

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 9/07/2020 12:55:13 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD464/2020
File Title: APPLICATION IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 9/07/2020 12:55:16 PM 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

BROAD PEAK INVESTMENT ADVISERS PTE. LTD. (FOR AND ON BEHALF OF BROAD PEAK MASTER FUND II LIMITED AND BROAD PEAK ASIA CREDIT OPPORTUNITIES HOLDINGS PTE. LTD.)

AND


TOR INVESTMENT MANAGEMENT (HONG KONG) LTD

Applicants

VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND RICHARD HUGHES, IN THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS OF EACH OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) AND THE THIRD TO FORTIETH PLAINTIFFS

Respondents

Affidavit of: **Michael Russell Catchpoole**
Address: Level 17, 8-12 Chifley Square, Sydney, New South Wales
Occupation: Solicitor
Date: 9 July 2020



Michael Russell Catchpoole



Witness

Filed on behalf of (name & role of party) **Broad Peak Investment Advisers Pte. Ltd. (For And On Behalf Of Broad Peak Master Fund II Limited And Broad Peak Asia Credit Opportunities Holdings Pte. Ltd.) and Tor Investment Management (Hong Kong) Ltd., Applicants**

Prepared by (name of person/lawyer) **Michael Catchpoole**

Law firm (if applicable) **Corrs Chambers Westgarth**

Tel **(02) 9210 6500** Tel **(02) 9210 6500**

Email **Michael.catchpoole@corrs.com.au**

Address for service **Level 17, 8 Chifley, 8-12 Chifley Square, Sydney NSW 2000**
(include state and postcode)

Document number	Details	Paragraph(s)	Page(s)
1	Affidavit of Michael Russell Catchpoole in support of the Interlocutory Process for the Applicants affirmed on 9 July 2020	1-6	1-3
2	Annexure "MRC-2", being correspondence regarding confidentiality between Corrs and Clayton Utz on 6 to 8 July 2020	3	4-16
Confidential Exhibit "MRC-3"			
3	Affidavit of Michael Russell Catchpoole in support of the Interlocutory Process for the Applicants affirmed on 6 July 2020 with proposed redactions	5(a)	1-14
4	Confidential Exhibit "MRC-1"	5(a)	16-232
5	Preliminary submissions on behalf of Bain to the Takeovers Panel dated 7 July 2020	5(b)	233-236
6	Preliminary submissions on behalf of First and Second Respondent and Deloitte Financial Advisory Pty Ltd to the Takeovers Panel dated 7 July 2020	5(c)	237-244

I, Michael Russell Catchpoole of Level 17, 8-12 Chifley Square, Sydney, New South Wales, solicitor affirm:

1. I am a partner in the firm Corrs Chambers Westgarth (**Corrs**), solicitors for the Applicants, Broad Peak Investment Advisors Pte. Ltd. (for and on behalf of Broad Peak Master Fund II Ltd and Broad Peak Asia Credit Opportunities Holdings Pte. Ltd. (**Broad Peak**) and Tor Investment Management (Hong Kong) Ltd (**Tor**).
2. Now produced and shown to me is a confidential paginated bundle of documents forming exhibit MRC-3 to this affidavit (**Exhibit**).
3. On 8 July 2020, I emailed Clayton Utz, the solicitors for the Administrators, in relation to the Interlocutory Process filed on 7 July 2020 and putting in place appropriate confidentiality arrangements. A copy of this email chain appears at pages 4 to 8 of Annexure MRC-2.
4. On 8 July, Corrs emailed proposed redactions of my affidavit that was affirmed in support of the Interlocutory Process on 6 July 2020 and filed on 7 July 2020 (**Affidavit**) to Clayton Utz. At 11:41AM, Clayton Utz responded to Corrs' proposed redactions.
5. At:

(a) pages 1 to 232 of Confidential Exhibit MRC-3 is a copy of the Affidavit of Michael Catchpoole filed 7 July 2020 with the Administrators' proposed redactions in yellow,

