

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 31/10/2020 5:56:45 PM AEDT 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: NSD714/2020
File Title: WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION (AS OWNER TRUSTEE) & ANOR v VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 31/10/2020 5:56:56 PM AEDT

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.



Affidavit

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

No. NSD 714 of 2020

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS

**WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION (AS OWNER TRUSTEE)
AND ANOTHER NAMED IN SCHEDULE 1**

Applicants

**VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 AND OTHERS
NAMED IN SCHEDULE 2**

Respondents

Affidavit of: Salvatore Algeri
Address: 447 Collins Street, Melbourne, Victoria 3000
Occupation: Registered Liquidator and Chartered Accountant
Date: 31 October 2020

Annexure	Document	Paragraph	Page
A	Interlocutory process dated 20 October 2020 filed in proceedings NSD464/2020	8	14
B	United States Bankruptcy Code Chapter 15 Recognition Motion filed 22 October 2020	8	37
C	Affidavit of David Michael Orr dated 29 July 2020 filed in proceedings NSD464 of 2020	11	75
D	Data extract from the Halo system in relation to the proofs of debt lodged by the Applicants	11	93

I, Salvatore Algeri, of Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly owned subsidiary) (**Deloitte**), of 447 Collins Street, Melbourne, Victoria 3000, Registered Liquidator and Chartered Accountant, say on oath:

Filed on behalf of (name & role of party) The Respondents
Prepared by (name of person/lawyer) Timothy James Sackar
Law firm (if applicable) Clayton Utz
Tel +61 2 9353 4000 Fax +61 2 8220 6700
Email kaadams@claytonutz.com
Address for service Level 15, 1 Bligh Street, Sydney NSW 2000
(include state and postcode)

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 practise as an accountant specialising in corporate restructuring and insolvency-related matters, with key experience in the consumer business, retail and transport sectors.
2. I, together with Mr Vaughan Strawbridge, Mr John Greig and Mr Richard Hughes, am one of the four joint and several deed administrators (together, the **Deed Administrators** and each an **Deed Administrator**) of the First, Second and Fourth Respondents (**Corporate Respondents**) and the other 38 companies set out in Schedule 3 to this affidavit (collectively, the **Virgin Companies**), pursuant to deeds of company arrangement executed by the Virgin Companies on 25 September 2020. Mr Strawbridge, Mr Greig and Mr Hughes are also partners of Deloitte. The Deed Administrators are the Third Respondents in the proceeding.
3. I am authorised by Mr Strawbridge, Mr Greig and Mr Hughes to make this affidavit on behalf of the Deed Administrators.
4. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and from information staff members at Deloitte and I have obtained in connection with my role as a former voluntary administrator and Deed Administrator of the Corporate Respondents and the other Virgin Companies, which I believe to be true.
5. This is the sixth affidavit I have made in these proceedings. In this affidavit, I refer to my affidavits dated 7 September 2020 (**Fourth Affidavit**) and 26 October 2020 (**Fifth Affidavit**), which have been filed in these proceedings, and to Exhibit DP-3 to the affidavit of Dean Poulakidas sworn 19 October 2020 (**Exhibit DP-3**).
6. I make this affidavit in support of the Respondents' interlocutory process dated 26 October 2020 (**Remitter**), in response to the Applicants' interlocutory application dated 21 October 2020 (**Application**) and in response to the Applicants' further amended originating application (which, at the time of preparing this affidavit, had not yet been filed) (**Prayer 6A application**).

Consequences of the DOCA being effectuated

7. As noted in my Fifth Affidavit, on 25 September 2020 each of the Respondents executed a deed of company arrangement (**DOCA**). A copy of the DOCA is at pages 293 to 575 of Exhibit DP-3.
8. The DOCA implements a restructure of the operations, business and affairs of the Corporate Respondents such that the Corporate Respondents will continue to operate and exist following effectuation of the DOCA, an entity associated with Bain Capital will hold the majority of shares in the Virgin group's ultimate holding company (and thus own

the assets and the corporate group), and, other than certain identified and designated liabilities which the restructured group agrees to retain and assume pursuant to the terms of the DOCA, the pre-administration liabilities of the Corporate Respondents (such as its obligations under the leases with the Applicants) will be compromised, released and extinguished. In consideration for that release, eligible creditors will be entitled to claim as beneficiaries of a Creditors' Trust (which will be administered by my fellow partners, Messrs Strawbridge, Greig and Hughes, and me as trustees).

9. The DOCA will complete and be effectuated shortly after satisfaction of the conditions set out in clause 4.1 of the DOCA (page 321 of Exhibit DP-3). In practical terms, the time at which this will occur is likely to be determined by the requirements to obtain court relief:
 - (a) authorising the contemplated transfer of shares pursuant to section 444GA(1)(b) of the Corporations Act (clause 4.1(c) of the DOCA at page 321 of Exhibit DP-3). The Deed Administrators' application for that relief is listed before Middleton J in Federal Court Proceedings Number NSD464/2020 at 10:15am on 10 November 2020. A copy of the relevant interlocutory process is annexed to this affidavit and marked "**A**"; and
 - (b) recognising the DOCA pursuant to Chapter 15 of the United States Bankruptcy Code (clause 4.1(d) of the DOCA at page 321 of Exhibit DP-3). That application is listed at 3pm on 12 November 2020 (New York time). A copy of the Recognition Motion (excluding its voluminous exhibits) is annexed to this affidavit and marked "**B**".
10. Accordingly, the Deed Administrators expect that the DOCA will be completed and effectuated during the course of November 2020. Among other things, on and from completion of the DOCA:
 - (a) the Deed Administrators will each:
 - (i) cease to be statutory officeholders of all of the First, Second and Fourth Respondents and will have no statutory power, authority or capacity to deal in any way with the property of the Corporate Respondents, including the property leased by the Corporate Respondents from the Applicants (**Willis Property**);
 - (ii) cease to be an "*insolvency administrator*" pursuant to the definition of Article 1 of the Convention on International Interests in Mobile Equipment (**Cape Town Convention**);
 - (iii) be appointed as a joint and several trustee of the Project Volar Creditors' Trust (**Creditors' Trust**), and hold the 'Trust Fund' on the terms set out in the

Project Volar creditors' trust deed set out as schedule 4 to the DOCA at pages 358 to 568 of Exhibit DP-3 (**Trust Deed**); and

(iv) retain an ability as a trustee of the Creditors' Trust to bring, prosecute and defend proceedings in the names of the Corporate Respondents, but only in respect of any right, claim or cause of action that forms part of the Trust Fund (clause 4.3(m) of the Trust Deed at page 373 of Exhibit DP-3), such as any costs orders made in favour of the Respondents in the proceedings; and

(b) all claims of creditors, including all claims of the Applicants under the leases between the Applicants and the Corporate Respondents (**Leases**), are extinguished and released and converted to claims against the Trust Fund held in the Creditors' Trust (clauses 6.4 and 6.6 of the DOCA at pages 323 to 324 of Exhibit DP-3). The Applicants will retain an ability, pursuant to section 444D of the Corporations Act and section 7 of the DOCA (which is at page 324 of Exhibit DP-3), repossess the engines and other leased property (**Willis Property**), but will not be able to exercise any rights under the Leases.

Current status of Willis Property

11. The Third Respondents have, at all times, continued to insure and maintain the Willis Property since their appointment as administrators of the Corporate Respondents. The table below sets out the current status of the Willis Property as at the time of this affidavit. I am informed by Andrew Symons of Virgin Tech that in short, all four of the engines are on their titled stands, have had their QEC Kits and other accessories installed, have been preserved for long-term preservation and storage and are otherwise ready to be collected.

Engine serial number	Location	Status
888473	Melbourne Airport	Installed on its titled Willis stand (Cradle: P/N D71CRA00005G02, S/N MCC150728-1-3; Base: P/N D71TRO00005G03, S/N MCC150728-1-3). QEC Kit has been reinstalled to the configuration in which it was first received from Willis. Engine preserved for long-term preservation and storage.
897193	Melbourne Airport	Installed on its titled Willis stand (Cradle: P/N D71CRA00005G02, S/N MCC150728-1-4; Base: P/N D71TRO00005G03, S/N MCC150728-1-4). QEC Kit has been reinstalled to the configuration in which it was first received from Willis. Engine preserved for long-term preservation and storage.
896999	Melbourne Airport	Installed on its titled Willis stand (Cradle P/N D71CRA00005G02, S/N MCC170335-1-1; Base: P/N D71TRO00005G03, S/N

		MCC170335-1) QEC Kit has been reinstalled to the configuration in which it was first received from Willis. Engine preserved for long-term preservation and storage.
894902	Melbourne Airport	Installed on its titled Willis stand (Cradle: P/N AM-2811-4800, S/N 769; Base: P/N AM2563-200, S/N 1216) QEC Kit has been reinstalled to the configuration in which it was first received from Willis. Engine preserved for long-term preservation and storage.

Proof of debt filed by the Applicants

12. As described in the affidavit of David Michael Orr dated 29 July 2020, filed in proceedings no. NSD464 of 2020 (a copy of which is annexed to this affidavit and marked "C"), the Deed Administrators have utilised a software platform called Halo in relation to the management of claims and submission of proofs of debt by creditors. Annexed to this affidavit and marked "D" is a data extract from the Halo system in relation to the proofs of debt lodged by the Applicants during the administration, showing that on 25 August 2020 the Applicants lodged proofs of debt:

- (a) as a secured creditor of the First Respondent in the amount of US\$17,067,060.09; and
 - (b) as an unsecured creditor of the Second Respondent in the amount of US\$17,067,060.09,
- (together, **Applicants' Proofs**).

13. There were no supporting documents attached to the Applicants' Proofs, however, the following text information was also submitted to Halo in support of the amounts claimed:

"Rent and other amounts owing under the General Terms Engine Lease Agreement dated 24 May 2019 (GTA) and each Aircraft Engine Lease Agreement relating to the GTA, each between the creditor as lessor and the Company as lessee and the Engine Lease Support Agreement dated 24 May 2019 between Willis Engine Structured Trust III and the Company (together, the Lease Agreements)

Pursuant to the Guarantee and Indemnity between the Company, the creditor and VB Leaseco Pty Ltd (VB) whereby the Company guarantees amounts owed to the creditor by VB under the General Terms Engine Lease Agreement dated 24 May 2019 (GTA) and each Aircraft Engine Lease Agreement relating to the GTA, each between the creditor as lessor and the Company as lessee (GTA)

and the Engine Lease Support Agreement dated 24 May 2019 between Willis Engine Structured Trust III and the Company

Nature of the debt claimed is as follows:

- *Rental arrears in the amount of US\$256,000.00 for the period from 1 April 2020 to 20 April 2020*
- *Estimated rent in the amount of US\$14,892,249.38, comprising of rent in the total amount of amount US\$256,000.00 per month for the remaining period of the Lease Agreements*
- *Estimated end of lease use fees for the period from the commencement of the Lease Agreements to 31 March 2020 (other than in respect of ESN 894902, which is to 29 February 2020) in the amount US\$1,927,810.71 plus end of lease utilisation which subsequently accrue until the expiry of the Lease Agreements owed to the creditor under the Lease Agreements*
- *Equipment maintenance and repair costs (including any compensation) owed to the creditor under the Lease Agreements*
- *Damages owed to the creditor under clause 19 (d) of the GTA including: (1) any additional amounts to place the creditor in the same position it would have been in if the Company had performed its obligations under the Lease Agreements; (2) the agreed value of any equipment the Company has failed to redeliver; (3) reasonable attorney's fees and costs of enforcement; (4) reasonable expenses, disbursements, costs and fees incurred in repossessing, storing, preserving, maintaining, repairing and refurbishing the equipment; and (5) preparing the equipment for sale or lease."*

14. I note that the most significant component of the Applicants' Proofs is the claim for rent for the remaining period of the Leases. The relief sought in the Application will, if made, lead to a situation whereby the Willis Property will not be able to be re-leased but rather will sit idle for an extended period. The effect may be to inflate the amount of the Applicants' Proofs against the Trust Fund (in an amount equivalent to at least US\$256,000.00 per month (in respect of the estimated rent component of the Applicants' Proofs) while the Willis Property is not re-leased), thereby diluting the returns to other unsecured creditors of the Virgin Companies.

Current status of the Fleet Restructure

15. Prior to the execution of the DOCA, Bain Capital entered into negotiations with the lessors and financiers in respect of potential future lease arrangements. Where those negotiations did not result in an agreement between Bain Capital and lessors or financiers for the continued use of the property by the Virgin Companies following completion of the DOCA, between 21 August to 24 September 2020 the (then) Administrators issued formal written letters and notices (styled as notices pursuant to section 443B of the Corporations Act) to the lessors and financiers of 66 aircraft and 8 engines (**443B Notices**).
16. The 443B Notices confirmed that the Virgin Companies no longer intended to exercise any rights in respect of the relevant property, confirmed that the Virgin Companies unequivocally surrendered possession of the relevant property to the lessor or financier, invited the lessor or financier to contact the Administrators' staff to make arrangements for the collection of that property and confirmed that the Administrators' staff would assist the lessor or financier with the practical aspects of that process, with any costs being to the account of the lessor or financier. The hand-back of aircraft and engines to those lessors and financiers has occurred collaboratively and consistently with that approach, with the Administrators and Virgin companies facilitating collection and lessors and financiers meeting the costs and disbursements associated with that process.
17. As at the date of this affidavit, all but three of the engines in respect of which 443B Notices were issued (excluding the Willis Engines) have been collected by their lessors. The three engines which have not yet been collected are due to be collected shortly. Of the 66 aircraft in respect of which 443B Notices were issued in late August and September, despite some of the aircraft and engines requiring component realignments or return to service works before being operational (and in some cases in different jurisdictions), only 9 remain in the custody of the Virgin Companies, of which:
 - (a) one is expected to be collected by arrangement in the week beginning on 2 November 2020 (following the completion of agreed return to service works, for which the lessor paid the costs);
 - (b) one is being placed into long-term storage while its engine is being repaired in Atlanta, USA and by agreement with the lessor will be collected as soon as the repaired engine is returned to Australia and repositioned on the airframe; and
 - (c) the other seven are Virgin company-owned aircraft which are subject to financing arrangements. Title transfer agreements have been agreed and will be executed

before the effectuation of the DOCA. The aircraft are also being transferred to third party storage or custody before the effectuation of the DOCA.

18. When the correspondence by which the Administrators attempted to give possession to the Applicants (including the s443B notice) was issued to the Applicants in June 2020, a section 443B notice was also issued to two other lessors at the same time. In contrast to the position with the Applicants, the lessors of those aircraft accepted the assistance provided to them by my staff in June 2020 to facilitate the exercise of their self-help right to take possession and their aircraft property was returned to their custody and possession many months ago. The Applicants' refusal to take possession, other than in strict compliance with the lease return provisions, and their subsequent commencement of proceedings is the reason their Engines remain with the Virgin Companies as at the date of this affidavit.
19. The position adopted by the Applicants has meant that the unsecured creditors of the Corporate Respondents have incurred:
 - (a) costs in defending the proceedings (which are outlined in the letter from Clayton Utz to Norton Rose Fulbright dated 22 October 2020, referred to in paragraph 18 of my Fifth Affidavit and annexed as annexure E to that affidavit);
 - (b) insurance, maintenance and other costs in relation to the preservation of the Engines from the commencement of the administration of the Corporate Respondents to date;
 - (c) the additional costs and remuneration of the Third Respondents incurred in relation to the proceedings;
 - (d) the disbursements and expenses referred to at paragraph 17 of my Fifth Affidavit.

Swearing of this affidavit

20. 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.
21. I have been informed by Orfhlaith Maria McCoy, 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.

22. 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 Melbourne
in Victoria
on 31 October 2020
Before me:

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)

.....
Signature of Salvatore Algeri

.....
Signature of witness
Orfhlaith Maria McCoy, solicitor.

SCHEDULE 1

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

No. NSD 714 of 2020

**IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 &
ORS**

Applicants

First Applicant: Wells Fargo Trust Company, National Association (as owner trustee)

Second Applicant: Willis Lease Finance Corporation

SCHEDULE 2

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

No. NSD 714 of 2020

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS

Respondents

First Respondent: VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741

Second Respondent: Virgin Australia Airlines Pty Ltd (Administrators Appointed)
ACN 090 670 965

Third Respondent: Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacity as joint and several voluntary administrators of the First and Second Respondents

Fourth Respondent: Tiger Airways Australia Pty Limited (Administrators Appointed)
ACN 124 369 008

SCHEDULE 3

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

No. NSD 714 of 2020

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS

Virgin entities subject to a deed of company arrangement

1. Virgin Australia Holdings Ltd (subject to deed of company arrangement) ACN 100 686 226
2. Virgin Australia International Operations Pty Ltd (subject to deed of company arrangement) ACN 155 859 608
3. Virgin Australia International Holdings Pty Ltd (subject to deed of company arrangement) ACN 155 860 021
4. Virgin Australia International Airlines Pty Ltd (subject to deed of company arrangement) ACN 125 580 823
5. Virgin Australia Airlines (SE Asia) Pty Ltd (subject to deed of company arrangement) ACN 097 892 389
6. Virgin Australia Airlines Holdings Pty Ltd (subject to deed of company arrangement) ACN 093 924 675
7. VAH Newco No.1 Pty Ltd (subject to deed of company arrangement) ACN 160 881 345
8. Tiger Airways Australia Pty Limited (subject to deed of company arrangement) ACN 124 369 008
9. Virgin Australia Airlines Pty Ltd (subject to deed of company arrangement) ACN 090 670 965
10. VA Borrower 2019 No. 1 Pty Ltd (subject to deed of company arrangement) ACN 633 241 059
11. VA Borrower 2019 No. 2 Pty Ltd (subject to deed of company arrangement) ACN 637 371 343
12. Virgin Tech Pty Ltd (subject to deed of company arrangement) ACN 101 808 879
13. Short Haul 2018 No. 1 Pty Ltd (subject to deed of company arrangement) ACN 622 014 831
14. Short Haul 2017 No. 1 Pty Ltd (subject to deed of company arrangement) ACN 617 644 390
15. Short Haul 2017 No. 2 Pty Ltd (subject to deed of company arrangement) ACN 617 644 443
16. Short Haul 2017 No. 3 Pty Ltd (subject to deed of company arrangement) ACN 622 014 813
17. VBNC5 Pty Ltd (subject to deed of company arrangement) ACN 119 691 502
18. A.C.N. 098 904 262 Pty Ltd (subject to deed of company arrangement) ACN 098 904 262
19. Virgin Australia Regional Airlines Pty Ltd (subject to deed of company arrangement) ACN 008 997 662
20. Virgin Australia Holidays Pty Ltd (subject to deed of company arrangement) ACN 118 552 159

21. VB Ventures Pty Ltd (subject to deed of company arrangement) ACN 125 139 004
22. Virgin Australia Cargo Pty Ltd (subject to deed of company arrangement) ACN 600 667 838
23. VB Leaseco Pty Ltd (subject to deed of company arrangement) ACN 134 268 741
24. VA Hold Co Pty Ltd (subject to deed of company arrangement) ACN 165 507 157
25. VA Lease Co Pty Ltd (subject to deed of company arrangement) ACN 165 507 291
26. Virgin Australia 2013-1 Issuer Co Pty Ltd (subject to deed of company arrangement) ACN 165 507 326
27. 737 2012 No.1 Pty. Ltd (subject to deed of company arrangement) ACN 154 201 859
28. 737 2012 No. 2 Pty Ltd (subject to deed of company arrangement) ACN 154 225 064
29. Short Haul 2016 No. 1 Pty Ltd (subject to deed of company arrangement) ACN 612 766 328
30. Short Haul 2016 No. 2 Pty Ltd (subject to deed of company arrangement) ACN 612 796 077
31. Short Haul 2014 No. 1 Pty Ltd (subject to deed of company arrangement) ACN 600 809 612
32. Short Haul 2014 No. 2 Pty Ltd (subject to deed of company arrangement) ACN 600 878 199
33. VA Regional Leaseco Pty Ltd (subject to deed of company arrangement) ACN 127 491 605
34. VB 800 2009 Pty Ltd (subject to deed of company arrangement) ACN 135 488 934
35. VB Leaseco No 2 Pty Ltd (subject to deed of company arrangement) ACN 142 533 319
36. VB LH 2008 No. 1 Pty Ltd (subject to deed of company arrangement) ACN 134 280 354
37. VB LH 2008 No. 2 Pty Ltd (subject to deed of company arrangement) ACN 134 288 805
38. VB PDP 2010-11 Pty Ltd (subject to deed of company arrangement) ACN 140 818 266
39. Tiger International Number 1 Pty Ltd (subject to deed of company arrangement) ACN 606 131 944
40. VAH Newco No. 2 Pty Ltd (subject to deed of company arrangement) ACN 160 881 354
41. VB Investco Pty Ltd (subject to deed of company arrangement) ACN 101 961 095

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/10/2020 11:44:17 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Interlocutory process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 3
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
Reason for Listing:	Interlocutory Hearing
Time and date for hearing:	10/11/2020, 10:15 AM
Place:	Please check Daily Court List for details

This and the following twenty-two pages are Annexure A referred to in the affidavit of Salvatore Algeri



Sworn on

Before me

31 October 202

Sia Lagos

Dated: 20/10/2020 12:07:32 PM AEDT

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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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.



