

**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

**AIDE MEMOIRE OF IMPERIAL TOBACCO CANADA LIMITED  
AND IMPERIAL TOBACCO COMPANY LIMITED  
(Motion for Approval of Sanction Order, returnable January 29-31, 2025)**

January 20, 2025

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Lawyers for the Applicants

1. Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (together, “**Imperial**”) are supportive of the First Amended and Restated Plan of Compromise and Arrangement dated December 5, 2024 (the “**CCAA Plan**”), as proposed by the Court-appointed monitor of Imperial, and consent to an order approving and sanctioning the CCAA Plan, subject to the position set out herein regarding Article 5.2 thereof.<sup>1</sup>
2. Article 5.2 of the CCAA Plan provides that “[t]he issue of allocation of the Global Settlement Amount as between the Tobacco Companies in the three CCAA Proceedings remains unresolved”. Article 5.2 was included in the CCAA Plan at first instance because Rothmans, Benson & Hedges Inc. (“**RBH**”), very late in the process, sought to backtrack from the terms of the negotiated deal – which include an internal and self-adjusting allocation formula – in an effort to reduce its own contribution obligations. More specifically, RBH is now seeking to impose some manner of (undefined) “re-allocation” of the contribution obligations that otherwise arise from the operation of the CCAA Plan. Imperial objects to any such proposed “re-allocation”, and reserves all rights to respond to whatever evidence and arguments may be advanced in this regard.
3. The other Tobacco Companies have consistently resisted this change in position by RBH. In particular, Imperial reiterates its firm view that the CCAA Plan – which has been the subject of protracted negotiation – should be operative on its own terms.
4. In an effort to advance matters to the creditors’ meetings and avoid an impasse, the Monitors ultimately included Article 5.2 so that a draft plan could be put forward for a vote without opposition from the Tobacco Companies. To be clear, however, Imperial does not view the “issue of allocation of the Global Settlement Amount” to be “unresolved”. To the contrary, the respective contributions by each Tobacco Company to the Global Settlement Amount are expressly defined by the CCAA Plan.
5. More specifically, the Tobacco Companies’ contributions to the Global Settlement Amount are governed by two payment mechanisms under the CCAA Plan: (i) the Upfront Contributions (Article 5.4), and (ii) the Annual Contributions (Article 5.6). The Annual Contributions are prescribed by Article 5.6 of the CCAA Plan, pursuant to which each Tobacco Company is

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<sup>1</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the CCAA Plan.

required to contribute an equal percentage (*i.e.*, 85% in the first 5 years, declining by 5% increments over the contribution period to a 70% threshold) of their respective Net After-Tax Income. These Annual Contributions will continue to be made by all three Tobacco Companies until the Global Settlement Amount is satisfied. There is no basis for any additional “allocation”, nor is any such re-allocation appropriate.

6. If this prescribed contribution formula were to be adjusted at this late stage, after the creditors have already voted unanimously in favour of the CCAA Plan, the economics of the CCAA Plan would be undermined. Moreover, the self-leveling nature of the payments under the CCAA Plan, which formed the foundation of the CCAA Plan from the outset of the negotiation process, would be materially compromised.
7. The Upfront Contributions prescribed by Article 5.4 are similarly subject to a prescribed allocation as between the three Tobacco Companies under the terms of the CCAA Plan. Specifically, Article 5.4 contemplates that the Tobacco Companies will each contribute the “cash and cash equivalents generated from all sources by each Tobacco Company as at the month end prior to the Plan Implementation Date, plus the Cash Security Deposits, less then sum of \$750 million which shall be deducted from the aggregate amount”. Again, therefore, no further “re-allocation” is necessary or appropriate in relation to the Upfront Contributions.
8. Accordingly, Imperial submits that there is no basis – pursuant to Article 5.2 or otherwise – for any order or direction in relation to issues of “allocation” under the CCAA Plan. The terms of the CCAA Plan necessarily govern the Tobacco Companies’ respective contributions to the Global Settlement Amount, and any variation of the CCAA Plan terms in this regard would have the effect of undermining the negotiated outcome that has been the subject of a protracted multi-party mediation.
9. The fundamental financial terms of the CCAA Plan similarly cannot be varied or “re-allocated” after sanction. If any such post-sanction re-allocation is proposed, Imperial and its affiliates, among others, will be forced to withdraw their support for the CCAA Plan if and to the extent that the CCAA Plan terms have been (or may be) materially changed.

10. Imperial reserves its right to respond more fully to any “re-allocation” arguments that may be advanced by RBH (or others), once these arguments have been fully briefed in accordance with the procedural schedule for the Sanction Hearing.

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

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Proceeding Commenced at Toronto

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