

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/04/2020 11:24:52 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD464/2020
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: 24/04/2020 11:25:10 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Document number	Details	Paragraph	Pages
4.	Copy of email from Gavin Rakoczy with KWM Letter and SCB Email dated 24 April 2020	9	15-23
5.	Copy of emails from Gavin Rakoczy dated 24 April 2020	10-12	24-25

I Cassandra Suzann Adams, solicitor of Clayton Utz, Level 15, 1 Bligh Street, Sydney NSW 2000, say on oath:

1. I am a solicitor employed by Clayton Utz, solicitors for the Plaintiffs. I have the day to day carriage of this matter under the supervision of Timothy Sackar (Mr Sackar), a partner of Clayton Utz.
2. I make this affidavit from my own knowledge and belief, except where otherwise stated in which case I have stated the source of my knowledge.

Clifford Chance

3. On 23 April 2020, I was by Mr Sackar and verily believe that, Mr Scott Bache, Partner, Clifford Chance was acting in relation to the administration of the Second to Thirty-Ninth Plaintiffs on behalf of certain aircraft owners/lessors. Mr Sackar then forwarded to me a chain or email communications, that I believe to be true, between Mr Sackar and Mr Bache.
4. On 23 April 2020:
 - (a) at 7.59pm, I emailed Mr Bache in reply to his email communications with Mr Sackar seeking Mr Bache to confirm specifically, which lessors he was acting on behalf of;
 - (b) at 10:24pm, I sent a further email to Mr Bache, informing Mr Bache that Vaughan Strawbridge, John Greig, Sal Algeri and Richard Hughes in their capacity as Joint and Several Administrators (**Administrators**) of Virgin Australia Holdings Limited ACN 100 686 226 & 37 other entities listed in Schedule 1 to the Originating Process (attached) had caused to be filed an application pursuant to sections 443B(8) and 447A of the Corporations Act 2001 (Cth) (**Application**) to be heard at 10.15am on Friday, 24 April 2020 before Justice Middleton in the Federal Court of Australia by way of Microsoft Teams (**Hearing**). The email included:
 - i. a copy of the Originating Process filed on 23 April 2020 in the Proceeding;
 - ii. a copy of the Affidavit of Vaughan Neil Strawbridge filed on 23 April 2020 in the Proceeding together with a Mimecast link to download Exhibit VNS-1; and
 - iii. details of Microsoft Teams Meeting Conference ID, in order for Mr Bache to join the Hearing on behalf of his clients; and
 - (c) at 10.30pm, I received a response from Mr Bache confirming that he would seek instructions. The email did not specify which aircraft owners/lessors Mr Bache acted on behalf of.

5. At **Annexure A** is a copy of the chain of correspondence referred in paragraphs 3 and 4 above excluding attachments as they have been filed in the Proceeding.
6. As at the time of swearing this affidavit, I have not received a further email from Mr Bache specifying which aircraft owners/lessors Mr Bache acts on behalf of or his response to the Application.

King & Wood Mallesons

7. On 23 April 2020, I was informed by Mr Sackar, and verily believe that, Messrs John Canning and Philip Pan, each a Partner of King & Wood Mallesons, were acting on behalf of some (but not all) aircraft lessors.
8. On 23 April 2020,
 - (a) at 8.05pm, I emailed Messrs Canning and Pan, seeking Messrs Canning and Pan to confirm specifically, which aircraft lessors they were acting on behalf of;
 - (b) at 8.38pm, I received an email from Mr Canning stating that they act for lessors and banks and will send a list overnight.
 - (c) at 10:21pm, I sent a further email to Mr Canning, copying Mr Pan, informing Mr Canning that the Administrators had made the Application and specified the details of the Hearing. The email included:
 - i. a copy of the Originating Process filed on 23 April 2020 in the Proceeding;
 - ii. a copy of the Affidavit of Vaughan Neil Strawbridge filed on 23 April 2020 in the Proceeding together with a Mimecast link to download Exhibit VNS-1; and
 - iii. details of Microsoft Teams Meeting Conference ID, in order for Mr Canning to join the Hearing on behalf of his clients.

At **Annexure B** is a copy of the chain of correspondence between Mr Canning and me excluding attachments as they have been filed in the Proceeding.

