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of Virgin Atlantic Airways Limited*

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

In re:

VIRGIN ATLANTIC AIRWAYS LIMITED,¹

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 20-____ ()

**VERIFIED PETITION FOR RECOGNITION OF FOREIGN
PROCEEDING AND MOTION FOR ANCILLARY RELIEF**

Shai Weiss is the duly-authorized foreign representative (the **Foreign Representative**) of Virgin Atlantic Airways Limited (**VAAL**), a private company limited by shares that is the subject of a proceeding (the **English Proceeding**) commenced under Part 26A of the Companies Act 2006 (as amended or re-enacted from time to time, the **Companies Act**) and pending before the High Court of Justice of England and Wales (the **English Court**).

The Foreign Representative has commenced this chapter 15 case ancillary to the English Proceeding and respectfully files this *Verified Petition for Recognition of Foreign Proceeding and Motion for Ancillary Relief* (the **Chapter 15 Petition**), with accompanying documentation,

¹ The last four digits of the United States Tax Identification Number, or similar foreign identification number, as applicable, for Virgin Atlantic Airways Limited are 3123

pursuant to sections 1504 and 1515 of title 11 of the United States Code (the **Bankruptcy Code**) seeking the entry of an order substantially in the form annexed hereto as Exhibit A (the **Proposed Order**): (i) recognizing the English Proceeding as a “foreign main proceeding” under section 1517 of the Bankruptcy Code; (ii) subject to the English Court’s entry of a sanction order (the **Sanction Order**) sanctioning VAAL’s restructuring plan (the **Plan**), giving full force and effect in the United States to the Sanction Order and the Plan pursuant to sections 105(a), 1507, and 1521 of the Bankruptcy Code; and (iii) granting related relief.

The Foreign Representative has also filed: (i) a *Memorandum of Law in Support of Verified Petition for Recognition of Foreign Proceeding and Motion for Ancillary Relief* setting forth the legal argument for the relief sought in the Chapter 15 Petition (the **Memorandum of Law**) and (ii) an *Ex Parte Application for Temporary Restraining Order and Motion for Provisional Relief* seeking certain provisional relief pending final disposition of the Chapter 15 Petition (the **Provisional Relief Motion**).

In support of the Chapter 15 Petition, the Foreign Representative respectfully states as follows:

JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. § 1501, and the *Amended Standing Order of Reference of the United States District Court for the Southern District of New York*, dated January 31, 2012, Reference M-431. *In re Standing Order of Reference Re: Title 11, 12 Misc. 00032* (S.D.N.Y. Jan. 31, 2012) (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue is proper in this District pursuant to 28 U.S.C. § 1410. The statutory predicates for the relief requested herein are sections 105(a), 1504, 1507, 1509, 1515, 1517, 1520 and 1521 of the Bankruptcy Code.

BACKGROUND

1. For a description of relevant English law, the Court is respectfully referred to the *Declaration of Jennifer Marshall as English Counsel in Support of (i) Verified Petition for Recognition of Foreign Proceeding and Motion for Ancillary Relief and (ii) Ex Parte Application for Temporary Restraining Order and Motion for Provisional Relief* dated August 3 2020, and filed contemporaneously herewith (the **Marshall Declaration**). For a detailed description of VAAL's business, corporate organization, and capital structure, the circumstances leading to the English Proceeding, and the Plan, the Court is respectfully referred to the *Explanatory Statement in Relation to a Restructuring Plan* attached as Exhibit C to the Marshall Declaration (the **Explanatory Statement**). Unpublished or foreign decisions and orders cited in connection with the Chapter 15 Petition and the Provisional Relief Motion are annexed to the *Declaration of Ken Coleman* dated August 4, 2020, and filed contemporaneously herewith (the **Coleman Declaration**).

A. Introduction

2. VAAL, together with its indirect parent Virgin Atlantic Limited (**VAL**) and their various subsidiaries (collectively, the **Group**), is a large U.K.-based air carrier that offers passenger, tour operator, and cargo services.² The ongoing COVID-19 pandemic has had an adverse impact on not only the Group, but the aviation industry as a whole, occasioning the near-shutdown of the global passenger aviation industry.³ While the Group has taken various measures to manage its liquidity in light of the unprecedented financial and operating conditions it faces, a

² Explanatory Statement, Part A ¶ 5.5.

³ Explanatory Statement, Part A ¶ 8.1.

more comprehensive recapitalization is necessary to secure the future of its business and ensure that it is able to meet its liabilities and funding requirements beyond mid-September 2020.⁴

3. The Group and its major stakeholders therefore negotiated an in-principle agreement for a recapitalization of the Group, as formalized in various support agreements and term sheets appended to such support agreements (the **Recapitalization**).⁵ A key component of the Recapitalization is the Plan, which is a “restructuring plan” under Part 26A of the Companies Act by which VAAL seeks to amend a revolving credit facility and certain lease arrangements, arrangements with trade creditors, and arrangements with its affiliates in order to reduce and/or reschedule its payment obligations thereunder.⁶ Absent the Plan, there is significant uncertainty as to whether VAAL would be able to achieve the requisite level of creditor consent to implement the Recapitalization, or any alternative transaction, in time to prevent it from going into formal insolvency proceedings given its deteriorating liquidity position.⁷ An English-law administration for the Group is an outcome that would be value-destructive and likely result in lower recoveries for stakeholders.⁸ Because VAAL has material assets and operations in the United States, the recognition of the English Proceeding and enforcement of the Sanction Order and the Plan through chapter 15 of the Bankruptcy Code are necessary to ensure that the Plan is effective and binding on all relevant parties.

⁴ Explanatory Statement, Part A ¶¶ 8.3-8.5.

⁵ Explanatory Statement, Part A ¶¶ 8.6-8.22.

⁶ Explanatory Statement, Part B ¶ 1.

⁷ Explanatory Statement, Part B ¶ 4.2.

⁸ Explanatory Statement, Part B ¶¶ 4.3-4.17.

B. VAAL's Business

4. VAAL is incorporated and registered in England and Wales as a private company limited by shares under registered number 01600117.⁹

5. The Group is a long haul, full-service, omni-channel airline that operates a fleet of 35 aircraft, with two entities in the Group holding an operating license and an air operating certificate issued and subject to regulation by the Civil Aviation Authority.¹⁰ The Group also has seven 747 aircraft which were retired from service in March 2020.¹¹ Five of these are leased and under agreements due to terminate in 2021, while the remaining two are owned and in the process of being sold.¹² In 2019, it had revenues of approximately £3,000,000,000 and EBITDAR of approximately £340,000,000, and operated over 23,000 flights, served approximately 6,000,000 passengers, and carried over 220,000 tonnes of cargo.¹³

6. With Delta Air Lines, Inc., the Group is a founding member of a leading \$13,000,000,000 transatlantic joint venture that launched in 2014 and was subsequently expanded to include Air France-KLM S.A.¹⁴

7. The Group's business is organised into three business segments according to their principal operating activities: (i) Virgin Atlantic, the Group's airline business (**Group Airline**); (ii) Virgin Atlantic Holidays, an industry-leading tour operator business and distribution channel for Group Airline (**Group Tour Operator**); and (iii) Virgin Atlantic Cargo, the Group's international cargo division (**Group Cargo**).¹⁵

⁹ Explanatory Statement, Part A ¶ 5.1.

¹⁰ Explanatory Statement, Part A ¶¶ 5.2, 5.8.

¹¹ Explanatory Statement, Part A ¶ 5.8.

¹² *Id.*

¹³ Explanatory Statement, Part A ¶ 5.2.

¹⁴ Explanatory Statement, Part A ¶ 5.3.

¹⁵ Explanatory Statement, Part A ¶ 5.5.

8. Group Airline focuses on hub airports in the United Kingdom and, in 2019, offered flights to 26 destinations from five UK airports—Heathrow, Gatwick, Manchester, Glasgow, and Belfast.¹⁶ It has recently announced plans to close its operations at Gatwick in the short term and consolidate flights at Heathrow, but will retain its Gatwick slots in order to have flexibility as passenger demand increases.¹⁷ It holds the second-largest slot portfolio at Heathrow and, together with its transatlantic joint venture partners, operates 8% of the slots at Heathrow.¹⁸

9. The expanded transatlantic joint venture with Delta Air Lines, Inc. and Air France-KLM S.A. offers 340 daily transatlantic flights, 110 non-stop routes, and over 340 destinations between North America and three United Kingdom/European hubs.¹⁹ The partnership provides customers with more convenient flight schedules, enhanced customer benefits such as reciprocal loyalty schemes, and seamless end-to-end journeys for passengers across all four airlines.²⁰

10. Group Tour Operator offers a strategic distribution channel for the Group through its digital and concession focused retail network, serving approximately 400,000 vacationers in 2019.²¹ As of February 1, 2020, it operated 57 stores, including concession stores across key parts of the NEXT retail portfolio across the United Kingdom.²² Group Tour Operator is the number one provider of packaged tours to Orlando, Florida.²³

11. Group Cargo supplements Group Airline's passenger operations and accounts for approximately a quarter of all long-haul air cargo capacity to and from the UK and approximately

¹⁶ Explanatory Statement, Part A ¶ 5.6.

