

Form 3 Interlocutory process

(Rules 2.2, 15A.4, 15A.8 and 15A.9)

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

No. NSD 464 of 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 EACH 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

A. DETAILS OF APPLICATION

This application is made under sections 447A(1) and 588FM(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**).

On the facts stated in the supporting affidavit of Vaughan Neil Strawbridge sworn on 1 July 2020 the Plaintiffs seek the following orders:

1. An order that the Interlocutory Process filed on 1 July 2020 be returnable at 10:15am on 2 July 2020.
2. Until further order, and until no later than 30 June 2021 an order pursuant to sections 37AF(1)(b)(i) and (ii) of the *Federal Court of Australia Act 1976* (Cth), on the ground stated in s 37AG(1)(a), being that the order is necessary to prevent prejudice to the proper administration of justice, that "Confidential Exhibit [VNS-5]" to the affidavit of Vaughan Neil Strawbridge sworn on 1 July 2020 be kept confidential and be prohibited from disclosure to any person other than the Judge hearing the Interlocutory Process filed on 2 July 2020, the Judge's staff and assistants, the Plaintiffs and their legal representatives, Bain Capital Private Equity LP, Bain Capital Credit LP and their affiliates and related entities and ASIC.

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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Address for service (include state and postcode)	Level 15, 1 Bligh Street, Sydney NSW 2000		

Relief from Administrators' personal liability for obligations arising out of the Administrators' Funding Agreement

3. An order, pursuant to section 447A(1) of the Corporations Act, 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, subject to prayer 4 below:
 - a. the liabilities of the First Plaintiffs incurred with respect to any obligations arising out of, or in connection with the Administrators' Funding Agreement dated 26 June 2020 between, among others, the First Plaintiffs, the Tenth Plaintiff and BC Hart Aggregator, L.P. (including in respect of monies borrowed, interest in respect monies borrowed and borrowing costs), including monies borrowed, interest incurred in respect of monies borrowed and borrowing costs, 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 Second to Fortieth Plaintiffs; and
 - b. notwithstanding that the liabilities in subparagraph (a) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of the Second to Fortieth Plaintiffs, if the property and assets of the Second to Fortieth Plaintiffs (where relevant) are insufficient to satisfy these debts and liabilities, such that the indemnity that exists under section 443D of the Act is insufficient to meet any amount for which the First Plaintiffs may be liable, then the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent of that insufficiency.

Relief from Administrators' personal liability for liabilities upon termination of the Sale Deed

4. An order, pursuant to section 447A(1) of the Corporations Act, 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 as follows:
 - a. to the extent that the First Plaintiffs incur any liability under section 443A(1) of the Corporations Act for a debt or debts incurred to BC Hart Aggregator, L.P upon the termination of the Sale and Implementation Deed dated 26 June 2020 between the Plaintiffs, BC Hart Aggregator, L.P. and BC Hart Aggregator (Australia) Pty Ltd due to the breach by, or failure of, any of the Plaintiffs;
 - b. then:
 - i. those are liabilities in the nature of debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Second to Fortieth Plaintiffs; and
 - ii. notwithstanding that the liabilities in subparagraph (b)(i) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several

administrators of the Second to Fortieth Plaintiffs, if the property and assets of the Second to Fortieth Plaintiffs (where relevant) are insufficient to satisfy these debts and liabilities, such that the indemnity that exists under section 443D of the Act is insufficient to meet any amount for which the First Plaintiffs may be liable, then the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent of that insufficiency.

Extension of Time

5. An order, pursuant to section 588FM of the Corporations Act that, in respect of any security interests created by or in connection with:
 - a. the General Security Agreement dated 26 June 2020 between the First Plaintiffs, the Second to Tenth Plaintiffs, the Thirteenth Plaintiff, the Nineteenth to Twenty-Fourth Plaintiffs, the Fortieth Plaintiff, and Global Loan Agency Services Australia Nominees Pty Ltd; and
 - b. the Charge Over Shares dated 26 June 2020 between the First Plaintiffs, the Seventh Plaintiff, and Global Loan Agency Services Australia Nominees Pty Ltd,

the time for registration of the security interests in respect of the collateral is fixed to be, for the purposes of section 588FL(2)(b)(iv) of the Corporations Act, 24 July 2020 (being the time that is the end of 20 business days after the date that the documents that gives rise to the security interests came into force).

