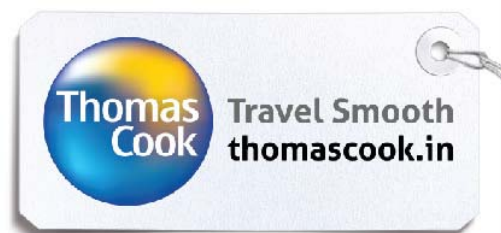


**Thomas Cook (India) Ltd.**  
Thomas Cook Building, Dr. D. N. Road,  
Fort, Mumbai - 400001  
Board: +91-22-6160 3333  
CIN: L63040MH1978PLC020717  
A FAIRFAX Company



12<sup>th</sup> February, 2021

The Manager,  
Listing Department  
**BSE Limited**  
Phiroze Jeejeebhoy Towers,  
Dalal Street,  
Mumbai – 400 001  
Scrip Code: 500413

The Manager,  
Listing Department  
**National Stock Exchange of India Limited**  
Exchange Plaza, 5th Floor, Plot No. C/1,  
G Block, Bandra-Kurla Complex, Bandra (E),  
Mumbai – 400 051  
Scrip Code: THOMASCOOK

Fax No.: 2272 2037/39/41/61

Fax No.: 2659 8237/38

Dear Sir/ Madam,

**Sub: Intimation under Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), 2015, as amended (“SEBI Listing Regulations”) - update on Buy-back**

This is in furtherance of our letters dated February 26, 2020 (outcome of the Board meeting held on February 26, 2020), September 22, 2020 (intimation of Board meeting held on September 25, 2020) and September 25, 2020 (outcome of the Board meeting held on September 25, 2020).

We wish to inform you that the Securities and Exchange Board of India has, by way of its order dated February 11, 2021, permitted the withdrawal of the Buyback.

Accordingly, the Buyback Committee of the Company has, vide its resolution dated February 12, 2021, noted the withdrawal of the Buyback.

This intimation has been made pursuant to Regulation 30 of the SEBI Listing Regulations.

This is for your information and records.

Thank you,

Yours faithfully,  
For **Thomas Cook (India) Limited**

**Amit J. Parekh**  
*Company Secretary and Compliance Officer*

Encl: a/a

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

UNDER SECTION 11(1) OF THE SEBI ACT, 1992 READ WITH REGULATION 28 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 2018.

IN THE MATTER OF BUY BACK OF SECURITIES IN –

COMPANY	THOMAS COOK (INDIA) LIMITED
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## BACKGROUND –

1. Thomas Cook (India) Limited ("**Thomas Cook (India) /TCIL /Company**") is a company incorporated under the provisions of the Companies Act, 1956. The registered office of TCIL is at Thomas Cook Building, Dr. D. N. Road, Fort, Mumbai-400001. The shares of TCIL are listed on the BSE and the National Stock Exchange of India Limited ("**NSE**").
2. The Board of Directors of TCIL in a meeting held on February 26, 2020, had approved the proposal for a buy-back of upto 2,60,86,965 equity shares (representing 6.90% of the total paid-up equity share capital as on December 31, 2019) of the face value of ₹1 each at a price of ₹57.50 per equity share [for a maximum aggregate consideration not exceeding ₹150 Crores and representing 9.57% and 1.82% of the aggregate paid-up equity share capital and free reserves (including securities premium account) of the Company on standalone and consolidated basis, respectively, as on March 31, 2019, being within the 10% limit of paid-up share capital and free reserves (including securities premium account) of the Company or such other source as may be permitted by the SEBI (Buy-back of Securities) Regulations, 2018 ("**Buy-back Regulations, 2018**") and the provisions of Sections 68, 69 and 70 of the Companies Act, 2013 ("**Companies Act 2013**")], from the members of the Company, as on March 7, 2020 ("**Record Date**"), on a proportionate basis, through "Tender Offer" process as specified under the Buy-back Regulations, 2018 ("**Buy-back Offer**"). A copy of the Board resolution for the aforementioned meeting was submitted to SEBI vide TCIL's letter dated February 28, 2020.



