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*Counsel to the Foreign Representatives*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	
	)	Chapter 15
Virgin Australia Holdings Ltd.	)	
(ACN 100 686 226) <sup>1</sup> , <i>et al.</i> ,	)	Case No. 20-11024 (SHL)
	)	
	)	
Debtor in a Foreign Proceeding. <sup>2</sup>	)	(Jointly Administered)

**MOTION FOR RECOGNITION AND  
ENFORCEMENT OF (I) THE DEEDS OF COMPANY ARRANGEMENT,  
(II) THE AUSTRALIAN COURT’S 444GA ORDER, AND (III) RELATED RELIEF  
UNDER BANKRUPTCY CODE §§ 105(A), 1507, 1509(B)(2)-(3), 1521(A), AND 1525(A)**

<sup>1</sup> An Australian Company Number (“ACN”) is a unique nine-digit number issued by the Australian Securities and Investments Commission (“ASIC”) to every company registered under the Commonwealth Corporations Act 2001 as an identifier.

<sup>2</sup> The Debtors in these cases, along with the last three digits of each Debtor’s ACN number, are: Virgin Australia Holdings Ltd (226); Virgin Australia International Operations Pty Ltd (608); Virgin Australia International Holdings Pty Ltd (021); Virgin Australia International Airlines Pty Ltd (823); Virgin Australia Airlines (SE Asia) Pty Ltd (389); Virgin Australia Airlines Holdings Pty Ltd (675); VAH Newco No. 1 Pty Ltd (345); Tiger Airways Australia Pty Limited (008); Virgin Australia Airlines Pty Ltd (965); VA Borrower 2019 No. 1 Pty Ltd (059); VA Borrower 2019 No. 2 Pty Ltd (343); Virgin Tech Pty Ltd (879); Short Haul 2018 No. 1 Pty Ltd (831); Short Haul 2017 No. 1 (390); Short Haul 2017 No. 2 Pty Ltd (443); Short Haul 2017 No. 3 Pty Ltd (813); VBNC5 Pty Ltd (502); A.C.N. 098 904 262 Pty Ltd (262); Virgin Australia Regional Airlines Pty Ltd (662); Virgin Australia Holidays Pty Ltd (159); VB Ventures Pty Ltd (004); Virgin Australia Cargo Pty Ltd (838); VB Leaseco Pty Ltd (741); VA Hold Co Pty Ltd (157); VA Lease Co Pty Ltd (291); Virgin Australia 2013-1 Issuer Co Pty Ltd (326); 737 2012 No. 1 Pty. Ltd (859); 737 2012 No. 2 Pty Ltd (064); Short Haul 2016 No. 1 Pty Ltd (328); Short Haul 2016 No. 2 Pty Ltd (077); Short Haul 2014 No. 1 Pty Ltd (612); Short Haul 2014 No. 2 Pty Ltd (199); VA Regional Leaseco Pty Ltd (605); VB 800 2009 Pty Ltd (934); VB Leaseco No. 2 Pty Ltd (319); VB LH 2008 No. 1 (354); VB LH 2008 No. 2 Pty Ltd (805); VB PDP 2010-11 Pty Ltd (266); Tiger International Number 1 Pty Ltd (944); VAH Newco No. 2 Pty Ltd (354); VB Investco Pty Ltd (095) (all Subject to Deed of Company Arrangement). The service address for each of the above Foreign Debtors is Deloitte Brisbane, Riverside Centre, 123 Eagle St, Brisbane QLD 4000, Australia.

Vaughan Strawbridge, Richard Hughes, John Greig, and Salvatore Algeri in their capacities as joint and several administrators of the deeds of company arrangement and foreign representatives (in such capacities, the “Deed Administrators”<sup>3</sup> or the “Foreign Representatives”)<sup>4</sup> of the above-captioned foreign debtors (the “Foreign Debtors” or “Deed Companies”), which are subject to external administration proceedings (each Foreign Debtor being “Subject to Deed of Company Arrangement”) under Australia’s *Corporations Act 2001* (Cth) (the “Corporations Act”), by and through their undersigned counsel, respectfully submit this *Motion for Recognition and Enforcement of (I) the Deeds of Company Arrangement, (II) the Australian Court’s 444GA Order, and (III) Related Relief under Bankruptcy Code §§ 105(a), 1507, 1509(b)(2)-(3), 1521(a), and 1525(a)* (the “Recognition Motion”).

In support of this Recognition Motion, the Foreign Representatives (i) respectfully submit the *Declaration of Foreign Representative in Support of Motion for Recognition and Enforcement of (I) the Deeds of Company Arrangement, (II) the Australian Court’s 444GA Order, and (III) Related Relief under Bankruptcy Code §§ 105(a), 1507, 1509(b)(2)-(3), 1521(a), and 1525(a)* (the “Recognition Declaration”) and (ii) refer to and rely on that certain *Declaration of Foreign Representative Pursuant to 11 U.S.C. § 1515 and Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure and in Support of Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representatives, and (III) Related Relief Under Chapter*

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<sup>3</sup> Prior to execution of the Bain DOCAs (as defined herein) the Deed Administrators were the “Voluntary Administrators” of the Foreign Debtors. Following the execution of the Bain DOCAs, the Foreign Debtors are “Subject to Deed of Company Arrangement” which is a form of external administration under the Corporations Act. References herein to the “Administrators” or the “Foreign Representatives” shall refer to both the “Voluntary Administrators” and “Deed Administrators” as applicable.

<sup>4</sup> Capitalized terms that are not defined herein shall have the meaning ascribed in the *Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representatives, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “Verified Petition”) [D.I. 2].

*15 of the Bankruptcy Code* filed in connection with the chapter 15 petitions of the Original Foreign Debtors (defined below) on April 20, 2020 [Docket No. 3] (the “Original Declaration”).

In further support hereof, the Foreign Representatives respectfully represent as follows:

### **PRELIMINARY STATEMENT**

1. Following the commencement of the Australian Proceedings (defined below) the Administrators conducted a competitive and public sale and recapitalization process of the Foreign Debtors’ business. The result of the process was an agreement with BC Hart Aggregator LP (“Bain”) for the sale of the business which was executed in June 2020. At the Second Creditors Meeting on September 4, 2020, and consistent with the Foreign Representatives’ recommendations, creditors voted overwhelmingly in support of deeds of company arrangement that Bain proposed to consummate the sale, executed copies of which are attached as Exhibits D-M to the Recognition Declaration (the “Bain DOCAs”). The Foreign Debtors executed the Bain DOCAs on September 25, 2020, and anticipate satisfying the conditions to completion of the deeds of company arrangement (and thus closing the sale) by the end of November 2020. Key features of the Bain DOCAs include (a) the consummation of the transaction by compulsory transfer of the shares of the ultimate holding company, effected through the Bain DOCAs and an Australian court order, which reduces transaction costs and increases recoveries to unsecured creditors, (b) a release of creditors’ claims against the Foreign Debtors, and (c) establishment of a creditors’ trust which will make distributions to creditors in satisfaction of their claims against the Foreign Debtors. One of the conditions precedent to the completion of the share sale transaction is entry by this Court of an order giving full force and effect to the Bain DOCAs and granting related relief. Accordingly, the Administrators now file this Recognition Motion seeking same.

## **BACKGROUND**

### **A. The Foreign Debtors and the Commencement of the Chapter 15 Proceedings**

2. Virgin Australia Holdings Ltd. (ACN 100 686 226) (Subject to Deed of Company Arrangement) (“Holdings”) is the ultimate parent of a group of affiliated companies (collectively the “Virgin Australia Group”) that own and operate three domestic commercial airlines – Virgin Australia, Virgin Australia Regional Airlines and Tigerair Australia – and one international commercial airline – Virgin Australia International Airlines. Holdings and 38 of its affiliated companies (the “Original Foreign Debtors”)<sup>5</sup> entered voluntary administration (the “Australian Proceedings”) under the Corporations Act on or about April 20, 2020, with the exception of Tiger International Number 1 Pty Ltd which entered voluntary administration on April 28, 2020. Following commencement of the Australian Proceedings, on or about April 29, 2020, the Original Foreign Debtors filed petitions under chapter 15 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court. On May 22, 2020 this Court entered an order recognizing the Administrators (in their capacity as voluntary administrators) as the Foreign Representatives of the Original Foreign Debtors and recognizing the Australian Proceedings as Foreign Main Proceedings. [Docket No. 13].

