

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/10/2020 11:44:17 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Interlocutory process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 3
File Number:	NSD464/2020
File Title:	APPLICATION IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Interlocutory Hearing
Time and date for hearing:	10/11/2020, 10:15 AM
Place:	Please check Daily Court List for details



*Sia Lagos*

Dated: 20/10/2020 12:07:32 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Form 3 Interlocutory process**

(Rule 2.2)

No. NSD 464 of 2020

Federal Court of Australia  
District Registry: New South Wales  
Division: Commercial and Corporations List

**IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 100 686 226 & ORS**

**VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND RICHARD HUGHES, IN THEIR CAPACITIES AS JOINT AND SEVERAL DEED ADMINISTRATORS OF VIRGIN AUSTRALIA HOLDINGS LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT)**

First Plaintiffs / First Applicants

**VIRGIN AUSTRALIA HOLDINGS LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN**

**100 686 226**

Second Plaintiff / Second Applicant

**A. DETAILS OF APPLICATION**

This application is made under sections 444GA and 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the *Insolvency Practice Schedule (Corporations)* set out in Schedule 2 to the Corporations Act (**IPS**) for orders that the First Plaintiffs, Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacities as joint and several deed administrators (**Deed Administrators**) of the Second to Forty-Second Plaintiffs (together, the **Companies**), be granted leave to transfer all of the existing shares in the Second Plaintiff, Virgin Australia Holdings Ltd (Subject to Deed of Company Arrangement) ACN 100 686 226 (**Company**), to BC Hart Aggregator, L.P., or its nominee (**Bain Capital**).

On the facts stated in the supporting affidavit of Vaughan Neil Strawbridge sworn on 20 October 2020 (**Strawbridge Affidavit**), the First Plaintiffs seek the following orders:

**Procedural orders (to be made at first return date of the Interlocutory Process)**

- 1. An order pursuant to section 447A of the Corporations Act and section 90-15(1) of the IPS that the Deed Administrators would be justified in providing the Explanatory Statement in the form annexed

Filed on behalf of (name & role of party)	The Plaintiffs		
Prepared by (name of person/lawyer)	Timothy James Sackar		
Law firm (if applicable)	Clayton Utz		
Tel	+61 2 9353 4000	Fax	+61 2 8220 6700
Email	jrobertson@claytonutz.com		
<b>Address for service</b> (include state and postcode)	Level 15, 1 Bligh Street, Sydney NSW 2000		



to the Interlocutory Process and marked "A" (**Explanatory Statement**) for distribution to the creditors and members of the Company.

2. An order that the Plaintiffs give notice to the creditors and members of the Company of the Interlocutory Process, the hearing date of this application, the Explanatory Statement and the availability of the independent expert's report of FTI Consulting (Australia) Limited dated 19 October 2020, within 3 business days of the date of the orders, by the following methods:
  - (a) where the creditor or member is a registered user on the Halo Platform (as that term is defined in the orders made on 11 August 2020), by publishing a notice via the Halo Platform;
  - (b) where the creditor or member is not a registered user on the Halo Platform but the Deed Administrators have an email address for a creditor or member (including from the books and records maintained by the Companies), by notifying each such creditor or member, via email;
  - (c) where a creditor or shareholder is not a registered user on the Halo Platform and the Deed Administrators do not have an email address for a creditor or shareholder (or have received notification of non-delivery of a notice sent by email in accordance with paragraph (b) above) but the Deed Administrators have a postal address for that creditor or shareholder (including from the books and records maintained by the Companies), by sending the materials to each such creditor or member, via post;
  - (d) by placing scanned, sealed copies on the website maintained by the Deed Administrators at <https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australiaholdings-limited-subsidiaries.html>; and
  - (e) by making an announcement to the Australian Stock Exchange.
3. An order that any interested person wishing to appear at the hearing of this application is to file and serve on the Plaintiffs and the Australian Securities and Investments Commission a Notice of Appearance in the prescribed form and indicating the grounds of opposition by 4pm on 5 November 2020.
4. An order that any interested person who is entitled to oppose this application pursuant to section 444GA(2) of the Corporations Act may apply to be joined as a respondent to this application by no later than 4pm on 5 November 2020.
5. An order that the Plaintiffs file any further evidence upon which they intend to rely on the application, including any supplementary affidavits deposing as to any correspondence or communications received by the Deed Administrators from any interested person who is entitled to oppose this application pursuant to section 444GA(2) of the Corporations Act and any responsive correspondence or communication from the Deed Administrators, by 12pm on 9 November 2020.