General

6. An order that the First Plaintiffs take all reasonable steps to cause notice of the Court's orders to be given, within one (1) business day of the making of the orders, to:
 - a. the creditors (including persons or entities claiming to be creditors) of each of the Second to the Fortieth Plaintiffs, in the following manner:
 - i. where the First Plaintiffs have an email address for a creditor, by 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 subparagraph (a)(i) above), by 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 Interlocutory Process and the orders on the website maintained by the First Plaintiffs at

<https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australiaholdings-limited-subsidiaries.html>; and

- b. the Australian Securities and Investments Commission.
7. An order that any person who can demonstrate a sufficient interest have liberty to apply, within (2) business days of notice having been provided under order 6, to vary or discharge any orders made pursuant to paragraphs 1 to 5 above, on giving written notice to the Plaintiffs and to the Associate to Justice Middleton.
 8. An order that the Plaintiffs have liberty to apply on one (1) business day's written notice to the Court in relation to any variation or discharge of the Court's orders.
 9. An order that the Plaintiffs' costs of the application be treated as costs in the administrations of each of the Second to Fortieth Plaintiffs, jointly and severally.
 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: 1 July 2020



Signed by Timothy James Sackar
Solicitor for the First Plaintiffs
(by his partner, Orfhlaith Maria McCoy)

This application will be heard by the Federal Court of Australia at the Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne, Victoria at **10:15am on 2 July 2020**.

B. NOTICE TO RESPONDENT(S) (IF ANY)

N/A

C. FILING

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

E. SERVICE

The Plaintiffs' address for service is:

Attention: Timothy Sackar/Kassandra Adams
C/- Clayton Utz Lawyers
Level 15,
1 Bligh Street
SYDNEY NSW 2000

It is intended to serve a copy of this interlocutory process on the following persons:

BC Hart Aggregator, L.P.;

BC Hart Aggregator (Australia) Pty Ltd; and

Global Loan Agency Services Australia Nominees Pty Ltd

C-/ Mark Clifton and Nikki Smythe, Herbert Smith Freehills, Sydney

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SCHEDULE 1

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

No. NSD 464 of 2020

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

Plaintiffs

First Plaintiff:	Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacity as joint and several voluntary administrators of the Second to Thirty-ninth Plaintiffs
Second Plaintiff:	Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226
Third Plaintiff	Virgin Australia International Operations Pty Ltd (Administrators Appointed) ACN 155 859 608
Fourth Plaintiff:	Virgin Australia International Holdings Pty Ltd (Administrators Appointed) ACN 155 860 021
Fifth Plaintiff:	Virgin Australia International Airlines Pty Ltd (Administrators Appointed) ACN 125 580 823
Sixth Plaintiff:	Virgin Australia Airlines (SE Asia) Pty Ltd (Administrators Appointed) ACN 097 892 389
Seventh Plaintiff:	Virgin Australia Airlines Holdings Pty Ltd (Administrators Appointed) ACN 093 924 675
Eighth Plaintiff:	VAH Newco No.1 Pty Ltd (Administrators Appointed) ACN 160 881 345
Ninth Plaintiff:	Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008
Tenth Plaintiff:	Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965
Eleventh Plaintiff:	VA Borrower 2019 No. 1 Pty Ltd (Administrators Appointed) ACN 633 241 059
Twelfth Plaintiff:	VA Borrower 2019 No. 2 Pty Ltd (Administrators Appointed) ACN 637 371 343

Thirteenth Plaintiff:	Virgin Tech Pty Ltd (Administrators Appointed) ACN 101 808 879
Fourteenth Plaintiff:	Short Haul 2018 No. 1 Pty Ltd (Administrators Appointed) ACN 622 014 831
Fifteenth Plaintiff:	Short Haul 2017 No. 1 Pty Ltd (Administrators Appointed) ACN 617 644 390
Sixteenth Plaintiff:	Short Haul 2017 No. 2 Pty Ltd (Administrators Appointed) ACN 617 644 443
Seventeenth Plaintiff:	Short Haul 2017 No. 3 Pty Ltd (Administrators Appointed) ACN 622 014 813
Eighteenth Plaintiff:	VBNC5 Pty Ltd (Administrators Appointed) ACN 119 691 502
Nineteenth Plaintiff:	A.C.N. 098 904 262 Pty Ltd (Administrators Appointed) ACN 098 904 262
Twentieth Plaintiff:	Virgin Australia Regional Airlines Pty Ltd (Administrators Appointed) ACN 008 997 662
Twenty-first Plaintiff:	Virgin Australia Holidays Pty Ltd (Administrators Appointed) ACN 118 552 159
Twenty-second Plaintiff:	VB Ventures Pty Ltd (Administrators Appointed) ACN 125 139 004
Twenty-third Plaintiff:	Virgin Australia Cargo Pty Ltd (Administrators Appointed) ACN 600 667 838
Twenty-fourth Plaintiff:	VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741
Twenty-fifth Plaintiff:	VA Hold Co Pty Ltd (Administrators Appointed) ACN 165 507 157
Twenty-sixth Plaintiff:	VA Lease Co Pty Ltd (Administrators Appointed) ACN 165 507 291
Twenty-seventh Plaintiff:	Virgin Australia 2013-1 Issuer Co Pty Ltd (Administrators Appointed) ACN 165 507 326
Twenty-eighth Plaintiff:	737 2012 No.1 Pty. Ltd (Administrators Appointed) ACN 154 201 859
Twenty-ninth Plaintiff:	737 2012 No. 2 Pty Ltd (Administrators Appointed) ACN 154 225 064

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