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<sup>5</sup> The original Foreign Debtors these cases, along with the last three digits of each Debtor’s ACN number, are: Virgin Australia Holdings Ltd (226); Virgin Australia International Operations Pty Ltd (608); Virgin Australia International Holdings Pty Ltd (021); Virgin Australia International Airlines Pty Ltd (823); Virgin Australia Airlines (SE Asia) Pty Ltd (389); Virgin Australia Airlines Holdings Pty Ltd (675); VAH Newco No. 1 Pty Ltd (345); Tiger Airways Australia Pty Limited (008); Virgin Australia Airlines Pty Ltd (965); VA Borrower 2019 No. 1 Pty Ltd (059); VA Borrower 2019 No. 2 Pty Ltd (343); Virgin Tech Pty Ltd (879); Short Haul 2018 No. 1 Pty Ltd (831); Short Haul 2017 No. 1 (390); Short Haul 2017 No. 2 Pty Ltd (443); Short Haul 2017 No. 3 Pty Ltd (813); VBNC5 Pty Ltd (502); A.C.N. 098 904 262 Pty Ltd (262); Virgin Australia Regional Airlines Pty Ltd (662); Virgin Australia Holidays Pty Ltd (159); VB Ventures Pty Ltd (004); Virgin Australia Cargo Pty Ltd (838); VB Leaseco Pty Ltd (741); VA Hold Co Pty Ltd (157); VA Lease Co Pty Ltd (291); Virgin Australia 2013-1 Issuer Co Pty Ltd (326); 737 2012 No. 1 Pty. Ltd (859); 737 2012 No. 2 Pty Ltd (064); Short Haul 2016 No. 1 Pty Ltd (328); Short Haul 2016 No. 2 Pty Ltd (077); Short Haul 2014 No. 1 Pty Ltd (612); Short Haul 2014 No. 2 Pty Ltd (199); VA Regional Leaseco Pty Ltd (605); VB 800 2009 Pty Ltd (934); VB Leaseco No. 2 Pty Ltd (319); VB LH 2008 No. 1 Pty Ltd (354); VB LH 2008 No. 2 Pty Ltd (805); VB PDP 2010-11 Pty Ltd (266); and Tiger International Number 1 Pty Ltd (944) (all Subject to Deed of Company Arrangement).

3. On August 3, 2020, two additional members of the Virgin Australia Group – VAH Newco No. 2 Pty Ltd (at the time In Liquidation) and VB Investco Pty Ltd (at the time In Liquidation) – were placed in voluntary administration, and subsequently on August 13, 2020 filed chapter 15 petitions before this Court<sup>6</sup> (the “Additional Foreign Debtors” and together with the Original Foreign Debtors, the “Foreign Debtors”). [Docket No. 25]. On September 18, 2020, this Court entered an order recognizing the Administrators as the Foreign Representatives of the Additional Foreign Debtors and recognizing the Australian Proceedings of the Additional Foreign Debtors as Foreign Main Proceedings. [Docket No. 32].

4. The Foreign Debtors commenced the Australian Proceedings following significant disruption and damage to their airline businesses resulting from the COVID-19 pandemic, the related restrictions on domestic and international travel, and the resulting reduction in capacity. *See* Original Decl. ¶ 8.

**B. Overview of Australian Administration Proceedings and Powers of an Australian Administrator to Sell Assets**

5. In Australia, voluntary administration proceedings commence with the appointment of one or more voluntary administrators, who act as the company’s agent with the full powers of its board of directors and officers. The powers of the company officers and directors are suspended and, subject to the overriding rights of a receiver (if appointed), only the administrator may deal with the company’s property during the administration. *See* Original Decl. ¶ 16. Additionally, any attempt to exercise control over the company’s property by a party other than the administrator or, if appointed, a receiver, is void (unless the administrator consented to such action or it was pursuant to a court order). *See Id.*

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<sup>6</sup> Case Nos. 20-11898 and 20-11899, respectively

6. The Australian administration process requires the occurrence of two separate meetings of creditors. The purpose of the first meeting is for creditors to determine whether (i) an advisory committee, which is referred to under the Corporations Act as a “committee of inspection” is required (and if so, to elect creditors to serve on the committee), and (ii) to remove the administrators and to appoint alternate administrators if any such alternative administrators have been proposed. *See* Original Decl. ¶ 23.

7. At the second meeting, administrators discuss their report on the company’s affairs which must be provided to creditors in advance of the meeting, and present their recommendations regarding the company’s future options. The Corporations Act provides for three options, (i) return of control of a company to directors, (ii) liquidation of a company, or (iii) execution of a deed of company arrangement addressing treatment of claims against a company (collectively, the “Exit Options”). *See* Recognition Decl. ¶ 9.

8. Section 435A of the Corporations Act provides that, after appointment, the administrators’ primary goals are to protect the company’s business, property, assets and affairs so that they may be administered in a way that: (i) maximize the chances of the company, or as much as possible of its business, continuing in existence; or (ii) if it is not possible for the company or its business to continue in existence, results in a better return for the company’s creditors and members than would result from an immediate winding up of the company. *See* Original Decl. ¶

17. Once appointed, the administrators are required to:

- (a) begin investigating the company’s business, property, affairs and financial circumstances as soon as is practicable after the administration begins;
- (b) form an opinion about which of the Exit Options is in the creditors’ interests; and
- (c) to convene the second meeting of creditors to “decide the company’s future.”

These actions are designed to best facilitate the administrators' main priorities, which are to secure the company's assets and ultimately achieve a better return for creditors than would have been achieved on an immediate winding up. *See* Original Decl. ¶ 18.

**C. The Sale Process**

9. Following their appointment, the Foreign Representatives commenced a public sale and recapitalization process (the "Sale Process"). The Sale Process was conducted in three phases over a two-month period. After receiving a number of non-binding indicative offers, the Foreign Representative shortlisted four parties to conduct further due diligence during phase two. Two of those parties were subsequently invited to undertake further detailed due diligence in phase three before submitting binding offers on June 22, 2020. After careful consideration of the offers received, and based on all the information available at that time, on June 26, 2020, the Foreign Representatives exercised their power of sale under the Corporations Act and signed binding transaction documents in the form of a sale and implementation deed and other ancillary documents (collectively, the "Sale Deed") for the sale of the business to Bain. Additional details regarding the Sale Process are set out in Section 8 of the Administrators' Report to Creditors dated August 25, 2020, as required by Section 75-225 of the Insolvency Practice Rules (Corporations) 2016 (including exhibits thereto, the "75-225 Report"), and which is attached as Exhibit A to the Recognition Declaration.

10. In connection with the Sale Deed, Bain agreed to provide A\$125 million in interim funding for the continued operation of the Foreign Debtors' business, and became responsible for all liabilities incurred by the Foreign Debtors in the operation of their business from and after July 1, 2020. 75-225 Report § 8.6. These funding and financial commitments were necessary to ensure continued operation of the Virgin Australia Group's business. *Id.*

11. The Sale Deed provided that Bain would purchase the Virgin Australia Group pursuant to an asset sale agreement unless creditors voted at the second meeting of creditors (the “Second Creditors Meeting”), to approve the Bain DOCAs which provided for the transaction via a compulsory transfer of the shares of Holdings (the “VAH Shares”) to Bain (or its nominee). The Bain DOCAs and the terms thereof are described in more detail in Section 9 of the 75-225 Report.

**D. The 75-225 Report, the Second Creditors Meeting and the Resolutions**

12. On August 25, 2020 in advance of the Second Creditors Meeting, the Administrators delivered to creditors the 75-225 Report along with the Notice of the Second Creditors Meeting convened pursuant to section 439A of the Corporations Act. Recognition Decl. ¶ 5. As with prior creditor circulars, the 75-225 Report was posted to a website the Administrators maintain specifically for the Australian Proceedings (the “Website”) <sup>7</sup>. *See Id.*

13. In various creditor communications, the Administrators provided advance notice of the date they expected to post the 75-225 Report. The 75-225 Report was made available to creditors in compliance with the required statutory time frame under the Australian Insolvency Practice Rules (Corporations) 2016. *Id.*

14. The purpose of the 75-225 Report was to provide creditors with information regarding the Virgin Australia Group’s business, property, affairs and financial circumstances, communicate the Administrators’ opinion and recommendations, and to assist creditors in making an informed decision at the Second Creditors Meeting. 75-225 Report § 1.2. Specifically, the Administrators provided creditors with background and financial information about the Virgin Australia Group, details regarding the Sale Process, Bain’s offer

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<sup>7</sup> See <https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australia-holdings-limited-subsidiaries.html>



and the Bain DOCAs, the estimated returns to creditors under various scenarios, and the results of the Administrators' investigations into any possible voidable transactions or transfers. *See generally* 75-225 Report.

15. The Second Creditors Meeting was held on Friday, September 4, 2020 at 10:00 a.m. Australian Eastern Standard Time. In light of logistical challenges and restrictions resulting from the ongoing COVID-19 pandemic, the Administrators held the Second Creditors Meeting virtually and conducted creditor voting on the proposed resolutions regarding the Bain DOCAs using an online voting platform. Recognition Decl. ¶ 7; 75-225 Report §§ 1.8-14.

