



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD464/2020

**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 THE SECOND TO THIRTY-NINTH
PLAINTIFFS** and others named in the schedule
Plaintiff

ORDER

JUDGE: JUSTICE MIDDLETON

DATE OF ORDER: 13 May 2020

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

1. The Interlocutory Process filed on 11 May 2020 be made returnable at 10.15am on 13 May 2020.

Tiger International No. 1 Pty Ltd

Joinder

2. Pursuant to rule 9.05 of the *Federal Court Rules 2011* (Cth) that Tiger International No. 1 Pty Ltd (Administrators Appointed) ACN 606 131 944 (**Tiger 1**) be added to this proceeding as Fortieth Plaintiff.

First meeting of creditors

3. Pursuant to section 1322(4)(a) of the Corporations Act the convening and holding of the first meeting of creditors of Tiger 1 in accordance with section 436E of the Corporations Act, pursuant to the notice sent to creditors in accordance with sections 75-225(1) and 75-15 of the *Insolvency Practice Rules (Corporations) 2016* (Cth) (**IPR**), is not invalidated by reason of the notice having been issued on 7 May 2020 (resulting in less than five business days' notice of the meeting being given to the creditors of Tiger 1).



4. Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, that Part 5.3A of the Corporations Act is to operate, *nunc pro tunc*, in relation to Tiger 1, as if any notice (**Notice**) required to be given pursuant to sections 75-225(1) and 75-15 of the IPR is validly given to creditors of Tiger 1 by taking the following steps in accordance:
- (a) where the First Plaintiffs:
 - (i) have an email address for a creditor, by sending the Notice by email to each such creditor;
 - (ii) where the First Plaintiffs do not have an email address for a creditor, but have a postal address for the creditor (or have received notification of non-delivery of a notice sent by email in accordance with (a)(i) above), by sending the Notice by posting a copy of it to the postal address for each such creditor;
 - (b) by publishing the Notice on the Australian Securities and Investments Commission (**ASIC**) published notices website at <https://insolvencynotices.asic.gov.au/>; and
 - (c) by publishing the Notice on the website maintained by the First Plaintiffs at <https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australia-holdings-limited-subsidiaries.html>.

Other notices to creditors to be provided electronically

5. Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, that if, pursuant to any provision in any of Part 5.3A of the Corporations Act, Part 5.3A of the *Corporations Regulations 2001* (Cth), the IPSC, or the IPR, the First Plaintiffs are required to provide any other notification to creditors during the administration of Tiger 1, the applicable notice requirements will be satisfied if the First Plaintiffs give such notice by taking the following steps:
- (a) where the First Plaintiffs:
 - (i) have an email address for a creditor, by notifying each such creditor of the relevant matter via email;
 - (ii) do not have an email address for a creditor, but have a postal address for that creditor (or have received notification of non-delivery of a



notice sent by email in accordance with (a)(i) above), by notifying each such creditor in writing of the relevant matter via post;

- (b) by publishing notice of the relevant matter on the website maintained by the First Plaintiffs at <https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australia-holdings-limited-subsiidiaries.html>; and
- (c) to the extent that the matter relates to a meeting that is the subject of section 75-40(4) of the IPR, by causing notice of the meeting to be published on the ASIC published notices website at <https://insolvencynotices.asic.gov.au/>.

Conducting meetings of creditors electronically

6. Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, that, to the extent not permitted specifically by sections 75-30, 75-35 and 75-75 of the IPR and the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (Cth), the First Plaintiffs be permitted to hold meetings of creditors during the administration of Tiger 1 by telephone or audio-visual conference only at the place of the First Plaintiffs' offices (without creditors of Tiger 1 being able to attend physically at that place), with such details of the arrangements for using the telephone or audio-visual conference facilities to be specified in each of the notices issued to creditors.
7. Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, that, to the extent not permitted specifically by section 75-35(2)(b) of the IPR and the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (Cth), the creditors of Tiger 1 who wish to participate at any meeting of Tiger 1 by telephone or audio-visual conference only at the place of the First Plaintiffs' offices (without creditors of Tiger 1 being able to attend physically at that place), must lodge with the First Plaintiffs, no later than the second last business day before the day on which the meeting is held, specific proxy forms containing the information in section 75-35(2)(b)(i)-(iii) of the IPR (with liberty to notify the First Plaintiffs of the withdrawal of that specific proxy and amended vote following any discussion at a meeting, in advance of a resolution being passed).