¹⁷ *Id.*

¹⁸ Explanatory Statement, Part A ¶ 5.9.

¹⁹ Explanatory Statement, Part A ¶ 5.7.

²⁰ *Id.*²¹ Explanatory Statement, Part A ¶ 5.10.

²¹ Explanatory Statement, Part A ¶ 5.10.

²² *Id.*

²³ *Id.*

27% of transatlantic capacity.²⁴ It focuses on sectors and goods where quality of service and punctuality are highly valued, such as perishables and e-commerce, and provides the Group with flexibility to scale up services in support of revenues during periods of reduced passenger demand.²⁵ For example, during the COVID-19 crisis, cargo flights have generated approximately £90,000,000 in revenue between April 2020 and June 2020.²⁶

12. As of May 1, 2020, the Group employed approximately 10,300 people, but reduced headcount by approximately in July.²⁷ The majority of VAAL's directors, officers, and employees are located in England and Wales. VAAL's headquarters and registered office is located in Crawley, England.

C. Relevant Liabilities under the Plan

13. As one component of the Recapitalization, the Plan only affects certain of VAAL's stakeholders, debts, and other obligations, as described with specificity in the Explanatory Statement and summarized at a high level in the following paragraphs. The Plan refers to such parties as "Plan Creditors," and an overview of the Plan treatment for each category of "Plan Creditor" is provided below in Paragraph 35.

i. The "RCF Agreement" and the "RCF Plan Creditors"

14. On January 17, 2018, VAAL, as borrower, entered into an English law-governed multicurrency revolving credit facility with total revolving commitments of USD 150,000,000, which commitments were subsequently increased through an accordion clause to USD

²⁴ Explanatory Statement, Part A ¶ 5.11.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Explanatory Statement, Part A ¶ 5.4.

280,000,000.²⁸ The facility is fully drawn.²⁹ The Plan refers to the facility agreement as the “RCF Agreement” and to the relevant creditors as the “RCF Plan Creditors.”

15. Interest on loans under the RCF Agreement is payable at a floating rate equal to the London Inter-bank Offered Rate or, in relation to any loan in Euro, the Euro Interbank Offered rate, plus margin of 1.75% per annum.³⁰ To secure VAAL’s obligations under the RCF Agreement, VAAL granted first-priority security to Lloyds Bank plc, as security agent, over two Boeing 787-9 aircraft and ten Rolls Royce engines.³¹ Fit Leasing Limited, a Group member and subsidiary of VAAL, granted additional security over two Rolls Royce engines.³²

ii. “Operating Lease Arrangements” and “Operating Lessor Plan Creditors”

16. VAAL leases four Airbus A330-200 aircraft, ten Airbus A333-300 aircraft, and eleven Boeing 787-9 aircraft from a number of aircraft leasing companies.³³ The Plan refers to the relevant lease agreements as “Operating Lease Agreements” and to the relevant creditors as the “Operating Lessor Plan Creditors.”

17. The Operating Lease Agreements have fixed terms and each is currently due to expire on dates between March 2021 and January 2034.³⁴ In each case, VAAL (i) pays rent for the aircraft on a monthly basis; (ii) is responsible for all costs and risks associated with the possession and operation of the aircraft, including insurance, maintenance, storage, operational costs, and any costs arising from damage or destruction to, or caused by, the aircraft; and (iii) does not have an

²⁸ Explanatory Statement, Part A ¶ 6.2.

²⁹ Explanatory Statement, Part A ¶ 6.6.

³⁰ Explanatory Statement, Part A ¶ 6.3.

³¹ Explanatory Statement, Part A ¶ 6.4.

³² Explanatory Statement, Part A ¶ 6.7.

³³ *Id.*

³⁴ *Id.*

ownership interest in the aircraft and is required to return the aircraft at the end of the lease term.³⁵ The Operating Lease Agreements are largely unsecured, though fourteen of the Operating Lessor Plan Creditors benefit from an assignment of insurance proceeds granted by VAAL³⁶ and each Operating Lessor Plan Creditor has received security deposits from VAAL, in the form of letters of credit or cash, equivalent to a number of months' rent.³⁷ The letters of credit may be drawn following an event of default under the relevant Operating Lease Agreement.³⁸ The Operating Lease Agreements also allow the Operating Lessor Plan Creditors to terminate their respective Operating Lease Agreements and seek repossession of the aircraft and damages following the occurrence of certain specified events of default.³⁹ Pursuant to bilateral discussions between VAAL and each Operating Lessor Plan Creditor, rent deferral arrangements were agreed with all but one of the Operating Lessor Plan Creditors for varying periods ranging between March 2020 and October 2020.⁴⁰

18. All of the Operating Lease Agreements are governed by English law.⁴¹ As at June 30, 2020, VAAL had an aggregate future liability of \$1,257,037,374.30 for the aircraft under the Operating Lease Agreements.⁴²

iii. "Trade Plan Creditors"

19. VAAL is party to a large number of contracts for the supply of goods, services, and premises, including, but not limited to, contracts for:

³⁵ *Id.*

³⁶ Explanatory Statement, Part A ¶ 6.8.

³⁷ Explanatory Statement, Part A ¶ 6.9.

³⁸ *Id.*

³⁹ Explanatory Statement, Part A ¶ 6.8.

⁴⁰ Explanatory Statement, Part A ¶ 6.10.

⁴¹ Explanatory Statement, Part A ¶ 6.7.

⁴² Explanatory Statement, Part A ¶ 6.12.

- a. operational services, including contracts with component suppliers, equipment suppliers, maintenance providers, technical consultants, and cargo service providers;
- b. the supply of services and/or access to facilities required to deliver its flying program both on the ground and in the air, including ground handling, catering, cleaning, in-flight entertainment, baggage tracking, and airport and lounge facilities;
- c. marketing services, including brand tracking, and contracts with marketing agencies, and advertising media providers;
- d. human resource services, including healthcare, resourcing, and recruitment;
- e. financial services, including business processing, professional advice, and insurance; and
- f. the supply of technology, including the Group's business systems and specialist airline software for managing operations data and revenue.⁴³

The Plan describes such counterparties as “Trade Plan Creditors.” Suppliers typically invoice VAAL periodically for amounts associated with services provided or goods supplied or premises leased to VAAL, and VAAL is generally required to pay amounts owing to each supplier within a specified period from receiving an invoice.⁴⁴ Since April 2020, in order to manage liquidity during the ongoing COVID-19 pandemic, VAAL has limited payments to suppliers to the minimum amount required in order to keep operating the business; subjected any payments to a robust internal process to ensure that such payments are approved for only business-critical reasons and are made in only the minimum amount required; engaged in bilateral discussions with certain suppliers in order to, among other things, reduce outstanding amounts owed and/or defer payment of those amounts; and, in some cases, sought to preserve cash by unilaterally stretching payment terms.⁴⁵ VAAL has identified 168 Trade Plan Creditors whose claims will be compromised

⁴³ Explanatory Statement, Part A ¶ 6.16.

⁴⁴ Explanatory Statement, Part A ¶ 6.17.

⁴⁵ Explanatory Statement, Part A ¶ 6.18.

pursuant to the Plan and, as at June 12, 2020, had a liability of £53,989,396.58 owed to the Trade Plan Creditors.⁴⁶ The claims of Trade Plan Creditors that will be subject to the Plan will be determined based on the liability owed by VAAL, including accrued and unpaid interest claimed by a Trade Plan Creditor in accordance with the relevant arrangements, with respect to goods or services rendered prior to 1:30 p.m. on July 14, 2020.⁴⁷

20. The Plan excludes any suppliers with outstanding claims against VAAL of less than £50,000 in the aggregate as at June 12, 2020.⁴⁸ For reasons explained in detail in the Explanatory Statement, the Plan also excludes, and VAAL does not seek to compromise the claims of, suppliers that fall into any of the following categories: (i) airports, governments, or other public bodies that have claims against VAAL with respect to, among other things, air traffic control charges, air navigation charges, overflight charges, airport charges, council tax, and business rates; (ii) insurance companies and brokers that have claims against VAAL with respect to insurance premiums payable by VAAL and claims under VAAL's insurance policies; (iii) sales agents who continue to sell air passenger tickets, cargo shipments, and/or package holidays on behalf of the Group; (iv) any supplier which has already agreed with VAAL discounts of a value equivalent to or greater than 20% of the amount outstanding as at June 12, 2020; (v) any advisory firm that has provided and/or continues to provide restructuring advice to VAAL or its creditors in connection with the Plan and the Recapitalization; (vi) any supplier of goods, services, or infrastructure with respect to which VAAL has no feasible alternative and where the loss of supply of such goods, services, or infrastructure would have an immediate and significant impact on safety or VAAL's operations; (vii) any supplier with contracts that, if terminated, would expose the Company to

⁴⁶ Explanatory Statement, Part A ¶ 6.19.

