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Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
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File Title: APPLICATION IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 16/08/2020 10:52:53 PM AEST

Registrar

Important Information

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Form 59
Rule 29.02(1)

Supplementary Affidavit

No. NSD 464 of 2020

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations List

IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS

VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND RICHARD HUGHES, IN THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) AND THE THIRD TO FORTY-SECOND PLAINTIFFS NAMED IN SCHEDULE 1

First Plaintiffs

AND OTHERS NAMED IN THE SCHEDULE

Plaintiffs

Affidavit of: Vaughan Neil Strawbridge
Address: 9 Grosvenor Place, 225 George Street, Sydney, New South Wales
Occupation: Registered Liquidator and Chartered Accountant
Date: 16 August 2020

Document number	Details	Paragraph	Page
1	Affidavit of Vaughan Neil Strawbridge sworn on 15 August 2020	All	1–10
2	Annexure A, copy of minutes of 14 August COI Meeting	[9]	11–15
3	Annexure B, copy of a circular to creditors dated 17 July 2020	[15]	16–21

I, Vaughan Neil Strawbridge, of Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly owned subsidiary) (**Deloitte**), at Level 9 Grosvenor Place, 225 George Street, Sydney, New South Wales, Registered Liquidator and Chartered Accountant, say on oath:

1. I am a partner in the Financial Advisory Group of the professional services firm trading as Deloitte. I am a Chartered Accountant and a Registered Liquidator and I have practised for more than 25 years as an accountant specialising in insolvency related matters in Australia, Thailand and the United Kingdom.
2. I am one of the four joint and several voluntary administrators of each of the Second to Forty-Second Plaintiffs (**Virgin Companies**), together with Mr Salvatore Algeri, Mr John Greig and Mr Richard Hughes (together, the **Administrators** and each an **Administrator**).
3. I am authorised by Mr Algeri, Mr Greig and Mr Hughes to make this affidavit on behalf of the Administrators. Where I depose below to the view or views of the Administrators, they are the view(s) which each of I, Mr Algeri, Mr Greig and Mr Hughes hold at the date of swearing this affidavit.
4. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and from information I and staff members at Deloitte have obtained through my role as an Administrator of the Virgin Companies, which I believe to be true.
5. This is the tenth affidavit that I have sworn in these proceedings.
6. I refer to and rely upon my:
 - (a) affidavit of 23 April 2020 (**First Affidavit**);
 - (b) supplementary affidavit of 24 April 2020 (**Second Affidavit**);
 - (c) affidavit of 11 May 2020 (**Third Affidavit**);
 - (d) supplementary affidavit of 11 May 2020 (**Fourth Affidavit**);
 - (e) supplementary affidavit of 15 May 2020 (**Fifth Affidavit**),
 - (f) affidavit of 2 July 2020 (**Sixth Affidavit**);
 - (g) affidavit of 9 July 2020 (**Seventh Affidavit**);
 - (h) affidavit of 7 August 2020 (**Eighth Affidavit**); and
 - (i) affidavit of 14 August 2020 (**Ninth Affidavit**),each filed in the proceedings.
7. This is the Affidavit is made in relation to the BPT Application.
8. This affidavit should be read together with the Ninth Affidavit and, for convenience, where I mention terms which are defined in the Ninth Affidavit they have the same meaning in this affidavit. The purpose of this affidavit is to supplement the Ninth Affidavit by addressing matters that occurred at the Committee of Inspection meeting held at 11am

on 14 August 2020 (**14 August COI Meeting**) and to address additional correspondence received by the Administrators and their solicitors in relation to matters that are the subject of the BPT Application.

Meeting of the Committee of Inspection held 14 August 2020

9. On 14 August I convened our seventh COI Meeting held via the Microsoft Teams videoconference platform. I acted as chairperson at the meeting pursuant to rule 75-50 of the *Insolvency Practice Rules (Corporations) 2016*. Mr Greig and Mr Algeri were also in attendance via video-teleconference. At **Annexure A** of this affidavit is a copy of the minutes from the 14 August COI Meeting.
10. At the 14 August COI Meeting:
 - (a) I outlined the BPT Application as being two-fold:
 - i. firstly, Broad Peak and Tor are seeking for the Court to determine that an alternative deed of company arrangement (**DOCA**) proposal can and should be voted on at the second meetings of creditors of the Virgin Companies (**Second Meetings**); and
 - ii. secondly, that Broad Peak and Tor are seeking an independent facilitator to be appointed for the purpose of providing access to information and stakeholders and also to consider any alternative DOCA proposals put forward;
 - (b) I advised that:
 - i. the Administrators have already exercised their power of sale with respect to the Virgin Companies, noting that the *Corporations Act 2001* (Cth) (**Corporations Act**) provides the Administrators with the ability to deal with and sell the assets of the Virgin Companies;
 - ii. a binding agreement was required in order to create certainty for the future of the Virgin Companies;
 - iii. while the Administrators can detail an alternative DOCA proposal in their report to creditors, for a proposal to be put to creditors it needs to be capable of being completed; and
 - iv. the only way the Administrators could consider an alternative proposal is if someone applied to Court set aside the sale agreement entered into between the Administrators and Bain Capital, and that this had not occurred. I also noted that this point was raised with the Court during the hearing in the proceeding on 10 July 2020.

