

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

**MOTION RECORD OF IMPERIAL TOBACCO CANADA LIMITED AND
IMPERIAL TOBACCO COMPANY LIMITED
(Motion for Stay Extension returnable February 20, 2020)**

February 13, 2020

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TO: THE COMMON SERVICE LIST

Court File No. 19-CV-615862-00CL
Court File No. 19-CV-616077-00CL
Court File No. 19-CV-616779-00CL

**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **JTI-MACDONALD CORP.**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED
AND IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

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TABLE OF CONTENTS

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

TABLE OF CONTENTS

| TAB | DOCUMENT | PAGE |
|------------|--|-------------|
| 1. | Notice of Motion | 1 |
| 2. | Affidavit of Eric Thauvette, sworn February 13, 2020 | 6 |
| A. | Exhibit "A" – Letter Agreement between Applicants and HSBC dated November 19, 2019 | 16 |
| 3. | Draft Stay Extension Order | 24 |

TAB 1

Court File No. CV-19-616077-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

**NOTICE OF MOTION
(Motion for Stay Extension
returnable February 20, 2020)**

The Applicants will make a motion before the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on Thursday, February 20, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order substantially in the form attached to the Motion Record at Tab 3 providing the following relief:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served; and
 - (b) extending the Stay Period (defined below) until and including September 30, 2020;
and
2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicants face an existential threat from tobacco-related litigation across Canada, including multiple class actions, government claims seeking to recover health care costs, and other ongoing proceedings (collectively, the “**Tobacco Litigation**”);
2. On March 1, 2019, the Court of Appeal for Quebec issued a judgment affirming a lower court decision that held Imperial Tobacco Canada Limited, JTI-Macdonald Corp., and Rothmans Benson & Hedges Inc. jointly and severally liable for a maximum of \$13.6 billion;
3. In addition, the plaintiffs in the Tobacco Litigation collectively seek hundreds of billions of dollars in damages, which exceeds the Applicants’ total assets by many orders of magnitude;
4. The Applicants were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019 (as amended from time to time, the “**Initial Order**”);
5. FTI Consulting Canada Inc. was appointed to act as the Monitor in the Initial Order;
6. Justice Winkler was appointed as the Court-Appointed Mediator in the Initial Order;
7. The Initial Order granted a stay of proceedings until April 11, 2019, or such later date as this Court may order (as extended by further court orders, the “**Stay Period**”);
8. The Court has previously extended the Stay Period until March 12, 2020;
9. The requested extension of the Stay Period is necessary and appropriate in the circumstances to allow for the continued operation of the Applicants’ business while they work towards developing a consensual plan of compromise or arrangement for the resolution of the Tobacco Claims (as defined in the Initial Order);
10. The Applicants have been acting in and continue to act in good faith and with due diligence in these CCAA proceedings;

11. During the extended Stay Period, the Applicants intend to continue engaging in the mediation process under the direction of the Court-Appointed Mediator and to work diligently (in consultation with the Monitor) to explore a negotiated resolution with the Tobacco Litigation stakeholders;
12. It is just and convenient and in the interests of the Applicants and their respective stakeholders that the Stay Period be extended;
13. The Applicants have sufficient liquidity to continue operations through the requested Stay Period;
14. The Monitor supports the extension of the Stay Period;
15. The provisions of the CCAA, including section 11.02, and the inherent and equitable jurisdiction of this Honourable Court;
16. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
17. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Affidavit of Eric Thauvette sworn February 13, 2020;
2. The Seventh Report of the Monitor (to be filed); and
3. Such further and other evidence as counsel may advise and this Court may permit.

February 13, 2020

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Limited

TO: THE COMMON SERVICE LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND
IMPERIAL TOBACCO COMPANY LIMITED

Court File No: CV-19-616077-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

NOTICE OF MOTION
(Motion for Stay Extension
returnable February 20, 2020)

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TAB 2

Court File No. CV-19-616077-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED
AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

AFFIDAVIT OF ERIC THAUVETTE

(Sworn February 13, 2020)

I, Eric Thauvette, of the City of Montreal, in the Province of Quebec, the Vice President and Chief Financial Officer of Imperial Tobacco Canada Limited (“ITCAN”), MAKE OATH AND SAY:

1. I am the Chief Financial Officer of ITCAN and, in that role, I am responsible for all financial-related aspects of ITCAN’s business operations. I am also an officer and director of ITCAN’s subsidiary and the other applicant, Imperial Tobacco Company Limited (“ITCO”, and collectively with ITCAN, the “Applicants”). As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have stated the sources of my information and believe them to be true. In preparing this Affidavit, I have consulted with other members of the Applicants’ senior management team, legal, financial and other advisors of the Applicants, and representatives of FTI Consulting Canada Inc. (“FTI” or the “Monitor”). In addition, I receive frequent updates from the Applicants’ counsel regarding these proceedings.

2. This affidavit is made in support of a motion by the Applicants for an order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA"), extending the Stay Period (defined below) up to and including September 30, 2020.

I. Background

3. The Applicants were granted CCAA protection by an order of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019 (as amended from time to time, the "Initial Order"). The Initial Order appointed FTI as the Monitor and granted a stay of proceedings in favour of the Applicants and certain related parties until and including April 11, 2019 or such later date as the Court may order (as extended by further court orders, the "Stay Period"). Most recently, this Court extended the Stay Period until and including March 12, 2020.

4. The Applicants sought CCAA protection following the judgment of the Quebec Court of Appeal on March 1, 2019, affirming a lower court decision that held ITCAN, JTI-Macdonald Corp. ("JTI"), and Rothmans Benson & Hedges Inc. ("RBH" and, with the Applicants and JTI, the "Tobacco Companies") jointly and severally liable for a maximum of \$13.6 billion. This class proceeding, together with the various consumer and government claims across the country (the "Tobacco Litigation"), collectively seek notional recovery of hundreds of billions of dollars from Imperial and the other legal Canadian tobacco manufacturers. Although Imperial disputes both the legal and factual foundation of the claims asserted in the Tobacco Litigation, as well as the corresponding quantification of damages, it ultimately determined that it is in the best interests of Imperial's stakeholders to engage in a restructuring process with the overriding objective of preserving the value of Imperial's business and resolving all Tobacco Claims (as defined in the Initial Order) in an orderly process under Court supervision.

5. ITCAN, JTI, and RBH are the three major Canadian manufacturers and distributors of tobacco products. JTI and RBH have also been granted CCAA protection under orders made on March 8, 2019 and March 22, 2019, respectively. Counsel for the Tobacco Companies have consulted on common issues in order to coordinate the three CCAA proceedings to the maximum extent possible.

II. The Mediation and Current Status of the CCAA Proceedings

6. At the joint comeback hearing for the Imperial, JTI, and RBH CCAA proceedings on April 4 – 5, 2019 (the “Comeback Hearing”), Justice Winkler was appointed the “Court-Appointed Mediator” in all three CCAA proceedings with a mandate to, among other things, adopt any process he considered appropriate for facilitating a global settlement of the Tobacco Claims.

7. Pursuant to an endorsement dated May 24, 2019, the mediation conducted by the Court-Appointed Mediator (the “Mediation”) is confidential and all steps taken or information produced by any of the parties in the Mediation shall not be disclosed. Therefore, the description of the Mediation and the Applicants’ participation below is general in nature.

8. During the most recent Stay Period, the Applicants have continued to engage in the Mediation in accordance with the directions provided by the Court-Appointed Mediator:

- (a) *Plenary Session:* The Court-Appointed Mediator hosted a plenary session in October 2019 that was attended by the Tobacco Companies, the Tobacco Litigation plaintiffs, and other stakeholders.
- (b) *Five-Year Forecasts:* Each of the Tobacco Companies, in consultation with their respective Monitors, prepared five-year financial forecasts. The forecasts were

uploaded to the data rooms set up for each of Imperial, JTI and RBH (the “Data Rooms”) in December 2019.

