

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 AIRLINES LIMITED

AND IN THE MATTER OF THOMAS COOK AIRCRAFT ENGINEERING LIMITED

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

FIRST WITNESS STATEMENT OF CHRISTOPHER DEBUS

I, Christopher Debus, 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 the following companies:
 - (A) Thomas Cook Airlines Limited ("**TCA**"); and
 - (B) Thomas Cook Aircraft Engineering Limited ("**TCAE**"),(each, a "**Company**" and together, the "**Companies**").
2. I have been a director of TCA since 5 April 2013 and TCAE since 5 April 2013.
3. As set out in detail in this witness statement, the directors of each Company 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 in respect of each Company, collectively, the "**Petitions**").

4. I understand that the Official Receiver is willing to accept the appointment as liquidator of each Company on an expedited basis and in turn intends to make an immediate application to appoint insolvency practitioners at:
 - (A) AlixPartners UK LLP ("**AlixPartners**") as special managers of TCA; and
 - (B) KPMG LLP ("**KPMG**") as special managers of TCAE.
5. I understand that the relevant individuals at AlixPartners and KPMG have agreed to accept those appointments.
6. I am duly authorised to make this witness statement on behalf of the Petitioners of each Company.
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 "CD1", a bundle of documents to which I refer in this witness statement using the format "CD1/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 each Company (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 the Companies, 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 the Companies.
11. On 22 September 2019, the board of directors of each Company (the "**Boards**") passed resolutions resolving that the relevant Company was insolvent and that it would be appropriate to present a petition for the compulsory winding up of the Company at Court. A copy of the resolutions is exhibited hereto marked "CD1/A" and "CD1/B".
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.

The Companies

13. The Companies are 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 TCA, in order to carry out the repatriation of Thomas Cook customers who live in the UK

TCA

15. TCA was incorporated in England and Wales on 21 April 1986 under the name Fernward Limited. TCA'S registered number is 02012379 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (CD1/C/1). A copy of its Articles of Association is now produced at CD1/E.
16. TCA is as an operating company.

TCAE

17. TCAE was incorporated in England and Wales on 12 December 2001 under the name Inhoco 2565 Limited. TCAE's registered number is 04339114 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (CD1/D/1). A copy of its Articles of Association is now produced at CD1/F.
18. TCAE is an operating company.

Grounds for the Petitions

The financial position of each Company

TCA

19. TCA is balance sheet and cash flow insolvent.
20. As to cash flow insolvency:
 - (A) I refer to the Parent Company Witness Statement which refers to the Group's cash pooling arrangements. TCA participates in one of these cash pooling arrangements. I understand that some or all of the entities which participate in this arrangement have filed petitions for winding up at the same time as this

Petition. It is expected that, as a result, the withdrawal of amounts from the cash pool accounts will be restricted and set-off rights under the arrangement exercised such that limited or no amounts will stand to the credit of those accounts. TCA will not therefore have access to sufficient funding to service its day-to-day operations.

- (B) TCA is an employer of around 3298 employees, the salaries of whom are paid monthly in arrears on the last working day of each month. As such, TCA is liable to pay the salaries of its employees in respect of September 2019 by the end of this month. TCA has insufficient cash available to make these payments and so will be unable to pay the salaries of its employees.
 - (C) As I describe in further detail in paragraph 24 below, TCA guarantees certain of the Group's financing and/or other arrangements. TCA also provides indemnities in respect of certain of the Group's bonding lines. For the reasons described below, certain of these liabilities are liable to be called imminently.
 - (D) TCA 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 TCA 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.
 - (E) TCA 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. TCA 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
21. 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) (CD1/G) shows a deficit of below £250 million in the week ending 4 October 2019. TCA will therefore be unable to meet these liabilities when called.
22. As explained in the Parent Company Witness Statement, there is no longer any realistic prospect that any additional funding will be provided.
23. Thus, in simple terms, TCA will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that TCA is unable to pay its debts as they fall due.

24. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "CD1/H", a copy of the balance sheet of TCA as at 31 July 2019 (which, I understand, is adjusted to reflect the impairment of intercompany receivables and investments in subsidiaries). TCA is faced with the imminent prospect of its contingent liabilities becoming due and payable:

(A) TCA is a guarantor in respect of the Existing Financing Arrangements. For the reasons set out in the Parent Company Witness Statement, these guarantee liabilities (in an amount of approximately £1.896 billion as at 22 September 2019) are liable to be called upon imminently.

(B) In addition, TCA is an indemnitor in respect of certain bonding lines pursuant to which bonds issued on behalf of certain Group Companies remain outstanding. I understand that certain of those Group Companies and other indemnitors have presented petitions for winding up at the same time as the Petitions. This will trigger a requirement under certain bonding lines to provide cash collateral in an amount equal to the aggregate amount of any outstanding bonds. Even where this is not the case, a call on the bonds issued on behalf of those Group Companies which have issued winding up petitions is likely, in which case TCA would become liable for the full amount of such bonds. As such, TCA is faced with the imminent prospect of this liability becoming due and payable.

