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Details of Filing

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Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 20/10/2020 12:07:38 PM AEDT

Registrar

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

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

First Plaintiffs / First Applicants

VIRGIN AUSTRALIA HOLDINGS LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 100 686 226

Second Plaintiff / Second Applicant

Affidavit of: Vaughan Neil Strawbridge
Address: 9 Grosvenor Place, 225 George Street, Sydney, New South Wales
Occupation: Registered Liquidator and Chartered Accountant
Date: 20 October 2020

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Witness

Filed on behalf of (name & role of party) The Plaintiffs
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[Version 3 form approved 02/05/2019]

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I, Vaughan Neil Strawbridge, of Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly owned subsidiary) (**Deloitte**), at Level 9 Grosvenor Place, 225 George Street, Sydney, New South Wales, Registered Liquidator and Chartered Accountant, say on oath:

OVERVIEW

1. I am a partner in the Financial Advisory Group of the professional services firm trading as Deloitte. I am a Chartered Accountant and a Registered Liquidator and I have practised for more than 25 years as an accountant specialising in insolvency related matters in Australia, Thailand and the United Kingdom.
2. I am one of the four joint and several deed administrators of each of the Second to Forty-Second Plaintiffs (**Virgin Companies**), together with Mr Salvatore Algeri, Mr John Greig and Mr Richard Hughes (together, the **Deed Administrators** and each a **Deed Administrator**).
3. I am authorised by Mr Algeri, Mr Greig and Mr Hughes to make this affidavit on behalf of the Deed Administrators. Where I depose below to the view or views of the Deed Administrators, they are the view(s) which each of I, Mr Algeri, Mr Greig and Mr Hughes hold at the date of swearing this affidavit.
4. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and from information I and staff members at Deloitte have obtained through my role as a Deed Administrator of the Virgin Companies, which I believe to be true.
5. This is the sixteenth affidavit that I have sworn in these proceedings.
6. I refer to and rely upon my:
 - (a) affidavit of 23 April 2020 (**First Affidavit**);
 - (b) supplementary affidavit of 24 April 2020 (**Second Affidavit**);
 - (c) affidavit of 11 May 2020 (**Third Affidavit**);

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- (d) supplementary affidavit of 11 May 2020 (**Fourth Affidavit**);
 - (e) supplementary affidavit of 15 May 2020 (**Fifth Affidavit**);
 - (f) affidavit of 2 July 2020 (**Sixth Affidavit**);
 - (g) affidavit of 9 July 2020 (**Seventh Affidavit**);
 - (h) affidavit of 7 August 2020 (**Eighth Affidavit**);
 - (i) affidavit of 14 August 2020 (**Ninth Affidavit**); and
 - (j) supplementary affidavit of 16 August 2020 (**Tenth Affidavit**),
- each filed in the proceedings.

7. I also refer to and rely upon the affidavits of:
- (a) David Michael Orr dated 29 July 2020 (**First Orr Affidavit**) and 6 August 2020 (**Second Orr Affidavit**) each filed in the proceedings;
 - (b) Salvatore Algeri dated 22 May 2020 (**Algeri Affidavit**) filed in the proceedings; and
 - (c) Richard John Hughes dated 30 September 2020 filed in proceedings numbered NSD 818 of 2020 (**Hughes Affidavit**).
8. Exhibited to me at the time of swearing this affidavit is a bundle of documents to which I make reference in this affidavit marked "**VNS-7**" (**Exhibit VNS-7**). A reference to a Tab in this affidavit is to a tab in Exhibit VNS-7, unless otherwise stated.
9. I make this affidavit in support of the relief sought by the First Plaintiffs and the Second Plaintiff in the Interlocutory Process filed in these proceedings on 20 October 2020 (**Interlocutory Process**), namely, an order pursuant to section 444GA(1)(b) of the *Corporations Act 2001* (Cth) (**Corporations Act**) that leave be granted for the Deed Administrators to transfer all of the existing shares in the capital of the Second Plaintiff, Virgin Australia Holdings Ltd (Subject to Deed of Company Arrangement) ACN 100 686 226 (**VAH**), to BC Hart Aggregator, L.P., or its nominee (**Bain Capital**).
10. This application is made having regard to the proposed transfer of shares in VAH to Bain Capital as contemplated by clause 10.3(a) of the deed of company arrangement dated 25 September 2020 (**Primary DOCA**), which was entered into by the Deed Administrators, Bain Capital, VAH and the Third, Seventh to Tenth, Thirteenth, Fifteenth, Eighteenth to Thirty-First, Thirty-Forth, Thirty-Seventh to Thirty-Ninth and Forty-First to Forty-Second

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Plaintiffs (together with VAH, the **Primary DOCA Companies**). Obtaining orders from the Court under section 444GA(1)(b) of the Corporations Act for leave to transfer the shares in VAH to Bain Capital is a condition precedent to completion of the Primary DOCA.

11. VAH is the parent company of the Virgin Companies and certain other companies in the Virgin group of companies that are not presently in a form of external administration (together, the **Virgin Group**).

INTRODUCTION

Appointment of the Deed Administrators as Administrators

12. I refer to and repeat:

- (a) paragraph 7 of my First Affidavit;
- (b) paragraphs 9 to 13 and 25 to 26 of my Third Affidavit;
- (c) paragraphs 10 to 12 of my Eighth Affidavit; and
- (d) paragraphs 7 to 8 of the Hughes Affidavit,

which set out the details of the Deed Administrators' appointment as the joint and several administrators of each of the Virgin Companies (together, the **Administrators** and each an **Administrator**), the corporate structure of the Virgin Companies and the Virgin Group, and the general nature of the business of the Virgin Companies (**Business**). Where, in this affidavit, I refer to the 'Administrators', I refer to the Deed Administrators acting in that (former) capacity.

13. I refer to:

- (a) the orders of the Court dated 13 May 2020 in these proceedings, pursuant to which the period within which the second meetings of creditors of each of the Second to Fortieth Plaintiffs (**Second Meetings**) must be convened for the purposes of section 439A(5)(b) of the Corporations Act (**Convening Period**), was extended to 18 August 2020; and
- (b) the orders of the Court dated 12 August 2020 in these proceedings, pursuant to which the Convening Period was further extended to 31 August 2020.