Michael Russell Catchpoole

Witness

and Corrs' proposed redactions in pink, and a copy of the Confidential Exhibit MRC-1 with Corrs' proposed redactions, to facilitate the publication of non-confidential version of that affidavit and exhibit. At the time of swearing this affidavit, the Applicants have not received a response to the proposed redactions of Confidential Exhibit MRC-1. These redactions are made in view of the Applicants' asserted contractual obligations of confidence;

(b) at pages 233 to 236 is a copy of Preliminary Submissions made by BC Hart Aggregator, L.P. and BC Hart Aggregator (Australia) Pty Ltd, Bain Capital Private Equity LP, Bain Capital Credit LP and their related entities (**Bain**) to the Takeovers Panel on 7 July 2020. I note the contents of section 4 of the Bain Preliminary Submissions at page 236; and

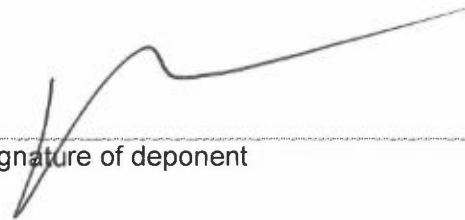
(c) at pages 237 to 244 is a copy of Preliminary Submissions made by the First and Second Respondents and Deloitte Financial Advisory Pty Ltd to the Takeovers Panel on 8 July 2020.

6. For the avoidance of doubt in view of the matters contained in the Preliminary Submissions, the Applicant in the Takeovers Panel proceeding has not sought any additional or alternative relief to that set out in the application at pages 17 to 41 of Confidential Exhibit MRC-1.

Affirmed by the deponent
at Sydney
in New South Wales
on 9 July 2020
Before me:

)
)
)
)
)

Signature of deponent



Signature of witness

CORRY PARISELLI
Australian Legal Practitioner

Rule 29.02(8)

Annexure certificate

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

BROAD PEAK INVESTMENT ADVISERS PTE. LTD. (FOR AND ON BEHALF OF BROAD PEAK MASTER FUND II LIMITED AND BROAD PEAK ASIA CREDIT OPPORTUNITIES HOLDINGS PTE. LTD.)

AND
TOR INVESTMENT MANAGEMENT (HONG KONG) LTD
 Applicants

VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND RICHARD HUGHES, IN THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS OF EACH OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) AND THE THIRD TO FORTIETH PLAINTIFFS
 Respondents

MRC-2

This is the annexure marked **MRC-2** referred to in the Affidavit of Michael Russell Catchpoole affirmed on 9 July 2020.



 Corry Pariselli

Filed on behalf of	Broad Peak Investment Advisers Pte. Ltd. (For And On Behalf Of Broad Peak Master Fund li Limited And Broad Peak Asia Credit Opportunities Holdings Pte. Limited) and Tor Investment Management (Hong Kong) Ltd, Applicants	
Prepared by	Michael Catchpoole Ref: 9155187	
Law firm	Corrs Chambers Westgarth	
Tel	(02) 9210 6288	Fax (02) 9210 6500
Email	michael.catchpoole@corrs.com.au	
Address for service	Level 17, 8 Chifley, 8-12 Chifley Square, Sydney, New South Wales 2000	

Jessica Every

From: Michael Catchpoole
Sent: Wednesday, 8 July 2020 10:20 AM
To: McCoy, Orla; Matt Whitbread
Cc: Cameron Cheetham; Andrew Lumsden; Andrew Edington; Jessica Every; Sackar, Timothy; Adams, Cassandra; Project Volar; Glavac, Mikhail; Gardner, Tom
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Orla

Thank you for your email. There are well established principles of open justice that require proceedings before the Courts be conducted transparently.

The fact that our clients have applied to vary an order obtained in their absence, and the circumstances surrounding that application is not confidential. Other parts of the material are confidential in the sense that they may be protected by a contractual confidentiality regime, but may not be so confidential as to justify non-publication or suppression orders.

