

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

**Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited**

PRE-FILING REPORT OF THE PROPOSED MONITOR

March 12, 2019

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**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

**PRE-FILING REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS PROPOSED MONITOR**

GENERAL

1. In this Pre-Filing Report, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached to this Pre-Filing Report as [Appendix "A"](#). Each capitalized term throughout this Pre-Filing Report, if defined in the glossary, is hyperlinked to its respective definition in the glossary.

INTRODUCTION

2. FTI Consulting Canada Inc. has been informed that Imperial Tobacco Canada Limited and its affiliated corporation, Imperial Tobacco Company Limited, intend to make an application under the [CCAA](#) before the Ontario Superior Court of Justice (Commercial List), seeking an [Initial Order](#), granting, among other things, the [Stay of Proceedings](#) in favour of [Imperial](#) until April 11, 2019 and appointing [FTI](#) as Monitor of [Imperial's CCAA Proceedings](#).

3. [FTI](#) is a “trustee” within the meaning of section 2 of the [BIA](#), and is not subject to any of the restrictions set out in subsection 11.7(2) of the [CCAA](#). [FTI](#) has provided its consent to act as Monitor, a copy of which is attached hereto as [Appendix “B”](#).

Engagement of FTI and Preparation of this Pre-Filing Report

4. In anticipation of the [Quebec Judgment](#) and pursuant to an engagement letter dated March 13, 2015, [FTI](#) was engaged to prepare, on a contingency basis, for the possibility of insolvency proceedings in which [FTI](#) would act as Monitor (subject to [Court](#) approval). Greg Watson and Paul Bishop, each a trustee within the meaning of subsection 2(1) of the [BIA](#), lead the [FTI](#) team with carriage of this matter. Although [Imperial](#) did not file for any court relief immediately following [FTI](#)'s engagement, [FTI](#) has periodically engaged in the activities described below to maintain and update its understanding of [Imperial](#)'s business, corporate structure, financial position and cash flow. [FTI](#) fully re-engaged with [Imperial](#) following the release of the [Quebec Appeal Judgment](#) to assist in their preparations to seek relief under the [CCAA](#) and Chapter 15 of the [US Bankruptcy Code](#).
5. Since the date of its engagement, [FTI](#) has:
 - (a) Attended in-person meetings involving [Imperial](#), senior management including the Chief Executive Officer, Chief Financial Officer, General Counsel and others in order to gain information and an understanding regarding [Imperial](#);
 - (b) Attended in-person and telephone meetings with [Imperial](#)'s Canadian and [US](#) counsel and with counsel to [BAT](#) in order to gain information and an understanding regarding [Imperial](#);
 - (c) Engaged legal counsel in Canada and the [US](#) who have also participated in certain of these meetings;

- (d) Attended in-person and telephone meetings with [Imperial](#)'s finance personnel;
 - (e) Obtained financial and other information produced by [Imperial](#) relating to its operations, cash flow forecasts and current financial situation;
 - (f) Assisted [Imperial](#) with the preparation of its cash flow forecasts;
 - (g) Reviewed certain of the books and records of [Imperial](#);
 - (h) Reviewed various other documents and materials relevant to [Imperial](#) and its business; and
 - (i) Prepared this Pre-Filing Report.
6. Since its engagement, [FTI](#) has become familiar with [Imperial](#)'s current state of affairs including the basis on which it is now seeking relief pursuant to the [CCAA](#) and the [US Bankruptcy Code](#). As a result, [FTI](#) is in a position to immediately act as Monitor in the [CCAA Proceedings](#), if appointed by this [Court](#).
7. Although this Pre-Filing Report has been prepared in anticipation of [FTI](#)'s appointment as Monitor of [Imperial](#), it has been prepared with the same duty, care and level of diligence that [FTI](#) would have utilized had it already been appointed as Monitor.
8. The [Proposed Monitor](#) has prepared this Pre-Filing Report in connection with the Initial Application. This Pre-Filing Report should not be relied on for any other purpose.

9. In preparing this Pre-Filing Report, the [Proposed Monitor](#) has relied upon unaudited financial information of [Imperial](#) and affiliates of [Imperial](#), the books and records of [Imperial](#), certain financial information prepared by [Imperial](#), and discussions with [Imperial](#)'s management. Other than as described in paragraph 5 above, the [Proposed Monitor](#) has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the [Proposed Monitor](#) expresses no opinion or other form of assurance on the information contained in this Pre-Filing Report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this Pre-Filing Report is based on [Imperial](#)'s management's assumptions regarding future events; actual results may vary from the forecast and such variations may be material.

Purpose of this Pre-Filing Report

10. The purpose of this Pre-Filing Report is to:
- (a) Inform the [Court](#) regarding the following:
 - (i) an overview of [Imperial](#) and its current situation;
 - (ii) an outline of the circumstances that have led to [Imperial](#)'s current request for relief;
 - (iii) the proposed restructuring activities of [Imperial](#); and
 - (iv) [Imperial](#)'s weekly cash flow forecast for the period ending June 9, 2019; and
 - (b) Support [Imperial](#)'s application for the proposed [Initial Order](#), including the following relief:
 - (i) the [Stay of Proceedings](#) to April 11, 2019 in favour of [Imperial](#) and their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, as well as, a limited stay in

favour of [BAT](#) and certain [BAT](#) affiliates who are co-defendants of Imperial in certain Canadian litigation;

- (ii) the appointment of [FTI](#) as Monitor under the [CCAA](#);
- (iii) authorization for [Imperial](#) to continue to utilize its cash management system during the [CCAA Proceedings](#);
- (iv) approval of ordinary course payments during the [CCAA Proceedings](#);
- (v) the appointment of the Honourable Warren K. Winkler as the [Tobacco Claimant Representative](#) on an interim basis until April 30, 2019;
- (vi) approval of an [Administration Charge](#) securing the fees and expenses of the [Proposed Monitor](#), counsel to the [Proposed Monitor](#), and counsel to [Imperial](#), in the aggregate amount of \$5 million;
- (vii) approval of the [Tobacco Claimant Representative Charge](#) securing the fees and expenses of the [Tobacco Claimant Representative](#) and his counsel and advisors in the aggregate amount of \$1 million;
- (viii) approval of the [Directors' Charge](#) securing an indemnity in favour of the directors and officers of [Imperial](#) in the aggregate amount of \$16 million;
- (ix) approval of the [Sales & Excise Tax Charge](#) securing certain tax obligations of [Imperial](#) in the aggregate amount of \$580 million;
- (x) approval, subject to the Proposed Monitor's consent, if appointed, to pay pre-filing amounts due to certain critical suppliers, including [BAT](#) and its affiliates, and

- (xi) authorization for the [Proposed Monitor](#), if appointed, to act as foreign representative in proceedings under Chapter 15 of the [US Bankruptcy Code](#).
- 11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
- 12. This Pre-Filing Report focuses on [Imperial](#)'s current situation and need for the [Initial Order](#). This Pre-Filing Report should be read in conjunction with the affidavit of Eric Thauvette, Vice President and Chief Financial Officer of [Imperial](#), sworn March 12, 2019 which provides a comprehensive overview of [Imperial](#)'s history, business and operations.

BACKGROUND

- 13. Section V of the [Thauvette Affidavit](#) provides a detailed outline of [Imperial](#)'s corporate structure, business, and financial information. The [Thauvette Affidavit](#) also provides a detailed chronology of litigation facing [Imperial](#), and its actions since the issuance of the [Quebec Judgment](#) on May 27, 2015, and the issuance of the [Quebec Appeal Judgment](#) on March 1, 2019.
- 14. This Pre-Filing Report does not repeat those details, but rather focuses on the following information which is relevant to its recommendation and support of the [Initial Order](#):
 - (a) [Imperial](#)'s business, including its integrated operations and cash management system with [BAT](#) affiliates,
 - (b) [Imperial](#)'s corporate structure, and
 - (c) the potential impact of litigation across Canada, and the impact of the [Quebec Judgment](#) and [Quebec Appeal Judgment](#) on [Imperial](#) and other stakeholders, including [Imperial](#)'s employees, its creditors and tax authorities.

