

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 SERVICES LIMITED

AND IN THE MATTER OF THOMAS COOK GROUP TOUR OPERATIONS LIMITED

AND IN THE MATTER OF THOMAS COOK GROUP AIRLINES LIMITED

AND IN THE MATTER OF THOMAS COOK WEST INVESTMENTS LIMITED

AND IN THE MATTER OF THOMAS COOK FINANCE 2 PLC

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

FIRST WITNESS STATEMENT OF REBECCA ANN SYMONDSON-POWELL

I, Rebecca Ann Symondson-Powell, 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 Services Limited ("**TC Services**");
- (B) Thomas Cook Group Tour Operations Limited ("**TCGTO**");
- (C) Thomas Cook Group Airlines Limited ("**TCG Airlines**");
- (D) Thomas Cook West Investments Limited ("**TC West Investments**");

(E) Thomas Cook Finance 2 plc ("**TCF2**"),

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

2. I have been a director of each Company since 28 March 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 AlixPartners UK LLP ("**AlixPartners**") as special managers of the Companies.
5. I understand that the relevant individuals at AlixPartners 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 "RASP1", a bundle of documents to which I refer in this witness statement using the format "RASP1/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 "RASP1/52A", "RASP1/52B", "RASP1/52C", "RASP1/52D" and "RASP1/52E".
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.

TC Services

14. TC Services was incorporated in England and Wales on 3 March 1995 under the name Designcargo Limited. TC Services' registered number is 03028914 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (RASP1/52F). A copy of its Articles of Association is now produced at RASP1/52K.
15. TC Services' business and its principal activity is as an operating company.

TCGTO

16. TCGTO was incorporated in England and Wales on 30 March 2017 under the name Thomas Cook Holdings Limited. TCGTO's registered number is 10699895 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (RASP1/52G). A copy of its Articles of Association is now produced at RASP1/52L.
17. TCGTO's business and its principal activity is to act as a holding company.

TCG Airlines

18. TCG Airlines was incorporated in England and Wales on 1 March 2017 under the name Thomas Cook Holdco 1 Limited. TCG Airlines' registered number is 10645850 and its registered office is at Hangar 1, Western Maintenance Area Runger Lane, Manchester

Airport, Manchester, United Kingdom, M90 5FL (RASP1/52H). A copy of its Articles of Association is now produced at RASP1/52M.

19. TCG Airlines' business and its principal activity is to act as a holding company.

TC West Investments

20. TC West Investments was incorporated in England and Wales on 26 July 2012 under its current name. TC West Investments' registered number is 08157544 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (RASP1/52I). A copy of its Articles of Association is now produced at RASP1/52N.

21. TC West Investments' business and its principal activity is to act as a holding company.

TCF2

22. TCF2 was incorporated in England and Wales on 1 March 2017 under the name Thomas Cook Holdco 2 Limited. TCF2's registered number is 10645715 and its registered office is at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ (RASP1/52J). A copy of its Articles of Association is now produced at RASP1/52O:

23. TCF2's business and its principal activity is to act as a finance company.

Grounds for the Petitions

The financial position of each Company

TC Services

24. TC Services is balance sheet and cash flow insolvent.

25. As to cash flow insolvency:

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

- (B) TC Services is an employer of around 4 employees, the salaries of whom are paid monthly in arrears on the last working day of each month. As such, TC Services is liable to pay the salaries of its employees in respect of September 2019 by the end of this month. TC Services has insufficient cash available to make these payments and so will be unable to pay the salaries of its employees.
- (C) TC Services 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 Services 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 Services 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 Services 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.
26. 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) (RASP1/52P) shows a deficit of below £250 million in the week ending 4 October 2019. TC Services will therefore be unable to meet these liabilities when called.
27. As explained in the Parent Company Witness Statement, there is no longer any realistic prospect that any additional funding will be provided.
28. Thus, in simple terms, TC Services will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that TC Services is unable to pay its debts as they fall due.
29. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "RASP1/52Q", a copy of the balance sheet of TC Services 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 Services has material intercompany liabilities owing to other Group entities. Accordingly, TC Services' liabilities exceed the value of its assets and I understand that this means TC Services is balance sheet insolvent.

TCGTO

30. TCGTO is balance sheet and cash flow insolvent.
31. As to cash flow insolvency:
- (A) As I describe in further detail in paragraph 35 below, TCGTO guarantees certain of the Group's financing and/or other arrangements. TCGTO 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.
- (B) TCGTO 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 TCGTO 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.
32. 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) (RASP1/52P) shows a deficit of below £250 million in the week ending 4 October 2019. TCGTO will therefore be unable to meet these liabilities when called.
33. As explained in the Parent Company Witness Statement, there is no longer any realistic prospect that any additional funding will be provided.
34. Thus, in simple terms, TCGTO will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that TCGTO is unable to pay its debts as they fall due.
35. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "RASP1/52R", a copy of the balance sheet of TCGTO as at 31 July 2019 (which, I understand, is adjusted to reflect the impairment of intercompany receivables and investments in subsidiaries). TCGTO is faced with the imminent prospect of its contingent liabilities becoming due and payable:
- (A) TCGTO 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, TCGTO 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 TCGTO would become liable for the full amount of such bonds. As such, TCGTO is faced with the imminent prospect of this liability becoming due and payable.

