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21 August 2024

To the Creditors

Regional Express Holdings Limited	ACN 099 547 270
Air Partners Pty Ltd	ACN 065 221 356
Regional Express Pty Ltd	ACN 101 325 642
Rex Airlines Pty Ltd	ACN 642 400 048
Rex Investment Holdings Pty Ltd	ACN 101 317 677
(Administrators Appointed) (together “the Companies” or “the Rex Group”)	

Dear Sir/Madam

We refer to the appointment of Adam Nikitins, Justin Walsh and I as Joint and Several Administrators (**Administrators**) of the Rex Group on 30 July 2024 and the previous circulars issued to creditors of the Companies.

We hereby give notice that on 21 August 2024 the Administrators filed an interlocutory application with the Federal Court of Australia (**Application**). The Application seeks orders under sections 439A(6) and 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**), section 90-15 of the *Insolvency Practice Schedule (Corporations)* (being Schedule 2 to the Corporations Act), and sections 37AF and 37AG of the *Federal Court of Australia Act 1976* (Cth).

These orders relate to, amongst other things, procedural matters in respect of the administration of the Companies, the conduct of the second meetings of creditors and limiting the personal liability of the Administrators in certain circumstances.

Likely of most interest to creditors is the request to extend the convening period for the administration to no later than 25 November 2024. Whilst it remains the Administrators intention to convene the meetings of creditors of the Rex Group at the first opportunity, it is our current view that the greatest return to creditors is likely to be derived from a sale or recapitalisation of the business as a going concern. More time is required to achieve such an outcome.

We expect to have a more informed view as to what time is required in the next 2 weeks. Further, it will become clearer during that time if all or only some of the entities should remain in administration for any extended period.

We will provide an update as soon as we have a clearer understanding.

A copy of the Application is attached at **Annexure A**.

The Application is listed to be heard on 23 August 2024 before the Honourable Justice Cheeseman at 10:15am. The hearing will take place at:

Federal Court of Australia
Law Courts Building
184 Phillip Street
Sydney NSW 2000

Please note that there is no need to take any action unless you wish to attend. Parties interested in attending should review the Federal Court daily court list for confirmation of details of the Court in which the Application is to be heard.

Questions regarding the administration should be directed to this office by email at rex.creditors@au.ey.com.

Yours sincerely



Sam Freeman
Joint and Several Administrator

Encl.

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Interlocutory process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 3
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 21/08/2024 4:30:35 PM AEST
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File Number: NSD1050/2024
File Title: IN THE MATTER OF REGIONAL EXPRESS HOLDINGS LIMITED ACN 099 547 270 (ADMINISTRATORS APPOINTED) & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



Sia Lagos

Registrar

Important Information

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

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 3 Interlocutory process

(rules 2.2, 15A.4, 15A.8 and 15A.9)

No. NSD1050 of 2024

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations

IN THE MATTER OF REGIONAL EXPRESS HOLDINGS LIMITED (ACN 099 547 270) (ADMINISTRATORS APPOINTED) AND OTHERS

SAMUEL FREEMAN, JUSTIN WALSH AND ADAM NIKITINS IN THEIR CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF EACH OF REGIONAL EXPRESS HOLDINGS LIMITED (ACN 099 547 270) (ADMINISTRATORS APPOINTED) AND THE THIRD TO SIXTH PLAINTIFFS NAMED IN THE SCHEDULE

First Plaintiffs

AND OTHERS NAMED IN THE SCHEDULE

A. DETAILS OF APPLICATION

This application is made pursuant to sections 439A(6) and 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**) and 90-15 of the *Insolvency Practice Schedule (Corporations)*, being Schedule 2 to the Corporations Act, and sections 37AF and 37AG of the *Federal Court of Australia Act 1976* (Cth).

This is an application by the Second to Sixth Plaintiffs (**Rex Companies**) and the First Plaintiffs, their administrators, for various orders facilitating the administration of each of the Rex Companies under the provisions of Part 5.3A of the Corporations Act.

On the facts stated in the supporting affidavit of Samuel John Freeman affirmed 21 August 2024, and adopting the terms defined above, the plaintiffs apply for the following relief:

Extension of Convening Period

1. Pursuant to subsection 439A(6) of the *Corporations Act 2001* (Cth) (**Corporations Act**), the convening period (as defined in section 439A(5)(b) of the Corporations Act) within which the First Plaintiffs (**Administrators**) must convene the second meeting of creditors in respect of each of the Second to Sixth Plaintiffs (**Rex Companies**) be extended up to and including 25 November 2024.

Filed on behalf of (name & role of party)	First to Sixth Plaintiffs		
Prepared by (name of person/lawyer)	Jillian McAleese		
Law firm (if applicable)	White & Case LLP		
Tel	+ 61 2 8249 6602	Fax	+ 61 2 8249 2699
Email	jillian.mcaleese@whitecase.com		
Address for service (include state and postcode)	Level 50, Governor Philip Tower, 1 Farrer Place Sydney NSW 2000		



2. Pursuant to section 447A of the Corporations Act, Part 5.3A of the Corporations Act is to operate in relation to the Rex Companies such that, notwithstanding the provisions in section 439A(2) of the Corporations Act, the second meetings of the creditors of each of the Rex Companies required under section 439A of the Corporations Act (**Second Meetings**) may be convened and held at any time during, or within, five (5) business days after the end of, the convening period as extended by order 1 above, provided that the Administrators give notice of the meeting to creditors of each of the Rex Companies (including the persons or entities claiming to be creditors of the Companies) at least five business days before the meeting.