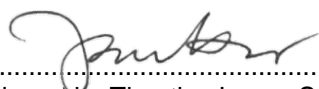


6. This application be listed for hearing on 10 November 2020 at 10.15am or such other date as the Court considers appropriate.

### Substantive orders

7. An order pursuant to section 444GA(1)(b) of the Corporations Act that the Deed Administrators be granted leave to transfer all of the existing shares in the capital of the Company (**Shares**) from the members (as defined in the Corporations Act) to Bain Capital or its nominee in accordance with clause 10.3 of the deed of company arrangement dated 25 September 2020, entered into by the Deed Administrators, Bain Capital, and certain of the Companies (**Deed**).
8. An order pursuant to section 447A(1) and section 90-15(1) of the IPS of the Corporations Act that any of the Deed Administrators may, jointly or severally, in their capacity as Deed Administrators:
- (a) execute share transfer forms and any other documents ancillary or incidental to effecting the transfer of the Shares referred to in Order 7; and
  - (b) enter or procure the entry of the name of Bain Capital or its nominee into the share register of the Company in respect of all Shares transferred to Bain Capital or its nominee in accordance with Order 7.
9. An order that the Deed Administrators' costs of and incidental to this application be costs and expenses in the deed administration of the Company.
10. An order that the Court's orders be entered forthwith.
11. Such further or other orders or directions as the Court considers appropriate.

Date: 20 October 2020

  
.....  
Signed by Timothy James Sackar  
Solicitor for the Plaintiffs



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

N/A

**C. FILING**

This interlocutory process is filed by Clayton Utz, solicitors for the Plaintiffs.

**E. SERVICE**

The Plaintiffs' address for service is:

Attention: Timothy Sackar/Jillian Robertson  
C/- Clayton Utz  
Lawyers  
1 Bligh Street, Sydney NSW 2000  
DX 370 Sydney

It is intended that a copy of this interlocutory process will be provided to each of the persons listed below:

Australian Securities and Investments Commission

"A"

## Explanatory Statement

Virgin Australia Holdings Limited ACN 100 686 226 (Subject to Deed of Company Arrangement) (**VAH** or **Company**)

[#] October 2020

Draft

## Explanatory Statement to shareholders and Independent Expert's Report

This Explanatory Statement provides information to the Company's shareholders (**Shareholders**) in respect of the deeds of company arrangement (**DOCAs**) entered into by Virgin Australia Holdings Limited ACN 100 686 226 (Subject to Deed of Company Arrangement) (**VAH**) and certain of its subsidiaries listed in Schedule 1 (together, the **Virgin Group**), BC Hart Aggregator, L.P. (**Bain Capital**) and the Deed Administrators on 25 September 2020.

It is a condition to completion and effectuation of the Primary DOCA that the Deed Administrators obtain a Court order pursuant to section 444GA(1)(b) of the *Corporations Act 2001* (Cth) (**Act**) granting leave to the Deed Administrators to transfer all of the Shares to Bain Capital for nil consideration. The Deed Administrators have applied for this order in the Federal Court of Australia (**Section 444GA Application**).

The Section 444GA Application has been tentatively listed for a final hearing on [Date TBC] at [Time TBC] in the Federal Court of Australia and will be heard via Microsoft Teams link.

If you wish to appear at the Court hearing and/or oppose the Section 444GA Application, you may do so by filing with the Court, and serving on the Deed Administrators and ASIC, a notice of appearance in the prescribed Court form indicating the grounds of opposition by [Time/Date TBC] 2020.

The Section 444GA Application has been listed for a directions hearing at [Time/Date TBC] 2020 before [Details to be confirmed] (**Directions Hearing**), when further directions relating to the final hearing of the Section 444GA Application will be made, including directions for the filing of any further evidence and confirmation of the final hearing date.

**Shareholders should consider the Independent Expert's Report in full before deciding whether to take any action in relation to the Section 444GA Application. If you are in any doubt as to the action you should take, you are recommended to obtain your own personal financial advice from your legal or other professional adviser(s).**

A copy of the Explanatory Statement (including the Independent Expert's Report) has been provided to ASIC at the same time as the issuance of this Explanatory Statement. Neither ASIC nor any of its officers take any responsibility for its contents.

## Key information for Shareholders

Capitalised terms used in this Explanatory Statement have the meanings defined in the Glossary in Schedule 2, unless the context requires otherwise or unless a term has been defined in the text of the Explanatory Statement.

### 1. Purpose of the Explanatory Statement

This document is an Explanatory Statement issued by VAH in connection with the Primary DOCA. If the Section 444GA Order is made and the Primary DOCA is implemented, all of your shares in VAH will be transferred to Bain Capital for no consideration and you will cease to own your shares.