(c) In addition, I informed the COI that:

- i. Broad Peak and Tor had the opportunity to put forward an alternative DOCA proposal during the sale process and that such a proposal was received and considered by the Administrators. I reminded the Committee of Inspection that the committee have previously been taken through the Administrators' reasons for not progressing with their proposal;
- ii. it was important that the sale transaction with Bain Capital is not interrupted or disrupted at this late stage as the cost and consequence of creating a termination event would be significant for creditors, employees and the future of the airline, and the Administrators need to ensure that the transaction is not impacted for those reasons;
- iii. Broad Peak and Tor's actions impact on stakeholders of the Virgin Companies, particularly employees, due to the ambiguity created in respect of the future of the airline;
- iv. in relation to the appointment of a facilitator and Broad Peak and Tor's desire to seek access to stakeholders and information, the Administrators have run a very open and public sale process. The Administrators have worked with all parties who expressed an interest in the Virgin Companies, including Broad Peak and Tor. I also stated that Broad Peak and Tor had been granted access full access to the data room and the management team to facilitate their due diligence. I noted that Broad Peak and Tor sought further access, however, they did not comply with what was agreed in respect to their proposal being taken forward and on this basis the Administrators moved forward with the Bain Capital proposal; and
- v. there is no assertion as to any inappropriate conduct by the Administrators in the conduct of the sale process.

11. During the 14 August COI Meeting, members of the committee expressed views in relation to the BPT Application, including statements to the effect:

- (a) this was turning into a distraction, and is costing money and is not for the benefit of anybody;
- (b) it would take another 3 to 4 months before [Broad Peak and Tor] would be in a position to enter into binding agreements;
- (c) that the application is creating instability and further costs in the administration and accordingly, is not for the benefit of stakeholders as a whole;

- (d) that the uncertainty created by the BPT Application is significant for employees at an already difficult time for employees and does not have any utility;
 - (e) expressions of support for the Administrators position, with statements confirming confidence in the Administrators; and
 - (f) they want certainty.
12. Following the discussion, I proposed a resolution for the Committee of Inspection to consider, being that *“The committee of inspection supports the Voluntary Administrators in objecting to the application on Monday for the provision of information to Broad Peak and Tor and the appointment of a facilitator.”*
 13. A vote on the resolution was conducted on the voices and was declared as carried on the voices. Seven committee members abstained from voting on the resolution and no creditors voted against the resolution.

Applicants' misapprehension regarding Second Meeting process

14. I refer to paragraphs [6], [12], [32]-[36] of the affidavit of Cameron Cheetham affirmed 11 August 2020, to paragraphs [4]-[7] of the affidavit of Cameron Cheetham affirmed on 16 August 2020 and to paragraphs [2], [7], [14]-[16], [20], [28], [39]-[48], [55]-[59], [66] the Applicants' written submissions dated 15 August 2020. I have had limited time to consider the numerous substantive issues raised by the Applicants' evidence and submissions in the time available before the hearing of the BPT Interlocutory Process. One matter that I consider it appropriate to address is the apparent misapprehension on the part of the Applicants that the ability of a person to propose a DOCA (which is not enshrined in any statutory provision but is at large):
 - (a) imposes any obligation or duty on administrators or the company proactively to assist that DOCA proponent with their proposal or to expend the company's resources or funds to do so. There is no such obligation or duty and, in my experience, administrators often receive multiple DOCA proposals, many of which are incapable of implementation due to conditionality, execution risk, lack of certainty of funding or other threshold concern. In those circumstances, administrators consider the proposals on their merits and select, of the proposals received, the proposal which is to be recommended to creditors having regard to all of the relevant factors. It is that (sole) proposal which is included on the notice of meeting and proxy forms for voting at the Second Meetings. The usual course, in my experience, is for the administrators' report to creditors pursuant to IPS s75-225 to outline the other proposals received and to explain to creditors why those proposals were rejected by the administrators. This streamlining process is necessary so that proposals which, in an administrator's

experience and commercial judgment are incapable of execution, are not put to creditors, creating unnecessary confusion and disillusionment if the proposals fail after having been approved by resolution of creditors;

- (b) occurs at the Second Meetings of creditors. The time at which DOCA proposals must be submitted is, invariably and necessarily, in advance of the issuance of the s75-225 Report, so that the administrators can invigilate and assess the proposals and compare them to any others, and duly report to creditors on the proposals received. There is no "right", as asserted by the Applicants, to put a DOCA proposal to creditors from the floor of a second meeting of creditors. Rather, the process is as I have described in paragraph 14(a) above. Were the process to occur as the Applicants suggest, the meeting would need to be immediately adjourned (if the proposal had any merit or was a proposal which creditors wished to consider further), so that a supplementary s75-225 report could be prepared by the Administrators and issued to creditors in respect of that last minute DOCA proposal.
15. Given the financial position of the Virgin Companies, the Sale Process the Administrators undertook was to identify any and all possible proposals for a sale of assets or undertaking, or DOCA proposal, in respect of the Virgin Companies, a process we conducted publically which culminated in three stages of offers being received with final binding offers being submitted on 22 June 2020. We reiterated that it was our intention to enter into binding agreements for the sale of the business by 30 June 2020, which we have done with Bain Capital which concluded the sale process. The Administrators are now in the process of completing the sale of the business to Bain, which will be done under an asset sale agreement unless creditors approve the DOCA to be proposed by Bain Capital. We have taken the Col through the sale process, who have resolved in support of the decision to enter into a binding agreement for the sale of the business and provision of interim funding. We intend in our s75-225 report to creditors to provide details of the sale process and our consideration. Some of those considerations have already been shared with the Col and also with creditors in a circular dated 17 July 2020, a copy of which is annexed to this affidavit and marked "Annexure B". Our report will also outline the details of the sale transaction to Bain Capital and the estimated return to creditors under the asset sale agreement and the return in the event the DOCA is approved by creditors, such that the Bain Capital DOCA proposal can be assessed, invigilated and considered by creditors as an alternative to a completion of the sale under the asset sale agreement. The relief sought by the Applicants effectively seeks to reopen and repeat that sale process, at a time when Bain Capital is funding the day-to-day operations of the Virgin Companies and in circumstances where the Applicants had an opportunity to, and

did, participate in the Sale Process but failed to provide a sufficiently compelling proposal for the Virgin Companies. I am concerned that if the relief sought by the Applicants is granted, other unsuccessful bidders in the Sale Process will also seek or demand a "second bite at the cherry" in the same way as the Applicants are now seeking in circumstances where we have exercised our power of sale under 437A of the Act. The consequences of such an unorthodox and unmanageable development, in my view, could result in the loss of the Bain Capital Transaction and the liquidation of the Virgin Companies.