Overview of Imperial

15. [Imperial](#) is the largest distributor of [Tobacco Products](#) in Canada, and sells 15 brands of [Tobacco Products](#) to approximately 26,825 retailers. [Imperial](#) operates two distinct businesses: tobacco and logistics. The tobacco business includes the marketing and sale of [Tobacco Products](#) and tobacco heated and vaping products. The logistics business distributes [Tobacco Products](#) for tobacco manufacturers, as well as certain non-[Tobacco Products](#) and services.
16. [ITCAN](#) is a privately-held corporation incorporated under the CBCA.
17. [ITCO](#) is a wholly-owned subsidiary of [ITCAN](#) and is the exclusive distributor of [Tobacco Products](#) imported into Canada by [ITCAN](#). [ITCO](#) is a privately-held corporation incorporated under the [CBCA](#). It is the largest revenue generator of [ITCAN](#)'s subsidiaries and operates all of [Imperial](#)'s distribution centres. [Imperial](#)'s central decision making functions, both long-range and day-to-day, are exercised in Canada.
18. [Imperial](#) employs approximately 466 permanent, full-time employees and approximately 98 contract, full-time employees in Canada.
19. As set out in paragraphs 41 and 42 of the [Thauvette Affidavit](#), [ITCO](#) uses distribution centres located in Alberta, British Columbia, Newfoundland and Labrador, Ontario, and Quebec. [ITCO](#) has contracted with [Ryder](#), a leading provider of commercial transportation, logistics, and supply chain management solutions, to supply and operate all of the distribution centres in Canada, with the exception of one distribution centre in Newfoundland and Labrador.
20. [ITCO](#) pays for the majority of [ITCAN](#)'s overhead and marketing costs. [ITCO](#) also pays discretionary dividends to [ITCAN](#) from the profits that it earns from its operations.
21. As described in paragraphs 82 to 85 of the [Thauvette Affidavit](#), [Imperial](#) has posted bonds or LOCs in respect of [Tobacco Taxes](#). The bonds and LOCs posted

are held by Canadian provincial and federal taxing authorities, the largest of which is with respect to its Ontario tax obligations.

Relationship between BAT and Imperial

22. [ITCAN](#) is 100% owned by [BAT NL](#). [BAT NL](#) is an indirect wholly-owned subsidiary of [BAT](#).
23. As discussed below, and as set out in paragraph 112 of the [Thauvette Affidavit](#), [Imperial](#) benefits from a wide range of services, licenses and rights provided by certain of [BAT's](#) affiliates, including, but not limited to: treasury, accounting, SAP and IT infrastructure, IT, human resources, product development and testing, technical and advisory assistance, integrated sales and operating plans. These services and functions are vital for preserving [Imperial's](#) business and value.

Credit Facilities and Cash Management System

24. Paragraphs 86 to 106 of the [Thauvette Affidavit](#) detail [Imperial's](#) cash management arrangements. The [Proposed Monitor](#) has reviewed these cash management arrangements and confirms the importance of these systems for the continuation of Imperial's business and operations. [Imperial](#) intends to maintain its current cash management systems throughout the [CCAA Proceedings](#).
25. As detailed in paragraph 93 of the [Thauvette Affidavit](#), [Imperial](#) has a \$30 million committed secured [Revolving Credit Facility](#) between [BATIF](#) and [ITCAN](#).
26. The [Revolving Credit Facility](#) is secured by the shares of [ITCAN's](#) subsidiary, Imperial Brands Ltd., a guarantee of Imperial Brands Ltd., and a hypothec on trademarks owned by Imperial Brands Ltd. The [Revolving Credit Facility](#) prohibits [ITCAN](#) and its subsidiaries from additional borrowing in excess of \$50 million without [BATIF's](#) consent. The [BATIF Security](#) provides that [ITCAN](#) cannot:
 - (a) create any security on, over or affecting the trademarks and shares charged by the [BATIF Security](#), without the consent of [BATIF](#);

- (b) dispose of all or any part of the trademarks and shares charged by the [BATIF Security](#), without the consent of [BATIF](#); or
 - (c) do or cause or permit anything to be done which in any way depreciates, jeopardizes or otherwise prejudices the value of the trademarks and shares which are charged by the [BATIF Security](#).
27. ITCAN's net cash flows consist of large, irregular amounts. Accordingly, the [Revolving Credit Facility](#) has been used on an "as needed basis" to fund the operating costs of [ITCAN](#) and its subsidiaries, including amounts payable for finished product, transportation costs, provincial and federal taxes, salaries, pension obligations and overhead. As at March 12, 2019, there were no amounts drawn down on the [Revolving Credit Facility](#). If no amounts are outstanding under the [Revolving Credit Facility](#), [ITCAN](#) has the option to invest surplus cash through [BATIF](#).
28. As outlined in paragraphs 104 and 105 of the [Thauvette Affidavit](#), in the past six months, [ITCAN](#) has invested surplus funds not immediately required for operations with [BATIF](#), ranging in amount from \$95 million to \$325 million at interest rates ranging from 1.1 to 2 percent per annum. On March 5, 2019, [ITCAN](#) invested \$260 million with [BATIF](#) for a period of seven days. The Proposed Monitor understands that on March 9, 2019, [Imperial](#) requested the early return of the \$260 million plus accrued interest from [BATIF](#) and on March 11, 2019, the funds were returned by [BATIF](#).
29. [ITCAN](#) and [ITCO](#) have bank accounts with the Bank of Nova Scotia. [ITCAN](#) also maintains a \$25 million revolving credit facility with the Bank of Nova Scotia, which serves as a back stop to the [Revolving Credit Facility](#). There are currently no funds drawn on this facility.
30. [ITCAN](#) has a [US](#) bank account with [Citibank](#) in New York which is used to fund Imasco Holdings Group, Inc.'s operating expenses and to pay the rent for [ITCAN](#)'s New York office. Imasco Holdings Group, Inc. is a foreign subsidiary

of ITCAN, governed by the laws of the State of Delaware.

31. The [Proposed Monitor](#) is of the view that it would be extremely disruptive to [Imperial](#)'s operations if [Imperial](#) were not permitted to continue to utilize its credit facilities and cash management systems during the [CCAA Proceedings](#). The [Proposed Monitor](#) does not anticipate that [Imperial](#) will draw down on the [Revolving Credit Facility](#) before the [Comeback Date](#).

Foreign Exchange Contracts

32. [ITCAN](#) regularly enters into foreign exchange forward contracts with [BATIF](#) for terms not exceeding 18 months to manage its foreign currency exposure arising from anticipated cash flows in the normal course of business. These are primarily denominated in [US](#) dollars (USD), Mexican Pesos (MXN) and British Pound Sterling (GBP). [ITCAN](#) does not use derivatives for speculative purposes.

Supply Chain

33. [ITCAN](#) purchases finished products from [BAT MX](#) at an agreed-to arm's length price to import into Canada. [ITCAN](#) acquires title to the purchased finished product once it is loaded onto trucks in Mexico to be transported through the [US](#) to its duty free distribution centres and finally shipped to Canada as discussed below.
34. Goods shipped from Mexico are sent to one of ITCAN's two rented duty free [Distribution Centres](#) in the US located in Shelby, Montana and Cleveland, Ohio. The day to day operation and management of the [Distribution Centres](#) is contracted out to [Ryder](#) and/or its affiliates. From the [Distribution Centres](#), product is imported to Canada.
35. [ITCAN](#) purchases certain other products from [ITCAN](#)'s affiliate, British American Tobacco (Supply Chain WE) Limited. Further details of [Imperial](#)'s supply chain can be found in paragraphs 67 to 79 of the [Thauvette Affidavit](#).

