

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

**IN THE MATTER OF BLUE SEAS OVERSEAS INVESTMENT LIMITED, AND IN THE MATTER OF THOMAS COOK MONEY LIMITED, AND IN THE MATTER OF THOMAS COOK GROUP UK LIMITED, AND IN THE MATTER OF THOMAS COOK TOUR OPERATIONS LIMITED, AND IN THE MATTER OF THOMAS COOK RETAIL LIMITED, AND IN THE MATTER OF THOMAS COOK UK LIMITED, AND IN THE MATTER OF TCCT RETAIL LIMITED, AND IN THE MATTER OF THOMAS COOK INVESTMENTS (2) LIMITED, AND IN THE MATTER OF THOMAS COOK CONTINENTAL HOLDINGS LIMITED, AND IN THE MATTER OF THE FREEDOM TRAVEL GROUP LIMITED, AND IN THE MATTER OF MYTRAVEL GROUP LIMITED, AND IN THE MATTER OF FUTURE TRAVEL LIMITED**

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

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**FIRST WITNESS STATEMENT OF JUSTIN LEE RUSSELL**

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I, Justin Lee Russell, 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) Blue Seas Overseas Investment Limited ("**BSOI**");
  - (B) Thomas Cook Money Limited ("**TC Money**");
  - (C) Thomas Cook Group UK Limited ("**TC Group UK**");

- (D) Thomas Cook Tour Operations Limited ("**TC Tour Operations**");
- (E) Thomas Cook Retail Limited ("**TC Retail**");
- (F) Thomas Cook UK Limited ("**TC UK**");
- (G) TCCT Retail Limited ("**TCCT Retail**");
- (H) Thomas Cook Investments (2) Limited ("**TC Investments (2)**");
- (I) Thomas Cook Continental Holdings Limited ("**TC Continental Holdings**");
- (J) The Freedom Travel Group Limited ("**TFTG**");
- (K) MyTravel Group Limited ("**MyTravel Group**");
- (L) Future Travel Limited ("**Future Travel**"),

(each, a "**Company**" and together, the "**Companies**").

2. I have been a director of BSOI since 14 June 2019, a director of TC Money since 14 June 2019, a director of TC Group UK since 14 June 2019, a director of TC Tour Operations since 14 June 2019, a director of TC Retail since 14 June 2019, a director of TC UK since 14 June 2019, a director of TCCT Retail since 14 June 2019, a director of TC Investments (2) since 14 June 2019, a director of TC Continental Holdings since 14 June 2019, a director of TFTG since 14 June 2019, a director of MyTravel Group since 14 June 2019 and a director of Future Travel since 14 June 2019.
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 BSOI, TC Money, TC Group UK, TC Tour Operations, TC UK, TC Investments (2), TC Continental Holdings and MyTravel Group; and

(B) KPMG LLP ("**KPMG**") as special managers of TC Retail, TCCT Retail, TFTG and Future Travel.

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 "**JLR1**", a bundle of documents to which I refer in this witness statement using the format "JLR1/Tab".
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 "JLR1/62A", "JLR1/62B", "JLR1/62C", "JLR1/62D", "JLR1/62E", "JLR1/62F", "JLR1/62G", "JLR1/62H", "JLR1/62I", "JLR1/62J", "JLR1/62K" and "JLR1/62L".
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 TC Tour Operations, TC Retail and TC UK, in order to carry out the repatriation of Thomas Cook customers who live in the UK.

## **BSOI**

15. BSOI was incorporated in England and Wales on 19 July 1994 under the name Inhoco 348 Limited which was subsequently changed to Going Abroad Limited on 8 August 1994 and finally to its current name, BSOI, on 26 April 1995 BSOI's registered number is 02950050 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (JLR1/62M). A copy of BSOI's Articles of Association is now produced at JLR1/62Y.
16. BSOI's business and its principal activity is to act as a holding company.

## **TC Money**

17. TC Money was incorporated in England and Wales on 24 August 2016 under its current name. TC Money's registered number is 10344118 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (JLR1/62N). A copy of TC Money's Articles of Association is now produced at JLR1/62Z.
18. TC Money's business and its principal activity is to act as a holding company.