Section 4 of this report contains further information regarding the Primary DOCA.

This Explanatory Statement contains information about:

- (a) the Section 444GA Application to the Court for approval to transfer all of the Shares to Bain Capital as part of the Primary DOCA;
- (b) the steps that you need to take if you wish to appear at the Court hearing in respect of the Section 444GA Application, which has been listed for hearing on [Date/Time TBC]; and
- (c) the effect of the Primary DOCA on you as a Shareholder, in order to assist you in deciding whether to take action in respect of the Section 444GA Application.

An Independent Expert's Report prepared by FTI, which contains an objective valuation of the Shares is attached to this document as **Attachment 1**.

### 2. Administration of the Virgin Group

On 20 April 2020, Vaughan Strawbridge, John Greig, Salvatore Algeri and Richard Hughes, were appointed as joint and several administrators (**Administrators**) of the Virgin Group, with the exception of Tiger International Number 1 Pty Ltd (Subject to Deed of Company Arrangement) (**Tiger 1**), VAH Newco No. 2 Pty Ltd (In Liquidation) (Subject to Deed of Company Arrangement) (**VAH Newco 2**) and VB Investco Pty Ltd (In Liquidation) (Subject to Deed of Company Arrangement) (**VB Investco**) in respect of which the Administrators were appointed on 28 April 2020 (Tiger 1) and 3 August 2020 (VAH Newco 2 and VB Investco).

A copy of the group structure chart for VAH and its subsidiaries is contained in Appendix D of the Administrators' Section 75-225 Report (a copy of which is provided as **Attachment 3**).

In the Administrators' Section 75-225 Report, the Administrators stated that the earliest date of insolvency in respect of the Virgin Group was 18 March 2020 and that the insolvency of the Virgin Group was due to an immediate and catastrophic reduction in capacity, in response to the announcements that were made by respective state and federal governments on restrictions on domestic travel in Australia in response to the coronavirus pandemic.

As you would be aware, the Shares have been suspended from trading on the ASX since 16 April 2020.

When the Virgin Group entered into voluntary administration, it owed approximately \$7,146,400,000 to unrelated third party creditors, including but not limited to secured and unsecured aircraft financiers and unsecured bondholders.

We refer to section 3.4 of the Administrators' Section 75-225 Report, which provides a detailed overview of the Virgin Group's creditors including financial creditors, employees and others.



### 3. Sale Process and formulation of the DOCAs

Immediately after their appointment, the Administrators commenced a competitive and comprehensive global sale process (**Sale Process**). The Sale Process occurred over a two-month period and in three phases:

- (a) **Phase One (April 2020 to mid-May 2020)** - In Phase One, 19 parties who had entered into non-disclosure agreements with the Administrators were given access to a virtual data room containing documents about the business and financial position of the Virgin Group. The Administrators subsequently received several non-binding indicative offers (**NBIO**) and, based on those offers, formed a shortlist of interested parties (**Shortlisted Bidders**);
- (b) **Phase Two (mid-May to June)** - In Phase Two, the Shortlisted Bidders conducted further due diligence, and were provided with additional financial and operational information about the Virgin Group, including a vendor due diligence report prepared by the Administrators' legal advisers, Clayton Utz. The Administrators subsequently received six final NBIOs, of which, they selected two to proceed to 'Phase 3' of the Sale Process (**Final Bidders**); and
- (c) **Phase Three (June 2020)** - In Phase Three, the Final Bidders conducted further due diligence, culminating in both parties making final binding offers on 22 June 2020. Following the Administrators' consideration and assessment of the two competing proposals, on 26 June 2020, the Administrators exercised their power of sale as administrators of the Virgin Group and signed binding transaction documents in the form of a sale and implementation deed and other ancillary documents (**Sale and Implementation Deed**) for the sale of the business to Bain Capital.

The completion of the Sale and Implementation Deed (**Completion**) was structured to occur in one of two ways:

- (a) pursuant to the DOCAs proposed by Bain Capital; or
- (b) by way of an asset sale agreement (**ASA**) involving the transfer of the business to Bain Capital.

The group is comprised of a parent company, VAH, which is listed on the ASX, and forty-nine controlled entities. This includes four main trading entities and 9 special purpose companies used for holding and financing aircraft assets. Voluntary administrators were appointed to 41 entities in the Virgin Group and all of those entities are now subject to deeds of company arrangement.

