

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:     Kassandra Suzann Adams  
Address:         Level 15, 1 Bligh Street, Sydney NSW 2000  
Occupation:     Solicitor  
Date:            24 May 2020

### Contents

Document number	Details	Annexure	Pages
1.	Affidavit of Kassandra Suzann Adams sworn on 24 May 2020		1–7
2.	Email blind-copying Aircraft Lessor Law Firms, attaching the Interlocutory Process, the Algeri Affidavit and Exhibit SA-1	A.	8

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     kaadams@claytonutz.com  
**Address for service**                     Level 15, 1 Bligh Street, Sydney NSW 2000  
(include state and postcode)

[Version 3 form approved 02/05/2019]

Document number	Details	Annexure	Pages
3.	Relay receipt, 22 May 2020	B.	9–10
4.	Email from David Lombe to three officers of ASIC, 23 May 2020	C.	11
5.	Email from David Lombe to Henry Carr, Assistant Secretary, Commonwealth Attorney-General's Department, 23 May 2020	D.	12
6.	Email from Gavin Rakoczy, King & Wood Mallesons, to Timothy Sackar and Graeme Tucker, Clayton Utz, and its attached letter, 23 May 2020	E.	13–15
7.	Email from Timothy Sackar, Clayton Utz, to Gavin Rakoczy, King & Wood Mallesons, and its attached letter, 23 May 2020	F.	16–18

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

1. I am a solicitor employed by Clayton Utz, solicitors for the Plaintiffs. I have the day to day carriage of this matter under the supervision of Timothy Sackar, a partner of Clayton Utz.
2. I make this affidavit from my own knowledge and belief, except where otherwise stated in which case I have stated the source of my knowledge.
3. I make this affidavit in relation to the Plaintiffs' Interlocutory Process dated 22 May 2020 (**Interlocutory Process**). At 9:59pm on 22 May 2020, I caused to be submitted the Interlocutory Process to the Court's registry for filing on behalf of the Plaintiffs, together with a supporting affidavit of Salvatore Algeri dated 22 May 2020 (**Algeri Affidavit**) and its exhibit marked "SA-1" (**Exhibit SA-1**).

**NOTICE OF THE INTERLOCUTORY APPLICATION TO THE LAWYERS FOR THE AIRCRAFT LESSORS**

4. I am aware, as the solicitor with day to day carriage of this matter, that the parties defined as 'Aircraft Lessors' in paragraph [13] of the Algeri Affidavit have retained lawyers at the firms of solicitors set out in paragraph [19] of the Algeri Affidavit to act for them in relation to the administrations of the Virgin Companies, including in relation to these proceedings. The firms retained by the Aircraft Lessors are King & Wood Mallesons, K&L Gates, Minter Ellison, Norton Rose Fulbright, Gilbert & Tobin, Ashurst and Allen & Overy (collectively, **Aircraft Lessor Law Firms**).

5. On 22 May 2020 at 10:00pm, I sent an email, on which a number of recipients at each of the Aircraft Lessor Law Firms were blind-copied, attaching the Interlocutory Process, the Algeri Affidavit and Exhibit SA-1. A copy of that email (excluding its attachments as they are in the same form as filed with the Court) is annexed to this affidavit as **Annexure A**. Annexed to this affidavit as **Annexure B** is a relay receipt which was automatically generated at the time the email was sent and lists the recipients of the email.
6. I also requested via Microsoft Outlook that a read receipt be notified to me when any of the recipients of the email read it. As at the time of making this affidavit, I have received 21 read receipts, including at least one read receipt from each of the Aircraft Lessor Law Firms.

#### **NOTICE OF THE INTERLOCUTORY APPLICATION TO THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)**

7. I am informed by David Lombe, Special Principal, Restructuring Services at Deloitte and verily believe to be true that on 23 May 2020 at 9:55am, Mr Lombe sent an email to three officers of ASIC. The email gave notice of the interlocutory application and attached copies of the Interlocutory Process, the Algeri Affidavit and Exhibit SA-1. A copy of Mr Lombe's email to ASIC is annexed to this affidavit as **Annexure C**.

