

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 GROUP PLC

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

[DRAFT] FIRST WITNESS STATEMENT OF DR. PETER FANKHAUSER

I, Dr. Peter Fankhauser, of 3rd Floor, South Building, 200 Aldersgate, London EC1A 4HD, WILL SAY AS FOLLOWS:

Introduction

1. As at the date of this witness statement, I am a director and Chief Executive Officer of Thomas Cook Group plc (the "**Company**").
2. I have been a director and Chief Executive Officer of the Company since November 2014.
3. As set out in detail in this witness statement, the directors of the 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 and to seek the immediate appointment of a liquidator (the "**Petition**"). The Company understands that the Official Receiver is willing to accept the appointment as liquidator on an expedited basis and in turn intends to make an immediate application to appoint insolvency practitioners of AlixPartners UK LLP ("**AlixPartners**") as special managers of the Company (the "**Special Managers**"). I understand that the relevant individuals at AlixPartners have agreed to accept that appointment.
4. I am duly authorised to make this witness statement on behalf of all the directors of the Company. I make this witness statement in support of the Petition.
5. 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.

6. Nothing in this witness statement is intended to waive any rights of privilege.
7. There is now produced and shown to me, and exhibited hereto marked "PF1", a bundle of documents to which I refer in this witness statement using the format "PF1/Vol/Tab/page".
8. On 22 September 2019, the board of directors of the Company (the "**Board**") passed resolutions resolving that the 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 at PF1/1/1.

The Company

9. The Company was formed in 2007 following a merger between Thomas Cook AG and another tourism business, MyTravel Group plc. It was incorporated and registered in England and Wales on 8 February 2007 under the name Shakespeareco plc which was subsequently changed to its current name, Thomas Cook Group plc, on 12 February 2007. The Company's registered number is 06091951 and its registered office is at 3rd Floor, South Building, 200 Aldersgate, London, United Kingdom EC1A 4HD (PF1/1/2). The Company is a public company listed on the London Stock Exchange. A copy of the Company's Articles of Association is now produced at PF1/1/3.
10. The Company's business and its principal activity is to act as the ultimate holding company of direct and indirect subsidiaries (together with the Company, the "**Group**") which operate the Thomas Cook leisure travel business across the world. The Company does not itself have separate trading activities. A corporate chart showing the structure of the Group is now produced at (PF1/1/4). I explain in further detail the structure and business of the Group in paragraph 14 below.
11. The Company's principal assets are its shares in Thomas Cook Group Tour Operations Limited and Thomas Cook Group Airlines Limited (which run the Tour Operator and Airline businesses, respectively, as described in paragraph 14 below), of which it owns 100 per cent. in each.

The Group

12. The Group's business is one of the prominent European brands in the leisure travel industry and offers holiday and flight options, including traditional packaged holidays, independent travel products, seat-only airline tickets and a selection of travel-related financial services. These products are typically sold directly to customers (through retail

outlets, Thomas Cook websites and call centres) or to third-party travel agents on a business-to-business basis. The Group serves approximately 22 million customers annually and its key markets are the United Kingdom (the "**UK**"), Germany and Northern Europe (PF1/1/5).

13. The Group is a major employer, employing approximately 21,000 employees globally (including approximately 9,000 in the UK), as at 31 December 2018 (PF1/1/6/2), and operates from 16 countries (PF1/1/5/2).
14. The Group's business is structured into three divisions:
 - (A) Tour Operator - the Group's tour operator business (the "**Tour Operator**") operates under a number of well-recognised brands including Thomas Cook, Neckermann, Spies, Tjäreborg and Ving. The Tour Operator offers a wide range of holiday options, including traditional packaged holidays (which is the largest product category and involves bundling together two or more components of travel, hotels and transfers for sale as a single product), independent travel products (including dynamically-packaged holidays where customers choose their independent holiday components) and certain travel-related financial services (for which the Tour Operator's companies act as intermediaries). The Tour Operator focuses its holiday offering on a core portfolio of 3,150 sun-and-beach hotels (PF1/1/5/17).
 - (B) Airline - the Group's airline business (the "**Airline**") operates three airlines in the UK, Germany (where it operates as 'Condor') and Northern Europe and supplies seats to the Tour Operator, as well as providing seat-only flight tickets. The Airline offers both short-haul and long-haul flights from departure cities in the UK, Germany and Northern Europe to destinations including the Middle East, Europe, North Africa and Northern America. The Airline operates (from its entities that hold air operator certificates) over 100 aircraft; the majority of which are leased from third parties.
 - (C) Corporate - the Group's corporate division carries out the corporate functions of the Group as well as operating certain other businesses, including Thomas Cook Money and Thomas Cook China (as defined in paragraph 16 below).
15. The Group operates different business models for its tour operations within the jurisdictions in which it sells products, depending on the degree of integration between the Tour Operator and Airline businesses. In Northern Europe, the business ("**TCNE**") uses a closely integrated model (where the travel component of the holiday option uses flights provided by the Airline) whilst in the UK and Germany, the Tour Operator may source seats from the Airline or from third parties. In countries where the Airline does not operate, all flights are sourced from third parties.