Form 3 Interlocutory process

(Rule 2.2)

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 (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 100 686 226 & ORS

VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND RICHARD HUGHES, IN THEIR CAPACITIES AS JOINT AND SEVERAL DEED ADMINISTRATORS OF VIRGIN AUSTRALIA HOLDINGS LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT)

First Plaintiffs / First Applicants

VIRGIN AUSTRALIA HOLDINGS LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN

100 686 226

Second Plaintiff / Second Applicant

A. DETAILS OF APPLICATION

This application is made under sections 444GA and 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the *Insolvency Practice Schedule (Corporations)* set out in Schedule 2 to the Corporations Act (**IPS**) for orders that the First Plaintiffs, Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacities as joint and several deed administrators (**Deed Administrators**) of the Second to Forty-Second Plaintiffs (together, the **Companies**), be granted leave to transfer all of the existing shares in the Second Plaintiff, Virgin Australia Holdings Ltd (Subject to Deed of Company Arrangement) ACN 100 686 226 (**Company**), to BC Hart Aggregator, L.P., or its nominee (**Bain Capital**).

On the facts stated in the supporting affidavit of Vaughan Neil Strawbridge sworn on 20 October 2020 (**Strawbridge Affidavit**), the First Plaintiffs seek the following orders:

Procedural orders (to be made at first return date of the Interlocutory Process)

1. An order pursuant to section 447A of the Corporations Act and section 90-15(1) of the IPS that the Deed Administrators would be justified in providing the Explanatory Statement in the form annexed

Filed on behalf of (name & role of party)	The Plaintiffs		
Prepared by (name of person/lawyer)	Timothy James Sackar		
Law firm (if applicable)	Clayton Utz		
Tel	+61 2 9353 4000	Fax	+61 2 8220 6700
Email	jrobertson@claytonutz.com		
Address for service (include state and postcode)	Level 15, 1 Bligh Street, Sydney NSW 2000		



to the Interlocutory Process and marked "A" (**Explanatory Statement**) for distribution to the creditors and members of the Company.

2. An order that the Plaintiffs give notice to the creditors and members of the Company of the Interlocutory Process, the hearing date of this application, the Explanatory Statement and the availability of the independent expert's report of FTI Consulting (Australia) Limited dated 19 October 2020, within 3 business days of the date of the orders, by the following methods:
 - (a) where the creditor or member is a registered user on the Halo Platform (as that term is defined in the orders made on 11 August 2020), by publishing a notice via the Halo Platform;
 - (b) where the creditor or member is not a registered user on the Halo Platform but the Deed Administrators have an email address for a creditor or member (including from the books and records maintained by the Companies), by notifying each such creditor or member, via email;
 - (c) where a creditor or shareholder is not a registered user on the Halo Platform and the Deed Administrators do not have an email address for a creditor or shareholder (or have received notification of non-delivery of a notice sent by email in accordance with paragraph (b) above) but the Deed Administrators have a postal address for that creditor or shareholder (including from the books and records maintained by the Companies), by sending the materials to each such creditor or member, via post;
 - (d) by placing scanned, sealed copies on the website maintained by the Deed Administrators at <https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australiaholdings-limited-subsidiaries.html>; and
 - (e) by making an announcement to the Australian Stock Exchange.
3. An order that any interested person wishing to appear at the hearing of this application is to file and serve on the Plaintiffs and the Australian Securities and Investments Commission a Notice of Appearance in the prescribed form and indicating the grounds of opposition by 4pm on 5 November 2020.
4. An order that any interested person who is entitled to oppose this application pursuant to section 444GA(2) of the Corporations Act may apply to be joined as a respondent to this application by no later than 4pm on 5 November 2020.
5. An order that the Plaintiffs file any further evidence upon which they intend to rely on the application, including any supplementary affidavits deposing as to any correspondence or communications received by the Deed Administrators from any interested person who is entitled to oppose this application pursuant to section 444GA(2) of the Corporations Act and any responsive correspondence or communication from the Deed Administrators, by 12pm on 9 November 2020.

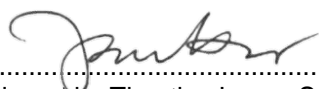


6. This application be listed for hearing on 10 November 2020 at 10.15am or such other date as the Court considers appropriate.

Substantive orders

7. An order pursuant to section 444GA(1)(b) of the Corporations Act that the Deed Administrators be granted leave to transfer all of the existing shares in the capital of the Company (**Shares**) from the members (as defined in the Corporations Act) to Bain Capital or its nominee in accordance with clause 10.3 of the deed of company arrangement dated 25 September 2020, entered into by the Deed Administrators, Bain Capital, and certain of the Companies (**Deed**).
8. An order pursuant to section 447A(1) and section 90-15(1) of the IPS of the Corporations Act that any of the Deed Administrators may, jointly or severally, in their capacity as Deed Administrators:
- (a) execute share transfer forms and any other documents ancillary or incidental to effecting the transfer of the Shares referred to in Order 7; and
 - (b) enter or procure the entry of the name of Bain Capital or its nominee into the share register of the Company in respect of all Shares transferred to Bain Capital or its nominee in accordance with Order 7.
9. An order that the Deed Administrators' costs of and incidental to this application be costs and expenses in the deed administration of the Company.
10. An order that the Court's orders be entered forthwith.
11. Such further or other orders or directions as the Court considers appropriate.

Date: 20 October 2020


.....
Signed by Timothy James Sackar
Solicitor for the Plaintiffs

**B. NOTICE TO DEFENDANT(S) (IF ANY)**

N/A

C. FILING

This interlocutory process is filed by Clayton Utz, solicitors for the Plaintiffs.

E. SERVICE

The Plaintiffs' address for service is:

Attention: Timothy Sackar/Jillian Robertson
C/- Clayton Utz
Lawyers
1 Bligh Street, Sydney NSW 2000
DX 370 Sydney

It is intended that a copy of this interlocutory process will be provided to each of the persons listed below:

Australian Securities and Investments Commission

"A"

Explanatory Statement

Virgin Australia Holdings Limited ACN 100 686 226 (Subject to Deed of Company Arrangement) (**VAH** or **Company**)

[#] October 2020

Draft

Explanatory Statement to shareholders and Independent Expert's Report

This Explanatory Statement provides information to the Company's shareholders (**Shareholders**) in respect of the deeds of company arrangement (**DOCAs**) entered into by Virgin Australia Holdings Limited ACN 100 686 226 (Subject to Deed of Company Arrangement) (**VAH**) and certain of its subsidiaries listed in Schedule 1 (together, the **Virgin Group**), BC Hart Aggregator, L.P. (**Bain Capital**) and the Deed Administrators on 25 September 2020.

It is a condition to completion and effectuation of the Primary DOCA that the Deed Administrators obtain a Court order pursuant to section 444GA(1)(b) of the *Corporations Act 2001* (Cth) (**Act**) granting leave to the Deed Administrators to transfer all of the Shares to Bain Capital for nil consideration. The Deed Administrators have applied for this order in the Federal Court of Australia (**Section 444GA Application**).

The Section 444GA Application has been tentatively listed for a final hearing on [Date TBC] at [Time TBC] in the Federal Court of Australia and will be heard via Microsoft Teams link.

If you wish to appear at the Court hearing and/or oppose the Section 444GA Application, you may do so by filing with the Court, and serving on the Deed Administrators and ASIC, a notice of appearance in the prescribed Court form indicating the grounds of opposition by [Time/Date TBC] 2020.

The Section 444GA Application has been listed for a directions hearing at [Time/Date TBC] 2020 before [Details to be confirmed] (**Directions Hearing**), when further directions relating to the final hearing of the Section 444GA Application will be made, including directions for the filing of any further evidence and confirmation of the final hearing date.

Shareholders should consider the Independent Expert's Report in full before deciding whether to take any action in relation to the Section 444GA Application. If you are in any doubt as to the action you should take, you are recommended to obtain your own personal financial advice from your legal or other professional adviser(s).

A copy of the Explanatory Statement (including the Independent Expert's Report) has been provided to ASIC at the same time as the issuance of this Explanatory Statement. Neither ASIC nor any of its officers take any responsibility for its contents.

Key information for Shareholders

Capitalised terms used in this Explanatory Statement have the meanings defined in the Glossary in Schedule 2, unless the context requires otherwise or unless a term has been defined in the text of the Explanatory Statement.

1. Purpose of the Explanatory Statement

This document is an Explanatory Statement issued by VAH in connection with the Primary DOCA. If the Section 444GA Order is made and the Primary DOCA is implemented, all of your shares in VAH will be transferred to Bain Capital for no consideration and you will cease to own your shares.

Section 4 of this report contains further information regarding the Primary DOCA.

This Explanatory Statement contains information about:

- (a) the Section 444GA Application to the Court for approval to transfer all of the Shares to Bain Capital as part of the Primary DOCA;
- (b) the steps that you need to take if you wish to appear at the Court hearing in respect of the Section 444GA Application, which has been listed for hearing on [Date/Time TBC]; and
- (c) the effect of the Primary DOCA on you as a Shareholder, in order to assist you in deciding whether to take action in respect of the Section 444GA Application.

An Independent Expert's Report prepared by FTI, which contains an objective valuation of the Shares is attached to this document as **Attachment 1**.

2. Administration of the Virgin Group

On 20 April 2020, Vaughan Strawbridge, John Greig, Salvatore Algeri and Richard Hughes, were appointed as joint and several administrators (**Administrators**) of the Virgin Group, with the exception of Tiger International Number 1 Pty Ltd (Subject to Deed of Company Arrangement) (**Tiger 1**), VAH Newco No. 2 Pty Ltd (In Liquidation) (Subject to Deed of Company Arrangement) (**VAH Newco 2**) and VB Investco Pty Ltd (In Liquidation) (Subject to Deed of Company Arrangement) (**VB Investco**) in respect of which the Administrators were appointed on 28 April 2020 (Tiger 1) and 3 August 2020 (VAH Newco 2 and VB Investco).

A copy of the group structure chart for VAH and its subsidiaries is contained in Appendix D of the Administrators' Section 75-225 Report (a copy of which is provided as **Attachment 3**).

In the Administrators' Section 75-225 Report, the Administrators stated that the earliest date of insolvency in respect of the Virgin Group was 18 March 2020 and that the insolvency of the Virgin Group was due to an immediate and catastrophic reduction in capacity, in response to the announcements that were made by respective state and federal governments on restrictions on domestic travel in Australia in response to the coronavirus pandemic.

As you would be aware, the Shares have been suspended from trading on the ASX since 16 April 2020.

When the Virgin Group entered into voluntary administration, it owed approximately \$7,146,400,000 to unrelated third party creditors, including but not limited to secured and unsecured aircraft financiers and unsecured bondholders.

We refer to section 3.4 of the Administrators' Section 75-225 Report, which provides a detailed overview of the Virgin Group's creditors including financial creditors, employees and others.

3. Sale Process and formulation of the DOCAs

Immediately after their appointment, the Administrators commenced a competitive and comprehensive global sale process (**Sale Process**). The Sale Process occurred over a two-month period and in three phases:

- (a) **Phase One (April 2020 to mid-May 2020)** - In Phase One, 19 parties who had entered into non-disclosure agreements with the Administrators were given access to a virtual data room containing documents about the business and financial position of the Virgin Group. The Administrators subsequently received several non-binding indicative offers (**NBIO**) and, based on those offers, formed a shortlist of interested parties (**Shortlisted Bidders**);
- (b) **Phase Two (mid-May to June)** - In Phase Two, the Shortlisted Bidders conducted further due diligence, and were provided with additional financial and operational information about the Virgin Group, including a vendor due diligence report prepared by the Administrators' legal advisers, Clayton Utz. The Administrators subsequently received six final NBIOs, of which, they selected two to proceed to 'Phase 3' of the Sale Process (**Final Bidders**); and
- (c) **Phase Three (June 2020)** - In Phase Three, the Final Bidders conducted further due diligence, culminating in both parties making final binding offers on 22 June 2020. Following the Administrators' consideration and assessment of the two competing proposals, on 26 June 2020, the Administrators exercised their power of sale as administrators of the Virgin Group and signed binding transaction documents in the form of a sale and implementation deed and other ancillary documents (**Sale and Implementation Deed**) for the sale of the business to Bain Capital.

The completion of the Sale and Implementation Deed (**Completion**) was structured to occur in one of two ways:

- (a) pursuant to the DOCAs proposed by Bain Capital; or
- (b) by way of an asset sale agreement (**ASA**) involving the transfer of the business to Bain Capital.

The group is comprised of a parent company, VAH, which is listed on the ASX, and forty-nine controlled entities. This includes four main trading entities and 9 special purpose companies used for holding and financing aircraft assets. Voluntary administrators were appointed to 41 entities in the Virgin Group and all of those entities are now subject to deeds of company arrangement.

In addition to the Primary DOCA (which is the subject of this Explanatory Statement), Bain Capital proposed 9 other deeds of company arrangement covering all other entities in the Virgin Group in administration that were not proposed to be a party to the Primary DOCA. At the Second Meeting, creditors of the relevant Virgin Group companies resolved that these other 9 deeds of company arrangement also be executed. Further details in relation to the other 9 deeds of company arrangement are contained in section 9 of the Administrators' Section 75-225 Report.

In the Administrators' Section 75-225 Report, the Administrators recommended each of the deeds of company arrangement proposed by Bain Capital.

4. Key information in relation to the Primary DOCA

4.1 Overview

At the Second Meeting held pursuant to section 439A of the Act, the creditors of the Primary DOCA Companies resolved that those companies enter into the Primary DOCA and that the Administrators be appointed as joint and several deed administrators (**Deed Administrators**).

The Primary DOCA was executed by all parties on 25 September 2020 and it is intended to compromise certain claims of creditors of the Primary DOCA Companies that arose prior to 20 April 2020.

The Primary DOCA contemplates the following steps being taken in relation to the Shares, on the condition that the orders sought by the Deed Administrators pursuant to the Section 444GA Application are made by the Court:

(a) **Step 1: Transfer of Shares**

The Deed Administrators will transfer all of the Shares to Bain Capital or its nominee.

(b) **Step 2: New subscription**

Bain Capital or its nominee will subscribe for an aggregate amount equal to the sum of the amount of funding provided by Bain Capital for the purposes of the Creditors' Trust and the drawn amount under the Interim Funding Facility, for additional shares in VAH.

4.2 Conditions

The implementation of the Primary DOCA is conditional upon the satisfaction of certain Conditions, including:

- (a) the Deed Administrators, the Trustees and the Primary DOCA Companies executing the Creditors' Trust Deed;
- (b) ASIC granting an exemption pursuant to section 655A(1)(a) of the Act from the application of section 606 of the Act to permit the transfer of all of the Shares to Bain Capital or its nominee (**ASIC Relief**); and
- (c) the Deed Administrators obtaining the orders sought pursuant to the Section 444GA Application. The date by which the Conditions must be satisfied is 30 November 2020 pursuant to clause 4.4(a)(1) of the Primary DOCA. If the Conditions are not satisfied or waived by 30 November 2020, the transfer of the business and assets of the Virgin Group will occur via the ASA.

4.3 Key Terms

The key terms of the Primary DOCA include¹:

- (a) the establishment of a Creditors' Trust, whereby upon the effectuation of the Primary DOCA, all eligible creditors' claims against the Primary DOCA Companies will transfer to the Creditors' Trust and a dividend will be paid in respect of those eligible creditor claims to satisfy those claims;

¹ The other 9 deeds of company arrangement entered into by the remaining Virgin Group companies (being all other Virgin Group companies that are not party to the Primary DOCA), Bain Capital and the Deed Administrators contain provisions that are substantially on the same terms as the Primary DOCA - save to note that the ASIC Relief and 444GA Order are not conditions to completion of those deeds of company arrangement.

- (b) all employees who are employed by one of the Primary DOCA Companies at the date of the Primary DOCA and who remain employees upon completion of the Primary DOCA will be paid in the normal course. All employee entitlements will be unaffected, and Bain Capital will assume continuing employee entitlements for continuing employees and pay out in full entitlements to employees that are made redundant;
- (c) Bain Capital will provide customers who are currently holding credits, because they paid for a flight prior to 20 April 2020 that was cancelled by the Virgin Group or for which they were otherwise entitled to a refund, with a new credit (**Future Flight Credit**) for an amount equal to any remaining value on their existing credit. Future Flight Credits will be available for booking flights up to 31 July 2022 with travel valid until 30 June 2023; and
- (d) any Shareholder claims which are subordinated to the claims of other unsecured creditors under the Act will be extinguished and Shareholders are not eligible to receive a dividend from the Creditors' Trust in respect of those claims.

If the Primary DOCA is implemented, VAH will be delisted from the ASX and Bain Capital will continue to operate the business as a going concern.

5. Independent Expert's Report

As noted above, the Section 444GA Application has been commenced by the Deed Administrators in the Federal Court of Australia seeking the leave of the Court pursuant to section 444GA(1)(b) of the Act for the transfer of the Shares to Bain Capital.

Under subsection 444GA(3) of the Act, the Court may only grant leave to transfer the Shares to Bain Capital if it is satisfied that the transfer would not unfairly prejudice the interests of the Shareholders. The Deed Administrators intend to rely on the Independent Expert's Report when addressing the issue of unfair prejudice before the Court.