The Tobacco Industry & Litigation in Canada

36. [Imperial](#), [Rothmans](#) and [JTI](#) are the three largest tobacco distributors in Canada and make up the vast majority of legal Canadian tobacco industry sales. Each of these distributors are indirectly owned by large, international parent corporations: [BAT](#), [PMI](#) and Japan Tobacco International, respectively.
37. Each distributor offers a range of tobacco-based products under multiple trademark names. Demand for different tobacco-based products has changed over time in direct relation to changes in advertising practices, greater awareness of health implications, increased [Tobacco Taxes](#), changing tobacco prices and the introduction of new, more restrictive, legislation.
38. The major issues facing the Canadian tobacco industry today and specifically the large tobacco distributors include, but are not limited to:
 - (a) Smuggling and illicit product on the market;
 - (b) Litigation, including class actions and government lawsuits for sizeable damages;
 - (c) Advertising/health warning restrictions, plain packaging and other requirements on tobacco-based products; and
 - (d) E-cigarettes and other new forms of tobacco products as increased competition.
39. All ten provincial governments have filed “Medicaid” lawsuits against the major tobacco distributors and their parents, jointly and severally.
40. There are also many ongoing class action lawsuits that have been brought against the major tobacco distributors, most of which allege joint and several liability among the major tobacco distributors.

Ongoing Litigation against Imperial in Canada

Canadian Litigation

41. [ITCAN](#) is currently facing more than 20 large tobacco litigation claims that have been filed across Canada, including the [Quebec Appeal Judgment](#), with claims for damages totalling in excess of \$330 billion. [BAT](#) is named as a co-defendant in a number of these actions. Details about specific claims can be found on “**Schedule A – Litigation**” in the [Thauvette Affidavit](#).
42. Certain of the ongoing claims against [ITCAN](#) include, but are not limited to:
 - (a) The government “Medicaid” actions – to recover healthcare costs incurred in connection with smoking-related diseases;
 - (b) Smoking/health class actions – to seek damages on behalf of individuals who suffered from certain heart diseases, chronic respiratory diseases or cancers;
 - (c) Deceptive trade practice class actions – to seek to enjoin [ITCAN](#) from its continued use of existing marketing practices of certain cigarette brands, as well as compensation and disgorgement of profits from the sale of such marketed products;
 - (d) Ontario tobacco farmers’ and growers’ class action – to seek damages in respect of historical pricing practices of tobacco leaves; and
 - (e) Individual actions – to seek damages in respect of a variety of claims, including personal injury claims, addiction claims, disgorgement claims and more.
43. As is evident from paragraph 42, the litigation landscape against [Imperial](#) consists of a patchwork of overlapping claims which have been advanced on behalf of various subgroups of Canadians and the provincial and federal governments over the years.

44. [ITCAN](#) continues to defend itself against these and all claims, including filing its own lawsuits against third parties in response to lawsuits commenced against [ITCAN](#).

Quebec Litigation

45. In 1998, two class action lawsuits were filed against the three major Canadian tobacco distributors, [ITCAN](#), [Rothmans](#) and [JTI](#), in the Quebec Superior Court seeking over \$20 billion in compensatory and punitive damages. On February 21, 2005, both cases were granted certification. These class action lawsuits are referred to as the “Letourneau action” and the “Blais action” and each included a description of its class and class members. These actions are described in more detail at paragraph 132 of the [Thauvette Affidavit](#).
46. The trial was concluded in 2014 and the [Quebec Judgment](#) was released on May 27, 2015. The trial judge found the co-defendants jointly liable for an amount that, including interest, equalled \$15.6 billion, with [Imperial](#)'s share being approximately \$10.6 billion.
47. The [Quebec Judgment](#) included a [Provisional Execution Order](#) which required [ITCAN](#) to immediately pay \$742.5 million (a portion of the total judgment against it), notwithstanding the appeal of the [Quebec Judgment](#).
48. On July 9, 2015, ITCAN brought a motion before the Quebec Court of Appeal seeking an order cancelling the [Provisional Execution Order](#). The Court of Appeal cancelled the [Provisional Execution Order](#) on July 23, 2015.
49. On August 14, 2015, the plaintiffs brought a motion, pursuant to article 497 of the *Code of Civil Procedure* (Quebec), seeking security to guarantee the payments of the costs of the appeal of the [Quebec Judgement](#) and the full amount of the condemnation under the [Quebec Judgement](#), in the amount of \$5.0 billion. The motion was heard on October 6, 2015. On October 27, 2015 the Court of Appeal ordered [ITCAN](#) to pay a total of \$758 million as security. Such payments were to be made in equal instalments of approximately \$108.3 million per quarter for 7

quarters starting on December 30, 2015. All instalments have been paid.

Appeal of the Quebec Judgment

50. [ITCAN](#) filed its appeal submissions from the [Quebec Judgment](#) on December 11, 2015. The appeal of the [Quebec Judgment](#) was heard during the week of November 21, 2016 and on November 30, 2016. On March 1, 2019, the Quebec Court of Appeal released its decision. The [Quebec Appeal Judgment](#) substantially upheld the [Quebec Judgment](#) with two modifications: (i) the total claim amount was reduced by just over \$1 million; and (ii) the interest schedule was adjusted, reducing the interest payable on the total claim amount by approximately \$3 billion.
51. Pursuant to the [Quebec Appeal Judgment](#), [ITCAN](#)'s total liability now stands at \$9,153,565,094.80 with interest and additional indemnity for moral damages and punitive damages.
52. In addition to the liability referenced in paragraph 51 above, the [Quebec Appeal Judgment](#) provides that by April 30, 2019, the co-defendants must pay an initial deposit into court. [ITCAN](#) is currently in the process of disputing this requirement, as detailed in paragraph 140 of the [Thauvette Affidavit](#).
53. [ITCAN](#) cannot satisfy the liability owing under the [Quebec Appeal Judgment](#). As described in the [Thauvette Affidavit](#) at paragraph 143, based on [Imperial](#)'s financial statements for the year ending December 31, 2018, the liability owing under the [Quebec Appeal Judgment](#) exceeds [ITCAN](#)'s total assets by billions of dollars.

FORUM

54. As described at paragraphs 17, 29, and 32 of the [Thauvette Affidavit](#), [ITCAN](#)'s operations have a significant connection to the province of Ontario. The majority of [ITCAN](#)'s revenue is generated in Ontario (37% in 2017), [ITCAN](#) has its biggest market share in Ontario (55% in 2018), [ITCAN](#) sells to more stores in

- Ontario than in any other province, [ITCAN](#) pays more tax in Ontario than in any other province and many of the third parties with which [ITCAN](#) has critical relationships are based in Ontario. [Imperial](#)'s head office is located in Brampton, Ontario.
55. In addition, the highest concentration of litigation claims brought against [ITCAN](#) were commenced in Ontario or are governed by common law jurisdictions.
56. While all three of [Imperial](#)'s pension plans are registered in Quebec, approximately 22% of [Imperial](#)'s workforce is located in Ontario.
57. On March 8, 2019, [JTI](#) commenced proceedings under the [CCAA](#) in Ontario as a result of the [Quebec Appeal Judgment](#). It is the Proposed Monitor's understanding that JTI faces a number of the same challenges as Imperial, including but not limited to, the liabilities imposed by the [Quebec Appeal Judgment](#) and [Tobacco Taxes](#). These similarities present an opportunity for potential coordination and efficiency in Court proceedings. If Imperial's [CCAA Proceedings](#) and JTI's CCAA proceedings are heard by the same judge, certain complex issues would not have to be considered and addressed multiple times with potential conflicting decisions or results.
58. Accordingly, [Imperial](#) has concluded, and the [Proposed Monitor](#) agrees, that Ontario is the most suitable forum for the [CCAA Proceedings](#).