16. Since March 2015, the Group has had a strategic partnership in place with Fosun International Limited ("**Fosun International**"), a leading investment group with operations globally, which includes a joint venture in China called Kuyi International Travel Agency (Shanghai) Co. ("**Thomas Cook China**") (PF1/1/5/34 & 177).

The Group's financing structure

17. The Group's principal financing arrangements (referred to together as the "**Existing Financing Arrangements**") can be summarised as follows:
- (A) English law governed revolving credit facilities (the "**RCF**") providing £650 million in revolving commitments and £200 million and €28 million in committed bonding commitments, with Thomas Cook Group Treasury Limited ("**TC Treasury**") and Thomas Cook Airlines Treasury Limited as the original borrowers (PF1/1/7). I refer to the lenders under the RCF as the "**Lenders**" in this witness statement.
 - (B) €750 million 6.25% senior unsecured notes due to mature on 15 June 2022 (the "**2022 Notes**") issued by the Company under a New York law governed indenture (PF1/1/8). I refer to the beneficial owners of the 2022 Notes as the "**2022 Noteholders**" in this witness statement.
 - (C) €400 million 3.875% senior unsecured notes due to mature on 15 July 2023 (the "**2023 Notes**") issued by Thomas Cook Finance 2 Plc ("**TCF2**") under a New York law governed indenture (PF1/2/9). In this witness statement I refer to the beneficial owners of the 2023 Notes as the "**2023 Noteholders**" (together with the 2022 Noteholders, the "**Noteholders**").
18. The 2022 Notes and the 2023 Notes (together, the "**Notes**") are admitted to trading on the Global Exchange Market of the Irish Stock Exchange.
19. The RCF and the Notes are all unsecured pari passu obligations and benefit from common guarantors across the Group, including the Company.

Events leading to the Petition

Overview

20. During the course of the last 12 months, the Group's financial condition has deteriorated as a result of challenging trading conditions, including the general economic slowdown and customer uncertainty which was impacted by, among other things, the decision of the UK to exit the European Union. In addition, the Group's market faced a substantial increase in competition which focussed on online distribution with lower cost structures than traditional retail travel businesses, such as that of the Group's. The decline in the

Group's financial performance has adversely impacted the Company's share price which has fallen rapidly over the past year by over 95% from 77.85 pence on 21 September 2018 to 3.45 pence on 20 September 2019 (PF1/2/10).

21. As further described below, over the past nine months, the Company has pursued a number of options in an effort to address its financial difficulties. These have included a strategic review of the Airline and the negotiation of a proposed recapitalisation plan with the Company's key stakeholders. However, as further described below, against the backdrop of challenging negotiations with stakeholders, tightening liquidity and unhelpful press speculation about the Company's financial position, none of these options has proved to be capable of implementation during the time available.

Events between January 2019 and the end of June 2019

The Group's financial condition

22. On 16 May 2019 the Company published its half year results for the six months ending 31 March 2019 (the "**2019 Half Year Results**") (PF1/2/11). The 2019 Half Year Results showed that the Company had sustained an underlying first-half loss on an earnings before interest and tax basis of £245 million. As at 31 March 2019, sales in the traditional peak periods were lower than expected and below sales at the equivalent point in the 2018 financial year. The 2019 Half Year Results also announced a £1.1 billion impairment of goodwill relating to the 2007 merger with MyTravel Group plc in light of the Group's weak trading environment, which resulted in a statutory loss for the six-month period of £1.4 billion.
23. At the end of the reporting period of the 2019 Half Year Results, the Group's net debt position had also increased to £1.25 billion, a like-for-like increase of £275 million from the prior year, as a result of the Group's lower profitability and a negative working capital position due to, among other things, a lack of advance payments for holidays.

Strategic Review

24. Following the Company's Full Year 2018 Results (PF1/2/12), the Company worked with its financial advisers in order to identify suitable solutions to, among other things, reduce the Group's leverage and address the Group's funding shortfall, which was projected at the time to arise in October 2019.
25. Following consideration of all of the possible options identified, and with the benefit of advice from the Company's legal and financial advisers, the Board decided to explore whether any potential disposals of the Group's business could realise sufficient value to represent a commercially viable option whilst avoiding any risk to the sustainability of the Group's capital structure. Accordingly, the Company announced in its First Quarter

Trading Statement dated 7 February 2019 (PF1/2/13) that it was conducting a strategic review of the Airline in order to enhance value to shareholders and intensify the Group's strategic focus (the "**Strategic Review**").