⁴⁷ Explanatory Statement, Part A ¶ 6.19.

⁴⁸ Explanatory Statement, Part A ¶ 6.25.

significant loss disproportionate to the benefits of their inclusion in the Plan; (viii) any company with a contract to supply products for new fleet of aircraft and that has agreed, or has been approached by VAAL to agree, to defer the delivery of such products for a period of two years or more; and (ix) companies that are creditors of VAAL under certain arrangements that are being compromised under the Plan or as part of the Recapitalization.⁴⁹

iv. “Connected Party Agreements” and “Connected Party Plan Creditors”

21. VAAL is also party to a number of agreements with affiliates that will be included in the Plan, including: (i) a trademark license arrangement with VAL TM Limited, under which VAAL has the license to use various “Virgin Atlantic” trademarks and names and is required to pay royalties;⁵⁰ (ii) certain contractual arrangements with one of VAAL’s indirect shareholders, Delta Air Lines, Inc., in connection with establishing a joint venture, certain transition payments in relation to the joint venture, and various reservation, ticketing, help desk, and related services;⁵¹ and (iii) a £30,000,000 English-law unsecured revolving credit facility provided by Delta Air Lines, Inc. and one of VAAL’s subsidiaries, Virgin Holdings Limited, that is fully drawn.⁵² The Plan refers to such arrangements as “Connected Party Agreements” and to the relevant creditors as “Connected Party Plan Creditors.”

D. Assets and Operations in the United States

22. VAAL has operations and assets in a number of states, with the majority of its U.S. operations and assets in New York, Georgia, Florida, California, and Nevada. Of these locations, New York and Atlanta are the most significant. New York is where VAAL has the most employees

⁴⁹ *Id.*

⁵⁰ Explanatory Statement, Part A ¶¶ 6.27-6.35.

⁵¹ Explanatory Statement, Part A ¶¶ 6.36-6.44.

⁵² Explanatory Statement, Part A ¶¶ 6.45-6.48.

and significant assets, including its principal U.S. bank accounts and engineering assets. Atlanta is where VAAL maintains its U.S. office for administrative functions and also has some engineering assets. In addition, VAAL has a smaller bank account in Colorado and additional engineering assets across ten other states.

E. Events Leading to the English Proceeding

23. The Group and its business have been adversely affected by the ongoing COVID-19 pandemic, which has caused an unprecedented near-shutdown of the global passenger aviation industry.⁵³ As a result of the pandemic, global airlines have announced large scale cost-cutting and cash preservation initiatives, sought extensive government support and subsidies, and/or have commenced chapter 11 cases, entered administration, or other court-backed restructuring processes.⁵⁴ Global aviation was one of the first industries to be impacted by the COVID-19 pandemic and is likely to be one of the last to fully recover.⁵⁵

24. Since January 1, 2020, the Group's reservations are down 89% year-on-year and current demand for the second half of 2020 is at approximately 25% of 2019 levels.⁵⁶ Industry downside forecasts suggest that 2021 passenger demand could fall as low as 50% of 2019 levels.⁵⁷

25. To address the deterioration in the Group's trading and liquidity position, the Group was the first UK airline to take immediate and decisive steps to manage liquidity, including:

- a. suspending unprofitable flights and reducing capacity beginning with the suspension of flights to and from Shanghai on January 31, 2020;
- b. implementing proactive flight cancellations for any cash loss-making flying;

⁵³ Explanatory Statement, Part A ¶ 8.1.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Explanatory Statement, Part A ¶ 8.2.

⁵⁷ Explanatory Statement, Part A ¶ 8.2.

- c. taking advantage of surging cargo demand by launching cargo-only flights in April 2020;
- d. consolidating remaining flights to Heathrow to reduce fixed operational costs;
- e. continuously monitoring passenger and cargo demand to adjust capacity plans as necessary;
- f. immediately grounding the A346-600 fleet and the 747-400 fleet;
- g. securing full voluntary support and commitment from employees and unions to immediately reduce personnel costs;
- h. the CEO and leadership team reducing their salaries by 20% and 15% respectively from April 2020 to December 2020;
- i. immediately suspending discretionary overhead spend following supplier cost review;
- j. fully drawing down available credit facilities;
- k. securing immediate shareholder support;
- l. determining a long term forecast for economic recovery from which to build a robust and sustainable business plan; and
- m. undertaking a rapid strategic business model review that led to the development of a recovery plan, which was announced on May 5, 2020.⁵⁸

26. Notwithstanding these steps, additional measures are necessary to regain a sustainable capital structure in light of the challenging financial and operating conditions facing the Group.⁵⁹ In March 2020, the Group engaged with the government of the United Kingdom and its advisers in relation to both aviation industry wide and company specific direct support.⁶⁰ It also engaged with a wide range of stakeholders, including potential third-party investors to raise new capital, and entered negotiations with existing creditors to secure a financial support package with

⁵⁸ Explanatory Statement, Part A ¶ 8.3.

⁵⁹ Explanatory Statement, Part A ¶ 8.5.

⁶⁰ Explanatory Statement, Part A ¶ 8.4.

the government as a potential lender of last resort.⁶¹ In connection with these efforts, the Group retained Houlihan Lokey and Allen & Overy LLP as financial and legal advisors and appointed Alvarez & Marsal Europe LLP to carry out contingency planning and to potentially serve as administrators in the event VAAL were to enter administration.⁶²

27. On May 8, 2020, VAAL began to formally engage with its key stakeholders.⁶³ On May 15, 2020, VAAL gave a presentation to stakeholders that had signed non-disclosure agreements on the unprecedented impact of the COVID-19 pandemic on its business, the extensive actions it had taken to reduce costs, and a five-year plan to resize the Group to emerge from the COVID-19 pandemic as a sustainably profitable airline.⁶⁴ Since the presentation, the Group and its advisors have continued to engage in discussions with its stakeholders in order to agree the terms of a recapitalization.⁶⁵ In parallel, the Group and its advisors have run an open process to invite third-party investors to provide new financing. On July 2, 2020, VAAL signed a term sheet and binding commitment letter with Davidson Kempner European Partners, LLP for £170,000,000 million of debt financing,⁶⁶ and the parties will enter into a new £110,000,000 term loan facility on the effective date of the Recapitalization.⁶⁷

28. Following extensive negotiations, VAAL and its stakeholders reached an in-principle agreement on the key commercial terms for the Recapitalization, a consensual recapitalization of the Group.⁶⁸ The Plan proposed in the English Proceeding is one component of the Recapitalization, the implementation of which by September 3, 2020, will ensure the

⁶¹ *Id.*

⁶² Explanatory Statement, Part A ¶ 8.5.

⁶³ Explanatory Statement, Part A ¶ 8.6.

⁶⁴ Explanatory Statement, Part A ¶ 8.7.

⁶⁵ Explanatory Statement, Part A ¶ 8.8.

⁶⁶ Explanatory Statement, Part A ¶ 8.10.

⁶⁷ *Id.*

⁶⁸ Explanatory Statement, Part A ¶¶ 8.11-8.22.

continuing operations of the Group for the benefit of all stakeholders, with the key elements for a sustainable capital structure and a foundation from which VAAL can deliver long-term value for all of its stakeholders.⁶⁹

29. In order to formalize the terms of the in-principle agreement and provide the Group with some stability during the restructuring process and the confidence required to propose the Plan, VAAL asked stakeholders to enter into support agreements in order to commit those parties to negotiate long form documentation and implement the Recapitalization.⁷⁰ Generally, the parties to each support agreement: (i) undertook to take all actions within their power necessary to give effect to all or any part of the Recapitalization; (ii) confirmed their support for the Recapitalization and agreed not to take, encourage, assist or support any action which would, or would reasonably be expected to, breach, delay or be inconsistent with the Recapitalization; (iii) submitted to the jurisdiction of the courts of England and Wales in respect of any compromise or arrangement used to implement the Recapitalization; and (iv) agreed to forbear from taking, or from directing or encouraging any other person to take, any enforcement action, including by delivering a notice of default or acceleration, as a result of certain suspended defaults, except as permitted or required under the terms of the Recapitalization.⁷¹ Each support agreement provides the parties thereto with certain voluntary termination rights, including the right of VAAL or a majority of the creditors thereunder to terminate by mutual written consent.⁷² Each support agreement also ceases to have effect upon the earliest of: (x) the date it is terminated in accordance with its terms; (y) a long-stop

⁶⁹ Explanatory Statement, Part B ¶ 1.1.

