



**STRICTLY PRIVATE AND CONFIDENTIAL**

Gareth Davies  
Director General, International and Security Group  
Department for Transport  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

18 September 2019

Dear Mr Davies,

**Thomas Cook Group plc (the "Company"): update and commercial proposal**

**1. Introduction**

I write to you in connection with the Company's ongoing recapitalisation negotiations ("**Project Avenue**"). We have now started to receive feedback from stakeholders on the "Compromise Proposal" which our financial advisers, PJT Partners, sent out over the weekend (a copy of which I shared with you at our meeting on Monday morning). You will recall that I mentioned that the purpose of the Compromise Proposal is to find a way to unlock a commercial agreement following the feedback we received last week that certain of our lending banks are now requiring an additional £200 million of new money funding as a condition to their support for the implementation of Project Avenue. The target for completion of that transaction continues to be, as I mentioned, early October.

The initial feedback which we have received from stakeholders (including Fosun, the bank lenders and the ad hoc noteholder group) is that (i) all parties remain broadly supportive of the transaction, but (ii) there remain a number of substantive outstanding commercial points that will need to be resolved. One of these points is the need to reach agreement on whether bank lenders and noteholders should benefit from a conversion right into Fosun Tourism Group's shares in exchange for the creditors' 25% stake in the tour operator. Achieving a resolution of the outstanding points is without doubt challenging, and (as I mentioned) we are still faced with the need to secure a commitment for additional new funding required by our lending banks. However, and notwithstanding these challenges, as a Board of Directors we have concluded that there should be sufficient shared determination (and economic logic) for all parties to find a solution.

In order to assist with the resolution of the outstanding commercial issues, in particular the provision of the additional £200 million of new money funding referred to above, we wanted to explore with you whether HM Government would be willing to participate in Project Avenue on commercial terms alongside the Company's other stakeholders. Accordingly, we have set out an overview of our proposal for HM Government's participation in Project Avenue in Option 1 below.

If HM Government concludes that it is not able to assist with Option 1, we have set out as Option 2 our alternative request. This is for HM Government to help us to exert pressure on the various stakeholders to support the Compromise Proposal and, in the event that the Company and its key stakeholders do not reach agreement, to discuss in principle what alternative support may be available to the Company to assist with the implementation of a contingency plan on a coordinated basis.

## **2. Option 1: proposal for HM Government participation in Project Avenue**

As set out further in the term sheet at Appendix 1 to this letter, the Company proposes that a sub-set of its core lending banks would commit to provide a standby facility of between £150 million and £250 million (subject to final stakeholder feedback) to be used by the Company in the event that the £900 million capital injection agreed as part of Project Avenue proves to be insufficient during the next three years. This facility would be repaid before other financial indebtedness is repaid and would be structured as a last in – first out facility that would increase the Company's liquidity headroom during its seasonal working capital troughs. This facility would be guaranteed by HM Government, in consideration for which HM Government would receive a fee and would benefit from the same security package as other lenders providing new money.

The Company considers that the terms of the proposal outlined in this letter and in Appendix 1 would be capable of being structured to adhere to the market economy operator principle, as they would likely be acceptable to a commercial investor providing similar financial support in similar circumstances. In particular, I note that:

- (A) HM Government would receive a fee for the provision of its guarantee;
- (B) interest owed to HM Government as a result of a call under the guarantee would be set at a rate in order to ensure that it is commensurate with the interest rate to be given to the primary lenders under the facility;
- (C) HM Government's exposure under the guarantee would be secured, ranking *pari passu* with amounts owed by the Thomas Cook Group to its lenders in respect of the core facilities being advanced pursuant to Project Avenue; and
- (D) the economic terms would be based on a proposal for a loan to be provided by one of the Company's other stakeholders.

As such, the Company considers that there is a reasonable basis for HM Government to conclude that support on these terms could be structured in order to ensure that it would not constitute state aid. We would also propose to engage with you on an expedited basis in order to agree final pricing and

terms, with input from our financial advisers. In addition, we can provide further due diligence information (including the Company's business plan) on request.

**3. Option 2: request for HM Government engagement with key stakeholders to achieve the Compromise Proposal or, if this cannot be implemented, to assist with the implementation of a contingency plan on a more coordinated basis**

We have set ourselves the target of achieving a commercial consensus on all material outstanding points by the evening of Sunday 22 September 2019, when we are scheduled to have a further board meeting to review progress and status. If that target can be reached then our judgement is that it continues, just, to be possible to document and close a transaction by early October.

If commercial agreement is not reached by Sunday evening, our current working assumption – although the Board will continue to keep the position under review by reference to the position at the time – is that as a Board we will likely be compelled to conclude that there is no longer a reasonable prospect of avoiding insolvency. As such, we will be required to take steps to place the Company (and other members of its group) into an insolvency procedure.

Of course, if adverse developments occur before Sunday, then that may bring forward the point in time we are forced to reach that conclusion (and, by implication, take steps to commence insolvency proceedings earlier).

Our requests of HM Government as part of Option 2, if you conclude that Option 1 cannot be supported by HM Government, are therefore twofold:

- (A) first, that you exert all pressure that HM Government is capable of on the various key stakeholders whose support is needed for Project Avenue to succeed and, in particular, to encourage them to support the Compromise Proposal. We believe we have already covered in our discussions the key stakeholders that are relevant, but we would be happy to discuss with you further what would be most helpful; and
- (B) second, if HM Government is unwilling to accept Option 1 and if the Compromise Proposal cannot be achieved, that we discuss in principle what support might be available from HM Government as an alternative to Option 1 to enable the Board to determine that it is appropriate to temporarily delay initiating an insolvency process. This would include the provision of funding and assurances to ensure that creditor positions, including in particular any customers who make advance bookings for holidays in that period, are not worsened by any delay in filing). This temporary delay would allow for the implementation of Project Saturn on a more coordinated basis. Without additional support in this period, as mentioned above, the Board is likely to have no option but to file for insolvency on Sunday or Monday if a commercial agreement is not capable of being reached with key parties in the near term.