26. Shortly following that announcement, the Company, assisted by its financial advisers, commenced the marketing process in respect of the Airline's business. The initiation of the Strategic Review also prompted expressions of interest from parties interested in the Tour Operator, TCNE and the whole of the Group, which were considered and explored by the Company and its advisers.
27. Following considerable work by the Company as part of the Strategic Review, the Company received:
 - (A) five non-binding offers for all or part of the Airline;
 - (B) one non-binding offer for a sale of the Tour Operator from Fosun Tourism Group ("**Fosun**"), an affiliate of Fosun International; and
 - (C) one non-binding offer for TCNE, which was followed by a fully financed offer at a later stage.
28. Following careful consideration by the Board and in consultation with the Lenders, the Board decided not to pursue any of the bids received as part of the Strategic Review on the basis that (i) none of the bids were likely to realise sufficient value, and (ii) following the disposal of any individual business division, the capital structure of the remaining Group was unlikely to be sustainable. It would therefore not have been commercially justifiable nor in the interests of the Group's stakeholders to have entered into any of these transactions.
29. However, as described below, Fosun and the Company discussed a potential alternative transaction structure pursuant to which Fosun and certain of the Company's stakeholders would participate in the recapitalisation of the Group (the "**Recapitalisation Plan**"). Following positive feedback from the Lenders with respect to the proposed Recapitalisation Plan, and in light of the offers received as part of the Strategic Review, the Board decided to actively pursue the development of the Recapitalisation Plan.

Liquidity challenges and other challenges

30. Whilst the Company was progressing the Strategic Review, the Group faced further challenges, including in relation to its liquidity position.
31. Throughout this period, certain of the Group's non-UK companies stopped contributing cash to the Group's cash pooling arrangements (under which, in the ordinary course,

Group members regularly transferred surplus cash to a master account and were able to draw down from that same account in order to meet their own cash flow requirements) in light of the Group's difficult financial situation.

32. In addition to the reductions in the Group's existing liquidity sources from the Company's subsidiaries, certain of the Group's third party payment service providers on whom the Group depends to collect significant amounts of cash from customers, including Concardis and Nets, Barclaycard, Unicredit and American Express, have taken actions to mitigate their financial exposure to the Group, such as by withholding cash collections and cancelling the payment services which they provide to the Group. Whilst the Company was able to resolve, to some extent, the actions by the Group's payment service providers in the following months, these actions further demonstrated that the Company's stakeholders were beginning to take actions that would negatively impact on the Company's financial position.
33. During this time, confidential information with respect to the Strategic Review was improperly released to the press which, given that the Company is publicly listed, led to the Company responding to the press reports by announcements through the Regulatory News Service (PF1/2/14-17). These events had a destabilising effect on the Group's business, which put further pressure on the Group's liquidity needs.
34. In light of the challenges described above, throughout this period the Company sought to take actions to tackle the deterioration in its financial and trading position through active steps to manage liquidity. These steps have included launching headcount reduction schemes and trying to negotiate more favourable supplier payment terms where possible.

Events between July 2019 and early September 2019 – the development of the Recapitalisation Plan

35. As noted above in paragraph 29, following the submission of its interest in purchasing the Tour Operator in the context of the Strategic Review, Fosun engaged with the Company and certain of the Company's stakeholders in relation to the recapitalisation of the Group's business.
36. Following this, in mid-June 2019, the Company and ten of the Lenders entered into non-disclosure agreements, with additional Lenders subsequently signing similar non-disclosure agreements (the "**Participating Lenders**"). On 9 July 2019, the Participating Lenders met with the Company and its advisers and received a detailed presentation on the Group's financial position and the proposed Recapitalisation Plan. The Company and its advisers continued to engage with the Participating Lenders throughout the development of the Recapitalisation Plan.

37. On 12 July 2019, the Company announced that the Strategic Review had been paused as a result of continuing challenges in the European travel market which had, among other things, impacted the Company's ability to execute a disposal in a way that would return satisfactory value to the Group and its stakeholders. In the same announcement, the Company confirmed that it was in advanced discussions with Fosun (and its affiliates) and the Group's core lending banks on key commercial principles with respect to the recapitalisation of the Group through an injection of £750 million of new money and a reorganisation of the Tour Operator and the Airline (PF1/2/18).
38. The 12 July announcement also noted that it was envisaged that a significant amount of debt under the Existing Financing Arrangements would be converted into equity. Accordingly, in order to implement the Recapitalisation Plan on a consensual basis, the Company was advised that it would need to obtain support from its shareholders, the Lenders, the Noteholders and certain of the Group's other stakeholders (such as its bonding line providers).

Engagement with Noteholders

39. Given the requirement for Noteholder consent, the Company and its advisers started engaging with the Noteholders in relation to the Recapitalisation Plan towards the end of July 2019. As at 16 August 2019, nine Noteholders holding in aggregate approximately half by value of the Notes had each entered into non-disclosure agreements with the Company (the "**Participating Noteholders**"). The Company and its advisers continued to engage with the Participating Noteholders throughout the development of the Recapitalisation Plan.

