

NOTICE OF FILING

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Details of Filing

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



Sia Lagos

Dated: 7/08/2020 10:45:39 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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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: David Michael Orr
Address: Riverside Centre, 123 Eagle St, Brisbane City QLD 4000
Occupation: Registered Liquidator and Chartered Accountant
Date: 6 August 2020

Contents

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| 1 | Affidavit of David Michael Orr in support of application for orders under sections 447A(1) of the <i>Corporations Act 2001</i> (Cth) and s 90-15 of Schedule 2 - the <i>Insolvency Practice Schedule (Corporations)</i> sworn on 6 August 2020 | All | 1 - 12 |
| 2 | Annexure "A", being a copy of the Notice of Voting Record Date issued to USD Noteholders on 30 July 2020 | | |

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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(include state and postcode)

I, David Michael Orr, of Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly owned subsidiary) (**Deloitte**), at Riverside Centre, 123 Eagle St, Brisbane City Queensland 4000, Registered Liquidator and Chartered Accountant, say on oath:

1. I am a partner in the Restructuring Services practice of the professional services firm trading as Deloitte. I am a Chartered Accountant and a Registered Liquidator and I have practised for more than 19 years as an accountant specialising in insolvency related matters in Australia. I estimate that I have chaired, or assisted the chairperson to run a creditors' meeting approximately 100 times in my role as an insolvency practitioner.
2. I am assisting the four joint and several voluntary administrators of each of the Second to Fortieth Plaintiffs and the administrators of each of VAH Newco No. 2 Pty Ltd (in liquidation) (Administrators Appointed), the proposed Forty-First Plaintiff, and VB Investco Pty Ltd (in liquidation) (Administrators Appointed), the proposed Forty-Second Plaintiff (together, **Virgin Companies**), being Mr Vaughan Strawbridge, Mr Salvatore Algeri, Mr John Greig and Mr Richard Hughes (together, **the Administrators** and each an **Administrator**) in relation to the administration of the Virgin Companies.
3. 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 in the course of my role assisting the Administrators of the Virgin Companies, which I believe to be true.
4. I have shown this affidavit to Mr Strawbridge and he has confirmed that he agrees with its contents and has consented to it being filed in the proceedings.
5. This is the second affidavit that I have sworn in these proceedings.
6. I refer to and rely upon my affidavit of 29 July 2020 (**First Affidavit**).
7. I make this affidavit in support of the relief sought by the Plaintiffs in the Interlocutory Process filed in these proceedings on 6 August 2020 (**Application**), namely, orders under sections 439A(6) and 447A(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the *Insolvency Practice Schedule (Corporations)*, being Schedule 2 to the Corporations Act (**IPSC**).

HALO PLATFORM

Overview

8. On 29 July 2020 the First Plaintiffs filed an application in these proceedings concerning creditors registering on the Deloitte Halo Platform (**Initial Halo Application**) which is described in paragraph 8 of my First Affidavit.