ACCOMMODATION AGREEMENT

59. [BAT](#) and its affiliates, most of which are not located in Canada, provide goods and services to [Imperial](#) through various [Intercompany Arrangements and Agreements](#). Certain of these arrangements and agreements allow the [BAT Counterparties](#) to terminate such arrangements and agreements unilaterally on notice and also upon the occurrence of certain insolvency events of default, including, but not limited to, an admission of insolvency, an inability to pay liabilities as they generally become due, the commencement of a court-supervised insolvency proceeding, or the passing of a resolution for the commencement of a

- court-supervised insolvency proceeding. However, the [BAT Counterparties](#) have advised that they are willing to continue to provide goods and services pursuant to the [Intercompany Arrangements and Agreements](#) on the condition that [ITCAN](#) enters into an [Accommodation Agreement](#). Although Imperial is not arm's length from the [BAT Counterparties](#) that provide such goods and services, it is the [Proposed Monitor's](#) understanding that Imperial and the [BAT Counterparties](#) endeavour to ensure that any amounts paid for goods and services pursuant to the [Intercompany Arrangements and Agreements](#) are consistent with prices that would be paid by arm's length parties in similar circumstances.
60. As described in paragraphs 112 and 115 of the [Thauvette Affidavit](#), it is apparent that it would be impossible for [Imperial](#) to operate without the goods and services provided by the [BAT Counterparties](#).
61. As a result, and in consultation with the [Proposed Monitor](#), [Imperial](#), [BAT](#) and the [BAT Counterparties](#) have entered into an [Accommodation Agreement](#) as of March 12, 2019. The [Accommodation Agreement](#) is attached to this Pre-Filing Report as [Appendix "C"](#). The [Accommodation Agreement](#) provides that in exchange for the limited waiver of the [BAT Counterparties'](#) [Insolvency Termination Rights](#) and [Unilateral Termination Rights](#), [Imperial](#) will not, without the consent of the [BAT Counterparties](#): a) seek an order of the Court approving and sanctioning a plan of compromise and arrangement in the [CCAA Proceedings](#); b) seek an order of the Court to terminate the [CCAA Proceedings](#); c) take any steps to engage in a sales process of any kind; d) take any steps to settle outstanding material litigation; or e) file materials with the [Court](#) in respect of the [CCAA Proceedings](#).
62. The [Accommodation Agreement](#) also contains certain [Termination Events](#) under Section 5, which if any occur, gives each of the [BAT Counterparties](#) the right to terminate the [Accommodation Agreement](#) upon giving [ITCAN](#) 30 days prior notice. These [Termination Events](#) include the following, if they occur without the consent of the [BAT Counterparties](#): a) Imperial's breach of any of its obligations under sections 3 or 4 the [Accommodation Agreement](#); b) the termination of the

CCAA Proceedings or the conversion of such proceedings to a receivership; c) a reduction in the scope of the [Stay of Proceedings](#); d) an order of the Court approving any settlement of any material litigation involving [Imperial](#); e) an order of the [Court](#) approving the sale of Imperial's assets; f) the assignment of any [Intercompany Arrangement and Agreement](#); or g) a change in [Imperial](#)'s corporate structure or share composition.

63. The [Proposed Monitor](#) is of the view that the [Accommodation Agreement](#) provides Imperial with access to the goods and services it requires to continue operations and protects against cessation of supply without the approval of the [Court](#). The [Proposed Monitor](#) considers the [Accommodation Agreement](#) to be reasonable under the circumstances.

THE TOBACCO CLAIMANT REPRESENTATIVE

64. The [Tobacco Claimants](#) include a variety of claims and many thousands of claimants. If each [Tobacco Claimant](#), or even a portion of the [Tobacco Claimants](#), were to participate directly in settlement discussions with [Imperial](#), such discussions would likely be prolonged and may prove to be inconclusive. Imperial is therefore proposing that the Court appoint the Honourable Warren K. Winkler Q.C. to act as the [Tobacco Claimant Representative](#), with a mandate to represent all persons with a [Tobacco Claim](#), other than the federal, provincial and territorial governments of Canada, and to negotiate a settlement with Imperial on behalf of the [Tobacco Claimants](#). [Imperial](#) is proposing that the [Tobacco Claimant Representative](#) be appointed on an interim basis until April 30, 2019, on which date Imperial will request the appointment of the [Tobacco Claimant Representative](#) for the length of the [CCAA Proceedings](#), or as otherwise necessary. [Imperial](#) has also proposed that the [Tobacco Claimant Representative](#) be permitted to retain counsel and other advisors.

65. Imperial's rationale for appointing the Tobacco Claimant Representative and the Tobacco Claimant Representative's proposed duties are clearly discussed in the affidavit of Nancy Roberts, sworn March 12, 2019 and attached to this Pre-Filing Report as [Appendix "D"](#).

IMPERIAL'S CASH FLOW FORECAST

66. [Imperial](#), with the assistance of the [Proposed Monitor](#), has prepared a consolidated 13-week cash flow forecast of its receipts and disbursements. The [Forecast](#) and the management's report on the cash flow statement as required by section 10(2)(b) of the [CCAA](#) are attached hereto as [Appendix "E"](#) and [Appendix "F"](#), respectively. The [Forecast](#) shows a positive net cash flow of approximately \$152 million in the period from the week of March 11, 2019 to the week of June 3, 2019 and is summarized below.
67. At this time, [Imperial's Forecast](#) estimates that, during the 13 week cash flow period, [Imperial](#) will have net cash inflows from operating activities of \$167 million with total receipts of approximately \$1.285 billion and total disbursements of \$1.118 billion, before professional fees of approximately \$15 million such that the net cash flows are forecasted to be \$152 million. Although net cash flows are positive during this 13 week period, there are three weeks within this period which are forecasted to have negative operating cash flows. These are largely driven by the timing of the payment of taxes and government levies due at the end of each month. As such, cash flows in the weeks surrounding month-end tax payments are expected to be negative, which are then offset by the receipt of the positive cash flows during the remainder of the month.
68. [Imperial](#) intends to make certain ordinary course payments during the [CCAA Proceedings](#) in accordance with the [Forecast](#), specifically, amounts due to trade creditors, suppliers, landlords, contractual counterparties and taxing authorities to ensure uninterrupted continuation of the business. The [Proposed Monitor](#) believes this course of action is fair and reasonable in the circumstances.

69. It is anticipated that [Imperial](#)'s projected liquidity requirements throughout the [CCAA Proceedings](#) will be met by cash generated from operations.

Proposed Monitor's Report on the Reasonableness of the Cash Flow Forecast

70. Section 23(1)(b) of the [CCAA](#) states that the [Proposed Monitor](#) shall, "review the company's cash flow statement as to its reasonableness and file a report with the court on the monitor's findings".