16. The Bain DOCAs include one "Primary DOCA", one "International Group DOCA", and eight separate "Subsidiary DOCAs". 75-225 Report § 9.2. The Foreign Debtors are each the subject of a specific Bain DOCA based on, among other things, their lines of business, identity of assets and liabilities, and commonality of certain liabilities. The below chart sets forth the separate Bain DOCAs and the relevant Foreign Debtors included therein:

Primary DOCA	<ul style="list-style-type: none"> <li>• Virgin Australia Holdings Ltd ACN 100 686 226;</li> <li>• Virgin Australia Airlines Holdings Pty Ltd ACN 093 924 675;</li> <li>• VAH Newco No.1 Pty Ltd ACN 160 881 345;</li> <li>• Tiger Airways Australia Pty Limited ACN 124 369 008;</li> <li>• Virgin Australia Airlines Pty Ltd ACN 090 670 965;</li> <li>• Virgin Tech Pty Ltd ACN 101 808 879;</li> <li>• A.C.N. 098 904 262 Pty Ltd ACN 098 904 262;</li> <li>• Virgin Australia Regional Airlines Pty Ltd ACN 008 997 662;</li> <li>• Virgin Australia Holidays Pty Ltd ACN 118 552 159;</li> <li>• VB Ventures Pty Ltd ACN 125 139 004;</li> <li>• Virgin Australia Cargo Pty Ltd ACN 600 667 838;</li> <li>• VB Leaseco Pty Ltd ACN 134 268 741;</li> <li>• VB Investco Pty Ltd ACN 101 961 095;</li> <li>• VAH Newco No.2 Pty Ltd ACN 160 881 354;</li> <li>• Virgin Australia International Operations Pty Ltd ACN 155 859 608;</li> <li>• VBNC5 Pty Ltd ACN 119 691 502;</li> </ul>
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	<ul style="list-style-type: none"> <li>• Short Haul 2017 No. 1 Pty Ltd ACN 617 644 390;</li> <li>• VB PDP 2010-11 Pty Ltd ACN 140 818 266;</li> <li>• VB LH 2008 No. 1 Pty Ltd ACN 134 280 354;</li> <li>• VB LH 2008 No. 2 Pty Ltd ACN 134 288 805;</li> <li>• 737 2012 No.1 Pty. Ltd. ACN 154 201 859;</li> <li>• 737 2012 No.2 Pty. Ltd. ACN 154 225 064;</li> <li>• VA Regional Leaseco Pty Ltd ACN 127 491 605;</li> <li>• VA Hold Co Pty Ltd ACN 165 507 157;</li> <li>• Virgin Australia 2013-1 Issuer Co Pty Ltd ACN 165 507 326;</li> <li>• VA Lease Co Pty Ltd ACN 165 507 291;</li> <li>• Short Haul 2016 No. 1 Pty Ltd ACN 612 766 328; and</li> <li>• Short Haul 2016 No. 2 Pty Ltd ACN 612 796 077 (each of the foregoing now Subject to Deed of Company Arrangement).</li> </ul>
International Group DOCA	<ul style="list-style-type: none"> <li>• Virgin Australia International Holdings Pty Ltd ACN 155 860 021;</li> <li>• Virgin Australia International Airlines Pty Ltd ACN 125 580 823;</li> <li>• Tiger International Number1 Pty Ltd ACN 606 131 944; and</li> <li>• Virgin Australia Airlines (SE Asia) Pty Ltd ACN 097 892 389 (each of the foregoing now Subject to Deed of Company Arrangement).</li> </ul>
Subsidiary DOCA 1	<ul style="list-style-type: none"> <li>• Short Haul 2014 No. 1 Pty Ltd ACN 600 809 612 and</li> <li>• Short Haul 2014 No. 2 Pty Ltd ACN 600 878 199 (each of the foregoing now Subject to Deed of Company Arrangement).</li> </ul>
Subsidiary DOCA 2	<ul style="list-style-type: none"> <li>• Short Haul 2017 No. 2 Pty Ltd ACN 617 644 443 (now Subject to Deed of Company Arrangement)</li> </ul>
Subsidiary DOCA 3	<ul style="list-style-type: none"> <li>• Short Haul 2018 No. 1 Pty Ltd ACN 622 014 831 (now Subject to Deed of Company Arrangement)</li> </ul>
Subsidiary DOCA 4	<ul style="list-style-type: none"> <li>• VA Borrower 2019 No. 1 Pty Ltd ACN 633 241 059 (now Subject to Deed of Company Arrangement)</li> </ul>
Subsidiary DOCA 5	<ul style="list-style-type: none"> <li>• VA Borrower 2019 No. 2 Pty Ltd ACN 637 371 343 (now Subject to Deed of Company Arrangement)</li> </ul>
Subsidiary DOCA 6	<ul style="list-style-type: none"> <li>• VB Leaseco No 2 Pty Ltd ACN 142 533 319 (now Subject to Deed of Company Arrangement)</li> </ul>
Subsidiary DOCA 7	<ul style="list-style-type: none"> <li>• VB 800 2009 Pty Ltd ACN 135 488 934 (now Subject to Deed of Company Arrangement)</li> </ul>
Subsidiary DOCA 8	<ul style="list-style-type: none"> <li>• Short Haul 2017 No. 3 Pty. Ltd. ACN 622 014 813 (now Subject to Deed of Company Arrangement)</li> </ul>

17. In order to be approved, creditors of the respective companies for which a particular deed of company arrangement was proposed, representing a majority in number and majority in value of all claims voting at the virtual second meeting of creditors (or attending

by proxy) needed to vote in favor of the deed of company arrangement. Creditors of each company the subject of a particular deed of company arrangement vote as a single class.

Recognition Decl. ¶ 8.

18. In connection with the Second Creditors Meeting, creditors of the relevant Foreign Debtors had the opportunity to vote for one of following options for the future of the Foreign Debtors:

- (a) that the companies under administration execute the relevant Bain DOCA;
- (b) that the administration end with control of the relevant company or companies reverting back to the companies' directors; or
- (c) that the relevant company or companies be wound up (and ultimately liquidated).

Recognition Decl. ¶ 9.

19. Creditors cast 7,302 votes representing A\$9,229,508,689<sup>8</sup> of claims against the Foreign Debtors at the Second Creditors Meeting in respect of primary and guarantee claims. Each of the Bain DOCAs was approved either unanimously or by an overwhelming majority by both number and value. Recognition Decl. ¶ 10.

20. Having obtained creditor approval at the Second Creditors Meeting, the Administrators, acting on behalf of the Foreign Debtors, and Bain executed the Bain DOCAs on September 25, 2020. The two main conditions to completion, or effectiveness of the Bain DOCAs are the transfer of the VAH Shares to Bain (or its nominee) (the "Share Transfer") and entry by this Court of an order recognizing the Bain DOCAs. Recognition Decl. ¶ 11.

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<sup>8</sup> This is the total amount of claims against the Foreign Debtors held by creditors that voted at the Second Creditors Meeting. This amount includes some duplication as a number of claims were entitled to vote on more than one Bain DOCA. More specifically, if a creditor held a single claim in the amount of \$100 against two Foreign Debtors, and one of those Foreign Debtors was included in Primary DOCA while the other Foreign Debtor was included in the International DOCA, \$200 is included in the total above.

**E. The 444GA Application**

21. The Primary DOCA provides for the Share Transfer; however, a deed of company arrangement, on its own, cannot effect a share transfer. Instead, the Corporations Act provides that deed administrators can seek court approval of such transfers. Accordingly, the Primary DOCA requires the Administrators to make an application to the Federal Court of Australia (the “Australian Court”) seeking leave under section 444GA of the Corporations Act (the “444GA Application”) to effect the Share Transfer. 75-225 Report § 9.4.

22. Section 444GA of the Corporations Act provides that a deed administrator may transfer shares in the company to which he or she is appointed with either the written consent of the owner of the shares or the leave of the court. The court will only grant leave if it is satisfied that the transfer of shares will not unfairly prejudice the interests of shareholders of the company. *Id.* The Administrators have engaged an independent expert to value the VAH Shares. The Australian corporate regulator (ASIC) examines the proposed transaction and shareholders, creditors, and other interested parties will have the opportunity to be heard at the hearing on the 444GA Application (the “444GA Hearing”).

23. The Administrators are hopeful that the court will approve the Share Transfer given the lack of equity value in the VAH Shares as evidenced by the independent expert’s report and the fact that creditors of the Virgin Australia Group are not being paid in full on account of their claims. As set out in the 444GA Application, the Foreign Representatives intend to send an explanatory memorandum to shareholders that includes the independent expert’s report. Recognition Decl. ¶ 11.

24. The Administrators filed the 444GA Application on October 20, 2020 with the Australian Court and the 444GA Hearing has been set for November 10, 2020. Following the 444GA Hearing, the Foreign Representatives will file a supplemental declaration regarding

the outcome of the hearing. Recognition Decl. ¶ 11. To the extent that the Australian Court enters an order granting the 444GA Application (the “444GA Order”), this Recognition Motion seeks recognition of such order.

25. The Sale Deed provides that if the Australian Court does not grant the 444GA Application and authorize the Share Transfer, the Bain DOCAs will be terminated and the assets of each Foreign Debtor will be sold to Bain pursuant to the terms of an agreed asset sale agreement. 75-225 Report § 9.4.