⁷⁰ Explanatory Statement, Part A ¶¶ 8.11-8.113.

⁷¹ Explanatory Statement, Part A ¶ 8.13.

⁷² Explanatory Statement, Part A ¶ 8.15.

date of September 30, 2020, or such later date as may be agreed between VAAL and a majority of its creditors; and (z) the effective date of the Recapitalization.⁷³

30. As of the date the Plan was filed, VAAL had received signatures to, or indications of support for, support agreements from a substantial proportion of its stakeholders.⁷⁴ Notwithstanding the significant level of support for the Recapitalization, the Plan is necessary in order for VAAL to restructure each of the arrangements that are proposed to be subject to the Plan.⁷⁵

31. On July 20, 2020, VAAL's board of directors appointed the Foreign Representative by formal resolution attached hereto as Exhibit B (the **Board Resolution**) to act as the company's foreign representative for the purposes of commencing and prosecuting appropriate proceedings in foreign jurisdictions, including in the United States, ancillary to the English Proceeding. The Board Resolution specifically authorizes and directs the Foreign Representative in its capacity as VAAL's foreign representative to commence this case in support of the English Proceeding and the Plan.

F. The English Proceeding and the Plan

32. Part 26A of the Companies Act, which became law in England and Wales in late June, establishes a process by which a company that has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern may propose a restructuring plan.⁷⁶ Like a chapter 11 plan of reorganization, a restructuring plan enables a company to compromise its obligations to stakeholders.⁷⁷ One relevant

⁷³ Explanatory Statement, Part A ¶ 8.16.

⁷⁴ Explanatory Statement, Part A ¶ 8.20.

⁷⁵ Explanatory Statement, Part A ¶ 5.16.

⁷⁶ Marshall Declaration ¶¶ 12-14.

⁷⁷ Marshall Declaration ¶ 12.

difference is that, like an English scheme of arrangement, a restructuring plan need not involve all of a company's stakeholders and debts or obligations and can be limited to select groups of its creditors and/or members and to the debts or obligations owed to those creditors and/or members.⁷⁸

In this case, the Plan restructures, amends, or authorizes VAAL to restructure or amend certain debts and obligations owed to those parties that constitute Plan Creditors and provides for the same treatment for each Plan Creditor as will be received by other similarly situated Plan Creditors. There is no need for any Plan Creditor to file a claim in the English Proceeding to receive the same treatment as other similarly situated Plan Creditors with respect to their rights under the relevant agreements. The process for participating in or objecting to the Plan is the same for creditors of VAAL located in the United States as it is for any other creditor, wherever located in the world. The Plan does not restructure or amend debts and obligations owed to other stakeholders of VAAL, including creditors that are not Plan Creditors. As such, creditors of VAAL that are not Plan Creditors will not be affected by the Plan and no distributions of VAAL's assets will be made on account of claims filed and processed in the English Proceeding.

33. On July 14-15, 2020, a Practice Statement Letter was sent to Plan Creditors to provide them notice of the Plan, VAAL's intention to commence a proceeding in respect of the Plan with the English Court, and the date of the hearing before the English Court to seek an order granting VAAL permission to convene meetings of Plan Creditors. The Practice Statement Letter was provided to RCF Plan Creditors directly and via their agent, and to each other Plan Creditor directly. On July 20, 2020, VAAL circulated a supplement to the Practice Statement Letter reflecting certain changes to the Plan, including the removal of certain classes. Such documents were distributed via email to the extent practicable and were also made available to Plan Creditors

⁷⁸ Marshall Declaration ¶¶ 12-13.

on a website at www.lucid-is.com/virginatlantic. Notice of the Plan Meetings and of the hearing before the English Court seeking entry of the Sanction Order will be provided in substantially the same manner.

34. On July 30, 2020, papers pertaining to the Plan were filed with the English Court. On August 4, 2020, the English Court entered an order (the **Convening Order**) which, among other things: (i) granted VAAL permission to convene meetings of Plan Creditors to consider the approval of the Plan; (ii) appointed the Foreign Representative; and (iii) authorized the Foreign Representative to commence this chapter 15 case in order to seek recognition and relief in the United States in respect of the English Proceeding. The Plan Creditor meetings are currently scheduled to begin at 2:00 p.m. (London time) on August 25, 2020, with a separate meeting for each of the following classes of Plan Creditors: (i) “RCF Plan Creditors,” (ii) “Operating Lessor Plan Creditors,” (iii) “Trade Plan Creditors,” and (iv) “Connected Party Plan Creditors.”

35. The Plan will amend the claims of Trade Plan Creditors and grant VAAL a power of attorney authorizing it to enter into certain documents on behalf of Plan Creditors to amend the agreements between the Plan Creditors and VAAL to further the implementation of the Recapitalization. Summarized at a high level and subject to the more detailed discussion in Part B, Section 2 of the Explanatory Statement, the Plan provides for the following amendments to VAAL’s arrangements with each class of Plan Creditors:⁷⁹

- a. *The RCF Agreement.* The RCF Agreement will be amended to, among other things: convert from a revolving credit facility to a term loan facility; extend the maturity date; alter the repayment provisions and schedule; and increase the margin. Certain events of default will also be waived.⁸⁰

⁷⁹ Many of the amendments in the Plan are keyed off of or refer to the following key dates in the Plan process: (i) the “Plan Effective Date,” the date a copy of the Sanction Order is delivered to the Registrar of Companies for England and Wales; and (ii) the “Recapitalisation Effective Date,” the date VAAL notifies Plan Creditors and other affected stakeholders that the Recapitalization has been completed.

⁸⁰ Explanatory Statement, Part B ¶¶ 2.1-2.3.

- b. *Operating Lease Agreements.* Each Operating Lessor Plan Creditor may elect, or be deemed to elect in certain circumstances, one of three alternative treatments: (i) the deferral and capitalization of a portion of each rent payment as it comes due, and repayment of the deferred amounts in 48 equal monthly installments commencing on January 1, 2022; (ii) a permanent reduction to the amount of rent, the deferral and capitalization of the entirety of each rent payment as it comes due, and a single repayment of the deferred amount at the expiration of the lease; or (iii) the termination of the lease and repossession of the aircraft. Certain events of default will also be waived.⁸¹
- c. *Trade Plan Creditors.* The arrangements in place with the Trade Plan Creditors will be amended such that amounts owed to Trade Plan Creditors for goods delivered or services performed prior to 1:30 PM (London time) on July 14, 2020, will be reduced by 20%, with (i) 10% of the balance to be paid shortly following the Recapitalisation Effective Date and (ii) the remainder to be paid in equal quarterly installments from December 31, 2020, through September 30, 2022, including interest accruing on such amounts at a rate of 1% per annum.
- In addition, the Trade Plan Creditors will waive any defaults, events of default, or other breaches by VAAL of the Trade Creditor Agreements and any consequences thereunder existing as at or arising before the Plan Effective Date (the Plan will not, however, prevent landlords of VAAL from exercising any rights of forfeiture or re-entry that they may have, unless a landlord votes in favor of the Plan or otherwise accepts the compromise set out in the Plan).⁸²
- d. *Connected Party Agreements.* In the case of Connected Party Plan Creditors, (i) all accrued and unpaid amounts due and payable as at the Recapitalisation Effective Date will be capitalized in exchange for the issuance of preference shares and (ii) all accrued and unpaid amounts that become due and payable during the “Capitalisation Period” under the Plan shall be capitalized in exchange for the issuance of preference shares on December 31 of each year. The Plan defines the “Capitalisation Period” as the period between January 1, 2020, and the earlier of (y) January 17, 2026 and (z) the date certain other obligations of VAAL are paid in full. Certain events of default will also be waived.⁸³

36. Under English law, in order for the Plan to become legally valid and binding, the following formal requirements must generally be satisfied: (i) requisite approval by Plan Creditors;

⁸¹ Explanatory Statement, Part B ¶¶ 2.4-2.10.

⁸² Explanatory Statement, Part B ¶¶ 2.11-2.13.

⁸³ Explanatory Statement, Part B ¶¶ 2.14-2.16.