71. Pursuant to section 23(1)(b) of the [CCAA](#) and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the [Proposed Monitor](#) hereby reports as follows:

- (a) The [Forecast](#) has been prepared by management of [Imperial](#) for the purpose described in Note 1 of the [Forecast](#), using the probable and hypothetical assumptions set out in Notes 2 to 6;
- (b) The [Proposed Monitor](#)'s review consisted of inquiries, analytical procedures and discussion related to information supplied by certain of the management and employees of [Imperial](#). Since hypothetical assumptions need not be supported, the [Proposed Monitor](#)'s procedures with respect to them were limited to evaluating whether they were consistent with the purposes of the [Forecast](#). The [Proposed Monitor](#) has also reviewed the support provided by management of [Imperial](#) for the probable assumptions, and the preparation and presentation of the [Forecast](#);
- (c) Based on its review, nothing has come to the attention of the [Proposed Monitor](#) that causes it to believe that, in all material respects:
 - (i) The hypothetical assumptions are not consistent with the purposes of the [Forecast](#);
 - (ii) As at the date of this Pre-Filing Report, the probable assumptions developed by management are not suitably supported and consistent with the plans of [Imperial](#) or do not provide a reasonable

basis for the Forecast, given the hypothetical assumptions; or

- (iii) The [Forecast](#) does not reflect the probable and hypothetical assumptions;
 - (d) Since the [Forecast](#) is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the [Proposed Monitor](#) expresses no assurance as to whether the [Forecast](#) will be achieved. The [Proposed Monitor](#) expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Pre-Filing Report, or relied upon by the [Proposed Monitor](#) in preparing this Pre-Filing Report; and
 - (e) The [Forecast](#) has been prepared solely for the purpose described in Note 1 on the face of the [Forecast](#) and readers are cautioned that it may not be appropriate for other purposes.
72. A copy of [Imperial](#)'s report on the [Forecast](#) pursuant to paragraph 10.2(b) of the [CCAA](#) is attached hereto as **Appendix "F"**.

COURT-ORDERED CHARGES

Administration Charge

73. [Imperial](#) is seeking an [Administration Charge](#) on [Imperial](#)'s [Property](#) up to the maximum amount of \$5 million. Together with the [Tobacco Claimant Representative Charge](#), the [Administration Charge](#) is proposed to have first priority over all other charges and security interests.
74. The beneficiaries of the [Administration Charge](#), if granted, would be the [Proposed Monitor](#), the [Proposed Monitor](#)'s counsel and counsel to [Imperial](#).
75. The [Proposed Monitor](#) has reviewed the underlying assumptions upon which [Imperial](#) has based the quantum of the [Administration Charge](#), the complexities of

the [CCAA Proceedings](#) and the services to be provided by the beneficiaries of the [Administration Charge](#) and believes that the limit of \$5 million is reasonable in the circumstances.

The Tobacco Claimant Representative Charge

76. [Imperial](#) has proposed that the [Tobacco Claimant Representative](#), his counsel and advisors be granted the [Tobacco Claimant Representative Charge](#) over the [Property](#) up to a maximum amount of \$1 million, to rank *pari passu* with the [Administration Charge](#).
77. The [Proposed Monitor](#) believes that the appointment of the [Tobacco Claimant Representative](#) will allow the [Tobacco Claimants'](#) interests to be adequately represented in the [CCAA Proceedings](#) in an efficient manner. The [Proposed Monitor](#) also believes that it is appropriate to grant a charge in favour of the [Tobacco Claimant Representative](#), his counsel and advisors for their fees and expenses incurred in connection with the [CCAA Proceedings](#).
78. The [Proposed Monitor](#) has reviewed the underlying assumptions upon which [Imperial](#) has based the quantum of the proposed [Tobacco Claimant Representative Charge](#) and agrees that the limit of \$1 million is reasonable in the circumstances.

The Directors' Charge

79. [Imperial](#) is seeking the [Directors' Charge](#) in the amount of \$16 million with priority over all encumbrances on [Imperial's](#) [Property](#) other than the [Administrative Charge](#) and the [Tobacco Claimant Representative Charge](#). The [Proposed Monitor](#) is of the view that the amount of the [Directors' Charge](#) is reasonable in relation to the quantum of the estimated potential liability of [Imperial's](#) directors and officers. [Imperial's](#) officers and directors are only entitled to the benefit of the [Directors' Charge](#) to the extent that they do not have coverage under any directors' and officers' insurance policy or to the extent such coverage

is insufficient. The [Proposed Monitor](#) understands that Imperial's Directors have insisted on the protection of the [Directors' Charge](#) in order to remain on the Board during the course of the [CCAA Proceedings](#).

The Sales & Excise Tax Charge

80. [Imperial](#) is seeking the [Sales & Excise Tax Charge](#) in the amount of \$580 million with priority over all encumbrances on [Imperial](#)'s assets other than the Administrative Charge, the [Tobacco Claimant Representative Charge](#) and the [Directors' Charge](#). The [Sales & Excise Tax Charge](#) is intended to cover the maximum amount of collected and accrued tax between prescribed payment dates that may give rise to personal liability to directors if unremitted [Tobacco Taxes](#) and [Sales Taxes](#) are not paid. The [Proposed Monitor](#) is of the view that the amount of the [Sales & Excise Tax Charge](#) is reasonable in relation to the quantum of the estimated potential liability of [Imperial](#)'s directors and officers. The [Proposed Monitor](#) understands that Imperial's Directors have insisted on the protection of the [Sales & Excise Tax Charge](#) in order to remain on the Board during the course of the [CCAA Proceedings](#).

Summary of the Proposed Rankings of the Court-Ordered Charges

81. If the Initial Order is granted, the proposed Court-ordered charges would have the following ranking:
- (a) First - The [Administration Charge](#) in the amount of \$5 million and the [Tobacco Claimant Representative Charge](#) in the amount of \$1 million on a *pari passu* basis;
 - (b) Second - The [Directors' Charge](#) in the amount of \$16 million; and
 - (c) Third - The [Sales & Excise Tax Charge](#) in the amount of \$580 million.
82. The [Proposed Monitor](#) believes that the proposed Court-ordered charges and rankings are required and reasonable in the circumstances of the [CCAA Proceedings](#) in order to preserve the going concern operations of [Imperial](#) and

maintain their enterprise values, and accordingly, supports the granting of and the proposed rankings of the charges and to resolve ongoing litigation and claims.

CHAPTER 15 PROCEEDINGS

83. As detailed in section III of the [Thauvette Affidavit](#), [Imperial](#)'s operations are supported by some of [BAT](#)'s affiliates and are located in various jurisdictions, including Canada, Mexico and the US. Specifically, [Imperial](#) has:

- (a) An integrated supply chain that includes movement of inventory through the US;
- (b) Banking and cash management systems located in both Canada and the US; and
- (c) Certain subsidiaries and assets that are based in the US.

84. Accordingly, [Imperial](#) is requesting in the [Initial Order](#) that the [Proposed Monitor](#) (if appointed Monitor), be authorized to commence Chapter 15 proceedings with respect to [ITCAN](#).

85. The [Proposed Monitor](#) agrees that protection in the [US](#) is necessary to preserve the going concern value of [Imperial](#)'s business and further agrees that the Chapter 15 proceedings should be commenced immediately. The [Proposed Monitor](#) has reviewed the circumstances, including facts set out in the [Thauvette Affidavit](#), and agrees with [Imperial](#)'s conclusion that Canada is the centre of main interest for [Imperial](#).

86. The [Proposed Monitor](#) is willing to act as a foreign representative in the Chapter 15 proceedings if so authorized by this Honourable [Court](#).