The idea that there is a "construct of a public hearing" which requires non-confidential information to be kept confidential is fundamentally at odds with the applicable legal principles. The application to vary orders obtained from the Court in our client's absence is not a "private issue." In fact, the existence of the public orders is being relied upon as a basis to deny our clients' statutory rights.

The Court has asked the parties to confer about a confidentiality regime. We have proposed that the parties undertake the customary process of attempting to produce a non-confidential version of the affidavit and exhibit. We take it that your clients will not co-operate with that process but please let us know if we have misunderstood your position.

Our clients will prepare a non-confidential version of the affidavit, that redacts certain details. We will provide a proposed redacted affidavit to your client this morning, so that, if so minded, your clients can provide feedback and then, taking into account any feedback or objections provide the proposed non-confidential affidavit and a copy of this correspondence, to the Court this afternoon.

Kind regards

Michael Catchpoole | Partner
Corrs Chambers Westgarth
 t +61 2 9210 6288 m +61 417 727 304 e michael.catchpoole@corrs.com.au
 corrs.com.au

From: McCoy, Orla [mailto:omccoy@claytonutz.com]
Sent: Tuesday, 7 July 2020 8:27 PM
To: Matt Whitbread <matt.whitbread@corrs.com.au>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>; Michael Catchpoole <michael.catchpoole@corrs.com.au>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Matt

Thank you for your email below.

Service on other identified parties

We confirm that our clients have no objection to service being effected on the parties listed at paragraphs a. to d. below

Notice to other interested parties

Our clients do not agree that it would be appropriate to publish your clients' Interlocutory Process on their website so as to give advance notice of the hearing of your clients' application to third parties. The appropriate course is for notice of the orders, any reasons for judgment and any evidence filed on an open basis, to be notified to interested parties in accordance with any disclosure or notification orders which the Court ultimately makes.

The orders made by the Court on 2 July 2020 and published on our clients' website on 3 July 2020 have already given notice of the application made on 2 July, and the grant of liberty and the timeframe for any parties who claimed to be affected by those orders to apply to vary or set aside the orders. To the extent interested parties perceive any reason to apply to the Court, they are already on notice and at liberty to do so. No further notification of those rights is necessary.

In any case the basis on which your clients seek to vary the orders is peculiar to your clients, and not germane to interested parties at large such that notice of that application should be given.

Finally, and most fundamentally, your clients' application is an application which seeks to modify confidentiality orders and in doing so seeks to rely on confidential material. In those circumstances, it is conceivable that the Court may need to hear some or all of the evidence and submissions in a closed Court setting. Our clients do not consent to disclosure of confidential material through a construct of a public hearing of what appears in essence to be a private issue.

Kind regards

Orla M. McCoy, Partner
Clayton Utz

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4240 | F +612 8220 6700
omccoy@claytonutz.com | www.claytonutz.com

 Please consider the environment before printing this e-mail

From: Matt Whitbread <matt.whitbread@corrs.com.au>
Sent: Tuesday, 7 July 2020 3:36 PM
To: McCoy, Orla <omccoy@claytonutz.com>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>; Michael Catchpoole <michael.catchpoole@corrs.com.au>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Orla

As set out in the Interlocutory Process, our clients intend to serve the Interlocutory Process on the following parties in addition to your clients:

- a. BC Hart Aggregator, L.P.;
- b. BC Hart Aggregator (Australia) Pty Ltd;
- c. Global Loan Agency Services Australia Nominees Pty Ltd; and
- d. ASIC.

Please confirm by **6pm** that your client has no objection to service of the interlocutory Process on those parties. Please also see attached the sealed documents.

Notice to other interested parties

We consider that it would be appropriate for the administrators to provide a copy of the Interlocutory Process on their website so that any other interested parties can appear on the return of the application. Please confirm by return that your clients will publish notice of the application.