## **TC Group UK**

19. TC Group UK was incorporated in England and Wales on 21 November 1988 under the name Lopmit Limited. TC Group UK's registered number is 02319744 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (JLR1/62O). A copy of TC Group UK's Articles of Association is now produced at JLR1/62AA.
20. TC Group UK's business and its principal activity is to act as a holding company.

### **TC Tour Operations**

21. TC Tour Operations was incorporated in England and Wales on 18 May 1999 under the name Inhoco 930 Limited. TC Tour Operation's registered number is 03772199 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (JLR1/62P). A copy of TC Tour Operations' Articles of Association is now produced at JLR1/62BB.
22. TC Tour Operation's business and its principal activity is as an operating company.

### **TC Retail**

23. TC Retail was incorporated in England and Wales on 22 April 1909 under the name Pickfords, Limited. TC Retail's registered number is 00102630 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (JLR1/62Q). A copy of TC Retail's Articles of Association is now produced at JLR1/62CC.
24. TC Retail's business and its principal activity is as an operating company.

### **TC UK**

25. TC UK was incorporated in England and Wales on 22 July 1991 under the name Trushelfco (No.1728) Limited. TC UK's registered number is 02631252 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (JLR1/62R). A copy of TC UK's Articles of Association is now produced at JLR1/62DD.
26. TC UK's business and its principal activity is as an operating company.

### **TCCT Retail**

27. TCCT Retail was incorporated in England and Wales on 5 October 2010 under the name Thomas Cook Travel Limited which was subsequently changed to its current name, TCCT Retail Limited, on 31 August 2012. TCCT Retail's registered number is 07397858 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (JLR1/62S). A copy of TCCT Retail's Articles of Association is now produced at JLR1/62EE.
28. TCCT's business and its principal activity is as an operating company.

### **TC Investments (2)**

29. TC Investments (2) was incorporated in England and Wales on 23 January 2007 under the name Exhibitions One Limited which was subsequently changed to its current name,

Thomas Cook Investments (2) Limited, on 7 January 2008. TC Investments (2)'s registered number is 06062179 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (JLR1/62T). A copy of TC Investments (2)'s Articles of Association is now produced at JLR1/62FF.

30. TC Investments (2)'s business and its principal activity is to act as a holding company.

#### **TC Continental Holdings**

31. TC Continental Holdings was incorporated in England and Wales on 9 June 2008 under its current name. TC Continental Holdings' registered number is 06614883 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (JLR1/62U). A copy of TC Continental Holdings' Articles of Association is now produced at JLR1/62GG.

32. TC Continental Holdings' business and its principal activity is to act as a holding company.

#### **TFTG**

33. TFTG was incorporated in England and Wales on 30 July 1999 under the name Ever 1185 Limited. TFTG's registered number is 07397858 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (JLR1/62V). A copy of TFTG's Articles of Association is now produced at JLR1/62HH.

34. TFTG'S business and its principal activity is as an operating company.

#### **MyTravel Group**

35. MyTravel Group was incorporated in England and Wales on 3 December 1962 under the name Pendle Travel Services Limited. MyTravel Group's registered number is 00742748 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (JLR1/62W). A copy of MyTravel Group's Articles of Association is now produced at JLR1/62II.

36. MyTravel Group's business and its principal activity is to act as a holding company.

#### **Future Travel**

37. Future Travel was incorporated in England and Wales on 25 November 1996 under the name Personal Travel Advisors Limited which was subsequently changed to its current name, Future Travel Limited, on 11 March 1997. Future Travel's registered number is 03283092 and its registered office is at Westpoint Peterborough Business Park, Lynch

Wood, Peterborough PE2 6FZ (JLR1/62X). A copy of Future Travel's Articles of Association is now produced at JLR1/62JJ.