- (c) *Appointment of Representative Counsel:* On December 9, 2019, the Court granted an order (the “Representative Counsel Order”) appointing the Law Practice of Wagner & Associates Inc. (“Representative Counsel”) to represent the TRW Claimants (as defined in the Representative Counsel Order) in the Imperial, JTI and RBH CCAA proceedings, including the Mediation.
- (d) *Meetings with Court-Appointed Mediator:* The Applicants participated in numerous meetings with the Court-Appointed Mediator during the most recent Stay Period.
- (e) *Miscellaneous:* The Applicants negotiated non-disclosure agreements with counsel for representative plaintiffs in the Quebec Class Action and their financial advisor, Representative Counsel and its financial advisors, and counsel for the Ontario Flue-Cured Tobacco Growers’ Marketing Board, and they were provided access to the Imperial Data Room. In addition, the Applicants have continued receiving and responding to requests for information from Tobacco Litigation stakeholders during the most recent Stay Period.

9. The Applicants continue to believe that the Mediation and interactions facilitated by the Court-Appointed Mediator will allow all stakeholders to better understand the competing interests of other parties in the CCAA proceedings, and assist in identifying a path forward for ultimately developing a consensual plan of compromise or arrangement. The Applicants have diligently adhered to all directions made by the Court-Appointed Mediator relating to scheduling and the Mediation, and will continue to do so during the extended Stay Period.

III. Other Matters

10. On November 19, 2019, the Applicants entered into a letter agreement (the “Letter Agreement”) with HSBC Bank Canada (“HSBC”) relating to certain cash management arrangements and letters of credit (“LCs”) related to certain pension and tax obligations of the Applicants issued by HSBC. Under the Letter Agreement, HSBC has agreed to renew or extend the LCs it has issued on terms set out in the Letter Agreement. In addition, the Letter Agreement provides that the Applicants will maintain a minimum cash balance in their accounts with HSBC in an amount approximately equal to the total amount of the LCs (the “Minimum Balance”). The Letter Agreement also provides that HSBC may agree, at its discretion, to issue additional LCs and that the Minimum Balance will increase by an amount equal to 103% of any additional LCs issued by HSBC, unless the Applicants have prepaid all reimbursement obligations with respect to such additional LCs. Finally, the Applicants have acknowledged that HSBC may exercise set-off rights, including upon a draw being made by a beneficiary under an LC. The Monitor has reviewed and approved the Applicants entering into the Letter Agreement. A copy of the Letter Agreement without schedules is attached as Exhibit “A”.

11. As explained in my affidavit sworn September 23, 2019 for the most recent stay extension motion (the “September Thauvette Affidavit”), ITCAN is required to indemnify British American Tobacco Mexico, S.A. de C.V. (“BAT Mexico”) for certain costs resulting from the transition to plain packaging as, under a Finished Good Supply contract manufacturing agreement (the “BAT MX Agreement”), ITCAN is required to compensate BAT Mexico for the costs of implementing any changes requested by ITCAN. Given the Mediation and as a result of discussions with various stakeholders, ITCAN decided to delay making the payments while the Monitor examined and reported on them. During the most recent Stay Period, ITCAN employees met with the Monitor and explained the detailed composition of the proposed payments. The

Applicants and BAT Mexico are currently gathering detailed back-up documentation and other information in order to answer questions raised by the Monitor. The proposed payments have not been made yet.

12. As also explained in the September Thauvette Affidavit, the Federal government published the *Tobacco Products Regulations (Plain and Standardized Appearance)*, SOR/2019-107 (the “Regulations”) mandating plain and standardized appearance of tobacco packages and products on May 1, 2019. The Regulations will be implemented in two phases. In phase 1, manufacturers are no longer able to sell branded tobacco products since November 9, 2019 while retailers had an additional 90 days to sell branded tobacco products. In phase 2, manufacturers will have to ensure that all manufacturing, sales and distribution of cigarettes are in a slide and shell packaging format after November 9, 2021 while retailers have an additional 3 months to ensure all sales of cigarettes are in a slide and shell packaging format.

13. As anticipated, the Applicants had accelerated sales of certain branded products to certain of their wholesale and retail customer base during the transition under phase 1, resulting in corresponding inventory level fluctuations, higher than expected trade receipts, and other positive variances during the most recent extended Stay Period. It is anticipated that there will be some continuing variations from historical levels of receipts and disbursements in the Applicants’ cash flows for the extended Stay Period as a result of the transition under phase 1 but the Applicants expect that their cash flows will be regularized over time.