#### **4. Consequences of insolvency**

The consequences of the Company's entry into insolvency are, as we have discussed previously, very serious.

As you know, we have been working with the CAA to develop contingency plans to mitigate the consequences of this insolvency (which we refer to as "Project Saturn"). But, even if Project Saturn is successfully implemented (which, given its unprecedented complexity, cannot be assumed), the consequences include:

- (A) a repatriation exercise that would likely involve approximately 150,000 UK customers – the largest peacetime repatriation in the UK. This is in addition to the hundreds of thousands of non-UK Thomas Cook customers from the other 15 markets covered by Thomas Cook who will be abroad on Thomas Cook holidays and flights at the time that Project Saturn may be implemented;
- (B) engagement with, and ransom payments to, among others, hoteliers, aircraft lessors, key suppliers and foreign governments (note that certain of these payments would be made through the Air Travel Trust but others would require additional funding);
- (C) the international nature of the Thomas Cook's business means that UK customers as well as customers from Thomas Cook's 15 other source markets will be affected by Project Saturn. With customers from multiple nationalities all staying in the same hotels, across multiple destinations around the world, it is likely to be even more challenging to come to an arrangement with hoteliers, many of whom are likely to face insolvency themselves as a result of any Thomas Cook insolvency, to ensure that guests are allowed to remain in the hotels for the duration of their stay;
- (D) the potential threat to the security and safety of UK customers in destinations where it has been impossible to reach agreement with hoteliers for the reasons above;
- (E) significant costs arising from the need to retain staff in destinations impacted by Project Saturn, as well as call centres and IT infrastructure in the UK, in order to support Project Saturn;
- (F) issues arising in relation to Thomas Cook's employees, which, as at 31 December 2018, numbered approximately 9,000 in the UK out of approximately 21,263 worldwide;
- (G) the serious knock-on effect for thousands of other businesses, both in the UK and abroad, that are reliant on the Company for their survival; and
- (H) other issues that are likely to arise through the winding up of a business of Thomas Cook's nature, complexity, size and scale (including an impact on insurance companies and other financial institutions).

Up until now, our work on Project Saturn – other than the engagement we have had with CAA, DfT and UKGI – has been conducted on the basis of a limited number of Company personnel and advisers in order to minimise the number of people who are aware of its existence. The concern, as you will appreciate, is that once its existence becomes more widely known, it is at risk of creating the very outcome we are all working to avoid (that is, a self-fulfilling prophecy). However, given the gravity of the consequences outlined above (and the even worse outcomes that might arise if Project Saturn is not capable of implementation when needed) we now intend to authorise more intensive contingency planning.

Intensifying our planning will necessarily involve a broader array of external stakeholders. A number of these will relate to the repatriation exercise, such as the airline which the CAA intends to engage, as well as the lessors of certain damp leased aircraft to which the CAA requires access as part of its flight plans. We also intend to consult with our financial stakeholders in relation to the conduct of an accelerated M&A process as a contingency, which will of necessity involve contact (on a confidential basis) with certain potential purchasers and their financiers.

The circle of parties aware of Project Saturn, given its complexity and scale, will inevitably need to expand further in the next 24 hours. As we have discussed with you, this increases leak risk significantly. This will itself will undermine the prospect of achieving the recapitalisation plan (although we will take every possible step to manage that risk as best we can). However, you will appreciate that if we do not take those steps, then there likely is no prospect of avoiding an unplanned insolvency, with no support available from the Company's resources for any repatriation exercise.

## **5. Requests of HM Government**

In conclusion, we would make the following requests:

- (A) first, that you consider Option 1 outlined in this letter and in Appendix 1. In this regard, I note that:
  - (i) given the consequences of Project Saturn outlined above, it is highly likely that Project Saturn would be a very difficult and disorderly process that would be highly disruptive for Thomas Cook's customers, employees and suppliers (which number in the hundreds of thousands in the UK alone) – no matter how much planning is done in advance and even if the necessary access to funding is in place;
  - (ii) it is anticipated that much of the required funding associated with the repatriation exercise would need to be provided by HM Government. This cost is estimated to be in the region of several hundred million pounds on the reasonable assumption that there need to be some payments to ransom creditors (for example, hoteliers) in order to ensure a smooth repatriation process. In comparison to this funding requirement, the proposed (subject to final stakeholder feedback) £150 million to £250 million guarantee arrangement would likely constitute a moderate investment and risk for HM Government;