RELIEF SOUGHT

The Stay of Proceedings

87. [Imperial](#) requires the [Stay of Proceedings](#) and other protections provided by the [CCAA](#) given that [Imperial](#) is insolvent. The [Stay of Proceedings](#) is needed to maintain the *status quo* and provide time for [Imperial](#) to review and restructure its affairs and develop a plan of compromise or arrangement in a manner designed to be efficient, fair and transparent while maximizing recoveries for all stakeholders.
88. The proposed [Stay of Proceedings](#) is in favour of [Imperial](#), [Imperial](#)'s wholly owned non-applicant subsidiaries and Liggett & Meyers Tobacco Company of Canada Limited, in which [ITCAN](#) holds a 50% voting interest and 70% equity participation. The rationale for extending the [Stay of Proceedings](#) to these non-applicant entities is that certain non-applicant entities hold trademarks or other assets of [ITCAN](#), others provide services to [ITCAN](#), share the cash management system with [ITCAN](#) or have guaranteed certain [ITCAN](#) debts. [Imperial](#) and their non-applicant subsidiaries are heavily integrated and services between the aforementioned entities are required on a non-interrupted basis.
89. The proposed [Stay of Proceedings](#) includes, but is not limited to, Canadian litigation brought, or that could now or in the future be brought, against [ITCAN](#), its subsidiaries or Liggett & Myers Tobacco Company of Canada Limited.
90. The proposed [Stay of Proceedings](#) would also extend to [BAT](#) and certain [BAT](#) affiliates, but only in respect of [Tobacco Claims](#) and proceedings related to Imperial, Imperial's business or [Property](#). The Proposed Monitor is of the view that it is appropriate to extend this limited stay to [BAT](#) and certain [BAT](#) affiliates for the reasons described in paragraphs 12 and 13 of the [Thauvette Affidavit](#).
91. The [Proposed Monitor](#) believes that the initial 30-day request is fair and reasonable in the circumstances.

Payments During the CCAA Proceedings

92. Notwithstanding the litigation, [Imperial](#) intends to continue carrying on its business activities as a going concern.
93. [Imperial](#) intends to make ordinary course payments during the course of the [CCAA Proceedings](#) in accordance with and as set out in [Imperial](#)'s cash flow statement. This includes ordinary course intercompany payments, payments to trade creditors and ongoing taxes and duties, subject to the general oversight of the [Proposed Monitor](#). The [Proposed Monitor](#) believes this course of action is fair and reasonable in the circumstances.

The Tobacco Claimant Representative

94. The [Proposed Monitor](#) supports Imperial's request to appoint the Honourable Warren K. Winkler Q.C. as [Tobacco Claimant Representative](#) on an interim basis until April 30, 2019.

Court-Ordered Charges

95. The [Proposed Monitor](#) supports the amount and rankings of the court-ordered charges as set out at paragraph 81 above.

Chapter 15 Proceedings

96. The [Proposed Monitor](#) supports [Imperial](#)'s request for authorization to commence the Chapter 15 proceedings with respect to the [Chapter 15 Entity](#) and to authorize [FTI](#) (if appointed as Monitor) to act as foreign representative in such proceedings.

CONCLUSION

97. The [Proposed Monitor](#) is of the view that the relief requested by [Imperial](#) is necessary, reasonable and justified. The [Proposed Monitor](#) is also of the view that granting the relief requested will provide [Imperial](#) the best opportunity to undertake the [CCAA Proceedings](#), to preserve value and maximize recoveries for [Imperial](#)'s stakeholders.

98. Accordingly, the [Proposed Monitor](#) respectfully recommends that [Imperial](#)'s request for the [Initial Order](#) be granted.

The Proposed Monitor respectfully submits to the Court this Pre-Filing Report.

Dated this 12 day of March, 2019.

FTI Consulting Canada Inc.

FTI Consulting Canada Inc.

in its capacity as proposed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

APPENDIX A

GLOSSARY

“Accommodation Agreement” means the accommodation agreement made between ITCAN and the BAT Counterparties, which provides that in exchange for the limited waiver of the BAT Counterparties’ Insolvency Termination Rights and Unilateral Termination Rights, Imperial will not, without the consent of the BAT Counterparties: a) seek an order of the Court approving and sanctioning a plan of compromise and arrangement in the CCAA Proceedings; b) seek an order of the Court to terminate the CCAA Proceedings; c) take any steps to engage in a sales process of any kind; d) take any steps to settle outstanding material litigation; or e) file materials with the Court in respect of the CCAA Proceedings.

“Administration Charge” means a charge on the Property to a maximum amount of \$5 million to secure the fees and expenses of the Proposed Monitor, counsel to the Proposed Monitor and counsel to Imperial.

“BAT” means British American Tobacco p.l.c., a public company listed on the London Stock Exchange.

“BAT Counterparties” means certain BAT affiliates who are party to the Accommodation Agreement, including: BAT MX, British American Tobacco (Investments) Limited, British American Tobacco (Holdings) Limited, British American Tobacco (Brands) Limited, Souza Cruz, S.A., Bass Americas, S.A., and Nicoventures Trading Limited.

“BAT MX” means British American Tobacco Mexico S.A. de C.V.

“BAT NL” means British American Tobacco International (Holdings) B.V.

“BATIF” means B.A.T. International Finance p.l.c.

“BATIF Security” means the charge over shares of ITCAN’s subsidiary, Imperial Brands Ltd., a guarantee of Imperial Brands Ltd., and a hypothec on trademarks owned by Imperial Brands Ltd. in favour of BATIF.

“BIA” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

“CBCA” means the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44, as amended.

“CCAA” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

“CCAA Proceedings” means the insolvency proceedings commenced by Imperial under the CCAA, if granted.

“**Chapter 15 Entity**” means ITCAN and the Chapter 15 proceedings commenced under the US Bankruptcy Code with respect to ITCAN.

“**Citibank**” means Citibank, N.I.

“**Comeback Date**” means the date of the comeback motion which will be set by the Court upon the granting of the Initial Order.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Directors’ Charge**” means a charge on the Property to a maximum amount of \$16 million to secure an indemnity in favour of the directors and officers of Imperial.

“**Distribution Centres**” means the duty free distribution centres in the US located in Shelby, Montana and Cleveland, Ohio.

“**Forecast**” means the consolidated 13-week cash flow projection of Imperial’s receipts and disbursements.

“**FTI**” means FTI Consulting Canada Inc.

“**Imperial**” means collectively, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited.

“**Initial Order**” means an initial order, substantially in the form of the draft initial order, which if granted would authorize the Stay of Proceedings and FTI’s appointment as Monitor of Imperial’s CCAA Proceedings.

“**Insolvency Termination Rights**” means BAT’s right under certain Intercompany Arrangements and Agreements to terminate such arrangement or agreement with Imperial upon the occurrence of certain insolvency events of default, including: admission of insolvency, an inability to pay liabilities as they generally become due, the commencement of a court-supervised insolvency proceeding, the passing of a resolution for the commencement of a court-supervised insolvency proceeding, or any event having a substantially similar effect to any of the foregoing with respect to the applicable Imperial party.

“**Intercompany Arrangements and Agreements**” means the various formal and informal arrangements and agreements as between Imperial and certain BAT affiliates relating to the provision of goods and services.

“**ITCAN**” means Imperial Tobacco Canada Limited.

“**ITCO**” means Imperial Tobacco Company Limited.

“**JTI**” means JTI-Macdonald Corp.

“**PMI**” means Phillip Morris International.

“Property” means all of the present and future assets, property and undertakings of Imperial.

“Proposed Monitor” means FTI Consulting Canada Inc.

“Provisional Execution Order” means the order included in the Quebec Judgment which provided for provisional execution, requiring ITCAN to immediately pay \$742.5 million, notwithstanding the appeal of the Quebec Judgment.

“Quebec Judgment” means the Quebec Superior Court’s judgment on the “Letourneau action” and the “Blais action” released on May 27, 2015 in which the trial judge found the co-defendants jointly liable for \$15.6 billion, with Imperial’s share being approximately \$10.6 billion.

“Quebec Appeal Judgment” means the Quebec Court of Appeal decision on the appeal of the Quebec Judgment whereby the Court of Appeal substantially upheld the Quebec Judgment with two notable modifications: (i) the total claim amount was reduced by just over \$1 million; and (ii) the interest schedule was adjusted, reducing the interest payable on the total claim amount by approximately \$3 billion. Imperial’s share of the liability stands at \$9,153,565,094.80 with interest and additional indemnity for moral damages and punitive damages.