Swearing of this affidavit

- 16. I have not been able to swear this affidavit in proper form at the time that I have signed it due to the measures I have taken to minimise the spread of COVID-19.
- 17. I have been informed by Kassandra Suzann Adams, as the proposed witness to this affidavit, and believe, that the relaxation of formality with respect to the unsworn nature of this affidavit does not diminish the need for me to satisfy myself that the contents of this affidavit are true and correct. I have satisfied myself that that is the case.
- 18. I will formally swear this affidavit when circumstances allow and will instruct Clayton Utz to file the sworn version with the Court.

Sworn by the deponent)
 at Sydney)
 in New South Wales)
 on 16 August 2020)
 Before me:)

.....
 Signature of Vaughan Neil Strawbridge

.....
 Signature of witness
 Kassandra Suzann Adams, solicitor

SCHEDULE 1

Federal Court of Australia
District Registry: New South Wales
Division: General

No. NSD 464 of 2020

IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS

Plaintiffs

- First Plaintiffs: Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacity as joint and several voluntary administrators of the Second to Thirty-ninth Plaintiffs
- Second Plaintiff: Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226
- Third Plaintiff: Virgin Australia International Operations Pty Ltd (Administrators Appointed) ACN 155 859 608
- Fourth Plaintiff: Virgin Australia International Holdings Pty Ltd (Administrators Appointed) ACN 155 860 021
- Fifth Plaintiff: Virgin Australia International Airlines Pty Ltd (Administrators Appointed) ACN 125 580 823
- Sixth Plaintiff: Virgin Australia Airlines (SE Asia) Pty Ltd (Administrators Appointed) ACN 097 892 389
- Seventh Plaintiff: Virgin Australia Airlines Holdings Pty Ltd (Administrators Appointed) ACN 093 924 675
- Eighth Plaintiff: VAH Newco No.1 Pty Ltd (Administrators Appointed) ACN 160 881 345
- Ninth Plaintiff: Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008
- Tenth Plaintiff: Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965
- Eleventh Plaintiff: VA Borrower 2019 No. 1 Pty Ltd (Administrators Appointed) ACN 633 241 059

Twelfth Plaintiff:	VA Borrower 2019 No. 2 Pty Ltd (Administrators Appointed) ACN 637 371 343
Thirteenth Plaintiff:	Virgin Tech Pty Ltd (Administrators Appointed) ACN 101 808 879
Fourteenth Plaintiff:	Short Haul 2018 No. 1 Pty Ltd (Administrators Appointed) ACN 622 014 831
Fifteenth Plaintiff:	Short Haul 2017 No. 1 Pty Ltd (Administrators Appointed) ACN 617 644 390
Sixteenth Plaintiff:	Short Haul 2017 No. 2 Pty Ltd (Administrators Appointed) ACN 617 644 443
Seventeenth Plaintiff:	Short Haul 2017 No. 3 Pty Ltd (Administrators Appointed) ACN 622 014 813
Eighteenth Plaintiff:	VBNC5 Pty Ltd (Administrators Appointed) ACN 119 691 502
Nineteenth Plaintiff:	A.C.N. 098 904 262 Pty Ltd (Administrators Appointed) ACN 098 904 262
Twentieth Plaintiff:	Virgin Australia Regional Airlines Pty Ltd (Administrators Appointed) ACN 008 997 662
Twenty-first Plaintiff:	Virgin Australia Holidays Pty Ltd (Administrators Appointed) ACN 118 552 159
Twenty-second Plaintiff:	VB Ventures Pty Ltd (Administrators Appointed) ACN 125 139 004
Twenty-third Plaintiff:	Virgin Australia Cargo Pty Ltd (Administrators Appointed) ACN 600 667 838
Twenty-fourth Plaintiff:	VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741
Twenty-fifth Plaintiff:	VA Hold Co Pty Ltd (Administrators Appointed) ACN 165 507 157
Twenty-sixth Plaintiff:	VA Lease Co Pty Ltd (Administrators Appointed) ACN 165 507 291
Twenty-seventh Plaintiff:	Virgin Australia 2013-1 Issuer Co Pty Ltd (Administrators Appointed) ACN 165 507 326
Twenty-eighth Plaintiff:	737 2012 No.1 Pty. Ltd (Administrators Appointed) ACN 154 201 859

Twenty-ninth Plaintiff:	737 2012 No. 2 Pty Ltd (Administrators Appointed) ACN 154 225 064
Thirtieth Plaintiff:	Short Haul 2016 No. 1 Pty Ltd (Administrators Appointed) ACN 612 766 328
Thirty-first Plaintiff:	Short Haul 2016 No. 2 Pty Ltd (Administrators Appointed) ACN 612 796 077
Thirty-second Plaintiff:	Short Haul 2014 No. 1 Pty Ltd (Administrators Appointed) ACN 600 809 612
Thirty-third Plaintiff:	Short Haul 2014 No. 2 Pty Ltd (Administrators Appointed) ACN 600 878 199
Thirty-fourth Plaintiff:	VA Regional Leaseco Pty Ltd (Administrators Appointed) ACN 127 491 605
Thirty-fifth Plaintiff:	VB 800 2009 Pty Ltd (Administrators Appointed) ACN 135 488 934
Thirty-sixth Plaintiff:	VB Leaseco No 2 Pty Ltd (Administrators Appointed) ACN 142 533 319
Thirty-seventh Plaintiff:	VB LH 2008 No. 1 Pty Ltd (Administrators Appointed) ACN 134 280 354
Thirty-eighth Plaintiff:	VB LH 2008 No. 2 Pty Ltd (Administrators Appointed) ACN 134 288 805
Thirty-ninth Plaintiff:	VB PDP 2010-11 Pty Ltd (Administrators Appointed) ACN 140 818 266
Fortieth Plaintiff:	Tiger International Number 1 Pty Ltd (Administrators Appointed) ACN 606 131 944
Forty-first Plaintiff:	VAH Newco No. 2 Pty Ltd (In Liquidation) (Administrators Appointed) ACN 160 881 354
Forty-second Plaintiff:	VB Investco Pty Ltd (In Liquidation) (Administrators Appointed) ACN 101 961 095