The Deed Administrators engaged the Expert to provide an independent opinion on whether the Share Transfer would unfairly prejudice the Shareholders. This involved the Expert valuing the Shares on both a going concern and non-going concern (liquidation) basis. In respect of the liquidation analysis, the Expert considered two liquidation scenarios: (i) a distressed sale - selling the business in distress as a whole or as an assembly of assets, which can be revitalised as a business; and (ii) selling the assets on an asset by asset basis. The valuation date used by the Expert in the assessment was 30 June 2020, being the date of the most recently available financial information of VAH. However, to the extent possible, the Expert considered material events up to the date of the 31 August 2020 in assessing value.

The Independent Expert's Report will be relied upon by the Deed Administrators for the purpose of the Section 444GA Application and also for the purpose of applying for ASIC Relief. See **Attachment 1** for a full copy of the Independent Expert's Report. Shareholders (and their advisers and any other interested parties) should read the Independent Expert's Report carefully and in its entirety. By way of summary, the key findings of the Expert, as set out in Independent Expert's Report, are as follows:

- (d) On a going concern basis, the equity of VAH has nil value as at the Valuation Date. However, in light of the current operating environment caused by COVID-19, the Expert notes that the more relevant assessment of value of the purpose of assisting the Court in relation to the Section 444GA Application is the liquidation basis; and
- (e) On a liquidation basis, the equity of VAH has nil value as at the Valuation Date.

6. Section 444GA Application

6.1 Overview

The Section 444GA Application has been filed in the Federal Court of Australia. A copy of the Interlocutory Process filed by the Deed Administrators is provided as **Attachment 4** of this Explanatory Statement. At the Directions Hearing, which will be heard on [Date/Time TBC], it is expected that the Court will:

- (a) set a timetable for the preparation of the matter for final hearing, which is likely to include the dates by which any interested person (including any Shareholder who wishes to oppose the Section 444GA Application) must file with the Court and serve on the Deed Administrators a notice of appearance and any affidavit evidence on which that person intends to rely; and
- (b) confirm the final hearing date and time.

If you wish to appear at the Directions Hearing to make submissions on the timetable to be set down by the Court, and/or oppose the Section 444GA Application at the final hearing, you will need to file with the Court and serve on the Deed Administrators and ASIC a notice of appearance in the prescribed Court form and any affidavit on which you intend to rely. The timetable that the Deed Administrators anticipate the Court will set down at the Directions Hearing is likely to provide a date by which any appearance and affidavit must be filed and served by an interested party who wishes to oppose the Section 444GA Application at the final hearing.

The Deed Administrators will accept service of any appearance and affidavit at Clayton Utz, Level 15, 1 Bligh Street, Sydney NSW 2000 (Attention: Timothy Sackar/ Jillian Robertson) or tsackar@claytonutz.com/ jrobertson@claytonutz.com.

6.2 Important Dates

We draw your attention to the following key dates in relation to the Section 444GA Application:

Event	Date
Notice of appearance and affidavits to be served by any Shareholder seeking to appear at the hearing of the Section 444GA Application	[TBC]
Directions hearing - during which further directions for the hearing of the Section 444GA Application are to be made	[TBC]
Proposed hearing date for the Section 444GA Application	[TBC]
Proposed date for the Share Transfer	[TBC]

The dates, including the proposed hearing date, will be subject to any further directions made by the Court.

6.3 What will happen if the Section 444GA Order is not made?

As the Section 444GA Order is a Condition (see section 4.2 above) to completion of the Primary DOCA, the deed will not be effectuated if the Section 444GA Order is not made. In those circumstances, Completion will occur via the ASA, subject to any conditions contained in the ASA. Following completion under the ASA, the Deed Administrators will then convene a meeting to consider the future of the Virgin Group.

It is the Deed Administrators' opinion that the time, cost and complexity of completing the ASA would be greater than effectuation of the Share Transfer. The sale price is also lower under the ASA than the Primary DOCA due to the additional transaction costs that would be incurred by Bain Capital in completing the ASA. This would necessarily mean a lower return to creditors and would not result in any return to Shareholders (for further details, we refer you to section 11 of the Section 75-225 Report).

6.4 Effect of the Section 444GA Order on Shareholders

If the Section 444GA Order is made and the Primary DOCA is fully implemented, all of your shares in VAH will be transferred by the Deed Administrators to Bain Capital and you will not receive any money or form of consideration.

6.5 Australian income tax consequences

This section of the Explanatory Statement is provided as general information for Shareholders who are Australian resident taxpayers holding their Shares on capital account, not as trading stock, and who are not subject to the Taxation of Financial Arrangements rules in Division 230 of the *Income Tax Assessment Act 1997* (Cth) for the purposes of calculating any gains or losses arising from financial arrangements. It does not take account of the circumstances of any individual Shareholder. Each Shareholder should seek its own tax advice on the consequences for it of the Primary DOCA being effectuated.

Upon the effectuation of the Primary DOCA, the Share Transfer will give rise to a capital gains event (**CGT Event**) for Shareholders because it will trigger a CGT Event and may crystallise a capital loss. Depending upon each individual taxpayer's financial position and tax profile, this capital loss may be available to offset against the taxpayer's capital gains thereby potentially reducing the amount of tax otherwise payable by the taxpayer.

The Australian resident Shareholders who hold their Shares on capital account will incur a capital loss to the extent the reduced cost base of the Shares transferred exceeds the market value of the Shares.

The reduced cost base in the Shares includes:

- (a) the acquisition cost of the Shares;
- (b) incidental acquisition costs incurred to acquire and hold the Shares;
- (c) expenditure incurred to increase or preserve the value of the Shares; and
- (d) capital expenditure incurred to establish, preserve or defend their title to the Shares.

Given the transfer will occur by way of Court order, the time of the CGT Event for Shareholders will be when the Share Transfer takes effect in accordance with the Primary DOCA.

7. ASIC Relief

As VAH is a publically listed company on the ASX, the ASIC Relief (referred to at 4.2(b) above) will be required to enable completion of the Share Transfer.

The Deed Administrators have engaged with ASIC by providing a copy of this Explanatory Statement along with additional information relevant to the relief being sought.

8. What do you need to do now?

Shareholders (and their advisers and any other interested parties) should read this Explanatory Statement (including the documents referred to in this Explanatory Statement) in

its entirety before making a decision regarding whether or not to take any action in relation to the Section 444GA Application.

Please note that this Explanatory Statement does not constitute financial product advice and has been prepared without reference to the investment objectives, financial situation, taxation position or particular needs of any and every Shareholder. Whether or not to take any action in relation to the Primary DOCA or in respect of the Section 444GA Application is a decision for each individual Shareholder and will depend, amongst other things, on an assessment of the relevant Shareholder's individual financial circumstances. Accordingly, as the professional, financial, legal and taxation consequences of such a decision may be different for each particular Shareholder, each Shareholder should seek professional financial, legal and taxation advice before making a decision.

9. What information is available to assist you?

To assist you in deciding whether to take any action in relation to the Section 444GA Application, this Explanatory Statement attaches copies of the following documents:

- (e) Independent Expert's Report at Attachment 1;
- (f) Primary DOCA and Creditors' Trust Deed at Attachment 2; and
- (g) Administrators' Section 75-225 Report to Creditors at Attachment 3;
- (h) Interlocutory Process filed by the Deed Administrators in relation to the Section 444GA Application is at Attachment 4.

Should you have any queries regarding this Explanatory Statement, the Independent Expert's Report or the Section 444GA Application, please email virginadmin@deloitte.com.au.

Schedule 1 - Virgin Group

- Virgin Australia Holdings Ltd ACN 100 686 226 (Subject to Deed of Company Arrangement)
- Virgin Australia International Operations Pty Ltd ACN 155 859 608 (Subject to Deed of Company Arrangement)
- Virgin Australia International Holdings Pty Ltd ACN 155 860 021 (Subject to Deed of Company Arrangement)
- Virgin Australia International Airlines Pty Ltd ACN 125 580 823 (Subject to Deed of Company Arrangement)
- Virgin Australia Airlines (SE Asia) Pty Ltd ACN 097 892 389 (Subject to Deed of Company Arrangement)
- Virgin Australia Airlines Holdings Pty Ltd ACN 093 924 675 (Subject to Deed of Company Arrangement)
- VAH Newco No.1 Pty Ltd ACN 160 881 345 (Subject to Deed of Company Arrangement)
- Tiger Airways Australia Pty Limited ACN 124 369 008 (Subject to Deed of Company Arrangement)
- Virgin Australia Airlines Pty Ltd ACN 090 670 965 (Subject to Deed of Company Arrangement)
- VA Borrower 2019 No. 1 Pty Ltd ACN 633 241 059 (Subject to Deed of Company Arrangement)
- VA Borrower 2019 No. 2 Pty Ltd ACN 637 371 343 (Subject to Deed of Company Arrangement)
- Virgin Tech Pty Ltd ACN 101 808 879 (Subject to Deed of Company Arrangement)
- Short Haul 2018 No. 1 Pty Ltd ACN 622 014 831 (Subject to Deed of Company Arrangement)
- Short Haul 2017 No. 1 Pty Ltd ACN 617 644 390 (Subject to Deed of Company Arrangement)
- Short Haul 2017 No. 2 Pty Ltd ACN 617 644 443 (Subject to Deed of Company Arrangement)
- Short Haul 2017 No. 3 Pty Ltd ACN 622 014 813 (Subject to Deed of Company Arrangement)
- VBNC5 Pty Ltd ACN 119 691 502 (Subject to Deed of Company Arrangement)
- A.C.N. 098 904 262 Pty Ltd ACN 098 904 262 (Subject to Deed of Company Arrangement)
- Virgin Australia Regional Airlines Pty Ltd ACN 008 997 662 (Subject to Deed of Company Arrangement)
- Virgin Australia Holidays Pty Ltd ACN 118 552 159 (Subject to Deed of Company Arrangement)
- VB Ventures Pty Ltd ACN 125 139 004 (Subject to Deed of Company Arrangement)
- Virgin Australia Cargo Pty Ltd ACN 600 667 838 (Subject to Deed of Company Arrangement)
- VB Leaseco Pty Ltd ACN 134 268 741 (Subject to Deed of Company Arrangement)
- VA Hold Co Pty Ltd ACN 165 507 157 (Subject to Deed of Company Arrangement)
- VA Lease Co Pty Ltd ACN 165 507 291 (Subject to Deed of Company Arrangement)
- Virgin Australia 2013-1 Issuer Co Pty Ltd ACN 165 507 326 (Subject to Deed of Company Arrangement)
- 737 2012 No.1 Pty. Ltd ACN 154 201 859 (Subject to Deed of Company Arrangement)
- 737 2012 No. 2 Pty Ltd ACN 154 225 064 (Subject to Deed of Company Arrangement)

Short Haul 2016 No. 1 Pty Ltd ACN 612 766 328 (Subject to Deed of Company Arrangement)
Short Haul 2016 No. 2 Pty Ltd ACN 612 796 077 (Subject to Deed of Company Arrangement)
Short Haul 2014 No. 1 Pty Ltd ACN 600 809 612 (Subject to Deed of Company Arrangement)
Short Haul 2014 No. 2 Pty Ltd ACN 600 878 199 (Subject to Deed of Company Arrangement)
VA Regional Leaseco Pty Ltd ACN 127 491 605 (Subject to Deed of Company Arrangement)
VB 800 2009 Pty Ltd ACN 135 488 934 (Subject to Deed of Company Arrangement)
VB Leaseco No 2 Pty Ltd ACN 142 533 319 (Subject to Deed of Company Arrangement)
VB LH 2008 No. 1 Pty Ltd ACN 134 280 354 (Subject to Deed of Company Arrangement)
VB LH 2008 No. 2 Pty Ltd ACN 134 288 805 (Subject to Deed of Company Arrangement)
VB PDP 2010-11 Pty Ltd ACN 140 818 266 (Subject to Deed of Company Arrangement)
Tiger International Number 1 Pty Ltd ACN 606 131 944 (Subject to Deed of Company Arrangement)
VAH Newco No. 2 Pty Ltd ACN 160 881 354 (In Liquidation) (Subject to Deed of Company Arrangement)
VB Investco Pty Ltd ACN 101 961 095 (In Liquidation) (Subject to Deed of Company Arrangement)

Schedule 2 - Glossary of terms

In the Explanatory Statement, capitalised terms have the meanings set out in the following table:

Act	<i>Corporations Act 2001 (Cth)</i>
Administrators	Vaughan Neil Strawbridge, Salvatore Algeri, Richard John Hughes and John Lethbridge Greig of Deloitte Touche Tohmatsu
ASA	Has the meaning as defined in the Primary DOCA
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
Bain Capital	BC Hart Aggregator, L.P.
Completion	The completion of the Sale and Implementation Deed
Conditions	The conditions set out in clause 4.1 of the Primary DOCA
Court	Federal Court of Australia
Creditors' Trust	Has the meaning as defined in the Primary DOCA.
Creditors' Trust Deed	The document entitled 'Creditors' Trust Deed' between the Deed Administrators, VAH and Bain Capital that is annexed to the Primary DOCA
Deed Administrators	Vaughan Strawbridge, Salvatore Algeri, Richard Hughes and John Greig of Deloitte Touche Tohmatsu
Expert	FTI Consulting (Australia) Pty Limited
Explanatory Statement	This document as described in section 1
Future Flight Credit	Has the meaning as defined in the Primary DOCA
Independent Expert's Report	The report by the Expert as described in section 5 and as annexed to this Explanatory Statement at Attachment 1
Interim Funding Facility	Has the meaning as defined in the Primary DOCA
NBIO	Non-binding indicative offer
Primary DOCA	The deed of company arrangement entered into between VAH and 27 of its subsidiaries, Bain Capital and the Deed Administrators on 25 September 2020

Primary DOCA Companies	A.C.N. 098 904 262 Pty Ltd, Tiger Airways Australia Pty Limited, Virgin Australia Holidays Pty Ltd, VAA, Virgin Australia Airlines Holdings Pty Ltd, Virgin Australia Cargo Pty Ltd, VAH, VAH Newco No.1 Pty Ltd, VAH Newco No.2 Pty Ltd, Virgin Australia Regional Airlines Pty Ltd, VB Investco Pty Ltd, VB Leaseco Pty Ltd, VB Ventures Pty Ltd, Virgin Tech Pty Ltd, Virgin Australia International Holdings Pty Ltd, 737 2012 No.1 Pty. Ltd., 737 2012 No. 2 Pty Ltd, Short Haul 2016 No. 1 Pty Ltd, Short Haul 2016 No. 2 Pty Ltd, Short Haul 2017 No. 1 Pty Ltd, VA Hold Co Pty Ltd, VA Lease Co Pty Ltd, Virgin Australia 2013-1 Issuer Co Pty Ltd, VA Regional Leaseco Pty Ltd, VB PDP 2010-11 Pty Ltd, VB LH 2008 No. 1 Pty Ltd, VB LH 2008 No. 2 Pty Ltd, VBNC5 Pty Ltd
Sale and Implementation Deed	Has the meaning as defined in the Primary DOCA
Sale Process	The competitive and comprehensive global sale process of the Virgin Group undertaken by the Administrators from April to June 2020
Second Meeting	The second meeting of creditors of the VAH and certain of its subsidiaries in the Virgin Group held concurrently on 4 September 2020 in accordance with section 439A of the Act
Section 75-225 Report	The report prepared by the Administrators in accordance with section 75-225 of the Insolvency Practice Rules dated 25 August 2020 as annexed to this Explanatory Statement at Attachment 3
Section 444GA Application	The application by the Deed Administrators pursuant to section 444GA of the Act as described in section 6.
Section 444GA Order	The orders sought by the Deed Administrators pursuant to the Section 444GA Application.
Shares	All the issued share capital of VAH
Shareholders	Means the shareholders of VAH as at the date of the Explanatory Statement
Share Transfer	The transfer of shares in VAH to Bain Capital pursuant to the Primary DOCA
Shortlisted Bidders	The parties selected by the Administrators to participate in Phase 2 of the Sale Process
Tiger 1	Tiger International Number 1 Pty Ltd ACN 606 131 944 (subject to deed of company arrangement)
Trustees	Vaughan Strawbridge, Salvatore Algeri, Richard Hughes and John Greig of Deloitte Touche Tohmatsu in their capacity as trustees of the Creditors Trust
VAA	Virgin Australia Airlines Pty Ltd ACN 090 670 965 (subject to deed of company arrangement)

VAH	Virgin Australia Holdings Limited ACN 100 686 226 (subject to deed of company arrangement)
VAH Newco 2	VAH Newco No. 2 Pty Ltd ACN 160 881 354 (in liquidation) (subject to deed of company arrangement)
VB Investco	VB Investco Pty Ltd ACN 101 961 095 (in liquidation) (subject to deed of company arrangement)
Virgin Group	VAH and each of the subsidiaries listed in Schedule 1 of this Explanatory Memorandum.
Velocity	Velocity Rewards Pty Ltd ACN 116 089 448

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Attachment 1 - Independent Expert's Report

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Attachment 2 – Primary DOCA and Creditors Trust

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Attachment 3 - Section 75-225 Report

Draft



Attachment 4 - Interlocutory Process

Draft

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This and the following thirty-seven pages
are Annexure B referred to in the affidavit
of Salvatore Algeri

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Sworn on Before me

31 October 2020

In re:

Virgin Australia Holdings Ltd.
(ACN 100 686 226)¹, *et al.*,

Debtor in a Foreign Proceeding.²

)
) Chapter 15
)
) Case No. 20-11024 (SHL)
)
)
)
)
)
) (Jointly Administered)

**MOTION FOR RECOGNITION AND
ENFORCEMENT OF (I) THE DEEDS OF COMPANY ARRANGEMENT,
(II) THE AUSTRALIAN COURT’S 444GA ORDER, AND (III) RELATED RELIEF
UNDER BANKRUPTCY CODE §§ 105(A), 1507, 1509(B)(2)-(3), 1521(A), AND 1525(A)**

¹ An Australian Company Number (“ACN”) is a unique nine-digit number issued by the Australian Securities and Investments Commission (“ASIC”) to every company registered under the Commonwealth Corporations Act 2001 as an identifier.