(ii) the English Court's entry of the Sanction Order sanctioning the Plan; and (iii) the delivery of the Sanction Order to the Registrar of Companies for England and Wales.⁸⁴ The requirements for Plan Creditor approval of the Plan are comparable to, and are in some respects more stringent than, the requirements for plan approval under chapter 11 of the Bankruptcy Code.

37. In order for a class of Plan Creditors to accept the Plan, the Plan must be approved by Plan Creditors representing at least 75% in value of the claims held by such Plan Creditors present in person or by proxy and voting at the relevant meeting.⁸⁵ There is no numerosity requirement.⁸⁶ One means of approval is for the Plan to be accepted by every class of Plan Creditors.⁸⁷ If a class of Plan Creditors does not accept the Plan, i.e., there is a dissenting class, the English Court can nevertheless sanction the Plan if none of the members of the dissenting class would be worse off than under the alternative and the Plan is approved by at least one class of Plan Creditors that would receive a payment, or have a genuine economic interest, under such alternative.⁸⁸ The Plan also cannot be sanctioned by the English Court unless the English Court is satisfied, among other things, that the Plan is fair and the classes of creditors and/or members voting in respect of the Plan have been properly formed⁸⁹ (in general, the stakeholders within a class must be similarly situated so that their interests are not so dissimilar as to make it impossible to consult with a view to their common interest).⁹⁰

38. In connection with the recognition of the English Proceeding, the Foreign Representative also requests that the Court give full force and effect to the Sanction Order and the

⁸⁴ Marshall Declaration ¶¶ 17, 19.

⁸⁵ Marshall Declaration ¶ 17.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Marshall Declaration ¶ 25.

⁹⁰ Marshall Declaration ¶ 15.

Plan in the United States. In the interests of time and efficiency, this chapter 15 case has been commenced prior to the Plan Creditor meetings and the entry of the Sanction Order so that the two proceedings can proceed in parallel and the Court can consider enforcement as soon as possible after the English Court approves the Plan in the English Proceeding. The Foreign Representative's request that this Court enforce the Sanction Order and the Plan is therefore contingent on the entry of the Sanction Order and, implicitly, the approval of Plan Creditors. To the extent practicable, the Foreign Representative will file updates on the Plan approval process in this case so that the Court has all necessary information prior to the hearing on the disposition of the Chapter 15 Petition.

39. After the Plan becomes effective, VAAL will enter into a "Recapitalisation Implementation Deed" on behalf of itself and each of the Plan Creditors pursuant to the authority granted to it under the Plan. The Recapitalisation Implementation Deed will, once executed and dated, oblige the parties thereto to enter into documents necessary to effect amendments to their existing agreements with the Group. The effectiveness of such amendments would be subject to, among other conditions precedent, the entry of an order in this case giving full force and effect to the Plan in the United States.

RELIEF REQUESTED

40. By this Chapter 15 Petition, the Foreign Representative seeks the following relief:
- a. recognition, pursuant to section 1517 of the Bankruptcy Code, of the English Proceeding as a "foreign main proceeding" as defined in section 1502(4) of the Bankruptcy Code;
 - b. all relief afforded to foreign main proceedings automatically upon recognition pursuant to section 1520 of the Bankruptcy Code, including, without limitation, application of the stay imposed by section 362 of the Bankruptcy Code, provided that such stay shall be limited to Plan Creditors;
 - c. enforcement of the Sanction Order and the Plan in the United States pursuant to sections 105(a), 1507, and 1521 of the Bankruptcy Code; and

- d. such other and further relief as is appropriate under the circumstances pursuant to sections 105(a), 1507, and 1521 of the Bankruptcy Code.

BASIS FOR RELIEF

A. Recognition of the English Proceeding

41. For the reasons more fully discussed in the Memorandum of Law, the English Proceeding is entitled to recognition under section 1517 of the Bankruptcy Code because:

- a. the English Proceeding is: (i) a “foreign proceeding” within the meaning of section 101(23) of the Bankruptcy Code and (ii) pending where VAAL has the “center of its main interests” and is therefore a “foreign main proceeding” within the meaning of section 1502(4), in satisfaction of section 1517(a)(1);
- b. the Foreign Representative is the duly appointed “foreign representative” of VAAL within the meaning of section 101(24) of the Bankruptcy Code and a “person” within the meaning of section 101(41), in satisfaction of section 1517(a)(2); and
- c. the case was properly commenced in accordance with sections 1504 and 1509 of the Bankruptcy Code and the Chapter 15 Petition meets the requirements of sections 1504 and 1515, in satisfaction of section 1517(a)(3).

42. Recognizing the English Proceeding would not be manifestly contrary to the public policy of the United States, as prohibited by section 1506 of the Bankruptcy Code. In fact, granting recognition will promote the United States public policy of respecting foreign proceedings as articulated in, *inter alia*, sections 1501(a) and 1508 of the Bankruptcy Code and further cooperation between courts to the maximum extent possible as mandated by section 1525(a) of the Bankruptcy Code. Thus, the conditions for mandatory recognition of the English Proceeding under section 1517 of the Bankruptcy Code are satisfied.

43. Under section 1520 of the Bankruptcy Code, upon recognition of the English Proceeding as a “foreign main proceeding” section 362 of the Bankruptcy Code would automatically take effect with respect to VAAL and the property of VAAL within the territorial

jurisdiction of the United States. Because the Plan only purports to bind Plan Creditors, however, the Foreign Representative requests the application of the automatic stay in this case be limited to Plan Creditors.

B. Enforcement of the Sanction Order and the Plan

44. In connection with the recognition of the English Proceeding as a “foreign main proceeding” and subject to the English Court’s entry of the Sanction Order, the Foreign Representative also seeks the enforcement of the Sanction Order and the Plan in the United States.

45. Section 1507 of the Bankruptcy Code provides that, “if recognition is granted,” a court “may provide additional assistance to a foreign representative under this title or under other laws of the United States.” 11 U.S.C. § 1507. Similarly, section 1521(a) of the Bankruptcy Code provides that, upon recognition of a foreign proceeding, and “where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of any creditors, the court may grant any appropriate relief . . .” 11 U.S.C. § 1521. Such relief includes, among other things, “granting any additional relief that may be available to a trustee,” with certain exceptions that are not relevant here. *Id.* Finally, section 105(a) of the Bankruptcy Code allows the Court to “issue any order . . . necessary or appropriate to carry out the provisions of [title 11].”

46. The Sanction Order is analogous to a plan confirmation order, and the Plan is analogous to a plan of reorganization, in a chapter 11 case. As such, the two documents are the key operative restructuring documents and their enforcement in connection with the recognition of the English Proceeding is necessary to give full effect to the English Proceeding in the United States. Moreover, the requirements for stakeholder approval of the Plan and the entry of the Sanction Order are similar to those that would apply to the approval and confirmation of plans of reorganization under the Bankruptcy Code. This Court should therefore give full force and effect

in the United States to the Sanction Order and the Plan under well-established principles of international comity and pursuant to sections 105(a), 1507, and 1521 of the Bankruptcy Code.

CONCLUSION

WHEREFORE, the Foreign Representative respectfully requests that this Court grant the Chapter 15 Petition and enter the Proposed Order recognizing the English Proceeding as a “foreign main proceeding,” enforcing the Sanction Order and the Plan in the United States, and granting such other relief as is appropriate under the circumstances.

Dated: New York, New York
August 4, 2020

By: /s/ Ken Coleman
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Joseph Badtke-Berkow
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*Counsel to Shai Weiss, as the Foreign
Representative of Virgin Atlantic Airways
Limited*

VERIFICATION

Pursuant to 28 U.S.C. § 1746, Shai Weiss declares as follows:

I am the Chief Executive Officer and duly authorized agent of Virgin Atlantic Airways Limited and have been appointed and authorized to act as foreign representative of Virgin Atlantic Airways Limited. I have full authority to verify the foregoing *Verified Petition for Recognition of Foreign Proceeding and Motion for Ancillary Relief*.

I have read such document, and am informed and do believe that the factual allegations contained therein are true and accurate to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 4th day of August 2020, in London




EXHIBIT A

Proposed Order

EXHIBIT B

Board Resolution

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

In re:

VIRGIN ATLANTIC AIRWAYS LIMITED,¹

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 20-____ (____)

ORDER GRANTING RECOGNITION AND RELATED RELIEF

This matter was brought by Shai Weiss, as the duly-authorized foreign representative (the **Foreign Representative**) of Virgin Atlantic Airways Limited (**VAAL**) in a proceeding (the **English Proceeding**) under Part 26A of the Companies Act 2006 pending before the High Court of Justice of England and Wales (the **English Court**), with the filing of a *Verified Petition for Recognition of Foreign Proceeding and Motion for Ancillary Relief* (the **Chapter 15 Petition**), with accompanying documentation, pursuant to sections 1504 and 1515 of title 11 of the United States Code (the **Bankruptcy Code**) seeking the entry of an order: (i) recognizing the English Proceeding as a “foreign main proceeding” under section 1517 of the Bankruptcy Code; (ii) giving full force and effect in the United States to the *Sanction Order* of the English Court dated [●] (the **Sanction Order**) and the restructuring plan sanctioned by such order (the **Plan**), both attached hereto as Exhibit A (together, the **Plan Documents**); and (iii) granting related relief.