Sworn on _____ Before me _____

MINUTES OF THE COMMITTEE OF INSPECTION (COI) MEETING OF

VIRGIN AUSTRALIA HOLDINGS LIMITED ACN 100 686 226 AND SUBSIDIARIES (ADMINISTRATORS APPOINTED)
(THE **COMPANIES** OR **VIRGIN GROUP**)

HELD AT THE OFFICES OF DELOITTE, LEVEL 9, 225 GEORGE STREET, SYDNEY NSW 2000
ON 14 AUGUST 2020 AT 11:00AM (AEST)

PRESENT Vaughan Strawbridge Joint and Several Administrator, Deloitte Financial
Timothy Sackar Clayton Utz
Advisory Pty Ltd (**Deloitte**)

OPENING OF THE MEETING

Mr Strawbridge declared the meeting open at 11:02 AM (AEST).

He advised this was the seventh meeting of the COI of Virgin Australia Holdings Limited and subsidiaries (Administrators Appointed) which will be referred to as the Companies or the Virgin Group during the meeting.

He introduced Timothy Sackar of Clayton Utz, the Administrators' solicitor, who was present at the meeting with him.

He noted John Greig and Sal Algeri, Joint and Several Administrator of the Companies, were also in attendance via the videoconference facility.

IN ATTENDANCE

Mr Strawbridge noted that all committee members in attendance were attending via the Microsoft Teams videoconference platform and the listing of those accessing the online meeting platform would be used as a basis for the attendance register.

The attendance register is attached at **Annexure A**.
The observers register is attached at **Annexure A**.

CHAIRPERSON

Mr Strawbridge advised that pursuant to rule 75-50 of the *Insolvency Practice Rules (Corporations) 2016 (IPR)*, he would occupy the Chair as Joint and Several Administrator of the Companies.

QUORUM

The Chairperson declared a quorum present at the meeting as a majority of the committee members were seen as viewing the online meeting platform at that time.

RECORDING OF THE MEETING

The Chairperson advised of his intention to record the meeting for the purpose of minute taking. He asked if any committee members objected to the meeting being recorded. No objections to the recording of the meeting were made.

TIME AND PLACE OF MEETING

The Chairperson stated he had not received any objections that the time and place was not convenient to the committee members. Therefore, pursuant to 75-30 of the IPR, he declared that the meeting is held at a time and place most convenient for the majority of persons entitled to receive notice of the meeting.

AGENDA

The agenda for the meeting is:

- a) Broad Peak and Tor application to Court heard on 17 August 2020;
- b) Court orders made since the last COI meeting; and
- c) any other business.

BROAD PEAK AND TOR (BP&T) APPLICATION TO COURT

The Chairperson advised a letter was sent to committee members last night providing key relevant discussion points for the agenda items of the meeting.

The Chairperson advised the essence of the Court application by BP&T is two-fold:

- Firstly, they are seeking for the Court to determine that an alternative Deed of Company Arrangement proposal can and should be voted on at the second meeting; and

- Secondly, they are seeking an independent facilitator to be appointed for the purpose of providing access to information and stakeholders and to also consider any alternative DOCA proposals put forward.

The Chairperson advised the Administrators had already exercised their power of sale, whilst noting the Corporations Act provides the Administrators with the ability to deal with and sell the assets of the Companies.

The Chairperson advised it was not the Administrators original intent to exercise their power of sale, however, as the sale process progressed, the Administrators needed to get a binding agreement in place and create certainty for the future of the airline.

The Chairperson advised the Administrators can describe an alternative DOCA proposal however, for a proposal to be put to creditors it needs to be capable of being completed, in this case the Administrators have already exercised their power of sale in respect to the assets of the company.

He noted the only way the Administrators could consider an alternative proposal is if the Court was to set aside the sale agreement with Bain Capital (**Bain**), and this had not occurred. This point was raised with his Honour during the last Court hearing with BP&T on 10 July 2020.

The Chairperson advised BP&T had the opportunity to put forward their alternative proposal during the sale process. Their proposal was received, and the Administrators did consider it. The COI and BP&T have previously been taken through the Administrators' reasons for not progressing with their proposal.

He noted how important it was that the sale transaction with Bain is not interrupted or disrupted as the cost and consequence of creating a termination event would be significant for creditors, employees and the future of the airline, and the Administrators need to ensure the transaction is not impacted for those reasons.

The Chairperson noted the impact of BP&T's actions on stakeholders of the business, particularly employees due to the ambiguity it creates around the future of the airline. He then opened the meeting to discussion.

Jason Opperman of JPA No. 123 Co., Ltd asked if the Administrators had clear advice from Senior Counsel on prospects of the BP&T application on Monday.

The Chairperson noted the Administrators have been clear around how they have exercised their power of sale which creates difficulties around their ability to consider alternative proposals.