#### **NOTICE OF THE INTERLOCUTORY APPLICATION TO THE COMMONWEALTH ATTORNEY GENERAL'S DEPARTMENT**

8. I am informed by Mr Lombe and verily believe to be true that on 23 May 2020 at 9:56am, Mr Lombe sent an email to Mr Henry Carr, Assistant Secretary at the Commonwealth Attorney-General's Department, who I am aware, as the solicitor with day to day carriage of this matter, is responsible for the Commonwealth Government's Fair Entitlements Guarantee Scheme. The email gave notice of the interlocutory application and attached copies of the Interlocutory Application, the Algeri Affidavit and Exhibit SA-1. Mr Lombe's email to Mr Carr is annexed to this affidavit as **Annexure D**.

#### **CORRESPONDENCE WITH KING & WOOD MALLESONS**

9. On 23 May 2020 at 10:37am, I was copied on an email from Gavin Rakoczy of King & Wood Mallesons, which attached a letter addressed to Timothy Sackar and Graeme Tucker (also a partner of Clayton Utz who is acting on this matter). A copy of that email and letter is annexed to this affidavit as **Annexure E**.

10. On 23 May 2020 at 8.01pm, Timothy Sackar sent an email attaching a letter in response to Gavin Rakoczy of King & Wood Mallesons, on which I was copied. A copy of that email and letter is annexed to this affidavit as **Annexure F**.

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

)  
)  
)  
)  
)

Signature of Kassandra Suzann Adams

Signature of witness  
Madeleine McCloy, solicitor.

**SCHEDULE**

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 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

**Gardner, Tom**

---

**From:** Adams, Cassandra  
**Sent:** Friday, 22 May 2020 10:00 PM  
**Cc:** Tucker, Graeme; !NATVolarLeases; Algeri, Sal; Sparks, Grant; Mohammed, Mukhtader; Hassall, Rosie; Project Volar  
**Subject:** In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) & Ors - Federal Court of Australia Proceeding Number NSD 464 of 2020  
**Attachments:** Exhibit SA-1.zip; Interlocutory Process - 25 May 2020 application (2).pdf; Project Volar - 443B Extension Affidavit (22 May) (003) (2).pdf

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>
	Tucker, Graeme	Delivered: 22/05/2020 10:00 PM
	!NATVolarLeases	<b>This is Annexure A referred to in the affidavit of Kassandra Suzann Adams</b>
	Algeri, Sal	
	Sparks, Grant	<b>Sworn on</b>
	Mohammed, Mukhtader	
	Hassall, Rosie	_____
	Project Volar	<b>Before me</b>
		_____

Dear Sir/Madam

**In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) & Ors - Federal Court of Australia Proceeding Number NSD 464 of 2020**

We refer to the Circular to Aircraft Financiers & Lessors issued yesterday. The Circular gave notice to aircraft lessors and financiers of the Plaintiffs' application listed for hearing at **10:15am on Monday, 25 May 2020** in the Federal Court of Australia.

We **attach** the documents filed by the Plaintiffs in these proceedings in connection with the application:

1. an Interlocutory Process filed on 22 May 2020; and
2. a supporting affidavit of Salvatore Algeri filed on 22 May 2020 and Exhibit SA-1 to the affidavit.

Kind regards

**Kassandra Adams, Senior Associate  
Clayton Utz**

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

**Gardner, Tom**

---

**From:** Microsoft Outlook  
**To:** Jessica.Ji@AllenOvery.com; Jason.Gray@AllenOvery.com; caitlin.murray@minterellison.com; michael.vickery@minterellison.com; pbowden@gtlaw.com.au; Khan, Safiyya; jschembri@gtlaw.com.au; rjones@gtlaw.com.au; Penny Robinson; Rakoczy, Gavin (AU; Pan, Philip (AU; Rajanayagam, Andrew (AU; Miles, Jessica (AU; Anthony Sommer; James Mok; Canning, John (AU; dale.rayner@au.kwm.com; Casamento, Vittorio; Jock.O'Shea@ashurst.com; james.marshall@ashurst.com; Seelenmeyer, Lewis; robert.melson@klgates.com; Opperman, Jason; Fielden, Cassandra; david.goldman@nortonrosefulbright.com; noel.mccoy@nortonrosefulbright.com; Newman, Olivia; Santos, Brian; Davies, Hannah K.; Williams, Nick; Toh, Natalia Aubrey  
**Sent:** Friday, 22 May 2020 10:00 PM  
**Subject:** Relayed: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) & Ors - Federal Court of Australia Proceeding Number NSD 464 of 2020

**Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:**

[Jessica.Ji@AllenOvery.com](mailto:Jessica.Ji@AllenOvery.com) ([Jessica.Ji@AllenOvery.com](mailto:Jessica.Ji@AllenOvery.com))

[Jason.Gray@AllenOvery.com](mailto:Jason.Gray@AllenOvery.com) ([Jason.Gray@AllenOvery.com](mailto:Jason.Gray@AllenOvery.com))

[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com) ([caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com))

[michael.vickery@minterellison.com](mailto:michael.vickery@minterellison.com) ([michael.vickery@minterellison.com](mailto:michael.vickery@minterellison.com))

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[Penny Robinson](mailto:Penny.Robinson@minterellison.com) ([Penny.Robinson@minterellison.com](mailto:Penny.Robinson@minterellison.com))

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[Rajanayagam, Andrew \(AU](mailto:Rajanayagam,Andrew@Andrew.Rajanayagam@au.kwm.com) ([Andrew.Rajanayagam@au.kwm.com](mailto:Andrew.Rajanayagam@au.kwm.com))

[Miles, Jessica \(AU](mailto:Miles,Jessica@Jessica.Miles@au.kwm.com) ([Jessica.Miles@au.kwm.com](mailto:Jessica.Miles@au.kwm.com))

[Anthony Sommer](mailto:Anthony.Sommer@minterellison.com) ([Anthony.Sommer@minterellison.com](mailto:Anthony.Sommer@minterellison.com))

[James Mok](mailto:James.Mok@minterellison.com) ([James.Mok@minterellison.com](mailto:James.Mok@minterellison.com))

[Canning, John \(AU](mailto:Canning,John@John.Canning@au.kwm.com) ([John.Canning@au.kwm.com](mailto:John.Canning@au.kwm.com))

[dale.rayner@au.kwm.com](mailto:dale.rayner@au.kwm.com) ([dale.rayner@au.kwm.com](mailto:dale.rayner@au.kwm.com))

This and the following page  
is Annexure B referred  
to in the affidavit of  
Kassandra Suzann Adams

Sworn on

\_\_\_\_\_

Before me

\_\_\_\_\_

[Casamento, Vittorio \(vittorio.casamento@nortonrosefulbright.com\)](mailto:vittorio.casamento@nortonrosefulbright.com)

[Jock.O'Shea@ashurst.com \(Jock.O'Shea@ashurst.com\)](mailto:Jock.O'Shea@ashurst.com)

[james.marshall@ashurst.com \(james.marshall@ashurst.com\)](mailto:james.marshall@ashurst.com)

[Seelenmeyer, Lewis \(Lewis.Seelenmeyer@klgates.com\)](mailto:Lewis.Seelenmeyer@klgates.com)

[robert.melson@klgates.com \(robert.melson@klgates.com\)](mailto:robert.melson@klgates.com)

[Opperman, Jason \(Jason.Opperman@klgates.com\)](mailto:Jason.Opperman@klgates.com)

[Fielden, Cassandra \(cassandra.fielden@nortonrosefulbright.com\)](mailto:cassandra.fielden@nortonrosefulbright.com)

[david.goldman@nortonrosefulbright.com \(david.goldman@nortonrosefulbright.com\)](mailto:david.goldman@nortonrosefulbright.com)

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[Newman, Olivia \(olivia.newman@nortonrosefulbright.com\)](mailto:olivia.newman@nortonrosefulbright.com)

[Santos, Brian \(Brian.Santos@klgates.com\)](mailto:Brian.Santos@klgates.com)

[Davies, Hannah K. \(Hannah.Davies@klgates.com\)](mailto:Hannah.Davies@klgates.com)

[Williams, Nick \(Nick.Williams@klgates.com\)](mailto:Nick.Williams@klgates.com)

[Toh, Natalia Aubrey \(Natalia.Toh@klgates.com\)](mailto:Natalia.Toh@klgates.com)