In addition to the Primary DOCA (which is the subject of this Explanatory Statement), Bain Capital proposed 9 other deeds of company arrangement covering all other entities in the Virgin Group in administration that were not proposed to be a party to the Primary DOCA. At the Second Meeting, creditors of the relevant Virgin Group companies resolved that these other 9 deeds of company arrangement also be executed. Further details in relation to the other 9 deeds of company arrangement are contained in section 9 of the Administrators' Section 75-225 Report.

In the Administrators' Section 75-225 Report, the Administrators recommended each of the deeds of company arrangement proposed by Bain Capital.

## 4. Key information in relation to the Primary DOCA

### 4.1 Overview

At the Second Meeting held pursuant to section 439A of the Act, the creditors of the Primary DOCA Companies resolved that those companies enter into the Primary DOCA and that the Administrators be appointed as joint and several deed administrators (**Deed Administrators**).

The Primary DOCA was executed by all parties on 25 September 2020 and it is intended to compromise certain claims of creditors of the Primary DOCA Companies that arose prior to 20 April 2020.

The Primary DOCA contemplates the following steps being taken in relation to the Shares, on the condition that the orders sought by the Deed Administrators pursuant to the Section 444GA Application are made by the Court:

(a) **Step 1: Transfer of Shares**

The Deed Administrators will transfer all of the Shares to Bain Capital or its nominee.

(b) **Step 2: New subscription**

Bain Capital or its nominee will subscribe for an aggregate amount equal to the sum of the amount of funding provided by Bain Capital for the purposes of the Creditors' Trust and the drawn amount under the Interim Funding Facility, for additional shares in VAH.

### 4.2 Conditions

The implementation of the Primary DOCA is conditional upon the satisfaction of certain Conditions, including:

- (a) the Deed Administrators, the Trustees and the Primary DOCA Companies executing the Creditors' Trust Deed;
- (b) ASIC granting an exemption pursuant to section 655A(1)(a) of the Act from the application of section 606 of the Act to permit the transfer of all of the Shares to Bain Capital or its nominee (**ASIC Relief**); and
- (c) the Deed Administrators obtaining the orders sought pursuant to the Section 444GA Application. The date by which the Conditions must be satisfied is 30 November 2020 pursuant to clause 4.4(a)(1) of the Primary DOCA. If the Conditions are not satisfied or waived by 30 November 2020, the transfer of the business and assets of the Virgin Group will occur via the ASA.

### 4.3 Key Terms

The key terms of the Primary DOCA include<sup>1</sup>:

- (a) the establishment of a Creditors' Trust, whereby upon the effectuation of the Primary DOCA, all eligible creditors' claims against the Primary DOCA Companies will transfer to the Creditors' Trust and a dividend will be paid in respect of those eligible creditor claims to satisfy those claims;

<sup>1</sup> The other 9 deeds of company arrangement entered into by the remaining Virgin Group companies (being all other Virgin Group companies that are not party to the Primary DOCA), Bain Capital and the Deed Administrators contain provisions that are substantially on the same terms as the Primary DOCA - save to note that the ASIC Relief and 444GA Order are not conditions to completion of those deeds of company arrangement.

- (b) all employees who are employed by one of the Primary DOCA Companies at the date of the Primary DOCA and who remain employees upon completion of the Primary DOCA will be paid in the normal course. All employee entitlements will be unaffected, and Bain Capital will assume continuing employee entitlements for continuing employees and pay out in full entitlements to employees that are made redundant;
- (c) Bain Capital will provide customers who are currently holding credits, because they paid for a flight prior to 20 April 2020 that was cancelled by the Virgin Group or for which they were otherwise entitled to a refund, with a new credit (**Future Flight Credit**) for an amount equal to any remaining value on their existing credit. Future Flight Credits will be available for booking flights up to 31 July 2022 with travel valid until 30 June 2023; and
- (d) any Shareholder claims which are subordinated to the claims of other unsecured creditors under the Act will be extinguished and Shareholders are not eligible to receive a dividend from the Creditors' Trust in respect of those claims.

If the Primary DOCA is implemented, VAH will be delisted from the ASX and Bain Capital will continue to operate the business as a going concern.

## 5. Independent Expert's Report

As noted above, the Section 444GA Application has been commenced by the Deed Administrators in the Federal Court of Australia seeking the leave of the Court pursuant to section 444GA(1)(b) of the Act for the transfer of the Shares to Bain Capital.

Under subsection 444GA(3) of the Act, the Court may only grant leave to transfer the Shares to Bain Capital if it is satisfied that the transfer would not unfairly prejudice the interests of the Shareholders. The Deed Administrators intend to rely on the Independent Expert's Report when addressing the issue of unfair prejudice before the Court.