3. Thereafter, vide a letter dated March 6, 2020, TCIL had filed the draft Letter of Offer ("**DLOF**") in relation to the *Buy-back Offer* of the Company, with SEBI under Regulation 8(i) of the *Buy-back Regulations, 2018*.
4. Subsequently, vide various correspondences including e-mails dated April 30, 2020, May 28, 2020, June 5, 2020, June 26, 2020 and September 17, 2020, TCIL had requested SEBI to permit deferral of the *Buy-back Offer* to the quarter ending June 20, 2021. However, the aforementioned request was withdrawn and vide a letter dated September 28, 2020, TCIL had filed an application seeking withdrawal of the *Buy-back Offer* ("**Application**").
5. As on September 30, 2020, the shareholding in TCIL was as under:

<b>TABLE I – SHAREHOLDING IN THOMAS COOK (INDIA) (SOURCE: BSE WEBSITE)</b>			
	<b>NAME</b>	<b>NO. OF SHARES</b>	<b>% SHAREHOLDING</b>
<b>A.</b>	PROMOTER/ PROMOTER GROUP	24,81,53,725	65.60
<b>B.</b>	PUBLIC SHAREHOLDING	12,27,65,642	32.45
<b>C.</b>	SHARES HELD BY EMPLOYEE TRUST	73,56,122	1.94
<b>D.</b>	<b>TOTAL (A + B)</b>	<b>37,82,75,489</b>	<b>100.00</b>

6. An opportunity of personal hearing was granted to TCIL on November 19, 2020. TCIL appeared for the hearing through its authorised representatives, viz. Mahadevan (Managing Director), Mahesh Iyer (CEO) and Ram Kenkare (Group Legal Head) and reiterated the submissions contained in its letter dated September 28, 2020. TCIL was granted time till November 27, 2020, to file additional written submissions, if any, including providing details of the financial data put up before its Board in relation to the approval and subsequent withdrawal of the *Buy-back Offer*. TCIL filed its written submissions vide a letter dated November 26, 2020.
7. Vide the Application dated September 29, 2020, oral submissions made during the personal hearing and written submissions dated November 26, 2020, TCIL had submitted as under:

1. *The Buy-back Offer was approved by the Board by way of its resolution dated February 26, 2020, in accordance with Regulation 5(i)(b) of the Buy-back Regulations, 2018 after the management had made a presentation to the Board. Subsequent to filing of the DLOF on March 6, 2020, the Covid-19 pandemic occurred resulting in the Company's business (in the travel and tourism sector) being*



severely affected. Further, the global lockdown measures had reduced the tourism industry to a standstill. The impact of Covid-19 on the financial performance of the Company is explained as under:

- a. As per the stock exchange disclosures made, for the quarter ended June 30, 2020, TCIL had:
    - On a standalone basis, reported a loss of ₹27 million (after a non-cash gain of ₹212 million on account of increase in the market value of shares of Quess Corp Limited) compared to a positive earnings before tax of ₹548 million in the quarter ended June 30, 2019;
    - On a consolidated basis, reported a loss of ₹1,361 million (after a non-cash gain of ₹212 million on account of increase in the market value of shares of Quess Corp Limited) compared to a positive earnings before tax of ₹399 million in the quarter ended June 30, 2019;
    - On a standalone basis, reported cash and bank deposits at ₹2,449 million (without the float on prepaid cards and liability for OD utilization), down from ₹3,895 million as at March 31, 2020, thereby showing an effective cash burn of ₹1,460 million during the three month period.
  
  - b. The above mentioned financial parameters and efforts are indicative of the severe impact of the COVID-19 pandemic on the financial condition of TCIL. Further, it is submitted that the present commercial and financial position is not what it was when the Company had announced the Buyback, and has undergone substantial deterioration.
2. Cash and bank deposits (standalone basis, without the float on prepaid cards) were ₹3,895 million as at March, 2020 and ₹1,881 million as at August, 2020, thereby depleting by approximately 52% since March, 2020. While, TCIL had been incurring an average monthly fixed costs of approximately ₹220 million per month, on standalone basis, since the commencement of the lockdown, i.e., for a period from March 2020 to September 2020, TCIL had not earned any substantial income during the aforementioned period. Accordingly, in light of such circumstances and bearing in mind the monthly fixed costs/operational costs being incurred by the Company, we believe it is prudent and in the best interests of our shareholders and investors to conserve our cash reserves. The original purpose of the Buy-back Offer was to create a mechanism for distributing surplus cash to our shareholders and



enhance shareholder value. However, as on the date of the Application, the Company does not have any surplus cash to distribute and in fact, may need to raise more funds – in the form of equity and/or debt – to survive the downturn caused by the Covid-19 pandemic.