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14. On 25 August 2020, the Second Meetings were convened and the Administrators determined to hold the meetings on 4 September 2020.
15. On 4 September 2020, the Second Meetings of each Virgin Company were held concurrently. At the Second Meetings, the respective creditors of the Virgin Companies resolved that 10 deeds of company arrangement (as a whole) be entered into by the Virgin Companies, namely that:
- (a) the Primary DOCA Companies enter into the Primary DOCA with Bain Capital and the Deed Administrators, pursuant to which the Deed Administrators would be appointed as the joint and several deed administrators of the Primary DOCA Companies;
 - (b) the Fourth to Sixth and Fortieth Plaintiffs (together, the **IG DOCA Companies**) enter into a deed of company arrangement with Bain Capital and the Deed Administrators (**IG DOCA**), pursuant to which the Deed Administrators would be appointed as the joint and several deed administrators of the IG DOCA Companies; and
 - (c) the Thirty-Second and Thirty-Third Plaintiffs enter into a deed of company arrangement with Bain Capital and the Deed Administrators, and each of the Eleventh, Twelfth, Fourteenth, Sixteenth, Seventeenth, Thirty-Fifth and Thirty-Sixth Plaintiffs (together with the Thirty-Second and Thirty-Third Plaintiffs, the **Subsidiary DOCA Companies**) enter into separate deeds of company arrangement with Bain Capital and the Deed Administrators (all together, the **Subsidiary DOCAs** and each a **Subsidiary DOCA**), pursuant to which the Deed Administrators would be appointed as the joint and several deed administrators of the Subsidiary DOCA Companies.
16. On 25 September 2020, the Primary DOCA, IG DOCA and each of the Subsidiary DOCAs (together, the **Bain DOCAs**) were executed by each of the respective parties and the Administrators were appointed as the Deed Administrators of each of the Virgin Companies. Exhibited at **Tab 1 of Exhibit VNS-7** are copies of historical extracts of the records maintained by the Australian Securities and Investments Commission (**ASIC**) in respect of each of the Virgin Companies obtained on 9 October 2020.
17. Exhibited at **Tabs 2 to 11 of Exhibit VNS-7** are copies of the Primary DOCA, the IG DOCA and each of the Subsidiary DOCAs respectively.

Deponent

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COURSE OF THE ADMINISTRATIONS PRIOR TO THE SECOND MEETINGS**Sale Process**

18. I refer to and rely upon:
- (a) paragraphs 10 to 15 of my Sixth Affidavit;
 - (b) paragraphs 9 to 14 of my Seventh Affidavit;
 - (c) paragraphs 33 to 45 of my Ninth Affidavit; and
 - (d) paragraphs 40 to 43 of the Algeri Affidavit.
19. As noted in my Third Affidavit, my Sixth Affidavit, my Seventh Affidavit, my Ninth Affidavit and the Algeri Affidavit, following our appointment, the Administrators immediately commenced a comprehensive global sale process (**Sale Process**). To assist with the Sale Process, the Administrators engaged the services of Houlihan Lokey, a specialist debt restructuring firm of financial advisers, and Morgan Stanley, an investment bank (see paragraph 44(e) of my Third Affidavit).
20. The steps undertaken by the Administrators in relation to the Sale Process, either ourselves or through our advisers, are described in detail in the affidavits referred to in paragraph 18 above. They were, in summary, as follows:
- (a) on and from 21 April 2020, Houlihan Lokey issued non-disclosure agreements and a flyer to a total of 85 interested parties seeking proposals for a sale and/or recapitalisation of the Virgin Companies or substantially all of their assets (see paragraphs 44(e) and 45 of my Third Affidavit);
 - (b) on and from 27 April 2020, Houlihan Lokey:
 - (i) opened a secure data room containing documents regarding the Business and the financial position of the Virgin Companies (**Data Room**) (see paragraphs 44(e) and 46 of my Third Affidavit); and
 - (ii) prepared an information memorandum and distributed it to parties that had entered into non-disclosure agreements with the Administrators (see paragraphs 44(e) and 48 of my Third Affidavit);

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- (c) as at 11 May 2020, a total of 19 parties who the Administrators considered could be potential purchasers had been granted access to the Data Room (see paragraph 47 of my Third Affidavit);
- (d) on 15 May 2020, the Administrators received several non-binding indicative offers and, based on those offers, formed a shortlist of interested parties which, in the Administrators' opinion, were the parties most likely to be able ultimately to make a credible offer for the Business (**Shortlisted Bidders**) (see paragraph 42 of the Algeri Affidavit);
- (e) on and from 15 May 2020, the Administrators and our advisers worked with the Shortlisted Bidders in 'Phase 2' of the Sale Process to give those parties the opportunity to develop and make the best non-binding offers they could in the circumstances (see paragraph 42 of the Algeri Affidavit), including by:
- (i) arranging multiple virtual meetings, presentation and "Q&A" opportunities and "roadshows" between the interested parties and management personnel of the Virgin Companies;
 - (ii) sharing more detailed financial and operational information with the Shortlisted Bidders, including the provision of vendor due diligence prepared by the Administrators' legal advisers, Clayton Utz;
 - (iii) facilitating meetings between the Shortlisted Bidders and the Virgin Companies' counter-parties, unions and other key stakeholders of the Business as could be managed in the available time;
- (f) on 29 May 2020, five final non-binding indicative proposals for Phase 2 of the Sale Process were received from the Shortlisted Bidders (see paragraph 13(f) of my Sixth Affidavit);
- (g) on 2 June 2020, the Administrators selected two final preferred bidders, comprising Bain Capital and Cyrus Capital Partners L.P. (**Cyrus Capital**), to proceed to 'Phase 3' of the Sale Process (see paragraph 13 of my Sixth Affidavit);
- (h) on and from 2 June 2020, the Administrators and our advisers engaged in extensive negotiations with Bain Capital and Cyrus Capital in relation to all aspects of a proposed transaction, including the form of the documents to give effect to a transaction. To assist with the consideration of competing proposals, the Administrators requested that Bain Capital and Cyrus Capital review a draft sale and implementation deed and

