

**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 June 26, 2019)**

June 17, 2019

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

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(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
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LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

**NOTICE OF MOTION
(Motion for Stay Extension
returnable June 26, 2019)**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on Wednesday, June 26, 2019 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 December 16, 2019;
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 an appeal judgment condemning Imperial Tobacco Canada Limited to pay a potential maximum amount that, with interest, is over \$9 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. Following the comeback hearing, the Court extended the Stay Period until June 28, 2019;
9. The 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 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 conclude negotiations for forms of nondisclosure agreements and begin exchanging information with the provinces, to start finalizing the terms on which information will be shared with other stakeholders, to engage in the mediation process with the Court-Appointed Mediator, and to work diligently (in consultation with the Monitor) to engage in substantive discussions 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 June 17, 2019;
2. The Fourth Report of the Monitor (to be filed); and
3. Such further and other evidence as counsel may advise and this Court may permit.

June 17, 2019

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

TO: 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 June 26, 2019)**

OSLER, HOSKIN & HARCOURT LLP
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Toronto ON M5X 1B8

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

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 June 17, 2019)

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 (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 relating to the status of the CCAA proceedings and have personally attended at a number of the court appearances to date in 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 December 16, 2019.

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").

4. The Applicants sought CCAA protection in the face of an existential threat from tobacco-related litigation across Canada, including multiple class actions, government claims seeking to recover health care costs under special purpose provincial legislation (the "Medicaid Actions"), and other ongoing proceedings (collectively the "Tobacco Litigation"). On March 1, 2019, the Court of Appeal for Quebec issued an appeal judgment in two tobacco-related class actions, the Letourneau and Blais class actions (the "Quebec Class Actions"), and awarded damages of up to a potential maximum amount of over \$9 billion against ITCAN. Moreover, ITCAN is currently facing more than 20 large tobacco litigation claims that have been filed across Canada, with claims for damages totalling well in excess of \$600 billion.

5. While the Applicants dispute the claims made in the various proceedings, the Applicants concluded it was in the best interests of all of their stakeholders to engage in a restructuring process with the overriding objective of preserving the value of the Applicants' business and facilitating a global resolution of all Tobacco Claims (as defined in the Initial Order) in an orderly process under Court supervision.

6. ITCAN, JTI-Macdonald Corp. (“JTI”), and Rothmans Benson & Hedges Inc. (“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 Applicants, RBH, and JTI have consulted extensively on common issues in order to coordinate the three CCAA proceedings to the maximum extent possible. For example, the Applicants, RBH, and JTI worked together to explore the possibility of negotiated resolutions to issues raised by stakeholders in motions scheduled before this Honourable Court.

7. The comeback motions for the Imperial, JTI, and RBH CCAA proceedings were heard together on April 4 and 5, 2019 (the “Comeback Hearing”). Following the Comeback Hearing, the Court extended the Stay Period until and including June 28, 2019.

II. The Mediation

8. Importantly, the terms of Justice Winkler’s mandate as the Court-Appointed Mediator in all three CCAA Proceedings were finalized at the Comeback Hearing. During the most recent Stay Period, the Applicants have participated in discussions relating to setting the ground rules for the mediation process before the Court-Appointed Mediator, including a Communication & Confidentiality Protocol approved by this Court in an endorsement dated May 24, 2019.

9. In addition, the Applicants have participated in numerous meetings with the Court-Appointed Mediator and the Monitor on a variety of issues that arose in these CCAA proceedings, including the issues raised by the motions filed by representative plaintiffs in the Quebec Class Actions (the “QCAPs”) for the Comeback Hearing.

10. The Court-Appointed Mediator has recently set a schedule for participation by various stakeholders in the Imperial, JTI and RBH CCAA proceedings in a mediation process. The Applicants believe that this mediation process and anticipated interactions facilitated by the Court-Appointed Mediator during the proposed extended Stay Period 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 plan of compromise or arrangement.