The Deed Administrators engaged the Expert to provide an independent opinion on whether the Share Transfer would unfairly prejudice the Shareholders. This involved the Expert valuing the Shares on both a going concern and non-going concern (liquidation) basis. In respect of the liquidation analysis, the Expert considered two liquidation scenarios: (i) a distressed sale - selling the business in distress as a whole or as an assembly of assets, which can be revitalised as a business; and (ii) selling the assets on an asset by asset basis. The valuation date used by the Expert in the assessment was 30 June 2020, being the date of the most recently available financial information of VAH. However, to the extent possible, the Expert considered material events up to the date of the 31 August 2020 in assessing value.

The Independent Expert's Report will be relied upon by the Deed Administrators for the purpose of the Section 444GA Application and also for the purpose of applying for ASIC Relief. See **Attachment 1** for a full copy of the Independent Expert's Report. Shareholders (and their advisers and any other interested parties) should read the Independent Expert's Report carefully and in its entirety. By way of summary, the key findings of the Expert, as set out in Independent Expert's Report, are as follows:

- (d) On a going concern basis, the equity of VAH has nil value as at the Valuation Date. However, in light of the current operating environment caused by COVID-19, the Expert notes that the more relevant assessment of value of the purpose of assisting the Court in relation to the Section 444GA Application is the liquidation basis; and
- (e) On a liquidation basis, the equity of VAH has nil value as at the Valuation Date.

## 6. Section 444GA Application

### 6.1 Overview

The Section 444GA Application has been filed in the Federal Court of Australia. A copy of the Interlocutory Process filed by the Deed Administrators is provided as **Attachment 4** of this Explanatory Statement. At the Directions Hearing, which will be heard on [Date/Time TBC], it is expected that the Court will:

- (a) set a timetable for the preparation of the matter for final hearing, which is likely to include the dates by which any interested person (including any Shareholder who wishes to oppose the Section 444GA Application) must file with the Court and serve on the Deed Administrators a notice of appearance and any affidavit evidence on which that person intends to rely; and
- (b) confirm the final hearing date and time.

If you wish to appear at the Directions Hearing to make submissions on the timetable to be set down by the Court, and/or oppose the Section 444GA Application at the final hearing, you will need to file with the Court and serve on the Deed Administrators and ASIC a notice of appearance in the prescribed Court form and any affidavit on which you intend to rely. The timetable that the Deed Administrators anticipate the Court will set down at the Directions Hearing is likely to provide a date by which any appearance and affidavit must be filed and served by an interested party who wishes to oppose the Section 444GA Application at the final hearing.

The Deed Administrators will accept service of any appearance and affidavit at Clayton Utz, Level 15, 1 Bligh Street, Sydney NSW 2000 (Attention: Timothy Sackar/ Jillian Robertson) or [tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)/ [jrobertson@claytonutz.com](mailto:jrobertson@claytonutz.com).

### 6.2 Important Dates

We draw your attention to the following key dates in relation to the Section 444GA Application:

Event	Date
Notice of appearance and affidavits to be served by any Shareholder seeking to appear at the hearing of the Section 444GA Application	[TBC]
Directions hearing - during which further directions for the hearing of the Section 444GA Application are to be made	[TBC]
Proposed hearing date for the Section 444GA Application	[TBC]
Proposed date for the Share Transfer	[TBC]

*The dates, including the proposed hearing date, will be subject to any further directions made by the Court.*

### 6.3 What will happen if the Section 444GA Order is not made?

As the Section 444GA Order is a Condition (see section 4.2 above) to completion of the Primary DOCA, the deed will not be effectuated if the Section 444GA Order is not made. In those circumstances, Completion will occur via the ASA, subject to any conditions contained in the ASA. Following completion under the ASA, the Deed Administrators will then convene a meeting to consider the future of the Virgin Group.

It is the Deed Administrators' opinion that the time, cost and complexity of completing the ASA would be greater than effectuation of the Share Transfer. The sale price is also lower under the ASA than the Primary DOCA due to the additional transaction costs that would be incurred by Bain Capital in completing the ASA. This would necessarily mean a lower return to creditors and would not result in any return to Shareholders (for further details, we refer you to section 11 of the Section 75-225 Report).

#### **6.4 Effect of the Section 444GA Order on Shareholders**

If the Section 444GA Order is made and the Primary DOCA is fully implemented, all of your shares in VAH will be transferred by the Deed Administrators to Bain Capital and you will not receive any money or form of consideration.