Engagement with shareholders

40. The 12 July announcement noted that existing shareholders would be significantly diluted as part of the Recapitalisation Plan, but that they may be given the opportunity to participate in the Recapitalisation Plan by way of investment alongside Fosun and converting financial creditors on terms to be agreed. The Company made similar disclosures in relation to the expected dilution of existing shareholders in announcements dated 12 August 2019, 28 August 2019 and 20 September 2019 (PF1/2/19-21).
41. In this context, the Company was also aware that it would be necessary to obtain shareholder support for the Recapitalisation Plan in order to ensure that it could be implemented on a solvent and consensual basis.
42. As such, in the second and third week of July 2019, the Company, assisted by its advisers, consulted with the Company's largest shareholders (other than Fosun) to seek clarity as to whether they would be willing to participate in the Recapitalisation Plan or whether they had other views on the proposed Recapitalisation Plan.

43. Following this, a large Turkish tour operator, Anex Tour Group ("**Anex**"), began to build its holding in the Company's shares to an approximately 8% shareholding as of 6 August 2019. On 2 August 2019, Anex's advisers contacted Credit Suisse AG, one of the Company's financial advisers, expressing an interest in acquiring the Group and confirmed that Anex would be willing to sign a non-disclosure agreement in order to advance these discussions (PF1/2/22). On 14 August 2019, Anex's advisers sent a further email to Credit Suisse AG, attaching a signed copy of the non-disclosure agreement and requesting, among other things, permission to discuss a possible partnership with Fosun (PF1/2/23). The Company gave Anex permission to consult with Fosun and I understand that Anex and Fosun subsequently agreed that further discussions would continue as the development of the Recapitalisation Plan progressed, but that no agreement has been reached between the two parties.

Contingency plans for the implementation of the Recapitalisation Plan where shareholder consent could not be obtained

44. As a contingency plan, in the event that approval from the Company's shareholders could not be obtained, it was determined that the Recapitalisation Plan could be implemented by way of a pre-pack administration sale of the Company's business and assets to a newly incorporated entity owned by the Lenders and the Noteholders, and steps were taken to develop a potential pre-pack sale should it have been required.

The Schemes

45. The Company was advised that, in order to effect the debt releases and the Group reorganisation contemplated pursuant to the Recapitalisation Plan, the Company would be required to obtain consent from the Lenders and the Noteholders. Pursuant to the terms of the Existing Financing Arrangements, the Company would require consent from 100% of the Lenders and 90% by value of the Noteholders in order to implement the Recapitalisation Plan. As such, the Company was advised that it should seek to obtain these consents through creditors' schemes of arrangement under the Companies Act 2006, which would require consent from 75% by value and a majority in number of each of the Lenders and the Noteholders. Accordingly, it was proposed that:
- (A) the Company, as the issuer of the 2022 Notes and a guarantor of the 2023 Notes, should propose a scheme of arrangement in respect of the Noteholders;
 - (B) TCF2, a member of the Group and the issuer of the 2023 Notes and a guarantor of the 2022 Notes, should propose a scheme of arrangement in respect of the Noteholders; and
 - (C) TC Treasury, a member of the Group and the borrower under the RCF, should propose a scheme of arrangement in respect of the Lenders.

For the purposes of this witness statement, I refer to these schemes of arrangement together as the “**Schemes**”.

46. Due to the strict timetable requirements in respect of schemes of arrangement, and the fact that the Company required a solution to its liquidity needs by early October 2019 (due to seasonal working capital outflow that occurs then), the Company was advised that the Schemes had to be launched by the end of August 2019 in order for the Recapitalisation Plan to be implemented in time. However, the final terms of the Recapitalisation Plan had not been agreed by the end of August (although, as noted in paragraph 50 below, key commercial terms had been agreed by this point). As such, the Schemes were structured as “amending schemes”, whereby the contractual consent thresholds necessary to implement the Recapitalisation Plan would be reduced in order to facilitate the ultimate implementation of the Recapitalisation Plan once definitive terms had been agreed. The key amendments proposed by the Schemes are summarised in the table set out below:

Debt Document	Existing consent threshold for releasing claims	Proposed amended threshold for releasing claims
RCF Agreement – Cash Facilities	Unanimous consent of the RCF Lenders	75% by value of total commitments in respect of the Cash Facilities
RCF Agreement – Bonding Facilities	Unanimous consent of the RCF Bonding Providers	Unanimous consent of the RCF Bonding Providers
2022 Notes Indenture	90% of nominal face value of the 2022 Notes	75% affirmative vote of the aggregate nominal face value of the 2022 Notes and 2023 Notes with a “quorum” of 50.1%
2023 Notes Indenture	90% of nominal face value of the 2023 Notes	

47. The Schemes were launched on 28 August 2019 (PF1/2/20) and the court hearing to convene the creditor meetings in respect of the Schemes was held on 30 August 2019. The 28 August announcement also noted that key commercial terms had been agreed in relation to the Recapitalisation Plan, but that certain detailed points remained outstanding. At the hearing on 30 August 2019, the Court (Norris J) gave leave to convene creditors' meetings in respect of the Schemes. The creditor meetings in respect of the Schemes were initially scheduled to take place on 18 September 2019, with the sanction hearing due to take place on 20 September 2019. However, as I describe in paragraph 57 below, the dates for the meetings were subsequently delayed by a further court order issued on 16 September 2019 in order to give the Company more time to negotiate the final detailed terms of the Recapitalisation Plan.