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a term sheet for the provision of interim funding (amongst other documents), and to submit their proposals for the sale and/or recapitalisation of the Virgin Companies or substantially all of their assets by reference to those documents. Each of Bain Capital and Cyrus Capital together with their lawyers and financial advisers negotiated the terms of the draft sale and implementation deed and a term sheet for the provision of interim funding (and other documents), in intensive and comprehensive negotiations over a period of approximately 10 days with the Administrators and our legal and financial advisers, to the point that when final offers were received the documents were in substantially executable form;

- (i) on 22 June 2020, the Administrators received final binding offers from Bain Capital and Cyrus Capital;
 - (j) on 24 June 2020, the Administrators received a recapitalisation proposal (in the form of a deed of company arrangement proposal) as well as an offer of interim funding (which was conditional on acceptance of the recapitalisation proposal) from two holders of notes issued by VAH, being 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 (**BP&T**) (**BPT DOCA Proposal**);
 - (k) on 26 June 2020, Cyrus Capital withdrew its offer;
 - (l) on 26 June 2020, following the Administrators' consideration and assessment of the competing proposals (with the assistance of their financial advisers), the Administrators accepted the offer submitted by Bain Capital (**Bain Transaction**) and executed a number of binding transaction documents with Bain Capital on that date to give effect to the Bain Transaction (**Transaction Documents**); and
 - (m) on 26 June 2020, the Administrators made an announcement of the Bain Transaction by releasing information to the Australian Securities Exchange (**ASX**) on that date, a copy of which is exhibited at **Tab 12 of Exhibit VNS-7**.
21. On 20 July 2020, BP&T submitted a further proposal, which was more or less the same as the BPT DOCA Proposal, for consideration again by the Administrators. The details of the BPT DOCA Proposal and the reasons why the Administrators were unable to take this proposal forward are described in paragraphs 60 to 68 of my Ninth Affidavit.

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22. On 21 August 2020, BP&T sent a letter to me (copied to Timothy Sackar of Clayton Utz and Jim McKnight of Houlihan Lokey) formally withdrawing their proposals. Exhibited at **Tab 13** of **Exhibit VNS-7** is a copy of that letter.

Bain Transaction

23. The Bain Transaction and the effect of the Transaction Documents are described at:
- (a) paragraphs 14 to 15 of my Sixth Affidavit; and
 - (b) paragraphs 37 to 44 of my Ninth Affidavit.
24. As noted in paragraphs 40 to 41 of my Ninth Affidavit, there are two pathways to completion of the Bain Transaction, with completion to occur either:
- (a) pursuant to the terms of an asset sale agreement, which has been agreed between the Administrators and Bain Capital (**Bain Capital ASA**); or
 - (b) by way of entry into the Bain DOCAs, if approved by creditors at the Second Meetings (which has since occurred), and the subsequent completion and effectuation of the Bain DOCAs.
25. Completion of the Bain Transaction by effectuation of the Bain DOCAs is expected to provide a better return to creditors than the Bain Capital ASA. That is principally because it enables completion of the sale to occur on a more expedited and streamlined basis (through retention of the existing corporate structure, facilitated by the order now sought in these proceedings under section 444GA of the Corporations Act to transfer the shares of VAH to Bain Capital). In other words, completion by effectuation of the Bain DOCAs will permit Bain Capital to acquire control of the Virgin Companies by a transfer of the shares in VAH, which will provide for a more efficient transaction removing the need to incur certain costs (including taxes and duties that may be payable on a transfer of assets) and also avoid the need for Bain Capital to acquire new licences and regulatory approvals, which could significantly delay the completion of a sale transaction.
26. As I set out further below, completion of the Bain Transaction pursuant to the Bain DOCAs is conditional upon, amongst other things, the Court making an order under section 444GA of the Corporations Act for leave to be granted to the Deed Administrators to transfer all of the shares in VAH to Bain Capital (**Share Transfer**).

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27. I expressed the following opinions in my Sixth Affidavit, Seventh Affidavit and Ninth Affidavit, which I continue to hold for the reasons given in my Sixth Affidavit, Seventh Affidavit and Ninth Affidavit (which are shared by the other Administrators):
- (a) entering into the Bain Transaction and the Transaction Documents was in the best interests of the Virgin Companies and its creditors (see paragraph 29 of my Sixth Affidavit, paragraph 14 of my Seventh Affidavit and paragraph 42 of my Ninth Affidavit);
 - (b) the Bain Transaction contemplated under the Transaction Documents was the most favourable transaction available for the benefit of creditors and the Virgin Companies as a whole, insofar as it provided the greatest prospect of the Business remaining intact and otherwise provided the likely greatest return to creditors (see paragraph 31(a) of my Sixth Affidavit, paragraph 14 of my Seventh Affidavit and paragraph 42 of my Ninth Affidavit); and
 - (c) in circumstances where the survival of the Business was at stake (with its more than 9,000 jobs and systemic importance to the Australian aviation market and broader economy), the Administrators proceeded with the Bain Transaction because it satisfied a number of critical matters, including that it provided for:
 - (i) certainty as to outcome (insofar as an immediately binding agreement was to be entered into providing for a sale of the Business and assets of the Virgin Companies);
 - (ii) security of funding to the Virgin Companies in the interim period pending completion;
 - (iii) an expedited assumption of economic risk by Bain Capital in the interim period;
 - (iv) assumption of all employee entitlements by Bain Capital;
 - (v) honouring of customer travel credits by Bain Capital;
 - (vi) a recapitalisation of the Business under the new ownership of a well-resourced purchaser; and
 - (vii) the greatest estimated returns to unsecured creditors of the Virgin Companies, (see paragraph 44 of my Ninth Affidavit).