Confidentiality

We note that your clients have purported to reserve their rights under the terms of the Non-Disclosure Agreements (NDA) entered into by the Applicants and their advisors on a number of occasions. Aside from contractual or genuine commercial matters, our clients consider that aspects of the affidavit evidence and correspondence that may not necessarily require s.37AF orders.

In an effort to assist the Court, we propose to prepare a version of the Affidavit and Exhibit with proposed confidentiality redactions. Subject to agreement as to the form of that document, the redacted version of the affidavit and exhibit could then be provided to any interested parties. We will write to you separately on that topic.

If you have any questions please contact us.

Kind regards,

Matt Whitbread | Senior Associate
Corrs Chambers Westgarth
 t +61 2 9210 6093 m +61 410 588 321 e matt.whitbread@corrs.com.au
 corrs.com.au

From: Michael Catchpoole
Sent: Tuesday, 7 July 2020 10:16 AM
To: McCoy, Orla <omccoy@claytonutz.com>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Matt Whitbread <matt.whitbread@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Orla

Given it is our client's Interlocutory Application which we have sought to have urgently listed, we are not sure to what end it would be appropriate for your client to contact the Court to attempt to list our application.

Kind regards

Michael Catchpoole | Partner
Corrs Chambers Westgarth
 t +61 2 9210 6288 m +61 417 727 304 e michael.catchpoole@corrs.com.au
 corrs.com.au

From: McCoy, Orla [mailto:omccoy@claytonutz.com]
Sent: Tuesday, 7 July 2020 10:08 AM
To: Michael Catchpoole <michael.catchpoole@corrs.com.au>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Matt Whitbread <matt.whitbread@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Michael

We note that you have proceeded to contact the Court, notwithstanding our last email.

We intend to approach the Court to seek to have the application listed for hearing on Thursday or Friday of this week. We will copy you with that correspondence.

Regards

Orla

From: Michael Catchpoole <michael.catchpoole@corrs.com.au>
Sent: Tuesday, 7 July 2020 9:44 AM
To: McCoy, Orla <omccoy@claytonutz.com>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Matt Whitbread <matt.whitbread@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Orla

Thank you for your email. We will approach the Court seeking permission to proceed confidentially. If your clients have an objection to confidentiality they can let the Court know at the appropriate time.

Kind regards

Michael Catchpoole | Partner
 Corrs Chambers Westgarth
 t +61 2 9210 6288 m +61 417 727 304 e michael.catchpoole@corrs.com.au
corrs.com.au

From: McCoy, Orla [<mailto:omccoy@claytonutz.com>]
Sent: Tuesday, 7 July 2020 9:32 AM
To: Michael Catchpoole <michael.catchpoole@corrs.com.au>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Matt Whitbread <matt.whitbread@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Michael

We refer to your clients' application served at 11.40pm last night.

We are currently taking instructions and will endeavour to respond in the next 30-60 minutes.

Regards

Orla

From: Michael Catchpoole <michael.catchpoole@corrs.com.au>
Sent: Monday, 6 July 2020 11:40 PM
To: Sackar, Timothy <tsackar@claytonutz.com>; McCoy, Orla <omccoy@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>

Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Matt Whitbread <matt.whitbread@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>

Subject: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors

Dear Colleagues

We attach our clients’:

1. Notice of Appearance; and
2. Interlocutory Application and supporting affidavit.

Due to its size, the confidential exhibit to the affidavit follows by separate secure link.

In view of the potential that this information is confidential or that claims to confidentiality may exist over the contents of the affidavit and exhibit, we propose to approach Justice Middleton’s associate for a listing of this application and to put in place an interim confidentiality regime to prevent disclosure of this material pending the return date of the Interlocutory Application.

Please let us know by 9:30am tomorrow if your client’s have any objection to us contacting the Court to obtain a listing for the Interlocutory Process on the basis outlined above. Please let us know if you have any questions.