#### **6.5 Australian income tax consequences**

This section of the Explanatory Statement is provided as general information for Shareholders who are Australian resident taxpayers holding their Shares on capital account, not as trading stock, and who are not subject to the Taxation of Financial Arrangements rules in Division 230 of the *Income Tax Assessment Act 1997* (Cth) for the purposes of calculating any gains or losses arising from financial arrangements. It does not take account of the circumstances of any individual Shareholder. Each Shareholder should seek its own tax advice on the consequences for it of the Primary DOCA being effectuated.

Upon the effectuation of the Primary DOCA, the Share Transfer will give rise to a capital gains event (**CGT Event**) for Shareholders because it will trigger a CGT Event and may crystallise a capital loss. Depending upon each individual taxpayer's financial position and tax profile, this capital loss may be available to offset against the taxpayer's capital gains thereby potentially reducing the amount of tax otherwise payable by the taxpayer.

The Australian resident Shareholders who hold their Shares on capital account will incur a capital loss to the extent the reduced cost base of the Shares transferred exceeds the market value of the Shares.

The reduced cost base in the Shares includes:

- (a) the acquisition cost of the Shares;
- (b) incidental acquisition costs incurred to acquire and hold the Shares;
- (c) expenditure incurred to increase or preserve the value of the Shares; and
- (d) capital expenditure incurred to establish, preserve or defend their title to the Shares.

Given the transfer will occur by way of Court order, the time of the CGT Event for Shareholders will be when the Share Transfer takes effect in accordance with the Primary DOCA.

### **7. ASIC Relief**

As VAH is a publically listed company on the ASX, the ASIC Relief (referred to at 4.2(b) above) will be required to enable completion of the Share Transfer.

The Deed Administrators have engaged with ASIC by providing a copy of this Explanatory Statement along with additional information relevant to the relief being sought.

### **8. What do you need to do now?**

Shareholders (and their advisers and any other interested parties) should read this Explanatory Statement (including the documents referred to in this Explanatory Statement) in

its entirety before making a decision regarding whether or not to take any action in relation to the Section 444GA Application.

Please note that this Explanatory Statement does not constitute financial product advice and has been prepared without reference to the investment objectives, financial situation, taxation position or particular needs of any and every Shareholder. Whether or not to take any action in relation to the Primary DOCA or in respect of the Section 444GA Application is a decision for each individual Shareholder and will depend, amongst other things, on an assessment of the relevant Shareholder's individual financial circumstances. Accordingly, as the professional, financial, legal and taxation consequences of such a decision may be different for each particular Shareholder, each Shareholder should seek professional financial, legal and taxation advice before making a decision.

## 9. What information is available to assist you?

To assist you in deciding whether to take any action in relation to the Section 444GA Application, this Explanatory Statement attaches copies of the following documents:

- (e) Independent Expert's Report at Attachment 1;
- (f) Primary DOCA and Creditors' Trust Deed at Attachment 2; and
- (g) Administrators' Section 75-225 Report to Creditors at Attachment 3;
- (h) Interlocutory Process filed by the Deed Administrators in relation to the Section 444GA Application is at Attachment 4.

Should you have any queries regarding this Explanatory Statement, the Independent Expert's Report or the Section 444GA Application, please email [virginadmin@deloitte.com.au](mailto:virginadmin@deloitte.com.au).

## Schedule 1 - Virgin Group

Virgin Australia Holdings Ltd ACN 100 686 226 (Subject to Deed of Company Arrangement)

Virgin Australia International Operations Pty Ltd ACN 155 859 608 (Subject to Deed of Company Arrangement)

Virgin Australia International Holdings Pty Ltd ACN 155 860 021 (Subject to Deed of Company Arrangement)

Virgin Australia International Airlines Pty Ltd ACN 125 580 823 (Subject to Deed of Company Arrangement)

Virgin Australia Airlines (SE Asia) Pty Ltd ACN 097 892 389 (Subject to Deed of Company Arrangement)

Virgin Australia Airlines Holdings Pty Ltd ACN 093 924 675 (Subject to Deed of Company Arrangement)

VAH Newco No.1 Pty Ltd ACN 160 881 345 (Subject to Deed of Company Arrangement)

Tiger Airways Australia Pty Limited ACN 124 369 008 (Subject to Deed of Company Arrangement)

Virgin Australia Airlines Pty Ltd ACN 090 670 965 (Subject to Deed of Company Arrangement)

VA Borrower 2019 No. 1 Pty Ltd ACN 633 241 059 (Subject to Deed of Company Arrangement)

VA Borrower 2019 No. 2 Pty Ltd ACN 637 371 343 (Subject to Deed of Company Arrangement)

Virgin Tech Pty Ltd ACN 101 808 879 (Subject to Deed of Company Arrangement)