Committee of Inspection

8. Pursuant to section 447A(1) of the Corporations Act and 90-15 of the IPSC, that Divisions 75 and 80 of the IPSC, and Division 75 of the IPR are to operate as if the



requirement in sections 80-10 and 80-15 of the IPSC for the creditors of a company to resolve that a committee of inspection be formed and to appoint members of the committee of inspection, be dispensed with.

9. Order 6(b) of the orders made on 24 April 2020 be varied by deleting the words “Thirty-Ninth Plaintiffs” and replacing them with the words “Fortieth Plaintiffs”, such that that order reads:

a single committee of inspection be formed in respect of the Second to Fortieth Plaintiffs.

10. Pursuant to section 447A(1) of the Corporations Act and 90-15 of the IPSC First Plaintiffs are not required to issue any further Proposal (as that term is defined in Order 6(d) of the orders made on 24 April 2020) to the creditors of the Second to Fortieth Plaintiffs.

Extension of Convening Period

11. Pursuant to section 439A(6) of the Corporations Act the convening period defined in section 439A(5)(b) of the Corporations Act in respect of each of the Second to Fortieth Plaintiffs (together, the **Virgin Companies** and each, a **Virgin Company**), be extended until 18 August 2020.
12. Pursuant to section 447A(1) of the Corporations Act, that Part 5.3A of the Corporations Act is to operate in relation to each of the Virgin Companies such that, notwithstanding section 439A(2) of the Corporations Act, the second meeting of the creditors of each of the Virgin Companies required under section 439A of the Corporations Act may be convened at any time before, or within, five (5) business days after, the end of the convening period as extended by order 12 above (provided the First Plaintiffs give notice of the meetings to eligible creditors of each of the Virgin Companies (including the persons claiming to be creditors of the Virgin Companies) at least five (5) business days before the meeting).

Limitation of Administrators’ Liability

Current Rio Tinto Agreement

13. Pursuant to sections 447A(1) and 443B(8) of the Corporations Act and section 90-15 of the IPSC, that Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if section 443A(1) of the Corporations Act provides that:



- (a) the liabilities of the First Plaintiffs (in their capacity as administrators of the Twentieth Plaintiff) incurred with respect to any obligations arising out of, or in connection with, an agreement entered into with Rio Tinto Services Limited in respect of charter flights as described in paragraph 101 of the Strawbridge Affidavit (**Rio Tinto Agreement**), are in the nature of debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of the Twentieth Plaintiff; and
- (b) notwithstanding that the liabilities in suborder (a) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of the Twentieth Plaintiff, the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent that the proceeds of any applicable insurance policy held by or for the benefit of the First Plaintiffs or the Twentieth Plaintiff, or assets of the Twentieth Plaintiff are in aggregate insufficient to satisfy the debt and liabilities incurred by the First Plaintiffs arising out of, or in connection with, the Rio Tinto Agreement.

Conditional Credits

- 14. Pursuant to section 90-15 of the IPSC, the Court directs the First Plaintiffs would be justified in issuing conditional credits to customers of the Virgin Companies in accordance with the proposal set out in Schedule 2 to these orders (**Conditional Credits**).
- 15. Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, that Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if section 443A(1) of the Corporations Act provides that:
 - (a) the liabilities of the First Plaintiffs incurred with respect to any obligations arising out of, or in connection with, the issuing of Conditional Credits, including but not limited to taxes, airline surcharges and ancillary fees associated to the Conditional Credits Proposal, are in the nature of debts incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies; and
 - (b) notwithstanding that the liabilities for the Conditional Credits are debts incurred by the First Plaintiffs in the performance and exercise of their



functions as joint and several administrators of each of the Virgin Companies, the First Plaintiffs shall not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of the particular Virgin Company or Virgin Companies that are the issuers of the Conditional Credits are insufficient to satisfy the debt and liabilities incurred by the First Plaintiffs arising out of, or in connection with, the issuance of the Conditional Credits.