9. On 24 April 2020, at 7.28am, I received an email from Gavin Rakoczy, Special Counsel, King & Wood Mallesons, attaching a letter from King & Wood Mallesons (**KWM Letter**) and an email from James Alexio, Senior Account Manager, Standard Chartered Bank (Singapore) Limited to (**SC Bank**), among others, Salvatore Algeri, one of the Administrators (**SC Email**), as detailed below:
 - (a) The KWM Letter provides:
 - i. confirmation that they act on behalf of:
 1. AerCap
 2. Bank of America
 3. BNP Paribas
 4. Credit Industriel et Commerical

5. Danke Holdings Co., Ltd (managed by SMBC Aviation Capital)
6. Dubai Aerospace Enterprise
7. ELF Group
8. GECAS
9. ICBC Aviation Leasing Co., Ltd
10. Jackson Square Aviation
11. Kitakensetsu Co., Ltd (managed by SMBC Aviation Capital)
12. ORIX Aviation
13. Pembroke Aircraft Leasing (UK) Limited (noting their qualifying email dated 24 April 2020)
14. RRP Engine Leasing Limited
15. SMBC Aviation Capital (UK) Limited
16. Standard Chartered Bank (noting their qualifying email dated 24 April 2020);
and

- ii. that their clients as identified in 9(a) do not object to the Application, on the basis that various conditions as outlined in the KWM Letter are met.

(b) The SC Email further provides additional conditions required by the SC Bank.

At **Annexure C** is a copy of the email from Mr Rakoczy together with the KWM Letter and at **Annexure D** is a copy of the SC Email that was attached to the email from Mr Rakoczy.

10. On 24 April 2020 at 8.36, I received a further email from Mr Rakoczy, confirming that they have received instructions on the letter from Genesis Aero and Kitakousan Co., Ltd (managed by SMBC Aviation Capital).
11. On 24 April 2020 at 8.54am, I received a further email from Mr Rakoczy, confirming that:
 - (a) they also have received instructions from Bank of China; and that
 - (b) it is intended that KWM will observe the hearing via Microsoft Teams but will not be seeking leave to appear on behalf of any of the parties listed in paragraphs 9(a), 10 or 11(a).
12. At **Annexure E** is a copy of the chain of correspondence referred to in paragraphs 10 and 11 above.
13. I am informed by Mr Sackar and verily believe that he has not received any other communication from any creditor of the Second to Thirty-Ninth Plaintiffs concerning the Application or the relief sought by the Application.

Sworn by the deponent
at Sydney
in New South Wales
on 24 April 2020
Before me:

)
)
)
)
)

.....
Signature of deponent

.....
Signature of witness
Madeline McCloy, Solicitor

SCHEDULE 1

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**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

McCloy, Madeleine

Before me _____

From: Scott.Bache@CliffordChance.com
Sent: Thursday, 23 April 2020 10:30 PM
To: Adams, Cassandra
Cc: Paul.Greenwell@CliffordChance.com; Mark.Gillgren@CliffordChance.com; Sackar, Timothy; Project Volar
Subject: RE: [EXT] Virgin [CU-Legal.FID3017446]

Kassandra

Thank you for the email. We will take instructions and come back to you.

Kind regards

Scott Bache
Partner
Clifford Chance
27th Floor, Jardine House, One Connaught Place, Hong Kong
Direct: +852 2826 3493
Mobile:+852 9423 3933
Email: Scott.Bache@cliffordchance.com

From: Adams, Cassandra <kaadams@claytonutz.com>
Sent: 23 April 2020 20:24
To: Bache, Scott (Finance-HK) <Scott.Bache@CliffordChance.com>
Cc: Greenwell, Paul (Finance-HK) <Paul.Greenwell@CliffordChance.com>; Gillgren, Mark (Finance-PER) <Mark.Gillgren@CliffordChance.com>; Sackar, Timothy <tsackar@claytonutz.com>; Project Volar <Volar@claytonutz.com>
Subject: FW: [EXT] Virgin [CU-Legal.FID3017446]

Dear Scott,

I am sending this to you in the interests of time.

As you may be aware, Vaughan Strawbridge, John Greig, Sal Algeri and Richard Hughes in their capacity as Joint and Several Administrators (**Administrators**) of Virgin Australia Holdings Limited ACN 100 686 226 & 37 other entities listed in Schedule 1 to the Originating Process (attached) caused to be filed an application pursuant to sections 443B(8) and 447A of the *Corporations Act 2001* (Cth) to be heard at **10.15am on Friday, 24 April 2020** before Justice Middleton in the Federal Court of Australia by way of Microsoft Teams (**Hearing**).

In relation to the Hearing, please find attached copies of the following documents:

1. Originating Process dated 23 April 2020 filed in the Proceeding; and
2. Affidavit of Vaughan Neil Strawbridge in support of the Originating Application, filed in the Proceeding on 23 April 2020, together with a Mimecast link to Exhibit VNS-1.