The Court has considered and reviewed the Chapter 15 Petition and the declarations, pleadings, exhibits, and other papers submitted in support thereof. No objections or other responses were filed to the Chapter 15 Petition that have not been overruled, withdrawn, or otherwise

¹ The last four digits of the United States Tax Identification Number, or similar foreign identification number, as applicable, for Virgin Atlantic Airways Limited are 3123.

resolved. All interested parties had an opportunity to be heard on the Chapter 15 Petition at a hearing before the Court on _____.

After due deliberation and sufficient cause appearing therefore, the Court finds and concludes as follows:

- a. The findings and conclusions set forth herein constitute the 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 case by 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. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. § 1501 and the *Amended Standing Order of Reference of the United States District Court for the Southern District of New York*, dated January 31, 2012, Reference M-431. *In re Standing Order of Reference Re: Title 11, 12 Misc. 00032* (S.D.N.Y. Jan. 31, 2012) (Preska, C.J.).
- c. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P) and the Court may enter a final order consistent with Article III of the United States Constitution.
- d. Venue is proper in this District pursuant to 28 U.S.C. § 1410.
- e. VAAL has a place of business and property in the United States and is therefore eligible to be a debtor under 11 U.S.C. § 109.
- f. The English Proceeding is a "foreign proceeding" within the meaning of 11 U.S.C. § 101(23).
- g. The English Proceeding is pending in England, where VAAL has the "center of its main interests" as such term is used in 11 U.S.C. § 1517(b)(1), and as such constitutes a "foreign main proceeding" under 11 U.S.C. § 1502(4) and in satisfaction of 11 U.S.C. § 1517(a)(1).
- h. The Foreign Representative is the duly appointed "foreign representative" of VAAL within the meaning of 11 U.S.C. § 101(24) and a "person" within the meaning of 11 U.S.C. § 101(41), in satisfaction of 11 U.S.C. § 1517(a)(2).

- i. This case was properly commenced pursuant to 11 U.S.C. §§ 1504 and 1509 and the Chapter 15 Petition meets the requirements of 11 U.S.C. §§ 1504 and 1515, in satisfaction of 11 U.S.C. § 1517(a)(3).
- j. The English Proceeding is entitled to recognition as a “foreign main proceeding” pursuant to 11 U.S.C. § 1517(b)(1).
- k. The Foreign Representative is entitled to all relief afforded foreign main proceedings automatically upon recognition pursuant to 11 U.S.C. § 1520 and to additional relief pursuant to 11 U.S.C. §§ 1507 and 1521.
- l. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, and consistent with the public policy of the United States.
- m. Good, sufficient, appropriate, and timely notice of the filing of the Chapter 15 Petition and the hearing on the Chapter 15 Petition has been given pursuant to Local Rules 2002-4 and 9078-1 and Bankruptcy Rule 2002(q)(1) and no other or further notice is necessary or required.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

- 1. The Chapter 15 Petition is **GRANTED**.
- 2. The Foreign Representative is recognized as the “foreign representative” of VAAL within the meaning of 11 U.S.C. § 101(24).
- 3. The English Proceeding is recognized as a “foreign main proceeding” pursuant to 11 U.S.C. § 1517(b)(1).
- 4. All automatic relief under 11 U.S.C. § 1520 shall apply in this case, including, without limitation, application of the stay imposed by 11 U.S.C. § 362 with respect to VAAL and the property of VAAL within the territorial jurisdiction of the United States (provided that such stay shall be limited to “Plan Creditors” as defined in the Plan).
- 5. Pursuant to 11 U.S.C. §§ 1507 and 1521, the Plan Documents, and any amendments or extensions thereof as may be entered or sanctioned from time to time by the English Court, are given full force and effect in the United States.

6. The Foreign Representative is authorized to take all actions necessary to carry out this Order.

7. The Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any request for additional relief or any adversary proceeding brought in and through these cases, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of the Court.

8. The Foreign Representative shall provide service and notice of this Order in accordance with the Court's *Order Specifying Form and Manner of Service of Notice, Scheduling Recognition Hearing, and Waiving Certain Requirements*.

Dated: New York, New York
August __, 2020

United States Bankruptcy Judge

EXHIBIT A

VAAL Board Minutes

VIRGIN ATLANTIC AIRWAYS LIMITED

Company number: 01600117

(the Company)

**Minutes of a meeting of the directors
of the Company held by telephone
on 27 July 2020 at 5 p.m.**

Present:

Mr P. Norris (in the chair)
Mr G. McCallum
Mr I. Woods
Mr T. Mackay
Mr S. Weiss
Mr G. Hauenstein
Mr S. Sear
Mr D. James

In attendance:

Mr E. Griffith (*Partner – Restructuring, Allen & Overy LLP*)
Mr M. Jacovides (*Partner – Banking, Allen & Overy LLP*)
Ms C. Coppel (*Partner – Corporate, Allen & Overy LLP*)
Mr N. Clark (*Partner – Banking, Allen & Overy LLP*)
Mr M. Moore (*Partner – Banking, Allen & Overy LLP*)
Mr I. de Sousa (*Company Secretary*)
Mr L. Brambilla
Ms H. Boyd-Boland
Mr J. Homerstone

1. CHAIRPERSON

Mr P. Norris was appointed chairperson of the meeting.

2. APOLOGIES, NOTICE AND QUORUM

- 2.1 The chairperson noted that apologies for absence had been received from Mr E. Bastian and Sir R. Branson who would be represented at this meeting by their alternates, Mr D. James and Mr P. Norris respectively.
- 2.2 The chairperson reported that notice of the meeting had been given to all of the directors in accordance with the Company's articles of association and that a quorum was present.

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3. DECLARATIONS OF INTEREST

3.1 The directors each declared an interest in the business to be considered at the meeting in accordance with section 177 and section 182 of the Companies Act 2006, in particular:

(a) in the case of Mr G. Hauenstein, Mr D. James and Mr S. Sear (the **Delta Directors**), an interest in:

- (i) the Connected Party Plan Creditors under and as defined in the Explanatory Statement;
- (ii) document 7 as listed in Appendix 1 to these minutes; and
- (iii) documents 7, 11 and 14 as listed in Appendix 5 to these minutes,

by virtue of the Delta Directors being representatives of Delta Air Lines, Inc. which:

- (A) indirectly holds a 49 per cent. stake in the Company; and
- (B) forms part of the Connected Party Plan Creditors under the Restructuring Plan (defined below) and Explanatory Statement,

(the **Delta Declared Interests**);

(b) in the case of Mr P. Norris, Mr G. McCallum and Mr I. Woods (the **Virgin Directors**), an interest in:

- (i) the Connected Party Plan Creditors under and as defined in the Explanatory Statement;
- (ii) document 7 as listed in Appendix 1 to these minutes; and
- (iii) documents 7, 11 and 14 as listed in Appendix 5 to these minutes,

by virtue of the Virgin Directors being representatives of Virgin Investments Limited which:

- (A) indirectly holds a 51 per cent. stake in the Company; and
- (B) forms part of the Connected Party Plan Creditors under the Restructuring Plan and Explanatory Statement,

(the **Virgin Declared Interests**);

(c) in the case of all directors, an interest in documents 7, 11, 12, 13, 14 and 15 as listed in Appendix 5 to these minutes, by virtue of all directors also being directors of Virgin Atlantic Limited, Virgin Holidays Limited, Virgin Atlantic International Limited and Virgin Travel Group Limited (the **VAL, VHL, VAIL and VTGL Declared Interests**); and

(d) in the case of Mr T. Mackay and Mr S. Weiss (the **Executive Directors**), an interest in: documents 1, 5, 7, 13, 14, 15 and 16 as listed in Appendix 5 to these minutes by virtue of the Executive Directors also being directors of Fit Leasing Limited, Virglease (3) Limited, VAA Holdings UK Limited, VAA Holdings Jersey Limited, VA Cargo Limited and Virgin Incoming Services Inc. (the **FLL, Virglease, VAAH UK, VAAH Jersey, VAC and VIS**

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Declared Interests, and, together with the VAL, VHL, VAIL and VTGL Declared Interests, the **Intra-Group Declared Interests**).