**F. Effect of DOCA Execution and Completion**

26. Upon execution of the Bain DOCAs, the Administrators became Deed Administrators of each of the Bain DOCAs and continue to operate the Foreign Debtors’ business to allow for the satisfaction of certain conditions precedent to completion of the Bain DOCAs. The powers of the directors of the Foreign Debtors remain suspended pending completion of the Bain DOCAs. Any reference to Foreign Debtors includes the Administrators in their roles as both Voluntary Administrators and Deed Administrators as applicable.

27. Completion of all of the Bain DOCAs will occur simultaneously (such occurrence, “Completion”) and have two key effects. 75-225 Report § 9.3. First, upon Completion, a creditors’ trust (the “Creditors’ Trust”) will be established that is comprised of various pools of funds, to which the creditors of the separate Bain DOCAs will have recourse based on their existing claims. The Creditors’ Trust and various pools of funds thereunder are discussed in more detail in section 10.2.1 of the 75-225 Report.

28. Second, upon Completion and establishment of the Creditors’ Trust, all claims held by creditors of the Foreign Debtors (other than excluded claims) will be released. 75-225 Report § 9.3.2. Creditors with eligible claims will become beneficiaries of the Creditors’

Trust, and will be paid a dividend from the relevant pool. *Id.* § 9.3.3. Each excluded claim identified in the Primary DOCA will not be released, and will continue to be a liability of the applicable Foreign Debtor post-Completion. *Id.* § 9.5.

### **JURISDICTION AND VENUE**

29. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (2)(A), (O) and (P), and the Court may enter a final order in respect of it under Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. § 1410.

### **STATUTORY BASIS FOR RELIEF REQUESTED**

30. The bases for the relief requested herein are sections 105(a), 1507, 1509(b)(2)-(3), 1521(a), and 1525(a) under chapters 11 and 15 of title 11 of the United States Code (the Bankruptcy Code"); rules 2015(d) and 7001 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules"); and rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules").

### **RELIEF REQUESTED**

31. By this Recognition Motion, the Foreign Representatives request that the Court enter an order, substantially in the form of the Proposed Order, pursuant to Bankruptcy Code §§ 105(a), 1507, 1509(b)(2)-(3), 1521(a), and 1525(a):

- a. providing that, as of Completion, the Bain DOCAs, the 444GA Order, and all other agreements related thereto are recognized, granted comity and given full force and effect and are binding upon and enforceable against all entities in accordance with their terms, and such terms shall be binding upon and fully enforceable against Creditors<sup>9</sup> whether or not they have actually agreed to be bound by the Bain DOCAs or have participated in the Australian Proceedings;

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<sup>9</sup> Capitalized terms used in this paragraph 31 that are not defined in this Recognition Motion have the meaning ascribed to them in the Bain DOCAs, as applicable. For purposes of this paragraph 31, as set forth in the Bain DOCAs, the term (1) "Deed Company" means a Foreign Debtor; (2) "Creditor" means a person who has a Claim; and (3) "Claim" means a debt payable by, and all claims against, a Deed Company (present or future, certain or contingent,

- b. declaring unenforceable in the United States, as of Completion, any judgment that purports to determine the liability of any entity released pursuant to the Bain DOCAs with respect to any debt released, extinguished, cancelled, discharged, assigned or restructured under the Bain DOCAs or as a result of Australian law relating to the Bain DOCAs, in each case to the extent inconsistent with the Bain DOCAs, the 444GA Order or Australian law;
- c. subject to clauses 6.3(b), 7 and 9 of the Bain DOCAs, which generally limit the extent to which the Bain DOCAs apply to Secured Creditors and Owners, and subject to clause 8 of the Bain DOCAs, which relates to Claims covered by insurance, prohibiting, in relation to a Creditor's Claim:
  - (1) making or proceeding with an application for an order to wind up a Deed Company or for the appointment of a provisional liquidator or a court appointed receiver to any of the Deed Companies and their property;
  - (2) instituting, reviving, or continuing any action, suit, arbitration, mediation or proceeding against a Deed Company, or in relation to the property of a Deed Company;
  - (3) instituting, reviving, or continuing with any Enforcement Process against the property of a Deed Company;
  - (4) taking any action whatsoever to seek to recover any part of its Claim;
  - (5) exercising any right of set off or defense, cross claim, or cross action to which a Creditor would not have been entitled had the relevant Deed Company been wound up on the Appointment Date;
  - (6) commencing or taking any further step in any arbitration against a Deed Company or to which a Deed Company is a party in relation to any matter arising or occurring before the Appointment Date; or
  - (7) otherwise enforcing any right it may have or acquire,except to the extent of that Creditor's entitlement, if any, to participate in the Trust Fund in accordance with the terms of the Trust Deed.

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ascertained or sounding only in damages), being a debt or claim that would be admissible to proof against a Deed Company in accordance with Division 6 of Part 5.6 of the Corporations Act, if the Deed Company had been wound up and the winding up is taken to have commenced on the Appointment Date, and any fine or penalty to which a Deed Company is subject or liable to be subject arising out of circumstances occurring prior to the Appointment Date that would be so admissible but for the operation of section 553B of the Corporations Act. Furthermore, the term "Claim" (a) includes a Claim of a Secured Creditor; and (b) includes a Claim arising under the DOCA (as defined in the Primary DOCA and the International Group DOCA), including, for the avoidance of doubt, any Claim against a Deed Company under the DOCA in respect of a Liability incurred by another party to the DOCA after the Appointment Date; and (c) does not include an Excluded Claim.

- d. providing that all Claims are extinguished and released as set forth in clause 6.4 of the Bain DOCAs, subject to paragraph 31(e) hereof;
- e. providing that upon all Claims being released as set forth in clause 6.4 of the Bain DOCAs, and subject to paragraph 31(f) hereof:
  - (1) each Trust Creditor who had a Claim, will be entitled to make a claim against the Trust Fund, in accordance with the Trust Deed, which is equal in amount to their released Claim; and
  - (2) each FFC Creditor will be entitled to a Future Flight Credit in respect of their released FFC Claim.
- f. prohibiting a Creditor from making a claim against, participating in, or receiving any distribution from, the Trust Fund in respect of a Non-Participating Claim;
- g. permanently enjoining all entities subject to this Court's jurisdiction from commencing or taking any action, (i) that is inconsistent with, in contravention of, or would interfere with or impede the administration, implementation, and/or consummation of the Bain DOCAs, the 444GA Order, or the terms of the Order or (ii) to obtain possession of, exercise control over, or assert claims or debts that have been released, extinguished, discharged, cancelled or novated under the Bain DOCAs;
- h. providing that no action taken by the Foreign Representatives in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Bain DOCAs, the 444GA Order or any order entered in or in respect of the Chapter 15 Proceedings (including any adversary proceedings or contested matters) will be deemed to constitute a waiver of any immunity afforded the Foreign Representatives including pursuant to Bankruptcy Code § 1510;
- i. authorizing the Foreign Representatives and the Foreign Debtors to take all actions necessary to effectuate the relief granted pursuant to the Court's Order;
- j. retaining jurisdiction with respect to the effect, enforcement, amendment or modification of the Court's Order;
- k. declaring that (i) the Order shall be effective immediately and enforceable upon entry; (ii) the Foreign Representatives shall not be subject to any stay of the implementation, enforcement, or realization of the relief granted in the Order; and (iii) the Order shall constitute a final order within the meaning of 28 U.S.C. § 158(a);
- l. finding that due, adequate, and sufficient notice of this Recognition Motion, the relief requested by this Recognition Motion, and the hearing on this Recognition Motion has been given to all Creditors and other interested parties, which notice is deemed adequate for all purposes, and no other or further notice need be given;



- m. declaring that serving a copy of the Order within seven business days of its entry, by facsimile, electronic mail, first class mail, or overnight express delivery, upon all Notice Parties listed in this Recognition Motion, and posting it to the Website shall constitute good and sufficient service and adequate notice for all purposes; and
- n. granting such other and further relief as the Court deems just and proper  
(collectively, the “Relief Requested”).

### **ARGUMENT**

#### **I. The Relief Requested Is The Type of Relief Contemplated by Chapter 15.**

##### **A. The Relief Requested Constitutes Necessary and Appropriate Cooperation with the Foreign Proceedings and the Foreign Representatives under Section 1525(a).**

32. The Foreign Representatives respectfully submit that the Relief Requested is necessary to complete the successful restructuring of the Foreign Debtors, and to maximize recoveries by unsecured creditors. The Relief Requested is also consistent with the requirements and purposes of the Bankruptcy Code. In particular, Bankruptcy Code § 1525(a) provides that bankruptcy courts “shall cooperate to the maximum extent possible with a foreign court or a foreign representative.” *See* 11 U.S.C. § 1525 (a). Bankruptcy Code § 1509(b) similarly provides that “[i]f the court grants recognition under section 1517, and subject to any limitations that the court may impose consistent with the policy of this chapter . . . a court in the United States shall grant comity and cooperation to the foreign representative.” *See* 11 U.S.C. § 1525 (a). Granting the Relief Requested will support the principles of coordination and cooperation mandated by Bankruptcy Code §§ 1525(a) and 1509(b), and will promote the fair and efficient administration of claims against the Foreign Debtors in the Australian Proceedings.