The Microsoft Teams Meeting Conference ID in order to join the Hearing is: **146 961 71#**.

I would appreciate confirmation as to who in particular you are acting for prior to 8am (Sydney time).

Kind regards,

**Kassandra Adams, Senior Associate
Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |
kaadams@claytonutz.com | www.claytonutz.com
Please consider the environment before printing this e-mail

From: Adams, Kassandra

Sent: Thursday, 23 April 2020 7:59 PM

To: 'Scott.Bache@CliffordChance.com' <Scott.Bache@CliffordChance.com>

Cc: 'Paul.Greenwell@CliffordChance.com' <Paul.Greenwell@CliffordChance.com>;

'Mark.Gillgren@CliffordChance.com' <Mark.Gillgren@CliffordChance.com>; Sackar, Timothy
<tsackar@claytonutz.com>; Project Volar <Volar@claytonutz.com>

Subject: FW: [EXT] Virgin [CU-Legal.FID3017446]

Dear Scott,

I refer to your emails with Tim below, can you please confirm specifically, which lessors you are acting on behalf of?

Many thanks,

**Kassandra Adams, Senior Associate
Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |
kaadams@claytonutz.com | www.claytonutz.com
Please consider the environment before printing this e-mail

From: Scott.Bache@CliffordChance.com <Scott.Bache@CliffordChance.com>

Sent: Tuesday, 21 April 2020 11:40 PM

To: Sackar, Timothy <tsackar@claytonutz.com>

Cc: Paul.Greenwell@CliffordChance.com; Mark.Gillgren@CliffordChance.com; Tucker, Graeme
<gtucker@claytonutz.com>

Subject: RE: [EXT] RE: Virgin

Thanks for the prompt response Tim.

Look forward to touching base in the coming days.

Scott Bache
Partner
Clifford Chance
27th Floor, Jardine House, One Connaught Place, Hong Kong
Direct: +852 2826 3493
Mobile: +852 9423 3933
Email: Scott.Bache@cliffordchance.com

From: Sackar, Timothy <tsackar@claytonutz.com>

Sent: 21 April 2020 21:04

To: Bache, Scott (Finance-HK) <Scott.Bache@CliffordChance.com>

Cc: Greenwell, Paul (Finance-HK) <Paul.Greenwell@CliffordChance.com>; Gillgren, Mark (Finance-PER)
<Mark.Gillgren@CliffordChance.com>; Tucker, Graeme <gtucker@claytonutz.com>

Subject: [EXT] RE: Virgin

Thanks Scott, yes we are advising Deloitte.

All understood. We will come back to you.

Kind regards

Tim

Timothy Sackar
National Practice Leader, R&I
Clayton Utz

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4114 | F +612 8220 6700 | M +614 29 450 051 |
tsackar@claytonutz.com | www.claytonutz.com

Please consider the environment before printing this e-mail

From: Scott.Bache@CliffordChance.com <Scott.Bache@CliffordChance.com>
Sent: Tuesday, 21 April 2020 10:11 PM
To: Sackar, Timothy <tsackar@claytonutz.com>
Cc: Paul.Greenwell@CliffordChance.com; Mark.Gillgren@CliffordChance.com
Subject: Virgin

Hi Tim

Trust you are well in these very strange times.

I understand you might be acting for the Voluntary Administrators of Virgin Australia.

We are in the process of speaking with a number of our firms operating lessor clients and we expect to receive various sets of instructions in the next few days. Prior to knowing you were involved we reached out to Deloitte and Sam Marsden has put us in touch with Mohammed Mukhtader who we understand is leading the team at Deloitte looking after aircraft owners / lessors.

To the extent we have any legal questions I thought we should drop you a line and find out who at your firm is dealing with similar issues.

One immediate issue that has been raised is that we understand that the Voluntary Administrators might be intending to make an application for a release from personal liability in relation to, inter alia, lease payments for a period of 6 months under section 447A. Whilst we can understand the rationale for such an application, in the circumstances we were wondering how a 6 month period (assuming my information on the time period being sought is correct) lines up with the obligations under the Cape Town convention which is 60 days? Our clients will obviously have some practical questions around the implications for the return of their aircraft (assuming they are surplus to requirements) of any order so an early conversation around how this will all work may be useful.

Speak soon.