Other ancillary orders

16. The First Plaintiffs must take all reasonable steps to cause notice of these orders to be given, within one (1) business day after the making of these orders, to:
 - (a) the creditors (including persons or entities claiming to be creditors) of each of the Virgin Companies, in the following manner:
 - (i) where the First Plaintiffs have an email address for a creditor, notifying each such creditor, via email, of the making of the orders and providing a link to a website where the creditor may download the orders and the Interlocutory Process;
 - (ii) where the First Plaintiffs do not have an email address for a creditor but have a postal address for that creditor (or have received notification of non-delivery of a notice sent by email in accordance with (a)(i) above), notifying each such creditor, via post, of the making of the orders and providing a link to a website where the creditor may download the orders and the Interlocutory Process; and
 - (iii) placing scanned, sealed copies of the orders and the Interlocutory Process on the website maintained by the First Plaintiffs at <https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australia-holdings-limited-subsiidiaries.html>; and
 - (b) ASIC; and
 - (c) the Australian Competition and Consumer Commission (ACCC).
17. Any person who can demonstrate a sufficient interest has liberty to apply to vary or discharge any orders made pursuant to orders 2 to 16 above, on 1 business days' written notice being given to the Plaintiffs and to the Associate to Justice Middleton.
18. The First Plaintiffs have liberty to apply for any further extension of the convening period as extended by order 12 above at any time before 18 August 2020.



19. Order 12 of the orders made on 24 April 2020 be varied by deleting the words “Thirty-Ninth Plaintiffs” and replacing them with the words “Fortieth Plaintiffs” such that that order reads:

The Plaintiffs have liberty to apply on 1 business day’s written notice to the Court in relation to any variation of these orders or any other matter generally arising in the administrations of each of the Second to Fortieth Plaintiffs.

20. The Plaintiffs' costs of this application be costs in the administration of the Virgin Companies, jointly and severally.
21. These orders be entered forthwith.
22. The hearing be stood over until 10.15am on Friday, 15 May 2020 in respect of paragraphs 14, 15, 18, 20, 21, 22 of the Interlocutory Process.

Date that entry is stamped: 13 May 2020

Sia Lagos
Registrar



Schedule

No: NSD464/2020

Federal Court of Australia

District Registry: New South Wales

Division: General

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 622 014 831



	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
Interested Person	DEPUTY COMMISSIONER OF TAXATION



SCHEDULE 2

Proposal

1. The voluntary administrators may cause Virgin Australia Airlines Pty Limited, Tiger Airways Australia Pty Limited, Virgin Australia International Airlines Pty Limited or Virgin Australia Regional Airlines Pty Ltd (each a **Virgin Australia Group Entity**) to issue conditional credits on the terms set out in paragraphs 2 to 11 below.
2. Subject to paragraph 3 below, the conditional credits may be issued to:
 - (a) customers who:
 - (i) purchased a ticket (**Original Ticket**) (including by redeeming Velocity Frequent Flyer points for a Velocity Any Seat) for a flight operated by a Virgin Australia Group Entity prior to it entering into voluntary administration; or
 - (ii) purchased a holiday package from Virgin Australia Airlines Pty Limited prior to it entering into voluntary administration; and
 - (b) where:
 - (i) either:
 - A. the flight for which the ticket could be used or the holiday package was cancelled by the Virgin Australia Group Entity or, in the case of a holiday package, a component (including a component supplied by a third party supplier) was cancelled in connection with COVID-19 resulting in the cancellation of the entire package; or
 - B. the ticket or holiday package was cancelled by the customer prior to scheduled departure and:
 - 1) in the case of a flight, the ticket was of a type that gave the customer an entitlement to a refund or credit on that cancellation by the customer; or
 - 2) in the case of a holiday package, the customer was entitled to a refund or credit (or a combination of them) on that cancellation by the customer; and
 - (ii) the customer has not been provided with a refund, credit, re-accommodation on another flight, another holiday package or alternative compensation.

In this paragraph 2, a flight or ticket includes any flight or ticket arising from a change in the booking in respect of the Original Ticket.