##### **B. The Relief Requested Is Consistent with the Goals of Chapter 15 and Is Authorized Under Bankruptcy Code §§ 1521, 1507, and 105(a).**

33. The Relief Requested constitutes appropriate relief and additional assistance

needed to implement the restructuring result of the Foreign Proceedings. There are three other statutory bases for the Relief Requested. First, Bankruptcy Code § 1521 provides that, upon recognition of a foreign proceeding and at the request of a foreign representative, the Court may grant “any appropriate relief” necessary to effectuate the purpose of chapter 15 and to protect the assets of the debtor or the interests of the creditors, including injunctive relief and “any additional relief that may be available to a trustee.” 11 U.S.C. § 1521(a). The scope of the discretionary relief available under Bankruptcy Code § 1521(a) is “exceedingly broad,” as the Bankruptcy Code permits the granting of “any appropriate relief” to effectuate the purposes of chapter 15 and to protect the debtor’s assets and the interests of creditors. *In re Avanti Commc’ns Grp. PLC*, 582 B.R. 603, 612 (Bankr. S.D.N.Y. 2018). As described in I.D below, relief is available under Bankruptcy Code § 1521(a) if the interests of “the creditors and other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a).

34. The Court may also grant discretionary relief pursuant to Bankruptcy Code § 1507 in order to provide “additional assistance” to a foreign representative. 11 U.S.C. § 1507(a). The legislative history states that § 1507 provides authority for “additional relief” beyond that permitted under § 1521. H.R. Rep. No. 109-31, pt. 1, at 109 (2005). As described in I.D below, courts grant additional assistance under Bankruptcy Code § 1507(a) when doing so is “consistent with the principles of comity”. 11 U.S.C. § 1507(b). Courts in this district have concluded they are not required to analyze a request for an enforcement order under Bankruptcy Code § 1507 when the relief requested is explicitly provided for, and granted, under Bankruptcy Code § 1521. *See In re Rede Energia S.A.*, 515 B.R. 69, 95 n. 46 (Bankr. S.D.N.Y. 2014) (citing *Atlas Shipping A/S*, 404 B.R. 726, 741 (Bankr. S.D.N.Y. 2009)). Regardless, the Relief Requested herein is also available as “additional assistance” to the extent that Bankruptcy Code § 1507 applies.

35. Finally, section 105(a) of the Bankruptcy Code provides that the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Thus, the Court may also issue the Relief Requested under Bankruptcy Code § 105 of the Code.

**C. Recognition of the Bain DOCAs and the 444GA Order Sufficiently Protects the Interests of Creditors.**

36. Bankruptcy Code § 1522 provides that relief under Bankruptcy Code § 1521(a) – including injunctive relief – is appropriate where the interests of “the creditors and other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a). Although the Bankruptcy Code does not define “sufficient protection,” the legislative history indicates that additional relief is only available where U.S. creditors’ interests are protected. H.R. Rep. No. 109-31, pt. 1, at 116 (2005) (stating that relief should not be granted where “it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors”); *see also In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 82 (Bankr. S.D.N.Y. 2011) (holding that, pursuant to Bankruptcy Code § 1522, the court is “required to ascertain that the interests of U.S. creditors are “sufficiently protected” and is “empowered to effectuate other procedures for the protection of U.S. creditors”).

37. Courts considering this issue generally focus on the procedural fairness of the foreign proceeding, and whether U.S. creditors are entitled to equal treatment in the foreign proceeding. *See, e.g., In re Daebo Int’l Shipping Co., Ltd.*, 543 B.R. 47, 54 (Bankr. S.D.N.Y. 2015) (holding that U.S. creditors’ interests were sufficiently protected where they were entitled to file claims in a Korean proceeding, and to equal treatment with unsecured creditors). Courts may also balance the relief requested by a foreign representative against the creditors’ and parties’ respective interests. *In re AJW Offshore, Ltd.*, 488 B.R. 551, 559 (Bankr. E.D.N.Y. 2013).

38. Here, relief under Bankruptcy Code § 1521 is appropriate because creditors and other parties are sufficiently protected under both analyses. First, U.S. and non-U.S. creditors are entitled to equal treatment under the Bain DOCAs, and have received equal treatment throughout the Australian Proceedings. For example, U.S. creditors were entitled to file claims in the Australian Proceedings and to vote on the resolution proposed in connection with the Second Creditors' Meeting, and they will be entitled to seek recourse from the Creditors' Trust under the same criteria that apply to all creditors. Furthermore, in addition to U.S. creditor representation on the Committee of Inspection, the Administrators established a Noteholder Consultative Committee, recognizing the importance of the Virgin Australia noteholder creditors, including the holders of the U.S. notes. Following the release of the 75-225 Report, the Administrators also conducted a specific conference call for holders of the U.S. notes during the U.S. day to provide a summary of the 75-225 Report as well as an explanation of key dates and mechanics for voting on the proposed resolutions. Recognition Decl. ¶ 5. In addition, the Administrators retained the undersigned counsel to serve as special liaison to U.S. noteholders and creditors, in part, to ensure U.S. creditors could access information, and participate in the Australian Proceedings without undue inconvenience. *See* Recognition Decl. ¶ 15. Accordingly, the Relief Requested clearly does not injure U.S. creditors, let alone injure them unjustifiably.

39. The Relief Requested also satisfies the balancing test employed by some courts. The Bain DOCAs provide for a share sale structure that results in increased recoveries to all unsecured creditors. Entry of an order granting the Relief Requested is a condition precedent to Completion. By ensuring Completion occurs and that the Bain DOCAs are enforceable in the United States, the Relief Requested clearly benefits creditors because it protects their access to increased recoveries. On the other hand, if Completion does not occur because the

Relief Requested is not granted, the Administrators are obligated to proceed with an asset sale transaction that will result in reduced recoveries to unsecured creditors. *See* Recognition Decl. ¶ 6; 75-225 Report § 8.6. Furthermore, granting the Relief Requested will not affect equity holders' interests because the VAH Shares have no value. *See* Recognition Decl. ¶ 11. Accordingly, the benefits to creditors and the Foreign Debtors resulting from the Relief Requested outweigh any alleged interests of creditors, equity holders or other parties that might otherwise seek to attack the Bain DOCA or the 444GA Order in the United States.

40. Because the Relief Requested provides sufficient protection to U.S. and non-U.S. creditors as a whole and is necessary to the restructuring of the Foreign Debtors, the Court should find that relief under § 1521 is appropriate in these chapter 15 cases.

**D. The Relief Requested Satisfies Section 1507 of the Bankruptcy Code.**

41. Bankruptcy Code § 1507(b) sets forth the factors that the Court must consider when determining whether to provide “additional assistance” to a foreign representative. Consistent with the principles of comity, the Court must consider whether the additional assistance will reasonably assure (1) just treatment of all creditors and equity holders, (2) protection of U.S. creditors against prejudice and inconvenience of processing claims in the foreign proceeding, (3) prevention of preferential or fraudulent disposition of property, (4) distribution of proceeds of the debtor's property substantially in accordance with the Bankruptcy Code, and (5) if appropriate, provision of an opportunity for a fresh start for the debtor that such foreign proceeding concerns. *See* 11 U.S.C. § 1507(b); 8 Collier on Bankruptcy ¶ 1507.02 (16th 2020).

42. As described in I.B above, the Court is not required to determine whether the Relief Requested is available under Bankruptcy Code § 1507(b), given it is available, and may be granted under, Bankruptcy Code § 1521. However, to the extent Bankruptcy Code § 1507(b) does apply, the Relief Requested satisfies each of the enumerated requirements.

43. First, the Relief Requested reasonably assures “just treatment of all holders of claims against or interests in the debtor’s property.” 11 U.S.C. § 1507(b)(1). Courts have held that this prong is satisfied where the foreign insolvency law provides “a comprehensive procedure for the orderly and equitable distribution of [the debtor’s] assets among all its creditors.” *In re Rede Energia*, 515 B.R. at 71. Australian voluntary administration proceedings and deeds of company arrangement clearly meet this standard. In fact, a deed of company arrangement is just that – a mechanism for resolving creditor claims in an orderly and equitable manner. *See* Recognition Decl. ¶ 13.

