

## EMEA DC Meeting Statement 18 October 2019

### regarding Auction Terms in respect of Thomas Cook Group plc

Issue Numbers: 2019091701, 2019091700, 2019092301

The EMEA DC met today to discuss the Auction in respect of Thomas Cook Group plc (the **Reference Entity**).

The EMEA DC resolved to approve the publication of the draft Auction Settlement Terms and the Final List. The Auction in respect of the Reference Entity will be held on 30 October 2019.

This statement sets out the reason for the exclusion of the 2023 Notes (as defined below) from the Final List, and an explanation of the Event Determination Dates relevant to the settlement of Updated 2003 Transactions and Updated 2014 Transactions.

#### 1. FINAL LIST

The EMEA DC approved the publication of the Initial List of Deliverable Obligations on 11 October 2019. The only Deliverable Obligation included on the Initial List was the EUR 750,000,000 6.25 per cent. Senior Notes due June 2022 issued by the Reference Entity (the **2022 Notes**). The Reference Entity had also guaranteed the EUR 400,000,000 3.875 per cent. Senior Notes due July 2023 issued by Thomas Cook Finance 2 plc (the **2023 Notes**).

As part of the proposed Scheme of Arrangement, the Reference Entity published an Explanatory Statement in relation to Schemes of Arrangement under Part 26 of the Companies Act 2006 between the Reference Entity, Thomas Cook Group Treasury Limited, Thomas Cook Finance 2 plc and their respective Scheme Creditors dated 30 August 2019 (the **Explanatory Statement**). The terms of the indenture for the 2023 Notes (the **2023 Indenture**) is included in the appendices to the Explanatory Statement (in mark-up showing the changes that were proposed as part of the Scheme of Arrangement such that the un-amended terms can be discerned).

In summary, Section 11.05 of the 2023 Indenture provided that the Reference Entity's guarantee of the 2023 Notes would be released, *inter alia*, at any time when the Reference Entity is released from its guarantee in respect of the Senior Facilities Agreement dated 21 November 2017. The Senior Facilities Agreement does not appear to be publicly available and no public copy of the Senior Facilities Agreement has been submitted to the DC Secretary.

In the absence of a public copy of the Senior Facilities Agreement, it was not possible to determine whether the Reference Entity's guarantee of the 2023 Notes is a Qualifying Guarantee. Under the 2014 Definitions, a Qualifying Guarantee does not include any guarantee that pursuant to the terms applicable thereto, the principal payment obligations of the Reference Entity can be discharged, released, reduced or otherwise altered as a result of the occurrence or non-occurrence of an event or circumstance, in each case other than by payment or certain permitted exceptions. A similar requirement also applies under the Updated 2003 Definitions.

In the absence of a copy of the Senior Facilities Agreement, there is insufficient information to determine whether the guarantee in respect of the 2023 Notes is a Qualifying Guarantee. This is why the EMEA DC did not include the 2023 Notes on the Initial List.

In accordance with Section 3.3(c) of the DC Rules, an Eligible Market Participant proposed that the 2023 Notes should be added to the Supplemental List. In accordance with Section 3.3(d) of the DC Rules, Eligible Market Participants challenged the inclusion of the 2023 Notes on the Supplemental List. In accordance with

Section 3.3(e) of the DC Rules, the EMEA DC is responsible for resolving a challenge to the 2023 Notes and the EMEA DC upheld the challenge. In the absence of a public copy of the Senior Facilities Agreement, there remains insufficient information to determine whether the guarantee of the 2023 Notes is a Qualifying Guarantee.

Accordingly, the 2023 Notes were not included on the Final List.

## **2. EVENT DETERMINATION DATES**

### **2.1 The DC Questions**

The EMEA DC noted that it would be helpful to clarify how the Event Determination Date is determined in respect of the Credit Events that have occurred with respect to Reference Entity.

Three DC Questions were raised in respect of the Reference Entity:

- (a) Has a Bankruptcy Credit Event occurred with respect to the Reference Entity as a result of the Chapter 15 Petition (the **Chapter 15 Question**)?
- (b) Has a Failure to Pay Credit Event occurred with respect to the Reference Entity (the **Failure to Pay Question**)?
- (c) Has a Bankruptcy Credit Event occurred with respect to the Reference Entity as a result of the compulsory liquidation (the **Liquidation Question**)?

### **2.2 The Chapter 15 Question**

The EMEA DC determined that this was only a Bankruptcy Credit Event in respect of Updated 2003 Transactions. The Event Determination Date for this DC Question is 17 September 2019.

Accordingly, the Event Determination Date for all Updated 2003 Transactions is 17 September 2019.

### **2.3 The Failure to Pay Question and the Liquidation Question**

Updated 2003 Transactions had already been triggered by the Chapter 15 Question so these DC Questions are not relevant to the settlement of Updated 2003 Transactions.

The Failure to Pay Question was submitted to the DC Secretary on 20 September 2019 and the Liquidation Question was submitted to the DC Secretary on 23 September 2019.

The EMEA DC decided the Liquidation Question on 23 September 2019 and determined that a Bankruptcy Credit Event had occurred with respect to the Reference Entity under the 2014 Definitions. However, the EMEA DC subsequently decided the Failure to Pay Question and determined that a Failure to Pay Credit Event had also occurred with respect to the Reference Entity under the 2014 Definitions.

The Event Determination Date in respect of the Failure to Pay Question is 20 September 2019. Although the Failure to Pay Question was decided after the Liquidation Question, the Event Determination Date of the Failure to Pay Question was earlier than the Liquidation Question.

Therefore, all 2014 Transactions have an Event Determination Date of 20 September 2019 and the Liquidation Question is not relevant to settlement of the 2014 Transactions.

Accordingly, the Auction Settlement Terms published by the EMEA DC relate to the Chapter 15 Question in respect of Updated 2003 Transactions and the Failure to Pay Question in respect of 2014 Transactions. No Auction is necessary in respect of the Liquidation Question because all 2014 Transactions were already

triggered by the Failure to Pay Question and will settle by reference to the Auction in respect of that DC Question.