Subject: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) & Ors - Federal Court of Australia  
Proceeding Number NSD 464 of 2020

**Gardner, Tom**

---

**From:** Lombe, David <dlombe@deloitte.com.au>  
**Sent:** Saturday, 23 May 2020 9:55 AM  
**To:** 'Thea Eszenyi'; 'Carl Sibilialia'; 'Yvan Dang'  
**Subject:** Court Application In the matter of Virgin Australia Holdings Ltd (Administrators Appointed)  
**Attachments:** Interlocutory Process - 25 May 2020 application (2).pdf; Exhibit SA-1.zip; Project Volar - 443B Extension Affidavit (22 May) (003) (2).pdf

Dear Thea,

For completeness I have re sent the interlocutory process together with the affidavit and exhibits.

Accordingly please find attached:

1. Interlocutory Process filed 22 May 2020; and
2. Affidavit of Salvatore Algeri filed 22 May 2020 together with Exhibit SA-1.

If you have any questions please do not hesitate to contact me.

Regards

David

**David Lombe**  
Special Principal| Restructuring Services  
Deloitte Financial Advisory Pty Ltd  
Grosvenor Place, 225 George Street, Sydney, NSW, 2000  
D: +61 2 9322 7400 | F: +61 2 9322 7001  
[dlombe@deloitte.com.au](mailto:dlombe@deloitte.com.au) | [www.deloitte.com](http://www.deloitte.com)

**Deloitte.**

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This is Annexure C referred to in the affidavit of Cassandra Suzann Adams

Sworn on \_\_\_\_\_

Before me \_\_\_\_\_

**Gardner, Tom**

---

**From:** Lombe, David <dlombe@deloitte.com.au>  
**Sent:** Saturday, 23 May 2020 9:56 AM  
**To:** 'Carr, Henry'  
**Subject:** Court Application In the matter of Virgin Australia Holdings Ltd (Administrators Appointed)  
**Attachments:** Interlocutory Process - 25 May 2020 application (2).pdf; Exhibit SA-1.zip; Project Volar - 443B Extension Affidavit (22 May) (003) (2).pdf

Dear Henry.

For completeness I have re sent the interlocutory process together with the affidavit and exhibits.

Accordingly please find attached:

1. Interlocutory Process filed 22 May 2020; and
2. Affidavit of Salvatore Algeri filed 22 May 2020 together with Exhibit SA-1.

If you have any questions please do not hesitate to contact me.

Regards

David

**David Lombe**  
Special Principal| Restructuring Services  
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**Deloitte.**

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This is Annexure D referred to in the affidavit of Cassandra Suzann Adams

Sworn on \_\_\_\_\_

Before me \_\_\_\_\_

This and the following 2 pages is Annexure E referred to in the affidavit of Cassandra Suzann Adams

Sworn on \_\_\_\_\_

Before me \_\_\_\_\_

---

**From:** Rakoczy, Gavin (AU) <Gavin.Rakoczy@au.kwm.com>

**Sent:** Saturday, 23 May 2020 10:37 AM

**To:** Sackar, Timothy <tsackar@claytonutz.com>; Tucker, Graeme <gtucker@claytonutz.com>

**Cc:** Adams, Cassandra <kaadams@claytonutz.com>; Mohammed, Mukhtader <mukmohammed@deloitte.com.au>; Sal Algeri <saalgeri@deloitte.com.au>; Canning, John (AU) <John.Canning@au.kwm.com>; Rajanayagam, Andrew (AU) <Andrew.Rajanayagam@au.kwm.com>; Rayner, Dale (AU) <Dale.Rayner@au.kwm.com>; Miles, Jessica (AU) <Jessica.Miles@au.kwm.com>; Pan, Philip (AU) <Philip.Pan@au.kwm.com>; Mew, Cameron (AU) <Cameron.Mew@au.kwm.com>

**Subject:** Urgent | Virgin Australia Holdings Ltd and its associated entities (All Administrators Appointed) | Court application

**Importance:** High

Tim / Graeme,

Please see attached correspondence.