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

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

TCG Airlines

37. TCG Airlines is balance sheet and cash flow insolvent.

38. As to cash flow insolvency:

- (A) As I describe in further detail in paragraph 42 below, TCG Airlines 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) TCG Airlines 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 TCG Airlines 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.

39. 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) (RASP1/52P) shows a deficit of below £250 million in the week ending 4 October 2019. TCG Airlines will therefore be unable to meet these liabilities when called.

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

41. Thus, in simple terms, TCG Airlines will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that TCG Airlines is unable to pay its debts as they fall due.
42. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "RASP1/52S", a copy of the balance sheet of TCG Airlines as at 31 July 2019 (which, I understand, is adjusted to reflect the impairment of intercompany receivables and investments in subsidiaries). TCG Airlines is faced with the imminent prospect of its contingent liabilities becoming due and payable. TCG Airlines is a guarantor of the Group's main pension scheme in the UK, the Thomas Cook Pension Plan (the "**Pension Scheme**"). I understand that the statutory employers in respect of the Pension Scheme have filed a petition for winding up at the same time as this Petition; this will crystallise the Pension Scheme's section 75 liabilities. TCG Airlines will therefore be liable on demand for the full amount of the section 75 liabilities which, I understand, is estimated to be approximately £275 million.
43. Accordingly, TCG Airlines' liabilities exceed the value of its assets and I understand that this means TCG Airlines is balance sheet insolvent.

TC West Investments

44. TC West Investments is balance sheet and cash flow insolvent.
45. As to cash flow insolvency, as I describe in further detail in paragraph 49 below, TC West Investments 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.
46. 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) (RASP1/52P) shows a deficit of below £250 million in the week ending 4 October 2019. TC West Investments will therefore be unable to meet these liabilities when called.
47. As explained in the Parent Company Witness Statement, there is no longer any realistic prospect that any additional funding will be provided.
48. Thus, in simple terms, TC West Investments will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that TC West Investments is unable to pay its debts as they fall due.
49. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "RASP1/52T", a copy of the balance sheet of TC West Investments as at 31 July 2019 (which, I understand, is adjusted to reflect the impairment of intercompany

receivables and investments in subsidiaries). TC West Investments is faced with the imminent prospect of its contingent liabilities becoming due and payable. TC West Investments 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 TC West Investments' 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 West Investments is faced with the imminent prospect of this liability becoming due and payable.

50. Accordingly, TC West Investments' liabilities exceed the value of its assets and I understand that this means TC West Investments is balance sheet insolvent.

TCF2

51. TCF2 is balance sheet and cash flow insolvent.
52. As to cash flow insolvency, as I describe in further detail in paragraph 56 below, TCF2 is the issuer in respect of the 2023 Notes and guarantees certain of the Group's financing and/or other arrangements. For the reasons described below, these are liable to be called imminently.
53. 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) (RASP1/52P) shows a deficit of below £250 million in the week ending 4 October 2019. TCF2 will therefore be unable to meet these liabilities when called.
54. As explained in the Parent Company Witness Statement, there is no longer any realistic prospect that any additional funding will be provided.
55. Thus, in simple terms, TCF2 will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that TCF2 is unable to pay its debts as they fall due.
56. As to balance sheet insolvency, there is now produced and shown to me, and exhibited hereto marked "RASP1/52U", a copy of the balance sheet of TCF2 as at 31 July 2019 (which, I understand, is adjusted to reflect the impairment of intercompany receivables and investments in subsidiaries). TCF2 is faced with the imminent prospect of its principal and contingent liabilities becoming due and payable. TCF2 is the issuer of the 2023 Notes and a guarantor in respect of the other Existing Financing Arrangements. For the reasons set out in the Parent Company Witness Statement, these *principal and guarantee* liabilities (in an amount of approximately £1.896 billion as at 22 September 2019) are liable to be called upon imminently.

57. Accordingly, TCF2's liabilities exceed the value of its assets and I understand that this means TCF2 is balance sheet insolvent.

Entry into insolvency process

58. 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.
59. Accordingly, each Company has no option other than to seek its entry into an insolvency process.

Administration

60. 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.
61. 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

62. 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.
63. 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 both the Official Receiver and AlixPartners 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.

64. 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 AlixPartners 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

65. 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

66. The registered office of each Company is located at Westpoint Peterborough Business Park, Lynch Wood, Peterborough PE2 6FZ, except for TCG Airlines, whose registered office is at Hangar 1, Western Maintenance Area Runger Lane, Manchester Airport, Manchester, United Kingdom, M90 5FL, and the main administrative functions of each Company are located at the registered office, except for TCF2, whose main administrative functions are located at 3rd Floor, South Building, 200 Aldersgate, London, EC1A 4HD. 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

67. 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.
68. 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.
69. 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.
70. 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.
71. 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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Rebecca Ann Symondson-Powell