² The Debtors in these cases, along with the last three digits of each Debtor’s ACN number, are: Virgin Australia Holdings Ltd (226); Virgin Australia International Operations Pty Ltd (608); Virgin Australia International Holdings Pty Ltd (021); Virgin Australia International Airlines Pty Ltd (823); Virgin Australia Airlines (SE Asia) Pty Ltd (389); Virgin Australia Airlines Holdings Pty Ltd (675); VAH Newco No. 1 Pty Ltd (345); Tiger Airways Australia Pty Limited (008); Virgin Australia Airlines Pty Ltd (965); VA Borrower 2019 No. 1 Pty Ltd (059); VA Borrower 2019 No. 2 Pty Ltd (343); Virgin Tech Pty Ltd (879); Short Haul 2018 No. 1 Pty Ltd (831); Short Haul 2017 No. 1 (390); Short Haul 2017 No. 2 Pty Ltd (443); Short Haul 2017 No. 3 Pty Ltd (813); VBNC5 Pty Ltd (502); A.C.N. 098 904 262 Pty Ltd (262); Virgin Australia Regional Airlines Pty Ltd (662); Virgin Australia Holidays Pty Ltd (159); VB Ventures Pty Ltd (004); Virgin Australia Cargo Pty Ltd (838); VB Leaseco Pty Ltd (741); VA Hold Co Pty Ltd (157); VA Lease Co Pty Ltd (291); Virgin Australia 2013-1 Issuer Co Pty Ltd (326); 737 2012 No. 1 Pty. Ltd (859); 737 2012 No. 2 Pty Ltd (064); Short Haul 2016 No. 1 Pty Ltd (328); Short Haul 2016 No. 2 Pty Ltd (077); Short Haul 2014 No. 1 Pty Ltd (612); Short Haul 2014 No. 2 Pty Ltd (199); VA Regional Leaseco Pty Ltd (605); VB 800 2009 Pty Ltd (934); VB Leaseco No. 2 Pty Ltd (319); VB LH 2008 No. 1 (354); VB LH 2008 No. 2 Pty Ltd (805); VB PDP 2010-11 Pty Ltd (266); Tiger International Number 1 Pty Ltd (944); VAH Newco No. 2 Pty Ltd (354); VB Investco Pty Ltd (095) (all Subject to Deed of Company Arrangement). The service address for each of the above Foreign Debtors is Deloitte Brisbane, Riverside Centre, 123 Eagle St, Brisbane QLD 4000, Australia.

Vaughan Strawbridge, Richard Hughes, John Greig, and Salvatore Algeri in their capacities as joint and several administrators of the deeds of company arrangement and foreign representatives (in such capacities, the “Deed Administrators”³ or the “Foreign Representatives”)⁴ of the above-captioned foreign debtors (the “Foreign Debtors” or “Deed Companies”), which are subject to external administration proceedings (each Foreign Debtor being “Subject to Deed of Company Arrangement”) under Australia’s *Corporations Act 2001* (Cth) (the “Corporations Act”), by and through their undersigned counsel, respectfully submit this *Motion for Recognition and Enforcement of (I) the Deeds of Company Arrangement, (II) the Australian Court’s 444GA Order, and (III) Related Relief under Bankruptcy Code §§ 105(a), 1507, 1509(b)(2)-(3), 1521(a), and 1525(a)* (the “Recognition Motion”).

In support of this Recognition Motion, the Foreign Representatives (i) respectfully submit the *Declaration of Foreign Representative in Support of Motion for Recognition and Enforcement of (I) the Deeds of Company Arrangement, (II) the Australian Court’s 444GA Order, and (III) Related Relief under Bankruptcy Code §§ 105(a), 1507, 1509(b)(2)-(3), 1521(a), and 1525(a)* (the “Recognition Declaration”) and (ii) refer to and rely on that certain *Declaration of Foreign Representative Pursuant to 11 U.S.C. § 1515 and Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure and in Support of Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representatives, and (III) Related Relief Under Chapter*

³ Prior to execution of the Bain DOCAs (as defined herein) the Deed Administrators were the “Voluntary Administrators” of the Foreign Debtors. Following the execution of the Bain DOCAs, the Foreign Debtors are “Subject to Deed of Company Arrangement” which is a form of external administration under the Corporations Act. References herein to the “Administrators” or the “Foreign Representatives” shall refer to both the “Voluntary Administrators” and “Deed Administrators” as applicable.

⁴ Capitalized terms that are not defined herein shall have the meaning ascribed in the *Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representatives, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “Verified Petition”) [D.I. 2].

15 of the Bankruptcy Code filed in connection with the chapter 15 petitions of the Original Foreign Debtors (defined below) on April 20, 2020 [Docket No. 3] (the “Original Declaration”).

In further support hereof, the Foreign Representatives respectfully represent as follows:

PRELIMINARY STATEMENT

1. Following the commencement of the Australian Proceedings (defined below) the Administrators conducted a competitive and public sale and recapitalization process of the Foreign Debtors’ business. The result of the process was an agreement with BC Hart Aggregator LP (“Bain”) for the sale of the business which was executed in June 2020. At the Second Creditors Meeting on September 4, 2020, and consistent with the Foreign Representatives’ recommendations, creditors voted overwhelmingly in support of deeds of company arrangement that Bain proposed to consummate the sale, executed copies of which are attached as Exhibits D-M to the Recognition Declaration (the “Bain DOCAs”). The Foreign Debtors executed the Bain DOCAs on September 25, 2020, and anticipate satisfying the conditions to completion of the deeds of company arrangement (and thus closing the sale) by the end of November 2020. Key features of the Bain DOCAs include (a) the consummation of the transaction by compulsory transfer of the shares of the ultimate holding company, effected through the Bain DOCAs and an Australian court order, which reduces transaction costs and increases recoveries to unsecured creditors, (b) a release of creditors’ claims against the Foreign Debtors, and (c) establishment of a creditors’ trust which will make distributions to creditors in satisfaction of their claims against the Foreign Debtors. One of the conditions precedent to the completion of the share sale transaction is entry by this Court of an order giving full force and effect to the Bain DOCAs and granting related relief. Accordingly, the Administrators now file this Recognition Motion seeking same.

BACKGROUND

A. The Foreign Debtors and the Commencement of the Chapter 15 Proceedings

2. Virgin Australia Holdings Ltd. (ACN 100 686 226) (Subject to Deed of Company Arrangement) (“Holdings”) is the ultimate parent of a group of affiliated companies (collectively the “Virgin Australia Group”) that own and operate three domestic commercial airlines – Virgin Australia, Virgin Australia Regional Airlines and Tigerair Australia – and one international commercial airline – Virgin Australia International Airlines. Holdings and 38 of its affiliated companies (the “Original Foreign Debtors”) ⁵ entered voluntary administration (the “Australian Proceedings”) under the Corporations Act on or about April 20, 2020, with the exception of Tiger International Number 1 Pty Ltd which entered voluntary administration on April 28, 2020. Following commencement of the Australian Proceedings, on or about April 29, 2020, the Original Foreign Debtors filed petitions under chapter 15 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court. On May 22, 2020 this Court entered an order recognizing the Administrators (in their capacity as voluntary administrators) as the Foreign Representatives of the Original Foreign Debtors and recognizing the Australian Proceedings as Foreign Main Proceedings. [Docket No. 13].

⁵ The original Foreign Debtors these cases, along with the last three digits of each Debtor’s ACN number, are: Virgin Australia Holdings Ltd (226); Virgin Australia International Operations Pty Ltd (608); Virgin Australia International Holdings Pty Ltd (021); Virgin Australia International Airlines Pty Ltd (823); Virgin Australia Airlines (SE Asia) Pty Ltd (389); Virgin Australia Airlines Holdings Pty Ltd (675); VAH Newco No. 1 Pty Ltd (345); Tiger Airways Australia Pty Limited (008); Virgin Australia Airlines Pty Ltd (965); VA Borrower 2019 No. 1 Pty Ltd (059); VA Borrower 2019 No. 2 Pty Ltd (343); Virgin Tech Pty Ltd (879); Short Haul 2018 No. 1 Pty Ltd (831); Short Haul 2017 No. 1 (390); Short Haul 2017 No. 2 Pty Ltd (443); Short Haul 2017 No. 3 Pty Ltd (813); VBNC5 Pty Ltd (502); A.C.N. 098 904 262 Pty Ltd (262); Virgin Australia Regional Airlines Pty Ltd (662); Virgin Australia Holidays Pty Ltd (159); VB Ventures Pty Ltd (004); Virgin Australia Cargo Pty Ltd (838); VB Leaseco Pty Ltd (741); VA Hold Co Pty Ltd (157); VA Lease Co Pty Ltd (291); Virgin Australia 2013-1 Issuer Co Pty Ltd (326); 737 2012 No. 1 Pty. Ltd (859); 737 2012 No. 2 Pty Ltd (064); Short Haul 2016 No. 1 Pty Ltd (328); Short Haul 2016 No. 2 Pty Ltd (077); Short Haul 2014 No. 1 Pty Ltd (612); Short Haul 2014 No. 2 Pty Ltd (199); VA Regional Leaseco Pty Ltd (605); VB 800 2009 Pty Ltd (934); VB Leaseco No. 2 Pty Ltd (319); VB LH 2008 No. 1 Pty Ltd (354); VB LH 2008 No. 2 Pty Ltd (805); VB PDP 2010-11 Pty Ltd (266); and Tiger International Number 1 Pty Ltd (944) (all Subject to Deed of Company Arrangement).

3. On August 3, 2020, two additional members of the Virgin Australia Group – VAH Newco No. 2 Pty Ltd (at the time In Liquidation) and VB Investco Pty Ltd (at the time In Liquidation) – were placed in voluntary administration, and subsequently on August 13, 2020 filed chapter 15 petitions before this Court⁶ (the “Additional Foreign Debtors” and together with the Original Foreign Debtors, the “Foreign Debtors”). [Docket No. 25]. On September 18, 2020, this Court entered an order recognizing the Administrators as the Foreign Representatives of the Additional Foreign Debtors and recognizing the Australian Proceedings of the Additional Foreign Debtors as Foreign Main Proceedings. [Docket No. 32].

4. The Foreign Debtors commenced the Australian Proceedings following significant disruption and damage to their airline businesses resulting from the COVID-19 pandemic, the related restrictions on domestic and international travel, and the resulting reduction in capacity. *See* Original Decl. ¶ 8.

B. Overview of Australian Administration Proceedings and Powers of an Australian Administrator to Sell Assets

5. In Australia, voluntary administration proceedings commence with the appointment of one or more voluntary administrators, who act as the company’s agent with the full powers of its board of directors and officers. The powers of the company officers and directors are suspended and, subject to the overriding rights of a receiver (if appointed), only the administrator may deal with the company’s property during the administration. *See* Original Decl. ¶ 16. Additionally, any attempt to exercise control over the company’s property by a party other than the administrator or, if appointed, a receiver, is void (unless the administrator consented to such action or it was pursuant to a court order). *See Id.*

⁶ Case Nos. 20-11898 and 20-11899, respectively

6. The Australian administration process requires the occurrence of two separate meetings of creditors. The purpose of the first meeting is for creditors to determine whether (i) an advisory committee, which is referred to under the Corporations Act as a “committee of inspection” is required (and if so, to elect creditors to serve on the committee), and (ii) to remove the administrators and to appoint alternate administrators if any such alternative administrators have been proposed. *See* Original Decl. ¶ 23.

7. At the second meeting, administrators discuss their report on the company’s affairs which must be provided to creditors in advance of the meeting, and present their recommendations regarding the company’s future options. The Corporations Act provides for three options, (i) return of control of a company to directors, (ii) liquidation of a company, or (iii) execution of a deed of company arrangement addressing treatment of claims against a company (collectively, the “Exit Options”). *See* Recognition Decl. ¶ 9.

8. Section 435A of the Corporations Act provides that, after appointment, the administrators’ primary goals are to protect the company’s business, property, assets and affairs so that they may be administered in a way that: (i) maximize the chances of the company, or as much as possible of its business, continuing in existence; or (ii) if it is not possible for the company or its business to continue in existence, results in a better return for the company’s creditors and members than would result from an immediate winding up of the company. *See* Original Decl. ¶

17. Once appointed, the administrators are required to:

- (a) begin investigating the company’s business, property, affairs and financial circumstances as soon as is practicable after the administration begins;
- (b) form an opinion about which of the Exit Options is in the creditors’ interests; and
- (c) to convene the second meeting of creditors to “decide the company’s future.”

These actions are designed to best facilitate the administrators' main priorities, which are to secure the company's assets and ultimately achieve a better return for creditors than would have been achieved on an immediate winding up. *See* Original Decl. ¶ 18.

C. The Sale Process

9. Following their appointment, the Foreign Representatives commenced a public sale and recapitalization process (the "Sale Process"). The Sale Process was conducted in three phases over a two-month period. After receiving a number of non-binding indicative offers, the Foreign Representative shortlisted four parties to conduct further due diligence during phase two. Two of those parties were subsequently invited to undertake further detailed due diligence in phase three before submitting binding offers on June 22, 2020. After careful consideration of the offers received, and based on all the information available at that time, on June 26, 2020, the Foreign Representatives exercised their power of sale under the Corporations Act and signed binding transaction documents in the form of a sale and implementation deed and other ancillary documents (collectively, the "Sale Deed") for the sale of the business to Bain. Additional details regarding the Sale Process are set out in Section 8 of the Administrators' Report to Creditors dated August 25, 2020, as required by Section 75-225 of the Insolvency Practice Rules (Corporations) 2016 (including exhibits thereto, the "75-225 Report"), and which is attached as Exhibit A to the Recognition Declaration.

10. In connection with the Sale Deed, Bain agreed to provide A\$125 million in interim funding for the continued operation of the Foreign Debtors' business, and became responsible for all liabilities incurred by the Foreign Debtors in the operation of their business from and after July 1, 2020. 75-225 Report § 8.6. These funding and financial commitments were necessary to ensure continued operation of the Virgin Australia Group's business. *Id.*

11. The Sale Deed provided that Bain would purchase the Virgin Australia Group pursuant to an asset sale agreement unless creditors voted at the second meeting of creditors (the “Second Creditors Meeting”), to approve the Bain DOCAs which provided for the transaction via a compulsory transfer of the shares of Holdings (the “VAH Shares”) to Bain (or its nominee). The Bain DOCAs and the terms thereof are described in more detail in Section 9 of the 75-225 Report.

D. The 75-225 Report, the Second Creditors Meeting and the Resolutions

12. On August 25, 2020 in advance of the Second Creditors Meeting, the Administrators delivered to creditors the 75-225 Report along with the Notice of the Second Creditors Meeting convened pursuant to section 439A of the Corporations Act. Recognition Decl. ¶ 5. As with prior creditor circulars, the 75-225 Report was posted to a website the Administrators maintain specifically for the Australian Proceedings (the “Website”) ⁷. *See Id.*

13. In various creditor communications, the Administrators provided advance notice of the date they expected to post the 75-225 Report. The 75-225 Report was made available to creditors in compliance with the required statutory time frame under the Australian Insolvency Practice Rules (Corporations) 2016. *Id.*

14. The purpose of the 75-225 Report was to provide creditors with information regarding the Virgin Australia Group’s business, property, affairs and financial circumstances, communicate the Administrators’ opinion and recommendations, and to assist creditors in making an informed decision at the Second Creditors Meeting. 75-225 Report § 1.2. Specifically, the Administrators provided creditors with background and financial information about the Virgin Australia Group, details regarding the Sale Process, Bain’s offer

⁷ See <https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australia-holdings-limited-subsidiaries.html>

and the Bain DOCAs, the estimated returns to creditors under various scenarios, and the results of the Administrators’ investigations into any possible voidable transactions or transfers. *See generally* 75-225 Report.

15. The Second Creditors Meeting was held on Friday, September 4, 2020 at 10:00 a.m. Australian Eastern Standard Time. In light of logistical challenges and restrictions resulting from the ongoing COVID-19 pandemic, the Administrators held the Second Creditors Meeting virtually and conducted creditor voting on the proposed resolutions regarding the Bain DOCAs using an online voting platform. Recognition Decl. ¶ 7; 75-225 Report §§ 1.8-14.

16. The Bain DOCAs include one “Primary DOCA”, one “International Group DOCA”, and eight separate “Subsidiary DOCAs”. 75-225 Report § 9.2. The Foreign Debtors are each the subject of a specific Bain DOCA based on, among other things, their lines of business, identity of assets and liabilities, and commonality of certain liabilities. The below chart sets forth the separate Bain DOCAs and the relevant Foreign Debtors included therein:

Primary DOCA	<ul style="list-style-type: none"> • Virgin Australia Holdings Ltd ACN 100 686 226; • Virgin Australia Airlines Holdings Pty Ltd ACN 093 924 675; • VAH Newco No.1 Pty Ltd ACN 160 881 345; • Tiger Airways Australia Pty Limited ACN 124 369 008; • Virgin Australia Airlines Pty Ltd ACN 090 670 965; • Virgin Tech Pty Ltd ACN 101 808 879; • A.C.N. 098 904 262 Pty Ltd ACN 098 904 262; • Virgin Australia Regional Airlines Pty Ltd ACN 008 997 662; • Virgin Australia Holidays Pty Ltd ACN 118 552 159; • VB Ventures Pty Ltd ACN 125 139 004; • Virgin Australia Cargo Pty Ltd ACN 600 667 838; • VB Leaseco Pty Ltd ACN 134 268 741; • VB Investco Pty Ltd ACN 101 961 095; • VAH Newco No.2 Pty Ltd ACN 160 881 354; • Virgin Australia International Operations Pty Ltd ACN 155 859 608; • VBNC5 Pty Ltd ACN 119 691 502;
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	<ul style="list-style-type: none"> • Short Haul 2017 No. 1 Pty Ltd ACN 617 644 390; • VB PDP 2010-11 Pty Ltd ACN 140 818 266; • VB LH 2008 No. 1 Pty Ltd ACN 134 280 354; • VB LH 2008 No. 2 Pty Ltd ACN 134 288 805; • 737 2012 No.1 Pty. Ltd. ACN 154 201 859; • 737 2012 No.2 Pty. Ltd. ACN 154 225 064; • VA Regional Leaseco Pty Ltd ACN 127 491 605; • VA Hold Co Pty Ltd ACN 165 507 157; • Virgin Australia 2013-1 Issuer Co Pty Ltd ACN 165 507 326; • VA Lease Co Pty Ltd ACN 165 507 291; • Short Haul 2016 No. 1 Pty Ltd ACN 612 766 328; and • Short Haul 2016 No. 2 Pty Ltd ACN 612 796 077 (each of the foregoing now Subject to Deed of Company Arrangement).
International Group DOCA	<ul style="list-style-type: none"> • Virgin Australia International Holdings Pty Ltd ACN 155 860 021; • Virgin Australia International Airlines Pty Ltd ACN 125 580 823; • Tiger International Number1 Pty Ltd ACN 606 131 944; and • Virgin Australia Airlines (SE Asia) Pty Ltd ACN 097 892 389 (each of the foregoing now Subject to Deed of Company Arrangement).
Subsidiary DOCA 1	<ul style="list-style-type: none"> • Short Haul 2014 No. 1 Pty Ltd ACN 600 809 612 and • Short Haul 2014 No. 2 Pty Ltd ACN 600 878 199 (each of the foregoing now Subject to Deed of Company Arrangement).
Subsidiary DOCA 2	<ul style="list-style-type: none"> • Short Haul 2017 No. 2 Pty Ltd ACN 617 644 443 (now Subject to Deed of Company Arrangement)
Subsidiary DOCA 3	<ul style="list-style-type: none"> • Short Haul 2018 No. 1 Pty Ltd ACN 622 014 831 (now Subject to Deed of Company Arrangement)
Subsidiary DOCA 4	<ul style="list-style-type: none"> • VA Borrower 2019 No. 1 Pty Ltd ACN 633 241 059 (now Subject to Deed of Company Arrangement)
Subsidiary DOCA 5	<ul style="list-style-type: none"> • VA Borrower 2019 No. 2 Pty Ltd ACN 637 371 343 (now Subject to Deed of Company Arrangement)
Subsidiary DOCA 6	<ul style="list-style-type: none"> • VB Leaseco No 2 Pty Ltd ACN 142 533 319 (now Subject to Deed of Company Arrangement)
Subsidiary DOCA 7	<ul style="list-style-type: none"> • VB 800 2009 Pty Ltd ACN 135 488 934 (now Subject to Deed of Company Arrangement)
Subsidiary DOCA 8	<ul style="list-style-type: none"> • Short Haul 2017 No. 3 Pty. Ltd. ACN 622 014 813 (now Subject to Deed of Company Arrangement)

17. In order to be approved, creditors of the respective companies for which a particular deed of company arrangement was proposed, representing a majority in number and majority in value of all claims voting at the virtual second meeting of creditors (or attending

by proxy) needed to vote in favor of the deed of company arrangement. Creditors of each company the subject of a particular deed of company arrangement vote as a single class.