(C) TCA is a guarantor in respect of liabilities owed to the CAA by specified holders of Air Travel Organiser's Licences in the Group. The insolvency of any such holder and publication of its "failure" by the CAA will crystallise TCA guarantee in respect of payments by such holder to the CAA or Air Travel Trust. I understand that certain of the holders have filed petitions for winding up at the same time as this Petition. As such, TCA is faced with the imminent prospect of this liability becoming due and payable.

25. Accordingly, TCA's liabilities exceed the value of its assets and I understand that this means TCA is balance sheet insolvent.

TCAE

26. TCAE is balance sheet and cash flow insolvent.

27. As to cash flow insolvency:

(A) I refer to the Parent Company Witness Statement which refers to the Group's cash pooling arrangements. TCAE participates in one of these cash pooling arrangements. I understand that some or all of the entities which participate in this arrangement have filed petitions for winding up at the same time as this

Petition. It is expected that, as a result, the withdrawal of amounts from the cash pool accounts will be restricted and set-off rights under the arrangement exercised such that limited or no amounts will stand to the credit of those accounts. TCAE will not therefore have access to sufficient funding to service its day-to-day operations.

- (B) TCAE is an employer of around 416 employees, the salaries of whom are paid monthly in arrears on the last working day of each month. As such, TCAE is liable to pay the salaries of its employees in respect of September 2019 by the end of this month. TCAE has insufficient cash available to make these payments and so will be unable to pay the salaries of its employees.
 - (C) As I describe in further detail in paragraph 31 below, TCAE guarantees certain of the Group's financing and/or other arrangements. For the reasons described below, these are liable to be called imminently.
 - (D) TCAE 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 TCAE 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.
28. 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) (CD1/G) shows a deficit of below £250 million in the week ending 4 October 2019. TCAE will therefore be unable to meet these liabilities when called.
29. As explained in the Parent Company Witness Statement, there is no longer any realistic prospect that any additional funding will be provided.
30. Thus, in simple terms, TCAE will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that TCAE is unable to pay its debts as they fall due.
31. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "CD1/I", a copy of the balance sheet of TCAE as at 31 July 2019 (which, I understand, is adjusted to reflect the impairment of intercompany receivables and investments in subsidiaries). TCAE is faced with the imminent prospect of its contingent liabilities becoming due and payable. TCAE is a guarantor in respect of liabilities owed to the CAA by specified holders of Air Travel Organiser's Licences in the Group. The insolvency of any such holder and publication of its "failure" by the CAA will crystallise TCAE's guarantee in respect of payments by such holder to the CAA or Air Travel Trust. I understand that certain of the holders have filed petitions for winding up at the same

time as this Petition. As such, TCAE is faced with the imminent prospect of this liability becoming due and payable.

32. Accordingly, TCAE's liabilities exceed the value of its assets and I understand that this means TCAE is balance sheet insolvent.

Entry into insolvency process

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

Administration

35. The directors of each Company have considered whether it would be possible to appoint administrators to seek to rescue the Company as a going concern or to seek to achieve a better realisation of the Company'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 the Companies, 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 each Company.
36. 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

37. The only alternative to an administration is liquidation. As I note above, each Company is unable to pay its debts as they fall due. A winding up order in respect of each Company 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.
38. In the circumstances, given that the creditors of each Company have had many opportunities to support a recapitalisation of the Group and have refused to do so, and

given that the Official Receiver and AlixPartners and KPMG are willing to act with immediate effect as Liquidator and Special Managers respectively, and each Company is unable to avoid the position whereby it is unable to pay its debts as they fall due, the directors of each Company are of the firm view that it is the most appropriate route in the interest of the Company's creditors and other stakeholders for the Company to be wound up. I understand it is intended that TCA 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.

39. I understand that similarly to the Parent Company, it is proposed that the Official Receiver will take office immediately as liquidator of each Company and the Official Receiver has arranged for either AlixPartners or KPMG to accept an appointment as special manager of each Company, 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 each Company is insolvent and lacks the funding in order to continue to trade, the Board of each Company 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 any of the Companies. Further, it is understood that the preference of the Official Receiver is for the Official Receiver to be appointed as liquidator of each Company.

Payment to the Official Receiver

40. 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

41. The registered office of each Company is located at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ and the main administrative functions of each Company are located at Hangar 1, Western Maintenance Area Runger Lane, Manchester Airport, Manchester, United Kingdom, M90 5FL. Accordingly, I believe that the centre of main interests of each Company 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

42. As each Company 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 each Company have concluded that there is no reasonable prospect that the Company will avoid an insolvent liquidation.
43. The relief requested of the Court by the Petitions is to, among other things, grant a compulsory winding up order in respect of each Company 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.
44. However, the Board of each Company considers that it is clear that the grounds for winding up are made out as the Company is very clearly insolvent and unable to pay its debts as they fall due. Further, a final winding up order in respect of each Company would allow the CAA to immediately commence the repatriation of the Group's customers based in the UK. The financial position of each Company 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 Petitions. Accordingly, I request that the Court waives the notice requirements under rule 7.10 of the Insolvency Rules 2016.
45. Further, I request that the hearing of the Petitions 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 each Company, which would reduce the number of UK customers requiring support and assistance as part of the CAA's repatriation exercise.
46. 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 Debus