14. During the proposed extended Stay Period, ITCAN will be purchasing used machinery from BAT MX at its depreciated net book value, which is approximately \$6.7 million. The machinery will be used to manufacture and package cigarettes in a manner currently permitted under phase 1 of the Regulations. The machinery is expected to be used until phase 2 of the

Regulations comes into effect in November 2021, at which time it will need to be replaced with machinery that can produce packages in a slide and shell packaging format. The Monitor has reviewed and approved this purchase.

15. As explained in my affidavit sworn March 12, 2019, ITCO contracted with Ryder Integrated Logistics, a division of Ryder Truck Rental Canada Ltd. (“Ryder”) to supply and operate most of the Applicants’ distribution centres in Canada. ITCO’s contract with Ryder expired recently. In addition, Ryder and ITCO had a dispute regarding certain charges under the parties’ contract. That dispute has been resolved, and ITCO and Ryder agreed to extend their prior agreement while negotiating and finalizing a new contract.

16. Effective May 1, 2020, Joe Fragnito will assume the role of Chief Executive Officer of the Applicants. Mr. Fragnito is currently the President and Chief Commercial Officer at R.J. Reynolds Tobacco Company.

17. Overall, there has been negligible disruption of the Applicants’ business operations. The stay of proceedings has therefore achieved its objective of providing operational stability and fostering an environment that encourages stakeholder discussions.

IV. Stay Extension

18. As noted above, the Applicants are seeking to extend the Stay Period up to and including September 30, 2020.

19. I believe that the Applicants have acted and are continuing to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order. During the extended Stay Period, the Applicants intend to continue engaging in the Mediation under the

direction of the Court-Appointed Mediator and to work diligently (in consultation with the Monitor) to explore a negotiated resolution with the Tobacco Litigation stakeholders.

20. The Applicants' overriding objective remains the eventual global resolution of all Tobacco Claims in a co-ordinated fashion, which will require the continuing participation of all stakeholders in a co-ordinated process under continuing Court supervision.

21. The Applicants, with the assistance of the Monitor, have prepared an updated Cash Flow Forecast for the 35-week period commencing the week of February 3, 2020 through the week of September 28, 2020, which reflects that the Applicants are projected to have sufficient funding to continue to operate in the normal course during the proposed extension of the Stay Period. I understand that the Monitor will be attaching the updated Cash Flow Forecast with its report that will be filed with the Court. As noted in the September Thauvette Affidavit, the Applicants experienced a decline in sales during the past several months as compared to year-over-year numbers for the same period. The Applicants expect that this trend will continue in 2020. With phase 1 of the Regulations in place, a higher decline in sales is expected in 2020 as compared to 2019. The Applicants currently expect that the other Tobacco Companies in Canada and tobacco companies in the United States will similarly experience steeper declines in 2020 as opposed to 2019. The Applicants are continuing to analyze the data in consultation with the Monitor to better understand these developments.

22. The Monitor has expressed its support for the extension of the Stay Period to September 30, 2020.

SWORN BEFORE ME at the City of
Montreal, in the Province of Quebec, this
13th day of February, 2020.

I. Berthiaume
Commissioner for Taking Affidavits

Eric Thauvette
Eric Thauvette



IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL
TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED
APPLICANTS

Court File No: CV-19-616077-00CL

Ontario
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

AFFIDAVIT OF ERIC THAUVETTE
(Sworn February 13, 2020)

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Lawyers to the Applicants, Imperial Tobacco Canada
Limited and Imperial Tobacco Company Limited

Matter No: 1144377

TAB A

This is **Exhibit "A"** referred to in the
Affidavit of Eric Thauvette sworn before me
this 13th day of February, 2020.

I. Berthiaume

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



Private and Confidential

Dated as of November 19, 2019

Imperial Tobacco Canada Limited
3711 St-Antoine Street West
Montreal, QC H4C 3P6

Imperial Tobacco Company Limited
3711 St-Antoine Street West
Montreal, QC H4C 3P6

Attention: Éric Thauvette

Dear Sir:

Re: *Re Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited, CV-19-616077-00CL (the "CCAA Proceedings")*

We hereby refer to:

- A facility letter agreement dated September 25, 2012 (as amended, the "**LC Facility Agreement**") among HSBC Bank Canada ("**Us**", "**We**" or "**HSBC**"), as lender, and Imperial Tobacco Canada Limited ("**ITCAN**"), as borrower, establishing a letter of credit/bank guarantee facility in the maximum amount of \$82,257,000 (the "**LC Facility**");
- The letters of credit/bank guarantees issued under the LC Facility Agreement set forth on Schedule "A" hereto (the "**Existing LCs**" and each an "**Existing LC**"), and together with any Additional LCs (as defined below), the "**LCs**" and each a "**LC**";
- That certain master indemnity and reimbursement agreement for letters of credit dated as of October 3, 2012 between HSBC and ITCAN entered into in connection with the LC Facility Agreement;
- That certain supplementary applicant reimbursement agreement for letters of credit dated July 3, 2015 among HSBC, ITCAN and Imperial Tobacco Company Limited ("**ITCO**" and together with ITCAN, "**You**") entered into in connection with the LC Facility Agreement; and
- That certain commercial account operating agreement and the related account agreements between HSBC and ITCAN dated on or about November 12, 2019, as amended.

We further refer to the Second Amended and Restated Initial Order dated March 12, 2019 made by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") in the CCAA Proceedings (as may be further amended and restated from time to time, the "**Initial Order**"). FTI Consulting Canada Inc. was appointed as Monitor in the CCAA Proceedings (the "**Monitor**").

The purpose of this letter agreement ("**Agreement**") is to confirm the understandings and agreements reached among the undersigned parties to this Agreement (collectively, the "**Parties**") in respect of certain cash management arrangements and the LCs during the CCAA Proceedings, without, however, novating any of the obligations under the agreements and instruments referred to above.

FOR VALUE RECEIVED:

Minimum Balance

1. You represent and agree that the aggregate balance of unrestricted cash held on deposit in ITCAN's accounts with Us shall not fall below \$65,300,000 (the "**Minimum Balance**"). In any event, You will give Us at least 21 days prior written notice of the aggregate unrestricted cash on deposit with Us being projected by You or the Monitor to fall below the Minimum Balance (a "**Balance Notice**"). You will provide Us with timely notice of any and all restricted cash on deposit in ITCAN's accounts with Us. The Minimum Balance shall automatically be increased by an additional amount equal to 103% of the face value of all Additional LCs (as defined below), unless You shall have prepaid all of Your reimbursement obligations with respect to such Additional LCs.

Letters of Credit/Bank Guarantees

2. You have requested extensions and renewals of the Existing LCs. You acknowledge and agree that HSBC's agreement to permit the renewal of the Existing LCs and of any Additional LCs after the commencement of the CCAA Proceedings constitutes a new post-filing extension of credit by HSBC and that You will treat the LC Exposure (as defined below) as such for all purposes, including treating the LC Exposure as unaffected under any plan of arrangement proposed by You. Except as expressly contemplated in paragraphs 2 and 3 hereof, You will not request any new extensions of credit (including letters of credit or bank guarantees) and We are under no obligation to extend any further credit under the LC Facility Agreement or otherwise. For the purposes of this Agreement "**LC Exposure**" means, at any particular time, without duplication, the sum of (i) the undrawn and unexpired aggregate amount of all LCs outstanding, and (ii) the aggregate amount of all drawings under LCs for which HSBC has not been reimbursed.
3. HSBC may, from time to time, on an uncommitted basis and at its sole discretion, agree to issue one or more standby letters of credit or bank guarantees at the request of ITCAN on a stand-alone basis, in addition to the Existing LCs, and any renewals thereof (such additional letters of credit or bank guarantees, and any renewals thereof, are the "**Additional LCs**" and each an "**Additional LC**").
4. Should We decide to issue an Additional LC, the terms and conditions under which such Additional LC is issued, including without limitation with respect to letter of credit or bank guarantee commission and issuance, fees payable, term, and, if applicable, any prepayment obligations, will be determined by HSBC in its sole discretion at the time of issuance, and set out in documentation and reimbursement agreements, in form and content satisfactory to HSBC in its sole discretion, with respect to such Additional LC.