Additional New Money

48. Between the end of July 2019 and the start of August 2019, the Company, Fosun, the Participating Lenders and the Participating Noteholders continued to make progress in respect of the agreement of the key commercial terms of the Recapitalisation Plan. Although £750 million had initially been identified as the new money requirement to support the Group's business plan, following discussions between the Company's and the Participating Lenders' respective financial advisers, the new money requirement was revised to £900 million, with the additional £150 million (the "**Additional New Money**") initially proposed to be funded by the Participating Noteholders. The Company disclosed the Additional New Money requirement in an announcement on 12 August 2019 (PF1/2/19).
49. Following this announcement, negotiations continued with Fosun, the Participating Lenders and the Participating Noteholders about which stakeholder or stakeholders would fund the Additional New Money. The Company and its advisers actively encouraged Fosun and the Participating Noteholders to consider possible funding structures whereby they would provide the Additional New Money.

Events between 9 September 2019 and 22 September 2019

The Incremental New Money request and outstanding commercial issues

50. As the Company announced on 28 August 2019, it had managed to agree key commercial terms in relation to the Recapitalisation Plan with Fosun, the Lenders and the Noteholders by the time that the Schemes were launched. These key terms included an outline of the ownership split between Fosun, the Lenders and the Noteholders in relation to the Tour Operator and the Airline. However, as noted in that announcement, there were a number of detailed points that were still outstanding, such as the risk allocation amongst Fosun, the Lenders and the Noteholders with respect to the bridge financing required during transaction implementation and agreement between Fosun, the Lenders and the Noteholders on the separation of the Group into distinct Airline and Tour Operator businesses. The final Recapitalisation Plan was also stated to be subject to ongoing due diligence and Lender and Noteholder credit committee approval processes.
51. In the week commencing 9 September 2019, certain of the Lenders requested that a further £150 million to £200 million of funding be provided, in addition to the Additional New Money, in order to address perceived downside risk to the Tour Operator business and to the winter season in 2020 (the "**Incremental New Money**"). The Lenders had originally requested that the Incremental New Money be provided by Fosun, although Fosun indicated that, if the Incremental New Money was deemed necessary, other stakeholders would need to provide the funding.

52. The Company and its advisers did not agree with the perceived risk analysis carried out by the Lenders' advisers, which gave rise to the request for the Incremental New Money, in particular in light of a range of mitigation steps that could be taken by the Company in the event that further liquidity was needed, which were discussed with the Lenders. As such, the Company and its advisers did not agree that the Incremental New Money was necessary. Nevertheless, in order to explore all available avenues at this stage, the Company engaged with one of the Noteholders that had previously been interested in providing the Additional New Money in order to explore whether it would be willing to provide the Incremental New Money (the "**Relevant Noteholder**"). The Relevant Noteholder indicated that it was interested in lending the Company £150 million as part of the Recapitalisation Plan. However, the Incremental New Money from this Relevant Noteholder would have added an additional layer of complexity to the transaction, as the Relevant Noteholder was a "writer" of credit default swaps ("**CDS**") in relation to the Group's debt. These CDS instruments were structured so as to oblige the "writer" (namely the Relevant Noteholder) to make a very substantial payment to the "holder" of the CDS upon a "credit event", e.g. the Company entering into administration.
53. Thus, the Relevant Noteholder had a financial interest in ensuring that a "credit event" did not take place.
54. The Company was told that the Relevant Noteholder would only be willing to provide the Incremental New Money if the Recapitalisation Plan was structured so that it did not trigger a "credit event" under the CDS written by the Relevant Noteholder. However, the Company was advised that, if the Recapitalisation Plan was structured in such a way, other Noteholders (who were the "holders" of the CDS and thus had the opposite financial interest to that of the Relevant Noteholder) might seek to trigger a credit event by trying to block the vote at the creditors' meetings in respect of the Schemes.
55. During this time, constructive engagement between the Company, Fosun, the Participating Lenders and the Participating Noteholders continued. However, certain commercial points remained outstanding in relation to the Recapitalisation Plan, including whether the Lenders and the Noteholders should benefit from a conversion right into Fosun's shares in exchange for the creditors' 25% stake in the Tour Operator (to which Fosun was reluctant to agree). It was also proposed by certain of the stakeholders, including Fosun, that some of the Group's hotel partners participate in the Recapitalisation Plan. Although this option was explored by the Company, given the challenges in respect of agreeing the terms of the hotel partners' participation, it was not considered to be viable option that could be implemented in the time available.
56. On 15 September 2019, PJT Partners LP, the Company's financial adviser, circulated a document (the "**Compromise Proposal**") presenting the Company's proposed compromise position on certain points in order to align the stakeholders so that the final commercial terms of the Recapitalisation Plan could be agreed (PF1/2/24). It was agreed

by the stakeholders that feedback on the Compromise Proposal would be provided early in the week commencing 16 September 2019.