44. Second, Bankruptcy Code § 1507(b)(2) requires the Court to consider whether the requested relief will reasonably assure “protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding.” This factor is satisfied where creditors are given adequate notice of timing and procedures for filing claims, and such procedure does not create any additional burdens for a foreign creditor to file a claim. *See, e.g., Bank of New York v. Treco (In re Treco)*, 240 F.3d 148, 158 (2d Cir. 2001). The Australian Proceedings do not differentiate creditors based on nationality or jurisdiction; all creditors are entitled to participate in the Australian Proceedings and are classified together based on a similarity of their legal rights against the Foreign Debtors rather than their Country of origin. *See* Recognition Decl. ¶ 15. The Foreign Representatives also implemented voting procedures for use at the Second Creditors’ Meeting to ensure that any creditor with claims against a Foreign Debtor could virtually attend such meeting, ask questions, and vote in a manner consistent with their claim, including where relevant, the voting rights set forth in the applicable debt documents. *See* 75-225 Report § 14; Circular to Creditors, *Voting in Halo – How To Guide*, August 25, 2020.<sup>10</sup>

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<sup>10</sup> Available at <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/finance/insolvency/virgin/au-fa-virgin-voting-halo-250820.pdf>

45. Third, the Court must consider whether the additional assistance will assure “prevention of preferential or fraudulent dispositions of property of the debtor.” 11 U.S.C. § 1507(b)(3). The key purpose of the Relief Requested is to prevent creditors (or equity holders, where applicable) from seeking to enhance their recoveries by proceeding in the United States against the Foreign Debtors or their property in respect of debts or claims that were discharged in accordance with the Bain DOCAs and the 444GA Order upon Completion.

46. Fourth, the Court must consider whether the Relief Requested will assure “distribution of proceeds of the debtor’s property substantially in accordance with the order prescribed [in the Bankruptcy Code].” 11 U.S.C. § 1507(b)(4). To be clear, the distribution need not replicate the priority order established by the Bankruptcy Code; rather, it should be similar to such priority order and have a reasonable basis. *See In re Rede Energia*, 515 B.R. at 97. Here, priority in right of payment and in distribution of proceeds in the Australian Proceedings, and under the Bain DOCAs and 444GA Order, is substantially similar to the manner in which such rights and distributions would be made under Bankruptcy Code. Specifically, the Australian Proceedings preserve the priority ranking of secured creditors relative to unsecured creditors, and unsecured creditors relative to equity holders. *See* 75-225 Report § 3.4.2.2.

47. In light of the foregoing, the Court may also grant the Relief Requested as an extension of comity to the Foreign Representatives and the Australian Proceedings in accordance with Bankruptcy Code § 1507(b).

**E. The Relief Requested Meets the Standard for Injunctive Relief.**

48. As detailed above, the Relief Requested is clearly appropriate under Bankruptcy Code § 1507. Bankruptcy Code § 1522 does not prohibit the Relief Requested under Bankruptcy Code § 1521. However, the Court must still consider whether the standard for granting relief under Bankruptcy Code § 1521 are satisfied under the present circumstances. Under Bankruptcy Code

§ 1521(e), the standards for injunctive relief apply to certain relief available under § 1521. Permanent injunctive relief – such as the relief requested herein – is appropriate where the movant can show a likelihood of irreparable harm. This Court has found that a debtor or its estate would suffer irreparable harm where the orderly determination of claims and the fair distribution of assets are disrupted. *See, e.g., Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713-14 (2d Cir. 1987) (“The equitable and orderly distribution of a debtor’s property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail.”); *In re Garcia Avila*, 296 B.R. 95, 114 (Bankr. S.D.N.Y. 2003) (“[I]rreparable harm is present when the failure to enjoin local actions will disrupt the orderly reconciliation of claims and the fair distribution of assets in a single, centralized forum[.]”); *In re MMG LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (“[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of the other creditors.”).

49. The United States Supreme Court, the United States Court of Appeals for the Second Circuit, and this Court have all recognized a federal court’s authority to grant permanent injunctive relief to enforce foreign plans and discharges. *See, e.g. Canada S.R. Co. v Gebhard*, 109 U.S. 527, 539 (1883) (concluding that actions brought in the United States by plaintiff bondholders who did not participate in the Canadian insolvency proceedings of the bond issuer could not be maintained, even though the bonds were payable in New York); *Argo Fund Ltd. v. Bd. of Dirs. of Telecom Arg., S.A. (In re Bd. of Dirs. of Telecom Arg., S.A.)*, 528 F.3d 162, 175-75 (2d Cir. 2008) (affirming bankruptcy court decision granting full force and effect to Argentine plan); *In re Sino-Forest Corp.*, 501 B.R. 655, 666 (Bankr. S.D.N.Y. 2013) (granting permanent



injunctive relief to enforce Canadian plan, including third party releases); *In re Metcalfe & Mansfield*, 421 B.R. 685, 700 (Bankr. S.D.N.Y. 2010) (same).<sup>11</sup>

50. While insolvency proceedings in many jurisdictions conclude with the entry of a court order discharging claims against the debtor, bankruptcy courts' authority to grant injunctive relief under Bankruptcy Code § 1521 is not limited to circumstances where a foreign court has entered a discharge order. To the contrary, bankruptcy courts have broad discretion to grant injunctive relief in order to "further the purposes of chapter 15 and protect the debtor's assets and the interests of creditors." *In re Atlas Shipping A/S*, 404 B.R. 726, 739 (Bankr. S.D.N.Y. 2009). Another court in the Second Circuit has granted permanent injunctive relief to give full force and effect to foreign proceedings, or actions taken in foreign proceedings including the discharge of claims against a foreign debtor where the discharge is a result of a deed of company arrangement and not a court order. *See In re Maritimo Offshore Pty. Ltd.*, Case No. 16-31613 (Bankr. D. Conn. Feb. 14, 2019) (entering an order giving full force and effect to a deed of company arrangement under Australian law and holding that "[c]reditors of Maritimo shall not take actions inconsistent with or contrary to the DOCA and/or the Claims Process against Maritimo"). Other courts have granted recognition of proceedings that do not require a court order in accordance with the insolvency laws governing the foreign main proceedings. *See In re Betcorp Ltd.*, 400 B.R. 266, 295 (Bankr. D. Nev. 2009) (holding that a voluntary winding up, which does not require court approval or oversight constitutes a foreign main proceeding).

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<sup>11</sup> This Court has also granted injunctive relief in other chapter 15 cases without reported decisions. *See, e.g., In re Quintas Ltd.*, No. 18-12739 (MH) (Bankr. S.D.N.Y. Oct. 11, 2018) [ECF No. 14] (granting injunction to enforce Australian scheme of arrangement); *In re Boart Longyear Ltd.*, No. 17-11156 (Bankr. S.D.N.Y. Aug. 30, 2017) [ECF No. 45] (granting injunction to enforce Australian scheme of arrangement); *In re Pac. Expl. & Prod. Corp.*, No. 16-11189 (JLG) (Bankr. S.D.N.Y. Oct. 3, 2016) [ECF No. 31] (granting injunction enforcing scheme of arrangement under Canadian law); *In re Winsway Enters. Holdings Ltd.*, No. 16-10833 (MG) (Bankr. S.D.N.Y. June 16, 2016) [ECF No. 22] (granting injunction enforcing scheme of arrangement under Hong Kong law).

51. The Bain DOCAs are the result of a competitive sale process and an overwhelmingly supportive creditor vote. If the Bain DOCAs and 444GA Order are not given permanent effect, creditors and other parties could bring claims in the United States against the Foreign Debtors or their respective property in the United States frustrating the Foreign Debtors' efforts to complete the Bain DOCAs which are the result of the Australian Proceedings thus jeopardizing creditor recoveries. Accordingly, the Relief Requested is necessary to protect the Foreign Debtors and their creditors as a whole from irreparable harm, and to facilitate a creditor-approved outcome of the Australian Proceedings.

**F. Recognition of the Bain DOCAs and the 444GA Order Is Not Contrary to Public Policy.**

52. While bankruptcy courts may refuse to grant relief otherwise available under chapter 15 if the action “would be manifestly contrary to the public policy of the United States”, 11 U.S.C. § 1506, courts have construed this exception narrowly. *See In re Ephedra Prods. Liab. Litig.*, 349 B.R. 333, 336 (S.D.N.Y. 2006) (ruling that the public policy exception embodied in section 1506 should be “narrowly interpreted, as the word ‘manifestly’ in international usage restricts the public policy exception to the most fundamental policies of the United States”); *Armada (Singapore) Pte Ltd. v. Shah (In re Ashapura Minechem Ltd.)*, 480 B.R. 129, 139 (S.D.N.Y. 2012) (concluding that granting recognition was not within the “narrow” public policy exception despite the absence of a formal mechanism for unsecured creditors to participate in the foreign proceeding); *In re ABC Learning Ctrs.*, 445 B.R. 318, 335 (Bankr. D. Del. 2010), *aff’d*, 728 F.3d 301 (3d Cir. 2013) (“This exception is to be narrowly construed.”). This Court has held that the relevant inquiry in determining whether the requested relief is contrary to public policy is whether or not it violates “fundamental standards” of “procedural fairness”—the same inquiry

made to determine whether creditors and other parties in interest are sufficiently protected, as discussed above. *See In re Metcalfe*, 421 B.R. at 697.

53. Given the limited application of Bankruptcy Code § 1506 generally and the aforementioned procedures used to ensure fairness to all creditors and afford them an opportunity to be heard, all in accordance with the procedures, requirements and powers of the Corporations Act, the Relief Requested is not in any way contrary to public policy.