III. Current Status of CCAA Proceedings

11. The QCAPs filed wide-ranging motions, originally returnable at the Comeback Hearing, in the Imperial, JTI and RBH CCAA proceedings. A number of the issues raised by the QCAPs were not finally determined at the Comeback Hearing and were referred to the Court-Appointed Mediator. The Court also heard further submissions on some of the issues raised in these Comeback Hearing motions on April 25, April 26, and May 14.

12. Among other things, the QCAPs sought orders (i) prohibiting the Applicants from making intercompany payments except for payments for physical inventory actually supplied; (ii) taxing the fees and disbursements of professionals and consultants engaged by the Applicants (including counsel for the Applicants, the Monitor, and counsel for the Monitor) every 90 days with prior notice to the service list; (iii) partially lifting the stay of proceedings to obtain court approval for settlements between the QCAPs and the liquidators of Kansa General International Insurance Company Ltd. and Northumberland General Insurance Company (the “Insurance Settlements”); and (iv) partially lifting the stay of proceedings to permit the QCAPs to file a bankruptcy application.

13. Following the Comeback Hearing, the Applicants' counsel (in conjunction with JTI's and RBH's counsel) attempted to consensually resolve these issues with the assistance of the Court-Appointed Mediator:

- (a) *Professional fees*: The Applicants and the QCAPs resolved this issue by agreeing to the regular disclosure of professional fees on the terms included in the Professional Fee Disclosure Order granted by this Court on May 14, 2019.
- (b) *Insurance Settlements*: Despite disagreements about the scope of the Insurance Lift-Stay Order granted on April 5, 2019, the Applicants and the QCAPs consensually resolved this issue as well. On April 25, 2019, this Court issued an endorsement on consent authorizing the QCAPs to seek court approval for the Insurance Settlements while deferring all other issues. Following further discussions, the Applicants and the QCAPs reached an agreement that contemplated the QCAPs applying to seek approval for spending the proceeds of the Insurance Settlements for certain stated purposes. On May 31, 2019, this Court granted an order approving the parties' agreement and further lifting the stay to permit the QCAPs to obtain court approval for spending the Insurance Settlement proceeds for the purposes described in the parties' agreement. The QCAPs subsequently obtained such approval from the Quebec Superior Court.
- (c) *Bankruptcy application and intercompany payments*: The Applicants understand that the QCAPs are no longer seeking to file a bankruptcy application at this time. In addition, while the intercompany payments issues has not been fully resolved, it appears that the issue has been deferred for the time being.

14. The Applicants' counsel have also engaged with the Consortium,¹ Alberta, Newfoundland and Labrador, and Ontario to negotiate the terms on which the parties will exchange information, which is key to any successful negotiations in these proceedings.

15. In particular, during the most recent Stay Period, the Applicants' counsel have been negotiating forms of non-disclosure agreements ("NDAs") with these provinces' counsel in order to facilitate the sharing of confidential information by the Applicants with the provinces and their professional advisors. The Applicants have finalized the form of NDAs with the Consortium, Alberta, and Newfoundland and Labrador for sharing information with external advisors retained by these provinces. The Applicants are continuing to negotiate NDAs for sharing information directly with these provinces and with Ontario.

16. Once the forms of NDAs with the provinces have been finalized, the Applicants will start responding to requests for documents and information in order to facilitate further discussions with the provinces. In addition, these NDAs will serve as a model (with necessary modifications) for sharing information with other stakeholders.

17. The Applicants understand that representatives of the various provinces in the Consortium held meetings with the Monitors in the Imperial, RBH and JTI CCAA proceedings as well as with the Court-Appointed Mediator. In addition, the Applicants' counsel have continued communicating with counsel for the above-noted provinces on issues arising in the CCAA proceedings.

¹ British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and Saskatchewan.