Short Haul 2018 No. 1 Pty Ltd ACN 622 014 831 (Subject to Deed of Company Arrangement)

Short Haul 2017 No. 1 Pty Ltd ACN 617 644 390 (Subject to Deed of Company Arrangement)

Short Haul 2017 No. 2 Pty Ltd ACN 617 644 443 (Subject to Deed of Company Arrangement)

Short Haul 2017 No. 3 Pty Ltd ACN 622 014 813 (Subject to Deed of Company Arrangement)

VBNC5 Pty Ltd ACN 119 691 502 (Subject to Deed of Company Arrangement)

A.C.N. 098 904 262 Pty Ltd ACN 098 904 262 (Subject to Deed of Company Arrangement)

Virgin Australia Regional Airlines Pty Ltd ACN 008 997 662 (Subject to Deed of Company Arrangement)

Virgin Australia Holidays Pty Ltd ACN 118 552 159 (Subject to Deed of Company Arrangement)

VB Ventures Pty Ltd ACN 125 139 004 (Subject to Deed of Company Arrangement)

Virgin Australia Cargo Pty Ltd ACN 600 667 838 (Subject to Deed of Company Arrangement)

VB Leaseco Pty Ltd ACN 134 268 741 (Subject to Deed of Company Arrangement)

VA Hold Co Pty Ltd ACN 165 507 157 (Subject to Deed of Company Arrangement)

VA Lease Co Pty Ltd ACN 165 507 291 (Subject to Deed of Company Arrangement)

Virgin Australia 2013-1 Issuer Co Pty Ltd ACN 165 507 326 (Subject to Deed of Company Arrangement)

737 2012 No.1 Pty. Ltd ACN 154 201 859 (Subject to Deed of Company Arrangement)

737 2012 No. 2 Pty Ltd ACN 154 225 064 (Subject to Deed of Company Arrangement)

- Short Haul 2016 No. 1 Pty Ltd ACN 612 766 328 (Subject to Deed of Company Arrangement)
- Short Haul 2016 No. 2 Pty Ltd ACN 612 796 077 (Subject to Deed of Company Arrangement)
- Short Haul 2014 No. 1 Pty Ltd ACN 600 809 612 (Subject to Deed of Company Arrangement)
- Short Haul 2014 No. 2 Pty Ltd ACN 600 878 199 (Subject to Deed of Company Arrangement)
- VA Regional Leaseco Pty Ltd ACN 127 491 605 (Subject to Deed of Company Arrangement)
- VB 800 2009 Pty Ltd ACN 135 488 934 (Subject to Deed of Company Arrangement)
- VB Leaseco No 2 Pty Ltd ACN 142 533 319 (Subject to Deed of Company Arrangement)
- VB LH 2008 No. 1 Pty Ltd ACN 134 280 354 (Subject to Deed of Company Arrangement)
- VB LH 2008 No. 2 Pty Ltd ACN 134 288 805 (Subject to Deed of Company Arrangement)
- VB PDP 2010-11 Pty Ltd ACN 140 818 266 (Subject to Deed of Company Arrangement)
- Tiger International Number 1 Pty Ltd ACN 606 131 944 (Subject to Deed of Company Arrangement)
- VAH Newco No. 2 Pty Ltd ACN 160 881 354 (In Liquidation) (Subject to Deed of Company Arrangement)
- VB Investco Pty Ltd ACN 101 961 095 (In Liquidation) (Subject to Deed of Company Arrangement)

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## Schedule 2 - Glossary of terms

In the Explanatory Statement, capitalised terms have the meanings set out in the following table:

<b>Act</b>	<i>Corporations Act 2001 (Cth)</i>
<b>Administrators</b>	Vaughan Neil Strawbridge, Salvatore Algeri, Richard John Hughes and John Lethbridge Greig of Deloitte Touche Tohmatsu
<b>ASA</b>	Has the meaning as defined in the Primary DOCA
<b>ASIC</b>	Australian Securities and Investments Commission
<b>ASX</b>	Australian Securities Exchange
<b>Bain Capital</b>	BC Hart Aggregator, L.P.
<b>Completion</b>	The completion of the Sale and Implementation Deed
<b>Conditions</b>	The conditions set out in clause 4.1 of the Primary DOCA
<b>Court</b>	Federal Court of Australia
<b>Creditors' Trust</b>	Has the meaning as defined in the Primary DOCA.
<b>Creditors' Trust Deed</b>	The document entitled 'Creditors' Trust Deed' between the Deed Administrators, VAH and Bain Capital that is annexed to the Primary DOCA
<b>Deed Administrators</b>	Vaughan Strawbridge, Salvatore Algeri, Richard Hughes and John Greig of Deloitte Touche Tohmatsu
<b>Expert</b>	FTI Consulting (Australia) Pty Limited
<b>Explanatory Statement</b>	This document as described in section 1
<b>Future Flight Credit</b>	Has the meaning as defined in the Primary DOCA
<b>Independent Expert's Report</b>	The report by the Expert as described in section 5 and as annexed to this Explanatory Statement at Attachment 1
<b>Interim Funding Facility</b>	Has the meaning as defined in the Primary DOCA
<b>NBIO</b>	Non-binding indicative offer
<b>Primary DOCA</b>	The deed of company arrangement entered into between VAH and 27 of its subsidiaries, Bain Capital and the Deed Administrators on 25 September 2020

