



FURTHER AMENDED FIXED DATE CLAIM FORM

Form 2 [Rule 8.1(4)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2021CD00222



IN THE MATTER of the **COMPANIES ACT 2004** of
Jamaica

AND

IN THE MATTER of an Application by **iCREATE
LIMITED** for directions pursuant to **Section 130(2)** of
the **COMPANIES ACT 2004** of Jamaica

The Claimant, **iCREATE LIMITED** of 72b Hope Road, Kingston 6 in the parish of Saint Andrew seeks the following Orders: -

1. Time be abridged for the service of this Fixed Date Claim Form so that the First Hearing may be fixed less than four (4) weeks after being issued;
2. An Order that notwithstanding the provisions of the Companies Act and the Articles of Incorporation of **iCREATE LIMITED** regarding the holding of its Annual General Meeting, information circular or other documents that may be or already have been disseminated by the company, it may call and conduct its 2021 Annual General Meeting and subsequent General Meetings, during the declaration of disaster area due to the effects of the SARS-CoV-2 Coronavirus ("**COVID-19**"), in accordance with this Order and shall be valid;
3. An Order that **iCREATE LIMITED** be permitted to conduct its Annual General 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 to ask questions in such a reasonable order and manner as the Chairman may allow, and to vote electronically including before the meeting or by proxy chosen from among the persons the company indicated 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;
4. An Order that **iCREATE LIMITED** be permitted to provide its shareholders with notices of

the Annual General 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 and/or the website of the Jamaica Stock Exchange;

5. A Declaration that any notice or document delivered to shareholders by electronic mail and/or by posting links to access the documents on the websites of **iCREATE LIMITED** and the Jamaica Stock Exchange shall satisfy the requirements for serving documents for an Annual General Meeting notwithstanding the provisions to the contrary in the **Companies Act** and the Articles of Incorporation of **iCREATE LIMITED**;
6. An Order that failure or inability of a shareholder to attend or remain in the Annual General Meeting to be held in accordance with of these Orders as a result of mistakes of a technical nature or of events beyond the control of **iCREATE LIMITED** shall not constitute a defect in the calling of the Annual General Meeting and shall not invalidate any resolutions passed or proceedings taken at that Annual General Meeting;
7. A Declaration that paragraphs 2 to 6 of the Orders herein shall apply with such modifications as necessary to any Extraordinary General Meeting to be called by **iCREATE LIMITED**.
8. Liberty to apply; and
9. Such further order, direction and/or other relief for the Annual General Meeting of **iCREATE LIMITED** to be called, held and conducted in such manner as this Honourable Court deems fit.

The grounds on which the Claimant, **iCREATE LIMITED** is seeking the Orders are as follows: -

- a. Pursuant to Rule 27. 2(5) of the Civil Procedure Rules (CPR), the Court may on an application direct that shorter notice be given in urgent cases;
- b. **iCREATE LIMITED** is a company incorporated under the **Companies Act** and is publicly listed on the Junior Market of the Jamaica Stock Exchange;
- c. On March 13, 2020, the Prime Minister of Jamaica, the Most Honourable Andrew Holness, declared several measures and/or Orders under the **Disaster Risk Management (Enforcement Measures) Order 2020** due to the impact of COVID-19;
- d. This Order, which was made pursuant to the **Disaster Risk Management Act ("DRMA")**, imposed restrictions on public gatherings with stay at home orders for individuals over a specified age and only for them to leave home for the necessities of life, none of which is an Annual General Meeting.
- e. Since that date the Government has implemented several measures to limit the spread of COVID-19 by the promulgation of a series of orders under the **DRMA**.
- f. On June 3 2021, the **Disaster Risk Management (Enforcement Measures) (No. 7) Order 2021 ("the DRM Order")** was brought into effect extending the period for which Jamaica is deemed a disaster area to June 30, 2021. Given the nature of 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 individuals to limit social contact, including public gatherings, as much as possible.