In relation to the appointment of a facilitator and BP&T's desire to seek access to stakeholders and information, the Chairperson advised that the Administrators had run a very open and public sale process. They have worked with all parties who had expressed an interest in the Virgin Group, including BP&T who first obtained access to the interim funding data room around 26 May 2020 and subsequently full access to the data room. The Administrators agreed to expanding access to the full data room with them and also access to the management team to facilitate the due diligence they wanted to undertake. This access was agreed to with them and provided. They subsequently sought further access but did not comply with what was agreed in respect to their proposal being taken forward. On this basis the Administrators moved forward with the Bain proposal.

The Court considered in an application by BP&T, access to information and stakeholders, which was heard on 10 July. This access was not granted. They then withdrew their application to the Takeovers Panel on the same day, which was an application in respect to access also.

In their current application there is no assertion as to any inappropriate conduct by the Administrators in the conduct of the sale process. The Administrators have at all times considered the requests for information and access to the stakeholders and sought advice in respect to this. The Administrators have responded to their request and outlined their decisions in respect to the sale and why further access to information and stakeholders is not appropriate. The Court has also considered this and dealt with their request at the hearing on 10 July.

Christopher Hill representing Velocity Rewards Pty Limited stated that this matter should start and stop with the fact that the Administrators have exercised their power of sale and an alternative DOCA cannot be considered as the assets have already been sold. He stated this was turning into a distraction, is costing money and is not for the benefit of anybody. Mr Hill further noted that if BP&T get their orders, what is there to stop someone else taking the same action next week. He noted they had a chance to get into the sale process and they did not take it. He believed this action was an unnecessary distraction and uncalled for, while also noting the shortfalls in the merits of their proposal. He believed that even if BP&T got access to the information wanted, it would be another 3 to 4 months before they would be in a position to enter binding agreements. He stated their action was creating instability and more cost, and it cannot be for the benefit of creditors and stakeholders as a whole. His view was that the committee should be providing the Administrators with the support they require for Monday to make it clear to the Court that this should not be entertained.

Tony Troiani representing Sabre GLBL Inc, whilst agreeing with Mr Hill's premise that assets had been disposed of and therefore there is nothing to which the DOCA would attach to, stated he disagreed with the conclusion that Mr Hill came to that other people are not entitled to propose another DOCA. He thought it was a bad look for any administrator to be seeking to close other people out from putting forward a DOCA. Mr Troiani's stated his preference would be to go to Court on Monday and make the clear point that their proposal is futile.

In response, the Chairperson noted BP&T were not excluded from the sale process. The Administrators worked with BP&T and made clear to them there was a certain threshold they would need to meet for their proposal to be taken forward, and they didn't meet that threshold..

Mr Troiani clarified that he was not referring to the sale process, rather the DOCA process and meeting of creditors. He noted it was for creditors to decide what is to happen by way of DOCA or otherwise at the meeting, and all the Administrator can say is that there are no assets available for a proposed DOCA rather than exclude parties from putting a DOCA forward.

The Chairperson advised the Administrators had not stated that alternative proposals could not be put to them and are happy to disclose alternative proposals and their terms in the report. He stated it was more around what can be voted on, whilst also noting that putting an alternative proposal up to vote on by creditors might be seen as misleading as it would not be capable of being completed.

The Chairperson advised the orders sought have the potential of essentially reopening the sale process. He noted no one would be able to complete all the due diligence work by the time the second meeting is due to be held. He advised a further issue is the funding and the Administrators are relying on Bain for funding trading.

Linda White, representing the Australian Council of Trade Unions (ACTU), agreed that the uncertainty this bondholder application is creating is significant for employees at an already difficult time for employees. The ACTU does not see any utility in the application. She noted employees are in difficult time and stated the ACTU cannot see any upside to the application and support the Administrators wholeheartedly.

Thomas Jacquot of FIIG Securities Limited made the following statements:

- a) In reference to the resolution of the COI made on 9 July 2020, his understanding is that there was support from the committee on the premise that the Administrators were running out on cash and they only had one option.
- b) During Court proceedings in July, Middleton J made it clear that anyone had the right to put forward an alternative DOCA.
- c) Only the Administrators know what is in the agreement with Bain, and creditors do not.
- d) In respect of the concerns that the orders sought by BP&T on Monday could reopen the sale process, there is a significant difference between BP&T and other bidders who are not creditors of the Companies.

The Chairperson advised that reopening the sale process is a concern as it would be incredibly disruptive and there would be an enormous amount of work required for

anyone to undertake due diligence. He noted the time to do this work and put proposals forward was during the sale process.

Steve Purvinas, representing members of the Australian Licensed Aircraft Engineers (**ALAEA**), stated he was very disappointed by any discussion coming from the COI that they should consider other proposals. He noted he had absolute confidence in the Administrators and if another option is put to creditors at the meeting, their members would be voting against it as they want certainty. He stated the ALAEA have full faith in the process the Administrators are undertaking.

Mr Jacquot asked that if the Administrators are unable to consider and complete another DOCA, shouldn't this be communicated to creditors?

The Chairperson advised the Administrators, whilst not to the level of detail communicated to the COI, they have communicated to creditors that they have exercised their power of sale which means they cannot entertain any other offer. This has also been publicly stated and also communicated in Court.

Mr Troiani noted the focus had so far been on the sale and the assets available, rather than the DOCA and the upcoming meeting of creditors. He noted no rational creditor could vote against the DOCA that supports the Bain transaction. He further noted that similarly, no rational creditor could vote for the Liquidation of the Companies, however that is still a proposition the Administrators are required to put to creditors as an option. Whilst it is irrational to vote for Liquidation, creditors are still entitled to vote for that option.

Mr Hill commented that the application on Monday is not around whether BP&T can put forward a DOCA proposal, it is also around whether they can open up a sale process, get access to information, employees and management and then formulate a proposal. He noted the time to do that has come and gone. He believed that the COI, as a body representing creditors, should support the Administrators in opposing that.