9. Further to paragraphs 6 to 8 of the First Affidavit, the Administrators are intending to utilise the Halo Platform to communicate with creditors on the adjudication of claims and to facilitate voting by creditors in advance of and at the Second Meetings of the Virgin Companies (**Second Meetings**).
10. I refer to and repeat paragraphs 10 to 38 of my First Affidavit, and in particular paragraphs 13, 14 and 15, which set out the Virgin Companies' creditor profile, on a group basis, as at the date of the Administrators' appointment.
11. For the reasons set out in more detail below, I am of the opinion, which is shared by the Administrators, that it is not practicable, having regard to the number of persons who are or may be creditors of the Virgin Companies (and who may seek to vote at the Second Meetings) and in light of logistical difficulties created by the COVID-19 pandemic, for the voting process to be performed in the ordinary way (in the context of a physical creditors' meeting), whereby:
 - (a) in the window between the convening and issuing of the notice to creditors in advance of the meetings and the date of the meetings (**Meeting Notice Period**), each person claiming to be a creditor is required to submit (physically or electronically) a proof of debt or claim form and where applicable an appointment of proxy or nomination of attorney form;
 - (b) at the same time, the Administrators are required to adjudicate on each proof of debt or claim, check each proxy or attorney and manually compile a list of persons entitled to vote at the Second Meetings; and
 - (c) if a poll is required (or is otherwise demanded), a vote must be obtained in real time from each party who is entitled to vote (unless the person has submitted a special proxy).
12. In my opinion, for the reasons set out in greater detail below, the Meeting Notice Period does not allow sufficient time for the steps in paragraphs 11(a) and 11(b) to be completed satisfactorily, or at all. Performed in the conventional manner, the time that would need to be spent by the Administrators and their staff would be significant and the expense associated with those steps would be very large (to the detriment of the potential returns to unsecured creditors). Additionally, given the number of persons entitled to attend the Second Meetings, it will not be possible for votes on a poll to be obtained and manually tallied in a reasonably timely manner.
13. Accordingly, further to the Initial Halo Application, the orders sought pursuant to the Application are intended to facilitate the adjudication of proofs of debt and claims, the

processing of proxies, and the administrative mechanics of the conduct of voting in advance of and at the Second Meetings.

Logistical matters in relation to processing Proofs and Proxies

14. The Administrators will need to manage the following logistical steps and administrative processes in adjudicating proofs of debt and processing proxy forms. These processes include:
 - (a) further to paragraph 31 of my First Affidavit, while the Administrators have the ability to "deactivate" a "double-claim" (as described in that paragraph 31), this process still requires manual processing by the Administrators and their staff to identify a "double-claim", communicate with the relevant parties and configure the Halo Platform so that (only) the relevant person is permitted to vote on the claim;
 - (b) further to paragraph 27 of my First Affidavit, the Administrators and their staff need to undertake the adjudication of any proofs of debt received in the usual way, which is a very time-consuming task given the number of creditors and potential claims involved;
 - (c) once a claim has been adjudicated, the Administrators are then required to notify the person who lodged the proof of debt as to the outcome of that adjudication (by making the appropriate updates to the creditor's personal account details in Halo). A person whose claim has been rejected, or adjudicated for a value which the person disagrees with, may seek to challenge that decision or make further enquiries in respect of that decision. That process will need to be undertaken by the Administrators in order for that person, if admitted as a creditor, to vote on any resolution;
 - (d) once a proxy has been appointed or vote on any resolution has been cast by a creditor in the Halo Platform it is not possible for the creditor to change the proxy or vote without contacting the Administrators. This means that any changes to proxy details or an amendment to any vote will need to be approved by the Administrators and their staff prior to the Second Meeting.
15. The Administrators will require sufficient time in advance of the Second Meetings to adequately address these matters and to correspond with persons via the Halo Platform on any questions or requests which arise in relation to the adjudication and voting process.

