



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Avia Syndicate) Instrument 2015/825

I, Stephen Yen PSM, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 9 September 2015

Stephen Yen

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is the *ASIC Corporations (Avia Syndicate) Instrument 2015/825*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at www.comlaw.gov.au.

3 Authority

This instrument is made under paragraphs 601QA(1)(a), 741(1)(a) and 926A(2)(a) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Avia means Avia Aviation Pty Ltd ACN 168 007 869.

Avia Airshares means Avia Airshares Pty Ltd ACN 143 407 434.

Avia Entity means each of Avia, Avia Airshares and the Avia Plane Owning Companies.

Avia Plane Owning Company means, in relation to an Avia Syndicate, the company that is the registered operator of the aircraft to which the Avia Syndicate relates and that is, or has been, a related body corporate of Avia and Avia Airshares.

Avia Syndicate means a managed investment scheme, each interest in which confers rights and entitlements on a holder of a share in an Avia Plane Owning Company to use, occupy or possess (except for illegal activities or for the purpose of providing transportation of passengers or cargo in air commerce for compensation or hire) for 2 or more periods for which the scheme is to operate, an aircraft, where:

- (a) the aircraft is, or monies to purchase the aircraft are, provided by Avia Airshares to the Avia Plane Owning Company as consideration for the issue of shares in the Avia Plane Owning Company to Avia Airshares with a view to those shares being transferred to persons wishing to use, occupy or possess the aircraft from time to time in

accordance with the Shareholders' Agreement and Management Agreement; and

- (b) the sale of the shares in the Avia Plane Owning Company is carried out by Avia Airshares in accordance with a Sales Deposit Agreement and Share Purchase Agreement; and
- (c) the number of holders of shares in each Avia Plane Owning Company does not exceed 16 persons; and
- (d) the management of the aircraft, including as to maintenance, repairs, scheduling and regulatory compliance, is carried out by Avia in accordance with a Management Agreement.

Avia Syndicate interest means an interest in an Avia Syndicate.

Completion means completion of the sale of shares under the Share Purchase Agreement.

Management Agreement means an agreement in respect of the management of an aircraft under which the Avia Plane Owning Company appoints Avia to manage the aircraft and which is in substantially the same form as that provided to ASIC on 16 July 2015.

registered operator has the same meaning as in regulation 47.100 of the *Civil Aviation Safety Regulations 1998*.

Sales Deposit Agreement means an agreement in respect of confidentiality, due diligence and the holding of deposit money before a person commits to acquire an Avia Syndicate interest and shares in an Avia Plane Owning Company and which is in substantially the same form as that provided to ASIC on 16 July 2015.

Share Purchase Agreement means an agreement in respect of the purchase of shares in an Avia Plane Owning Company and which is in substantially the same form as that provided to ASIC on 16 July 2015.

Shareholders' Agreement means an agreement in respect of the rights and obligations of holders of an interest in an Avia Plane Owning Company and which is in substantially the same form as that provided to ASIC on 16 July 2015.

Part 2—Exemption

5 Exemptions in relation to Avia Syndicates

- (1) The Avia Entities do not have to comply with subsection 601ED(5) of the Act in relation to the operation of an Avia Syndicate.
- (2) The Avia Entities do not have to comply with subsection 911A(1) of the Act for the provision of a financial service in relation to an Avia Syndicate.
- (3) Avia Airshares and an Avia Plane Owning Company in relation to an Avia Syndicate do not need to comply with Parts 6D.2 and 6D.3 (except section 736) of the Act in relation to a sale of shares in the Avia Plane Owning Company in connection with the Avia Syndicate.

6 Conditions

- (1) Avia, Avia Airshares and the Avia Plane Owning Company in relation to an Avia Syndicate, must take reasonable steps to ensure that:
 - (a) the Product Disclosure Statement for offers of Avia Syndicate interests for issue or sale prominently discloses the following in a clear, concise and effective manner:
 - (i) an Avia Syndicate interest is not an investment product and is not intended to provide the holder of the interest with a financial return;
 - (ii) an Avia Syndicate interest is likely to be illiquid because of the absence of a secondary market for the trading of the interest;
 - (iii) a description of the material terms and conditions of the Management Agreement, Sales Deposit Agreement, Share Purchase Agreement and Shareholders' Agreement in relation to the Avia Syndicate, including:
 - (A) the rights of a person to withdraw an application for Avia Syndicate interests and shares in the Avia Plane Owning Company, and that there is no obligation for Avia, Avia Airshares or the Avia Plane Owning Company to purchase or redeem an Avia Syndicate interest or shares in the Avia Plane Owning Company after the expiration of the period to withdraw such an application; and

- (B) the circumstances in which the holders of Avia Syndicate interests may elect a new manager of the Avia Syndicate;
 - (iv) that Avia, Avia Airshares and the Avia Plane Owning Company do not hold an Australian financial services licence under the Act for the provision of financial services in relation to the Avia Syndicate and are not regulated by ASIC as financial services licensees;
 - (v) the Avia Syndicate is not registered as a managed investment scheme under the Act; and
- (b) a person who applies for an Avia Syndicate interest and a share in the Avia Plane Owning Company may, by written notice to Avia Airshares, withdraw the application and require Avia Airshares promptly to repay any application money (without deducting any fees or expenses, except for those reasonable fees or expenses permitted under the Share Purchase Agreement) during the period ending on the later of:
 - (i) 90 days after the date of entry into the Sales Deposit Agreement; and
 - (ii) 60 days after Completion;provided that person is not in material default of the Sales Deposit Agreement, Share Purchase Agreement, Shareholders' Agreement and Management Agreement.
- (2) Avia must take reasonable steps to become and remain a member of an external dispute resolution scheme:
 - (a) approved by ASIC for the purposes of subparagraph 912A(2)(b)(i) of the Act; and
 - (b) that covers complaints in relation to an Avia Syndicate made by holders of Avia Syndicate interests in connection with the operation of that Avia Syndicate.

7 Exemption for person acting on behalf of an Avia Entity

A person who provides a financial service in relation to an Avia Syndicate on behalf of an Avia Entity does not have to comply with subsection 911B(1) of the Act for the provision of the financial service.