38. Future Travel's business and its principal activity is as an operating company.

### **Grounds for the Petitions**

#### **The financial position of each Company**

##### **BSOI**

39. BSOI is balance sheet and cash flow insolvent.
40. As to cash flow insolvency:
- (A) As I describe in further detail in paragraph 44 below, BSOI guarantees certain of the Group's financing and/or other arrangements. For the reasons described below, certain of these liabilities are liable to be called imminently.
- (B) BSOI 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 BSOI 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.
41. 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) (JLR1/62KK) shows a deficit of below £250 million in the week ending 4 October 2019. BSOI will therefore be unable to meet these liabilities when called.
42. As explained in the Parent Company Witness Statement, there is no longer any realistic prospect that any additional funding will be provided.
43. Thus, in simple terms, BSOI will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that BSOI is unable to pay its debts as they fall due.
44. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "JLR1/62LL", a copy of the balance sheet of BSOI as at 31 July 2019 (which, I understand, is adjusted to reflect the impairment of intercompany receivables and investments in subsidiaries). BSOI is faced with the imminent prospect of its contingent liabilities becoming due and payable.

45. BSOI 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 the BSOI'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, BSOI is faced with the imminent prospect of this liability becoming due and payable.
46. Accordingly, BSOI's liabilities exceed the value of its assets and I understand that this means BSOI is balance sheet insolvent.

### **TC Money**

47. TC Money is balance sheet and cash flow insolvent.
48. As to cash flow insolvency:
- (A) I refer to the Parent Company Witness Statement which refers to the Group's cash pooling arrangements. TC Money 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. TC Money will not therefore have access to sufficient funding to service its day-to-day operations.
  - (B) TC Money is an employer of around 22 employees, the salaries of whom are paid monthly in arrears on the last working day of each month. As such, TC Money is liable to pay the salaries of its employees in respect of September 2019 by the end of this month. TC Money has insufficient cash available to make these payments and so will be unable to pay the salaries of its employees.
  - (C) TC Money 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 TC Money 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.
  - (D) TC Money 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. TC Money 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.

49. 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) (JLR1/62KK) shows a deficit of below £250 million in the week ending 4 October 2019. TC Money will therefore be unable to meet these liabilities when called.
50. As explained in the Parent Company Witness Statement, there is no longer any realistic prospect that any additional funding will be provided.
51. Thus, in simple terms, TC Money will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that TC Money is unable to pay its debts as they fall due.
52. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "JLR1/62MM", a copy of the balance sheet of TC Money 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, TC Money has material intercompany liabilities owing to other Group entities and current liabilities in respect of employee salaries. Accordingly, TC Money's liabilities exceed the value of its assets and I understand that this means TC Money is balance sheet insolvent.

#### **TC Group UK**

53. TC Group UK is balance sheet and cash flow insolvent.
54. As to cash flow insolvency, TC Group UK 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 TC Group UK 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.
55. 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) (JLR1/62KK) shows a deficit of below £250 million in the week ending 4 October 2019. TC Group UK will therefore be unable to meet the liabilities set out above when due
56. As explained in the Parent Company Witness Statement, there is no longer any realistic prospect that any additional funding will be provided.

57. Thus, in simple terms, TC Group UK will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that TC Group UK is unable to pay its debts as they fall due.
58. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "JLR1/62NN", a copy of the balance sheet of TC Group UK 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, TC Group UK has material intercompany liabilities owing to other Group entities. Accordingly, TC Group UK's liabilities exceed the value of its assets and I understand that this means TC Group UK is balance sheet insolvent.

### **TC Tour Operations**

59. TC Tour Operations is balance sheet and cash flow insolvent.
60. As to cash flow insolvency:
- (A) I refer to the Parent Company Witness Statement which refers to the Group's cash pooling arrangements. TC Tour Operations 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. TC Tour Operations will not therefore have access to sufficient funding to service its day-to-day operations.
  - (B) TC Tour Operations operates the payroll in respect of around 172 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. TC Tour Operations has insufficient cash available to make these payments.
  - (C) As I describe in further detail in paragraph 64 below, TC Tour Operations guarantees certain of the Group's financing and/or other arrangements. TC Tour Operations 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) TC Tour Operations 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 TC Tour Operations 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) TC Tour Operations 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. TC Tour Operations 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.
61. 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) (JLR1/62KK) shows a deficit of below £250 million in the week ending 4 October 2019. TC Tour Operations will therefore be unable to meet these liabilities when called.
62. As explained in the Parent Company Witness Statement, there is no longer any realistic prospect that any additional funding will be provided.
63. Thus, in simple terms, TC Tour Operations will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that TC Tour Operations is unable to pay its debts as they fall due.
64. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "JLR1/62OO", a copy of the balance sheet of TC Tour Operations as at 31 July 2019 (which, I understand, is adjusted to reflect the impairment of intercompany receivables and investments in subsidiaries). TC Tour Operations is faced with the imminent prospect of its contingent liabilities becoming due and payable:
- (A) TC Tour Operations 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, TC Tour Operations 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 TC Tour Operations would become liable for the full amount of such bonds. As such, TC Tour Operations is faced with the imminent prospect of this liability becoming due and payable.