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THE SECOND MEETINGS

Administrators' 75-225 Report

28. On 25 August 2020, the Administrators issued a report to the creditors of the Virgin Companies pursuant to section 75-225 of the *Insolvency Practice Rules (Corporations) 2016 (Cth) (IPR) (75-225 Report)*, which, amongst other things, gave notice of the Second Meetings. I was substantially involved in, and supervised, the preparation of the 75-225 Report. A copy of the 75-225 Report is exhibited at **Tab 14** of **Exhibit VNS-7**.

Financial position of the Virgin Companies

29. In the 75-225 Report, on the basis of investigations by the Administrators and our staff, the Administrators expressed the opinion that the Virgin Companies were insolvent on 22 March 2020, and possibly as early as 18 March 2020, for the reasons set out at section 6.4 of that report, namely that:

- (a) the Virgin Companies suffered substantial reductions to capacity and projected revenue due to the 18 March 2020 and 22 March 2020 travel restrictions announced by the Commonwealth and various State Governments in response to the COVID-19 pandemic;
- (b) the Virgin Companies were unable to access further debt or equity funding, in particular from the Commonwealth Government or from VAH's major shareholders, being Etihad Airways, Singapore Airlines Ltd, Nanshan Group, HNA Group and Virgin Group Ltd (together, the **Major Shareholders**); and
- (c) as a consequence of the circumstances set out in (a) and (b) above, the Virgin Companies were unable to continue to meet their known liabilities as they fell due.

30. The financial performance of the Virgin Companies was reported to the ASX through audited annual financial statements and reviewed half-yearly (interim) financial statements. The Virgin Group's consolidated audited statement of profit and loss, balance sheet and statement of cash flows for the 2018 and 2019 financial years, and reviewed accounts for the 2019 and 2020 financial years are summarised in sections 4.2.1 to 4.2.3 of the 75-225 Report.

31. In February 2020, the Virgin Group reported its half year financial results for the 2020 financial year, which was a net loss before tax of \$88.6 million. This was a deterioration

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relative to the prior financial year of \$87.7 million net profit before tax. Announcements made to the ASX stated that the financial loss was due to the impact of higher costs for fuel, enterprise agreement labour, airports and depreciation and rental costs. As the impact of COVID-19 on the aviation industry worsened (as a result of initially international and then later domestic travel restrictions), the Virgin Group made further announcements to the ASX on the impact on capacity and the measures taken to reduce costs. Further commentary on the events leading to our appointment as Administrators is set out at sections 5.6 and 6 of the 75-225 Report.

32. The creditor body for the Virgin Companies is extremely large and complex with different creditor groups having different rights and priorities under the provisions of the Corporations Act and specific agreements entered into with Virgin Companies. In section 3.4 of the 75-225 Report, the Administrators provided a breakdown of the Virgin Companies' creditors on a grouped basis (see Table 6 in section 3.4.1) and set out commentary in relation to the number and estimated value of the creditors' claims in the creditor pool.
33. In summary, there is a substantial deficiency in assets available to the Virgin Companies to meet the debts and claims owing to the creditors of the Virgin Companies.

Bain DOCA Proposal

34. Prior to issuing the 75-225 Report, the Administrators received a proposal from Bain Capital for the Virgin Companies to execute the proposed Bain DOCAs (**Bain DOCA Proposal**).
35. The key terms of the Bain DOCA Proposal are summarised in the 75-225 Report at sections 8.6 and 9.
36. One of the principal terms of the Primary DOCA is that, subject to certain conditions precedent set out in clause 4.1 of the Primary DOCA (one of which being the Deed Administrators obtaining the orders being sought in these proceedings), all of the issued ordinary shares in VAH would be transferred to Bain Capital.
37. Additional features of the Bain DOCA Proposal are set out in the 75-225 Report, which sets out, amongst other things, that:

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- (a) a creditors' trust would be formed and a creditors' trust fund would be established (**Trust Fund**) to meet the claims of unsecured creditors (including secured creditors to the extent of any deficiency in the value of their security) of the Virgin Companies (other than specified excluded claims which would not be released under the Bain DOCAs and for which the Virgin Companies would remain liable following their emergence from external administration), with Bain Capital making a cash contribution of between \$447.2 million and \$572.2 million to the Trust Fund (see sections 9.3.1 and 11.2 of the 75-225 Report);
- (b) the Trust Fund would comprise the following four separate 'pools' or 'pots' of money, each with different eligibility criteria designed to meet claims of different creditors of the Virgin Companies (see section 9.3.3 of the 75-225 Report):
- (i) the funds in Pool A would total between \$343 million and \$468 million and would be available for creditors of each of the Primary DOCA Companies, the IG DOCA Companies and the Subsidiary DOCA Companies (with the exception of critical suppliers);
 - (ii) the funds in Pool B would total \$10 million and would only be established if creditors resolved to accept both the Primary DOCA and IG DOCA – only in those circumstances, would certain creditors of the IG DOCA Companies be eligible to receive a distribution from Pool B;
 - (iii) the funds in Pool C would total \$94.1 million and would be available for critical suppliers which have been identified because there are no alternative service providers and they are critical for the future of the Business to continue operating – those suppliers who are deemed critical have been made aware of their return from Pool C; and
 - (iv) the funds in Pool D would total \$23.2 million and would be available for the creditors of the IG DOCA Companies only in the event that the IG DOCA completes but the Primary DOCA does not;
- (c) Bain Capital would assume control of the Business and continue to trade the Virgin Companies as a going concern;
- (d) all continuing employees of the Virgin Companies (being employees who are employed by one of the Primary DOCA Companies at the date of the Primary DOCA and who are to remain employees upon completion of the Primary DOCA) would be

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paid in the normal course of their employment (with their existing entitlements remaining unaffected);

