

29 April 2022

## TO CREDITORS

Dear Sir / Madam

### **Project Volar Creditors' Trust (the Trust)**

We refer to our previous updates in relation to proceedings commenced by various creditors, including our update to creditors dated 16 March 2022 in respect to the *Wells Fargo Trust Company National Association (as owner trustee) and Willis Lease Finance Corporation ("Willis") v VB Leaseco Pty Ltd* High Court of Australia proceedings.

### **Appeals against the Trustees' adjudications**

As previously notified to creditors, a number of aircraft lessors and financiers commenced proceedings in the Supreme Court of NSW (the **Court**) challenging the Trustees' adjudications of their proofs of debt, on various grounds.

The first aspect of those challenges was heard by the Court in March 2022. On 13 April 2022, the Court handed down judgment in the Trustees' favour, dismissing claims by a number of aircraft lessors (**Aircraft Lessors**) that rent and maintenance reserves accruing during the external administrations of the Virgin Companies was payable in priority to other claims against the Trust in reliance on a principle known as the "liquidation expenses principle".

The Court held that the Trust Deed did not incorporate a liquidation expenses principle so as to give priority to the Aircraft Lessors' claims. Although it was not necessary to decide the question, the Court was also not persuaded to extend the scope of the liquidation expenses principle beyond the context of a winding up. Finally, the Court held that the liquidation expenses principle did not apply to the Aircraft Lessors in any event, as their aircraft property was retained during the external administrations for the joint benefit of the Aircraft Lessor and the general body of creditors.

The Aircraft Lessors also claimed priority for rent and maintenance reserves on the alternative basis that the voluntary administrators became personally liable for those amounts pursuant to the Corporations Act 2001 (Cth) from 16 June 2020. The Court rejected that argument on the basis that rent and maintenance reserves were not payable under the pre-administration leases during that period, because of the terms of certain Aircraft Protocol Agreements executed by Aircraft Lessors whose property was retained after that date (and, in the case of Willis, the Administrators had the benefit of orders from the Federal Court of Australia relieving them of any personal liability under the pre-administration Willis leases from 16 June 2020).

On 27 April 2022, the Court made Orders dismissing the Aircraft Lessors' proceedings, except for two reserved matters (disputes regarding repossession costs priority and quantum), which remain to be heard and determined. The Orders, when entered, will be posted on our website at: <https://virgin.deloitte-halo.com/>.

The parties subject to these Orders will have 28 days from the date of the Orders, or such further time as the Court allows, to file an appeal or a notice of intention to appeal from the decision of the Court.

The two trade creditor proceedings commenced in September 2021 have now also been resolved and subsequently discontinued.

An adjudication appeal proceeding brought by a former employee before the NSW Supreme Court was also dismissed, with costs in favour of the Trustees, on 22 March 2022. We will provide a further update on the remaining aircraft lessor and financier proceedings in due course.

We thank you for your continued support and patience throughout this process.

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## Timing of dividend

Until such time as the appeals against the Trustees' adjudications have been resolved, we are unable to provide an estimate of the timing of a dividend. We are working as expeditiously as possible to resolve these issues. We will continue to keep creditors informed of any significant developments on these issues, which have a bearing on the timing of dividends.

## Further queries

In the event you have any queries regarding the contents of this circular, or the administration in general, please do not hesitate to contact us at [virginadmin@deloitte.com.au](mailto:virginadmin@deloitte.com.au).

Yours faithfully



**Sal Algeri**  
Trustee