Limitation of Liability – Deed of Guarantee

3. Pursuant to section 447A(1) of the Corporations Act, Part 5.3A of the Corporations Act is to operate, *nunc pro tunc*, in relation to the Administrators, the Second Plaintiff (**Rex Holdings**) and the Fifth Plaintiff (**Regional Express**) as if section 443A(1) of the Corporations Act provides that:
 - (a) the liabilities of the Administrators incurred with respect to any obligations arising out of, or in connection with, the Deed of Guarantee (supporting future ticket purchases) dated 15 August 2024 between the Commonwealth of Australia, the Administrators, Rex Holdings and Regional Express (**Deed**) (including any variation to the terms of that Deed), are in the nature of debts incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of Rex Holdings and Regional Express; and
 - (b) notwithstanding that the liabilities in subparagraph 3(a) are debts or liabilities incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of Rex Holdings and Regional Express, if the property and assets of Rex Holdings and Regional Express are insufficient to satisfy these debts and liabilities, such that the indemnity under section 443D of the Corporations Act is insufficient to meet any amount for which the Administrators may be liable, then the Administrators will not be personally liable to repay such debts or satisfy such liabilities to the extent of that insufficiency.
4. Until further order of the Court, pursuant to sections 37AF(1)(b)(i) of the *Federal Court of Australia Act 1976* (Cth), on the ground stated in section 37AG(1)(a), being that the order is necessary to prevent prejudice to the proper administration of justice, Confidential Exhibit SJF-5 to the affidavit of Samuel Freeman affirmed 21 August 2024 be kept confidential and be prohibited from disclosure to any person other than:
 - (a) a Judge of the Court and that Judge's personal staff and assistants;
 - (b) the plaintiffs and their legal representatives; and
 - (c) the Commonwealth of Australia and its legal representatives.

Conduct of Second Meeting of Creditors

5. Pursuant to section 90-15 of the *Insolvency Practice Schedule (Corporations)* (Cth) (**IPSC**), the Administrators would be justified in permitting only those persons who have lodged particulars of a debt or claim in the administration of



one or more of the Rex Companies, and by no later than midday on the second business day before the Second Meetings are held (**POD Lodgement Date**), to participate and vote in respect of the resolutions to be determined at the Second Meetings.

6. Pursuant to section 90-15 of the IPSC, in respect of any debt or claim submitted by a person to the Administrators in respect of the Rex Companies, the Administrators are justified in disregarding for voting purposes any such debt or claim (or particulars thereof) that is lodged after the expiry of the POD Lodgement Date.
7. Pursuant to section 90-15 of the IPSC, the *Insolvency Practice Rules (Corporations) 2016* (Cth) (**IPR**) are to operate in relation to the Rex Companies such that persons (or their proxy or attorney) may not at any time after the POD Lodgement Date, without the express written consent of the Administrators, amend or replace any proof of debt.
8. Pursuant to section 447A of the Corporations Act and/or section 90-15 of the IPSC, Part 5.3A of the Corporations Act (and rule 75-150 of the IPR) is to operate in relation to the Rex Companies such that a person appointed as a proxy, by a person otherwise entitled to vote at the Second Meetings, will not be entitled to vote, unless:
 - (a) in the case of a person appointed by special proxy, that special proxy has been received by the Administrators by no later than midday on the second business day before the Second Meetings; or
 - (b) in the case of a person appointed by general proxy, that general proxy names either an Administrator or the chairperson of the meeting as the person appointed as proxy and has been received by the Administrators by no later than midday on the second business day before the Second Meetings,(together the **Proxy Lodgement Date**).
9. Pursuant to section 90-15 of the IPSC, in respect of any appointment of proxy forms submitted by a person to the Administrators in respect of the Rex Companies, the Administrators are justified in disregarding any such proposed appointment of proxy that is lodged after the expiry of the Proxy Lodgement Date.
10. Pursuant to section 90-15 of the IPSC, the IPR are to operate in relation to the Rex Companies such that the requirements of a person to:
 - (a) lodge particulars of a debt or claim for the purposes of section 75-85(3)(b) of the IPR;
 - (b) provide an instrument of appointment of proxy pursuant to section 75-150(3) of the IPR; and
 - (c) provide an instrument evidencing the appointment of a power of attorney pursuant to section 75-155(2) of the IPR,

in order to establish an entitlement to vote at the Second Meetings may only be satisfied by a person submitting a claim lodged on the creditor portal maintained by the Administrators accessible on the website <https://ey.creditors.accountants/Account/Login> prior to the expiry of the POD



Lodgement Date (in the case of subparagraph ((a)) and the Proxy Lodgement Date (in the case of subparagraphs (b) and (c)).