Recognition Decl. ¶ 8.

18. In connection with the Second Creditors Meeting, creditors of the relevant Foreign Debtors had the opportunity to vote for one of following options for the future of the Foreign Debtors:

- (a) that the companies under administration execute the relevant Bain DOCA;
- (b) that the administration end with control of the relevant company or companies reverting back to the companies' directors; or
- (c) that the relevant company or companies be wound up (and ultimately liquidated).

Recognition Decl. ¶ 9.

19. Creditors cast 7,302 votes representing A\$9,229,508,689⁸ of claims against the Foreign Debtors at the Second Creditors Meeting in respect of primary and guarantee claims. Each of the Bain DOCAs was approved either unanimously or by an overwhelming majority by both number and value. Recognition Decl. ¶ 10.

20. Having obtained creditor approval at the Second Creditors Meeting, the Administrators, acting on behalf of the Foreign Debtors, and Bain executed the Bain DOCAs on September 25, 2020. The two main conditions to completion, or effectiveness of the Bain DOCAs are the transfer of the VAH Shares to Bain (or its nominee) (the "Share Transfer") and entry by this Court of an order recognizing the Bain DOCAs. Recognition Decl. ¶ 11.

⁸ This is the total amount of claims against the Foreign Debtors held by creditors that voted at the Second Creditors Meeting. This amount includes some duplication as a number of claims were entitled to vote on more than one Bain DOCA. More specifically, if a creditor held a single claim in the amount of \$100 against two Foreign Debtors, and one of those Foreign Debtors was included in Primary DOCA while the other Foreign Debtor was included in the International DOCA, \$200 is included in the total above.

E. The 444GA Application

21. The Primary DOCA provides for the Share Transfer; however, a deed of company arrangement, on its own, cannot effect a share transfer. Instead, the Corporations Act provides that deed administrators can seek court approval of such transfers. Accordingly, the Primary DOCA requires the Administrators to make an application to the Federal Court of Australia (the “Australian Court”) seeking leave under section 444GA of the Corporations Act (the “444GA Application”) to effect the Share Transfer. 75-225 Report § 9.4.

22. Section 444GA of the Corporations Act provides that a deed administrator may transfer shares in the company to which he or she is appointed with either the written consent of the owner of the shares or the leave of the court. The court will only grant leave if it is satisfied that the transfer of shares will not unfairly prejudice the interests of shareholders of the company. *Id.* The Administrators have engaged an independent expert to value the VAH Shares. The Australian corporate regulator (ASIC) examines the proposed transaction and shareholders, creditors, and other interested parties will have the opportunity to be heard at the hearing on the 444GA Application (the “444GA Hearing”).

23. The Administrators are hopeful that the court will approve the Share Transfer given the lack of equity value in the VAH Shares as evidenced by the independent expert’s report and the fact that creditors of the Virgin Australia Group are not being paid in full on account of their claims. As set out in the 444GA Application, the Foreign Representatives intend to send an explanatory memorandum to shareholders that includes the independent expert’s report. Recognition Decl. ¶ 11.

24. The Administrators filed the 444GA Application on October 20, 2020 with the Australian Court and the 444GA Hearing has been set for November 10, 2020. Following the 444GA Hearing, the Foreign Representatives will file a supplemental declaration regarding

the outcome of the hearing. Recognition Decl. ¶ 11. To the extent that the Australian Court enters an order granting the 444GA Application (the “444GA Order”), this Recognition Motion seeks recognition of such order.

25. The Sale Deed provides that if the Australian Court does not grant the 444GA Application and authorize the Share Transfer, the Bain DOCAs will be terminated and the assets of each Foreign Debtor will be sold to Bain pursuant to the terms of an agreed asset sale agreement. 75-225 Report § 9.4.

F. Effect of DOCA Execution and Completion

26. Upon execution of the Bain DOCAs, the Administrators became Deed Administrators of each of the Bain DOCAs and continue to operate the Foreign Debtors’ business to allow for the satisfaction of certain conditions precedent to completion of the Bain DOCAs. The powers of the directors of the Foreign Debtors remain suspended pending completion of the Bain DOCAs. Any reference to Foreign Debtors includes the Administrators in their roles as both Voluntary Administrators and Deed Administrators as applicable.

27. Completion of all of the Bain DOCAs will occur simultaneously (such occurrence, “Completion”) and have two key effects. 75-225 Report § 9.3. First, upon Completion, a creditors’ trust (the “Creditors’ Trust”) will be established that is comprised of various pools of funds, to which the creditors of the separate Bain DOCAs will have recourse based on their existing claims. The Creditors’ Trust and various pools of funds thereunder are discussed in more detail in section 10.2.1 of the 75-225 Report.

28. Second, upon Completion and establishment of the Creditors’ Trust, all claims held by creditors of the Foreign Debtors (other than excluded claims) will be released. 75-225 Report § 9.3.2. Creditors with eligible claims will become beneficiaries of the Creditors’

Trust, and will be paid a dividend from the relevant pool. *Id.* § 9.3.3. Each excluded claim identified in the Primary DOCA will not be released, and will continue to be a liability of the applicable Foreign Debtor post-Completion. *Id.* § 9.5.

JURISDICTION AND VENUE

29. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (2)(A), (O) and (P), and the Court may enter a final order in respect of it under Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. § 1410.

STATUTORY BASIS FOR RELIEF REQUESTED

30. The bases for the relief requested herein are sections 105(a), 1507, 1509(b)(2)-(3), 1521(a), and 1525(a) under chapters 11 and 15 of title 11 of the United States Code (the Bankruptcy Code); rules 2015(d) and 7001 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules); and rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the Local Rules).

RELIEF REQUESTED

31. By this Recognition Motion, the Foreign Representatives request that the Court enter an order, substantially in the form of the Proposed Order, pursuant to Bankruptcy Code §§ 105(a), 1507, 1509(b)(2)-(3), 1521(a), and 1525(a):

- a. providing that, as of Completion, the Bain DOCAs, the 444GA Order, and all other agreements related thereto are recognized, granted comity and given full force and effect and are binding upon and enforceable against all entities in accordance with their terms, and such terms shall be binding upon and fully enforceable against Creditors⁹ whether or not they have actually agreed to be bound by the Bain DOCAs or have participated in the Australian Proceedings;

⁹ Capitalized terms used in this paragraph 31 that are not defined in this Recognition Motion have the meaning ascribed to them in the Bain DOCAs, as applicable. For purposes of this paragraph 31, as set forth in the Bain DOCAs, the term (1) “Deed Company” means a Foreign Debtor; (2) “Creditor” means a person who has a Claim; and (3) “Claim” means a debt payable by, and all claims against, a Deed Company (present or future, certain or contingent,

- b. declaring unenforceable in the United States, as of Completion, any judgment that purports to determine the liability of any entity released pursuant to the Bain DOCAs with respect to any debt released, extinguished, cancelled, discharged, assigned or restructured under the Bain DOCAs or as a result of Australian law relating to the Bain DOCAs, in each case to the extent inconsistent with the Bain DOCAs, the 444GA Order or Australian law;
- c. subject to clauses 6.3(b), 7 and 9 of the Bain DOCAs, which generally limit the extent to which the Bain DOCAs apply to Secured Creditors and Owners, and subject to clause 8 of the Bain DOCAs, which relates to Claims covered by insurance, prohibiting, in relation to a Creditor's Claim:
- (1) making or proceeding with an application for an order to wind up a Deed Company or for the appointment of a provisional liquidator or a court appointed receiver to any of the Deed Companies and their property;
 - (2) instituting, reviving, or continuing any action, suit, arbitration, mediation or proceeding against a Deed Company, or in relation to the property of a Deed Company;
 - (3) instituting, reviving, or continuing with any Enforcement Process against the property of a Deed Company;
 - (4) taking any action whatsoever to seek to recover any part of its Claim;
 - (5) exercising any right of set off or defense, cross claim, or cross action to which a Creditor would not have been entitled had the relevant Deed Company been wound up on the Appointment Date;
 - (6) commencing or taking any further step in any arbitration against a Deed Company or to which a Deed Company is a party in relation to any matter arising or occurring before the Appointment Date; or
 - (7) otherwise enforcing any right it may have or acquire,
- except to the extent of that Creditor's entitlement, if any, to participate in the Trust Fund in accordance with the terms of the Trust Deed.

ascertained or sounding only in damages), being a debt or claim that would be admissible to proof against a Deed Company in accordance with Division 6 of Part 5.6 of the Corporations Act, if the Deed Company had been wound up and the winding up is taken to have commenced on the Appointment Date, and any fine or penalty to which a Deed Company is subject or liable to be subject arising out of circumstances occurring prior to the Appointment Date that would be so admissible but for the operation of section 553B of the Corporations Act. Furthermore, the term "Claim" (a) includes a Claim of a Secured Creditor; and (b) includes a Claim arising under the DOCG (as defined in the Primary DOCA and the International Group DOCA), including, for the avoidance of doubt, any Claim against a Deed Company under the DOCG in respect of a Liability incurred by another party to the DOCG after the Appointment Date; and (c) does not include an Excluded Claim.

- d. providing that all Claims are extinguished and released as set forth in clause 6.4 of the Bain DOCAs, subject to paragraph 31(e) hereof;
- e. providing that upon all Claims being released as set forth in clause 6.4 of the Bain DOCAs, and subject to paragraph 31(f) hereof:
 - (1) each Trust Creditor who had a Claim, will be entitled to make a claim against the Trust Fund, in accordance with the Trust Deed, which is equal in amount to their released Claim; and
 - (2) each FFC Creditor will be entitled to a Future Flight Credit in respect of their released FFC Claim.
- f. prohibiting a Creditor from making a claim against, participating in, or receiving any distribution from, the Trust Fund in respect of a Non-Participating Claim;
- g. permanently enjoining all entities subject to this Court's jurisdiction from commencing or taking any action, (i) that is inconsistent with, in contravention of, or would interfere with or impede the administration, implementation, and/or consummation of the Bain DOCAs, the 444GA Order, or the terms of the Order or (ii) to obtain possession of, exercise control over, or assert claims or debts that have been released, extinguished, discharged, cancelled or novated under the Bain DOCAs;
- h. providing that no action taken by the Foreign Representatives in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Bain DOCAs, the 444GA Order or any order entered in or in respect of the Chapter 15 Proceedings (including any adversary proceedings or contested matters) will be deemed to constitute a waiver of any immunity afforded the Foreign Representatives including pursuant to Bankruptcy Code § 1510;
- i. authorizing the Foreign Representatives and the Foreign Debtors to take all actions necessary to effectuate the relief granted pursuant to the Court's Order;
- j. retaining jurisdiction with respect to the effect, enforcement, amendment or modification of the Court's Order;
- k. declaring that (i) the Order shall be effective immediately and enforceable upon entry; (ii) the Foreign Representatives shall not be subject to any stay of the implementation, enforcement, or realization of the relief granted in the Order; and (iii) the Order shall constitute a final order within the meaning of 28 U.S.C. § 158(a);
- l. finding that due, adequate, and sufficient notice of this Recognition Motion, the relief requested by this Recognition Motion, and the hearing on this Recognition Motion has been given to all Creditors and other interested parties, which notice is deemed adequate for all purposes, and no other or further notice need be given;

- m. declaring that serving a copy of the Order within seven business days of its entry, by facsimile, electronic mail, first class mail, or overnight express delivery, upon all Notice Parties listed in this Recognition Motion, and posting it to the Website shall constitute good and sufficient service and adequate notice for all purposes; and
- n. granting such other and further relief as the Court deems just and proper (collectively, the “Relief Requested”).

ARGUMENT

I. The Relief Requested Is The Type of Relief Contemplated by Chapter 15.

A. The Relief Requested Constitutes Necessary and Appropriate Cooperation with the Foreign Proceedings and the Foreign Representatives under Section 1525(a).

32. The Foreign Representatives respectfully submit that the Relief Requested is necessary to complete the successful restructuring of the Foreign Debtors, and to maximize recoveries by unsecured creditors. The Relief Requested is also consistent with the requirements and purposes of the Bankruptcy Code. In particular, Bankruptcy Code § 1525(a) provides that bankruptcy courts “shall cooperate to the maximum extent possible with a foreign court or a foreign representative.” *See* 11 U.S.C. § 1525 (a). Bankruptcy Code § 1509(b) similarly provides that “[i]f the court grants recognition under section 1517, and subject to any limitations that the court may impose consistent with the policy of this chapter . . . a court in the United States shall grant comity and cooperation to the foreign representative.” *See* 11 U.S.C. § 1525 (a). Granting the Relief Requested will support the principles of coordination and cooperation mandated by Bankruptcy Code §§ 1525(a) and 1509(b), and will promote the fair and efficient administration of claims against the Foreign Debtors in the Australian Proceedings.

B. The Relief Requested Is Consistent with the Goals of Chapter 15 and Is Authorized Under Bankruptcy Code §§ 1521, 1507, and 105(a).

33. The Relief Requested constitutes appropriate relief and additional assistance

needed to implement the restructuring result of the Foreign Proceedings. There are three other statutory bases for the Relief Requested. First, Bankruptcy Code § 1521 provides that, upon recognition of a foreign proceeding and at the request of a foreign representative, the Court may grant “any appropriate relief” necessary to effectuate the purpose of chapter 15 and to protect the assets of the debtor or the interests of the creditors, including injunctive relief and “any additional relief that may be available to a trustee.” 11 U.S.C. § 1521(a). The scope of the discretionary relief available under Bankruptcy Code §1521(a) is “exceedingly broad,” as the Bankruptcy Code permits the granting of “any appropriate relief” to effectuate the purposes of chapter 15 and to protect the debtor’s assets and the interests of creditors. *In re Avanti Commc’ns Grp. PLC*, 582 B.R. 603, 612 (Bankr. S.D.N.Y. 2018). As described in I.D below, relief is available under Bankruptcy Code § 1521(a) if the interests of “the creditors and other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a).

34. The Court may also grant discretionary relief pursuant to Bankruptcy Code § 1507 in order to provide “additional assistance” to a foreign representative. 11 U.S.C. § 1507(a). The legislative history states that § 1507 provides authority for “additional relief” beyond that permitted under § 1521. H.R. Rep. No. 109-31, pt. 1, at 109 (2005). As described in I.D below, courts grant additional assistance under Bankruptcy Code § 1507(a) when doing so is “consistent with the principles of comity”. 11 U.S.C. § 1507(b). Courts in this district have concluded they are not required to analyze a request for an enforcement order under Bankruptcy Code § 1507 when the relief requested is explicitly provided for, and granted, under Bankruptcy Code § 1521. *See In re Rede Energia S.A.*, 515 B.R. 69, 95 n. 46 (Bankr. S.D.N.Y. 2014) (citing *Atlas Shipping A/S*, 404 B.R. 726, 741 (Bankr. S.D.N.Y. 2009)). Regardless, the Relief Requested herein is also available as “additional assistance” to the extent that Bankruptcy Code § 1507 applies.

35. Finally, section 105(a) of the Bankruptcy Code provides that the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Thus, the Court may also issue the Relief Requested under Bankruptcy Code § 105 of the Code.

C. Recognition of the Bain DOCAs and the 444GA Order Sufficiently Protects the Interests of Creditors.

36. Bankruptcy Code § 1522 provides that relief under Bankruptcy Code § 1521(a) – including injunctive relief – is appropriate where the interests of “the creditors and other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a). Although the Bankruptcy Code does not define “sufficient protection,” the legislative history indicates that additional relief is only available where U.S. creditors’ interests are protected. H.R. Rep. No. 109-31, pt. 1, at 116 (2005) (stating that relief should not be granted where “it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors”); *see also In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 82 (Bankr. S.D.N.Y. 2011) (holding that, pursuant to Bankruptcy Code § 1522, the court is “required to ascertain that the interests of U.S. creditors are “sufficiently protected” and is “empowered to effectuate other procedures for the protection of U.S. creditors”).

37. Courts considering this issue generally focus on the procedural fairness of the foreign proceeding, and whether U.S. creditors are entitled to equal treatment in the foreign proceeding. *See, e.g., In re Daeho Int’l Shipping Co., Ltd.*, 543 B.R. 47, 54 (Bankr. S.D.N.Y. 2015) (holding that U.S. creditors’ interests were sufficiently protected where they were entitled to file claims in a Korean proceeding, and to equal treatment with unsecured creditors). Courts may also balance the relief requested by a foreign representative against the creditors’ and parties’ respective interests. *In re AJW Offshore, Ltd.*, 488 B.R. 551, 559 (Bankr. E.D.N.Y. 2013).

38. Here, relief under Bankruptcy Code § 1521 is appropriate because creditors and other parties are sufficiently protected under both analyses. First, U.S. and non-U.S. creditors are entitled to equal treatment under the Bain DOCAs, and have received equal treatment throughout the Australian Proceedings. For example, U.S. creditors were entitled to file claims in the Australian Proceedings and to vote on the resolution proposed in connection with the Second Creditors' Meeting, and they will be entitled to seek recourse from the Creditors' Trust under the same criteria that apply to all creditors. Furthermore, in addition to U.S. creditor representation on the Committee of Inspection, the Administrators established a Noteholder Consultative Committee, recognizing the importance of the Virgin Australia noteholder creditors, including the holders of the U.S. notes. Following the release of the 75-225 Report, the Administrators also conducted a specific conference call for holders of the U.S. notes during the U.S. day to provide a summary of the 75-225 Report as well as an explanation of key dates and mechanics for voting on the proposed resolutions. Recognition Decl. ¶ 5. In addition, the Administrators retained the undersigned counsel to serve as special liaison to U.S. noteholders and creditors, in part, to ensure U.S. creditors could access information, and participate in the Australian Proceedings without undue inconvenience. *See* Recognition Decl. ¶ 15. Accordingly, the Relief Requested clearly does not injure U.S. creditors, let alone injure them unjustifiably.

39. The Relief Requested also satisfies the balancing test employed by some courts. The Bain DOCAs provide for a share sale structure that results in increased recoveries to all unsecured creditors. Entry of an order granting the Relief Requested is a condition precedent to Completion. By ensuring Completion occurs and that the Bain DOCAs are enforceable in the United States, the Relief Requested clearly benefits creditors because it protects their access to increased recoveries. On the other hand, if Completion does not occur because the

Relief Requested is not granted, the Administrators are obligated to proceed with an asset sale transaction that will result in reduced recoveries to unsecured creditors. *See* Recognition Decl. ¶ 6; 75-225 Report § 8.6. Furthermore, granting the Relief Requested will not affect equity holders' interests because the VAH Shares have no value. *See* Recognition Decl. ¶ 11. Accordingly, the benefits to creditors and the Foreign Debtors resulting from the Relief Requested outweigh any alleged interests of creditors, equity holders or other parties that might otherwise seek to attack the Bain DOCA or the 444GA Order in the United States.