Kind regards

Michael Catchpoole | Partner
Corrs Chambers Westgarth
t +61 2 9210 6288 m +61 417 727 304 e michael.catchpoole@corrs.com.au
corrs.com.au

Our full email footer is available at www.corrs.com.au/email-footer. In summary: This email and attachments may be confidential and subject to copyright or legal professional privilege. If you received this email in error, please inform the sender immediately, delete it and do not use, copy or disclose it. To unsubscribe from marketing messages, contact privacy@corrs.com.au.

Our full email footer is available at www.corrs.com.au/email-footer. In summary: This email and attachments may be confidential and subject to copyright or legal professional privilege. If you received this email in error, please inform the sender immediately, delete it and do not use, copy or disclose it. To unsubscribe from marketing messages, contact privacy@corrs.com.au.

Our full email footer is available at www.corrs.com.au/email-footer. In summary: This email and attachments may be confidential and subject to copyright or legal professional privilege. If you received this email in error, please inform the sender immediately, delete it and do not use, copy or disclose it. To unsubscribe from marketing messages, contact privacy@corrs.com.au.

Jessica Every

From: Glavac, Mikhail <mglavac@claytonutz.com>
Sent: Wednesday, 8 July 2020 4:10 PM
To: Andrew Edington; McCoy, Orla
Cc: Cameron Cheetham; Andrew Lumsden; Michael Catchpoole; Matt Whitbread; Jessica Every; Sackar, Timothy; Adams, Cassandra; Project Volar; Gardner, Tom
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Andrew

We confirm that we have received both parts of the proposed redacted exhibit MRC-1.

Regards,

Mikhail Glavac, Senior Associate
Clayton Utz

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4614 | F +612 8220 6700 |
mglavac@claytonutz.com | www.claytonutz.com

Please consider the environment before printing this e-mail

From: Andrew Edington <andrew.edington@corrs.com.au>
Sent: Wednesday, 8 July 2020 3:05 PM
To: Glavac, Mikhail <mglavac@claytonutz.com>; McCoy, Orla <omccoy@claytonutz.com>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Michael Catchpoole <michael.catchpoole@corrs.com.au>; Matt Whitbread <matt.whitbread@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Orla, Mikhail,

I attach the second part the proposed redacted form of exhibit MRC-1, referred to below, with pages omitted/redactions highlighted subject to our clients' instructions. Please confirm receipt of both parts.

Regards,

Andrew

Andrew Edington | Senior Associate
Corrs Chambers Westgarth
 t +61 2 9210 6758 e andrew.edington@corrs.com.au
corrs.com.au

From: Andrew Edington
Sent: Wednesday, 8 July 2020 2:55 PM
To: 'Glavac, Mikhail' <mglavac@claytonutz.com>; McCoy, Orla <omccoy@claytonutz.com>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Michael Catchpoole <michael.catchpoole@corrs.com.au>; Matt Whitbread <matt.whitbread@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Orla, Mikhail,

Further to our email this morning attaching a proposed redacted version of Michael Catchpoole's affidavit, we also attach a proposed redacted version of (the first part of) the exhibit – indicating which pages are proposed to be omitted and highlighting parts proposed to be redacted, subject to instructions. Due to file size, I plan to send you the second part by separate email. Could you please confirm receipt by reply email.

Regards,

Andrew

Andrew Edington | Senior Associate
Corrs Chambers Westgarth
 t +61 2 9210 6758 e andrew.edington@corrs.com.au
corrs.com.au

From: Glavac, Mikhail [<mailto:mglavac@claytonutz.com>]
Sent: Wednesday, 8 July 2020 12:52 PM
To: Andrew Edington <andrew.edington@corrs.com.au>; Michael Catchpoole <michael.catchpoole@corrs.com.au>; McCoy, Orla <omccoy@claytonutz.com>; Matt Whitbread <matt.whitbread@corrs.com.au>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Andrew

We do not have any objections to the preparation of a non-confidential version of the affidavit.

