

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF THOMAS COOK IN DESTINATION MANAGEMENT LIMITED

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

FIRST WITNESS STATEMENT OF CHRISTOPHER ALAN LEIGH MOTTERSHEAD

I, Christopher Alan Leigh Mottershead, of Westpoint Peterborough Business Park, Lynch Wood, Peterborough, United Kingdom, PE2 6FZ WILL SAY AS FOLLOWS:

Introduction

1. As at the date of this witness statement, I am a director of Thomas Cook In Destination Management Limited ("**TCDML**").
2. I have been a director of TCDML since 19 October 2017.
3. As set out in detail in this witness statement, the directors of TCDML have, with regret, and notwithstanding their efforts to the contrary, reached the decision that they have no option but to present a winding up petition under section 124 of the Insolvency Act 1986 (the "**IA 1986**") and to seek the immediate appointment of a liquidator (the "**Petition**").
4. I understand that the Official Receiver is willing to accept the appointment as liquidator of TCDML on an expedited basis and in turn intends to make an immediate application to appoint insolvency practitioners at AlixPartners UK LLP ("**AlixPartners**") as special managers of TCDML.

5. I understand that the relevant individuals at AlixPartners have agreed to accept this appointment.
6. I am duly authorised to make this witness statement on behalf of the Petitioners of TCDML.
7. Unless I say otherwise, the facts and matters set out in this witness statement are within my own knowledge and are true to the best of my knowledge and belief. Where I refer to information supplied by others, I identify the source and the information is true to the best of my knowledge, information and belief.
8. Nothing in this witness statement is intended to waive any rights of privilege.
9. There is now produced and shown to me, and exhibited hereto marked "CALM/1", a bundle of documents to which I refer in this witness statement using the format "CALM1/Tab/page".
10. There is now produced and shown to me the witness statement of Dr. Peter Fankhauser in relation to the proposed liquidation of Thomas Cook Group plc, the ultimate parent company of TCDML (the "**Parent Company**") dated 22 September 2019 (the "**Parent Company Witness Statement**"). I note that much of the information contained in the Parent Company Witness Statement also applies to TCDML, in particular information relating to (i) the structure and business of the Group, (ii) the deterioration of the Group's financial condition, and (iii) the efforts of the Parent Company to implement a viable restructuring of the Group, which would include TCDML.
11. On 22 September 2019, the board of directors of TCDML (the "**Board**") passed resolutions resolving that TCDML was insolvent and that it would be appropriate to present a petition for the compulsory winding up of TCDML at Court. A copy of the resolutions is exhibited hereto marked "CALM1/60A".
12. Unless otherwise stated, all defined terms used in this witness statement shall have the meaning given to them in the Parent Company Witness Statement.

TCDML

13. TCDML is part of the Group which, together with the Parent Company, operates the Thomas Cook leisure travel business across the world. For further background details in respect of the Group, I refer to the Parent Company Witness Statement.
14. As described in the Parent Company Witness Statement, I understand that the CAA requires, among other things, the use of certain assets of Group Companies and

assistance by certain of the Group's employees, including those of TCDML, in order to carry out the repatriation of Thomas Cook customers who live in the UK.

15. TCDML was incorporated in England and Wales on 7 March 2014 under the name Thomas Cook Finance (2) Limited, which was subsequently changed to Thomas Cook In Destination Services Limited on 19 May 2016, which was subsequently changed to its current name, Thomas Cook In Destination Management Limited, on 14 February 2019. TCDML's registered number is 08927429 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (CALM1/60B). A copy of TCDML's Articles of Association is now produced at CALM1/60C.
16. TCDML's business and its principal activity is as an operating company.

Grounds for the Petitions

The financial position of TCDML

17. TCDML is balance sheet and cash flow insolvent.
18. As to cash flow insolvency:
 - (A) TCDML operates the payroll in respect of around 650 employees, the salaries of whom are paid monthly in arrears on the last working day of each month. As such, the payment in respect of September 2019 payroll falls due imminently. TCDML has insufficient cash available to make these payments.
 - (B) TCDML has material intercompany liabilities owing to other Group entities. I understand that some or all of the entities to which such liabilities are owed have filed petitions for winding up at the same time as this Petition. It is expected that TCDML will become liable to repay such liabilities imminently which, in light of the factors to which I refer in this witness statement, it will not be able to do.
 - (C) TCDML participates in certain of the Group's credit card arrangements and merchant facilities. Upon the insolvency of one or more participants, certain of these arrangements permit the provider to withhold payments, require the delivery of third party guarantees or collateral and/or terminate the arrangement. TCDML will likely be unable to meet any such collateral request and its cash flow will be adversely impacted by a suspension of payments or termination of these arrangements.
19. As set out in the Parent Company Witness Statement, the Group's short term cash flow forecast for the period from the week ending 13 September 2019 to the week ending 4 October 2019 (with a reporting date of the actual on 6 September 2019) (CALM1/60D)

shows a deficit of below £250 million in the week ending 4 October 2019. TCDML will therefore be unable to meet the liabilities set out above when due.

20. As explained in the Parent Company Witness Statement, there is no longer any realistic prospect that any additional funding will be provided.
21. Thus, in simple terms, TCDML will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that TCDML is unable to pay its debts as they fall due.
22. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "CALM1/60E", a copy of the balance sheet of TCDML as at 31 July 2019 (which, I understand, is adjusted to reflect the impairment of intercompany receivables and investments in subsidiaries). As set out above, TCDML has material intercompany liabilities owing to other Group entities. Accordingly, TCDML's liabilities exceed the value of its assets and I understand that this means TCDML is balance sheet insolvent.