- (e) employees whose employment with the Virgin Companies would not continue would have their entitlements paid out in full;
- (f) customers who currently hold, or who are entitled to, a conditional credit (under the conditional credit policy implemented by the Administrators), would be provided with a new credit to be available to be used on a future flight for an amount equal to any remaining value on any conditional credit (**Future Flight Credits**) – Future Flight Credits will be available for flights booked in the period to 31 July 2022 and for travel in the period to 30 June 2023; and
- (g) the following liabilities would be carried forward and satisfied by the Virgin Companies under Bain Capital's ownership:
 - (i) certain liabilities accrued by the Virgin Companies from the date of the Administrators' appointment up to 30 June 2020 (totalling approximately \$35 million), including unearned revenue and accrued leave entitlements of employees;
 - (ii) liability for a loan owing by the Virgin Companies of \$150 million to Velocity Rewards Pty Ltd as trustee for The Loyalty Trust, being another entity in the Virgin Group that is not in external administration; and
 - (iii) liability for all travel credits and unearned travel revenue, being \$604 million gross less restricted cash of \$210 million (being collateral held in respect of prepaid flights) resulting in a \$394 million net amount. This amount relates to customers currently holding, or who are entitled to a conditional flight credit, being provided with a new Future Flight Credit for an amount equal to any remaining value on their conditional credit; and
- (h) the shareholders of VAH (**Shareholders**) will receive no payment from the Trust Fund and no other payment in return for the transfer of its shares to Bain Capital.

38. The Primary DOCA was not contingent on the approval of the IG DOCA or any of the Subsidiary DOCAs and if creditors of the relevant Virgin Companies resolved in favour of the Administrators entering into the Primary DOCA but did not resolve in favour of the Administrators entering into the IG DOCA or any of the Subsidiary DOCAs (or the conditions under the IG DOCA or any of the Subsidiary DOCAs are not satisfied), the

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assets of the relevant companies subject to the IG DOCA or Subsidiary DOCAs will be sold to Bain Capital via the Bain Capital ASA.

39. On the other hand, the IG DOCA and each of the Subsidiary DOCAs were conditional on completion under the Primary DOCA. If the conditions to the Primary DOCA are not satisfied, Bain Capital will have the option of waiving those conditions and proceeding with an acquisition of the shares in the relevant IG DOCA Companies or Subsidiary DOCA Companies under the Bain Capital ASA.
40. In accordance with section 75-225(3)(b) of the IPR, the Administrators recommended that, at the Second Meetings, the creditors of the Virgin Companies vote in favour of the Bain DOCA Proposal and the resolutions that the Administrators enter into the Bain DOCAs.
41. In section 12 of the 75-225 Report, the Administrators set out our opinion that:
- (a) the Virgin Companies are insolvent and unable to pay their debts as and when they fall due;
 - (b) the Administrators do not recommend nor consider that it would be in the interests of the creditors of the Virgin Companies that the administration of the Virgin Companies end and the control of the Virgin Companies be returned to their respective directors;
 - (c) as the Bain DOCA Proposal provides a greater return to creditors than would be achieved if the Virgin Companies were wound up (with or without the completion of the sale of the Business and the assets of the Virgin Companies under the Bain Capital ASA), the creditors should not resolve to wind up the Virgin Companies; and
 - (d) it is in the creditors' interests to resolve that the Virgin Companies execute the Bain DOCAs as the Bain DOCA Proposal provides a significantly greater return to creditors than would be achieved if the Virgin Companies were placed into liquidation.

Outcome of the Second Meetings

42. On 4 September 2020, the Second Meetings were held concurrently at 10:00am AEST. In accordance with the orders made in these proceedings on 24 April 2020, the Second Meetings were held by videoconference and were hosted online via the Microsoft Teams Live Events platform. I chaired the meetings. Mr Algeri, Mr Greig and Mr Hughes also attended the Second Meetings.

Deponent

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43. Exhibited at **Tab 15 of Exhibit VNS-7** is a copy of the minutes of the Second Meetings (**Minutes**), as lodged with ASIC, which accurately record what transpired at the Second Meetings. As described in the Minutes in relation to the future of the Virgin Companies, I proposed the resolutions set out in Appendix M of the 75-225 Report, namely:
- (a) in relation to the future of the Primary DOCA Companies that each of the Primary DOCA Companies execute the Primary DOCA and that Mr Algeri, Mr Greig, Mr Hughes and I be appointed as deed administrators and that the committee of inspection formed in respect of the Virgin Companies for the purposes of the administration of the Virgin Companies (in accordance with orders made in these proceedings on 24 April 2020) (**Committee of Inspection**) be appointed as a committee of inspection for the Primary DOCA;
 - (b) in relation to the future of the IG DOCA Companies, that each of the IG DOCA Companies execute the IG DOCA and that Mr Algeri, Mr Greig, Mr Hughes and I be appointed as deed administrators and that the Committee of Inspection be appointed as a committee of inspection for the IG DOCA; and
 - (c) in relation to the future of the Subsidiary DOCA Companies, that each of the Subsidiary DOCA Companies execute their respective Subsidiary DOCA and that Mr Algeri, Mr Greig, Mr Hughes and I be appointed as deed administrators in respect of each Subsidiary DOCA and that the Committee of Inspection be appointed as a committee of inspection for the Subsidiary DOCAs.
44. In accordance with the orders made in these proceedings on 11 and 12 August 2020, voting on the proposed resolutions at the Second Meetings took place via the Halo Platform for all creditors, including those who had lodged a proof of debt using another means (with the exception of the USD noteholders, which are described in paragraph 26 of the First Orr Affidavit). An overview of the Halo Platform and the method of voting via the Halo Platform is described in detail in the First Orr Affidavit and the Second Orr Affidavit. Voting opened on 25 August 2020 and (with the exception of the USD noteholders) closed live at the end of each resolution put to the creditors during the Second Meetings. The outcome of the USD Noteholder voting process was input into the Halo Platform in advance of the Second Meetings, such that the tallying of votes on any resolution at the Second Meetings incorporated these results.
45. The resolutions that:

 Deponent

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- (a) the Primary DOCA Companies execute the Primary DOCA;
- (b) the IG DOCA Companies execute the IG DOCA; and
- (c) each of the Subsidiary DOCA Companies execute their respective Subsidiary DOCA,
- were all passed by the creditors of the respective Virgin Companies by both number and value.
46. Once voting on the resolutions had closed at the Second Meetings, the Administrators shared the Halo Platform screen with creditors and observers attending the meetings by using the screen-sharing feature on the Microsoft Teams platform in order to announce the outcome of the vote. Exhibited at **Tab 16** of **Exhibit VNS-7** are copies of the Halo Platform screens that were shared with creditors and observers at the Second Meetings which displayed the outcome of the vote on the resolutions (**Voting Outcome Slides**).
47. In respect of the Primary DOCA, the result of the voting on the resolution that the relevant Virgin Companies execute the Primary DOCA was as follows:
- (a) For: 6,484 votes with a value of \$6,129,963,973;
- (b) Against: 63 votes with a value of \$142,112,254; and
- (c) Abstain: 257 votes with a value of \$523,880,811.
48. Accordingly, the resolution that the relevant Virgin Companies execute the Primary DOCA passed in both number and value with:
- (a) 99.03% of the number of creditors voting on the resolution voting in favour; and
- (b) 97.72% of the value of creditors voting on the resolution voting in favour.
49. The creditors of the other Virgin Companies also voted in favour of the respective resolutions that the relevant Virgin Companies execute the IG DOCA and the Subsidiary DOCAs. The results of the votes (in number and value) in respect of the IG DOCA and the Subsidiary DOCAs are set out in the Voting Outcome Slides exhibited at Tab 16 of VNS-7. The results of the votes (in number) in respect of the IG DOCA and the Subsidiary DOCAs were as follows:

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Vote	IG DOCA	Subsidiary DOCAs
For (%)	96.09%	100%
Against (%)	3.91%	Nil
Abstain (number)	184	0

50. I declared that the resolutions of creditors that:

- (a) the Primary DOCA Companies execute the Primary DOCA and that Mr Algeri, Mr Greig, Mr Hughes and I be appointed as deed administrators and the Committee of Inspection be appointed as a committee of inspection for the Primary DOCA;
- (b) the IG DOCA Companies execute the IG DOCA and that Mr Algeri, Mr Greig, Mr Hughes and I be appointed as deed administrators and the Committee of Inspection be appointed as a committee of inspection for the IG DOCA; and
- (c) each of the Subsidiary DOCA Companies execute their respective Subsidiary DOCA and that Mr Algeri, Mr Greig, Mr Hughes and I be appointed as deed administrators in respect of each Subsidiary DOCA and the Committee of Inspection be appointed as a committee of inspection for the Subsidiary DOCA,

all passed by a poll conducted through the Halo Platform in accordance with the orders made in these proceedings on 12 August 2020 and section 75-110(1) of the IPR.

EXECUTION AND PROGRESSION OF THE BAIN DOCAS

Execution of the Bain DOCAs

51. On 25 September 2020, the Primary DOCA, IG DOCA and each of the Subsidiary DOCAs were executed by the Deed Administrators, Bain Capital and the applicable Virgin Companies.

Estimated return to creditors and members

52. As detailed in the 75-225 Report, the average estimated return to creditors of the Virgin Companies as a whole is as follows in three different scenarios (first, where the Bain DOCAs are completed; second, where the Bain DOCAs are not completed, the Virgin

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Companies go into liquidation and the assets are sold to Bain Capital under the Bain Capital ASA; and third, where the Bain DOCAs are not completed, the Virgin Companies go into liquidation and the assets are not sold to Bain Capital under the Bain Capital ASA):

Creditor Group	Bain DOCAs		Asset sale to Bain in a liquidation		No sale to Bain in a liquidation
	High	Low	High	Low	High
Priority creditors / employees (cents in the dollar expressed as a percentage)	100%	100%	100%	100%	19.4%
Unsecured creditors average return (cents in the dollar expressed as a percentage)	13%	9%	7%	4%	1%
Unsecured creditors - fund available for distribution after costs	\$612.8m	\$462.0m	\$310.1m	\$207.2m	\$52.4m

53. With respect to the completion of the Bain Transaction, whether by the Bain DOCA Proposal or the Bain Capital ASA, the Administrators assessed the estimated return to creditors based on a range, having regard to both a high and low value basis. With respect to a winding up of the Virgin Companies without any sale to Bain Capital, the Administrators only assessed the estimated return to creditors on an optimistic (high) basis (and we did not undertake an assessment on a pessimistic (low) basis as that scenario sees no return to unsecured creditors).
54. The Bain DOCA Proposal provides a greater estimated return to unsecured creditors in comparison to completing the sale to Bain Capital by the Bain Capital ASA or in the event the assets are otherwise realised in liquidation on a piecemeal basis.
55. A sale pursuant to the Bain DOCA Proposal will allow the completion of the sale of the Business as a going concern, whilst providing minimal disruption to the trading and operations of the Business. Under the Bain DOCA proposal all assets, securities and

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 Witness

selected contracts of the Virgin Companies will be assumed following completion of the restructure. A significant amount of work has already been undertaken in relation to restructuring the Business. There is no requirement to novate or transfer contracts under the Bain DOCA Proposal. In contrast, all assets and securities would be purchased by Bain Capital in accordance with the Bain Capital ASA on completion, which gives rise to the requirement for the Deed Administrators to transfer or novate contractual agreements to new entities associated with Bain Capital. The requirement to novate contractual assets pursuant to the Bain Capital ASA is estimated to take significantly more time to complete the Bain Transaction (with the Bain Capital ASA allowing for up to 3 years for this to occur after completion of the Bain Capital ASA). The costs associated with executing and implementing the Bain DOCA Proposal are therefore significantly lower in comparison with the Bain Capital ASA and this benefit is reflected in the superior return to creditors under the Bain DOCA Proposal.