57. In order to allow more time for the stakeholders to finalise the terms of their participation in the Recapitalisation Plan, the Company (and TCF2 and Thomas Cook Treasury, the other Group companies who had proposed the Schemes) applied to the High Court on 16 September 2019 to delay the creditors' meetings (which resulted in a consequential delay to the subsequent sanction hearing). The High Court granted the application and the creditor meetings were delayed to 27 September 2019 with the sanction hearing scheduled to take place on 30 September 2019 (PF1/2/25).

Request to HM Government

58. As noted above, the Company began to receive preliminary feedback on the Compromise Proposal on 16 and 17 September 2019. This feedback, whilst generally constructive, did not result in any binding commitments from Fosun, the Lenders or the Noteholders and certain commercial points remained outstanding. As such, the Board met on 17 September 2019 to discuss the prospects of the Company being able to implement the Recapitalisation Plan in time to meet its liquidity needs. At this meeting, the Board resolved to approach a broader range of stakeholders on an expedited basis, including HM Government ("**HMG**"), to see if it would be willing to assist in the development of the Recapitalisation Plan.
59. On 18 September 2019, the Company submitted a formal request to HMG setting out a framework for those areas in which HMG could provide meaningful support in order to assist the Company in securing further funding for, and the survival of, the Group's business (PF1/2/26). In particular, this letter made three key requests of HMG:
- (A) that HMG considered the terms of a proposal whereby HMG would participate in the Recapitalisation Plan on commercial terms by guaranteeing the Incremental New Money facility in exchange for a fee and the benefit of a security package;
 - (B) that HMG exerted all pressure that it is capable of on the various Company stakeholders whose support was needed for the Recapitalisation Plan to succeed; and
 - (C) if HMG was unwilling to accept the proposal outlined in (A) above, given the risk that the directors of the Company would be compelled by events to conclude that the Company no longer had a reasonable prospect of avoiding insolvency without the Recapitalisation Plan being substantially agreed with all key parties by 22 September 2019, that HMG considered what support it might be able to provide as an alternative to the proposal outlined above to enable the directors of the Company to determine that it would be appropriate to delay initiating an

insolvency process temporarily in order to allow for the implementation of the contingency plans described below on a more coordinated basis.

Media reports

60. Throughout this period, the Company continued to be subject to reports in the media. For example, on 15 September 2019, the Sunday Times published an article noting that the UK Civil Aviation Authority (the “CAA”) had commenced contingency plans in case the Company was forced to enter into an insolvency process (PF1/2/27). This article also noted that AlixPartners had been appointed as potential administrators. A number of news publications also presented the Company's routine filing under Chapter 15 of the US Bankruptcy Code in the context of the Schemes as a filing for bankruptcy protection (PF1/2/28). This adverse publicity had an increasingly detrimental effect on the public's perception of the Company's financial position, which is crucial for a business of the Group's nature.
61. In addition, on 19 September 2019, the Company was the subject of two further leaks to the press. The first was published by Sky News, which stated that the Company was engaged in a “last-ditch fire-sale in a bid to avert collapse”, was left with “a £200m black hole in its finances” following the Incremental New Money request and had appointed AlixPartners as potential insolvency appointees if rescue efforts failed (PF1/2/31). The Sky News article also contained details of the CAA's repatriation contingency plan. The second story was contained in an article in The Times, which reported on the request for the Incremental New Money, which had not been announced previously on the basis that it was subject to ongoing negotiation (PF1/2/29).
62. Almost immediately following the publication of these articles, some of the Company's suppliers began to demand pre-payment from the Company in exchange for crucial supplies, which had a further detrimental impact on the Company's liquidity.
63. Following these news stories, the Company announced on 20 September 2019 that discussions in relation to the Recapitalisation Plan were continuing between the Company and a range of stakeholders, including Fosun, the Company's core lending banks and a majority of the Noteholders, that these discussions now included the request of Incremental New Money, and that the Recapitalisation Plan is expected to result in existing shareholders' interests being significantly diluted, with significant risk of no recovery (PF1/2/21).
64. There was further media reports on 20 September 2019, including a front page article by the Financial Times, which stated that “Thomas Cook appeals for £200m state bailout to stave off ‘bloodbath’ collapse” (PF1/2/30) and an article by Sky News reporting that “Thomas Cook gives up hope of private rescue and City blame game” (PF1/2/31). The negative media coverage has further damaged the public's confidence in the Group's

ability to continue trading and resulted in an overwhelming number of calls on 20-22 September 2019 to the Group's call centres, which included requests to cancel holidays.