- (iii) the requested guarantee would only ever be provided as a contingency. HM Government would only be exposed under the guarantee if the Company needs to draw down under the standby facility and is then unable to repay amounts owed to the primary lenders thereunder. In addition, HM Government would be paid the guarantee fee, even if the guarantee is never called. As such, HM Government would incur an unconditional benefit in exchange for a contingent risk; and
  - (iv) the maximum cost to HM Government that could arise under this proposal would likely be extremely modest when compared with Project Saturn. The support provided pursuant to this proposal would not be a bail-out, and there can be no basis for saying that the Company – or its shareholders or management – is being rewarded for failure or for past mistakes. The Company's shareholders have already suffered significant losses, as the Company's market capitalisation has decreased significantly over the past year. Furthermore, if shareholders are to obtain any interest in the Thomas Cook group following completion of Project Avenue, they can expect to be subjected to significant dilution as a result of the proposed debt for equity swap. In addition, as a result of the debt for equity swap and the provision of the new money as part of Project Avenue, the Company's existing lenders and noteholders will incur significant financial losses and will be required to make further investments in Thomas Cook's business. As such, the key beneficiaries of Project Avenue will be Thomas Cook's customers, suppliers and employees, who will continue to receive uninterrupted support;
- (B) second, that you consider our alternative request in Option 2 for HM Government to help us to exert pressure on the various stakeholders to encourage them to support the Compromise Proposal and, in the event that it is not possible for the Company to reach agreement with its stakeholders, to discuss in principle what alternative support may be available to the Company to assist with the implementation of a contingency plan on a more coordinated basis.

I apologise that the outlook of this letter is negative, and that the requests that have been made in this letter require such swift action. However, this reflects the circumstances we unavoidably find ourselves in. Your prompt feedback would be appreciated, and I am, of course, available at any point to continue our discussions. In the meantime, our legal and financial advisers will make themselves available to you at short notice to help.

Yours sincerely,

Peter Fankhauser  
Chief Executive Officer  
Thomas Cook Group plc

**Appendix 1****Key terms of HM Government funding proposal**

**TERM SHEET  
FOR THE LAST DRAW TOUR OPERATOR PROCEEDS  
LOAN FACILITY GUARANTEED BY HM GOVERNMENT**

**GBP 150,000,000 - 250,000,000 REVOLVING CREDIT FACILITY GUARANTEED  
BY HM GOVERNMENT RELATING TO THE RECAPITALISATION OF THE  
THOMAS COOK GROUP**

[Please note that the terms set out in this term sheet are indicative only and do not constitute an offer to arrange or finance the Facility. The provision of the Facility is subject to lock-up agreement (the "**Lock-up Agreement**"), due diligence, board approval, shareholder approval, regulatory and anti-trust clearances and approvals, other agreed performance conditions, satisfactory documentation and agreement between the Parent, the Lenders, HM Government and the Parent's regulators, existing creditors and key stakeholders (including, pensions trustees and key contractual counterparties) on the terms of the Proposed Transaction]<sup>1</sup>.

Capitalised terms which are not defined in this Term Sheet have the meaning given to them in the Fosun Bridge Facilities Agreement (draft circulated 4 September 2019).

DRAFT DATE: 18 SEPTEMBER 2019

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<sup>1</sup> To be deleted on signing



**PART 1**  
**THE FACILITY**

|   |  |
|---|--|
| <b>Facility:</b>  | A £[150,000,000 - 250,000,000] multi-currency revolving credit facility which may be utilised by way of drawing of Loans.<br><br>The multi-currency tranche of the Facility may be drawn in sterling and any other Optional Currency.  |
| <b>Total Commitments:</b>                               | GBP [150,000,000 - 250,000,000]  |
| <b>Optional Currencies:</b>                             | If readily available when required, euro or US dollars or such other currency approved by the Lender.  |
| <b>Borrower:<sup>2</sup></b>                            | Thomas Cook Group Tour Operations Limited (the "TO Holdco")  |
| <b>Original Lender:</b>                                 | [Lending Vehicle TBD].   |
| <b>Signing Date</b>                                     | To be signed as a condition precedent to drawdown under the Bridge Financing Agreements  |
| <b>Termination Date:</b>                                | The date [immediately before the date] falling 3 years after the [Fosun Equitisation Time].  |
| <b>Performance Target Satisfaction Date:</b>            | The first date falling twelve (12) months after the Fosun Equitisation Time on which the Performance Target Satisfaction Tests are satisfied.  |
| <b>Performance Target Satisfaction Test:</b>            | <i>[To be agreed]</i>  |
| <b>Purpose:</b>   | For general corporate purposes of the TO Group but excluding cash collateralisation of bonding lines.  |
| <b>Availability Period</b>                              | Upon the occurrence of Fosun Equitisation Time, and subject to the Termination Date, the Facility shall be available for draw-down from (i) 15 October 2020 to 31 December 2020, (ii) 15 October 2021 to 31 December 2021, and (iii) 14 October 2022 to 31 December 2022 (and if any of these days is not a Business Day, the next applicable Business Day). |
| <b>First Draw Tour Operator Proceeds Loan Agreement</b> | A £200,000,000 multi-currency and a £150,000,000 - 250,000,000 sterling revolving credit facility to be made available by [New FinCo].   |
| <b>Limitation on Utilisation:</b>                       | No Utilisation shall be made unless:   |

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<sup>2</sup> TBC if there will be further borrowers.

- (a) the facility under the First Draw Tour Operator Proceeds Loan Agreement is fully drawn on the proposed Utilisation Date;
- (b) no [Default]/[Event of Default] is outstanding or would occur as a result of the Utilisation;
- (c) the repeating representations are true in all material respects;
- (d) compliance with the Drawdown Liquidity Test;
- (e) compliance with the Minimum Liquidity Covenant;
- (f) [New Finco] (acting reasonably) consents in writing to a draw-down being made by the Borrower under the Facility; and
- (g) the Borrower's finance director or other authorised signatory certifies on behalf of the Borrower that the conditions set out in (a) to (e) are satisfied on the date of the Utilisation Request.

#### **Drawdown Liquidity Test**

To be tested on the submission of a Utilisation Request.

On the submission of a Utilisation Request, a 26 week cashflow (certified by TO Holdco directors) must also be delivered and must evidence on a pro forma basis that the Borrower will have sufficient funds to repay the amounts to be drawn under the Facility.