3. This proposal does not apply in respect of any Velocity Reward Seat ticket.
4. The conditional credits will:



- (a) in the case of a ticket purchased for a flight:
- (i) be for the amount paid for the Original Ticket (**Original Ticket Amount**), comprising the cost of the fare for the flight and taxes and airline surcharges (excluding fees) (**Original Fare Amount**) and the fees paid for any ancillary services to be provided by the operator of the flight (**Original Ancillary Services Amount**);
 - (ii) be redeemable against one of the following, depending on how the Original Ticket was booked:
 - A. if the Original Ticket was booked through a travel agent, the:
 - 1) cost of the fare for an Eligible Flight (including taxes and airline surcharges but excluding fees) (**Fare Amount**) that is equal to or less than the Original Fare Amount, or for an Eligible Flight with a higher Fare Amount provided that the customer pays the difference between that higher Fare Amount and the Original Fare Amount; and
 - 2) fees for the ancillary services provided by the operator in respect of the Eligible Flight in paragraph 2(a)(ii)A(1) where they are the same as the ancillary services to be provided under the Original Ticket and the cost is equal to or less than the Original Ancillary Services Amount, or for the ancillary services provided by the operator in respect of the Eligible Flight in paragraph 2(a)(ii)A(1) where they are the same as the ancillary services to be provided under the Original Ticket and the cost is greater than the Ancillary Services Amount provided that the customer pays the difference between that higher amount and the Original Ancillary Services Amount; or
 - B. if the Original Ticket was not booked through a travel agent, the Fare Amount across one or more Eligible Flights, up to the amount of that credit;
- (b) in the case of a holiday package:
- (i) be for the amount paid for the holiday package; and
 - (ii) be redeemable against one or more Eligible Flights, up to that amount;
- (c) not be redeemable on codeshare flights operated by other airlines or for any other good or service supplied by a Virgin Australia Group Entity;
- (d) not be transferable to any other person;
- (e) not be able to be used in conjunction with Velocity Frequent Flyer Points;



- (f) not be able to be used in conjunction with travel credits of that person or another person. Where the Original Ticket was not booked through a travel agent, a customer can combine their own conditional credits.

An **Eligible Flight** is a domestic flight operated by Virgin Australia Airlines Pty Limited or Virgin Australia Regional Airlines Pty Ltd.

- 5. To book a flight with a conditional credit, customers must call the Guest Contact Centre unless the Original Ticket was booked through a travel agent, in which case the customer must contact that travel agent.
- 6. The conditional credit will only be able to be redeemed for a limited period and will have to be redeemed before the earlier of:
 - (a) a restructuring or recapitalisation of the Virgin Australia Group Entity that issues the credit (unless the right to redeem such credits, or their equivalent, is expressly preserved and extended as part of that restructuring or recapitalisation); or
 - (b) a liquidation of the Virgin Australia Group Entity that issues the credit.

It may not be possible or practical for Virgin Australia Airlines Pty Limited or Virgin Australia Regional Airlines Pty Ltd to resume commercial flights during this period and nothing in this Proposal should be understood as a promise or warranty that either company will do so.

- 7. A customer's use of the conditional credit will be subject to the availability of flights and, if applicable, payment of any fare differences and applicable fees, taxes and airline surcharges if the credit is not sufficient to cover them or the credit is not redeemable for them. Upon booking a flight with a conditional credit, the terms and conditions applicable to that flight and fare type will apply.
- 8. A conditional credit cannot be exchanged for a refund or unconditional credit. If the conditional credit is used to book a flight and that flight (or any changed flight) is subsequently cancelled by the Virgin Australia Group Entity or the booking (or any subsequent changed booking) is cancelled by the customer prior to scheduled departure in accordance with the terms and conditions applicable to the booking, the customer cannot obtain a refund or unconditional credit. However, in that case, the original conditional credit will be reissued to the customer (provided the redemption period in paragraph 5 above has not expired). If the customer booked a flight that was for a higher Fare Amount and paid the difference between that higher Fare Amount and the Original Fare Amount and/or paid for additional ancillary services to be provided by the operator of the flight, the reissued conditional credit will include that higher Fare Amount and the additional amounts paid for those additional ancillary services. If the redemption period in paragraph 5 has expired, the customer will not be reissued with a conditional credit, but the customer retains all of the customer's general law and statutory rights against the relevant Virgin Australia Group Entity.
- 9. The practical effect of the conditional credit being used is that the customer will not be entitled to a refund or credit that would otherwise have resulted from the cancellation. "Use" of the credit for this purpose will occur once the flight booked with the credit has been provided or, where a credit has been used to book a flight, if the customer does not turn up for the booked flight or if the customer cancels the booking otherwise than in accordance with the terms and conditions applicable to the booking.
- 10. A conditional credit will be lost and may not be used where the customer has received a refund or alternative compensation in respect of the Original Ticket.



11. Where a customer elects not to receive a conditional credit, or does not use the conditional credit in the redemption period in paragraph 5, the customer retains all of the customer's general law and statutory rights against the relevant Virgin Australia Group Entity.