We are taking instructions in relation to the specific redactions proposed by your clients and any further redactions that our clients may propose. We will revert once we have obtained those instructions.

Regards,

Mikhail Glavac, Senior Associate
Clayton Utz

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4614 | F +612 8220 6700 |
mglavac@claytonutz.com | www.claytonutz.com

Please consider the environment before printing this e-mail

From: Andrew Edington <andrew.edington@corrs.com.au>
Sent: Wednesday, 8 July 2020 10:42 AM
To: Michael Catchpoole <michael.catchpoole@corrs.com.au>; McCoy, Orla <omccoy@claytonutz.com>; Matt Whitbread <matt.whitbread@corrs.com.au>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Orla

Further to Michael Catchpoole below, I attach the proposed form of redacted affidavit with proposed redactions highlighted. Please confirm whether you have any objections to preparation of a non-confidential version of the affidavit by redacting the highlighted material so that we are able to provide it to the Court this afternoon.

Many thanks.

Regards,

Andrew

Andrew Edington | Senior Associate
Corrs Chambers Westgarth
 t +61 2 9210 6758 e andrew.edington@corrs.com.au
corrs.com.au

From: Michael Catchpoole
Sent: Wednesday, 8 July 2020 10:20 AM
To: McCoy, Orla <omccoy@claytonutz.com>; Matt Whitbread <matt.whitbread@corrs.com.au>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Orla

Thank you for your email. There are well established principles of open justice that require proceedings before the Courts be conducted transparently.

The fact that our clients have applied to vary an order obtained in their absence, and the circumstances surrounding that application is not confidential. Other parts of the material are confidential in the sense that they may be protected by a contractual confidentiality regime, but may not be so confidential as to justify non-publication or suppression orders.

The idea that there is a "construct of a public hearing" which requires non-confidential information to be kept confidential is fundamentally at odds with the applicable legal principles. The application to vary orders obtained from the Court in our client's absence is not a "private issue." In fact, the existence of the public orders is being relied upon as a basis to deny our clients' statutory rights.

The Court has asked the parties to confer about a confidentiality regime. We have proposed that the parties undertake the customary process of attempting to produce a non-confidential version of the affidavit and exhibit. We take it that your clients will not co-operate with that process but please let us know if we have misunderstood your position.

Our clients will prepare a non-confidential version of the affidavit, that redacts certain details. We will provide a proposed redacted affidavit to your client this morning, so that, if so minded, your clients can provide feedback and then, taking into account any feedback or objections provide the proposed non-confidential affidavit and a copy of this correspondence, to the Court this afternoon.

Kind regards

Michael Catchpoole | Partner
Corrs Chambers Westgarth
 t +61 2 9210 6288 m +61 417 727 304 e michael.catchpoole@corrs.com.au
corrs.com.au

From: McCoy, Orla [<mailto:omccoy@claytonutz.com>]
Sent: Tuesday, 7 July 2020 8:27 PM
To: Matt Whitbread <matt.whitbread@corrs.com.au>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>; Michael Catchpoole <michael.catchpoole@corrs.com.au>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Matt

Thank you for your email below.

Service on other identified parties

We confirm that our clients have no objection to service being effected on the parties listed at paragraphs a. to d. below

Notice to other interested parties

Our clients do not agree that it would be appropriate to publish your clients' Interlocutory Process on their website so as to give advance notice of the hearing of your clients' application to third parties. The appropriate course is for notice of the orders, any reasons for judgment and any evidence filed on an open basis, to be notified to interested parties in accordance with any disclosure or notification orders which the Court ultimately makes.

The orders made by the Court on 2 July 2020 and published on our clients' website on 3 July 2020 have already given notice of the application made on 2 July, and the grant of liberty and the timeframe for any parties who claimed to be affected by those orders to apply to vary or set aside the orders. To the extent interested parties perceive any reason to apply to the Court, they are already on notice and at liberty to do so. No further notification of those rights is necessary.