11. Pursuant to section 447A of the Corporations Act and/or section 90-15 of the IPSC, Part 5.3A of the Corporations Act is to operate in relation to the Rex Companies such that where a person has appointed one of the Administrators as general proxy, and that Administrator is not present at a meeting and/or is not chairing the meeting, the chairperson is treated as that Administrator's deputy in accordance with rule 75-152(2) of the IPR.
12. Pursuant to section 90-15 of the IPSC, the IPR are to operate in relation to the Rex Companies such that all resolutions to be determined at the Second Meetings are to be decided by a poll and voted on electronically by creditors or, if relevant, their proxies or attorneys.
13. Pursuant to section 90-15 of the IPSC, the Administrators would be justified in counting, on any poll taken during the Second Meetings, all votes lodged by creditors (by proxy or otherwise), regardless of whether it can be shown that those creditors (or their proxy or attorney) were present at the Second Meetings.
14. Pursuant to section 90-15 of the IPSC, the requirement of rule 75-75(4)(b) of the IPR may be taken to be satisfied, in the case of the Rex Companies, by the provision to creditors (including persons or entities claiming to be creditors) of the Rex Companies of notice of the method and time for voting no less than five (5) business days before the date of the Second Meetings, with such notice to be in accordance with Order 4 of the Orders dated 6 August 2024 (**6 August Orders**).
15. Pursuant to section 90-15 of the IPSC, the requirements of rule 75-75(1) of the IPR may be taken to be satisfied, in the case of the Rex Companies, if:
 - (a) the Administrators hold the Second Meetings via audio-visual conference technology, such as (but not limited to) Kaltura, with the details of the audio-visual conference to be provided by a notice to creditors (including persons or entities claiming to be creditors) of the Rex Companies in accordance with Order 4 of the 6 August Orders;
 - (b) the Administrators conduct a virtual meeting by way of a live stream format, where participants are able to participate in the meeting by way of a written live chat function which is visible only to the Chairperson of the meeting (or his or her delegate), but where the participants cannot orally address the meeting;
 - (c) the Administrators have given a notice to creditors (including persons or entities claiming to be creditors) of the Rex Companies (in accordance with Order 4 of the 6 August Orders) that specifies that questions, requests for information, or comments that they wish to raise at the Second Meetings should be submitted, to the extent possible, to the Administrators by midday on the day that is two business days before the Second Meetings; and
 - (d) the Administrators:
 - (i) answer or address at the Second Meetings, as far as practicable, questions, requests for information, or comments submitted by creditors prior to midday on the day that is two business days



before the Second Meetings, for a period of not less than two (2) hours or until all such questions, requests for information and comments have been responded to (whichever occurs sooner); and

- (ii) otherwise may, but are not required at the Second Meetings to, answer or address any questions, requests for information, or comments submitted by creditors after midday on the day that is two business days before the Second Meetings.

Ancillary Orders

- 16. The Administrators take all reasonable steps to cause notice of the Court's orders to be given, within one (1) business day of the making of the orders to:
 - (a) creditors (including persons or entities claiming to be creditors) of the Rex Companies, in accordance with Order 4 of the 6 August Orders; and
 - (b) the Australian Securities and Investments Commission.
- 17. Liberty be granted to any person demonstrating a sufficient interest to apply to vary or discharge any orders made above, on one (1) business day's written notice being given to the Plaintiffs and to the Court.
- 18. The Plaintiffs' costs of the application be treated as costs in the administrations of each of the Rex Companies, jointly and severally.

Date: 21 August 2024

White & Case
.....
Signature of
Plaintiffs' legal practitioner

This application will be heard by at the Federal Court of Australia, Law Courts Building, 184 Phillip Street, Sydney NSW 2000 at *am/*pm on

B. NOTICE TO RESPONDENT(S) (IF ANY)

Not applicable.

C. FILING

This interlocutory process is filed by White & Case, solicitors for the Plaintiffs.

D. SERVICE

The applicant's address for service is White & Case, Level 50 Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000.

It is not intended to serve a copy of this interlocutory process on any person but it is intended that notice be given to creditors, the Commonwealth of Australia and the Australian Securities and Investments Commission.



SCHEDULE

No. NSD1050 of 2024

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations List

IN THE MATTER OF REGIONAL EXPRESS HOLDINGS LIMITED (ACN 099 547 270) (ADMINISTRATORS APPOINTED) AND OTHERS

First Plaintiff	Samuel Freeman, Justin Walsh and Adam Nikitins in their capacity as joint and several administrators of each of the Second to Sixth Plaintiffs
Second Plaintiff	Regional Express Holdings Limited (ACN 099 547 270) (Administrators Appointed)
Third Plaintiff	Air Partners Pty Ltd (Administrators Appointed) (ACN 065 221 356)
Fourth Plaintiff	Rex Investment Holdings Pty Limited (Administrators Appointed) (ACN 101 317 677)
Fifth Plaintiff	Regional Express Pty Limited (Administrators Appointed) (ACN 101 325 642)
Sixth Plaintiff	Rex Airlines Pty Ltd (Administrators Appointed) (ACN 642 400 048)