IV. Other Matters

18. The Applicants have entered into a settlement of their obligations related to a deferred income plan, a supplemental executive retirement plan, and a supplementary pension plan established by Genstar Corporation (collectively, the “Genstar Plans”).

19. Under a 1986 agreement, ITCAN guaranteed Genstar’s obligations related to the Genstar Plans and, until March 2019, funded the payments under the Genstar Plans by making monthly capital contributions to Imasco Holdings Group, Inc., a U.S. subsidiary. However, after obtaining the Initial Order, ITCAN ceased funding payments under the Genstar Plans. The Former Genstar U.S. Retiree Group Committee (the “Committee”) filed a motion seeking (i) a Representation Order appointing certain Representatives and Representative Counsel for the Genstar Plans’ members in these CCAA proceedings; and (ii) a Reinstatement Order reinstating the payments under the Genstar Plans.

20. On April 25, 2019, the Court granted the Representation Order. The motion for the Reinstatement Order was scheduled to be heard on April 26. However, on April 25, the Applicants and the Representatives, supported by the Committee, negotiated at arms’ length and agreed to resolve the motion for the Reinstatement Order on mutually agreeable terms, subject to court approval. The motion seeking court approval of the settlement will be heard on June 26, 2019. Beneficiaries under the Genstar Plans were given notice of the settlement and the settlement approval hearing pursuant to the Notice Procedure Order made by this Court on May 14, 2019. The Applicants will file materials in support of the settlement approval motion describing the settlement in grater detail.

21. On May 1, 2019, the Federal government published the *Tobacco Products Regulations (Plain and Standardized Appearance)*, SOR/2019-107 (the “Regulations”) that,

among other things, provide for the plain and standardized appearance of tobacco packages and products. Under the Regulations, manufacturers will no longer be able to sell branded tobacco products after November 9, 2019 while retailers have an additional 90 days to sell branded tobacco products. The Applicants have therefore been required to initiate strategies to address required changes to manufacturing equipment resulting from the transition to plain packaging. During this transition, the Applicants anticipate there will be accelerated sales of certain branded products to certain of their wholesale and retail customer base, resulting in corresponding inventory level fluctuations. As a result, the Applicants anticipate timing differences in historical levels of receipts and disbursements in the short term with the expectation that their cash flows will be regularized once the transition to plain packaging is complete.

22. During the most recent Stay Period, all of the Applicants' suppliers continued to supply goods and services post-filing based on existing arrangements or terms negotiated with the Applicants.

23. On May 22, 2019, the Applicants entered into a letter agreement (the "Letter Agreement") with The Bank of Nova Scotia ("BNS") relating to the cash management services provided by BNS and letters of credit ("LCs") related to certain pension and tax obligations of the Applicants issued by BNS. Under the Letter Agreement, BNS 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 BNS in an amount equal to the daily settlement risk borne by BNS and the total amount of the LCs (the "Minimum Balance"). Finally, the Applicants have acknowledged that BNS may exercise set-off rights to eliminate negative balances in any of the Applicants' accounts with BNS and, upon the occurrence of certain events, exposure under LCs. 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”.

24. The Applicants are currently in discussions with BNS regarding potential amendments to the Letter Agreement under which BNS would potentially issue certain additional LCs. If the parties agree to these amendments, the Applicants will be required to increase the Minimum Balance by an amount equal to 103% of any new LCs issued by BNS.

25. Overall, there has been negligible disruption or impairment 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.

V. Stay Extension

26. As noted above, the Applicants are seeking to extend the Stay Period up to and including December 16, 2019.

27. 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 conclude negotiations for the remaining NDAs and begin exchanging confidential information with the provinces, to start finalizing the terms on which information will be shared with other stakeholders, to engage in the mediation process with the Court-Appointed Mediator, and to work diligently (in consultation with the Monitor) to engage in substantive discussions with the Tobacco Litigation stakeholders.