<b>Primary DOCA Companies</b>	A.C.N. 098 904 262 Pty Ltd, Tiger Airways Australia Pty Limited, Virgin Australia Holidays Pty Ltd, VAA, Virgin Australia Airlines Holdings Pty Ltd, Virgin Australia Cargo Pty Ltd, VAH, VAH Newco No.1 Pty Ltd, VAH Newco No.2 Pty Ltd, Virgin Australia Regional Airlines Pty Ltd, VB Investco Pty Ltd, VB Leaseco Pty Ltd, VB Ventures Pty Ltd, Virgin Tech Pty Ltd, Virgin Australia International Holdings Pty Ltd, 737 2012 No.1 Pty. Ltd., 737 2012 No. 2 Pty Ltd, Short Haul 2016 No. 1 Pty Ltd, Short Haul 2016 No. 2 Pty Ltd, Short Haul 2017 No. 1 Pty Ltd, VA Hold Co Pty Ltd, VA Lease Co Pty Ltd, Virgin Australia 2013-1 Issuer Co Pty Ltd, VA Regional Leaseco Pty Ltd, VB PDP 2010-11 Pty Ltd, VB LH 2008 No. 1 Pty Ltd, VB LH 2008 No. 2 Pty Ltd, VBNC5 Pty Ltd
<b>Sale and Implementation Deed</b>	Has the meaning as defined in the Primary DOCA
<b>Sale Process</b>	The competitive and comprehensive global sale process of the Virgin Group undertaken by the Administrators from April to June 2020
<b>Second Meeting</b>	The second meeting of creditors of the VAH and certain of its subsidiaries in the Virgin Group held concurrently on 4 September 2020 in accordance with section 439A of the Act
<b>Section 75-225 Report</b>	The report prepared by the Administrators in accordance with section 75-225 of the Insolvency Practice Rules dated 25 August 2020 as annexed to this Explanatory Statement at Attachment 3
<b>Section 444GA Application</b>	The application by the Deed Administrators pursuant to section 444GA of the Act as described in section 6.
<b>Section 444GA Order</b>	The orders sought by the Deed Administrators pursuant to the Section 444GA Application.
<b>Shares</b>	All the issued share capital of VAH
<b>Shareholders</b>	Means the shareholders of VAH as at the date of the Explanatory Statement
<b>Share Transfer</b>	The transfer of shares in VAH to Bain Capital pursuant to the Primary DOCA
<b>Shortlisted Bidders</b>	The parties selected by the Administrators to participate in Phase 2 of the Sale Process
<b>Tiger 1</b>	Tiger International Number 1 Pty Ltd ACN 606 131 944 (subject to deed of company arrangement)
<b>Trustees</b>	Vaughan Strawbridge, Salvatore Algeri, Richard Hughes and John Greig of Deloitte Touche Tohmatsu in their capacity as trustees of the Creditors Trust
<b>VAA</b>	Virgin Australia Airlines Pty Ltd ACN 090 670 965 (subject to deed of company arrangement)

<b>VAH</b>	Virgin Australia Holdings Limited ACN 100 686 226 (subject to deed of company arrangement)
<b>VAH Newco 2</b>	VAH Newco No. 2 Pty Ltd ACN 160 881 354 (in liquidation) (subject to deed of company arrangement)
<b>VB Investco</b>	VB Investco Pty Ltd ACN 101 961 095 (in liquidation) (subject to deed of company arrangement)
<b>Virgin Group</b>	VAH and each of the subsidiaries listed in Schedule 1 of this Explanatory Memorandum.
<b>Velocity</b>	Velocity Rewards Pty Ltd ACN 116 089 448

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**Attachment 1 - Independent Expert's Report**

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**Attachment 2 – Primary DOCA and Creditors Trust**

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**Attachment 3 - Section 75-225 Report**

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**Attachment 4 - Interlocutory Process**

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