56. The no sale to Bain Capital in a liquidation scenario assumes that the Virgin Companies would cease to operate and all their assets would be realised for the benefit of creditors. The Administrators' assumptions in calculating the value of the return to creditors in this scenario are set out in Appendix L of the 75-225 Report. The calculation of estimated returns to each creditor class in this scenario is extremely complex and requires multiple estimates and assumptions based on several factors that would arise during the realisation process including various market forces affecting the value of each asset, the interest in each asset, its condition and the general economic status at the time of sale.
57. Based on the above analysis and currently available information, the Deed Administrators consider that:
- (a) if the Bain DOCAs are completed, there will be a likely return to:
 - (i) priority unsecured creditors of 100 cents in the dollar; and
 - (ii) unsecured creditors of between 9 and 13 cents in the dollar;
 - (b) if the Bain DOCAs are not completed and the Virgin Companies are wound up with the assets of the Virgin Companies sold to Bain Capital in accordance with the Bain Capital ASA, there will be a likely return to:
 - (i) priority unsecured creditors of 100 cents in the dollar; and

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- (ii) unsecured creditors of between 4 and 7 cents in the dollar;
 - (c) if the Bain DOCAs are not completed, the Virgin Companies are wound up and the assets of the Virgin Companies are not sold to Bain Capital, there will be a maximum return to:
 - (i) priority unsecured creditors of 19 cents in the dollar; and
 - (ii) unsecured creditors of 1 cent in the dollar (at most).
58. Thus, the greatest return to creditors of the Virgin Companies is likely to be achieved from completion of the Bain DOCAs.
59. In each of the various scenarios, no return is envisaged for the Shareholders (essentially because their claims rank below those of the creditors of the Virgin Companies and there are insufficient funds to meet the claims of creditors in full).

SHARE TRANSFER

Explanatory Statement

60. As I deposed at paragraphs 10 and 26 above, amongst other things, the Primary DOCA (at clause 10.3) provides for the Share Transfer on the basis that no consideration is to be paid to the Shareholders for their shares.
61. The Deed Administrators have caused to be prepared an Explanatory Statement, a draft of which is annexed to the Interlocutory Process and which is also exhibited at **Tab 17 of Exhibit VNS-7**, in order to explain the nature of the application and the proposed Share Transfer to various stakeholders including the Shareholders, the creditors of the Virgin Companies and ASIC.
62. The Explanatory Statement provides information to the Shareholders, the creditors of the Virgin Companies and ASIC about:
- (a) the background to this application, including the effect of key steps under the Primary DOCA and the need for Court approval for the Share Transfer;
 - (b) the effect of this application on the Shareholders;
 - (c) steps to be taken if the recipient intends to oppose this application;

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- (d) a recommendation to seek independent legal, financial and taxation advice before making a decision on whether to take any action in relation to this application; and
- (e) further information available to assist Shareholders in deciding whether to appear at the Court hearing of the application.
63. The Deed Administrators intend to provide a copy of the Explanatory Statement substantially in the form of the draft (but updated to refer to the date of the hearing of the application) to persons entitled to oppose this application under section 444GA(2) of the Corporations Act, including:
- (a) the Shareholders;
 - (b) the creditors of the Virgin Companies;
 - (c) ASIC; and
 - (d) any other interested person.
64. The Deed Administrators propose to give notice of this application and to provide a copy of the Explanatory Statement to creditors of the Virgin Companies and the Shareholders in the manner set out in paragraph 2 of the Interlocutory Process.
65. Interested parties may specifically request copies of this application and the Explanatory Statement from Deloitte and they can be emailed to those parties upon request.

Communications with the Shareholders

66. As I deposed at paragraph 29(b) above, VAH's Major Shareholders are comprised of Etihad Airways (which has approximately 20.03% of the total share capital), Singapore Airlines Ltd (20.01%), Nanshan Group (20.01%), HNA Group (19.86%) and Virgin Group Ltd (a company incorporated in the United Kingdom and not otherwise related to VAH other than through its shareholding) (10.02%). In addition to the Majority Shareholders, VAH has 19,176 other shareholders.
67. I am informed by Paul Scurrah, the Chief Executive Officer of VAH, and verily believe, that VAH sought financial support from the Major Shareholders on or about 8 April 2020 and indicated to the Major Shareholders as early as 22 March 2020 that they may be required to provide funding as part of the Virgin Companies seeking support from the Commonwealth Government.

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68. I am also informed by Mr Scurrah, and verily believe, that on or about 12 and 13 April 2020, the Major Shareholders indicated their inability or unwillingness to provide the financial support requested. None of the Major Shareholders proposed a deed of company arrangement, or any other means of recapitalising the Business, during the Sale Process.
69. Because of the large number of Shareholders, and the requirement that all Shareholders transfer their shares to Bain Capital, it is not practicable or indeed possible in the time available for the Deed Administrators to seek the written consent of all the Shareholders to the Share Transfer. If the conditions to the Primary DOCA are not satisfied by 30 November 2020, then (unless that date is extended) the Deed Administrators must complete the acquisition of the assets of the Primary DOCA Companies under the Bain Capital ASA in accordance with its terms (pursuant to clause 4.4 of the Primary DOCA). As I explained above, that is not in the interests of the creditors of the Virgin Companies as it will likely result in a lower return to creditors.
70. On 30 June 2020, the Administrators released an announcement to the ASX, a copy of which is exhibited at **Tab 18** of **Exhibit VNS-7**, which states that the Administrators:
- (a) had entered into the Bain Transaction;
 - (b) did not expect that there would be sufficient recoveries from the Bain Transaction to repay the Virgin Companies' creditors in full; and
 - (c) had reasonable grounds to believe that there is no likelihood that the Shareholders will receive any distribution for their shares.
71. On 25 August 2020, the Administrators released a further announcement to the ASX, which is exhibited at **Tab 19** of **Exhibit VNS-7**, which stated, amongst other things, that given unsecured creditors will not be paid in full under the Bain DOCA Proposal, there would be no return to Shareholders from the external administration of the Virgin Companies.

No prejudice to Shareholders

72. Based on the matters set out in paragraphs 52 to 59 above, the Deed Administrators believe that the interests of the Shareholders will not be unfairly prejudiced by the Share

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Transfer if leave is granted under section 444GA of the Corporations Act to effect the transfer in accordance with the terms of the Primary DOCA.