28. The Applicants’ overriding objective remains the eventual global resolution of all Tobacco Claims in a co-ordinated fashion, without preferring the claim of one stakeholder over

the others, which will require the continuing participation of all stakeholders in a co-ordinated process under continuing Court supervision.

29. I understand that the Monitor will be providing an updated Cash Flow Forecast which will demonstrate that the Applicants will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period. In assisting with preparation of the Cash Flow Forecast, the Applicants highlighted uncertainty in the market that may limit their ability to maintain and/or increase prices of their products, which may have an adverse impact on sales revenues.

30. The Monitor has expressed its support for the extension of the Stay Period to December 16, 2019.

SWORN BEFORE ME at the City of
Montreal, in the Province of Quebec, this
17th day of June, 2019.

I. Berthiaume

Commissioner for Taking Affidavits

Eric Thauvette

Eric Thauvette



TAB A

This is **Exhibit "A"** referred to in the Affidavit of Eric Thauvette sworn before me this 17th day of June, 2019.

I. Berthiaume

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



Private and Confidential

May 22, 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: Eric 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 credit agreement dated March 26, 2010 (the "**LC Credit Agreement**") among The Bank of Nova Scotia ("Us", "We" or "BNS"), as lender, and Imperial Tobacco Canada Limited ("ITCAN") and Imperial Tobacco Company Limited ("ITCO"), as borrowers, and establishing a committed standby letter of credit facility in a maximum amount of \$100,000,000 (the "**LC Credit Facility**") and the letters of credit issued thereunder described in Schedule "A" (the "**Province LCs**");
- Three (3) letters of credit issued at the request of ITCAN on a discretionary stand-alone basis independently from the LC Credit Agreement and further detailed in Schedule "B" hereof (the "**Pension LCs**" and, together with the Province LCs, the "**LCs**" and each a "**LC**");
- A letter agreement dated March 26, 2010 between BNS and ITCAN establishing a revolving demand credit facility by way of overdraft in a maximum amount of \$25,000,000, as amended on December 22, 2015 (the "**Overdraft Facility Agreement**"), which was terminated prior to the commencement of the CCAA Proceedings with your consent and agreement;
- A Canadian Dollar money management services positioning service agreement (inter-company) dated July 20, 2010 among BNS, ITCAN, ITCO, Imperial Tobacco Products Limited ("ITPL"), Channel 2 Inc. ("**Channel 2**") and Imperial Tobacco IT Solutions Inc. ("**IT Solutions**") (the "**CAD Positioning Agreement**"). ITPL no longer holds any accounts with Us and has been removed from the CAD Positioning Agreement. Channel 2 merged with, and is continuing as, ITCO. IT Solutions changed its name to Imperial Tobacco Services Inc. ("**IT Services**"; and, together with ITCAN and ITCO, "**You**"); and
- A US Dollar money management services positioning service agreement (inter-company) dated July 20, 2010 among BNS, ITCAN, ITCO and ITPL (the "**USD Positioning**

Agreement” and, together with the CAD Positioning Agreement, the **“Positioning Agreements”**). ITPL has been removed from the US Positioning Agreement.

We further refer to an Initial Order made on March 12, 2019 by the Ontario Superior Court of Justice (the **“Court”**) and initiating the CCAA Proceedings (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”**) for the continuation of certain cash management services and the renewal of the LCs during the CCAA Proceedings.

FOR VALUE RECEIVED:

Cash Management

1. You represent and agree that the aggregate balance of unrestricted cash held on deposit in ITCAN’s accounts with Us shall not: (a) from and after the date hereof up to June 28, 2019 fall below \$263,500,000, and (b) from and after June 28, 2019 fall below \$363,500,000 (in each case, 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 applicable 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.
2. You have instructed Us to close the account held for Imasco Pension Funds Society (**“Imasco”**). To the extent applicable, such account shall be brought to a zero balance by Us through netting and combination of Your accounts and the account of Imasco.
3. All account operations and services, including applicable daily payment limits in respect of such accounts and services, will be adjusted as agreed and described in Schedule **“C”**; provided, however, on each day that the actual aggregate unrestricted cash on deposit by ITCAN with Us is less than the applicable Minimum Balance, a reduced daily processing limit for wire transfers shall be established for that day in accordance with the following formula (the **“Reduced Daily Wire Limit”**):