Kind regards

Scott

Scott Bache
Partner
Clifford Chance
27th Floor, Jardine House, One Connaught Place, Hong Kong
Direct: +852 2826 3493
Mobile: +852 9423 3933
Email: Scott.Bache@cliffordchance.com

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For further information about Clifford Chance please see our website at <http://www.cliffordchance.com> or refer to any Clifford Chance office.

A list of the principals of Clifford Chance, the Hong Kong partnership, will be provided on request.

Switchboard: +852 2825 8888

Fax: +852 2825 8800

To contact any other office http://www.cliffordchance.com/people_and_places/people.html

For details of how we process personal data, please see our updated privacy statement https://www.cliffordchance.com/Legal_statements/privacy_statement.html.

[CC]Office1[/CC]

McCloy, Madeleine

Before me _____

From: Adams, Cassandra
Sent: Thursday, 23 April 2020 10:21 PM
To: john.canning@au.kwm.com
Cc: philip.pan@au.kwm.com; Sackar, Timothy; Project Volar; gavin.rakoczy@au.kwm.com
Subject: RE: Virgin Australia [CU-Legal.FID3017446]
Attachments: Project Volar - Originating Process dated 23 April 2020.pdf; Project Volar - Affidavit of V Strawbridge - Final (2).PDF; You've been sent large files

Hi John,

As you may be aware, Vaughan Strawbridge, John Greig, Sal Algeri and Richard Hughes in their capacity as Joint and Several Administrators (**Administrators**) of Virgin Australia Holdings Limited ACN 100 686 226 & 37 other entities listed in Schedule 1 to the Originating Process (attached) caused to be filed an application pursuant to sections 443B(8) and 447A of the *Corporations Act 2001* (Cth) to be heard at **10.15am on Friday, 24 April 2020** before Justice Middleton in the Federal Court of Australia by way of Microsoft Teams (**Hearing**).

In relation to the Hearing, please find attached copies of the following documents:

1. Originating Process dated 23 April 2020 filed in the Proceeding; and
2. Affidavit of Vaughan Neil Strawbridge in support of the Originating Application, filed in the Proceeding on 23 April 2020, together with a Mimecast link to Exhibit VNS-1.

The Microsoft Teams Meeting Conference ID in order to join the Hearing is: **146 961 71#**.

I would appreciate confirmation as to who in particular you are acting for prior to 8am.

Kind regards,

Kassandra Adams, Senior Associate

Clayton Utz

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |

kaadams@claytonutz.com | www.claytonutz.com

Please consider the environment before printing this e-mail

From: Canning, John (AU) <John.Canning@au.kwm.com>

Sent: Thursday, 23 April 2020 8:38 PM

To: Adams, Cassandra <kaadams@claytonutz.com>; Pan, Philip (AU) <Philip.Pan@au.kwm.com>

Cc: Sackar, Timothy <tsackar@claytonutz.com>; Project Volar <Volar@claytonutz.com>

Subject: RE: Virgin Australia

Hi Kassandra

We are acting for lessors and banks and will send a list overnight.

Thanks

John Canning | Partner

King & Wood Mallesons

Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000

T +61 2 9296 2098 | M +61 419 721 204 | F +61 2 9296 3999

john.canning@au.kwm.com | [Partner profile](#) | www.kwm.com

This communication and any attachments are confidential and may be privileged.

King & Wood Mallesons in Australia is a member firm of the King & Wood Mallesons network. See www.kwm.com for more information.

From: Adams, Cassandra <kaadams@claytonutz.com>

Sent: Thursday, 23 April 2020 8:05 PM

To: Pan, Philip (AU) <Philip.Pan@au.kwm.com>; Canning, John (AU) <John.Canning@au.kwm.com>

Cc: Sackar, Timothy <tsackar@claytonutz.com>; Project Volar <Volar@claytonutz.com>

Subject: Virgin Australia

Dear Philip and John,

I understand that you are acting for some but not all of the aircraft lessors. Could you please confirm, specifically, who you are acting on behalf of.

Many thanks,

**Kassandra Adams, Senior Associate
Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |
kaadams@claytonutz.com | www.claytonutz.com

Please consider the environment before printing this e-mail

McCloy, Madeleine

Before me _____

From: Rakoczy, Gavin (AU) <Gavin.Rakoczy@au.kwm.com>
Sent: Friday, 24 April 2020 7:28 AM
To: saalgeri@deloitte.com.au; mukmohammed@deloitte.com.au
Cc: Project Volar; Canning, John (AU); Pan, Philip (AU); Rajanayagam, Andrew (AU); Adams, Cassandra; Robertson, Jillian; Sackar, Timothy; Mew, Cameron (AU)
Subject: URGENT | Virgin | Court application
Attachments: RE: Notice of Application in the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors, Federal Court of Australia Proceeding Number NSD464/2020 (Proceeding); Letter to administrators dated 24 April 2020_DOCX.pdf

Importance: High

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Dear Sal and Mukhtader

Further to our recent discussions, please see attached letter and separate email. We will advise you if we receive instructions from any additional clients ahead of the hearing.