Kind regards

Gavin

**Gavin Rakoczy | Special Counsel**

**King & Wood Mallesons**

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

T +61 2 9296 2136 | M +61 407 955 186 | F +61 2 9296 3999

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

King & Wood Mallesons in Australia is a member firm of the King & Wood Mallesons network. See [www.kwm.com](http://www.kwm.com) for more information.

23 May 2020

To Tim Sackar and Graeme Tucker  
Partner  
Clayton Utz  
Level 15, 1 Bligh Street, Sydney, NSW, 2000

By email: [tsackar@claytonutz.com](mailto:tsackar@claytonutz.com); [gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)

Dear Tim and Graeme

**Virgin Australia Holdings Ltd and its associated entities (All Administrators Appointed) ("the Group")**

- 1 As you know, we act for a number of lessors and financiers to the Group, with total claims in excess of \$3.7 billion.
- 2 We refer to the court papers circulated by the Administrators at 10:02pm on Friday, 2 May 2020.
- 3 We note that order 2a is very broadly drawn and will excuse your clients from personal liability under *both* sections 443A(1)(c) and 443B(2) of the *Corporations Act 2001* (Cth) with respect to our clients aircraft, engines, etc for the period to 16 June 2020.
- 4 As currently drafted the order will mean that protocol agreements agreed and signed in the coming days will be ineffective to impose any personal liability on the administrators (including with regards the usage payment) until after 16 June 2020.
- 5 We anticipate that this is not the intention and is an oversight in the drafting of order 2a, noting that paragraph 47 of the supporting affidavit of Salvatore Algeri dated 22 May 2020 states as follows (emphasis added):

I and my fellow Administrators do not consider that the Aircraft Lessors of aircraft and equipment that would be used in accordance with the Aircraft Protocol will be materially prejudiced by the making of the proposed orders. While no payments are being made to Aircraft Lessors in the interim, **as soon as an Aircraft Lessor's Aircraft Protocol has been signed, the lessor's entitlement to the usage charges set out in the Aircraft Protocol will start.**
- 6 We request that your clients urgently confirm that they will amend order 2a to carve out any liability of the administrators under the protocol agreements (noting that your clients have previously obtained limited recourse orders from the Court in this respect).

7 We look forward to your urgent response.

Yours faithfully

*King & Wood Mallesons*

## Gardner, Tom

---

**From:** Sackar, Timothy  
**Sent:** Saturday, 23 May 2020 8:01 PM  
**To:** 'Rakoczy, Gavin (AU)'; Tucker, Graeme  
**Cc:** Adams, Cassandra; Mohammed, Mukhtader; Sal Algeri; Canning, John (AU); Rajanayagam, Andrew (AU); Rayner, Dale (AU); Miles, Jessica (AU); Pan, Philip (AU); Mew, Cameron (AU); McCoy, Orla; Glavac, Mikhail; Gardner, Tom; Project Volar  
**Subject:** RE: Urgent | Virgin Australia Holdings Ltd and its associated entities (All Administrators Appointed) | Court application  
**Attachments:** Letter to KWM re IP dated 23 May 2020.PDF

Thanks Gavin, please see attached our response.

Kind regards

CU Team

**Timothy Sackar**  
**National Practice Leader, R&I**  
**Clayton Utz**

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[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)

Please consider the environment before printing this e-mail

This and the following 2 pages is Annexure F referred to in the affidavit of Cassandra Suzann Adams

Sworn on \_\_\_\_\_

Before me \_\_\_\_\_

---

**From:** Rakoczy, Gavin (AU) <Gavin.Rakoczy@au.kwm.com>  
**Sent:** Saturday, 23 May 2020 10:37 AM  
**To:** Sackar, Timothy <tsackar@claytonutz.com>; Tucker, Graeme <gtucker@claytonutz.com>  
**Cc:** Adams, Cassandra <kaadams@claytonutz.com>; Mohammed, Mukhtader <mukmohammed@deloitte.com.au>; Sal Algeri <saalgeri@deloitte.com.au>; Canning, John (AU) <John.Canning@au.kwm.com>; Rajanayagam, Andrew (AU) <Andrew.Rajanayagam@au.kwm.com>; Rayner, Dale (AU) <Dale.Rayner@au.kwm.com>; Miles, Jessica (AU) <Jessica.Miles@au.kwm.com>; Pan, Philip (AU) <Philip.Pan@au.kwm.com>; Mew, Cameron (AU) <Cameron.Mew@au.kwm.com>  
**Subject:** Urgent | Virgin Australia Holdings Ltd and its associated entities (All Administrators Appointed) | Court application  
**Importance:** High

Tim / Graeme,

Please see attached correspondence.