- 3.2 In relation to the Delta Declared Interests, it was noted that, pursuant to the shareholders' agreement in respect of Virgin Atlantic Limited dated 13 March 2014 (the **Shareholders' Agreement**), the Delta Directors could participate in discussions and vote on the agreements/arrangement listed in paragraph 3.1(a) above insofar as: (i) the Explanatory Statement is being issued by the Company to Virgin Investments Limited as a Connected Party Plan Creditor; and (ii) they concern matters between the Company and Virgin Investments Limited.
- 3.3 In relation to the Virgin Declared Interests, it was noted that, pursuant to the Shareholders' Agreement, the Virgin Directors could participate in discussions and vote on the agreements/arrangements listed in paragraph 3.1(b) above insofar as: (i) the Explanatory Statement is being issued by the Company to Delta Air Lines, Inc. as a Connected Party Plan Creditor; and (ii) they concern matters between the Company and Delta Air Lines, Inc.
- 3.4 In relation to the Intra-Group Declared Interests, it was noted that, under article 43.3 of the Company's articles of association, the directors are entitled to be counted in the quorum and vote in respect of the agreements/arrangements listed in paragraphs 3.1(c) and 3.1(d) notwithstanding the Intra-Group Declared Interests.
- 3.5 The directors each confirmed in relation to themselves that they had no conflict of interest in relation to the business to be considered at the meeting which would constitute a conflict of interest in breach of section 175 or section 182 of the Companies Act 2006 other than those matters which had already been disclosed at paragraph 3.1 above.

4. PURPOSE OF THE MEETING

- 4.1 The chairperson reported that the business of the meeting was to:
- (a) provide an update on:
 - (i) the progress of negotiations with the Company's stakeholders regarding the proposed solvent recapitalisation plan of the Company and its subsidiaries (the **Recapitalisation Plan**); and
 - (ii) the restructuring plan with certain creditors of the Company (the **Plan Creditors**) under Part 26A of the Companies Act 2006 (the **Restructuring Plan**);
 - (b) consider and approve the entry into (to extent necessary) the documents required for the Convening Hearing scheduled for 4 August 2020 as listed in Appendix 1 and attached at Appendix 2 to these minutes (the **Convening Hearing Documents**);
 - (c) consider and approve an application for recognition of the Restructuring Plan in the United States under Chapter 15, Title 11 of the United States Bankruptcy Code (the **Chapter 15 Application**);
 - (d) consider and approve the entry into the documentation in relation to the Chapter 15 Application as listed in Appendix 3 and attached at Appendix 4 of these minutes (the **Chapter 15 Documents**);
 - (e) consider and approve the appointment of Mr S. Weiss as foreign representative of the Company for the purposes of Chapter 15 Application; and

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- (f) consider and approve the entry into the recapitalisation documents to which the Company will be a party listed in Appendix 5 and attached at Appendix 6 of these minutes (the **Recapitalisation Documents**).

4.2 The chairperson noted that:

- (a) various attendees from Allen & Overy LLP; and
- (b) various attendees from the Company's management team,

were in attendance to provide advice and highlight key terms of the Convening Hearing Documents, the Chapter 15 Documents and the Recapitalisation Documents.

5. DOCUMENTS TABLED

There were produced to the meeting:

- (a) the Convening Hearing Documents;
- (b) the Chapter 15 Documents; and
- (c) the Recapitalisation Documents,

each of which were initialled by the chairperson for the purpose of identification.

6. UPDATE ON RECAPITALISATION PLAN AND RESTRUCTURING PLAN

- 6.1 The chairperson referred to the board meeting of 13 July 2020 at which the directors approved the draft practice statement letter and authorised a sub-committee of the board to approve the final form of the practice statement letter. The final form of the practice statement letter was signed by the Company on 14 July 2020 and made available to all Plan Creditors via the Company's Information Agent (defined in the Explanatory Statement) on that date. Prior to circulation of the practice statement letter, the Company also executed the Deed Poll (defined in the Explanatory Statement).
- 6.2 Mr E. Griffith noted that since 14 July 2020 the support agreements have all been signed by sufficient creditors such that they have all become effective. Furthermore, since all finance lessors and related creditors signed the relevant support agreements, it is no longer necessary to include them in the Restructuring Plan. Accordingly, on 20 July 2020, the Company (acting by the sub-committee referred to above) issued an addendum to the practice statement letter informing Plan Creditors that all of the support agreements are effective and that the finance lessors and related creditors would no longer be part of the Restructuring Plan. Instead, their arrangements will be implemented outside of the Restructuring Plan as part of the wider Recapitalisation Plan.
- 6.3 This addendum to the practice statement letter also informed Plan Creditors of certain changes to the list of Trade Plan Creditors in the practice statement letter discovered after 14 July 2020. In addition, following feedback from Trade Plan Creditors, it was decided to change the cut-off date at which the reduction and deferrals to be implemented pursuant to the Restructuring Plan would apply to Trade Plan Creditors' claims against the Company from 21 August 2020 to 1.30 pm on 14 July 2020. This was intended to mitigate termination risk during the period prior to the Recapitalisation Effective Date and will not have a material impact on the forecast cashflows or business plan.
- 6.4 Mr T. Mackay also gave an update on a briefing call to which all Trade Plan Creditors were invited on 21 July 2020. The purpose of this call was to address some common queries that Trade Plan

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Creditors has been raising in connection with the Restructuring Plan, encourage Trade Plan Creditors to remain supportive of the Company, and help them navigate the unfamiliar legal process.

7. DISCUSSION OF THE CONVENING HEARING DOCUMENTS

7.1 Mr E. Griffith explained that the next step in the Restructuring Plan is to formally commence proceedings with respect to the Restructuring Plan in the High Court of England and Wales (the **Court**) by:

- (a) filing a claim form with the Court on 30 July 2020; and
- (b) filing the relevant Convening Hearing Documents with the Court on 30 July 2020,

to obtain an order for directions as to the convening and conduct of the Plan Meetings (as defined in the Explanatory Statement) (the **Convening Order**).

7.2 Mr E. Griffith explained that:

- (a) the Explanatory Statement will be made available to all Plan Creditors on the day following the Convening Hearing (assuming the Court issues the Convening Order) and is required to be made available by the Company pursuant to the Companies Act 2006 in order to provide Plan Creditors with sufficient information to enable them to make a decision as to whether or not to vote in favour of the Restructuring Plan at the relevant Plan Meeting; among other things it:
 - (i) describes the Group, its financial arrangements and certain financial information and the background to and events leading up to the launch of the Restructuring Plan;
 - (ii) sets out any material interests of the directors of the Company and the effect of those interests on the Restructuring Plan;
 - (iii) sets out, in more detail than the practice statement letter, the nature of the transactions contemplated by the Restructuring Plan as well as the wider Recapitalisation Plan;
 - (iv) outlines the mechanics to implement the Restructuring Plan (which are specifically set out in Restructuring Plan Document (as defined in the Explanatory Statement) at Part D of the Explanatory Statement); and
 - (v) describes what the Company considers the “relevant alternative” to the Restructuring Plan is; that is, what will happen if the Restructuring Plan is not approved and sanctioned by the Court by reference to the Illustrative Recoveries Analysis (as defined in the Explanatory Statement) prepared by Alvarez & Marsal Europe LLP, which will be appended to the Explanatory Statement;
- (b) the Illustrative Recoveries Analysis is a financial model that estimates the illustrative recoveries for the Plan Creditors in the event that the Restructuring Plan is not approved and sanctioned by the Court and the Company files for administration. Based on the Illustrative Recoveries Analysis, the Explanatory Statement provides that the Company’s good faith view is that the relevant alternative in the event that the Restructuring Plan is unsuccessful is administration;

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- (c) the witness statement of Mr S. Weiss and Mr. V. Parzyjagla of Lucid Issuer Services Limited (**Lucid**) are made in support of the Company's application to the Court for the Convening Order. The witness statement of Mr S. Weiss includes, among other matters, an overview of the Restructuring Plan and the class composition of Plan Creditors, the background to and reasons for the Recapitalisation Plan and additional detail as to the Company's cashflows thorough to September 2020 in support of the timeline requested. The witness statement of Lucid (as Information Agent under the Explanatory Statement) covers the dissemination of the practice statement letter issued by the Company on 14 July 2020; and
- (d) the Company is required to provide:
 - (i) the Court with the relevant Convening Hearing Documents in order to formally commence proceedings with respect to the Restructuring Plan with the Court to obtain the Court Order; and
 - (ii) each Plan Creditor with a copy of the notice summoning the Plan Meetings accompanied by the Explanatory Statement if the Court grants the Convening Order.

