a virtual-only meeting, the notice is not required to specify the venue of the meeting.”;

(iii) in article 53, by renumbering that article as paragraph (1) thereof and inserting next after paragraph (1), as renumbered, the following—

“ (2) For the avoidance of doubt, a member participating in a general meeting,

by electronic means, is deemed to be present at the meeting and to count towards constituting the quorum.”;

(iv) by inserting next after article 61 the following—

“61A. Where a general meeting is held as provided in article 47A, unless a poll is demanded, votes at the meeting shall be cast by any of the following methods selected by the chairman of the meeting—

- (a) a voting software installed on each participant’s device;
- (b) a device specifically created for voting;
- (c) an audio-visual device to participate in the meeting;
- (d) any other method permitted by the articles of the company.”; and

(v) by deleting article 131 and substituting therefor the following—

“131.—(1) A company may serve a notice on any member either—

- (a) personally, by handing it to or leaving it with the member;
- (b) by post, in accordance with paragraph (2); or
- (c) by facsimile transmission, or other means of electronic communication, with the written consent of the member, in accordance with paragraph (3).

(2) A notice sent by post shall be—

- (a) properly addressed, prepaid and posted in a letter; and
- (b) be deemed to be served at the time at which the notice would have been delivered in the ordinary course of post.

(3) A notice sent by electronic means shall—

- (a) be sent to the email address, facsimile transmission number, or otherwise in accordance with the instructions of the member for service of the notice; and
- (b) be deemed to have been received by the intended recipient after twenty-four hours from the time the notice was so served, if there is no notification of a failure of delivery during that period.”;

(b) in Table B—

(i) by inserting next after article 8 the following—

“8A. The general meeting may be held as a hybrid meeting or virtual-only meeting.”;

(ii) by inserting next after article 11 the following—

“11A.—(1) Where a general meeting is called in accordance with article 11, the notice of the meeting may be given, in writing, electronically, and, in the absence of any notification of failure of delivery, shall be deemed to have been received not less than twenty-four hours from the time the notice was served.

(2) In the case of a notice served, electronically, pursuant to paragraph (1), the twenty-one days' and fourteen days' notification shall be exclusive of the day on which the notice was received and the day on which the meeting is to be held.

(3) Notwithstanding the provisions of article 11, where the general meeting is called as a virtual-only meeting, the notice is not required to specify the venue of the meeting.

11B.—(1) A company may serve notice on any member either—

- (a) personally, by handing it to or leaving it with the member;
- (b) by post, in accordance with paragraph 2; or
- (c) by facsimile transmission, or other means of electronic communication, with the written consent of the member, in accordance with paragraph 3.

(2) A notice served by post shall be—

- (a) properly addressed, prepaid and posted in a letter; and
- (b) be deemed to be served at the time at which the notice would have been delivered in the ordinary course of post.

(3) A notice served by electronic means shall—

- (a) be sent to the email address, facsimile transmission number, or

otherwise in accordance with the instructions of the member for service of the notice; and


- (b) be deemed to have been received by the intended recipient after twenty-four hours from the time the notice was so served, if there is no notification of a failure of delivery during that period.”;
- (iii) in article 14, by renumbering that article as paragraph (1) thereof and inserting next after paragraph (1), as renumbered, the following—
  - “ (2) For the avoidance of doubt, a member participating in a general meeting, by electronic means, is deemed to be present at the meeting and to count towards constituting the quorum.”; and
- (iv) by inserting next after article 23 the following—
  - “23A. Where a general meeting of members is held as provided in article 8A, unless a poll is demanded, votes at the meeting shall be cast by any of the following methods selected by the chairman of the meeting—
    - (a) a voting software installed on each participant’s device;
    - (b) a device specifically created for voting;
    - (c) an audio-visual device to participate in the meeting;
    - (d) any other method permitted by the articles of the company.”.

Insertion of new Seventeenth Schedule in principal Act.

6. The principal Act is amended by inserting next after the Sixteenth Schedule the following—

Seventeenth Schedule

(Section 133F(1))

FORM 26			
 <b>THE COMPANIES ACT</b> APPLICATION FOR THE EXTENSION OF TIME FOR THE HOLDING OF AN ANNUAL GENERAL MEETING (AGM) (Pursuant to section 133F of the Companies Act)			
1. NAME OF COMPANY: <input style="width: 90%;" type="text"/>			
2. COMPANY NUMBER: <input style="width: 20%;" type="text"/>		3. COMPANY TAX REGISTRATION NUMBER: <input style="width: 20%;" type="text"/>	
A. <input type="checkbox"/> PRIVATE		B. <input type="checkbox"/> PUBLIC	
		5. NUMBER OF MEMBERS: <input style="width: 20%;" type="text"/>	
6. NAME AND ADDRESS OF APPLICANT			
NAME: <input style="width: 95%;" type="text"/>			
ADDRESS:	STREET:	<input style="width: 70%;" type="text"/>	
	TOWN:	<input style="width: 70%;" type="text"/>	
	POST OFFICE:	<input style="width: 70%;" type="text"/>	
	PARISH:	<input style="width: 70%;" type="text"/>	
7. DATE OF LAST AGM (dd/mm/yyyy): <input style="width: 20%;" type="text"/>		8. INTENDED DATE FOR THE NEXT AGM: <input style="width: 20%;" type="text"/>	
9. REASON(S) FOR REQUEST OF EXTENSION OF TIME (attach schedule if necessary):			
<input style="width: 100%; height: 100%;" type="text"/>			
10. I CERTIFY THAT ALL FACTS SET OUT IN THIS APPLICATION ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.			
DATE (dd/mm/yyyy)	PRINTED NAME <i>(must be the name as Applicant stated at item 6 above)</i>	SIGNATURE	CONTACT NUMBER
CAPACITY:			
<input type="checkbox"/> DIRECTOR <input type="checkbox"/> MEMBER			
Note: 1. This form must be submitted not less than 30 days prior to the due date of the meeting or such shorter period as the Registrar may determine, and the proposed date for holding the meeting shall be a date within a period of 120 days, or within such longer period as the Registrar may determine, after the due date for the general meeting. 2. If, on, or about, the proposed date of the general meeting the event or condition persists, a new application may be made to the Registrar.			

Passed in the House of Representatives this 6th day of October, 2021.

M. DALRYMPLE PHILIBERT, CD, MP  
*Speaker.*

Passed in the Honourable Senate this 22nd day of October, 2021, with three (3) amendments.

THOMAS TAVARES-FINSON, OJ, CD, QC, JP  
*President.*

On the 26th day of October, 2021 the House of Representatives agreed to the amendments made by the Senate.

M. DALRYMPLE PHILIBERT, CD, MP  
*Speaker.*

*This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.*

*Clerk to the Houses of Parliament.*