

EMEA DC Meeting Statement – 26 September 2022

Issue no. 2022062901

1. Is there a Successor to Compagnie Financière Michelin SA?

- (a) The EMEA DC has considered the DC Question in respect of Compagnie Financière Michelin SA (**Swiss Michelin** or the **Reference Entity**) in respect of 2014 Transactions.
- (b) Capitalised terms used but not defined in this statement have the meaning given to them in the 2018 ISDA Credit Derivatives Determinations Committees Rules (as amended as at the date of this statement) (including in the 2014 Definitions, as defined therein).

2. Decision

- (a) Based on the advice of Swiss counsel, the EMEA DC was of the view that the re-domiciliation of Swiss Michelin into France and its concurrent change of the company name and the legal entity type to Compagnie Financière Michelin, société par actions simplifiée (**Michelin France**) did not result in the creation of a new entity with a separate legal personality – rather Michelin France inherited its legal personality from Swiss Michelin, which, as a result, continues to exist as a French domiciled société par actions simplifiée. From a French law perspective, even though there is no specific express rule on the re-domiciliation of a foreign company into France, based on the advice of French counsel, the EMEA DC concluded that the better view was that the continuation of the legal personality from Swiss Michelin to Michelin France (following the transfer of domicile from Switzerland to France), would be also recognised under French law.
- (b) On the basis that Michelin France has inherited Swiss Michelin's legal personality and accordingly Swiss Michelin continues to exist (albeit in France in a new legal form), the EMEA DC determined that no succession had occurred as no Relevant Obligations had been transferred to another legal entity.
- (c) However, following the approach the EMEA DC adopted in relation to the conversions of Constellium N.V. into Constellium SE, Vivendi into Vivendi SE and Linde AG into Linde GmbH, the EMEA DC determined that Credit Derivative Transactions that specified Swiss Michelin as the Reference Entity should instead be read as specifying Michelin France. This is because Swiss Michelin is the same legal entity as Michelin France.

3. Background

- (a) The EMEA DC understands that the Reference Obligation typically specified in Credit Derivative Transactions in respect of the Reference Entity is the Euro 300,000,000 1.75 per cent. Bonds due 2027 with ISIN XS1233734562¹ (the **Reference Obligation** or the **2027 Bonds**). At the time the Reference Obligation was issued, it was issued by Michelin Luxembourg SCS (**Michelin LuxCo**) and guaranteed by Compagnie Financière du Groupe Michelin, "Senard et Cie".²
- (b) On 1 September 2020, Michelin LuxCo announced a consent solicitation in respect of the 2022 Bonds (ISIN: XS1233732194), the Reference Obligation and the 2045 Bonds (ISIN: XS1298728707) (the **Consent Solicitation**). As at 1 September 2020, the entity that guaranteed each of these Bonds had become known as Compagnie Financière Michelin SCmA (incorporated in Switzerland as a corporation limited by shares with unlimited partners (société en commandite par actions))(**Michelin SwissCo**). Michelin SwissCo would later be converted into Swiss Michelin as described below.³

¹ The prospectus dated 26 May 2015 is available from the Luxembourg Bourse.

² Compagnie Financière du Groupe Michelin, "Senard et Cie" was later converted into Michelin SwissCo, and then into Swiss Michelin, as described below.

³ The announcement of the Consent Solicitation and the related announcements of the results are available from the Luxembourg Bourse.

- (c) The Consent Solicitation cross-referred to an earlier February 2019 announcement of the Michelin Group. Such February 2019 announcement stated:⁴

"The Group is planning to simplify its legal structure by the first half of 2020, subject to obtaining the necessary agreements.

As part of this streamlining process, the Group's external financing operations would be transferred to Compagnie Générale des Établissements Michelin, the Group's parent company, while intra-group financing transactions would be retained by a dedicated subsidiary.

In addition, all of the international subsidiaries and affiliates would be consolidated by Compagnie Générale des Établissements Michelin, as is already the case for the French subsidiaries and affiliates."