Reduced Daily Wire Limit = \$115,000,000 x (A/the applicable Minimum Balance)

A = the actual aggregate unrestricted cash on deposit by ITCAN with Us determined at or about 10 a.m. (Toronto time) on the applicable date taking into account any items posted in our system overnight but not cleared through Your accounts with Us as at that time;

On each day that actual aggregate unrestricted cash on deposit by ITCAN with Us is below the applicable Minimum Balance, You will stay below the Reduced Daily Wire Limit calculated by You in good faith for such day with the supervision of the Monitor. Without limiting Your forgoing obligation, We may issue a written notice to You from time to time

advising You of the Reduced Daily Wire Limit based on the information available to Us in respect of ITCAN's accounts with Us and such determination by Us shall be final and binding on You for the applicable date (or any longer period specified by Us in such notice).

4. Except as amended or superseded by this Agreement, You and We agree that any cash management services provided by BNS to You, including under the Positioning Agreement, will be maintained in accordance with the terms and conditions of the applicable existing agreements with Us and any order of the Court in the CCAA Proceedings.
5. You acknowledge and agree to our netting and combining of, and setting-off against, one or more of any of Your accounts by Us to eliminate any negative balances from time to time in any account that any of You may have with Us irrespective of which of Your names the subject accounts are held in accordance with existing agreements or past practices.
6. Notwithstanding the allowance for a Reduced Daily Wire Limit pursuant to paragraph 3, upon the occurrence of an event described in subparagraphs (a) to (d) of the definition of a Triggering Event (as defined below), You acknowledge that we are not restricted by this Agreement from making an application to the Court for leave to seek an order permitting Us, among other things, to terminate the Positioning Agreements. Upon the occurrence of an event described in subparagraphs (e) or (f) of the definition of a Triggering Event, We may immediately terminate the Positioning Agreements, zero out all negative account balances through netting of accounts and cancel all daily processing limits in respect of such accounts and services; provided that, upon BNS taking any of the foregoing actions, Your obligation to hold the Minimum Balance on deposit with Us pursuant to paragraph 1 hereof shall be of no further force and effect as of the date that is five business days after the date that an amount of cash equal to the LC Exposure (as defined below) has been deposited in a non-disbursement account with Us in accordance with subparagraph 9(d) hereof.

Letters of Credit

7. You have requested extensions and renewals of the LCs. You acknowledge and agree that BNS' agreement to permit renewal of the LCs after the commencement of the CCAA Proceedings constitutes a new post-filing extension of credit by BNS and that You will treat the LC Exposure 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 this paragraph 7, You will not request any new extensions of credit (including letters of credit) and We are under no obligation to extend any further credit under the LC Credit Agreement.
8. 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 (as defined below) in a non-disbursement account with Us in accordance with paragraphs 9(c) and 10. For the purposes of this Agreement “**Triggering Event**” means any of the following: (a) You send Us a Balance Notice, (b) the aggregate cash balance on deposit with BNS falls below the applicable 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, (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 Proceeding 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, (e) the CCAA Proceedings are converted to, or overlaid with, another type of insolvency or bankruptcy proceeding, or (f) IT Services becomes subject to a bankruptcy or insolvency proceeding or any such proceedings involving IT Services are commenced or applied for by or against IT Services, other than a voluntary filing by IT Services to become an applicant in the CCAA Proceedings.