- (C) TC Tour Operations 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 the TC Tour Operation'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, TC Tour Operations is faced with the imminent prospect of this liability becoming due and payable.

- 65. Accordingly, TC Tour Operation's liabilities exceed the value of its assets and I understand that this means TC Tour Operations is balance sheet insolvent.

#### **TC Retail**

- 66. TC Retail is balance sheet and cash flow insolvent.

- 67. As to cash flow insolvency:

- (A) I refer to the Parent Company Witness Statement which refers to the Group's cash pooling arrangements. TC Retail 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. TC Retail will not therefore have access to sufficient funding to service its day-to-day operations.
- (B) TC Retail operates the payroll in respect of around 25 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. TC Retail has insufficient cash available to make these payments.
- (C) As I describe in further detail in paragraph 71 below, TC Retail guarantees certain of the Group's financing and/or other arrangements. TC Retail 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) TC Retail 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 TC Retail 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) TC Retail 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. TC Retail 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.

68 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) (JLR1/62KK) shows a deficit of below £250 million in the week ending 4 October 2019. TC Retail will therefore be unable to meet these liabilities when called.

69. As explained in the Parent Company Witness Statement, there is no longer any realistic prospect that any additional funding will be provided.

70. Thus, in simple terms, TC Retail will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that TC Retail is unable to pay its debts as they fall due.

71. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "JLR1/62PP", a copy of the balance sheet of TC Retail as at 31 July 2019 (which, I understand, is adjusted to reflect the impairment of intercompany receivables and investments in subsidiaries). TC Retail is faced with the imminent prospect of its contingent liabilities becoming due and payable:

(A) TC Retail 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 TC Retail would become liable for the full amount of such bonds. As such, TC Retail is faced with the imminent prospect of this liability becoming due and payable.

(B) TC Retail 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 the TC Retail'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, TC Retail is faced with the imminent prospect of this liability becoming due and payable.

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

### **TC UK**

73. TC UK is balance sheet and cash flow insolvent.

74. As to cash flow insolvency:

(A) I refer to the Parent Company Witness Statement which refers to the Group's cash pooling arrangements. TC UK 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. TC UK will not therefore have access to sufficient funding to service its day-to-day operations.

(B) TC UK operates the payroll in respect of around 842 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. TC UK has insufficient cash available to make these payments.

(C) As I describe in further detail in paragraph 78 below, TC UK guarantees certain of the Group's financing and/or other arrangements. TC UK 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) TC UK 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 TC UK 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) TC UK 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. TC UK 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.
75. 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) (JLR1/62KK) shows a deficit of below £250 million in the week ending 4 October 2019. TC UK will therefore be unable to meet these liabilities when called.
76. As explained in the Parent Company Witness Statement, there is no longer any realistic prospect that any additional funding will be provided.
77. Thus, in simple terms, TC UK will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that TC UK is unable to pay its debts as they fall due.
78. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "JLR1/QQ", a copy of the balance sheet of TC UK as at 31 July 2019 (which, I understand, is adjusted to reflect the impairment of intercompany receivables and investments in subsidiaries). TC UK is faced with the imminent prospect of its contingent liabilities becoming due and payable:
- (A) TC UK 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, TC UK 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 TC UK would become liable for the full amount of such bonds. As such, TC UK is faced with the imminent prospect of this liability becoming due and payable.