We kindly request confirmation that the attached letter and email will be provided to his Honour prior to this morning's hearing.

Kind regards

Gavin

**Gavin Rakoczy | Special Counsel
King & Wood Malleons**

Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000
T +61 2 9296 2136 | M +61 407 955 186 | F +61 2 9296 3999
gavin.rakoczy@au.kwm.com | www.kwm.com

This communication and any attachments are confidential and may be privileged.

King & Wood Malleons in Australia is a member firm of the King & Wood Malleons network.
See www.kwm.com for more information.

24 April 2020

To Sal Algeri and Mukhtader Mohammed
Virgin Group of Companies (all Administrators Appointed)
c/- Deloitte

By email: saalgeri@deloitte.com.au and
mukmohammed@deloitte.com.au

Dear Sal and Mukhtader

Virgin Group of Companies (all Administrators Appointed)

- 1 We act for a large number of lessors and financiers. In the short time available, we have been able to obtain instructions to send this letter from our clients listed in the Schedule to this letter.
- 2 We understand that the administrators propose to seek relief from the court for a period of 4 weeks from their personal liability under section 443B of the *Corporations Act 2001* (Cth) (**Act**) with respect to rent, etc for leased property (**Application**).
- 3 We are instructed to respond as follows.

Default position under the Act

- 4 As you are aware, during the period of the administration there is a moratorium under the Act which prevents lessors from taking possession of, or otherwise recovering, leased property.
- 5 Given the prejudice caused by the moratorium preventing our clients' exercise of proprietary rights in relation to leased (or financed) aircraft, engines, parts, etc (together the **Aircraft Property**), the Act provides that administrators are personally liable for so much of the rent and other amounts payable by the any Virgin lessee as are attributable to the period beginning more than 5 business days after the administration began. Separately, under the leases and other documents for the Aircraft Property, the counterparties to any Virgin lessee have rights in respect of, and any Virgin lessee has obligations to, without limitation:
 - (a) insure and maintain the aircraft, to keep usage, maintenance and other technical records in relation to the aircraft and to allow our clients to inspect the aircraft;
 - (b) keep the aircraft registered with the Civil Aviation Safety Authority and comply with all applicable laws and regulations of Commonwealth and state authorities in respect of aircraft and its business relating to aircraft;
 - (c) ensure that there are no liens on the aircraft other than agreed liens;

- (d) comply with any restrictions or prohibitions of sub-leasing;
- (e) comply with provisions relating to the provision of records;
- (f) comply with provisions relating to the removal, replacement and modification of parts and engines; and
- (g) comply with provisions relating to re-delivery and return conditions.

Initial 4 week period extension

- 6 We confirm that our clients do not object to the Application on the basis of your confirmation given during our recent discussions that:
- (a) all relevant parties affected by the proposed orders will be treated equally, ie landlords will not receive payment in circumstances where our clients are not being paid;
 - (b) the Application will not impact our clients' rights against the Virgin Group companies, including under relevant agreements and the *Convention on International Interests in Mobile Equipment 2001* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (together the **Aircraft Convention**);
 - (c) the administrators commit to agreeing a protocol with our clients next week in respect of the Aircraft Property to mitigate the prejudice to our clients from the Application (see below);
 - (d) the administrators will continue to maintain insurance in respect of the Aircraft Property and pre-appointment maintenance programs;
 - (e) there will be preservation of the Aircraft Property and no unauthorised removal or dealings with the engines or parts;
 - (f) the administrators will provide a section 440B consent to those of our clients who hold ALLPAP; and
 - (g) the administrators will support a representative on behalf of our clients being nominated to any committee of inspection (subject to the usual creditors' resolutions).