“Revolving Credit Facility” means the \$30 million committed secured revolving credit facility between BATIF and ITCAN.

“Rothmans” means Rothmans Benson & Hedges Inc.

“Ryder” means Ryder Integrated Logistics, a division of Ryder Truck Rental Canada Ltd.

“Sales & Excise Tax Charge” means a charge on the Property to a maximum of \$580 million to secure certain tax obligations of Imperial.

“Sales Taxes” means GST, HST, PST, and other retail sales taxes collected in connection with the sale of Tobacco Products.

“Stay of Proceedings” the stay of proceedings until April 11, 2019 in favour of Imperial and their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, as well as, a limited stay in favour of BAT and certain BAT affiliates.

“Termination Events” means any of the following, as enumerated under Section 5 of the Accommodation Agreement: a) Imperial’s breach of any of its obligations under the Accommodation Agreement; b) the termination of the CCAA Proceedings or the conversion of such proceedings to a receivership; c) a reduction in the scope of the Stay of Proceedings; d) an order of the Court approving any settlement of any material litigation involving Imperial; e) an order of the Court approving the sale of Imperial’s assets; f) the assignment of any Intercompany Arrangement and Agreement; or g) a change in Imperial’s corporate structure or share composition.

“Thauvette Affidavit” means the affidavit of Eric Thauvette, Vice President and Chief Financial Officer of Imperial, sworn March 12, 2019.

“Tobacco Claimant Representative” means Honourable Warren K. Winkler Q.C., acting as a representative for the Tobacco Claimants in the context of the CCAA proceedings.

“Tobacco Claimant Representative Charge” means a charge on the Property to a maximum amount of \$1 million to secure the fees and expenses of the Tobacco Claimant Representative and his counsel and advisors.

“Tobacco Claimants” means all persons with any Tobacco Claim, other than the federal, provincial and territorial governments of Canada.

“Tobacco Claims” means all claims brought or that could be brought under applicable law against Imperial in relation to the development, manufacturing, production, marketing, advertising of, any representations made in respect of, the purchase, sale, and use of, or exposure to, the Tobacco Products.

“Tobacco Products” means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

“Tobacco Taxes” means the federal excise taxes, import duties, and provincial tobacco taxes on all tobacco products imported into Canada and sold in a province.

“Unilateral Termination Rights” means BAT’s and BAT’s affiliates’ rights under certain Intercompany Arrangements and Agreements to give unilateral notice of termination to the relevant Imperial party and terminate such arrangement or agreement.

“US” means the United States of America

“US Bankruptcy Code” means title 11 of the United States Code.

APPENDIX B

Court File No.:

**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

CONSENT TO ACT AS MONITOR

We, FTI Consulting Canada Inc., hereby consent to act as the Court-appointed Monitor in respect of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.

DATED this 10th day of March, 2019.

FTI CONSULTING CANADA INC.

Per: 
Name: JEFFREY ROSENBERG
Title: SENIOR MANAGING DIRECTOR

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APPENDIX C

ACCOMMODATION AGREEMENT

This agreement (the “**Agreement**”), dated as of March 12, 2019, is entered into between Imperial Tobacco Canada Limited (“**ITCAN**”), Imperial Tobacco Company Limited (“**ITCO**”, and collectively with ITCAN, the “**ITCAN Parties**”), and the parties listed on the signature pages hereof as “**BAT Counterparties**” (each a “**BAT Party**”).

WHEREAS, on March 1, 2019, the Court of Appeal for Quebec issued an appeal judgment (the “**Judgment**”) that holds ITCAN liable, jointly and severally with its co-defendants, for approximately \$13.6 billion in damages (the “**Damages Award**”) in the Letourneau and Blais class actions in Quebec (bearing court file numbers 500-06-00070-983 and 500-06-000076-80), and ITCAN’s proportionate share of the Damages Award is approximately \$9.2 billion.

WHEREAS, as a result of the Judgment and ITCAN’s financial inability to satisfy the Damages Award, the ITCAN Parties are considering strategic alternatives with respect to their business operations, including making an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and seeking an Initial Order (the “**Initial Order**”) that, among other things, extends certain relief to the ITCAN Parties.

WHEREAS, the BAT Parties provide goods and services to the ITCAN Parties through various arrangements and agreements listed in Schedule “A” hereto (as amended, renewed, extended, restated, replaced, or otherwise modified from time to time, the “**Intercompany Arrangements and Agreements**”).

WHEREAS, certain Intercompany Arrangements and Agreements permit the applicable BAT Party to terminate such arrangement or agreement with the applicable ITCAN Party upon the occurrence of certain insolvency events of default (“**Insolvency Termination Rights**”), an admission of insolvency, an inability to pay liabilities as they generally become due, the commencement of a court-supervised insolvency proceeding, the passing of a resolution for the commencement of a court-supervised insolvency proceeding, or any event having a substantially similar effect to any of the foregoing with respect to the applicable ITCAN Party.

WHEREAS, certain Intercompany Arrangements and Agreements permit the applicable BAT Party to give unilateral notice of termination, and to terminate such arrangement or agreement following any applicable notice period (“**Unilateral Termination Rights**”).

WHEREAS, the applicable BAT Parties have advised the applicable ITCAN Parties that they are willing not to exercise the Insolvency Termination Rights or the Unilateral Termination Rights and to continue to provide goods and services to the applicable ITCAN Party in

accordance with the terms of the Intercompany Arrangements and Agreements on the condition that each of the ITCAN Parties enters into this Agreement and complies with the terms hereof.

1. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Each of the BAT Parties represents and warrants to each of the ITCAN Parties, and each of the ITCAN Parties represents and warrants to each of the BAT Parties:

- (a) it is a sophisticated party with enough knowledge and experience to evaluate properly the terms and conditions of this Agreement;
- (b) this Agreement has been duly executed and delivered by it, and, assuming the due authorization, execution and delivery by all Parties, this Agreement constitutes the legal, valid and binding obligation enforceable in accordance with its terms, subject to laws of general application and bankruptcy, insolvency and other similar laws affecting creditors' rights generally and general principles of equity; and
- (c) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

2. TERMINATION RIGHTS

For so long as this Agreement is in force, each of the BAT Parties agrees not to exercise its Insolvency Termination Rights or its Unilateral Termination Rights.

3. RIGHTS AND OBLIGATIONS

- (a) Each of the ITCAN Parties and each of the BAT parties shall perform its obligations under each of the Intercompany Arrangements and Agreements to which it is a party, in accordance with, and subject to the terms and conditions of the Intercompany Arrangements and Agreements and this Agreement.
- (b) Each of the BAT Parties shall have the right, from time to time, to modify pricing and delivery /supply terms in accordance with the terms of the Intercompany Arrangements and Agreement to which it is a party, and, otherwise, in manner consistent with past practice.

- (c) Each of the BAT Parties may appoint one or more of its affiliates or other persons or entity as its agent for receiving notices and deliveries, granting waivers, providing consents and otherwise exercising its rights hereunder.