8. DISCUSSION OF THE CHAPTER 15 APPLICATION AND CHAPTER 15 DOCUMENTS

- 8.1 Mr E. Griffith explained that, in parallel with the Restructuring Plan, the Company intends to file the Chapter 15 Application as the Plan Creditors are based in a variety of different jurisdictions, including the United States.
- 8.2 Mr E. Griffith noted that:
 - (a) the purpose of the Chapter 15 Application is:
 - (i) to seek recognition of the Restructuring Plan in the United States; and
 - (ii) to promote cooperation and communication between US courts and the Court;
 - (b) the Company would be required to file the Chapter 15 Documents with the United States Bankruptcy Court for the Southern District of New York; and
 - (c) if the Restructuring Plan is approved by the Plan Creditors and sanctioned by the Court, the Company expects that the Restructuring Plan and its effects will be recognised in the United States shortly after the Sanction Hearing scheduled for 2 September 2020.
- 8.3 Mr E. Griffith also explained that Chapter 15 of the US Bankruptcy Code requires the appointment of a foreign representative in connection with the Chapter 15 Application. The purpose of a foreign representative is to, among other things:
 - (a) file a petition for recognition; and
 - (b) seek additional relief from the US bankruptcy court or from other US state and federal courts.

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9. DISCUSSION OF THE RECAPITALISATION DOCUMENTS

- 9.1 The chairperson noted that negotiations with stakeholders had continued to take place since the previous board meeting and that the Recapitalisation Documents to which the Company is a party with the Plan Creditors had been substantially agreed with the relevant stakeholders.
- 9.2 Mr E. Griffith explained that the Recapitalisation Documents will be appended to, or made available to Plan Creditors alongside, the Explanatory Statement and reminded the directors that the Explanatory Statement and these Recapitalisation Documents are expected to be filed with the Court on 30 July 2020 as noted above in section 7.
- 9.3 Mr E. Griffith further explained that each Recapitalisation Document is summarised in the Explanatory Statement and referred the directors to the relevant sections in the Explanatory Statement.
- 9.4 Mr E. Griffith noted that the Amex support agreement is not required to be filed with the Court and explained that the Company was aiming to have it finalised and signed ahead of the Court filing on 30 July 2020.

10. DIRECTORS' CONFIRMATIONS AND CHAIRPERSON'S PROPOSALS

- 10.1 Each director confirmed that, having taken all reasonable care to ensure that this was the case:
- (a) he had read the Convening Hearing Documents, the Chapter 15 Documents and the Recapitalisation Documents;
 - (b) he had made or procured the making of all reasonable enquiries or was otherwise satisfied that all reasonable enquiries had been made to confirm and verify all the information contained in the Convening Hearing Documents, the Chapter 15 Documents and the Recapitalisation Documents (and all inferences which a reader may reasonably draw from it);
 - (c) the Explanatory Statement contained all information, within his knowledge or which it would be reasonable for him to obtain by making enquiries, required to comply with Part 26A of the Companies Act 2006; and
 - (d) all the information contained in the Convening Hearing Documents, the Chapter 15 Documents and the Recapitalisation Documents was true and accurate in all material respects and not misleading (whether by misstatement or omission).
- 10.2 The directors also considered:
- (a) the legal advice given to the Company in respect of the Restructuring Plan and Recapitalisation Plan by Allen & Overy LLP as the Company's external legal counsel;
 - (b) the financial advice given to the Company in respect of the Restructuring Plan and Recapitalisation Plan by Houlihan Lokey EMEA, LLP as the Company's external financial advisers; and
 - (c) the restructuring, insolvency and contingency planning advice given to the Company in respect of the Restructuring Plan and Recapitalisation Plan by Alvarez & Marsal Europe LLP.

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10.3 The chairperson proposed that the Company:

- (a) approve and, to the extent necessary, enter into the Convening Hearing Documents, the Chapter 15 Documents and the Recapitalisation Documents;
- (b) approve and file the Chapter 15 Documents with the United States Bankruptcy Court for the Southern District of New York; and
- (c) appoint Mr S. Weiss (or, in his absence, an alternative agreed by the directors of the Company) as the foreign representative of the Company for the purposes of the Chapter 15 Application; and

10.4 The directors considered that: (a) the Convening Hearing Documents; (b) the Chapter 15 Application; (c) the Chapter 15 Documents; (d) the appointment of Mr S. Weiss as foreign representative of the Company; and (e) the Recapitalisation Documents would promote the success of the Company for the benefit of the members as a whole, having regard to the relevant factors set out in section 172 of the Companies Act 2006 including:

- (a) the likely consequences in the long term;
- (b) the interests of the Company's employees;
- (c) the need to foster the Company's business relationships with the Plan Creditors;
- (d) the impact of the Company's operations on the community and the environment;
- (e) the desirability of the Company maintaining a reputation for high standards of business conduct; and
- (f) the need to act fairly as between the members of the Company,

and also concluded that: (a) the Convening Hearing Documents; (b) the Chapter 15 Application; (c) the Chapter 15 Documents; (d) the appointment of Mr S. Weiss as foreign representative of the Company; and (e) the Recapitalisation Documents were in the best interests of all stakeholders, including the Plan Creditors.

11. RESOLUTIONS

After due consideration, **IT WAS RESOLVED THAT:**

- (a) the Convening Hearing Documents be and hereby are approved;
- (b) the Chapter 15 Application be and hereby is approved;
- (c) the Chapter 15 Documents be and hereby are approved;
- (d) the Recapitalisation Documents be and hereby are approved;
- (e) all of the directors be and are hereby authorised to sign on the Company's behalf (if required) the Convening Hearing Documents, the Chapter 15 Documents and the Recapitalisation Documents with any such amendments as any of the directors may in their absolute discretion reasonably deem necessary or desirable;

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- (f) any one director or the secretary be authorised to circulate the notice of the Plan Meetings, the Explanatory Statement and the Recapitalisation Documents to each Plan Creditor if the Convening Order is granted by the Court;
- (g) Mr S. Weiss (or, in his absence an alternative agreed by the directors of the Company) be and hereby is approved and appointed as the foreign representative of the Company in connection with the Chapter 15 Application; and
- (h) any one director (or, in the case of a deed, any director in the presence of a witness who attests the signature or any two directors or any one director and the secretary) be authorised to sign on the Company's behalf all other documents, contracts, deeds, certificates or things lawfully required and to do or cause to be done all such acts and things which any director may in his absolute discretion reasonably deem necessary or desirable in connection with: (i) the Convening Hearing Documents; (ii) the Chapter 15 Documents; (iii) the appointment of Mr S. Weiss as foreign representative of the Company; (iv) the Chapter 15 Application; and (v) the Recapitalisation Documents, subject to obtaining in each case, if required, any relevant shareholder consent;

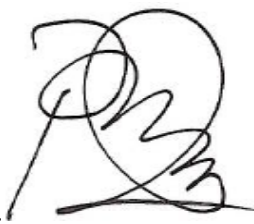
12. FILING

IT WAS RESOLVED THAT:

- (a) the secretary be instructed to arrange for the relevant Convening Hearing Documents to be filed with the Court in order to formally commence proceedings with respect to the Restructuring Plan in the Court; and
- (b) Mr S. Weiss be authorised to file the Chapter 15 Documents and supporting documents with the United States Bankruptcy Court for the Southern District of New York in connection with the Chapter 15 Application.

13. CLOSE OF MEETING

The meeting then ended.



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Mr P. Norris

Chairperson

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APPENDIX 1

CONVENING HEARING DOCUMENTS LIST

Please refer to the Documents List at Appendix 1 in the *“Project Spring – Board Meetings – 27 July 2020 – Documents Pack”*

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APPENDIX 2

CONVENING HEARING DOCUMENTS

Please refer to the Documents at Appendix 2 in the “*Project Spring – Board Meetings – 27 July 2020 – Documents Pack*”

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APPENDIX 3

CHAPTER 15 DOCUMENTS LIST

Please refer to the Documents List at Appendix 3 in the *“Project Spring – Board Meetings – 27 July 2020 – Documents Pack”*

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APPENDIX 4

CHAPTER 15 DOCUMENTS

Please refer to the Documents at Appendix 4 in the “*Project Spring – Board Meetings – 27 July 2020 – Documents Pack*”

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APPENDIX 5

RECAPITALISATION DOCUMENTS LIST

Please refer to the Documents List at Appendix 5 in the “*Project Spring – Board Meetings – 27 July 2020 – Documents Pack*”

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APPENDIX 6

RECAPITALISATION DOCUMENTS

Please refer to the Documents at Appendix 6 in the “*Project Spring – Board Meetings – 27 July 2020 – Documents Pack*”