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5 August 2024

## To the Creditors

<b>Regional Express Holdings Limited</b>	<b>ACN 099 547 270</b>
<b>Air Partners Pty Ltd</b>	<b>ACN 065 221 356</b>
<b>Regional Express Pty Ltd</b>	<b>ACN 101 325 642</b>
<b>Rex Airlines Pty Ltd</b>	<b>ACN 642 400 048</b>
<b>Rex Investment Holdings Pty Ltd</b>	<b>ACN 101 317 677</b>

**(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 circular issued to creditors of the Companies on 31 July 2024.

We hereby give notice that on 4 August 2024 the Administrators filed an originating application with the Federal Court of Australia (**Application**). The Application seeks orders under sections 443B(8) 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 first meeting of creditors and limiting the personal liability of the Administrators in certain circumstances. A copy of the Application is attached at **Annexure A**.

The Application is listed to be heard on 6 August 2024 before the Honourable Justice Yates 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](mailto:rex.creditors@au.ey.com).

Your sincerely

**Sam Freeman**  
Joint and Several Administrator

# Annexure A

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 4/08/2024 3:57:29 PM AEST  
Date Accepted for Filing: 5/08/2024 9:17:23 AM AEST  
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: Interlocutory Hearing  
Time and date for hearing: 06/08/2024, 10:15 AM  
Place: Please check Daily Court List for details



*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.



# Originating Process

(rule 2.2)

No. NSD 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 443B(8) and 447A of the **Corporations Act 2001** (Cth), 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).

This is an application by the Second to Sixth Plaintiffs (**Rex Companies**) and the First Plaintiffs, their administrators (**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 4 August 2024, and adopting the terms defined above, the plaintiffs claim the following orders:

#### Notices to Creditors

1. Subject to order 2 below, pursuant to s 447A of the **Corporations Act 2001** (Cth) and/or s 90-15 of the *Insolvency Practice Schedule (Corporations)* (**IPSC**), Part 5.3A of the Corporations Act is to operate, *nunc pro tunc*, in relation to each of the Rex

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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** Level 50, Governor Philip Tower, 1 Farrer Place Sydney NSW 2000  
(include state and postcode)

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Companies as if any notice (**Notice**) required to be given pursuant to sections 75-15 and 75-225(1) of the *Insolvency Practice Rules (Corporations) 2016* (Cth) (**IPR**) has been or will be validly given to creditors of the second to sixth plaintiffs (**Rex Companies**) by reason of the following steps having been taken at least five business days prior to the date of the proposed meeting:

- (a) where the first plaintiffs (**Administrators**) have an email address for a creditor (including persons or entities claiming to be creditors), by sending the Notice by email to each such creditor, irrespective of whether the creditor has nominated to receive electronic notifications of documents;
  - (b) other than in the case of Customer Creditors (as defined in order 1(c) below), where the Administrators do not have an email address for a creditor (including persons or entities claiming to be creditors), but have a postal address for that creditor, by sending the Notice by post to each such creditor;
  - (c) in the case of certain customers of the Rex Companies whose flights have been cancelled (each a **Customer Creditor** and, together, the **Customer Creditors**), where the Administrators do not have an email address for that Customer Creditor but have an email address for one or more ticketing agents from whom the Customer Creditor(s) purchased their tickets (each a **Ticketing Agent**), by sending the Notice by email to each such Ticketing Agent and requesting it be forwarded to the applicable Customer Creditors;
  - (d) by publishing the Notice on the Australian Securities and Investments Commission (**ASIC**) published notices website appearing at <https://publishednotices.asic.gov.au>; and
  - (e) by publishing the Notice on the creditor portal maintained by the Administrators accessible on the website [www.rex.com.au](http://www.rex.com.au) (**Creditor Portal**).
2. Pursuant to s 447A(1) of the Corporations Act and/or s 90-15 of the IPSC, the periods specified in s 436E(3)(a) of the Corporations Act and s 70-30(3)(b) of the IPR, be abridged to two (2) business days for the Customer Creditors.
  3. Pursuant to s 447A(1) of the Corporations Act and/or s 90-15 of the IPSC, if, pursuant to any provision in any of Part 5.3A of the Corporations Act, Part 5.3A of the *Corporations Regulations 2001* (Cth), the IPSC, or the IPR, the Administrators are required to provide any other notification to creditors during the administration of each of the Rex Companies, the applicable notice requirements will be satisfied if the Administrators give such notice by taking the following steps:



- (a) where the Administrators have an email address for a creditor (including persons or entities claiming to be creditors), by sending the notice by email to each such creditor, irrespective of whether the creditor has nominated to receive electronic notifications of documents;
- (b) other than in the case of Customer Creditors (as defined in order 1(c) below), where the Administrators do not have an email address for a creditor (including persons or entities claiming to be creditors), but have a postal address for that creditor, by sending the Notice by post to each such creditor;
- (c) in the case of the Customer Creditors, where the Administrators do not have an email address for a Customer Creditor but have an email address for a Ticketing Agent, by sending the Notice by email to each such Ticketing Agent and requesting that it be forwarded to the applicable Customer Creditors.
- (d) to the extent the matter relates to a meeting that is the subject of s 75-40(4) of the IPR, by causing notice of the meeting to be published on the ASIC published notices website at <https://insolvencyntices.asic.gov.au>; and
- (e) by publishing the Notice on the Creditor Portal.

#### **Conduct of First Meeting of Creditors**

4. Pursuant to s 447A of the Corporations Act and/or s 90-15 of the IPSC, Part 5.3A of the Corporations Act is to operate, in relation to the meeting required to be held under s 436E of the Corporations Act for each of the Rex Companies (**First Meeting**), so that the requirement to provide persons attending a virtual meeting with a reasonable opportunity to participate under s 75-75(1) of the IPR will be satisfied where:
- (a) 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 cannot orally address the meeting;
  - (b) the Administrators have given a notice to creditors of the Rex Companies (in accordance with Orders 1 and 2 of these Orders) that specifies that:
    - (i) questions, requests for information, or comments that they wish to raise at the First Meeting should be submitted, to the extent possible, to the Administrators by midday on 7 August 2024; and
    - (ii) general proxies or special proxies appointing a person on behalf of a creditor must be submitted to the Administrators by midday on 7 August 2024; and



- (c) the Administrators:
- (i) answer or address at the First Meeting, as far as practicable, questions, requests for information, or comments submitted by creditors prior to midday on 7 August 2024, 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) may, but are not required at the First Meeting to, answer or address any questions, requests for information, or comments submitted by creditors after midday on 7 August 2024.
5. Within five (5) business days of the First Meeting, the Administrators are to publish on the Creditor Portal information generally responding to the topics raised in any questions, requests for information and comments received prior to or during the First Meeting which are not in substance addressed at the First Meeting.

#### **Committee of Inspection**

6. Pursuant to s 447A(1) of the Corporations Act and/or s 90-15 of the IPSC, Divisions 75 and 80 of the IPSC and Division 75 of the IPR are to operate in relation to the Rex Companies so that:
- (a) the requirement in s 436E(1) of the Corporations Act and ss 80-10 and 80-15 of the IPSC for the creditors of the Rex Companies to resolve that a committee of inspection be formed and to appoint members of the committee at the First Meeting be dispensed with;
  - (b) a single committee of inspection be formed in respect of all of the Rex Companies;
  - (c) subject to (d)-(j) below, the members of the committee of inspection be persons proposed by the Administrators from nominations made to them before, or by one (1) business day after, the First Meeting;
  - (d) no later than three business days after the First Meeting, the Administrators are to put a proposal to the creditors (**Proposal**) by giving a notice in accordance with order 3 above:
    - (i) that the members of the committee of inspection be the persons proposed by the Administrators; and
    - (ii) inviting the creditors of the Rex Companies to vote either “Yes”, “No” or “Abstain” on the Proposal within five (5) business days after the day on which notice is given; and



- (iii) including a statement of the reasons for the Proposal and the likely impact it will have on creditors;
- (e) the Proposal is to be treated as a proposal made under s 75-40 of the IPSC save that the option of objecting to the proposal being resolved without a meeting of creditors under s 75-40(2)(d) (together with s75-130(2)(c)) is to be dispensed with;
- (f) the time in s 75-130(3) of the IPR be abridged from 15 business days to five (5) business days;
- (g) notwithstanding s 75-130(5) of the IPR, in the event of a deadlock in the vote on the Proposal between a majority of creditors in number and majority of creditors in value, the Administrators may, jointly, exercise a casting vote in favour of the resolution, in which case the resolution is passed;
- (h) if the Proposal is taken to have passed in accordance with r 75-130(2)(a)-(b) of the IPR (or in accordance with order 6(g) above), then the members of the committee of inspection of the Rex Companies shall be the persons proposed by the Administrators in the Proposal;
- (i) if, by reason of s 75-130(5) of the IPR, the Proposal is not taken to have passed in accordance with s 75-130(2)(a)-(b) (or in accordance with order 6(g) above), then the Administrators are to approach the Court for further relief in relation to the appointment of a committee of inspection; and
- (j) the Administrators must cause notice to be given to creditors, in the manner specified in order 3 above of:
  - (i) the outcome of the vote on the Proposal; and
  - (ii) if applicable, the Administrators' reasons for exercising, or not exercising, as the case may be, a joint casting vote in accordance with order 6(g)(i) above.