3. At its meeting held on September 25, 2020, the Board had discussed and deliberated on the Buy-back Offer. The Board was of the view that considering the fact that the present commercial and financial position of the Company had undergone substantial deterioration on account of the impact of the Covid-19 pandemic and the extended global lockdown measures, it was critical and in the best interests of all its shareholders and investors to protect the financial sustainability of the Company and withdraw the Buy-back Offer.
4. The Board at its meeting on November 11, 2020, expressed serious apprehensions about the impact on the financial sustainability of the Company should SEBI not permit the withdrawal of the Buy-back Offer. The Directors voiced their concerns about the present financial position of the Company given that the business had grounded to a stand-still post the lockdown and closure of International borders due to Covid-19 pandemic. They added that if the Buy-back Offer was to be implemented, it would have a bearing on the status of the Company as a going concern and consequently, impact the Company's subsidiaries, stakeholders especially the minority shareholders. They reiterated that in its current financial position, the Company may need a fresh infusion of funds to help it re-launch the business. The Directors asked the management to communicate the concerns of the Board to SEBI immediately and impress upon them the urgent need to obtain their approval for the withdrawal of the Buy-back Offer.
5. As regards the withdrawal of the Buy-back Offer under the **Buy-back Regulations, 2018** and the Companies Act 2013, it was submitted as under:
  - a. The buy-back is being undertaken in terms of Regulation 5(i)(b) of the Buy-back Regulations, 2018 and the proviso to Section 68(2)(b) of the Companies Act 2013 and was accordingly approved by the Board by way of its resolution dated February 26, 2020.



- b. Regulation 24(i)(d) of the Buy-back Regulations, 2018 permits withdrawal of a buy-back until the filing of the draft Letter of Offer ("DLOF") with SEBI. The Companies Act 2013 neither prohibits nor expressly provides for a withdrawal of the Buy-back Offer. In this regard, it is to be noted that Section 68(4) of the Companies Act 2013 does provide that a buy-back needs to be completed within one year, which commences from the date of the board resolution or the shareholders' resolution, as the case may be, which approved the buy-back.
- c. In this regard, the Buy-back Regulations, 2018 do permit withdrawal of a buy-back until filing of the DLOF. Since the filing of the DLOF will, in any event, take place after approval of a buy-back by the Board of Directors or shareholders as the case may be, the restriction of completing a buy-back within a period of one year (prescribed under the Companies Act 2013) is intended at prescribing a time line for completing a buy-back and would consequently be relevant only in the event that a buy-back is eventually being undertaken as opposed to being withdrawn (which withdrawal is expressly permitted under the Buy-back Regulations, 2018).
6. As regards the requirement of shareholders' approval, it was submitted as under:
- a. The total buy-back proposal was within the statutory limits that required only Board approval and therefore, did not require any shareholder approval. The withdrawal of the buy-back also did not require shareholder approval especially when the original proposal did not require shareholders' approval.
- b. Buy-back Regulations, 2018 do not provide that withdrawal of a buy-back (till the time of filing of DLOF) would need to be approved by the shareholders of a Company, irrespective of whether the buy-back was approved by the Board of Directors or shareholders.
- c. In the event the Company had decided to withdraw the buy-back prior to filing the DLOF, since the buy-back is through the Board approval route, the Company would not, in such an instance, have obtained shareholders' approval for withdrawing the buy-back in accordance with the Buy-back Regulations, 2018.
- d. The mere fact of having filed the DLOF with SEBI should not, by itself, necessitate a shareholders' approval for withdrawal of the buy-back. Accordingly, a shareholders' approval is not required to be obtained for the withdrawal of the buy-back.