Proposed method of voting at and in advance of the Second Meetings

16. As a consequence of the COVID-19 pandemic, the meetings of creditors of the Virgin Companies will need to be conducted as virtual meetings. As outlined in paragraphs 27-33 of the Affidavit of Vaughan Strawbridge sworn 23 April 2020, the Administrators sought orders to enable meetings of the Companies' creditors to be held electronically, in order to comply with the current restrictions on public gatherings put in place as a result of COVID-19 by the Australian Government and State and Territory Governments. Order 4 of the orders made by the Court on 24 April 2020 permits the Administrators to hold meetings of creditors of the Virgin Companies by telephone or audio-visual conference (without creditors of the Virgin Companies being able to attend physically), with such details of the arrangements for using the telephone or audio-visual conference facilities to be specified in each of the notices issued to creditors. As a consequence, in order to deal with proofs of debt and proxy forms at a virtual meeting, the Administrators will need to have received them in advance of the meeting. Since the 24 April 2020 Orders, the Administrators and my team have also reflected on how votes of creditors can be cast and processed at a virtual meeting.
17. Further to proposed Orders 2 and 3 of the Initial Halo Application, the Administrators propose that voting at the Second Meeting take place via the Halo Platform for all creditors, including those who lodged a proof of debt with the Administrators using another means (with the exception of the USD Noteholders pursuant to proposed Order 5 of the Initial Halo Application).
18. It is the Administrators' intention that, on the issuing of the report to creditors in accordance with s 75-225 of the IPR, resolutions will be put to creditors through the Halo Platform as a "Voting Event". Creditors will receive a digital "alert" that a Voting Event has "opened" and that they are able to then "vote" or "select proxy" (special or general) through the Halo Platform. If a proxy is nominated, the creditor will be required to provide an email address for that proxy and, if that email address is not already a registered user they will be required to open an account on Halo. Creditors other than creditors who are natural persons must submit a proxy. Where a creditor:
 - (a) does not nominate a proxy, they will vote directly through the Halo Platform;
 - (b) nominates a special proxy, their vote will be cast at the time of nomination of the proxy; or
 - (c) nominates a general proxy, the creditor's right to vote is transferred to the general proxy in the Halo Platform.

19. Each proof of debt (or claim in Halo) has a unique claim number, which entitles the relevant creditor to vote. Accordingly, there is no ability for a creditor's claim to be voted on more than once.
20. Due to the way the Halo Platform operates, once a vote has been submitted, it cannot be amended except by request to the Administrators as a user account must be "reset" to allow an amendment to occur. This means that creditors voting in advance of the meeting are unable to amend their vote unless they submit a request through the Halo Platform do so. For this reason, the Administrators seek an order to allow for sufficient time in advance of the Second Meeting for any such requests to be processed.
21. Once voting on a resolution has closed at the Second Meetings, the Administrators will be able to share the Halo Platform screen with creditors and observers by using the screen-sharing feature on the Microsoft Teams platform in order to announce the outcome of the vote.
22. One proposed point of difference between the Halo Platform and voting in the ordinary course at a physical meeting of creditors is that the Halo Platform is intended to allow creditors to vote in advance of the Second Meetings up until the time the "Voting Event" is closed by the chairperson at the Second Meetings. This arrangement:
 - (a) provides creditors with the flexibility to vote at any time after receiving the Administrators' report to creditors pursuant to section 75-225 of the IPR (that is, during the Meeting Notice Period), including during the Second Meetings (if that is the creditor's preference);
 - (b) provides creditors with more time to lodge their 'virtual vote', which reduces the risk of a creditor encountering any technical or user issue whilst voting. If that occurs, the creditor can contact the Deloitte Halo support team in advance of the Second Meetings;
 - (c) provides the Administrators with sufficient time to receive votes on the Halo Platform, up to and at the Second Meetings, and therefore to tally votes in advance of the meetings of creditors; and
 - (d) provides the Administrators with an opportunity (if necessary) urgently to seek an additional extension of the convening period or to adjourn the meeting if any significant issues are identified with the Halo Platform in the lead up to the Second Meetings.

USD Noteholders

23. Further to proposed Order 5 of the Initial Halo Application and paragraphs 25 and 26 of my First Affidavit, proposed Orders 2 to 5 of the Initial Halo Application do not apply to the USD Noteholders (for the reasons described in paragraph 26 of the First Affidavit). Akin Gump Strauss Hauer & Feld LLP, New York, have been acting as Special Noteholder Liaison in the administrations of the Virgin Companies and have been communicating with USD Noteholders, the Bank of New York Mellon as trustee and with the Depository Trustee Company (**DTC**) in the United States of America through which the notes are cleared. I understand from the Notice of Voting Record Date issued to USD Noteholders on 30 July 2020, a copy of which is marked as **Annexure "A"** to this affidavit, the votes of the USD Noteholders are taken pursuant to a Master Ballot and Beneficial Ballot process administered by DTC and the outcome of that process will be relayed to the Administrators in advance of the Second Meetings. As a result, it is not intended that the further orders sought with respect to the Halo Platform are to apply to the USD Noteholders.
24. The outcome of the USD Noteholder voting process will be input into the Halo Platform in advance of the Second Meetings, such that the tallying of votes on any resolution at the Second Meetings will incorporate these results.