26-week cashflow (certified by TO Holdco directors) to be provided together with Utilisation Request.

#### **Minimum Liquidity Covenant:**

To be tested in respect of the first quarter date falling at least 3 months after the Fosun Equitisation Time and each quarter date thereafter (each a "scheduled test date").<sup>3</sup>

13-week cashflow (certified by TO Holdco directors) to be provided within 5 BD of the relevant test date.

If the Minimum Liquidity Covenant is not satisfied on any scheduled test date, it will be tested on the date falling one week after the original test date. If the

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<sup>3</sup> Covenant headroom TBC.

Minimum Liquidity Covenant is not satisfied on the second test date, it will be tested for a third time on the date falling two weeks after the original test date. A breach of the Minimum Liquidity Covenant will occur only if the Test is not satisfied on three (3) consecutive test dates.

No later than 15 BD following delivery of a liquidity forecast evidencing a breach of the Minimum Liquidity Covenant, Fosun may cure such breach by subscribing for shares / making a shareholder loan to TO Holdco.

There shall be no limit on the number of equity cures and no limit on overcures. No equity cure amount shall be required to be applied in prepayment of the Facility.

Any equity cure amount may be repaid to Fosun if the Test is subsequently satisfied.

**Minimum Amount of each Loan:** GBP [5],000,000 or appropriate equivalent minimum amounts for Optional Currencies.

**Maximum Number of Loans:** No more than 10 Loans may be outstanding.

**Repayment:** Each Loan shall be repaid on the last day of its Interest Period.

A Borrower may not repay the principal amount of any loans outstanding under the First Draw Tour Operator Proceeds Loan Agreement if any Loans are outstanding under the Facility. For the avoidance of doubt, a Borrower shall be permitted at any time to rollover any existing loans, and pay interest and/or fees, in each case pursuant to and/or in connection with the First Draw Tour Operator Proceeds Loan Agreement.

**Clean Down:** The Borrower shall repay any Loans outstanding under the Facility on:

1) 31 January in each calendar year (or if this day is not a Business Day, the next Business Day) to ensure that the aggregate principal amount outstanding under the Facility does not exceed £100,000,000 on such date;

2) 28 February in each calendar year (or if this day is not a Business Day, the next Business Day) to ensure that the aggregate principal amount outstanding under

the Facility does not exceed £50,000,000 on such date; and

3) 31 March in each calendar year (or if this day is not a Business Day, the next Business Day) to ensure that no Loans are outstanding on such date.

## **PART 2 PRICING<sup>4</sup>**

**Arrangement Fee:** [●] per cent. flat on the amount of the Facility, payable on first Utilisation of the Facility.

**Agency Fee:** As set out in a fee letter dated [●].

**Security Agent Fee:** As set out in a fee letter dated [●].

**HM Government Guarantee Fee:** As set out in a fee letter dated [●].

**Commitment Fee:** [●] per cent. per annum, on the unused and uncanceled amount of the Facility for the Availability Period.

Commitment fee shall accrue from day to day and be payable quarterly in arrear during the Availability Period, on the last day of the Availability Period and on any cancelled amount of the Facility, at the time such cancellation is effective.

**Margin:** [●] per cent. per annum.

**Interest Periods for Loans:** One, two, three and six months or any other period agreed between the relevant Borrower, the Agent, the Lenders and HM Government.

**Interest on Loans:** The aggregate of the applicable:

- (a) Margin; and
- (b) interest rate benchmark.

**LIBOR** In relation to any Loan in euro, EURIBOR, and in relation to any Loan in any other currency, LIBOR, in each case set by reference to Thomson Reuters (and, if necessary, the use of linear interpolation) or, if not available, by reference to specified fallbacks and if, in each case, the rate is less than [●], it shall be deemed to be [●].

Any interest rate benchmark which is not available by reference to Thomson Reuters may be replaced with the consent of the Majority Lenders, HM Government and TO Holdco.

[Interest rate benchmarks shall be set by reference to Thomson Reuters without taking account of any

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<sup>4</sup> Economics to mirror the First Draw Tour Operator Proceeds Loan Agreement

correction, recalculation or republication of the originally published rate by the administrator.]

**Payment of Interest on Loans:** Accrued interest shall capitalise on the last day of each Interest Period.

### **PART 3 OTHER TERMS**

|                            |   |
|----------------------------|---|
| <b>Documentation:</b>      | <p>The Facility will be made available under a facilities agreement (the "<b>Facilities Agreement</b>") based on the First Draw Tour Operator Proceeds Loan Agreement as updated to reflect the terms in this term sheet and otherwise in form and substance satisfactory to the Original Lender, HM Government and TO Holdco. To be drafted by lead legal advisers to TO Holdco.</p> <p>Other documentation will include the TO Intercreditor consistent with the Intercreditor Arrangements outlined below, Transaction Security Documents, [hedging documents entered into in accordance with the Agreement and pursuant to the Hedging Strategy Paper,] an HM Government Fee Letter and an Agent and Security Agent Fee Letter.</p> |
| <b>Agent:</b>              | [•].  |
| <b>Security Agent:</b>     | [•].  |
| <b>TO Holdco:</b>          | Thomas Cook Group Tour Operations Limited.  |
| <b>TO Group:</b>           | TO Holdco and each of its Subsidiaries.   |
| <b>Nordic TO Group:</b>    | <p>Each Subsidiary of TO Holdco which is part of the Northern European tour operator business.</p> <p>Each member of the Nordic TO Group is a <b>Nordic TO Group Member</b>.</p>  |
| <b>Remaining TO Group:</b> | TO Group (excluding the Nordic TO Group).   |
| <b>Guarantors:</b>         | <ul style="list-style-type: none"><li>(a) TO Holdco;</li><li>(b) HM Government;</li><li>(c) those entities listed in Schedule 1 (<i>The Original Obligors</i>) and each other Material Company from time to time; and</li><li>(d) any member of the Group who from time to time accedes as a Guarantor under the First Draw Tour Operator Proceeds Loan Agreement.</li></ul>  |
| <b>Material Company:</b>   | (i) An Obligor, (ii) a member of the TO Group holding shares in a Material Company under limb (iii) and (iii) any member of the TO Group which has earnings before interest, tax, depreciation and amortisation   |