## **II. Other Courts in the Second Circuit Have Entered Orders Enforcing Deeds of Company Arrangement**

54. Bankruptcy courts in the Second Circuit and Eleventh Circuit granted similar relief, entering orders that give full force and effect to deeds of company arrangement executed in connection with Australian insolvency proceedings. *See In re Maritimo Offshore Pty. Ltd.*, Case No. 16-31613 (Bankr. D. Conn. Feb. 14, 2019); *In re Riviera Marine (Int.) Pty Ltd.*, Case No. 10-21722 (Bankr. M.D. Fla. Oct. 8, 2010). In *In re Maritimo Offshore Pty. Ltd.*, Case No. 16-31613 (Bankr. D. Conn. Oct. 21, 2016), demonstrates the protection provided by U.S. bankruptcy court orders enforcing a deed of company arrangement. The foreign debtors in that case were Australian yacht brokers and manufacturers. They filed chapter 15 petitions on October 21, 2016 in the United States Bankruptcy Court for the District of Connecticut, and obtained recognition of their Australian voluntary administration proceedings shortly thereafter. [*Id.* at Docket No. 37]. The *Maritimo* restructuring was consummated via a deed of company arrangement, and the voluntary administration proceedings concluded with the filing of a Notice of End of Administration on May 9, 2018. *Id.* *See Dubois, et al. v. Maritmo Offshore Pty Ltd., et al.*, Case No. 15-01114 (JAM) (D. Conn. Sept. 26, 2019) [Docket Nos. 188 & 106]. The foreign debtors in *Maritimo* obtained an order from the bankruptcy court giving full force and effect to the deed of company arrangement on February 14, 2019. [*Id.* at Docket No. 116].

55. Certain of the *Maritimo* customers filed claims against the foreign debtors in the United States District Court for the District of Connecticut prior to commencement of the chapter 15 cases, asserting claims for breach of contract, misrepresentation, negligent misrepresentation, breach of warranties, negligence and related actions under various state statutes, related to the purchase of a yacht and related customization services from the defendants. *Dubois, et al. v. Maritimo Offshore Pty Ltd., et al.*, Case No. 15-01114 (JAM) (D. Conn. Sept. 26, 2019) [Docket No. 188]. The district court subsequently dismissed the customers' claims against the foreign debtors because the bankruptcy court's order gave full force and effect to the DOCAs, which resolved all creditor claims against the foreign debtors. *Id.*

#### **SATISFACTION OF LOCAL RULE 9013-1(A)**

56. The Recognition Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to the Recognition Motion. Accordingly, the Foreign Representatives submit that the Recognition Motion satisfies Local Rule 9013-1(a).

#### **NOTICE**

The Foreign Representatives have provided notice of this Recognition Motion via facsimile, electronic mail, first class mail, or overnight express delivery to: (a) the Office of the United States Trustee, 201 Varick Street, New York, NY 10014, attn. Susan A. Arbeit, Esq. (susan.arbeit@usdoj.gov); (b) counsel to The Bank of New York Mellon in its capacity as indenture trustee to the New York Law Notes, Allen & Overy LLP, 50 Collyer Quay, #09-01 OUE Bayfront, Singapore, 049321, attn. Tim Beech (tim.beech@allenoverly.com) and Corrs Chambers Westgarth, 123 St Georges Terrace, Perth, WA 6000, Australia, attn. Michelle Dean (michelle.dean.corrs.com.au); (c) counsel to Bain, Paul, Weiss, Rifkind, Wharton & Garrison LLP, attn. Elizabeth McColm (emccolm@paulweiss.com) and Michael Colarossi

(mcolarossi@paulweiss.com); (d) the U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590, Attn: Office of Aviation Consumer Protection; and (e) such other parties in interest that have requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). The Foreign Representatives also intend to post this Recognition Motion and notice of the hearing on this Recognition Motion to a website that they maintain for creditors of the Virgin Australia Group at [www.deloitte.com/au/virgin-chapter-15](http://www.deloitte.com/au/virgin-chapter-15). In light of the relief requested, the Foreign Representatives submit that no further notice is necessary.

**NO PRIOR REQUEST**

57. No prior request for the relief sought in this Recognition Motion has been made to this Court or any other court.

WHEREFORE, the Foreign Representatives respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), granting the relief requested herein and such other and further relief as is just and proper.

New York, New York  
Dated: October 22, 2020

*/s/ Abid Qureshi*

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*Counsel to the Foreign Representatives*

**EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 15
	)	
Virgin Australia Holdings Ltd.	)	Case No. 20-11024 (SHL)
(ACN 100 686 226) <sup>1</sup> , <i>et al.</i> ,	)	
	)	
	)	
	)	
Debtor in a Foreign Proceeding. <sup>2</sup>	)	(Jointly Administered)
	)	

**ORDER GRANTING MOTION FOR RECOGNITION AND  
ENFORCEMENT OF (I) THE DEEDS OF COMPANY ARRANGEMENT, (II)  
THE AUSTRALIAN COURT’S 444GA ORDER, AND (III) RELATED RELIEF  
UNDER BANKRUPTCY CODE §§ 105(A), 1507, 1509(B)(2)-(3), 1521(A), AND 1525(A)**

Upon consideration of the *Motion for Recognition and Enforcement of (I) the Deeds of Company Arrangement, (II) the Australian Court’s 444GA Order, and (III) Related Relief under Bankruptcy Code §§ 105(a), 1507, 1509(b)(2)-(3), 1521(a), and 1525(a)* (the “Recognition Motion”) of Vaughan Strawbridge, Richard Hughes, John Greig, and Salvatore Algeri in their capacities as joint and several administrators of the deeds of company arrangement

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<sup>1</sup> An Australian Company Number (“ACN”) is a unique nine-digit number issued by the Australian Securities and Investments Commission (“ASIC”) to every company registered under the Commonwealth Corporations Act 2001 as an identifier.

<sup>2</sup> The Debtors in these cases, along with the last three digits of each Debtor’s ACN number, are: Virgin Australia Holdings Ltd (226); Virgin Australia International Operations Pty Ltd (608); Virgin Australia International Holdings Pty Ltd (021); Virgin Australia International Airlines Pty Ltd (823); Virgin Australia Airlines (SE Asia) Pty Ltd (389); Virgin Australia Airlines Holdings Pty Ltd (675); VAH Newco No. 1 Pty Ltd (345); Tiger Airways Australia Pty Limited (008); Virgin Australia Airlines Pty Ltd (965); VA Borrower 2019 No. 1 Pty Ltd (059); VA Borrower 2019 No. 2 Pty Ltd (343); Virgin Tech Pty Ltd (879); Short Haul 2018 No. 1 Pty Ltd (831); Short Haul 2017 No. 1 (390); Short Haul 2017 No. 2 Pty Ltd (443); Short Haul 2017 No. 3 Pty Ltd (813); VBNC5 Pty Ltd (502); A.C.N. 098 904 262 Pty Ltd (262); Virgin Australia Regional Airlines Pty Ltd (662); Virgin Australia Holidays Pty Ltd (159); VB Ventures Pty Ltd (004); Virgin Australia Cargo Pty Ltd (838); VB Leaseco Pty Ltd (741); VA Hold Co Pty Ltd (157); VA Lease Co Pty Ltd (291); Virgin Australia 2013-1 Issuer Co Pty Ltd (326); 737 2012 No. 1 Pty. Ltd (859); 737 2012 No. 2 Pty Ltd (064); Short Haul 2016 No. 1 Pty Ltd (328); Short Haul 2016 No. 2 Pty Ltd (077); Short Haul 2014 No. 1 Pty Ltd (612); Short Haul 2014 No. 2 Pty Ltd (199); VA Regional Leaseco Pty Ltd (605); VB 800 2009 Pty Ltd (934); VB Leaseco No. 2 Pty Ltd (319); VB LH 2008 No. 1 (354); VB LH 2008 No. 2 Pty Ltd (805); VB PDP 2010-11 Pty Ltd (266); Tiger International Number 1 Pty Ltd (944); VAH Newco No. 2 Pty Ltd (354); VB Investco Pty Ltd (095). The service address for each of the above Foreign Debtors is Deloitte Brisbane, Riverside Centre, 123 Eagle St, Brisbane QLD 4000, Australia.



and foreign representatives (in such capacities, the “Administrators” or the “Foreign Representatives”)<sup>3</sup> of the above-captioned foreign debtors (the “Foreign Debtors”); and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, and it appearing that venue is proper before this Court pursuant to 28 U.S.C. § 1410; and the Court having considered and reviewed the Recognition Motion, and the detailed summaries provided therein and in the 75-225 Report of the Sale Process, the Bain DOCAs and the requisite creditor approval of the same; and having held a hearing to consider the Relief Requested in the Recognition Motion on November [●], 2020 (the “Hearing”); and it appearing that timely notice of the Recognition Motion and the Hearing has been given to the Notice Parties; and it appearing that notice of the Recognition Motion and Hearing was posted on the Website; and it appearing that no other or further notice is required; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

**THIS COURT HEREBY FINDS AND DETERMINES THAT:**

A. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, and the Amended Standing Order of Reference dated January 31, 2012, Reference M-

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<sup>3</sup> Capitalized terms that are not defined herein shall have the meaning ascribed in the Recognition Motion.