40. Because the Relief Requested provides sufficient protection to U.S. and non-U.S. creditors as a whole and is necessary to the restructuring of the Foreign Debtors, the Court should find that relief under § 1521 is appropriate in these chapter 15 cases.

D. The Relief Requested Satisfies Section 1507 of the Bankruptcy Code.

41. Bankruptcy Code § 1507(b) sets forth the factors that the Court must consider when determining whether to provide “additional assistance” to a foreign representative. Consistent with the principles of comity, the Court must consider whether the additional assistance will reasonably assure (1) just treatment of all creditors and equity holders, (2) protection of U.S. creditors against prejudice and inconvenience of processing claims in the foreign proceeding, (3) prevention of preferential or fraudulent disposition of property, (4) distribution of proceeds of the debtor's property substantially in accordance with the Bankruptcy Code, and (5) if appropriate, provision of an opportunity for a fresh start for the debtor that such foreign proceeding concerns. *See* 11 U.S.C. § 1507(b); 8 Collier on Bankruptcy ¶ 1507.02 (16th 2020).

42. As described in I.B above, the Court is not required to determine whether the Relief Requested is available under Bankruptcy Code § 1507(b), given it is available, and may be granted under, Bankruptcy Code § 1521. However, to the extent Bankruptcy Code § 1507(b) does apply, the Relief Requested satisfies each of the enumerated requirements.

43. First, the Relief Requested reasonably assures “just treatment of all holders of claims against or interests in the debtor’s property.” 11 U.S.C. § 1507(b)(1). Courts have held that this prong is satisfied where the foreign insolvency law provides “a comprehensive procedure for the orderly and equitable distribution of [the debtor’s] assets among all its creditors.” *In re Rede Energia*, 515 B.R. at 71. Australian voluntary administration proceedings and deeds of company arrangement clearly meet this standard. In fact, a deed of company arrangement is just that – a mechanism for resolving creditor claims in an orderly and equitable manner. *See* Recognition Decl. ¶ 13.

44. Second, Bankruptcy Code § 1507(b)(2) requires the Court to consider whether the requested relief will reasonably assure “protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding.” This factor is satisfied where creditors are given adequate notice of timing and procedures for filing claims, and such procedure does not create any additional burdens for a foreign creditor to file a claim. *See, e.g., Bank of New York v. Treco (In re Treco)*, 240 F.3d 148, 158 (2d Cir. 2001). The Australian Proceedings do not differentiate creditors based on nationality or jurisdiction; all creditors are entitled to participate in the Australian Proceedings and are classified together based on a similarity of their legal rights against the Foreign Debtors rather than their Country of origin. *See* Recognition Decl. ¶ 15. The Foreign Representatives also implemented voting procedures for use at the Second Creditors’ Meeting to ensure that any creditor with claims against a Foreign Debtor could virtually attend such meeting, ask questions, and vote in a manner consistent with their claim, including where relevant, the voting rights set forth in the applicable debt documents. *See* 75-225 Report § 14; Circular to Creditors, *Voting in Halo – How To Guide*, August 25, 2020.¹⁰

¹⁰ Available at <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/finance/insolvency/virgin/au-fa-virgin-voting-halo-250820.pdf>

45. Third, the Court must consider whether the additional assistance will assure “prevention of preferential or fraudulent dispositions of property of the debtor.” 11 U.S.C. § 1507(b)(3). The key purpose of the Relief Requested is to prevent creditors (or equity holders, where applicable) from seeking to enhance their recoveries by proceeding in the United States against the Foreign Debtors or their property in respect of debts or claims that were discharged in accordance with the Bain DOCAs and the 444GA Order upon Completion.

46. Fourth, the Court must consider whether the Relief Requested will assure “distribution of proceeds of the debtor’s property substantially in accordance with the order prescribed [in the Bankruptcy Code].” 11 U.S.C. § 1507(b)(4). To be clear, the distribution need not replicate the priority order established by the Bankruptcy Code; rather, it should be similar to such priority order and have a reasonable basis. *See In re Rede Energia*, 515 B.R. at 97. Here, priority in right of payment and in distribution of proceeds in the Australian Proceedings, and under the Bain DOCAs and 444GA Order, is substantially similar to the manner in which such rights and distributions would be made under Bankruptcy Code. Specifically, the Australian Proceedings preserve the priority ranking of secured creditors relative to unsecured creditors, and unsecured creditors relative to equity holders. *See 75-225 Report* § 3.4.2.2.

47. In light of the foregoing, the Court may also grant the Relief Requested as an extension of comity to the Foreign Representatives and the Australian Proceedings in accordance with Bankruptcy Code § 1507(b).

E. The Relief Requested Meets the Standard for Injunctive Relief.

48. As detailed above, the Relief Requested is clearly appropriate under Bankruptcy Code § 1507. Bankruptcy Code § 1522 does not prohibit the Relief Requested under Bankruptcy Code § 1521. However, the Court must still consider whether the standard for granting relief under Bankruptcy Code § 1521 are satisfied under the present circumstances. Under Bankruptcy Code

§ 1521(e), the standards for injunctive relief apply to certain relief available under § 1521. Permanent injunctive relief – such as the relief requested herein – is appropriate where the movant can show a likelihood of irreparable harm. This Court has found that a debtor or its estate would suffer irreparable harm where the orderly determination of claims and the fair distribution of assets are disrupted. *See, e.g., Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713-14 (2d Cir. 1987) (“The equitable and orderly distribution of a debtor’s property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail.”); *In re Garcia Avila*, 296 B.R. 95, 114 (Bankr. S.D.N.Y. 2003) (“[I]rreparable harm is present when the failure to enjoin local actions will disrupt the orderly reconciliation of claims and the fair distribution of assets in a single, centralized forum[.]”); *In re MMG LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (“[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of the other creditors.”).

49. The United States Supreme Court, the United States Court of Appeals for the Second Circuit, and this Court have all recognized a federal court’s authority to grant permanent injunctive relief to enforce foreign plans and discharges. *See, e.g. Canada S.R. Co. v Gebhard*, 109 U.S. 527, 539 (1883) (concluding that actions brought in the United States by plaintiff bondholders who did not participate in the Canadian insolvency proceedings of the bond issuer could not be maintained, even though the bonds were payable in New York); *Argo Fund Ltd. v. Bd. of Dirs. of Telecom Arg., S.A. (In re Bd. of Dirs. of Telecom Arg., S.A.)*, 528 F.3d 162, 175-75 (2d Cir. 2008) (affirming bankruptcy court decision granting full force and effect to Argentine plan); *In re Sino-Forest Corp.*, 501 B.R. 655, 666 (Bankr. S.D.N.Y. 2013) (granting permanent

injunctive relief to enforce Canadian plan, including third party releases); *In re Metcalfe & Mansfield*, 421 B.R. 685, 700 (Bankr. S.D.N.Y. 2010) (same).¹¹

50. While insolvency proceedings in many jurisdictions conclude with the entry of a court order discharging claims against the debtor, bankruptcy courts' authority to grant injunctive relief under Bankruptcy Code § 1521 is not limited to circumstances where a foreign court has entered a discharge order. To the contrary, bankruptcy courts have broad discretion to grant injunctive relief in order to "further the purposes of chapter 15 and protect the debtor's assets and the interests of creditors." *In re Atlas Shipping A/S*, 404 B.R. 726, 739 (Bankr. S.D.N.Y. 2009). Another court in the Second Circuit has granted permanent injunctive relief to give full force and effect to foreign proceedings, or actions taken in foreign proceedings including the discharge of claims against a foreign debtor where the discharge is a result of a deed of company arrangement and not a court order. *See In re Maritimo Offshore Pty. Ltd.*, Case No. 16-31613 (Bankr. D. Conn. Feb. 14, 2019) (entering an order giving full force and effect to a deed of company arrangement under Australian law and holding that "[c]reditors of Maritimo shall not take actions inconsistent with or contrary to the DOCA and/or the Claims Process against Maritimo"). Other courts have granted recognition of proceedings that do not require a court order in accordance with the insolvency laws governing the foreign main proceedings. *See In re Betcorp Ltd.*, 400 B.R. 266, 295 (Bankr. D. Nev. 2009) (holding that a voluntary winding up, which does not require court approval or oversight constitutes a foreign main proceeding).

¹¹ This Court has also granted injunctive relief in other chapter 15 cases without reported decisions. *See, e.g., In re Quintas Ltd.*, No. 18-12739 (MH) (Bankr. S.D.N.Y. Oct. 11, 2018) [ECF No. 14] (granting injunction to enforce Australian scheme of arrangement); *In re Boart Longyear Ltd.*, No. 17-11156 (Bankr. S.D.N.Y. Aug. 30, 2017) [ECF No. 45] (granting injunction to enforce Australian scheme of arrangement); *In re Pac. Expl. & Prod. Corp.*, No. 16-11189 (JLG) (Bankr. S.D.N.Y. Oct. 3, 2016) [ECF No. 31] (granting injunction enforcing scheme of arrangement under Canadian law); *In re Winsway Enters. Holdings Ltd.*, No. 16-10833 (MG) (Bankr. S.D.N.Y. June 16, 2016) [ECF No. 22] (granting injunction enforcing scheme of arrangement under Hong Kong law).

51. The Bain DOCAs are the result of a competitive sale process and an overwhelmingly supportive creditor vote. If the Bain DOCAs and 444GA Order are not given permanent effect, creditors and other parties could bring claims in the United States against the Foreign Debtors or their respective property in the United States frustrating the Foreign Debtors' efforts to complete the Bain DOCAs which are the result of the Australian Proceedings thus jeopardizing creditor recoveries. Accordingly, the Relief Requested is necessary to protect the Foreign Debtors and their creditors as a whole from irreparable harm, and to facilitate a creditor-approved outcome of the Australian Proceedings.

F. Recognition of the Bain DOCAs and the 444GA Order Is Not Contrary to Public Policy.

52. While bankruptcy courts may refuse to grant relief otherwise available under chapter 15 if the action “would be manifestly contrary to the public policy of the United States”, 11 U.S.C. § 1506, courts have construed this exception narrowly. *See In re Ephedra Prods. Liab. Litig.*, 349 B.R. 333, 336 (S.D.N.Y. 2006) (ruling that the public policy exception embodied in section 1506 should be “narrowly interpreted, as the word ‘manifestly’ in international usage restricts the public policy exception to the most fundamental policies of the United States”); *Armada (Singapore) Pte Ltd. v. Shah (In re Ashapura Minechem Ltd.)*, 480 B.R. 129, 139 (S.D.N.Y. 2012) (concluding that granting recognition was not within the “narrow” public policy exception despite the absence of a formal mechanism for unsecured creditors to participate in the foreign proceeding); *In re ABC Learning Ctrs.*, 445 B.R. 318, 335 (Bankr. D. Del. 2010), *aff'd*, 728 F.3d 301 (3d Cir. 2013) (“This exception is to be narrowly construed.”). This Court has held that the relevant inquiry in determining whether the requested relief is contrary to public policy is whether or not it violates “fundamental standards” of “procedural fairness”— the same inquiry

made to determine whether creditors and other parties in interest are sufficiently protected, as discussed above. *See In re Metcalfe*, 421 B.R. at 697.

53. Given the limited application of Bankruptcy Code § 1506 generally and the aforementioned procedures used to ensure fairness to all creditors and afford them an opportunity to be heard, all in accordance with the procedures, requirements and powers of the Corporations Act, the Relief Requested is not in any way contrary to public policy.

II. Other Courts in the Second Circuit Have Entered Orders Enforcing Deeds of Company Arrangement

54. Bankruptcy courts in the Second Circuit and Eleventh Circuit granted similar relief, entering orders that give full force and effect to deeds of company arrangement executed in connection with Australian insolvency proceedings. *See In re Maritimo Offshore Pty. Ltd.*, Case No. 16-31613 (Bankr. D. Conn. Feb. 14, 2019); *In re Riviera Marine (Int.) Pty Ltd.*, Case No. 10-21722 (Bankr. M.D. Fla. Oct. 8, 2010). In *In re Maritimo Offshore Pty. Ltd.*, Case No. 16-31613 (Bankr. D. Conn. Oct. 21, 2016), demonstrates the protection provided by U.S. bankruptcy court orders enforcing a deed of company arrangement. The foreign debtors in that case were Australian yacht brokers and manufacturers. They filed chapter 15 petitions on October 21, 2016 in the United States Bankruptcy Court for the District of Connecticut, and obtained recognition of their Australian voluntary administration proceedings shortly thereafter. [*Id.* at Docket No. 37]. The *Maritimo* restructuring was consummated via a deed of company arrangement, and the voluntary administration proceedings concluded with the filing of a Notice of End of Administration on May 9, 2018. *Id.* *See Dubois, et al. v. Maritmo Offshore Pty Ltd., et al.*, Case No. 15-01114 (JAM) (D. Conn. Sept. 26, 2019) [Docket Nos. 188 & 106]. The foreign debtors in *Maritimo* obtained an order from the bankruptcy court giving full force and effect to the deed of company arrangement on February 14, 2019. [*Id.* at Docket No. 116].

55. Certain of the *Maritimo* customers filed claims against the foreign debtors in the United States District Court for the District of Connecticut prior to commencement of the chapter 15 cases, asserting claims for breach of contract, misrepresentation, negligent misrepresentation, breach of warranties, negligence and related actions under various state statutes, related to the purchase of a yacht and related customization services from the defendants. *Dubois, et al. v. Maritimo Offshore Pty Ltd., et al.*, Case No. 15-01114 (JAM) (D. Conn. Sept. 26, 2019) [Docket No. 188]. The district court subsequently dismissed the customers' claims against the foreign debtors because the bankruptcy court's order gave full force and effect to the DOCAs, which resolved all creditor claims against the foreign debtors. *Id.*

SATISFACTION OF LOCAL RULE 9013-1(A)

56. The Recognition Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to the Recognition Motion. Accordingly, the Foreign Representatives submit that the Recognition Motion satisfies Local Rule 9013-1(a).

NOTICE

The Foreign Representatives have provided notice of this Recognition Motion via facsimile, electronic mail, first class mail, or overnight express delivery to: (a) the Office of the United States Trustee, 201 Varick Street, New York, NY 10014, attn. Susan A. Arbeit, Esq. (susan.arbeit@usdoj.gov); (b) counsel to The Bank of New York Mellon in its capacity as indenture trustee to the New York Law Notes, Allen & Overy LLP, 50 Collyer Quay, #09-01 OUE Bayfront, Singapore, 049321, attn. Tim Beech (tim.beech@allenoverly.com) and Corrs Chambers Westgarth, 123 St Georges Terrace, Perth, WA 6000, Australia, attn. Michelle Dean (michelle.dean.corrs.com.au); (c) counsel to Bain, Paul, Weiss, Rifkind, Wharton & Garrison LLP, attn. Elizabeth McColm (emccolm@paulweiss.com) and Michael Colarossi

(mcolarossi@paulweiss.com); (d) the U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590, Attn: Office of Aviation Consumer Protection; and (e) such other parties in interest that have requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). The Foreign Representatives also intend to post this Recognition Motion and notice of the hearing on this Recognition Motion to a website that they maintain for creditors of the Virgin Australia Group at www.deloitte.com/au/virgin-chapter-15. In light of the relief requested, the Foreign Representatives submit that no further notice is necessary.

NO PRIOR REQUEST

57. No prior request for the relief sought in this Recognition Motion has been made to this Court or any other court.

WHEREFORE, the Foreign Representatives respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), granting the relief requested herein and such other and further relief as is just and proper.

New York, New York
Dated: October 22, 2020

/s/ Abid Qureshi

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Counsel to the Foreign Representatives

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 15
Virgin Australia Holdings Ltd. (ACN 100 686 226) ¹ , <i>et al.</i> ,)	Case No. 20-11024 (SHL)
Debtor in a Foreign Proceeding. ²)	(Jointly Administered)

**ORDER GRANTING MOTION FOR RECOGNITION AND
ENFORCEMENT OF (I) THE DEEDS OF COMPANY ARRANGEMENT, (II)
THE AUSTRALIAN COURT’S 444GA ORDER, AND (III) RELATED RELIEF
UNDER BANKRUPTCY CODE §§ 105(A), 1507, 1509(B)(2)-(3), 1521(A), AND 1525(A)**

Upon consideration of the *Motion for Recognition and Enforcement of (I) the Deeds of Company Arrangement, (II) the Australian Court’s 444GA Order, and (III) Related Relief under Bankruptcy Code §§ 105(a), 1507, 1509(b)(2)-(3), 1521(a), and 1525(a)* (the “Recognition Motion”) of Vaughan Strawbridge, Richard Hughes, John Greig, and Salvatore Algeri in their capacities as joint and several administrators of the deeds of company arrangement

¹ An Australian Company Number (“ACN”) is a unique nine-digit number issued by the Australian Securities and Investments Commission (“ASIC”) to every company registered under the Commonwealth Corporations Act 2001 as an identifier.

² The Debtors in these cases, along with the last three digits of each Debtor’s ACN number, are: Virgin Australia Holdings Ltd (226); Virgin Australia International Operations Pty Ltd (608); Virgin Australia International Holdings Pty Ltd (021); Virgin Australia International Airlines Pty Ltd (823); Virgin Australia Airlines (SE Asia) Pty Ltd (389); Virgin Australia Airlines Holdings Pty Ltd (675); VAH Newco No. 1 Pty Ltd (345); Tiger Airways Australia Pty Limited (008); Virgin Australia Airlines Pty Ltd (965); VA Borrower 2019 No. 1 Pty Ltd (059); VA Borrower 2019 No. 2 Pty Ltd (343); Virgin Tech Pty Ltd (879); Short Haul 2018 No. 1 Pty Ltd (831); Short Haul 2017 No. 1 (390); Short Haul 2017 No. 2 Pty Ltd (443); Short Haul 2017 No. 3 Pty Ltd (813); VBNC5 Pty Ltd (502); A.C.N. 098 904 262 Pty Ltd (262); Virgin Australia Regional Airlines Pty Ltd (662); Virgin Australia Holidays Pty Ltd (159); VB Ventures Pty Ltd (004); Virgin Australia Cargo Pty Ltd (838); VB Leaseco Pty Ltd (741); VA Hold Co Pty Ltd (157); VA Lease Co Pty Ltd (291); Virgin Australia 2013-1 Issuer Co Pty Ltd (326); 737 2012 No. 1 Pty. Ltd (859); 737 2012 No. 2 Pty Ltd (064); Short Haul 2016 No. 1 Pty Ltd (328); Short Haul 2016 No. 2 Pty Ltd (077); Short Haul 2014 No. 1 Pty Ltd (612); Short Haul 2014 No. 2 Pty Ltd (199); VA Regional Leaseco Pty Ltd (605); VB 800 2009 Pty Ltd (934); VB Leaseco No. 2 Pty Ltd (319); VB LH 2008 No. 1 (354); VB LH 2008 No. 2 Pty Ltd (805); VB PDP 2010-11 Pty Ltd (266); Tiger International Number 1 Pty Ltd (944); VAH Newco No. 2 Pty Ltd (354); VB Investco Pty Ltd (095). The service address for each of the above Foreign Debtors is Deloitte Brisbane, Riverside Centre, 123 Eagle St, Brisbane QLD 4000, Australia.

and foreign representatives (in such capacities, the “Administrators” or the “Foreign Representatives”)³ of the above-captioned foreign debtors (the “Foreign Debtors”); and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, and it appearing that venue is proper before this Court pursuant to 28 U.S.C. § 1410; and the Court having considered and reviewed the Recognition Motion, and the detailed summaries provided therein and in the 75-225 Report of the Sale Process, the Bain DOCAs and the requisite creditor approval of the same; and having held a hearing to consider the Relief Requested in the Recognition Motion on November [●], 2020 (the “Hearing”); and it appearing that timely notice of the Recognition Motion and the Hearing has been given to the Notice Parties; and it appearing that notice of the Recognition Motion and Hearing was posted on the Website; and it appearing that no other or further notice is required; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, and the Amended Standing Order of Reference dated January 31, 2012, Reference M-

³ Capitalized terms that are not defined herein shall have the meaning ascribed in the Recognition Motion.