Protocol and mitigation of prejudice

- 7 Our clients wish to work constructively with the administrators, with a view to achieving the objectives of your appointment while ensuring that reasonable arrangements are put in place to preserve our clients' rights in relation to the Aircraft Property, including under the Aircraft Convention.
- 8 Fundamental to this and our clients' non-objection to the Application is a protocol to be agreed with the administrators governing dealings in relation to the Aircraft Property, including concerning the following matters:
- (a) the administrators will provide our clients with weekly reporting on the use of their Aircraft Property;
 - (b) the administrators will take all reasonable steps to identify the location of all Aircraft Property and will provide this information to our clients on request;
 - (c) the administrators will use reasonable endeavours to identify as soon as practicable Aircraft Property surplus to business requirements;

- (d) our clients must not have out of pocket costs for Aircraft Property in the possession of the administrators. In particular, the administrators are required to arrange for and pay for regular maintenance and insurance of all Aircraft Property;
- (e) the administrators must continue to properly store, service and maintain all aircraft and keep usage, maintenance and other records in relation to the Aircraft Property in accordance with the relevant lease or other governing agreement;
- (f) the administrators will facilitate prompt access by our clients to periodically inspect their Aircraft Property and associated records (including log books and CASA records);
- (g) any insurance proceeds received by the administrators in relation to the Aircraft Property (eg as a result of damage to an aircraft) will be applied towards payment of the insured event and not for any other purpose;
- (h) parts must not be removed from any aircraft without the prior written consent of the relevant lessor (and financier, if applicable);
- (i) the administrators will attend to the removal of all liens on the Aircraft Property;
- (j) the administrators will cause the Virgin Group to comply with Civil Aviation Safety Authority requirements and all applicable law and regulations of Commonwealth and state authorities in respect of the Aircraft Property and its business relating to the Aircraft Property; and
- (k) discussion with the administrators concerning payment for Aircraft Property which is utilised by the administrators.

9 We look forward to receipt of a draft of the protocol early next week.

Aircraft Convention

10 For completeness we note that for subject aircraft the provisions of the Aircraft Convention will prevail over the provisions of the Act in respect of rights and remedies and requires the administrators to give possession of aircraft, engines, technical records, etc to lessors and secured creditors by no later than 60 days after the administration commenced, unless all defaults are cured and the administrators agree to perform all future obligations. The Aircraft Convention requires that during this 60 day period the administrators preserve the aircraft and maintain them and their value in accordance with the lease and finance agreements, which rights and obligations cannot be hindered or delayed by contrary provisions in the Act.

11 We expect that at the end of this 60 day period, the administrators will have a better view as to the status of any restructuring proposals and which of the Aircraft Property they will likely require. We propose that well in advance of the expiration of this period, our clients and the administrators engage and agree on a mutually acceptable way forward.

Next steps

12 Please ensure that a copy of this letter is provided to the Court as part of your application.

13 We look forward to your response and working with you constructively.

14 In the meantime, our clients reserve all their rights, including under any applicable letters of credit and other similar instruments.

Yours sincerely



John Canning | Partner
King & Wood Mallesons
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Gavin Rakoczy | Special Counsel
King & Wood Mallesons
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This communication and any attachments are confidential and may be privileged.

SCHEDULE

- 1 AerCap
- 2 Bank of America
- 3 BNP Paribas
- 4 Crédit Industriel et Commercial
- 5 Danke Holdings Co., Ltd. (managed by SMBC Aviation Capital)
- 6 Dubai Aerospace Enterprise
- 7 ELF Group
- 8 GECAS
- 9 ICBC Aviation Leasing Co., Ltd.
- 10 Jackson Square Aviation
- 11 Kitakensetsu Co., Ltd. (managed by SMBC Aviation Capital)
- 12 Merx Aviation
- 13 Nihon Life Creator Co., Ltd. (managed by SMBC Aviation Capital)
- 14 ORIX Aviation
- 15 Pembroke Aircraft Leasing (UK) Limited (noting their qualifying email dated 24 April 2020)
- 16 RRP Engine Leasing Limited
- 17 SMBC Aviation Capital (UK) Limited
- 18 Standard Chartered Bank (noting their qualifying email dated 24 April 2020)

McCloy, Madeleine

Before me _____

From: Alexio, James <James.Alexio@sc.com>
Sent: Friday, 24 April 2020 2:27 AM
To: Virgin Suppliers
Cc: Algeri, Sal; Mohammed, Mukhtader; Beer, Andy; Wang, Audrey; Mannion, Mark; Lukic, Tom
Subject: RE: Notice of Application in the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors, Federal Court of Australia Proceeding Number NSD464/2020 (Proceeding)

Dear Sirs

My name is James Alexio and I am a Senior Manager in the Group Special Assets Management team at Standard Chartered Bank.