431, *In re Standing Order of Reference Re: Title 11*, 12 Misc. 0032 (S.D.N.Y. Jan. 31, 2012) (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (2)(A), (O) and (P), and the Court may enter a final order in respect of it under Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Foreign Representatives have standing to make the Recognition Motion pursuant to Bankruptcy Code §1509(b) of 11 U.S.C. §§ 101 et seq. (as amended, the “Bankruptcy Code”).

D. The Relief Requested in the Recognition Motion is necessary to effectuate the purpose of chapter 15 and to protect the Foreign Debtors, their assets, and the interests of their creditors and other parties in interest.

E. The relief granted hereby (a) is essential to the success of the Australian Proceedings, the Bain DOCAs, and the sale of the Foreign Debtors’ business to Bain, (b) is an integral element, and/or integral to effectuation, of the Australian Proceedings, the Bain DOCAs, the 444GA Order, and the sale of the Foreign Debtors’ business to Bain, and (c) confers material benefits on, and is in the best interests of the Foreign Debtors and their creditors.

F. The Foreign Debtors and the Foreign Representatives are entitled to all of the Relief Requested in the Recognition Motion.

G. Appropriate notice of the filing of the Recognition Motion, the relief requested by the Recognition Motion, and the Hearing was given, which notice is deemed adequate for all purposes, and no other or further notice need be given.

H. The relief granted hereby is necessary and appropriate, in the interests of the public and of international comity, not inconsistent with the public policy of the United States, warranted pursuant to Bankruptcy Code §§ 105(a), 1507, 1509(b)(2)-(3), 1521(a) and 1525(a) and will not

cause hardship to creditors of the Foreign Debtors or other parties-in-interest that is not outweighed by the benefits of granting that relief.

I. Absent the Relief Requested, the Foreign Debtors may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings in connection with a claim against the Foreign Debtors or their property in the United States, thereby interfering with and causing harm to, the Foreign Debtors, their creditors, and other parties in interest in the Australian Proceedings and, as a result, the Foreign Debtors, their creditors, and such other parties in interest would suffer irreparable injury for which there is no adequate remedy at law.

J. Absent the Relief Requested, the efforts of the Foreign Debtors, the Australian Court and the Foreign Representatives in conducting the Australian Proceedings and effecting restructuring under the Bain DOCAs and Australian law may be thwarted by the actions of certain creditors, a result inimical to the purposes of chapter 15 as reflected in Bankruptcy Code § 1501(a).

For all of the foregoing reasons, and for the reasons stated by the Court on the record of the Hearing, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Recognition Motion is granted as provided herein.
2. Any reference to “Foreign Representatives” shall be a reference to both the Voluntary Administrators and Deed Administrators as applicable.
3. As of Completion,
  - a. The Bain DOCAs, the 444GA Order, and all other agreements related thereto are hereby recognized, granted comity and given full force and effect and are binding upon and enforceable against all entities in accordance with their terms, and such terms shall be binding upon and fully

enforceable against Creditors<sup>4</sup> whether or not they have actually agreed to be bound by the Bain DOCAs or have participated in the Australian Proceedings.

- b. Any judgment that purports to determine the liability of any entity released pursuant to the Bain DOCAs with respect to any debt released, extinguished, cancelled, discharged, assigned or restructured under the Bain DOCAs or as a result of Australian law relating to the Bain DOCAs is unenforceable in the United States, in each case to the extent inconsistent with the Bain DOCAs, the 444GA Order or Australian law.
- c. Subject to clauses 6.3(b), 7 and 9 of the Bain DOCAs, which generally limit the extent to which the Bain DOCAs apply to Secured Creditors and Owners, and subject to clause 8 of the Bain DOCAs, which relates to Claims covered by insurance, all entities are permanently enjoined from, in relation to a Creditor's Claim:
  - (1) making or proceeding with an application for an order to wind up a Deed Company or for the appointment of a provisional liquidator or a court appointed receiver to any of the Deed Companies and their property;
  - (2) instituting, reviving, or continuing any action, suit, arbitration, mediation or proceeding against a Deed Company, or in relation to the property of a Deed Company;
  - (3) instituting, reviving, or continuing with any Enforcement Process against the property of a Deed Company;
  - (4) taking any action whatsoever to seek to recover any part of its Claim;

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<sup>4</sup> Capitalized terms in paragraph 3 of this Order that are not otherwise defined in the Recognition Motion have the meaning ascribed to them in the Bain DOCAs, as applicable. For purposes of this paragraph 3, as set forth in the Bain DOCAs, the term (1) "Deed Company" means a Foreign Debtor; (2) "Creditor" means a person who has a Claim; and (3) "Claim" means a debt payable by, and all claims against, a Deed Company (present or future, certain or contingent, ascertained or sounding only in damages), being a debt or claim that would be admissible to proof against a Deed Company in accordance with Division 6 of Part 5.6 of the Corporations Act, if the Deed Company had been wound up and the winding up is taken to have commenced on the Appointment Date, and any fine or penalty to which a Deed Company is subject or liable to be subject arising out of circumstances occurring prior to the Appointment Date that would be so admissible but for the operation of section 553B of the Corporations Act. Furthermore, the term "Claim" (a) includes a Claim of a Secured Creditor; and (b) includes a Claim arising under the DOCG (as defined in the Primary DOCA and the International Group DOCA, as applicable) including, for the avoidance of doubt, any Claim against a Deed Company under the DOCG in respect of a Liability incurred by another party to the DOCG after the Appointment Date; and (c) does not include an Excluded Claim.

- (5) exercising any right of set off or defense, cross claim, or cross action to which a Creditor would not have been entitled had the relevant Deed Company been wound up on the Appointment Date;
- (6) commencing or taking any further step in any arbitration against a Deed Company or to which a Deed Company is a party in relation to any matter arising or occurring before the Appointment Date; or
- (7) otherwise enforcing any right it may have or acquire,

except to the extent of the applicable Creditor's entitlement, if any, to participate in the Trust Fund in accordance with the terms of the Trust Deed.

- d. All Claims of each Creditor are hereby extinguished and released as set forth in clause 6.4 of the Bain DOCAs, subject to paragraph 3(e) hereof.
- e. Upon all Claims being released as set forth in clause 6.4 of the Bain DOCAs, and subject to paragraph 3(f) hereof:
  - (1) each Trust Creditor who had a Claim, will be entitled to make a claim against the Trust Fund, in accordance with the Trust Deed, which is equal in amount to their released Claim; and
  - (2) each FFC Creditor will be entitled to a Future Flight Credit in respect of their released FFC Claim.
- f. Creditors are enjoined from making a claim against, participating in, or receiving any distribution from, the Trust Fund in respect of a Non-Participating Claim.
- g. All entities subject to this Court's jurisdiction are permanently enjoined from commencing or taking any action, (i) that is inconsistent with, in contravention of, or would interfere with or impede the administration, implementation, and/or consummation of the Bain DOCAs, the 444GA Order, or the terms of this Order or (ii) to obtain possession of, exercise control over, or assert claims or debts that have been released, extinguished, discharged, cancelled or novated under the Bain DOCAs.

4. No action taken by the Foreign Representatives in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Bain DOCAs, the 444GA Order or any order entered in or in respect of the Chapter 15 Proceedings (including any adversary proceedings or contested matters) will be deemed to constitute a waiver of any immunity afforded the Foreign Representatives including pursuant to Bankruptcy Code § 1510.

5. The Foreign Representatives and the Foreign Debtors are hereby authorized to take all actions necessary to effectuate the relief granted herein.

6. This Court shall retain jurisdiction with respect to the effect, enforcement, amendment or modification of the Court's Order.

7. Notwithstanding any provision of the Bankruptcy Rules to the contrary, (a) this Order shall be effective immediately and enforceable upon entry; (b) the Foreign Representatives are not subject to any stay of the implementation, enforcement, or realization of the relief granted in this Order; and (c) this Order shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

8. Due, adequate, and sufficient notice of the Recognition Motion, the relief requested by the Recognition Motion, and the Hearing was given to all Creditors and other interested parties, which notice is deemed adequate for all purposes and no other or further notice need be given.

9. A copy of this Order shall be served, within seven business days of entry of this Order, by facsimile, electronic mail, first class mail, or overnight express delivery, upon all Notice Parties listed in the Recognition Motion, and shall be posted to the Website. Such service shall constitute good and sufficient service and adequate notice for all purposes.

10. This Order applies to all parties in interest in these chapter 15 cases and all of their agents, employees, and representatives, and all those who act in concert with them who receive notice of this Order.

New York, New York  
Dated: \_\_\_\_\_

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UNITED STATES BANKRUPTCY JUDGE