(calculated on the same basis as Leverage EBITDAR and for these purposes excluding any members of the TO Group which are regulated entities) representing 5 per cent. or more of Leverage EBITDAR or which has gross assets or revenue representing 5 per cent. or more of the gross assets or revenue of the TO Group calculated on a consolidated basis.

**Obligors:**

The Borrower[s] and the Guarantors.

**Transaction Security:**

As set out in an agreed security table, with the Original Lender under the Facility and [New Finco] as lender under the First Draw Tour Operator Proceeds Loan Agreement to be secured on a pari passu basis.

To the extent that there is a call under the HM Government guarantee, HM Government to receive the same benefit and ranking in respect of the Transaction Security as if it were a primary lender under the Facility.

**Prepayment and Cancellation:**

**(a) Illegality**

The Lender's Commitment and HM Government's Guarantee Commitment shall be cancelled and its share of the Utilisations shall be prepaid in full subject to good faith negotiation (for no more than [•] days and in any event no later than the last day of any applicable grace period permitted by law).

**(b) Voluntary Cancellation**

A Borrower may, on not less than 5 Business Days' prior notice, cancel the whole or any part (being a minimum of GBP 5,000,000) of the Available Facility made available to it.

**(c) Voluntary Prepayment**

Utilisations may be prepaid in whole or in part on 5 Business Days' prior notice (but, if in part, by a minimum of GBP 5,000,000).

**(d) Increased Costs, Tax Gross-Up and Tax Indemnity**

The Borrower may cancel the Commitment of and prepay any Lender (including HM Government, if there has been a call under the

HM Government Guarantee) that makes a claim under these provisions.

(e) **Mandatory Prepayment - Disposals**

Other than certain customary and agreed exceptions, thresholds and reinvestment rights and period, sale proceeds of all disposals (less reasonable expenses and taxes incurred) shall be applied in prepayment on a *pro rata* basis of (i) the Facility as set out below and (ii) the certain agreed exception and reinvestment rights in accordance with its terms.

(f) **Mandatory Prepayment - Insurance Proceeds**

To the extent not applied to meet a third party claim or to cover certain operating losses or in reinstatement of the relevant asset or otherwise in amelioration of the loss within, in each case, within 120 days of receipt of such proceeds, all proceeds of any insurance claim (less reasonable expenses) shall be applied in prepayment on a *pro rata* basis of (i) the Facility as set out below and (ii) the certain agreed exception and reinvestment rights and period in accordance with their terms.

(g) **Mandatory Prepayment – Change of control of TO Holdco<sup>5</sup>**

(h) **General**

Prepayments in respect of the Facility shall be paid to a charged account <sup>6</sup> during any permitted reinvestment period and pending their application on the Termination Date.

Any amount prepaid may be redrawn.

Any prepayment shall be made with accrued interest on the amount prepaid and, subject to breakage costs, without premium or penalty.

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<sup>5</sup> Definition TBD – triggers will include Fulcrum losing control and a third party gaining control.

<sup>6</sup> Note: the account bank should be a financial institution who is not a lender or an affiliate of a lender under the First Draw Tour Operator Proceeds Loan Agreement or this Facility. An independent security agent can hold this role.

A Borrower may not prepay any utilisations under the First Draw Tour Operator Proceeds Loan Agreement if any Loans are outstanding under the Facility. For the avoidance of doubt, a Borrower shall be permitted at any time to prepay any interest and/or fees, in each case pursuant to and/or in connection with the First Draw Tour Operator Proceeds Loan Agreement.

**Representations:**

With agreed repetitions and at agreed times, each Obligor will make representations usual for transactions of this nature (subject to such qualifications as may be agreed) including, without limitation, the following (but where applicable subject to the agreed exceptions set out in Schedule 2 hereto):

- (a) Status
- (b) binding obligations
- (c) non-conflict with other obligations
- (d) power and authority
- (e) validity and admissibility in evidence
- (f) governing law and enforcement
- (g) insolvency
- (h) no filing or stamp taxes
- (i) no deduction of tax
- (j) no default
- (k) no misleading information
- (l) financial statements
- (m) no proceedings
- (n) no breach of laws
- (o) environmental laws
- (p) taxation
- (q) sanctions, anti-money laundering law and anti-corruption law

- (r) security and financial indebtedness
- (s) ranking
- (t) good title to assets
- (u) legal and beneficial ownership
- (v) shares
- (w) intellectual property
- (x) group structure chart
- (y) accounting reference date
- (z) centre of main interests and establishments
- (aa) pensions
- (bb) holding companies

**Information Undertakings:**

The Parent shall supply each of the following:

- (a) as soon as they become available, but in any event within 120 days of the end of its financial year its audited consolidated financial statements for that financial year (and prior to the Performance Target Satisfaction Date, to the extent prepared or if requested by the Agent, the audited financial statements of any Material Company);
- (b) [solely to the extent that they are prepared and as soon as they become available, but in any event within 90 days of the end of its financial half year, its consolidated financial statements for that financial half year]<sup>7</sup>;
- (c) as soon as they become available, but in any event within 60 days of the end of its financial quarter (other than the second and fourth quarters in each financial year), its consolidated interim management statements for that financial quarter;
- (d) a 13-week cashflow forecast provided monthly until the Performance Target Satisfaction Date and quarterly thereafter;

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<sup>7</sup> Under consideration.