In any case the basis on which your clients seek to vary the orders is peculiar to your clients, and not germane to interested parties at large such that notice of that application should be given.

Finally, and most fundamentally, your clients' application is an application which seeks to modify confidentiality orders and in doing so seeks to rely on confidential material. In those circumstances, it is conceivable that the Court may need to hear some or all of the evidence and submissions in a closed Court setting. Our clients do not consent to disclosure of confidential material through a construct of a public hearing of what appears in essence to be a private issue.

Kind regards

Orla M. McCoy, Partner
Clayton Utz

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4240 | F +612 8220 6700
omccoy@claytonutz.com | www.claytonutz.com

 Please consider the environment before printing this e-mail

From: Matt Whitbread <matt.whitbread@corrs.com.au>
Sent: Tuesday, 7 July 2020 3:36 PM
To: McCoy, Orla <omccoy@claytonutz.com>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>; Michael Catchpoole <michael.catchpoole@corrs.com.au>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Orla

As set out in the Interlocutory Process, our clients intend to serve the Interlocutory Process on the following parties in addition to your clients:

- a. BC Hart Aggregator, L.P.;

- b. BC Hart Aggregator (Australia) Pty Ltd;
- c. Global Loan Agency Services Australia Nominees Pty Ltd; and
- d. ASIC.

Please confirm by **6pm** that your client has no objection to service of the interlocutory Process on those parties. Please also see attached the sealed documents.

Notice to other interested parties

We consider that it would be appropriate for the administrators to provide a copy of the Interlocutory Process on their website so that any other interested parties can appear on the return of the application. Please confirm by return that your clients will publish notice of the application.

Confidentiality

We note that your clients have purported to reserve their rights under the terms of the Non-Disclosure Agreements (**NDA**) entered into by the Applicants and their advisors on a number of occasions. Aside from contractual or genuine commercial matters, our clients consider that aspects of the affidavit evidence and correspondence that may not necessarily require s.37AF orders.

In an effort to assist the Court, we propose to prepare a version of the Affidavit and Exhibit with proposed confidentiality redactions. Subject to agreement as to the form of that document, the redacted version of the affidavit and exhibit could then be provided to any interested parties. We will write to you separately on that topic.

If you have any questions please contact us.

Kind regards,

Matt Whitbread | Senior Associate
Corrs Chambers Westgarth
 t +61 2 9210 6093 m +61 410 588 321 e matt.whitbread@corrs.com.au
 corrs.com.au

From: Michael Catchpoole
Sent: Tuesday, 7 July 2020 10:16 AM
To: McCoy, Orla <omccoy@claytonutz.com>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Matt Whitbread <matt.whitbread@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Orla

Given it is our client's Interlocutory Application which we have sought to have urgently listed, we are not sure to what end it would be appropriate for your client to contact the Court to attempt to list our application.

Kind regards

Michael Catchpoole | Partner
Corrs Chambers Westgarth
 t +61 2 9210 6288 m +61 417 727 304 e michael.catchpoole@corrs.com.au
 corrs.com.au

From: McCoy, Orla [<mailto:omccoy@claytonutz.com>]
Sent: Tuesday, 7 July 2020 10:08 AM
To: Michael Catchpoole <michael.catchpoole@corrs.com.au>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Matt Whitbread <matt.whitbread@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra

<kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>

Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Michael

We note that you have proceeded to contact the Court, notwithstanding our last email.

We intend to approach the Court to seek to have the application listed for hearing on Thursday or Friday of this week. We will copy you with that correspondence.

Regards

Orla

From: Michael Catchpoole <michael.catchpoole@corrs.com.au>

Sent: Tuesday, 7 July 2020 9:44 AM

To: McCoy, Orla <omccoy@claytonutz.com>

Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Matt Whitbread <matt.whitbread@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>

Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Orla

Thank you for your email. We will approach the Court seeking permission to proceed confidentiality. If your clients have an objection to confidentiality they can let the Court know at the appropriate time.