I am responsible for management of the following exposures on behalf of both Pembroke Aircraft Leasing (UK) Limited (**Pembroke**) and Standard Chartered Bank to the Virgin Companies as summarised below:

Aircraft	Capacity	Lessor	Lessee
MSN 36601	Secured Creditor	JPA No. 122 Co, Ltd	Virgin Australia Airlines Pty Limited
MSN 36604	Secured Creditor	JPA No. 122 Co, Ltd	Virgin Australia Airlines Pty Limited
MSNs 41005 and 41042	Syndicate member of Secured Creditor	Shorthaul 2017 No. 2 Pty Limited	Virgin Australia Airlines Pty Limited
MSN 3674	Lessor	Pembroke Aircraft Leasing (UK) Limited	Tiger Airways Australia Pty Limited
MSN 3332	Lessor	Pembroke Aircraft Leasing (UK) Limited	Virgin Australia Regional Airlines Pty Limited

We are supportive of the Application on the terms outlined in the letter to be issued by King, Wood & Mallesons to the Administrators dated 24 April 2020 (**KWM Letter**) subject to clarification on the proposed protocols surrounding:

1. payment for Aircraft which are **utilised** by the Administrators following the expiration of the five day business period provided for in section 443B of the *Corporations Act 2001* (Cth) (**the Act**).
2. the realignment of engines.

We wish to make it clear that we do not object to the proposed waiver of liability for payment of rent in respect of Aircraft (subject to the terms outlined within the KWM Letter) that are grounded and not being used.

We however do not consider it appropriate that the Administrators should be completely relieved of their obligations under section 443B of the Act in circumstances where they are continuing to utilise Aircraft and benefit from their use. Of particular concern, we have been informed by personnel of the Virgin Companies that the Aircraft bearing MSN 3332 which is subject to the lease between Pembroke and Virgin Australia Regional Airlines Pty Limited (**VARA**) is continuing to operate revenue generating flights on a regular basis. For example, MSN 3332 is on record having flown 141 hours during March 2020 which equates to the consumption of approximately USD85,000 in maintenance life from the asset.

We accordingly request that you and/or the Court consider making provisions that require the Administrators to enter into a payment arrangement with lessors of Aircraft that continue to be utilised. This is because:

1. Operating an Aircraft results in the consumption of life on its engines and parts which equate to real costs for the owner. For example (and as mentioned above), the life consumed by VARA on MSN 3332 in March 2020 is equivalent to approximately USD85,000 which is a cost that Pembroke will need to bear on top of forgone rental. Further, Aircraft which are being flown (especially on a regular basis in the case of MSN 3332) will further depreciate in value as compared to Aircraft that are simply grounded. As a consequence lessors of Aircraft (such as Pembroke) which are almost fully utilised are being significantly prejudiced.

2. So far as we are aware, there are very few Aircraft which are still being utilised, most with Federal Government support or on charter-based contracts. We accordingly expect that the Administrators at Deloitte would be capable of negotiating a commercial arrangement with the affected lessors (such as Pembroke).
3. The Application, so far as it relates to permitting Administrators to fully utilise Aircraft and generate revenue, without any requirement to pay rent nor compensate for maintenance utility consumed, is entirely inconsistent with the Act.

We further consider that the realignment of engines from third party owned Aircraft to their original Aircraft is a critical matter of interest for lessors/financiers that should feature as part of the protocols proposed in the KWM Letter.

We respectfully ask that you tender this communication to the Court at the Hearing as part of your Application.

We hereby reserve all rights in respect of the Aircraft owned or financed by us, including under each of the underlying agreements between Pembroke or Standard Chartered Bank and the Virgin Companies in connection with the events of default. Nothing in this communication waives or varies any of the terms of the underlying agreements.

Regards

James

James Alexio

Senior Account Manager
Group Special Assets Management

Standard Chartered Bank (Singapore) Limited

Mobile: +65 9026 3438
Email: James.Alexio@sc.com

Website: <http://www.standardchartered.com>

Please consider the environment before printing this email.

From: Virgin Suppliers <virginsuppliers@deloitte.com.au>
Sent: Thursday, 23 April 2020 9:21 PM
Subject: [External] Notice of Application in the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors, Federal Court of Australia Proceeding Number NSD464/2020 (Proceeding)

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear Sir / Madam

Notice of Application in the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors, Federal Court of Australia Proceeding Number NSD464/2020 (Proceeding)

Vaughan Strawbridge, John Greig, Sal Algeri and Richard Hughes were appointed Joint and Several Administrators (**Administrators**) of Virgin Australia Holdings Limited ACN 100 686 226 and certain entities listed in Schedule A (**attached**) on 20 April 2020, pursuant to the provisions of Section 436A of the *Corporations Act 2001* (Cth).