Kind regards

Gavin

**Gavin Rakoczy | Special Counsel**  
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Email

23 May 2020

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**Attention:** Philip Pan

John Canning

Gavin Rakoczy

**By email:**

philip.pan@au.kwm.com

john.canning@au.kwm.com

gavin.rakoczy@au.kwm.com

Dear Colleagues

**Virgin Australia Holdings Ltd and its associated entities (All Administrators Appointed)**

We refer to your letter of even date regarding the Administrators' Interlocutory Process dated 22 May 2020 (**Interlocutory Process**) which is listed for hearing on Monday 25 May 2020 at 10.15am before Justice Middleton in the Federal Court of Australia.

Further to our brief telephone conversation with Gavin this morning, we have given thought to the matters raised in your letter.

We recognise that the concern raised in your letter arises from a possible misapprehension as to the interaction between prayer 2(a) of the Interlocutory Process and Order 2(a)(i) of the orders made by the Court on 15 May 2020 in the proceedings (**15 May Order**), and are grateful to you for raising the issue. We will ensure that the interaction between the operation of the 15 May Order and prayer 2(a) in the Interlocutory Process is clarified in our submissions to the Court, a copy of which will also be provided to you once filed.

Your letter expresses the concern that:

*As currently drafted the order will mean that protocol agreements agreed and signed in the coming days will be ineffective to impose any personal liability on the administrators (including with regards the usage payment) until after 16 June 2020*

We consider that this does not arise. That is because, as you will be aware, on 15 May 2020, his Honour Justice Middleton made (in relevant part) an Order in the following terms:

*"Pursuant to section 447A(1) of the Corporations Act 2001 (Cth) ... and section 90-15 of the Insolvency Practice Schedule 2016 (Cth), being Schedule 2 to the Corporations Act (IPSC), 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 each of the Virgin Companies) incurred with respect to any obligations arising out of, or in connection with, any future:*

*(i) agreement on the terms of, or substantially in accordance with, the Aircraft Protocols document in the form exhibited at Tab 12 of Exhibit VNS-2 to the Strawbridge Affidavit...*

*(together, the Applicable Agreements and each, an Applicable 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 each of the Virgin Companies; 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 each of the Virgin Companies, the First Plaintiffs will 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 is or are a party to the particular Applicable Agreement are insufficient to satisfy the debt and liabilities incurred by the First Plaintiffs arising out of, or in connection with, the Applicable Agreements."*

On its terms, the above Order applies to *agreements which the Administrators may enter into in the future*, such as an Aircraft Protocol Agreement: that is, liabilities which arise under section 443A of the Corporations Act. The terms of the above Order are reflected in clause 1.3 of the draft Aircraft Protocol.

The Interlocutory Process does not seek to modify or subvert the 15 May Order. In addition, it has a different sphere of operation; *viz*, section 443B of the Corporations Act. The Interlocutory Process seeks relief in relation to the time within which the administrators must determine whether or not to continue to use, occupy or retain possession of property *the subject of agreements entered into by the Virgin Companies prior to the relevant date*, and the corresponding personal liability of the administrators that is referable to that timing. There is nothing in the relief sought in the Interlocutory Process that will excuse the Virgin Companies from being liable to pay usage charges under the Aircraft Protocols (once agreed). Nor do the orders proposed in the Interlocutory Process derogate from the rights of Aircraft Lessors under the Convention and the Protocol, given that the further extension now sought (to 16 June 2020) is still within the 60 day "waiting period" prescribed by paragraph 3 of Article XI of the Protocol.

For those reasons, we do not consider that there is any need to amend the Interlocutory Process in the manner suggested in your letter. We confirm that we will furnish a copy of your letter to the Court, together with this response.

Yours faithfully



Clayton Utz

Our ref 13236/20556/81005835