5. We agree not to issue any notice of non-renewal under the LCs, allowing automatic renewal of same in accordance with their respective terms until the earlier of (x) the implementation of a plan of arrangement in the CCAA Proceedings, and (y) the occurrence of a Triggering Event (as defined below) upon the occurrence of which We will have the option (but not the obligation) to issue notices of non-renewal in accordance with the terms of the applicable LC, provided, however, that We will refrain from issuing a notice of non-renewal if You deposit unrestricted cash in an amount equal to our LC Exposure in a non-disbursement account with Us in accordance with paragraphs 6(d) and 7. For the purposes of this Agreement "**Triggering Event**" means any of the following: (a) You send Us a Balance Notice, (b) the aggregate balance of unrestricted cash on deposit with HSBC falls below the Minimum Balance, (c) You receive notice from Us that You have breached a term of this Agreement and You have not cured such breach within 15 days of receipt of written notice of such breach; provided that the foregoing cure period shall not apply to any breach of Section 1 of this Agreement, (d) a motion or application is filed or commenced by You or any person requesting an order terminating the CCAA Proceedings or requesting to have any one of You become subject to bankruptcy proceeding or any another type of insolvency proceeding (whether or not such proceedings are concurrent); provided, however, that any application for a bankruptcy order or a termination of the CCAA Proceedings will not constitute a Triggering Event unless (i) You are not actively contesting such application or (ii) You are actively contesting such application and leave from the stay is granted for such application to proceed, or (e) the CCAA Proceedings are converted to, or overlaid with, another type of insolvency or bankruptcy proceeding.
6. Provided that We are continuing to comply with all of our commitments hereunder (after being provided with written notice of any alleged breach and provided with a reasonable period of time to cure), You hereby:
 - a. Acknowledge HSBC's set-off rights, including without limitation, its contractual, legal and equitable set-off and compensation rights.
 - b. Waive the application of the stay of proceedings granted under the Initial Order (as amended from time to time) as it relates to Us exercising any set-off rights and any other rights contemplated under this Agreement in accordance with and subject to the terms of this Agreement.
 - c. Acknowledge and agree that upon a draw being made by a beneficiary under an LC and that draw being honoured by Us, We may immediately satisfy ITCAN's and/or ITCO's (as applicable) reimbursement obligation to Us in connection with such draw under the LC in full against all amounts which may at any time stand to the credit of ITCAN in any account held with Us, together with any interest thereon due or accruing due to You (the "**Amounts**"), including by way of set-off. If any reimbursement obligation is satisfied by application of any of the Amounts, the Minimum Balance shall be automatically reduced on a dollar for dollar basis by the amount applied in respect of any such reimbursement. The term "account" shall include a debt owned by Us to You (or any one of You), which by its term is not due.

- d. You agree: (i) upon the occurrence of an event described in subparagraphs (a) to (c) of the definition of a Triggering Event, to deposit within 3 business days an amount of cash equal to the LC Exposure at that time in a non-disbursement account with Us, or (ii) upon the occurrence of an event described in subparagraphs (d) or (e) of the definition of a Triggering Event, to immediately deposit an amount of cash equal to the LC Exposure at that time in a non-disbursement account with Us, and, in either case, should You fail to do so, We may transfer funds equal to the LC Exposure from Amounts to a non-disbursement account in the name of ITCAN and may also satisfy payment of any outstanding bank fees from the Amounts in accordance with and subject to the terms of this Agreement. The Minimum Balance shall be automatically reduced on a dollar for dollar basis by the amount of the cash on deposit in any such non-disbursement account.
7. Cash held on deposit in any such non-disbursement account shall only be released to You by Us after Your reimbursement obligations relating to drawn LC's have been satisfied in full, all remaining undrawn LC's expire or are returned to Us for cancellation and all of HSBC's (i) outstanding bank fees, and (ii) reasonable and documented legal fees incurred in connection with this Agreement up to an aggregate maximum amount of \$25,000 (inclusive of applicable taxes), are paid in accordance with and subject to the terms of this Agreement.
8. We agree that any and all fees payable by You to Us in connection with the LC's shall be charged in the ordinary course but only in respect of the LC's that comprise the existing LC Exposure at the applicable time, and no standby, commitment or other fees shall be payable by You to Us in connection with any unused or inaccessible portion of the LC Facility or otherwise pursuant to the LC Facility Agreement. No fees shall be payable by You to Us in connection with any LC's that have expired or that have been drawn and fully reimbursed by You.