Entry into insolvency process

23. Therefore, absent further new funding, which, for the reasons set out in the Parent Company Witness Statement, the directors of TCDML have no expectation of receiving, TCDML is unable to pay its debts as they fall due. It is the view of the directors of TCDML that there are no further options open to TCDML to avoid this position.
24. Accordingly, TCDML has no option other than to seek its entry into an insolvency process.

Administration

25. The directors of TCDML have considered whether it would be possible to appoint administrators to seek to rescue TCDML as a going concern or to seek to achieve a better realisation of TCDML's assets for the benefits of their creditors. However, as outlined in the Parent Company Witness Statement, any attempt to achieve the purposes of administration (and in particular to deliver a better result over liquidation) would depend on the Group, including TCDML, continuing trading for a period of time. There is not sufficient funding available to support an administration of the Parent Company and neither is there sufficient funding available to support an administration of TCDML.
26. In the absence of funding for an administration and the lack of any basis for concluding that any of the objectives of administration would be achievable, administration is not an available option.

Liquidation

27. The only alternative to an administration is liquidation. As I note above, TCDML is unable to pay its debts as they fall due. A winding up order in respect of TCDML is therefore sought on the grounds specified in section 122(1)(f) of the Insolvency Act 1986, namely that the company is unable to pay its debts.
28. In the circumstances, given that the creditors of TCDML have had many opportunities to support a recapitalisation of the Group and have refused to do so, and given that both the Official Receiver and AlixPartners are willing to act with immediate effect as Liquidator and Special Managers respectively, and TCDML is unable to avoid the position whereby it is unable to pay its debts as they fall due, the directors of TCDML are of the firm view that it is the most appropriate route in the interest of TCDML's creditors and other stakeholders for TCDML to be wound up. I understand it is intended that TCDML will provide transitional services to the Civil Aviation Authority for a period of time in connection with the repatriation exercise, and will receive funding for related costs (and any incremental liquidation expenses), as more fully described in the Parent Company Witness Statement.
29. I understand that similarly to the Parent Company, it is proposed that the Official Receiver will take office immediately as liquidator of TCDML and the Official Receiver has arranged for AlixPartners to accept an appointment as special manager of TCDML, as outlined in paragraph 4 above, (with the benefit of funding from HMG as described in the Parent Company Witness Statement) in order to assist the Official Receiver. Given that TCDML is insolvent and lacks the funding in order to continue to trade, the Board of TCDML considers that it is difficult to see what purpose there would be to appointing a liquidator provisionally in the present case and is therefore not seeking the appointment of a provisional liquidator in respect of TCDML. Further, it is understood that the preference of the Official Receiver is for the Official Receiver to be appointed as liquidator of TCDML.

Payment to the Official Receiver

30. I am advised that the Insolvency Rules 2016 provide that upon making a winding up petition, a deposit should be paid to the Official Receiver, or the Secretary of State must give notice to the Court that alternative arrangements for the payment of the deposit have been made. Given the out of hours and urgent nature of this Petition, it has not been possible for the deposit to be paid. I understand that the Secretary of State intends to notify the Court that alternative arrangements for the payment of the deposit have been made.

EU Regulation

31. The registered office of TCDML is located at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ and the main administrative functions of TCDML are located at its registered office. Accordingly, I believe that the centre of main interests of TCDML is within England and Wales and I am advised by the Parent Company's directors' legal advisers that, therefore, Regulation (EU) 2015/848 of the European Parliament on insolvency proceedings (recast) ("**Recast Insolvency Regulation**") applies to these winding-up proceedings and that these proceedings will be "main proceedings" within Article 3 of the Recast Insolvency Regulation.

Urgency and request for expedition

32. As TCDML has not been able – in the time available to it – to obtain financing in respect of its imminent liabilities, it will be in default of its obligations and is unable to pay its debts when they fall due within the meaning of the Insolvency Act 1986. As a result, the directors of TCDML have concluded that there is no reasonable prospect that TCDML will avoid an insolvent liquidation.
33. The relief requested of the Court by the Petition is to, among other things, grant a compulsory winding up order in respect of TCDML on an urgent and expedited basis. I am advised that although it is unusual for the Court to make a final winding up order on an expedited basis, the Court has taken this approach in two recent high-profile insolvencies (namely Carillion and British Steel), in which HMG took a similar position and funded the appointment of special managers rather than administrators.
34. However, the Board of TCDML considers that it is clear that the grounds for winding up are made out as TCDML is very clearly insolvent and unable to pay its debts as they fall due. Further, a final winding up order in respect of TCDML would allow the CAA to immediately commence the repatriation of the Group's customers based in the UK. The financial position of TCDML is well known to all stakeholders (and indeed the public at large). As a result, no purpose would be served by the usual requirement to advertise the Petition. Accordingly, I request that the Court waives the notice requirements under rule 7.10 of the Insolvency Rules 2016.
35. Further, I request that the hearing of the Petition be held on an out of hours basis. This request is made on the basis that there is expected to be the fewest number of aircraft of the Group's UK fleet in the air at 2.a.m. (BST) on Monday and therefore a winding up order made at, or around, this time would, to some extent, minimise disruption to customers and airports. I understand that 2 a.m. (BST) on Monday is also the preferred

time of the CAA given that it would allow as many Thomas Cook flights as possible to return to the UK before the appointment of the Official Receiver as liquidator of TCDML, which would reduce the number of UK customers requiring support and assistance as part of the CAA's repatriation exercise.

36. Having made enquiries of the Court, I am advised by the Parent Company's directors' legal advisers that the Court will be in a position to hold a substantive hearing of this petition at short notice and on an out of hours basis. I am grateful to the Court for accommodating this hearing.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

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Christopher Alan Leigh Mottershead