On 23 April 2020, the Administrators caused to be filed an application pursuant to sections 443B(8) and 447A of the *Corporations Act 2001* (Cth) to be heard at 10.15am on Friday, 24 April 2020 before Justice Middleton in the Federal Court of Australia by way of Microsoft Teams (**Hearing**).

In relation to the Hearing, please find attached copies of the following documents:

1. Originating Process dated 23 April 2020 filed in the Proceeding; and
2. Affidavit of Vaughan Neil Strawbridge in support of the Originating Application, filed in the Proceeding on 23 April 2020.

The Microsoft Teams Meeting Conference ID in order to join the Hearing is: **146 961 71#**.

Should you require a copy of Exhibit VNS-1 referred to the Affidavit of Vaughan Neil Strawbridge sworn 23 April 2020, please contact virginadmin@deloitte.com.au.

Kind regards

Matthew Carr

Manager | Restructuring Services
Deloitte Financial Advisory Pty Ltd
Level 23, 123 Eagle Street, Brisbane QLD 4000
www.deloitte.com.au

Deloitte.

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McCloy, Madeleine

Before me _____

From: Rakoczy, Gavin (AU) <Gavin.Rakoczy@au.kwm.com>
Sent: Friday, 24 April 2020 8:54 AM
To: Robertson, Jillian
Cc: Project Volar; Canning, John (AU); Pan, Philip (AU); Rajanayagam, Andrew (AU); Adams, Cassandra; Sackar, Timothy; Mew, Cameron (AU); mukmohammed@deloitte.com.au; saalgeri@deloitte.com.au
Subject: RE: URGENT | Virgin | Court application

Hi Jillian,

We've also received instructions from Bank of China.

Thanks for your earlier confirmation over the phone that our letter and the email from Standard Chartered will be annexed to an affidavit provided to the Court.

Finally, I confirm we'll observe the hearing via Microsoft Teams, but won't be seeking leave to appear on behalf of any of our clients.

Kind regards

Gavin

**Gavin Rakoczy | Special Counsel
King & Wood Mallesons**

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From: Rakoczy, Gavin (AU)
Sent: Friday, 24 April 2020 8:36 AM
To: 'saalgeri@deloitte.com.au' <saalgeri@deloitte.com.au>; 'mukmohammed@deloitte.com.au' <mukmohammed@deloitte.com.au>
Cc: 'Project Volar' <Volar@claytonutz.com>; Canning, John (AU) <John.Canning@au.kwm.com>; Pan, Philip (AU) <Philip.Pan@au.kwm.com>; Rajanayagam, Andrew (AU) <Andrew.Rajanayagam@au.kwm.com>; 'Adams, Cassandra' <kaadams@claytonutz.com>; 'Robertson, Jillian' <jrobertson@claytonutz.com>; 'Sackar, Timothy' <tsackar@claytonutz.com>; Mew, Cameron (AU) <Cameron.Mew@au.kwm.com>
Subject: RE: URGENT | Virgin | Court application

All,

I confirm we also have instructions on the letter from:

1. Genesis Aero
2. Kitakousan Co., Ltd (managed by SMBC Aviation Capital)

Kind regards

Gavin

**Gavin Rakoczy | Special Counsel
King & Wood Mallesons**

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From: Rakoczy, Gavin (AU)
Sent: Friday, 24 April 2020 7:28 AM
To: 'saalgeri@deloitte.com.au' <saalgeri@deloitte.com.au>; 'mukmohammed@deloitte.com.au' <mukmohammed@deloitte.com.au>
Cc: Project Volar <Volar@claytonutz.com>; Canning, John (AU) <John.Canning@au.kwm.com>; Pan, Philip (AU) <Philip.Pan@au.kwm.com>; Rajanayagam, Andrew (AU) <Andrew.Rajanayagam@au.kwm.com>; 'Adams, Kassandra' <kaadams@claytonutz.com>; 'Robertson, Jillian' <jrobertson@claytonutz.com>; Sackar, Timothy <tsackar@claytonutz.com>; Mew, Cameron (AU) <Cameron.Mew@au.kwm.com>
Subject: URGENT | Virgin | Court application
Importance: High

Dear Sal and Mukhtader

Further to our recent discussions, please see attached letter and separate email. We will advise you if we receive instructions from any additional clients ahead of the hearing.

We kindly request confirmation that the attached letter and email will be provided to his Honour prior to this morning's hearing.

Kind regards

Gavin

Gavin Rakoczy | Special Counsel
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