7. We also wish to draw your attention to the fact that the number of shareholders declined from 60,460 as on the date of the Board meeting (February 26, 2020) to 59,133 on the Record date (March 7, 2020). Further, we note that there were only four complaints received by SEBI on the status of the Buy-back of which two were not from the shareholders of the Company.
8. I have considered the Application made by TCIL along with all the material available on record. For the purpose of considering the instant Application, the issue for determination is *whether SEBI can allow TCIL to withdraw the Buy-back Offer, after it has filed the DLOF.*
9. From the facts in the instant proceedings, the following is noted:
- i. The Board of Directors of TCIL had approved the *Buy-back Offer* in a meeting held on February 26, 2020.
  - ii. The Board resolution for the aforementioned meeting was submitted to SEBI vide TCIL's letter dated February 28, 2020.
  - iii. Thereafter, TCIL had filed the *DLOF* with SEBI under Regulation 8(i) of the Buy-back Regulations, 2018, vide a letter dated March 6, 2020.
  - iv. Vide various correspondences including e-mails dated April 30, 2020, May 28, 2020, June 5, 2020, June 26, 2020 and September 17, 2020, TCIL had requested SEBI to permit deferral of the *Buy-back Offer* to the quarter ending June 20, 2021.
  - v. Subsequently, vide a letter dated September 28, 2020, TCIL had filed the Application seeking withdrawal of the *Buy-back Offer*.
10. In terms of Regulation 5(ii) of the Buy-back Regulations, 2018 and Section 68 of the Companies Act 2013, every buy-back shall be completed within a period of one year from the date of passing of the special resolution at general meeting, or the resolution passed by the Board of Directors of the Company, as the case may be. As stated above, in the instant matter, the Board resolution was passed on February 26, 2020; therefore, the buy-back in terms of the aforementioned provisions, has to be completed on or before



February 25, 2021. Further, Regulation 24(i)(d) of the Buy-back Regulations, 2018 *inter alia* states that “the company shall not withdraw the offer to buy-back after the draft letter of offer is filed with the Board”.

11. TCIL has stated that the Company’s financial position had undergone substantial deterioration on account of the impact of the Covid-19 pandemic and the extended lockdown procedures. As per the stock exchange disclosures made by TCIL for the quarter ended June 30, 2020, “On a standalone basis, reported cash and bank deposits were at ₹2,449 million (without the float on prepaid cards and liability for OD utilization), down from ₹3,895 million as at March 31, 2020, thereby showing an effective cash burn of ₹1,460 million during the three month period”. The mandate in the Companies Act 2013 relating to buy-back read with the provisions of the Buy-back Regulations, 2018 do not provide for a withdrawal of the Buy-back Offer. Accordingly, the question for consideration is *whether the mandatory obligations/compliances flowing from the statute/regulations, can be dispensed with in unforeseen situations such as the Covid-19 pandemic.*
12. It is a settled legal position that when the fulfillment of a condition prescribed by law, though mandatory, becomes impossible to be complied with because of an act of God or otherwise, law will excuse the fulfillment of that condition. Law can never insist upon the performance of an act which has otherwise become impossible of performance. In this context, reference is made to the judgment of the Supreme Court in the matter of **Industrial Finance Corporation of India Ltd. & Ors. vs. Cannanore Spinning & Weaving Mills Ltd. & Ors., AIR 2002 SC 1841**, wherein it had observed:

30. “... The Latin Maxim referred to in the English judgment “lex non cogit ad impossibilia” also expressed as “impotentia excusat legem” in common English acceptance means, the law does not compel a man to do that which he cannot possibly perform. There ought always thus to be an invincible disability to perform the obligation and the same is akin to the Roman Maxim “nemo tenetur ad impossibilia. In Broom’s Legal Maxims the state of the situation has been described as below:

“It is, then, a general rule which admits of ample practical illustration, that impotentia excusat legem; where the law creates a duty or charge; and the party is disabled to perform it without any default in him, and has no remedy over, there the law will in general excuse him (t); and though impossibility of performance is in general no excuse for not performing an obligation





*which a party has expressly undertaken by contract, yet when the obligation is one implied by law, impossibility of performance is a good excuse. ...”*