Final HM Government and stakeholder feedback in relation to the Recapitalisation Plan

65. **[Insert paragraphs on final government and other stakeholder feedback]**

66. **[x]**

67. **[x]**

Contingency planning

68. Although the Board – with the benefit of advice from the Company's financial and legal advisers – agreed that the Company had a reasonable prospect of achieving a consensual deal and implementing the Recapitalisation Plan by early October 2019, from July 2019, it was considered prudent and in the best interests of the Company's stakeholders to engage AlixPartners to consider possible alternative options in the context of an insolvency of the Company and the wider Group if the Recapitalisation Plan could not be achieved.

69. From around the middle of July to September 2019 AlixPartners carried out desktop contingency planning work (the "**Contingency Plan**") in respect of a potential insolvency of the Group. Until the week commencing 16 September 2019, although supported by the Company's input, this work was conducted without engaging with external third parties (other than the CAA, HMG and the Official Receiver). This approach was necessary in the circumstances of the Group given the material risk that engagement with a wider group of third parties increased the risk of a potential leak in relation to the Contingency Plan. As demonstrated by other media speculation in relation to the Group, this would have undermined confidence in the Group and the ability to deliver the Recapitalisation Plan such that the Contingency Plan may have become self-fulfilling.

70. However, in light of the continued challenges in relation to agreeing the final terms of the Recapitalisation Plan, the Board resolved on 17 September 2019 that approaches should be made by AlixPartners to certain external third parties as a contingency, whilst the Recapitalisation Plan was progressed in parallel. This escalation of the Contingency Plan preparation was carried out in case the Board was forced to conclude that the Recapitalisation Plan was no longer capable of implementation.

Repatriation

71. A key element of the Contingency Plan was to seek to develop a strategy to effect, insofar as possible, the repatriation of Thomas Cook customers who live in the UK in the event

of an insolvency of the Group. I understand that AlixPartners began initial discussions with the CAA and its advisers at the end of July 2019 and that these discussions have continued to develop with the benefit of input from core members of the Group. In parallel, efforts were made by AlixPartners to prepare a similar strategy in respect of the Group's Nordics and German airline. However, given the need for confidentiality in relation to the Contingency Plan and the fact that the German and Nordics management operate independently of the Company, the primary focus has been on UK customers.

72. I understand that the CAA is prepared to immediately commence a repatriation of Thomas Cook customers based in the UK. Given the current lack of capacity in the aircraft market (which is a particularly acute issue at present as a result of the grounding of Boeing 737 Max aircraft worldwide since March 2019) and the large number of customers affected by a potential insolvency of the Airline in the "peak" summer trading period, I understand that the CAA requires, among other things, the use of certain aircraft currently leased to Thomas Cook Airlines Limited and assistance by certain of the Group's employees (including cabin crew). In addition, I understand that the Official Receiver, assisted by the Special Managers, will put in place arrangements with the CAA in order to facilitate such repatriation.

Grounds for the Petition

The winding up petition

73. As outlined above, the Company has engaged extensively with its stakeholders, including HM Government, in order to seek a consensual arrangement by which support could be provided to the Company in order to restructure its business. It is regrettable that these efforts have not obtained sufficient support from the Company's stakeholders in order to achieve a successful outcome for the Company and the Group.

The Company's financial position

74. The present position is that the Company is cash flow and balance sheet insolvent.

75. As to cash flow insolvency:

- (A) The Company's available cash reserves at the time of writing are £956,670.
- (B) In the week commencing 30 September 2019, the Group is facing a substantial net cash outflow of approximately £486 million. The outflows include, among other things, £388 million of payments to the Group's hotel partners and £272 million to other external suppliers.

- (C) Accordingly, 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 actuals on 6 September 2019) (PF1/2/32) shows that, without any additional funding, the Group's forecast headroom will fall to a deficit of below £250 million in the week ending 4 October 2019.
 - (D) As explained above, there is no longer any realistic prospect that any additional funding will be provided because the recapitalisation negotiations have failed.
76. Thus, in simple terms, the Company will run out of cash by 4 October 2019 and probably earlier. I am advised that this means that the Company is unable to pay its debts as they fall due.
77. As to balance sheet insolvency:
- (A) As at 22 September 2019, the Company owes outstanding indebtedness, or guarantees outstanding indebtedness, under the Existing Financing Arrangements of approximately £1.896 billion in principal amount. All amounts owing in respect of the principal and guarantee liabilities will become due and payable, in the case of the RCF, following acceleration by the Lenders, and in the case of the Notes, automatically upon an event of default (which would include an insolvency event, such as liquidation, in respect of the Company). Accordingly, the Company is faced with the imminent prospect of its principal and guarantees becoming immediately due and payable. In addition, the Company has liabilities in respect of inter-company payables of approximately £625 million (as at 31 July 2019) and guarantee liabilities in an aggregate amount of approximately £2.1 billion in respect of, among other things, third party payment service providers, bonding providers and guarantees for the benefit of the CAA.
 - (B) The Company's principal assets are its shares in its main operating companies, Thomas Cook Group Tour Operations Limited and Thomas Cook Group Airlines Limited, under which the majority of the Group's business sits (PF1/1/4). I understand that winding up petitions have also been filed in respect of those subsidiaries (because they are also insolvent). As such, the Company's shares in those subsidiaries are considered to have no value attributed to them.
 - (C) The Company owns certain other assets which include a leasehold interest in its office premises in Aldersgate (which is considered to have a nil / nominal market value due to a substantial dilapidations liability) and inter-company payables which are considered to have no value given that the relevant Group companies have also filed for insolvency proceedings.
78. Accordingly, the Company has a balance sheet deficiency in excess of £3.1 billion.