431, *In re Standing Order of Reference Re: Title 11*, 12 Misc. 0032 (S.D.N.Y. Jan. 31, 2012) (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (2)(A), (O) and (P), and the Court may enter a final order in respect of it under Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Foreign Representatives have standing to make the Recognition Motion pursuant to Bankruptcy Code §1509(b) of 11 U.S.C. §§ 101 et seq. (as amended, the “Bankruptcy Code”).

D. The Relief Requested in the Recognition Motion is necessary to effectuate the purpose of chapter 15 and to protect the Foreign Debtors, their assets, and the interests of their creditors and other parties in interest.

E. The relief granted hereby (a) is essential to the success of the Australian Proceedings, the Bain DOCAs, and the sale of the Foreign Debtors’ business to Bain, (b) is an integral element, and/or integral to effectuation, of the Australian Proceedings, the Bain DOCAs, the 444GA Order, and the sale of the Foreign Debtors’ business to Bain, and (c) confers material benefits on, and is in the best interests of the Foreign Debtors and their creditors.

F. The Foreign Debtors and the Foreign Representatives are entitled to all of the Relief Requested in the Recognition Motion.

G. Appropriate notice of the filing of the Recognition Motion, the relief requested by the Recognition Motion, and the Hearing was given, which notice is deemed adequate for all purposes, and no other or further notice need be given.

H. The relief granted hereby is necessary and appropriate, in the interests of the public and of international comity, not inconsistent with the public policy of the United States, warranted pursuant to Bankruptcy Code §§ 105(a), 1507, 1509(b)(2)-(3), 1521(a) and 1525(a) and will not

cause hardship to creditors of the Foreign Debtors or other parties-in-interest that is not outweighed by the benefits of granting that relief.

I. Absent the Relief Requested, the Foreign Debtors may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings in connection with a claim against the Foreign Debtors or their property in the United States, thereby interfering with and causing harm to, the Foreign Debtors, their creditors, and other parties in interest in the Australian Proceedings and, as a result, the Foreign Debtors, their creditors, and such other parties in interest would suffer irreparable injury for which there is no adequate remedy at law.

J. Absent the Relief Requested, the efforts of the Foreign Debtors, the Australian Court and the Foreign Representatives in conducting the Australian Proceedings and effecting restructuring under the Bain DOCAs and Australian law may be thwarted by the actions of certain creditors, a result inimical to the purposes of chapter 15 as reflected in Bankruptcy Code § 1501(a).

For all of the foregoing reasons, and for the reasons stated by the Court on the record of the Hearing, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Recognition Motion is granted as provided herein.
2. Any reference to “Foreign Representatives” shall be a reference to both the Voluntary Administrators and Deed Administrators as applicable.
3. As of Completion,
 - a. The Bain DOCAs, the 444GA Order, and all other agreements related thereto are hereby recognized, granted comity and given full force and effect and are binding upon and enforceable against all entities in accordance with their terms, and such terms shall be binding upon and fully

enforceable against Creditors⁴ whether or not they have actually agreed to be bound by the Bain DOCAs or have participated in the Australian Proceedings.

- b. Any judgment that purports to determine the liability of any entity released pursuant to the Bain DOCAs with respect to any debt released, extinguished, cancelled, discharged, assigned or restructured under the Bain DOCAs or as a result of Australian law relating to the Bain DOCAs is unenforceable in the United States, in each case to the extent inconsistent with the Bain DOCAs, the 444GA Order or Australian law.
- c. Subject to clauses 6.3(b), 7 and 9 of the Bain DOCAs, which generally limit the extent to which the Bain DOCAs apply to Secured Creditors and Owners, and subject to clause 8 of the Bain DOCAs, which relates to Claims covered by insurance, all entities are permanently enjoined from, in relation to a Creditor's Claim:
 - (1) making or proceeding with an application for an order to wind up a Deed Company or for the appointment of a provisional liquidator or a court appointed receiver to any of the Deed Companies and their property;
 - (2) instituting, reviving, or continuing any action, suit, arbitration, mediation or proceeding against a Deed Company, or in relation to the property of a Deed Company;
 - (3) instituting, reviving, or continuing with any Enforcement Process against the property of a Deed Company;
 - (4) taking any action whatsoever to seek to recover any part of its Claim;

⁴ Capitalized terms in paragraph 3 of this Order that are not otherwise defined in the Recognition Motion have the meaning ascribed to them in the Bain DOCAs, as applicable. For purposes of this paragraph 3, as set forth in the Bain DOCAs, the term (1) "Deed Company" means a Foreign Debtor; (2) "Creditor" means a person who has a Claim; and (3) "Claim" means a debt payable by, and all claims against, a Deed Company (present or future, certain or contingent, ascertained or sounding only in damages), being a debt or claim that would be admissible to proof against a Deed Company in accordance with Division 6 of Part 5.6 of the Corporations Act, if the Deed Company had been wound up and the winding up is taken to have commenced on the Appointment Date, and any fine or penalty to which a Deed Company is subject or liable to be subject arising out of circumstances occurring prior to the Appointment Date that would be so admissible but for the operation of section 553B of the Corporations Act. Furthermore, the term "Claim" (a) includes a Claim of a Secured Creditor; and (b) includes a Claim arising under the DOCG (as defined in the Primary DOCA and the International Group DOCA, as applicable) including, for the avoidance of doubt, any Claim against a Deed Company under the DOCG in respect of a Liability incurred by another party to the DOCG after the Appointment Date; and (c) does not include an Excluded Claim.

- (5) exercising any right of set off or defense, cross claim, or cross action to which a Creditor would not have been entitled had the relevant Deed Company been wound up on the Appointment Date;
- (6) commencing or taking any further step in any arbitration against a Deed Company or to which a Deed Company is a party in relation to any matter arising or occurring before the Appointment Date; or
- (7) otherwise enforcing any right it may have or acquire,

except to the extent of the applicable Creditor's entitlement, if any, to participate in the Trust Fund in accordance with the terms of the Trust Deed.

- d. All Claims of each Creditor are hereby extinguished and released as set forth in clause 6.4 of the Bain DOCAs, subject to paragraph 3(e) hereof.
- e. Upon all Claims being released as set forth in clause 6.4 of the Bain DOCAs, and subject to paragraph 3(f) hereof:
 - (1) each Trust Creditor who had a Claim, will be entitled to make a claim against the Trust Fund, in accordance with the Trust Deed, which is equal in amount to their released Claim; and
 - (2) each FFC Creditor will be entitled to a Future Flight Credit in respect of their released FFC Claim.
- f. Creditors are enjoined from making a claim against, participating in, or receiving any distribution from, the Trust Fund in respect of a Non-Participating Claim.
- g. All entities subject to this Court's jurisdiction are permanently enjoined from commencing or taking any action, (i) that is inconsistent with, in contravention of, or would interfere with or impede the administration, implementation, and/or consummation of the Bain DOCAs, the 444GA Order, or the terms of this Order or (ii) to obtain possession of, exercise control over, or assert claims or debts that have been released, extinguished, discharged, cancelled or novated under the Bain DOCAs.

4. No action taken by the Foreign Representatives in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Bain DOCAs, the 444GA Order or any order entered in or in respect of the Chapter 15 Proceedings (including any adversary proceedings or contested matters) will be deemed to constitute a waiver of any immunity afforded the Foreign Representatives including pursuant to Bankruptcy Code § 1510.

5. The Foreign Representatives and the Foreign Debtors are hereby authorized to take all actions necessary to effectuate the relief granted herein.

6. This Court shall retain jurisdiction with respect to the effect, enforcement, amendment or modification of the Court's Order.

7. Notwithstanding any provision of the Bankruptcy Rules to the contrary, (a) this Order shall be effective immediately and enforceable upon entry; (b) the Foreign Representatives are not subject to any stay of the implementation, enforcement, or realization of the relief granted in this Order; and (c) this Order shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

8. Due, adequate, and sufficient notice of the Recognition Motion, the relief requested by the Recognition Motion, and the Hearing was given to all Creditors and other interested parties, which notice is deemed adequate for all purposes and no other or further notice need be given.

9. A copy of this Order shall be served, within seven business days of entry of this Order, by facsimile, electronic mail, first class mail, or overnight express delivery, upon all Notice Parties listed in the Recognition Motion, and shall be posted to the Website. Such service shall constitute good and sufficient service and adequate notice for all purposes.

10. This Order applies to all parties in interest in these chapter 15 cases and all of their agents, employees, and representatives, and all those who act in concert with them who receive notice of this Order.

New York, New York
Dated: _____

UNITED STATES BANKRUPTCY JUDGE

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 29/07/2020 1:00:21 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

This and the following seventeen pages are Annexure C referred to in the affidavit of Salvatore Algeri

Sworn on Before me

31 October 2020



Sia Lagos

Dated: 29/07/2020 10:39:27 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.



Form 59
Rule 29.02(1)

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 FORTIETH PLAINTIFFS NAMED IN SCHEDULE 1

First Plaintiffs

AND OTHERS NAMED IN THE SCHEDULE

Plaintiffs

Affidavit of: David Michael Orr
Address: Riverside Centre, 123 Eagle St, Brisbane City QLD 4000
Occupation: Registered Liquidator and Chartered Accountant
Date: 29 July 2020

Contents

Document number	Details	Paragraph	Page
1	Affidavit of David Michael Orr in support of application for orders under section 90-15 of Schedule 2 - the Insolvency Practice Schedule (Corporations) sworn on 29 July 2020	All	1 - 17
2	Annexure "DMO-1", being a bundle of documents exhibited to this affidavit by the deponent.	5	2

Filed on behalf of (name & role of party) The Plaintiffs
 Prepared by (name of person/lawyer) Timothy James Sackar
 Law firm (if applicable) Clayton Utz
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 Email kaadams@claytonutz.com
Address for service Level 15, 1 Bligh Street, Sydney NSW 2000
 (include state and postcode)

I, David Michael Orr, of Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly owned subsidiary) (**Deloitte**), at Riverside Centre, 123 Eagle St, Brisbane City Queensland 4000, Registered Liquidator and Chartered Accountant, say on oath:

1. I am a partner in the Restructuring Services practice of the professional services firm trading as Deloitte. I am a Chartered Accountant and a Registered Liquidator and I have practised for more than 19 years as an accountant specialising in insolvency related matters in Australia. A copy of my CV is located behind **Tab 1** of **Exhibit DMO-1**.
2. I am assisting the four joint and several voluntary administrators of each of the Second to Fortieth Plaintiffs and the proposed administrators of each of VAH Newco No. 2 Pty Ltd (in liquidation) and VB Investco Pty Ltd (in liquidation) (together, **Virgin Companies**), being Mr Vaughan Strawbridge, Mr Salvatore Algeri, Mr John Greig and Mr Richard Hughes (together, **the Administrators** and each an **Administrator**) in relation to the administration (or proposed administration) of the Virgin Companies.
3. 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 in the course of my role assisting the Administrators of the Virgin Companies, which I believe to be true.
4. I have shown this affidavit to Mr Strawbridge and he has confirmed that he agrees with its contents and has consented to it being filed in the proceedings.
5. Exhibited to me at the time of making this affidavit is a bundle of documents to which I make reference in this affidavit marked "DMO-1" (**Exhibit DMO-1**). A reference to a Tab in this affidavit is to a tab in Exhibit DMO-1 unless otherwise stated.

Background

6. The question of how to deal with voting has not yet arisen in the administrations of the Virgin Companies. This is because creditors of the Virgin Companies were not required to vote on a resolution at the first meeting of creditors of each of the Second to Fortieth Plaintiffs as to either:
 - (a) the appointment of a committee of inspection (because of the orders made by Justice Middleton dated 24 April 2020 and 15 May 2020 in these proceedings); or
 - (b) the possible replacement of the Administrators (because no creditor proposed such a resolution).
7. The question of voting will become relevant for the first time at the second meetings of creditors of the Virgin Companies to be convened under section 439A of the Corporations Act (**Second Meetings**). Voting at the Second Meetings is to occur in a context where, as set out below, the persons seeking to vote at the Second Meetings may number in the tens of thousands.

8. Accordingly, I have been assisting the Administrators, together with other Deloitte staff, in the development and implementation of software systems and processes to assist the Administrators in facilitating communications with a large number of creditors, the receipt and management of proofs of debt and proxy forms, the adjudication of claims and voting by creditors in advance of and at the Second Meetings. The principal software tool we have developed for this purpose is the "Halo Platform", or "Halo".
9. To facilitate the adoption of the Halo Platform for the purposes of voting at the Second Meetings, I make this affidavit in support of the relief sought by the Plaintiffs in the Interlocutory Process filed in these proceedings on 29 July 2020 (**Application**), comprising orders under section 90-15 of the Insolvency Practice Schedule (Corporations), being Schedule 2 to the *Corporations Act 2001* (Cth) (**IPSC**).

Overview of the Halo Platform

10. The Halo Platform is a proprietary digital claims management platform that was originally developed by Deloitte to assist organisations to manage whistle-blower disclosures securely and effectively. Deloitte has provided this digital facility to some of Australia's largest corporate businesses and Government departments and instrumentalities. Deloitte has adapted the Halo Platform for use in the external administration of the Virgin Companies and it now has the following capabilities:
 - (a) large numbers of persons, in this case persons claiming to be creditors of the Virgin Companies including employees, can register for a unique account on the platform and communicate and receive communications from the Administrators, via their user accounts;
 - (b) users can lodge a debt or claim for the purposes of voting at the Second Meetings;
 - (c) claims can be lodged on a "bulk" basis, as described at paragraph 18 below;
 - (d) users can upload documents, including any documents and particulars in support of a person's claim to be a creditor of the Virgin Companies;
 - (e) persons can access information in relation to the adjudication of debts and claims by the Administrators and for the Administrators to communicate with creditors through the platform in relation to that process;
 - (f) secure messages can be sent to, and received from, persons;
 - (g) a "voting event" can be created, which provides a notification to creditors of their ability to vote and the list of resolutions on which creditors may vote;
 - (h) creditors can nominate proxies to vote on resolutions; and

- (i) facilitating voting for the purposes of the Second Meetings, including to calculate and declare the results of a "live" poll.
11. In effect, the Halo Platform is a user interface (like a webpage) linked to a database that can be scaled up or down to accommodate the required number of users (in this application, persons claiming to be creditors of the Virgin Companies).
 12. I and other staff of Deloitte are currently undertaking load testing to ensure that Halo will be able to handle expected peak load times (e.g. voting during in the period before and during the Second Meetings). The initial results of this testing are due next week and, if it appears that performance or speed of the current interface will be slowed due to the expected load, the Administrators will increase the Halo system infrastructure to increase capacity and performance through the addition of more servers or other measures.

Creditor Profile of the Virgin Companies

13. The Virgin Companies' creditor profile, on a group basis as at the date of the Administrators' appointment, can be broadly summarised as follows (noting that the information is approximate only and based on our review of the books and records of the Virgin Companies and the information provided to date):
 - (a) lenders under secured corporate debt and aircraft financing facilities, who are owed approximately \$2,283,639,303;
 - (b) unsecured bondholders, who are owed approximately \$1,988,250,000;
 - (c) trade creditors, who are owed approximately \$166,704,085.69;
 - (d) aircraft lessors, who are owed approximately \$1,883,914,848;
 - (e) landlords, who are owed approximately \$71,209,929; and
 - (f) employees, who are owed approximately \$450,777,961.
14. The largest creditor category not reflected above is likely to comprise customers of the Virgin Companies. Customers whose flights were cancelled by Virgin Companies as a result of the COVID-19 pandemic have been entitled to obtain a "conditional credit" in accordance with the Conditional Credit Policy implemented by the Second to Fortieth Plaintiffs following the orders made by Justice Middleton on 13 May 2020 in these proceedings. Customers who have had their flights cancelled but have not availed themselves of and / or not used any credit offered under the Conditional Credit Policy will also be treated by the Administrators as creditors of the relevant Virgin Companies.
15. In my opinion, there are likely to be hundreds of thousands of such customers given that approximately 500,000 customers of the Virgin Companies were unable to utilise flight

tickets between April and June 2020 (stemming from flight cancellations due to the impact of the COVID-19 pandemic) and further customers will be affected in relation to flights scheduled for July to December 2020 that have been or are likely to be cancelled.

16. In addition, as at the date of this affidavit, approximately \$1.3m of Conditional Credits have been issued to over 7,600 customers who held direct bookings with the airline for flights or other services. The Administrators are currently unable to quantify the additional number of Conditional Credits issued to customers who booked through an agent.

Registration of creditors on Halo

17. As at 24 July 2020, 10,945 creditors had registered with the Halo Platform.
18. The figure at paragraph 17 includes employees and creditors whose details were pre-registered by the Administrators. Creditors were pre-registered in circumstances where the Administrators obtained information in relation to those creditors' claims from the books and records of the Virgin Companies, including from the companies' Vendor Master Database and the single consolidated report on company activities and property (**ROCAP**) lodged by the directors pursuant to Order 6 of the orders made by Justice Middleton dated 15 May 2020 in these proceedings. Where creditors were registered on the platform by the Administrators, they have received correspondence from the First Plaintiffs notifying them of their pre-registration and requesting that they confirm their email and create a password. The communications are detailed at paragraphs 38(a)ii (non-employee creditors) and 38(b) (employee creditors).
19. Any Creditor not pre-registered on the Halo Platform is able to register as a "new user". This can be done via the Deloitte Halo webpage at: <https://virgin.deloitte-halo.com/> (**Halo Webpage**). A printout of the Halo Webpage is located at **Tab 2** of **Exhibit DMO-1**.
20. In addition to providing instructions in relation to registering with the Halo Platform and submitting or viewing a proof of debt, the Halo Webpage contains a link to Deloitte's prepared answers to frequently asked questions regarding the Halo Platform (**Halo FAQs**). The Halo FAQs address the following:
 - (a) the Halo registration process;
 - (b) information privacy, including the management of personal information provided through Halo, for example, how such information will be used, creditor's rights in relation to their personal information and the process for lodging a complaint if a creditor has concerns about how their personal information is being used;

- (c) managing a Halo Platform user account, including how to request a password reset, change a creditor's contact details, turn off Halo Platform notifications and how to access assistance to using the platform;
- (d) making a claim, including how to submit a proof of debt and any supporting documentation, how to edit or update a previously submitted claim and how to see which people have been granted access to a creditor's claim (for example, a user's legal or financial advisers);
- (e) communications between creditors and the Administrators, including that by registering through Halo, the users consent to being contacted by the Administrators (and any subsequent external administrators appointed to the Virgin Companies) through the email address provided;
- (f) in respect of employee creditors, confirming that employee creditors have been pre-registered in the platform (and therefore not required to submit a claim) and providing contact details to discuss queries about entitlements; and
- (g) the manner in which the administration will proceed and the timeframe of when creditors can expect payments to be made.