13. The fundamental tests which have been applied by Courts before applying the aforementioned legal maxims to the facts of the case, are to see whether the event (that would result or has resulted in a non-compliance of law) was beyond the control of the person, occurred without any fault of the person and had resulted in an impossibility. In the words of the Bombay High Court in **Emperor vs. Ganpat Laxman Kalgutkar, AIR 1938 Bom 427**, “... If in the interpretation, the Court finds the duty either impossible of performance and beyond the normal capacity of a reasonable or prudent man, or when the performance in the strictest language of the enactment is either idle or impossible, then the enactment must be understood as dispensing with the strict performance of that duty.” In so far as the instant proceedings are concerned, the impossibility for TCIL to go ahead with the *Buy-back Offer* is on account of the Covid-19 pandemic, which as pointed out in the submissions of TCIL had resulted in the Company's business (in the travel/tourism sector) being severely affected thereby impacting its financial performance as under –
- a. “On a standalone basis, reported cash and bank deposits at ₹2,449 million, down from ₹3,895 million as at March 31, 2020, thereby showing an effective cash burn of ₹1,460 million during the three month period.”
  - b. Further, as per information received by SEBI vide TCIL's e-mail dated February 11, 2021, for the quarter ended December 31, 2020, the Company had reported losses (before tax) of ₹200.85 million on a standalone basis and ₹894 million on a consolidated basis vis-a-vis positive earnings (before tax) of ₹67.21 million on a standalone basis and ₹167.9 million on a consolidated basis for the quarter ended December 31, 2019.
14. At this stage, it cannot be disputed that the Covid-19 pandemic has now made it impossible for TCIL to go ahead with the *Buy-back Offer*. Further, such impossibility had occurred without any fault of the Company and was also beyond its control. Considering the aforementioned, in light of the discussions at paragraphs 12 and 13, I am of the considered view that it constitutes a valid ground for seeking relaxation (i.e. from ensuring compliance with the requirement of Regulation 24(i)(d) of the Buy-back Regulations, 2018).



15. I note that under Regulation 28(i) of the Buy-back Regulations, 2018, the Board may, relax the strict enforcement of any requirement of the said Regulations, in the interest of investors and the securities market, if the Board is satisfied that *inter alia* the requirement may cause undue hardship to investors. In this context, I have also examined whether the withdrawal has an adverse effect on the investors of TCIL in light of the aforementioned Regulation. The *Buy-back Offer* is proposed to be made by TCIL on a proportionate basis, through "Tender Offer" process as specified under the Buy-back Regulations, 2018. The stated purpose of the *Buy-back Offer* was to create a mechanism for distributing surplus cash to TCIL's shareholders and enhance the shareholder value. It is pertinent to note that TCIL had subsequently submitted that the continuation of the *Buy-back Offer* will not be in the interests of the shareholders of the Company (especially small shareholders) if the Company were to be directed to complete the buy-back. It was further submitted that TCIL will not be in a position to spare any cash and the viability and continuity of the Company, as a going concern, may be severely threatened on account of the Company's financial position having undergone substantial deterioration due to the Covid-19 pandemic. Upon a consideration of the aforementioned, I find that permitting TCIL to withdraw the *Buy-back Offer* will also be a measure in furtherance of protection of the interest of its shareholders.
16. I note that the instant Application has been filed by TCIL seeking relaxation under the provisions of Regulation 28 of the Buy-back Regulations, 2018. I note that the *DLOF* filed with SEBI is not performable and if compelled to be performed by TCIL, will result in an adverse effect on the business of the Company and in turn, its shareholders. While treating this as a unique case, I am inclined to exercise powers under Regulation 28(i)(b) read with Regulation 28(iv) of the Buy-back Regulations, 2018 and allow the request for withdrawal.



**ORDER –**

17. I, in exercise of the powers under Section 11(1) of the Securities and Exchange Board of India Act, 1992 (“SEBI Act”) and Regulation 28 of the Buy-back Regulations, 2018, in the interest of investors and the securities market, hereby allow **Thomas Cook (India)** to withdraw the *Buy-back Offer*.
18. The exemption so granted is subject to the following conditions:
- i. The statements/ averments made or facts mentioned in the Application and the letter dated November 26, 2020, are true and correct.
  - ii. The *Buy-back Offer* was not made with an intent to commit any fraudulent unfair trade practice in the securities market.
19. This Order is not intended to serve as a precedent.
20. The Application dated September 28, 2020, filed by Thomas Cook (India) is accordingly disposed of.
21. A copy of this Order shall be served upon the recognized Stock Exchanges for necessary compliance.

**Place: Mumbai**  
**Date: February 11, 2021**



A handwritten signature in black ink, appearing to read "Mahalingam", is written over a horizontal line.

**G. MAHALINGAM**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**