73. The estimated return to Shareholders in all scenarios is nil.
74. However, if the Court does not grant leave for the Share Transfer, then the Bain DOCAs will not complete and be effectuated. In that scenario:
- (a) the Deed Administrators are obliged (pursuant to clauses 4.4 and 16 of the Primary DOCA) to complete the Bain Transaction by the sale of the assets to Bain Capital in accordance with the Bain Capital ASA and then to call a meeting of creditors of the Virgin Companies;
 - (b) the Business and the assets of the Virgin Companies will have been transferred to Bain Capital and the consequence is that:
 - (i) it is most unlikely that there will be any further deed of company arrangement proposal with respect to the Virgin Companies; and
 - (ii) the Deed Administrators will recommend that the creditors resolve to wind up each of the Virgin Companies; and
 - (c) the Deed Administrators therefore consider it very likely that, at that meeting, the creditors will resolve to place the Virgin Companies into liquidation.
75. That course of events will be disadvantageous to creditors of the Virgin Companies (because they will receive a lower return) but, at the same time, will not lead to any advantage being conferred on the Shareholders because, while they will retain their shares in VAH, those shares will not have any value and Shareholders will receive no return from their shares.
76. Accordingly, the Shareholders would be in the same financial position regardless of the different scenario that comes to pass to complete the Bain Transaction, being either that:
- (a) the Share Transfer is effected in accordance with the terms of the Primary DOCA and the Bain DOCAs are effectuated; or
 - (b) if the Share Transfer is not effected, the Bain DOCAs are not completed and as a result the Bain Transaction completes via the Bain Capital ASA and the Virgin Companies are subsequently placed into liquidation.

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77. In both scenarios, the same result is faced by Shareholders – namely, no return from their shareholding in VAH.
78. However, as noted above, the return to creditors will likely be different depending on which scenario comes to pass to complete the Bain Transaction (as the creditors will receive a greater payment from the Trust Fund if the Share Transfer occurs and the Bain DOCAs are effectuated when compared with the smaller dividend to be received in a winding up).

ASIC Relief

79. VAH, being a listed company, is subject to the takeovers prohibitions in section 606 of the Corporations Act. In this regard, the Deed Administrators are proceeding on the basis that section 444GA of the Corporations Act does not operate to the exclusion of the takeover provisions set out in Chapter 6 of the Corporations Act.
80. The Deed Administrators are also proceeding on the basis that:
- (a) it would be unlawful for Bain Capital to acquire more than 20 percent of the issued share capital of VAH without complying with Chapter 6 of the Corporations Act, unless one of the exceptions in section 611 of the Corporations Act applies;
 - (b) none of the exceptions in section 611 of the Corporations Act apply; and
 - (c) ASIC relief from the takeover provisions in Chapter 6 of the Corporations Act is therefore required to facilitate the Share Transfer as contemplated by the Primary DOCA (**ASIC Relief**).
81. Apart from the orders sought in this application pursuant to section 444GA of the Corporations Act, the Share Transfer is also therefore subject to a condition precedent that ASIC issues the necessary consents and approvals or undertakes other such acts which are agreed in writing as reasonable or necessary or desirable to implement the Share Transfer, including granting relief pursuant to section 655A of the Corporations Act.
82. On 24 September 2020, the Deed Administrators submitted an application to ASIC for the ASIC Relief.
83. On 16 October 2020, ASIC advised the Deed Administrators' legal advisers, Clayton Utz, that it was willing to grant the ASIC Relief 'in-principle' subject to the Court making an

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order under section 444GA of the Corporations Act for leave to be granted to the Deed Administrators to transfer all of the shares in VAH to Bain Capital.

Supplementary affidavit

84. I intend to swear a supplementary affidavit (**Supplementary Affidavit**) deposing to the circulation of the Explanatory Statement and any communications received from interested parties in relation to the application. I intend to use the Supplementary Affidavit to summarise the views and attitudes of those parties in relation to the application (if any).

Commercial urgency

85. The conditions precedent to the Primary DOCA, as set out in clause 4.1 of the Primary DOCA, which include the conditions to which I deposed at paragraphs 36 and 37 above, are required to be satisfied by 30 November 2020 (unless extended). As noted above, if the conditions precedent are not satisfied by that date, then, pursuant to clause 4.4 of the Primary DOCA, the Deed Administrators must complete the Bain Transaction by the sale of the assets of the Primary DOCA Companies under the Bain Capital ASA.

86. Although the conditions precedent are only required to be satisfied by 30 November 2020, the Deed Administrators and Bain Capital are targeting an earlier date (of late October or early November) to complete the Bain DOCAs because:

- (a) it will result in the Virgin Companies coming out of external administration at an earlier date;
- (b) it will minimise the disruptions to the operations of the Virgin Companies and will allow the Business to resume trading in a state outside of external administration; and
- (c) it will reduce the fees and costs incurred by virtue of the Virgin Companies continuing to remain under external administration.

87. Also, certain of the other conditions precedent are likely to be satisfied only after the determination of this application (for example, the orders to be sought recognising the Share Transfer and the completed restructure of the Virgin Companies under Chapter 15 of the Bankruptcy Code in the United States).

88. Ultimately, the Deed Administrators consider it is in the interests of creditors that the Bain DOCAs complete as quickly as possible because this will lead to an earlier formation of

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the Creditors' Trust and a more timely distribution to creditors of the Virgin Companies from the Trust Fund.

Swearing of this affidavit

- 89. I have not been able to swear this affidavit in proper form at the time that I have signed it due to the measures I have taken to minimise the spread of COVID-19.
- 90. I have been informed by Jillian Kate Robertson, as the proposed witness to this affidavit, and believe, that the relaxation of formality with respect to the unsworn nature of this affidavit does not diminish the need for me to satisfy myself that the contents of this affidavit are true and correct. I have satisfied myself that that is the case.
- 91. I will formally swear this affidavit when circumstances allow and will instruct Clayton Utz to file the sworn version with the Court.

Sworn by the deponent)
 at Sydney)
 in New South Wales)
 on 20 October 2020) _____
 Before me:) Signature of deponent

 Signature of witness
 Jillian Kate Robertson, solicitor

Deponent

Witness