- (e) a 26-week cashflow forecast to be provided with any Utilisation Request
- (f) details of any disposal or insurance claim which will require a prepayment of the Facility;
- (g) with each set of audited consolidated financial statements and each set of its consolidated quarterly and half-year financial statements, a compliance certificate signed by two directors of TO Holdco and, in the case of the audited consolidated financial statements, reported on by the auditors of TO Holdco;
- (h) as soon as it becomes available, but in any event before the start of each of its financial years, an annual budget for that financial year;
- (i) a quarterly call with Fosun and management of the Group;
- (j) all documents dispatched by TO Holdco to its shareholders (or any class of them) or by TO Holdco or any other Obligor to its creditors generally (or any class of them);
- (k) details of any material litigation, arbitration or administrative proceedings or any material judgment;
- (l) such information regarding any assets subject to security in favour of the Finance Parties and the compliance of any Obligor with any security document, in each case as requested by the Security Agent;
- (m) prior to the Performance Target Satisfaction Date, copies of any material communications with the CAA or other governmental organisation responsible for implementing the EEC Directive 90/314/EEC on package travel, package holidays and package tours or the UK pensions regulator (the "Regulators") and after the Performance Target Satisfaction Date, summaries of any non-routine communication with the Regulators (if permissible under the appropriate national law) to the extent it could reasonably be expected to have a Material Adverse Effect; and

- (n) such other information as any Finance Party may request regarding the financial condition, assets and operations of the Group and/or any member of the Group.

TO Holdco shall promptly notify the Agent of any Default.

At least two directors of TO Holdco (one of whom shall be the chief financial officer) will give a presentation to the Lenders and HM Government about the on-going business, financial performance, trading and liquidity of the Group once every 6 months prior to the Performance Target Satisfaction Date and once annually thereafter.

The accounting reference date of the Parent shall not be changed more than once over the term of the Facility with 30 days' notice and subject to customary pro rating of baskets and reconciliation statements if required.

Customary undertakings relating to the provision by the Obligors of information for any "know your customer" checks required to be carried out by the Agent, the Lenders and HM Government shall be included in the Agreement.

#### **Most Favoured Nation**

It is acknowledged that the Lender and HM Government shall enter into the Last Draw Tour Operator Proceeds Loan Agreement on a date (the "**Last Draw Agreement Signing Date**") prior to entry by any member of the Group and the applicable lenders into the First Draw Tour Operator Proceeds Loan Agreement.

If, on entry into the First Draw Tour Operator Proceeds Loan Agreement, the lenders under the First Draw Tour Operator Proceeds Loan Agreement benefit from any new and material terms not specified in the term sheet for the First Draw Tour Operator Proceeds Loan Agreement at the Last Draw Agreement Signing Date that are more favourable to the lenders under the First Draw Tour Operator Loan Agreement in a material respect (the "**New Terms**"), the Borrower shall (and shall procure that any applicable member of the Group shall) promptly following any request in writing by the Majority Lenders or HM Government enter into any amendment or documentation reasonably required to

incorporate the New Terms under the Last Draw Tour Operator Proceeds Loan Agreement

**General Undertakings:<sup>89</sup>**

Undertakings usual for transactions of this nature (subject to agreed "ordinary course" exceptions which are consistent with the agreed business plan and subject to materiality thresholds (if appropriate) to be agreed and unless expressly set out in Schedule 5) in respect of each Obligor and, where applicable, in relation to the TO Group including, without limitation, the following:

***Authorisations and compliance with laws***

- (a) authorisations
- (b) compliance with laws
- (c) environmental compliance
- (d) environmental claims
- (e) anti-corruption and anti-money laundering
- (f) taxation
- (g) sanctions and use of proceeds
- (h) EU residents and restricted finance parties

***Restrictions on business focus***

- (i) restriction on merger – no mergers
- (j) no change of business
- (k) restriction on acquisitions – no acquisitions other than Permitted Acquisitions
- (l) restriction on joint ventures – no joint ventures other than Permitted Joint Ventures
- (m) holding companies

***Restrictions on dealing with assets and Security***

- (n) preservation of assets

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<sup>8</sup> Note: Transfer of value from the Borrower Groups to the Parent shall be restricted.

<sup>9</sup> Scope of permissions TBD for TO Group in the post Fosun equitisation period



- (o) *pari passu* ranking
- (p) negative pledge – no further security other than Permitted Security
- (q) restriction on disposals – no disposals other than Permitted Disposals
- (r) arm's length basis and related party transactions<sup>10</sup>

***Restrictions on movements of cash - cash out***

- (s) restriction on loans or credit – no further loans or credit other than Permitted Loans
- (t) restriction on guarantees or indemnities – no further guarantees or indemnities other than Permitted Guarantees
- (u) restriction on dividends and share redemption – none permitted (other than Permitted Distributions)
- (v) restrictions on cash pooling arrangements – no cash pooling between the TO Group and Airline Group

***Restrictions on movements of cash - cash in***

- (w) restriction on financial indebtedness – none permitted other than Permitted Financial Indebtedness
- (x) restriction on issuance of share capital – none other than Permitted Share Issue

***Miscellaneous***

- (y) insurance
- (z) pensions
- (aa) People with Significant Control regime
- (bb) access

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<sup>10</sup> This will include without limitation language to ensure that there will not be value leakage to ClubMed or other Fulcrum business or Fulcrum-related parties. This will also need to cover transactions between the Nordic TO Group and the rest of the TO Group.