General

9. Subject to paragraph 8 hereof, You agree to make payments for fees owing under the LC Facility Agreement, any of the LC's or any other agreements with Us in the ordinary course (without set-off).
10. The rights hereby conferred on HSBC are in addition to and not in substitution for or derogation from any other rights which HSBC may have under law or under any securities now or hereafter held by HSBC including without limitation, any set-off rights.
11. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited or eliminated only to the extent necessary to remove the invalidity, illegality or unenforceability.

12. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any other agreement between Us and You, then the provisions contained in this Agreement shall prevail to the extent of such conflict or inconsistency.
13. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario, and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the Court presiding over the CCAA Proceedings to adjudicate all matters related to the agreement set out in this Agreement.
14. Unless otherwise stated, all references herein to sums of money are expressed in, and all payments provided for herein shall be made in, Canadian Dollars.
15. No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the Parties to this Agreement entitled to grant the waiver. No failure to exercise, and no delay in exercising, any right or remedy, under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision.
16. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a party may send a copy of its original signature on the execution page hereof to the other party by facsimile or electronic transmission and such transmissions shall constitute delivery of an executed copy of this Agreement to the receiving party.
17. Other than with respect to The Bank of Nova Scotia and any financing or cash management arrangements between The Bank of Nova Scotia and You, You hereby represent and agree that, since the commencement of the CCAA Proceedings You have not to date, and that You will not during the CCAA Proceedings going forward, provide any credit, support, credit enhancement or other form of loss protection to any other cash management bank, or issuer of a letter of credit, letter of guarantee, surety bond or similar instrument without also providing the same protection to Us to ensure HSBC's exposure is protected to the same degree and proportion as such other person (taking into account to the quantum of cash management and letter of credit exposure).
18. You hereby represent and warrant that (i) the execution, delivery or performance by You of this Agreement and the consummation of the transactions contemplated herein, do not contravene any applicable law, or conflict with or result in any breach of any of the terms of any agreement or instrument to which You are party or by which You are bound; and (ii) no consent or approval, is required in connection with, the execution, delivery or performance by You of this Agreement, or the consummation of the transactions contemplated herein, other than such consents or approvals that have been obtained.

19. The parties hereto have requested that this Agreement and any document relating hereto be drafted in English. *Les parties aux présentes ont exigé que cette lettre et tout document y afférent soient rédigés en anglais.*

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

Yours truly,

HSBC BANK CANADA

By: _____
Name: CLAIRE GAUDICHAN
Title: VP, Global Banking

We acknowledge and agree to the terms and conditions in this Agreement.

Dated this 13 day of _____, 2019

IMPERIAL TOBACCO CANADA LIMITED

By: _____
Name: Eric Thauvette
Title: CFO & VP Finance

IMPERIAL TOBACCO COMPANY LIMITED

By: _____
Name: Tamara Gitto
Title: VP Legal & External Affairs

TAB 3

Court File No. CV-19-616077-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

| | | |
|--------------------|---|--------------------------------|
| THE HONOURABLE MR. |) | THURSDAY, THE 20 TH |
| |) | |
| JUSTICE MCEWEN |) | DAY OF FEBRUARY, 2020 |

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

**ORDER
(Stay Extension)**

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order extending the Stay Period (defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Eric Thauvette sworn February 13, 2020, the Seventh Report of the Monitor, and on hearing the submissions of respective counsel for the Applicants, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● affirmed February ●, 2020, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF THE STAY PERIOD

2. **THIS COURT ORDERS** that the Stay Period as defined in paragraph 18 of the Second Amended and Restated Initial Order dated March 12, 2019 is hereby extended until and including September 30, 2020.

GENERAL

3. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND
IMPERIAL TOBACCO COMPANY LIMITED

Court File No: CV-19-616077-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding Commenced at Toronto

ORDER
(Stay Extension)

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto ON M5X 1B8

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Fax: 416.862.6666

Lawyers for the Applicants, Imperial Tobacco Canada
Limited and Imperial Tobacco Company Limited

**IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL
TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED**

Court File No: CV-19-616077-00CL

APPLICANTS

Ontario

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**MOTION RECORD OF IMPERIAL TOBACCO
CANADA LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED**
(Motion for Stay Extension returnable February 20, 2020)

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Matter No: 1144377