- (d) The Consent Solicitation itself noted that the reorganisation had now commenced and as a result "(i) all external financing transactions of the Group (including bond issues, syndicated credit facilities and commercial paper programmes) would be transferred to [Compagnie Générale des Établissements Michelin (incorporated in France as a corporation limited by shares with unlimited partners (société en commandite par actions))(**Michelin ParentCo**)] while (ii) all intra-group financing transactions would be retained by a dedicated subsidiary of [Michelin ParentCo], Compagnie Financière Michelin Suisse SA (incorporated in Switzerland as a société anonyme) (**Michelin Intragroup FinCo**).
- (e) The Consent Solicitation also noted that since 2017, the Michelin Group's bond indebtedness had been issued directly by Michelin ParentCo and had not benefited from any guarantees. It also noted that the Group's intention is that all future principal external indebtedness will continue to be issued or raised directly by Michelin ParentCo. Accordingly, the purpose of the Consent Solicitation (including the release of the guarantee of the Reference Entity) was stated to be to ensure that all of the Group's bonds (and other principal indebtedness) were issued by the same legal entity. The principal requests of the original issuer (Michelin LuxCo) and the original guarantor (Michelin SwissCo) set out in the Consent Solicitation were that (i) the issuer of the 2022 Bonds, the Reference Obligation and the 2045 Bonds be changed to Michelin ParentCo and (ii) the guarantees given by Michelin SwissCo be released.
- (f) The successful completion of the Consent Solicitation in respect of the Reference Obligation and the 2045 Bonds was announced on 24 September 2020 and the guarantees of Michelin SwissCo were released with effect on and from 25 September 2020. The successful completion of the Consent Solicitation in respect of the 2022 Bonds was announced on 12 October 2020 and the guarantee of Michelin SwissCo in respect of the 2022 Bonds was released on 13 October 2020.
- (g) Later in October 2020, Michelin SwissCo converted into Swiss Michelin.⁵
- (h) On 1 April 2021, Swiss Michelin transferred the bulk of its assets and liabilities to Michelin Intragroup FinCo, by way of asset transfer. The name of the transferee is the same as that of the entity referred to in the Consent Solicitation as being intended to hold intra-group financing transactions. Swiss Michelin continued to exist following such transfer.
- (i) Finally, on 30 April 2021, Swiss Michelin re-domiciled to France and concurrently changed its legal entity type and company name to Michelin France.⁶

⁴ See: <https://www.michelin.com/en/documents/financial-for-the-year-ended-december-31-2018/>

⁵ The information available from the Swiss Central Business Name Index (Zefix) states that it was transformed pursuant to an instrument dated 16 October 2020.

⁶ Swiss Michelin was ultimately removed from the Swiss companies register on 25 November 2021.

4. **Replacement of the issuer and guarantor of 2022 Bonds, the Reference Obligation (i.e. the 2027 Bonds) and 2045 Bonds with Michelin ParentCo**

- (a) An entity may only be a Successor if, *inter alia*, either (A) the related Succession Date occurs on or after the Successor Backstop Date, or (B) such entity is a Universal Successor in respect of which the Succession Date occurred on or after January 1, 2014. Given that the DC Question was raised in June 2022 and the events took place between September 2020 and April 2021, all of the events occurred prior to the Successor Backstop Date. Therefore, Michelin ParentCo could only be the Successor if it was a Universal Successor.
- (b) The concept of universal succession is a recognised one under English law, whereby a succeeding entity assumes all obligations of the original entity and the original entity thereby ceases to exist. However, while this concept was the genesis of the provision included in the 2014 Definitions, the concept was not simply imported, and, as per the EMEA DC Statement in respect of Ziggo Bond Finance B.V. dated 21 January 2019, the EMEA DC was of the view that Universal Successor should be interpreted in accordance with the wording of the 2014 Definitions.

- (c) Section 2.2(a) of the 2014 Definitions provides as follows:

"Successor" means, subject to Section 2.2(c), the entity or entities, if any, determined as follows:...