- (cc) intellectual property
- (dd) amendments to Transaction Documents – none permitted
- (ee) [financial assistance]<sup>11</sup>
- (ff) treasury transactions – none permitted unless pre-agreed as ordinary course or in compliance with the Hedging Strategy Paper
- (gg) guarantors
- (hh) further assurance
- (ii) conditions subsequent (if any)

**Events of Default:**

Events of Default usual for transactions of this nature including, without limitation, the following:

- (a) non-payment unless failure to pay is caused by: (i) administrative or technical error or (ii) a Disruption Event and payment is made within 3 Business Days of its due date
- (b) breach of information undertaking and certain other agreed undertakings unless such failure is capable of remedy and is remedied within 5 Business Days of the earlier of (i) the Agent giving notice and (ii) an Obligor becoming aware
- (c) failure to comply with any other provision of the Finance Documents unless such failure is capable of remedy and is remedied within 10 Business Days of the earlier of (i) the Agent giving notice and (ii) an Obligor becoming aware
- (d) misrepresentation unless the circumstances giving rise to the misrepresentation or incorrect statement are capable of remedy and are remedied within 10 Business Days of the earlier of (i) the Agent giving notice and (ii) an Obligor becoming aware
- (e) cross default, subject to an agreed minimum amount

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<sup>11</sup> To be deleted if none is required.

- (f) insolvency
- (g) insolvency proceedings
- (h) creditors' process
- (i) unlawfulness and invalidity
- (j) Intercreditor Agreement
- (k) cessation of business
- (l) change of ownership of Obligors, Nordic TO Group Members and Material Companies (other than TO Holdco)
- (m) expropriation
- (n) repudiation and rescission of agreements
- (o) litigation
- (p) pensions
- (q) revocation of licence
- (r) material adverse change

**Nordic ring-fencing:** *[...]*

**Nordic Enforcement Triggers:** *[To be agreed]*

**Material Adverse Effect:** "Material Adverse Effect" means, in the reasonable opinion of the Lenders or, if there has been a call under the HM Government Guarantee, HM Government, a material adverse effect on:

- (a) the business, operations, property or financial condition of the Group taken as a whole;
- (b) the ability of an Obligor to perform its obligations under the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

**Majority Lenders:** 66⅔% of Total Commitments plus HM Government.

**Amendments and waivers:** Provisions requiring all Lender and HM Government consent to certain customary amendments and waivers will be included.

**Assignments and Transfers by Lenders/HM Government:** [...] <sup>12</sup>

The Agreement will contain provisions to prohibit members of the Group purchasing participations under the Agreement.

Disenfranchisement provisions shall apply where Fulcrum acquires any participations under the Agreement.

**Confidentiality:** Restriction on disclosure of Confidential Information by the Finance Parties.

**Conditions Precedent:** Conditions precedent usual for transactions of this nature in relation to each Obligor in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders acting reasonably) including, without limitation, the following <sup>13</sup>:

1. **Obligors**

- (a) constitutional documents
- (b) resolution of board of directors
- (c) specimen signatures
- (d) shareholder resolutions in relation to each Guarantor (as well as resolutions of boards of directors of any corporate shareholder party to such shareholder resolutions, approving the terms of such resolution, other than in respect of the Parent)
- (e) borrowing/guaranteeing/securing certificate
- (f) certification of copy documents
- (g) evidence that any relevant financial assistance laws have been complied with (if applicable)

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<sup>12</sup> To match terms in First Draw Tour Operator Proceeds Loan Agreement

<sup>13</sup> TBD

2. **Transaction Documents (other than the Finance Documents)**

- (a) a copy of any shareholders' agreement relating to the Parent.
- (b) a copy of the service contract of each member of Senior Management of the Parent and the TO Borrower

3. **Finance Documents**

- (a) the Intercreditor Agreement
- (b) the Agreement
- (c) the Fee Letters
- (d) the Transaction Security Documents in respect of each Original Obligor (as well as duly acknowledged notices required to be sent and share certificates and stock transfer forms required to be delivered under such documents)

4. **Legal opinions**

Appropriate legal opinions

5. **Other documents and evidence**

- (a) appointment of a process agent for Obligors not incorporated in England & Wales and other relevant jurisdictions
- (b) evidence of payment of all fees, costs and expenses then due from the Parent or the Borrowers under the Agreement on or before initial utilisation, including all fees, costs and expenses of the Agent, the Security Agent, the Lenders and HM Government in respect of the Proposed Transaction
- (c) Group Structure Chart
- (d) the Agreed Business Plan

- (e) Audited financial statements relating to the Parent, each Borrower<sup>14</sup> and, if available, each other Obligor
- (f) the Structure Memorandum (capable of being relied upon by the Lenders and HM Government)
- (g) completed Utilisation Requests
- (h) in respect of each UK company whose shares are subject to the Transaction Security either:
  - (a) a certificate of the Parent confirming (i) compliance by each member of the Group with any notice received under the UK People with Significant Control regime from such company and (ii) no issue of a "warning notice" or "restrictions notice" under that regime in respect of those shares, together with a copy of such company's PSC register;
  - or (b) a certificate of the Parent confirming that such company is not required to comply with the UK People with Significant Control regime
- (i) Agreed hedging strategy
- (j) a copy of any other document, authorisation, opinion or assurance specified by the Agent
- (k) Evidence that the CAA has not revoked, or given written notice to revoke, any licence, approval or consent which has or will have a material adverse impact (as determined by the Lenders or, where there has been a call under the HM Government Guarantee, HM Government, in each case acting reasonably) on the Group's ability to continue to operate as a tour operator, airline and/or travel money / insurance provider.
- (l) a confirmation by the finance director that (i) the Key Performance Indicators are complied with and (ii) the Group will be able to meet its debts as they fall due.<sup>15</sup>

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<sup>14</sup> Audited financial statements for the period ended 30 September 2016, 2017, 2018 and ten months ended 31 July 2019 of Tour Operator business to be provided. Requirement of financial statements subject to further discussion with Fosun.