#### **Extension of time to respond to creditor requests**

- 7. Pursuant to s 447A(1) of the Corporations Act and/or s 90-15 of the IPSC, s 70-1(2)(a) of the IPR is to operate in relation to the Rex Companies as if:
  - (a) the words '5 business days after receiving the request' be read as '10 business days after receiving the request'; and
  - (b) the Administrators may provide the information, report or document requested by a creditor by publishing that information, report or document on the Creditor Portal.



### **Limitation of Administrators' personal liability pursuant to Finance Documents**

8. 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 and the Rex Companies 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 Loan Agreement and the General Security Deed dated 30 July 2024 between the Administrators, the Rex Companies and PAGAC Regulus Holding Pte. Ltd and any variations of those documents (**Finance Documents**), including monies borrowed, interest incurred in respect of monies borrowed and borrowing costs, are in the nature of debts incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of the Rex Companies; and
  - (b) notwithstanding that the liabilities in subparagraph (a) are debts or liabilities incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of the Rex Companies, if the property and assets of the Rex Companies (where relevant) 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.

### **Suppression or non-publication order in relation to Finance Documents**

9. Until the conclusion of the external administration of the Rex Companies, or 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-2 to the affidavit of Samuel Freeman affirmed 3 August 2024 be kept confidential and be prohibited from disclosure to any person other than:
- (i) Yates J and his Honour's staff and assistants;
  - (ii) the Plaintiffs and their legal representatives; and
  - (iii) PAGAC Regulus Holding Pte. Ltd and its legal representatives.

### **Relief in relation to general meeting required under Corporations Act, s 249D**

10. Pursuant to s 1322(4)(d) of the Corporations Act, the time fixed by section 249D(5) for the calling of a meeting of members of the Second Plaintiff (**Rex Holdings**) requested in the notice dated 8 July 2024 issued by Kim Hai Lim (**Proposed EGM**), be extended up until and including the day that is twenty (20) business days after the second





meeting of creditors of Rex Holdings required by s 439A of the Corporations Act at which the creditors of Rex Holdings pass a resolution under s 439C of the Corporations Act.

11. Pursuant to s 1322(4)(d) of the Corporations Act, the time for Rex Holdings to provide a copy of the register of its members in response to the request dated 1 August 2024 issued by Kim Hai Lim, be extended up until and including the day that is five (5) business days after the day on which the meeting is called pursuant to order 1011 above.
12. Pursuant to s 1322(4)(d) of the Corporations Act, the time fixed by section 249D(5) for the holding the Proposed EGM be extended up until and including the day that is twenty-eight (28) days after the day on which the meeting is called pursuant to order 10 above.

**Notification of these orders**

13. The Administrators must take all reasonable steps to cause notice of these orders to be given, within one (1) business day of the making of these orders, to:
  - (a) the Australian Securities and Investments Commission; and
  - (b) to creditors of each of the Rex Companies (including persons or entities claiming to be creditors) in the manner specified in order 3 above.

**Other orders**

14. Any person who can demonstrate a sufficient interest has liberty 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.
15. The Administrators have liberty to apply on one (1) business day's written notice to the Court in relation to any variation of these orders or any other matter generally arising in the administrations of any or all of the Rex Companies.
16. The Administrators' costs of the application are to be treated as costs in the administrations of each of the Rex Companies, jointly and severally.

Date: 4 August 2024

A handwritten signature in cursive script that reads 'White &amp; Case'.

.....

Signature of plaintiffs' legal practitioner



This application will be heard by the \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_

**B. NOTICE TO DEFENDANT(S) (IF ANY)**

Not applicable.

**C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY**

Not applicable.

**D. FILING**

Date of filing:

\_\_\_\_\_  
Registrar

This originating process is filed by White & Case for the Plaintiffs.

**E. SERVICE**

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

The email address for service of the plaintiffs is [timothy.sackar@whitecase.com](mailto:timothy.sackar@whitecase.com) and [jillian.mcaleese@whitecase.com](mailto:jillian.mcaleese@whitecase.com)

It is intended to give notice of a copy of this originating process on the Australian Securities and Investments Commission and the creditors of each of the Second to Sixth Plaintiffs.

## SCHEDULE



No. NSD

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**

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