Mr Troiani agreed with Mr Hill's comments, whilst noting that he did not want it to be suggested that the Administrators are standing in the way of somebody else putting up a DOCA.

The Chairperson reiterated the Administrators had openly stated that anyone is capable of putting up a DOCA which would be taken into account when they report to creditors, however, what they do need to consider is if a proposal is capable of being put to the creditors to vote on.

Mr Jacquot noted that, whilst the Administrators state the BP&T DOCA could not be completed, it is still creditors' right to vote on it.

Henry Carr of the Attorney General's Department sought clarification to the Chairperson's comments that the application on Monday might trigger a termination event of the Bain transaction.

The Chairperson advised the Administrators did not want the opening up of the sale process to create a termination event under the agreement.

Richard Wolanski of Airframe Leasing (S) Pte. Ltd stated he fully supported the process the Administrations have undertaken and noted there was no alternative for the Administrator but to accept Bain's offer given the circumstances and funding issues. He questioned why the money available to unsecured creditors under the Bain transaction has been kept confidential.

The Chairperson advised Bain to have requested this be kept confidential until the Administrators report to creditors.

Mr Wolanski then asked if the Administrators are in compliance with the aircraft protocols signed and will have the time and ability to redeliver aircraft to lessors before the administration ends.

The Chairperson advised the Administrators are aware of their obligations under the aircraft protocols and the timing to return aircraft has been contemplated.

The Chairperson, given the comments made by the members of the COI, proposed a resolution for the committee to consider, noting voting would be conducted on the voices. He put the resolution to the committee:

"The committee of inspection supports the Voluntary Administrators in objecting to the application on Monday for the provision of information to Broad Peak and Tor and the appointment of a facilitator."

The Chairperson declared the resolution as carried, whilst noting for the record that the following members had abstained from voting:

- Thomas Jacquot of FIIG Securities Limited
- Yvonne Kelaher of Sargon CT
- Jeremy Hollingsworth of BNY Mellon
- Gary Busby as proxy for the Deputy Commissioner of Taxation
- Richard Wolanski of Airframe Leasing (S) Pte. Ltd
- John Lyons of the Association of Virgin Australia Group Pilots (VIPA)
- David Baker of Airline Cleaning Services Pty Ltd.

Mr Troiani sought clarification as to a scenario where the BP&T DOCA was voted on and approved by creditors at the second meeting, in which case the assets would have been sold, the BP&T DOCA could not be fulfilled and the Companies would end up in liquidation.

The Chairperson noted that in the event the Bain DOCA was not approved by creditors, it is likely the meeting would be adjourned to compete the sale to Bain under the asset sale agreement.

Mr Troiani noted this position illustrates the futility of BP&T's application. He stated that he supported the resolution put to the committee.

The Chairperson declared the resolution carried on the voices.

**COURT ORDERS
MADE SINCE THE
LAST COI MEETING**

The Chairperson then talked the committee through the summary Court orders summarised in the letter circulated to committee members last night.

**ANY OTHER
BUSINESS**

The Chairperson asked if there was any further business the committee members wanted to discuss.

**CLOSURE OF
MEETING**

The Chairperson thanked committee members for their attendance and declared the meeting closed at 12:07 PM (AEST)

Signed as a correct record.



.....
CHAIRPERSON

This and the following 5 pages are Annexure B referred to in the affidavit of Vaughan Neil Strawbridge dated 16 August 2020

17 July 2020

Sworn on _____

Before me _____

TO THE CREDITORS

Dear Sir/Madam

**Virgin Australia Holdings Limited (ACN 100 686 226)
and the subsidiaries listed in Annexure A
(All Administrators Appointed)
(the Companies or Virgin Australia)**

Update on the Voluntary Administration of the companies and timetable to second meeting of creditors

Further to the first meeting of creditors held on 30 April 2020 and various other communications sent to creditors, we provide you with this update on the progress of the voluntary administration and the sale of the business.

1. Communication with the committee of inspection (COI)

Regular meetings have been held with the COI to provide them with an update on the status of the voluntary administration and sale process. Meetings with the COI have been held on:

- 1st meeting on 21st May 2020;
- 2nd meeting on 10th June 2020;
- 3rd meeting on 1st July 2020; and
- 4th meeting on 9 July 2020.

In addition to the COI we have also held meetings with a group of bondholders as representatives of that class of creditors referred to as the Noteholder Consultative Committee (NCC) as follows:

- 1st meeting on 28th May 2020;
- 2nd meeting on 11th June 2020; and
- 3rd meeting on 2nd July 2020.

2. Creditor position

From our review of the books and records of the Virgin Companies, we have identified the Companies have approximately 10,247 known creditors (including approximately 9,020 employees), not including customers entitled to credits for flights which were cancelled due to the pandemic.

The creditor groups can be broadly summarised as follows:

- secured lenders and aircraft financiers, who are owed approximately \$2,284 million;
- unsecured bondholders, who are owed approximately \$1,988 million;
- trade creditors, who are owed approximately \$167 million;
- aircraft lessors, who are owed approximately \$1,884 million (full value of future claims if their losses are not mitigated);
- landlords, who are owed approximately \$71 million;
- employees, who are owed approximately \$451 million (in the event of liquidation); and
- customers entitled to credits for flights which were cancelled due to the pandemic - contingently owed approximately (\$604 million).

3. Sale of the business

On our appointment we commenced an immediate campaign for the sale and/or recapitalisation of the Virgin Group. Notwithstanding the scale and complexity of the business, we had formed the view that an expedited sale process needed to be conducted given the following factors:

- The significant cash constraints facing the Virgin Companies and the initial projection there would be insufficient cash to continue trading post 30 June 2020 without additional funding;
- The impact of the COVID-19 pandemic on the viability of the business and the ability to generate revenue to cover costs;
- The need to retain key contracts, assets, employees and regulatory approvals to preserve the value of the business; and
- The impact of the uncertainty of the future of the business on customers, financiers, business partners and the general market.