<sup>15</sup> Timing for testing of KPIs to be agreed.

|                                      |  |
|--------------------------------------|--|
| <b>Miscellaneous Provisions:</b>     | The Agreement will contain provisions relating to, among other things, default interest, market disruption, breakage costs, increased costs, set-off and administration.   |
| <b>Tax gross-up and indemnities:</b> | All payments to the Finance Parties shall be made without any Tax Deduction and if a Tax Deduction is required by law, the amount of payment shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required subject to customary qualifying lender concepts and on the understanding that no gross up will apply as at the date of the Facility Agreement.   |
| <b>Costs and Expenses:</b>           | <p>All costs and expenses (including legal fees) reasonably incurred by the Agent, the Security Agent, the Lenders and HM Government in connection with the negotiation, preparation, printing, execution and perfection of the Agreement, any document referred to in the Agreement, the Transaction Security and any other Finance Documents shall be paid by TO Holdco promptly on demand whether or not the Agreement is signed.</p> <p>Provisions relating to amendment costs, enforcement and preservation costs, the Agent's management time and the Security Agent's management time and additional remuneration shall also be included.</p> |
| <b>Governing Law:</b>                | English, save where inappropriate for Transaction Security Documents.  |
| <b>Jurisdiction:</b>                 | Courts of England, save where inappropriate for Transaction Security Documents.  |
| <b>Definitions:</b>                  | As per the First Draw Tour Operator Proceeds Loan Agreement.   |



**SCHEDULE 1**  
**THE ORIGINAL OBLIGORS** <sup>16</sup>

| <b>Borrower</b>                           | <b>Company Number</b> | <b>Jurisdiction of Incorporation</b> |
|---|-----------------------|--------------------------------------|
| Thomas Cook Group Tour Operations Limited | 10699895              | England and Wales                    |

| <b>Guarantor</b>                    | <b>Company Number</b> | <b>Jurisdiction of Incorporation</b> |
|-------------------------------------|-----------------------|--------------------------------------|
| [HM Government]                     | N/A                   | N/A                                  |
| [JerseyCo]                          | [●]                   | Jersey                               |
| Thomas Cook Belgium NV              | [●]                   | Belgium                              |
| Parkway Northern Europe Holding A/S | 20051582              | Denmark                              |
| MyTravel Denmark A/S                | [●]                   | Denmark                              |
| Thomas Cook Group PLC               | 13896909              | England and Wales                    |
| Thomas Cook Group Treasury Limited  | 06575598              | England and Wales                    |
| Thomas Cook Tour Operations Limited | 03772199              | England and Wales                    |
| TCCT Retail Limited                 | 07397858              | England and Wales                    |
| Thomas Cook UK Limited              | 02631252              | England and Wales                    |
| Thomas Cook Finance 2 plc           | 10645715              | England and Wales                    |
| Thomas Cook Group UK Limited        | 02319744              | England and Wales                    |
| Thomas Cook Investments (2) Limited | 06062179              | England and Wales                    |
| TCCT Holdings UK Limited            | 07714007              | England and Wales                    |

<sup>16</sup> To match the Obligors under the First Draw Tour Operator Proceeds Loan Agreement

|   |                    |                                |
|---|--------------------|--------------------------------|
| Thomas Cook Retail Limited                    | 00102630           | England and Wales              |
| MyTravel Group Limited                        | 00742748           | England and Wales              |
| Thomas Cook Group Hedging Limited             | 08024061           | England and Wales              |
| TCGH Holdings Limited                         | 08587707           | England and Wales              |
| Blue Sea Overseas Investments Limited         | 02950050           | England and Wales              |
| Sandbrook UK Investments Limited.             | 06304749           | England and Wales              |
| Thomas Cook UK Travel Limited                 | 01362039           | England and Wales              |
| The Freedom Travel Group Limited              | 03816981           | England & Wales                |
| Thomas Cook In Destination Management Limited | 08927429           | England & Wales                |
| Thomas Cook GmbH                              | HRB13588           | Germany (AG Bad Hamburg v.d.H) |
| Thomas Cook Touristik GmbH                    | HRB4617            | Germany (AG Bad Hamburg v.d.H) |
| Bucher Reisen & Öger Tours GmbH               | HRB36151           | Germany (AG Hamburg)           |
| Parkway Limited                               | 57491              | Guernsey                       |
| Thomas Cook Online Limited                    | [●]                | Guernsey                       |
| TCCT Holdings Limited                         | 106657             | Jersey                         |
| In Destination Incoming S.L.U.                | [●]                | Spain                          |
| Thomas Cook Northern Europe AB                | 1064578432HRB83385 | Sweden                         |
| Ving Sverige AB                               | [●]                | Sweden                         |
| Thomas Cook Nordic Holdings Aktiebolag        | 556458-7689        | Sweden                         |