A copy of the Halo FAQs is located at **Tab 3** of **Exhibit DMO-1**.

- 21. The Administrators intend to provide creditors of the Virgin Companies with further details of the Halo Platform in the report to creditors pursuant to section 75-225 of the IPR, including a copy of:
 - (a) a voting guide, which is intended to be a more detailed "step-by-step" user guide. This primary purpose of this guide will be to inform creditors how to vote in the Halo Platform (using additional screenshots) as well as registering and lodging proofs of debt; and
 - (b) a shorter form infographic, which steps through the process for voting in the Halo Platform. A copy of the draft infographic is located at **Tab 4** of **Exhibit DMO-1**.
- 22. The Halo Webpage also contains a link a form titled "Halo Help" through which individuals can submit any queries they may have in relation to the Halo Platform, proofs of debt or proxies.
- 23. In addition to the "Halo Help" form, the Administrators propose to communicate with creditors as follows:
 - (a) for customers of the Virgin Companies, if they call the Virgin Companies' general enquiry number on 13 67 89, an interactive voice response will:

- i. guide them to, amongst other places the Virgin website landing page, which will contain information on registering with the Halo Platform; or
 - ii. allow customers to speak to a Virgin team member. Approximately 200 staff are presently employed in the relevant call centre function. Where this option is selected, Virgin employees will work from a pre-defined script and the Halo FAQs to respond to any queries; and
- (b) for all creditors, a web chat support function is being developed, which will launch on the Virgin Website and allow individuals to click on an option to chat with a Virgin or Deloitte employee, trained in using the Halo Platform. This feature will allow the relevant Deloitte or Virgin employee to send through copies of the Halo FAQs.

Lodgement of proofs of debt

24. Creditors are currently able to lodge proofs of debt through the Halo Platform. The majority of creditors (other than customers) have been given notice of this functionality via email correspondence as detailed in paragraph 38 below.
25. Creditors, other than the USD noteholders described in paragraph 26 below, who have not already lodged a proof of debt will be requested do so through the Halo Platform prior to the Second Meetings. To date, the Administrators have also accepted proofs of debt lodged in the ordinary course (that is, being sent to the Administrators via email or post). Where proofs of debt are not submitted using the Halo Platform, but rather, have been sent to the Administrators by post or email, the Administrators have been manually entering this data into the Halo Platform. Once the data has been entered the relevant creditor is then sent a link to the Halo Platform via email asking them to confirm their registration.
26. While the Administrators would welcome the holders of:
 - (a) the USD \$350,000,000 7.875% Senior Notes due on 15 October 2021 (Reg S CUSIP: Q94606AG7 & 144A CUSIP: 92765YAG2); and
 - (b) the USD \$425,000,000 8.125% Senior Notes due on 15 November 2024 (Reg S CUSIP: Q94606AH5 & 144A CUSIP: 92765YAH0),(collectively, "**USD Noteholders**"), to register on the Halo Platform for the purposes of facilitating efficient and prompt notification and provision of information as to the conduct of the administrations of the Virgin Companies to those persons, the Administrators do not in this application seek orders requiring the USD Noteholders to vote via the Halo Platform. That is because, I understand, the votes of the USD Noteholders are taken pursuant to a Master Ballot and Beneficial Ballot process administered by the Depositary

Trustee Company in the United States of America and the outcome of that process will be relayed to the Administrators in advance of the Second Meetings.

27. Once a proof of debt has been lodged on the Halo Platform, it will be adjudicated for voting purposes only at the Second Meetings by the Administrators in the usual way. Given the large number of creditors, this will be a very time-consuming process. In my opinion, based on my experience of managing the proof of debt and voting process in a number of administrations in which I have been appointed as an administrator and having regard to:
 - (a) the number of proofs of debt anticipated from creditors of the Virgin Companies;
 - (b) the volume of preparatory work leading up to the Second Meetings; and
 - (c) the resources available to the Administrators to undertake that process,it is essential that, the Administrators and their staff have a period of at least 3 clear business days between the closing of the time for lodging or amending proofs of debt or submitting proxies and the date of the Second Meetings.
28. Noting the significant number of creditors, this will allow:
 - (a) the Administrators' staff sufficient time to adjudicate and admit creditors' debts for voting purposes prior to the Second Meetings;
 - (b) the Administrators' staff sufficient time to work through any issues that might arise in admitting claims;
 - (c) sufficient time for appointed proxies to register with the Halo Platform and vote in respect of their claims; and
 - (d) the avoidance of a situation whereby a large number of creditors may leave lodging their claim until the day before the meeting, in which case it would not be feasible for the Administrators and their staff to review and admit these claims prior to the Second Meetings.
29. A shorter period of time may mean that the Administrators are simply unable to complete the adjudication process before the Second Meetings.
30. Once a creditor's debt or claim is adjudicated, the creditor's individual account on the Halo Platform is updated and the creditor is able to view the amount for which their claim has been admitted. Creditors may then submit a query to the Administrators through the Halo Platform regarding the admitted claim amount prior to the Second Meetings (to the extent they wish to do so).
31. In order to eliminate any duplication of claims (for example, made by two different parties who have different interests in the same debt, such as, for example, a syndicate

financier and a security trustee or facility agent of that syndicate), the Halo Platform contains built in analytical processes which identify duplicate claims. In circumstances where a "double-claim" exists, the Halo Platform has the ability to "deactivate" this claim. This means that the claim remains in the Halo Platform and the associated users are still able to receive and send communications through the platform, but they are unable to submit a vote in respect of the claim at the Second Meetings. Where a claim is "deactivated" on the basis that it is a duplicated claim, the creditor will be notified. This notification takes the following form (by way of example only, whereby the email provided would be the primary user of the claim such as the security trustee in the example given above):

*"Claim VI011516C has been marked as a duplicate of Claim VI011435C.
Please contact the following users to gain access to Claim VI011435C.*

virgincreditor@deloitte.com.au

This is a system generated email. Please do not send messages or reply to this email."

32. With the assistance of Deloitte staff, I have prepared an estimate of the likely costs of managing the proof of debt and voting process on a conventional basis, compared with the likely professional and other costs of managing that process through the Halo Platform, taking into account, among other things, the costs and time associated with maintaining and updating a creditor management system, communicating with creditors, adjudicating on proofs of debt, requesting further information from creditors, verifying and reviewing proxies and tallying votes and the costs of developing and supporting the Halo Platform through the administration period. I estimate that, if done on a conventional basis, the costs of the process will be on the order of \$4,300,000, whereas if done through the Halo Platform, the costs will be around \$1,200,000. This amounts to a costs saving of \$3,100,000 to the estates of the Virgin Companies if the process is conducted through the Halo Platform.

Security of Creditors' Information

33. Deloitte recognises information security as a strategic imperative.
34. The Halo Platform complies with Deloitte's Global Security standards, which include regular security audits to ensure that the Halo Platform is secure, that security considerations be made at each stage of the software development lifecycle including requirements gathering, design, development and deployment.
35. Halo complies with Deloitte's Global Security standards, which include regular security audits to ensure that the Halo Platform is secure. These activities include the following:

- (a) internal security reviews before platform launch and updates;
 - (b) regular penetration test performed by in-house and third-party contractors; and
 - (c) source code review and testing, to ensure software vulnerabilities are identified and remediated.
36. The Halo Platform stores a range of confidential information, which includes personal information, financial information and customer information of creditors. The Halo Platform has a number of security features which protect the data of its users and the integrity of the data contained in the platform. These include, amongst other things:
- (a) end-to-end encryption;
 - (b) monitoring and virus protection;
 - (c) cloud network firewalling; and
 - (d) multifactor authentication by users.
37. Deloitte's security reviews, as well as on-going operations (such as Vulnerability management, virus protection, code reviews etc.) serve to ensure continued compliance to ISO 27001.

Communication with creditors in relation to the Halo Platform

38. Creditors of the Virgin Companies have received communications in relation to the Halo Platform as follows:
- (a) on 11 May 2020:
 - i. an email was sent from the Deloitte Halo Platform email address, virginhalo@deloitte.com.au to all creditors (other than employee creditors and customers) for which the Administrators had obtained an email address either from data contained in the Virgin Companies' books and records or as a result of a creditor having sent an email to the Administrators via one of the Virgin Companies' administration emails listed in paragraph 44(a)(xvii) of the Affidavit of Mr Strawbridge of 11 May 2020 (the **Creditor Database**). This email:
 - 1. provided the Halo Website Link;
 - 2. advised that the Halo Platform will serve as the Administrators' primary tool for communicating with creditors and managing claims during the administration of the Virgin Companies;
 - 3. advised that through the platform, employees and creditors will be able to:

- a. *"Register as a user to provide, verify or update contact information provided to the Administrators"*
 - b. *Submit claims (proof of debt) or modify previous claims provided. This includes submitting additional documentation to the Administrators*
 - c. *If you consent to electronic communications, this platform will allow you to send and receive secure messages to the Administrators about claims submitted or other matters"*
4. set out an explanation as to how creditors can register in the Halo Platform and access their individual Halo user accounts;
 5. provided a link to the Halo FAQs; and
 6. provided a link to a "Halo Help" form, through which creditors could submit a query to the Administrators.

A copy of this email titled "Virgin Australia Group (Administrators Appointed) | Launch of Halo creditors platform" is provided at **Tab 5 of Exhibit DMO-1**;

- ii. an email was sent from the Deloitte Halo Platform email address, virginhalo@deloitte.com.au to all creditors that the Administrators had pre-registered through the Halo Platform, being those who had submitted a proof of debt by post or email, which the Administrators then manually processed through Halo as at that date. In addition to including information described paragraphs 38(a)i.2-3 and 38(a)i.5-6 above, this email:
 1. informed creditors that their email had been pre-registered with Halo;
 2. requested that creditors confirm their email and create a password in the platform; and
 3. provided instructions on viewing and editing claims in the Halo Platform, which stated that:
 - a. the creditor is able to log in to Halo to submit a proof or debt or modify a previous claim;
 - b. that each claim receives a unique identification number so that the creditor can track its status in the administrations;
 - c. there may be a time delay before a claim and supporting documentation would be visible to the creditor in the "My Claims Dashboard" screen; and

- d. once the claim is visible to the creditor, the claim can be edited, updated or supporting documentation submitted.

A copy of this email titled " Virgin Australia Group (Administrators Appointed) | Pre-registration in Halo creditors platform" is provided at **Tab 6 of Exhibit DMO-1**;

(b) on 28 May 2020, an email was sent from the Deloitte Halo email address, virginhalo@deloitte.com.au to all employees at their Virgin Australia emails (and personal emails where nominated). In addition to including information described paragraphs 38(a)i.2-3 and 38(a)i.5-6 above, this email:

- i. informed employees that their work email (and their personal email, if on file) had been pre-registered with Halo;
- ii. set out an explanation on how employees can access their Halo accounts and create a password;
- iii. provided instructions on how employees can view their estimated entitlements and stated that:

1. *"At this stage, the entitlement details provided in Halo are for your information only and to provide you with the opportunity to review the balance of the entitlement. This is not a final determination of your employee entitlement balance"*
2. *"The estimate of entitlements presented will be at a point in time (i.e. 30 April 2020) and will increase or decrease during the course of the Administration as leave is accrued or taken and the Administrators work through other required adjustments".*

iv. provided:

1. instructions about how to submit a message or query to the Administrators through Halo;
2. the emails payroll.queries@virginaustralia.com and payroll@tigerair.com.au, through which employees could also submit a query; and
3. advised that for staff who are a member of a union, their union may be able to assist with their enquiry; and

v. attached:

1. the Halo FAQs; and

2. a copy of the notice posted on the Virgin employee workplace site, which provides further detail about employee entitlements.

A copy of this email titled "Pre-registration to view employee entitlements in Halo Platform" together with the attachments to that email is provided at **Tab 7 of Exhibit DMO-1**;

(c) on 29 June 2020, an email was sent from the Deloitte Halo email address, virginhalo@deloitte.com.au to all creditors (other than employee creditors and customers) identified in the Creditor Database or **ROCAP** that were not registered on the Halo Platform (based on their email address). In addition to the information described at paragraphs 38(a).i.1- 6 above, this email:

- i. requested that creditors register with Halo if they had not already done so; and
- ii. advised that *"Creditors will need to be registered in the Halo Platform in order to participate in the upcoming vote at the second meeting of creditors (August 2020)"*

A copy of this email titled "Virgin Australia Group (Administrators Appointed) |REMINDER: Register for Deloitte Halo Platform for Virgin Australia" is provided at **Tab 8 of Exhibit DMO-1**;

(d) on 13 July 2020, a further email was sent from the Deloitte Halo email address, virginhalo@deloitte.com.au to unsecured creditors (other than employee creditors and customers) in the Deloitte Halo database and identified in the Creditor Database or ROCAP that were not registered in the Halo Platform (based on their email address). This email:

- i. requested that these creditors lodge their claims as soon as possible to enable the Administrators to admit them for the purposes of voting at the Second Meetings;
- ii. made the following statements :
 1. *"Please note that the amount your claim is admitted for by the Administrators is for voting purposes at the second meeting of creditors. A detailed adjudication process of your claim(s) will occur at a later date when a dividend has been declared by the Administrators for any dividend distribution you may be entitled to";* and
 2. *"The Report to Creditors will outline the estimated return to creditors and will provide further details with respect to the steps to be taken to complete the sale of the Virgin Group".*

A copy of this email titled "Virgin Australia | Claims in Deloitte Halo Platform" is provided at **Tab 9** of **Exhibit DMO-1**; and

(e) a link to the Virgin Halo website, <https://virgin.deloitte-halo.com/> (Halo Website Link), has also been posted to the Virgin Companies administration website at <https://www2.deloitte.com/au/virgin>.

39. The Administrators have also scheduled further reminders regarding voting which will be sent to creditors of the Virgin Companies in advance of the Second Meetings.

Swearing of this Affidavit

40. 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.

41. I have been informed by Madeleine Louise McCloy, 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.

42. 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 Brisbane)
in Queensland)
on 29 July 2020)
Before me:)

.....
Signature of deponent

.....
Signature of witness
Madeleine Louise McCloy, 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 each of the Second to Fortieth 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

Claim Number	Creditor Number	Creditor First Name / Company	Creditor Suriname	ABN	Related Creditor	Creditor Type	Claim Type
VI114075C	CR023204	Wells Fargo Trust Company, National Association as owner trustee for Willis Engine Structured Trust III		Not applicable	FALSE	Organisation	Lessor
VI114080C	CR023204	Wells Fargo Trust Company, National Association as owner trustee for Willis Engine Structured Trust III		Not applicable	FALSE	Organisation	Lessor
Claim Number	Claim Category	Debtor Entity	Street Name 1	Street Name 2	Street Name 3	Town City	Postal Code
VI114075C	Secured	VB Leaseco Pty Ltd	C/- Willis Lease Finance Corporation	4700 Lyons Technology Parkway	Coconut Creek	Florida	33073
VI114080C	Unsecured	Virgin Australia Airlines Pty Ltd	C/- Willis Lease Finance Corporation	4700 Lyons Technology Parkway	Coconut Creek	Florida	33073
Claim Number	Country	State	Claim Amount (ex GST)	Claim Amount (incl GST)	Claim Currency	Informal POD	Is Formal C
VI114075C	United States		17,076,060.09	17,076,060.09	USD	TRUE	FALSE
VI114080C	United States		17,076,060.09	17,076,060.09	USD	TRUE	FALSE
Claim Number	Details Of Security	Consideration For Debt	Other Information	Cross Guarantee	Admitted	Admitted Amount	Duplicated
VI114075C	Lease Agreements are subject to security interests registered on the Personal Property Securities Register	Rent and other amounts owing under the General Terms Engine Lease Agreement dated 24 May 2019 (GTA) and each Aircraft Engine Lease Agreement relating to the GTA, each between the creditor as lessor and the Company as lessee and the Engine Lease Support Agreement dated 24 May 2019 between Willis Engine Structured Trust III and the Company (together, the Lease Agreements)	Nature of the debt claimed is as follows: -Rental arrears in the amount of US\$256,000.00 for the period from 1 April 2020 to 20 April 2020 -Estimated rent in the amount of US\$14,892,249.38, comprising of rent in the total amount of amount US\$256,000.00 per month for the remaining period of the Lease Agreements -Estimated end of lease use fees for the period from the commencement of the Lease Agreements to 31 March 2020 (other than in respect of ESN 894902, which is to 29 February 2020) in the amount US\$1,927,810.71 plus end of lease utilisation which subsequently accrue until the expiry of the Lease Agreements owed to the creditor under the Lease Agreements -Equipment maintenance and repair costs (including any compensation) owed to the creditor under the Lease Agreements -Damages owed to the creditor under clause 19 (d) of the GTA including: (1) any additional amounts to place the creditor in the same position it would have been in if the Company had performed its obligations under the Lease Agreements; (2) the agreed value of any equipment the Company has failed to redeliver; (3) reasonable attorney's fees and costs of enforcement; (4) reasonable expenses, disbursements, costs and fees incurred in repossessing, storing, preserving, maintaining, repairing and refurbishing the equipment; and (5) preparing the equipment for sale or lease.	FALSE	Admitted	25,597,451.79	FALSE
VI114080C		Pursuant to the Guarantee and Indemnity between the Company, the creditor and VB Leaseco Pty Ltd (VB) whereby the Company guarantees amounts owed to the creditor by VB under the General Terms Engine Lease Agreement dated 24 May 2019 (GTA) and each Aircraft Engine Lease Agreement relating to the GTA, each between the creditor as lessor and the Company as lessee (GTA) and the Engine Lease Support Agreement dated 24 May 2019 between Willis Engine Structured Trust III and the Company		FALSE	Not Admitted	-	FALSE
Claim Number	Type/tags	Submitted On	Converted Amount (incl GST)				
VI114075C	APP MCARR, RVW RHASSALL	27 Aug 2020 02:55 PM	AUD 25,597,451.73				
VI114080C	APP MCARR, RVW RHASSALL	27 Aug 2020 04:21 PM	AUD 25,597,451.73				
Claim Number	Created By	Created On	Last Updated By	Last Updated On	Time Zone		
VI114075C	veronica.lee@nortonrosefulbright.com	27 Aug 2020 02:55 PM	matcarr@deloitte.com.au	31 Aug 2020 02:02 PM	UTC +11:00		
VI114080C	veronica.lee@nortonrosefulbright.com	27 Aug 2020 04:21 PM	matcarr@deloitte.com.au	31 Aug 2020 02:05 PM	UTC +11:00		

This is Annexure D referred to in the affidavit of Salvatore Algeri

Sworn on Before me

31 October 2020