(vii) in respect of a Reference Entity which is not a Sovereign, if one entity assumes all of the obligations (including at least one Relevant Obligation) of the Reference Entity, and at the time of the determination either (A) the Reference Entity has ceased to exist, or (B) the Reference Entity is in the process of being dissolved (howsoever described) and the Reference Entity has not issued or incurred any Borrowed Money obligation at any time since the legally effective date of the assumption, such entity (the "Universal Successor") will be the sole Successor for the entire Credit Derivative Transaction.

- (d) A Universal Successor determination therefore requires that:
- (i) one entity has assumed all obligations of the Reference Entity (including at least one Relevant Obligation);
 - (ii) the Reference Entity has ceased to exist or is in the process of being dissolved; and
 - (iii) the Reference Entity has not issued or incurred any Borrowed Money obligation at any time since the legally effective date of the assumption.
- (e) Michelin ParentCo could not constitute a Universal Successor as (i) other obligations appear to have remained with Swiss Michelin (i.e. the intra-group financing transactions which were subsequently transferred to Michelin Intragroup FinCo) and it also appears reasonable to assume that further intra-group Borrowed Money arrangements may have been created subsequently⁷; and (ii) although Swiss Michelin is no longer incorporated in Switzerland, Michelin France has inherited its legal personality and continues to exist.

5. **Transfer of assets and liabilities to Michelin Intragroup FinCo**

- (a) Swiss counsel assisted the EMEA DC with the review of the transfer agreement between Swiss Michelin and Michelin Intragroup FinCo.⁸ Based on that review, it was clear that certain liabilities were transferred as part of the asset and liability transfer. However, there was no Eligible Information to suggest that any of those liabilities would constitute Relevant Obligations.

⁷ Note that the transfer agreement lists, *inter alia*, "contrat ligne de crédits Groupe" as being incurred after October 2020 but prior to the date of the transfer to Compagnie Financière Michelin Suisse SA.

⁸ Entered into in March 2021 and obtainable from the Swiss register of commerce.

- (b) As noted above, the transfer of assets and liabilities occurred prior to the Successor Backstop Date. The EMEA DC concluded that Michelin Intragroup FinCo also could not constitute a Universal Successor as (i) it was not possible to confirm that any Relevant Obligations were transferred to Michelin Intragroup FinCo; and (ii) as noted above, although Swiss Michelin is no longer incorporated in Switzerland, Michelin France has inherited its legal personality and continues to exist.

6. Re-domiciliation and change of name and legal entity type into Michelin France

- (a) On the basis that Michelin France has inherited Swiss Michelin's legal personality and accordingly the Reference Entity continues to exist (albeit in France in a new legal form), the EMEA DC determined that no succession had occurred.
- (b) However, following the approach the EMEA DC adopted in relation to the conversions of Constellium N.V. into Constellium SE, Vivendi into Vivendi SE and Linde AG into Linde GmbH, the EMEA DC determined that Credit Derivative Transactions that specified Swiss Michelin as the Reference Entity should instead be read as specifying Michelin France. This is because Swiss Michelin is the same legal entity as Michelin France.

7. Reference Obligation

- (a) As noted above, the EMEA DC understands that the 2027 Bonds are typically specified as the Reference Obligation.
- (b) The 2027 Bonds ceased to be an obligation of the Reference Entity in 2020. This constituted a Substitution Event under Section 2.11(a)(iii) of the 2014 Definitions. As a result, Section 2.10(b) of the 2014 Definitions provides that the 2027 Bonds will cease to be the Reference Obligation (other than for the purpose of the [...] "Not Subordinated" Deliverable Obligation Characteristic and Section 2.10(c)(ii)) [this relates to selection of a replacement Reference Obligation]. Accordingly, the 2027 Bonds are not "Obligations" or "Deliverable Obligations" for the purposes of triggering a Credit Event or settling Credit Derivative Transactions in respect of Michelin France.