Kind regards

Michael Catchpoole | Partner
Corrs Chambers Westgarth
 t +61 2 9210 6288 m +61 417 727 304 e michael.catchpoole@corrs.com.au
corrs.com.au

From: McCoy, Orla [<mailto:omccoy@claytonutz.com>]

Sent: Tuesday, 7 July 2020 9:32 AM

To: Michael Catchpoole <michael.catchpoole@corrs.com.au>

Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Matt Whitbread <matt.whitbread@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>; Sackar, Timothy <tsackar@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>

Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors [CU-Legal.FID3017446]

Dear Michael

We refer to your clients' application served at 11.40pm last night.

We are currently taking instructions and will endeavour to respond in the next 30-60 minutes.

Regards

Orla

From: Michael Catchpoole <michael.catchpoole@corrs.com.au>
Sent: Monday, 6 July 2020 11:40 PM
To: Sackar, Timothy <tsackar@claytonutz.com>; McCoy, Orla <omccoy@claytonutz.com>; Adams, Cassandra <kaadams@claytonutz.com>
Cc: Cameron Cheetham <cameron.cheetham@corrs.com.au>; Andrew Lumsden <Andrew.Lumsden@corrs.com.au>; Andrew Edington <andrew.edington@corrs.com.au>; Matt Whitbread <matt.whitbread@corrs.com.au>; Jessica Every <jessica.every@corrs.com.au>
Subject: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & Ors

Dear Colleagues

We attach our clients':

1. Notice of Appearance; and
2. Interlocutory Application and supporting affidavit.

Due to its size, the confidential exhibit to the affidavit follows by separate secure link.

In view of the potential that this information is confidential or that claims to confidentiality may exist over the contents of the affidavit and exhibit, we propose to approach Justice Middleton's associate for a listing of this application and to put in place an interim confidentiality regime to prevent disclosure of this material pending the return date of the Interlocutory Application.

Please let us know by 9:30am tomorrow if your client's have any objection to us contacting the Court to obtain a listing for the Interlocutory Process on the basis outlined above. Please let us know if you have any questions.

Kind regards

Michael Catchpoole | Partner
Corrs Chambers Westgarth
t +61 2 9210 6288 m +61 417 727 304 e michael.catchpoole@corrs.com.au
corrs.com.au

Our full email footer is available at www.corrs.com.au/email-footer. In summary: This email and attachments may be confidential and subject to copyright or legal professional privilege. If you received this email in error, please inform the sender immediately, delete it and do not use, copy or disclose it. To unsubscribe from marketing messages, contact privacy@corrs.com.au.

Our full email footer is available at www.corrs.com.au/email-footer. In summary: This email and attachments may be confidential and subject to copyright or legal professional privilege. If you received this email in error, please inform the sender immediately, delete it and do not use, copy or disclose it. To unsubscribe from marketing messages, contact privacy@corrs.com.au.

Our full email footer is available at www.corrs.com.au/email-footer. In summary: This email and attachments may be confidential and subject to copyright or legal professional privilege. If you received this email in error, please inform the sender immediately, delete it and do not use, copy or disclose it. To unsubscribe from marketing messages, contact privacy@corrs.com.au.

Our full email footer is available at www.corrs.com.au/email-footer. In summary: This email and attachments may be confidential and subject to copyright or legal professional privilege. If you received this email in error, please inform the sender immediately, delete it and do not use, copy or disclose it. To unsubscribe from marketing messages, contact privacy@corrs.com.au.

Our full email footer is available at www.corrs.com.au/email-footer. In summary: This email and attachments may be confidential and subject to copyright or legal professional privilege. If you received this email in error, please inform the sender immediately, delete it and do not use, copy or disclose it. To unsubscribe from marketing messages, contact privacy@corrs.com.au.