Administration

79. The directors of the Company have considered whether it would be possible to appoint an administrator 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 its creditors. However, any attempt to achieve the purposes of administration (and in particular to deliver a better result over liquidation) would depend on the Group continuing trading for a period of time. There is not sufficient funding available to support such an administration and HMG has confirmed that it will not fund the appointment of administrators.
80. 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

81. The only alternative to an administration is liquidation. HMG has confirmed that it is willing to provide support to the Company being placed into liquidation on an expedited basis with the Official Receiver taking office immediately as liquidator (and with a number of other Group companies to be similarly placed into liquidation with either AlixPartners or KPMG LLP as special managers). It is understood that the Official Receiver consents to accepting the appointment on this basis. It is further understood that the Official Receiver has arranged for AlixPartners to accept the appointment as Special Managers (with the benefit of funding from HMG) in order to assist the Official Receiver with the conduct of the liquidation. Amongst other things, it is understood that AlixPartners will assist the Official Receiver and the CAA in co-ordinating the repatriation of UK nationals.
82. In order to assist with the repatriation exercise, it is intended that the Company, together with a number of other Group companies and the Special Managers will enter into a services agreement with the CAA by which those Group companies will provide transitional services for a period of time to the CAA to enable it to carry out a repatriation of approximately 150,000 people to the UK. In exchange, the CAA will provide the funding for the related costs (and any incremental increase in the liquidation expenses) incurred as a consequence.
83. In the circumstances, given that the Company's creditors have had many opportunities to support a recapitalisation of the Group and have refused to do so, and given that both Official Receiver and AlixPartners are willing to act with immediate effect as Liquidator and Special Managers of the Company respectively, the directors are of the firm view that it is the most appropriate route in the interests of the Company's creditors and its other stakeholders for the Company to be wound up.

84. Given that the Company is insolvent and lacks the funding in order to continue to trade, the Board 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. Further, it is understood that the preference of the Official Receiver is for the Official Receiver to be appointed as liquidator.
85. For the reasons set out in respect of the administration, my understanding is that no private firm is willing to act as provisional liquidator in the absence of assurances as to their funding. HMG has advised that it will not fund a private firm to act as a provisional liquidator.

EU Regulation

86. As noted in paragraph 9 above, the registered office of the Company is located at 3rd Floor, South Building 200 Aldersgate, London, United Kingdom EC1A 4HD and the main administrative functions of the Company are located in London. Accordingly, I believe that the centre of main interests of the Company is within England and Wales and I am advised by the Company's legal advisers that, therefore, Regulation (EU) 2015/848 of the European Parliament on insolvency proceedings (recast) ("**Recast Insolvency Regulation**") apply to these proceedings and that these proceedings will be "main proceedings" within Article 3 of the Recast Insolvency Regulation.

Payment to the Official Receiver

87. I am advised that the Rules 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.

Urgency and request for expedition

88. As the Company has not – in the time available to it – been able to obtain financing to allow it to continue trading, it is in continuing default of its obligations and is unable to pay its debts as they fall due within the meaning of the Insolvency Act 1986. As a result, the directors of the Company have concluded that there is no reasonable prospect that the Company will avoid an insolvent liquidation.
89. The relief requested of the Court by this Petition is to, among other things, grant a compulsory winding up order in respect of the 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.

90. The Board 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 the Company would allow the CAA to immediately commence the repatriation of the Group's customers based in the UK. The financial position of the Company is well known to all stakeholders (and indeed the public at large). As a result, no purpose would be served by the usual requirements to advertise the Petition. Accordingly, I request that the Court waives the notice requirements under rule 7.10 of the Insolvency Rules 2016.
91. Further, I request that the hearing of this 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 the Company, which would reduce the number of UK customers requiring support and assistance as part of the CAA's repatriation exercise.
92. Having made enquiries of the Court, I am advised by the Company's directors' legal advisers that the Court will be in a position to hold a substantive hearing of this Petition at such 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 contents of this Witness Statement are true.

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Dr. Peter Fankhauser

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