Working with our advisers we undertook the following steps in the sale process:

1. on 21 April 2020, we commenced contacting and interacting with interested parties;
2. on 27 April 2020 we opened a data room to enable parties to commence due diligence and issued an information memorandum for the sale process;
3. on 15 May 2020, we received several non-binding indicative offers/proposals (NBIOs) and, based on those offers, formed a shortlist of interested parties which, in our opinion, were the parties most likely to be able to make a credible offer for the business (**Shortlisted Bidders**);
4. we commenced a second phase of due diligence in the sale process and on 29 May 2020, we received five final NBIOs for from the Shortlisted Bidders. We did receive other NBIOs from other parties not in the sale process;
5. on 2 June 2020 we selected two final preferred bidders, comprising Bain Capital and Cyrus Capital Partners, L.P (**Cyrus Capital**), to proceed to a third phase of the sale process;
6. on and from 2 June 2020, we and our advisers were engaged in extensive negotiations with Bain Capital and Cyrus Capital in relation to all aspects of a proposed transaction, including the form of the documents to give effect to a transaction;
7. on 22 June 2020, we received final binding offers from Bain Capital and Cyrus Capital;
8. on 24 June 2020, we received a back-up recapitalisation proposal (in the form of a deed of company arrangement proposal) as well as an offer of interim funding (which was conditional on acceptance of the back-up recapitalisation proposal) from Broad Peak and Tor (BP&T, two holders of bonds);

9. on 26 June 2020, following our consideration and assessment of the competing proposals (with the assistance of our advisers), we accepted the offer submitted by Bain Capital.

The objective of the sale process was to maximise the value of the business by:

- Running a competitive sale process to enhance competitive tension;
- Continuing to trade the business and maintain operational readiness to maximise revenue opportunities as the COVID-19 lessened, and to allow a seamless transition to a new owner;
- Maintaining the business structure to provide optionality to interested parties; and
- Providing certainty and confidence to stakeholders, including suppliers, financiers, customers and interested parties, by establishing an expedited, well-defined process and timetable.

An additional proposal to that from Bain Capital and Cyrus Capital was received, which we considered. However, it was highly conditional and contained no evidence of committed funding to enable a transaction to be completed. In these circumstances, we were unable to take this proposal forward given the lack of certainty and the level of conditionality.

Based on all of the information available to us, we concluded that the Bain Capital offer was the best offer received, including, because it:

1. provided certainty of a transaction being completed;
2. provided immediate funding required to continue to trade the business; and
3. resulted in the best outcome for the Companies' creditors (including its employees) as a whole.

On 26 June 2020, we signed binding transaction documents for the sale of the business to Bain Capital and as such we are not able to accept any alternate offer for sale, and they are committed to buying the business.

On 9 July the COI was taken through the sale process and provided with detail as to the steps the Administrators had taken in the sale process. At the conclusion of the COI meeting a resolution in respect to the sale was passed:

"...approving the Administrators actions of entering into binding agreements for the sale of the Virgin Australia business and to obtain interim funding enabling the business to continue to trade".

The current position is as follows:

- the Administrators continue to trade the business as usual until completion of the sale transaction; and
- economic risk for the business passed to Bain Capital from 1 July 2020, underpinned by interim funding of \$125m which has been provided by Bain Capital, which is to be used to trade the business from 1 July 2020 to completion of the sale transaction.

Under the sale transaction with Bain Capital the following will occur:

- employee entitlements to be covered in full. Continuing employees' entitlements are assumed by Bain Capital and any employees not continuing will receive a payout of their entitlements including redundancy entitlements in full. In the event of a liquidation these costs have been estimated at \$450 million;
- all travel credits/unearned travel revenue to be assumed in full;
- assumption of the Virgin Australia Airlines Holdings Pty Limited loan from the Velocity business of \$150 million;

- will take on / assume certain existing contractual and financial arrangements of Virgin Australia;
- will provide a significant amount of cash funding to enable a dividend to be paid to unsecured creditors; and
- will provide sufficient capital for the airline to strengthen the balance sheet of Virgin Australia, which will facilitate the ramp up of operations as the COVID restrictions ease.

We are currently in the process of working with the Virgin Australia management team and Bain Capital to restructure the business for future operations, which are expected to be significantly progressed but not finalised prior to the second meeting of creditors (anticipated to be held on 26 August 2020).

The actual return to creditors will be advised to creditors in our report to creditors expected to be issued on 19 August 2020, ahead of the second creditors meeting.

4. Trading of the business

On our appointment, while there was significant cash in the business, this cash was withheld by the financial institutions (**Restricted Cash**), who were seeking to off-set the cash against debts owed to them or exposures they had to the Companies. This meant we did not have any unrestricted available cash on day one of our appointment, requiring us to seek funding from the group's lending institutions to enable the payment of wages in the first week of our appointment.

We subsequently negotiated the release of some of the Restricted Cash that had been withheld by financial institutions, which has enabled us to trade the business while we urgently sought a sale and/or recapitalisation of the business through to 30 June 2020.