9. 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 BNS’ 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 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 or ITCO’s 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 and/or ITCO 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 applicable 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) or (f) of the definition of a Triggering Event, to deposit within 3 business days

an amount of cash equal to the Letter of Credit Exposure (as defined in the LC Credit Agreement, with the amendment that such definition will be deemed to include a reference to the Pension LCs in addition to the Province LCs; such amended definition for the purpose of this Agreement, 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 and Legal Fees from the Amounts in accordance with 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.

10. 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 LCs have been satisfied in full, all remaining undrawn LCs expire or are returned to Us for cancellation and all of our outstanding bank fees and Legal Fees in accordance with the terms of this Agreement.
11. We agree that any and all fees payable by You to Us in connection with the LCs shall be charged in the ordinary course but only in respect of the LCs 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 Credit Facility or otherwise pursuant to the LC Credit Agreement or the Overdraft Facility Agreement. No fees shall be payable by You to Us in connection with any LCs that have expired or that have been drawn and paid.

General

12. Subject to paragraph 11 hereof, You agree to make payments for fees owing under the LC Credit Agreement, any of the LCs, the Positioning Agreements or any other agreements with Us in the ordinary course (without set-off). You further agree to pay (without set-off) the reasonable and documented fees incurred by McMillan LLP, as counsel to BNS, up to an aggregate maximum amount of \$500,000 (inclusive of applicable taxes) (the “**Legal Fees**”), within 10 business days of receipt of an invoice (with privileged information redacted). The submission to You of McMillan’s redacted invoices in order to achieve the above in no way constitutes a waiver of BNS’ privilege with regards to the work performed by McMillan LLP.
13. You 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 BNS’ 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).

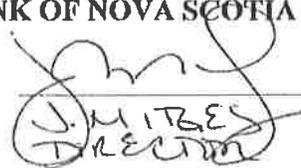
14. The rights hereby conferred on BNS are in addition to and not in substitution for or derogation from any other rights which BNS may have under law or under any securities now or hereafter held by BNS including without limitation, any or any other set-off rights.
15. In case any one or more of the 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.
16. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any other agreement between Us or any one or more of You, then the provisions contained in this Agreement shall prevail to the extent of such conflict or inconsistency.
17. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Québec, 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.
18. 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.
19. 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.
20. 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.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

Yours truly,

THE BANK OF NOVA SCOTIA

By:
Name:
Title:

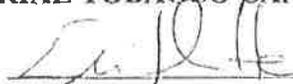

J. M. IVES
DIRECTOR



Name: Sauraa Khatri
Title: Associate Director

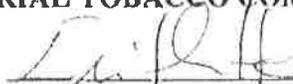
We acknowledge and agree to the terms and conditions in this Agreement.
Dated this 22 day of May, 2019

IMPERIAL TOBACCO CANADA LIMITED

By: 
Name: Eric Thauvette
Title: Vice President & CFO

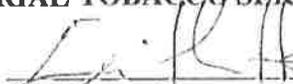
We acknowledge and agree to the terms and conditions in this Agreement.
Dated this 22 day of May, 2019

IMPERIAL TOBACCO COMPANY LIMITED

By: 
Name: Eric Thauvette
Title: Vice President & CFO

We acknowledge and agree to the terms and conditions in this Agreement.
Dated this 22 day of May, 2019

IMPERIAL TOBACCO SERVICES INC.

By: 
Name: Eric Thauvette
Title: President

Ontario

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

Proceeding commenced at Toronto

AFFIDAVIT OF ERIC THAUVETTE
(Sworn June 17, 2019)

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place, P.O. Box 50
Toronto, ON M5X 1B8

Deborah Glendinning (LSO# 31070N)
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Lawyers to the Applicants, Imperial Tobacco Canada
Limited and Imperial Tobacco Company Limited

Matter No: 1144377

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	WEDNESDAY, THE 26 TH
)	
JUSTICE MCEWEN)	DAY OF JUNE, 2019

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) until and including December 16, 2019, 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 June 17, 2019, the Fourth 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 June ●, 2019, 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 December 16, 2019.

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

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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 June 26, 2019)

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