ATTENDANCE AT THE SECOND MEETING

25. In accordance with Order 4 made by Justice Middleton in these proceedings dated 24 April 2020, the Second Meetings will be held via audio-visual conference technology using the Microsoft Teams platform in the same way as the First Meetings were held. As was required for the First Meetings, creditors and observers at the Second Meetings will be required to pre-register for the meeting through an online form hosted by Microsoft and will be permitted to submit questions prior to and during the meeting.
26. Noting that the Second Meetings are being held via Microsoft Teams software (with the Halo Platform being used only for voting and related purposes), it is not possible for the Administrators to generate a definitive list of creditors (or their appointed proxy or attorney) that attend the Second Meeting, in circumstances where:
- (a) the Microsoft Teams platform allows an attendee list to be generated only at any given point-in-time during the meetings (rather than a cumulative list of all attendees over the course of the meetings);

(b) the significant number of attendees expected at the Second Meetings mean that any list of attendees is likely to be incomplete where creditors enter and leave the audio-visual conference link at different points in time; and

(c) any list of attendees generated in Microsoft Teams would need to be cross-referenced against creditors that have been admitted to vote through the Halo Platform, which would be a time-consuming process.

27. For these reasons, the Administrators seek orders that they may count all votes lodged through the Halo Platform on any poll taken during the Second Meetings (regardless of whether it can be shown that those creditors (or their proxy or attorney) were present at the meeting).

SWEARING OF THIS AFFIDAVIT

28. 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.

29. I have been informed by Kassandra Suzann Adams, 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.

30. 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 Brisbane)
in Queensland)
on 6 August 2020)
Before me:)

.....
Signature of deponent

.....
Signature of witness
Kassandra Suzann Adams, solicitor

SCHEDULE 1

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 each of the Second to Fortieth 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

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| 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 |

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| 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 |

This is **Annexure A** referred to in the affidavit of David Michael Orr sworn on 6 August 2020

Before me

30 July 2020

To the holders of those certain (i) US \$350,000,000 7.875% Senior Notes due October 15, 2021 (Reg S CUSIP: Q94606AG7 & 144A CUSIP: 92765YAG2) and (ii) US \$425,000,000 8.125% Senior Notes due November 15, 2024 (Reg S CUSIP: Q94606AH5 & 144A CUSIP: 92765YAH0) (collectively, the "USD Senior Notes")

Re: Virgin Australia Holdings Limited (Administrators Appointed) and certain of its subsidiaries (all Administrators Appointed) (together, the "Companies"); Notice of Voting Record Date

This letter is provided to the holders of the USD Senior Notes as part of the voting process in connection with the upcoming Second Meeting of Creditors to be convened pursuant to section 439A of the *Corporations Act 2001* (Cth) in respect of the Companies.

The purpose of this letter is to notify you that the voting record date for the USD Senior Notes is **August 7, 2020 at 5:00 pm (New York Time)** (the "**Voting Record Date**"). Accordingly, only beneficial holders of USD Senior Notes as at the Voting Record Date will be entitled to vote on the resolutions put to creditors of the Companies, which resolutions will include whether (1) the Companies should execute a Deed of Company Arrangement, (2) the administration of the Companies should end, or (3) the Companies be wound up.

The voting process with respect to the USD Senior Notes will commence shortly with distribution of the master ballots and beneficial holder ballots to the DTC Participants as nominees and master ballot agents. Voting instructions and relevant deadlines will be outlined in those materials and also posted to <https://www2.deloitte.com/au/virgin>.

Yours faithfully



Vaughan Strawbridge
Joint and Several Administrator