Prior to our appointment, given the COVID-19 restrictions on travel, the business was operating at a significant loss. Management had reduced the costs of trading the business significantly, however in the circumstances the business had a monthly funding requirement of circa \$200 million. We, together with the Virgin Australia management team have been able to significantly further reduce the holding and trading costs of the business, mainly due to the support of stakeholders who have been critical to the continued operation of the airline, including:

- Employee support:
 - flexibility provided under the enterprise agreements and with the support of the unions representing employees;
 - flexibility from staff and continued support for the business; and
 - access to the Federal Government JobKeeper scheme.
- Financiers to the business:
 - Court Orders have been obtained to extend the period until we become personally liable to pay certain costs associated with property occupied by, or in the possession of, the companies;
 - aircraft protocols entered into with aircraft and engine financiers, which have significantly reduced the operating costs of the business in line with the current level of operations;
 - financiers' agreement with respect to the continued operation of merchant facilities; and
 - financiers' agreement to release restricted cash to provide liquidity to the business.
- Landlords and trade suppliers:
 - agreement with landlords for rental support; and
 - continued services from service providers and operating partners despite significant arrears of payments for services.

- Federal Government support:
 - aviation industry support package; and
 - underwritten flights schedule and international supported repatriation and cargo flights.

Without the support of the above stakeholders all working collaboratively with us, we would not have been able to reduce the funding requirement to a level enabling the completion of the sale process by 30 June 2020 (without significant interim funding being secured).

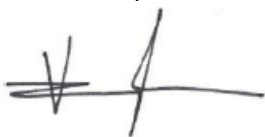
5. Next steps

We anticipate the following timetable in the next phase of the voluntary administration:

- **12 August 2020:** we expect to receive a Deed of Company Arrangement (**DOCA**) proposal from Bain Capital;
- **19 August 2020:** we expect to provide our Report to Creditors together with the notice of the second creditors meeting (convened pursuant to section 439A of the Corporations Act); and
- **26 August 2020:** expected date of the second creditors meeting.

While we have agreed a sale of the business to Bain Capital, they are obliged to submit to us a proposal on 12 August 2020, which if approved by creditors at the second meeting, will provide a better return to unsecured creditors than if the sale is completed through the asset sale transaction. Details of the transaction, DOCA, return to creditors and our recommendation to creditors will be included in our report to creditors.

Yours faithfully



Vaughan Strawbridge
Joint and Several Administrator

Annexure A

No.	Name	Date of appointment	ACN
1	Virgin Australia Holdings Ltd	20-Apr-20	ACN 100 686 226
2	Virgin Australia Airlines Pty Ltd	20-Apr-20	ACN 090 670 965
3	Virgin Australia International Airlines Pty Ltd	20-Apr-20	ACN 125 580 823
4	Virgin Australia Regional Airlines Pty Ltd	20-Apr-20	ACN 008 997 662
5	Tiger Airways Australia Pty Limited	20-Apr-20	ACN 124 369 008
6	737 2012 No. 2 Pty Ltd	20-Apr-20	ACN 154 225 064
7	737 2012 No.1 Pty. Ltd.	20-Apr-20	ACN 154 201 859
8	A.C.N. 098 904 262 Pty Ltd	20-Apr-20	ACN 098 904 262
9	Short Haul 2014 No. 1 Pty Ltd	20-Apr-20	ACN 600 809 612
10	Short Haul 2014 No. 2 Pty Ltd	20-Apr-20	ACN 600 878 199
11	Short Haul 2016 No. 1 Pty Ltd	20-Apr-20	ACN 612 766 328
12	Short Haul 2016 No. 2 Pty Ltd	20-Apr-20	ACN 612 796 077
13	Short Haul 2017 No. 1 Pty Ltd	20-Apr-20	ACN 617 644 390
14	Short Haul 2017 No. 2 Pty Ltd	20-Apr-20	ACN 617 644 443
15	Short Haul 2017 No. 3 Pty. Ltd.	20-Apr-20	ACN 622 014 813
16	Short Haul 2018 No. 1 Pty. Ltd.	20-Apr-20	ACN 622 014 831
17	Tiger International Number 1 Pty Ltd	28-Apr-20	ACN 606 131 944
18	VA Borrower 2019 No. 1 Pty Ltd	20-Apr-20	ACN 633 241 059
19	VA Borrower 2019 No. 2 Pty Ltd	20-Apr-20	ACN 637 371 343
20	VA Hold Co Pty Ltd	20-Apr-20	ACN 165 507 157
21	VA Lease Co Pty Ltd	20-Apr-20	ACN 165 507 291
22	VA Regional Leaseco Pty Ltd	20-Apr-20	ACN 127 491 605
23	VAH Newco No.1 Pty Ltd	20-Apr-20	ACN 160 881 345
24	VB 800 2009 Pty Ltd	20-Apr-20	ACN 135 488 934
25	VB Leaseco No 2 Pty Ltd	20-Apr-20	ACN 142 533 319
26	VB Leaseco Pty Ltd	20-Apr-20	ACN 134 268 741
27	VB LH 2008 No. 1 Pty Ltd	20-Apr-20	ACN 134 280 354
28	VB LH 2008 No. 2 Pty Ltd	20-Apr-20	ACN 134 288 805
29	VB PDP 2010-11 Pty Ltd	20-Apr-20	ACN 140 818 266
30	VB Ventures Pty Ltd	20-Apr-20	ACN 125 139 004
31	VBNC5 Pty Ltd	20-Apr-20	ACN 119 691 502
32	Virgin Australia 2013-1 Issuer Co Pty Ltd	20-Apr-20	ACN 165 507 326
33	Virgin Australia Airlines (SE Asia) Pty Ltd	20-Apr-20	ACN 097 892 389
34	Virgin Australia Airlines Holdings Pty Ltd	20-Apr-20	ACN 093 924 675
35	Virgin Australia Cargo Pty Ltd	20-Apr-20	ACN 600 667 838
36	Virgin Australia Holidays Pty Ltd	20-Apr-20	ACN 118 552 159
37	Virgin Australia International Holdings Pty Ltd	20-Apr-20	ACN 155 860 021
38	Virgin Australia International Operations Pty Ltd	20-Apr-20	ACN 155 859 608
39	Virgin Tech Pty Ltd	20-Apr-20	ACN 101 808 879