- g. Although the Order exempts holding of Annual General Meetings from the prohibition of public gatherings of more than fifteen (15) persons, it imposes restrictions regarding physical distancing of persons and other protocols for those attending Annual General Meetings.
- h. For the year 2021, **iCREATE LIMITED** has not been able to hold its Annual General Meeting as required by the provisions of the **Companies Act** and its Articles of Incorporation.
- i. Pursuant to **Section 126(1)** of the **Companies Act**, *“every company shall in each year hold a general meeting as its annual general meeting....; and not more than fifteen month shall elapse between the date of one annual general meeting of a company and that of the next.”*
- j. **iCREATE LIMITED** is scheduled to have its Annual General Meeting before December 2021.
- k. At Annual General Meetings, all shareholders are entitled to attend, be heard and vote.
- l. The membership of **iCREATE LIMITED** is greater than nine hundred (900) shareholders and there is no suitable venue which is appropriate size to accommodate all the shareholder entitled to attend at the required physical distance.
- m. Unlike directors’ meetings provided for pursuant to **Section 141** of the **Companies Act**, *“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.”*
- n. There are no similar provisions 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.
- o. Annual General Meetings must therefore generally be held at a physical venue where shareholders attend in person.
- p. The current state of affairs with the existential threat of COVID-19 makes it impracticable for **iCREATE LIMITED** to hold its Annual General Meeting in accordance with the provisions of the **Companies Act** and its Articles of Incorporation.
- q. The directors of **iCREATE LIMITED** have a fiduciary duty to the company and its shareholders in ensuring that the Annual General Meeting is held and that they act in accordance with laws of Jamaica;
- r. In the circumstances, **iCREATE LIMITED**, makes this application pursuant to **Section 130(2)** of the **Companies Act** which 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."

- s. It is impractical for **iCREATE LIMITED** to call and hold an Annual General Meeting in a manner consistent with the Act and the Articles of Incorporation of the company.
- t. In the absence of an order from this Honourable Court allowing for an Annual General Meeting by electronic means **iCREATE LIMITED** would be forced to hold an Annual General Meeting in breach of the Companies Act, its Article of Incorporation and the DRM Orders. This may pose a health risk to the shareholders.
- u. No Act has been passed in Parliament to amend and give effect to electronically holding of an Annual General Meeting while the COVID-19 pandemic is impacting Jamaica or since it has been declared a disaster area.
- v. The relief being sought for subsequent General Meetings to be held electronically once Jamaica has been declared a disaster area due to the impact of COVID-19 or until the **Companies Act** is amended is appropriate and necessary to avoid cost and expense to the Claimant and to save judicial time and resources.
- w. The Orders being sought in this Fixed Date Claim Form are appropriate and necessary so that **iCREATE LIMITED** may comply with the provisions of the **Companies Act**, its Articles of Incorporation in relation holding an Annual General Meeting and the DRM Orders.

AND TAKE NOTICE that at the hearing of this Application the Claimant, **iCREATE LIMITED** will rely on the Affidavit of Urgency of **TYRONE WILSON**, sworn to on May 17, 2021.

I, **TYRONE WILSON**, Director, certify that all facts set out in this Further Amended Fixed Date Claim Form are true to the best of my knowledge, information and belief.

Dated the 15th day of June 2021
iCREATE LIMITED

PER:


TYRONE WILSON
Director

Dated the 15th day of June 2021
TAVARES-FINSON ADAMS
ATTORNEYS-AT-LAW FOR THE CLAIMANT

PER:


DEMETRIE A. ADAMS

NOTICE:

The first hearing of this claim will take place at The Supreme Court, Public Buildings, King Street, Kingston, on the 12th day of July 2021, at 12:30 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 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 9:00a.m. to 3:00p.m. on Fridays, except on Public Holidays.

The Claimant's address for service is that of her said Attorneys-at-Law, **Tavares-Finson Adams, Attorneys-at-Law** of 58 Hope Road, Kingston 6 in the parish of Saint Andrew, Telephone No. (876)946-1729 Fax:(876)978-0159.

FILED by Tavares-Finson Adams, Attorneys-at-Law of Maryfield Place, 58 Hope Road, Kingston 6 in the parish of Saint Andrew. Telephone No. (876) 946-1729 Fax: (876) 978-0159, Attorneys-at-Law for and on behalf of the Claimant herein whose address for service is that of its said Attorneys-at-Law. (*Per: Demetrie Adams – demetrie.adams@dm3legal.com*)