4. ITCAN PARTY COVENANTS

Each of the ITCAN Parties covenants and agrees on a joint and several basis that, without the consent of each of the BAT Parties, it shall:

- (a) not seek an order of the Court approving and sanctioning a plan of compromise and arrangement in the CCAA proceedings in respect of any ITCAN Party (the “**Proceedings**”);
- (b) not seek an order of the Court terminating the Proceedings;
- (c) not propose, support or take any steps in furtherance of a process for the solicitation of offers for the sale of all or a material portion of the assets or undertakings of an ITCAN Party or any of its subsidiaries, or an investment in an ITCAN Party or any of its subsidiaries, or seek an order of the Court approving the sale of all or a material portion of the assets or undertakings of an ITCAN Party or any of its subsidiaries, or an investment in ITCAN or any of its subsidiaries;
- (d) not propose, support or take any steps in furtherance of a settlement of any material litigation, or seek an order of the Court approving the settlement of any material litigation; and
- (e) deliver to Stikeman Elliott LLP, on behalf of each of the BAT Parties, for their review and comment, draft copies of any court materials in respect of the Proceedings (including, without limitation, any notices of motion, affidavits, other evidence, and forms of orders) which any ITCAN Party intends to file with the Court, no later than two (2) days prior to the date on which such ITCAN Party serves and files such court materials (or as soon as possible in exigent circumstances where it is not reasonably practicable to provide copies two (2) days in advance), and it will not file such materials unless they are in form and substance acceptable to each of the BAT Parties, acting reasonably.

5. TERMINATION EVENTS

Each of the following events (if it occurs without the consent of each of the BAT Parties) shall constitute a Termination Event in relation to all ITCAN Parties:

- (a) any ITCAN Party breaches any of its obligations in Section 3 or 4 hereof;

- (b) the Proceedings are terminated or dismissed or converted to a receivership, proposal in bankruptcy or bankruptcy proceeding;
- (c) The stay of proceedings is reduced in scope, terminated or expires without being extended;
- (d) an order of the Court is made approving a settlement of any of the material litigation against any ITCAN Party;
- (e) an order of the Court is made approving the sale of all or a material portion of the assets or undertakings of any ITCAN Party or any of its subsidiaries;
- (f) any of the Intercompany Arrangements and Agreements are assigned or transferred by any ITCAN Party; or
- (g) any ITCAN Party issues any additional shares or there is a change in the composition of the board of directors of an ITCAN Party, or the powers of either of such boards is reduced or transferred to any other person or body.

6. TERMINATION

- (a) Upon the occurrence of a Termination Event this Agreement may be terminated by any BAT Party upon 30 days' prior notice to ITCAN.
- (b) This Agreement may be terminated for convenience by any BAT Party on 12 months' prior notice to ITCAN.
- (c) This Agreement may be terminated at any time by written consent of the Parties.
- (d) Upon termination of this Agreement for any reason the BAT Parties shall no longer be required, subject to a contrary Order of the Court, to perform under the Intercompany Arrangements and Agreements.

7. FURTHER ASSURANCES

- (a) Each party hereto shall do all such things in its control, take all such actions as are commercially reasonable, deliver to the other parties hereto such further information and documents and execute and deliver to the other parties hereto such further instruments and agreements as the other parties hereto shall reasonably request to accomplish the purpose of this Agreement or to assure to the other parties hereto the benefits of this Agreement in accordance with its true intent.

- (b) In all respects, other than as expressly contemplated by this Agreement, the terms of the Intercompany Arrangements and Agreements shall continue to apply unamended and shall remain in full force and effect.

8. MISCELLANEOUS

- (a) The headings in this Agreement are for reference only and shall not affect the meaning or interpretation of this Agreement.
- (b) Unless the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing any gender shall include all genders.
- (c) This Agreement, together with the Intercompany Arrangements and Agreements, constitute the entire agreement and supersede all prior agreements and understandings, both oral and written, among the parties hereto with respect to the subject matter hereof.
- (d) This Agreement may not be modified, amended or supplemented as to any matter except by means of a written agreement signed by the parties hereto.
- (e) Any provision of this Agreement may be waived if, and only if, such waiver is in writing and signed by the party hereto against whom the waiver is to be effective. No failure or delay by any party hereto in exercising and right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise.
- (f) This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (excluding any conflict of laws rule or principle which might refer such construction to the laws of another jurisdiction).
- (g) It is understood and agreed by the parties hereto that money damages would not be a sufficient remedy for any breach by the parties hereto of this Agreement and the non-breaching party shall be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach, including an order by a court of competent jurisdiction requiring any party hereto to comply promptly with this Agreement.
- (h) Any notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery (in which case it shall be left with a responsible officer of the recipient) or by electronic communication addressed to the recipient, as follows:

(i) If to an ITCAN Party at:

Imperial Tobacco Canada Limited
3711, rue Saint-Antoine ouest,
Montreal, Quebec, H4C 3P6

Attention: Vice President, Legal and External Affairs
Fax: (514) 939-0432
Email: Tamara_Gitto@bat.com

With a copy to:

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario M5X 1B8

Attention: Deborah Glendinning / Marc Wasserman
Fax: (416) 862-6666
Email: dglendinning@osler.com
mwasserman@osler.com

(ii) If to a BAT Party:

c/o BATLAW LIMITED

Globe House
4 Temple Place
LONDON, WC2R 2PG

Attention: Gareth Cooper
Fax: 44 20 7395 0241
Email: gareth-cooper@bat.com

With a copy to:

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Attention: David Byers / Maria Konyukhova
Fax: (416) 947-0866
Email: DByers@stikeman.com
MKonyukhova@stikeman.com

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any notice or other communication shall be conclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient on a business day and on the business day following the transmittal thereof if not so transmitted.

- (i) This Agreement may be executed by facsimile or other electronic means and in one or more counterparts, all of which shall be considered one and the same agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered by its proper and duly authorized officer as of the date first written above.

**IMPERIAL TOBACCO CANADA
LIMITED**

By: 

Name:

Title:

**IMPERIAL TOBACCO COMPANY
LIMITED**

By: 

Name:

Title:

[The BAT Counterparties Signature Pages follow]

THE BAT COUNTERPARTIES

**BRITISH AMERICAN TOBACCO
MEXICO, S.A. DE C.V.**

By: _____
Name:
Title:

**BRITISH AMERICAN TOBACCO
(INVESTMENTS) LIMITED**

By: _____
Name:
Title:

**BRITISH-AMERICAN TOBACCO
(HOLDINGS) LIMITED**

By: _____
Name:
Title:

**BRITISH AMERICAN TOBACCO
(BRANDS) LIMITED.**

By: _____
Name:
Title:

SOUZA CRUZ S.A.

By: _____
Name:
Title:

BASS AMERICAS, SA

By: _____
Name:
Title:

**NICOVENTURES TRADING
LIMITED.**

By: _____
Name:
Title:

SCHEDULE "A"

Intercompany Agreements

- Finished Goods Supply Agreement dated July 2, 2015, between Imperial Tobacco Canada Limited and British American Tobacco Mexico, S.A. DE C.V.
- Consulting and Advisory Services Agreement dated July 1, 2002, as amended January 1, 2009, between Imperial Tobacco Canada Limited and British American Tobacco (Investments) Limited.
- Platform Trade Mark and Technology Access Sub-license Agreement dated March 15, 2013, between Imperial Tobacco Canada Limited and British-American Tobacco (Holdings) Limited.
- Trade Mark and Technology Access Sub-license Agreement dated March 5, 2012, between Imperial Tobacco Canada Limited and British-American Tobacco (Holdings) Limited.
- Trade Mark and Technology Access Sub-license Agreement dated November 3, 2011, between Imperial Tobacco Canada Limited and British-American Tobacco (Holdings) Limited.
- Agreement (regarding Trademarks - du Maurier - USA) commencing on August 26, 2005, between Imperial Tobacco Canada Limited and British American Tobacco (Brands) Limited.
- Agreement (regarding Trademarks - Peter Jackson - USA) commencing on October 17, 2006, between Imperial Tobacco Canada Limited and British American Tobacco (Brands) Limited.
- Services Agreement Relating to the Provision of IT services dated January 1, 2013, between Imperial Tobacco Canada Limited and Souza Cruz S.A.
- Rendering of Services Agreement dated February 15, 2016, between Imperial Tobacco Canada Limited and Souza Cruz S.A.
- Master Services Agreement (FSSC and HR services agreement) effective July 1, 2015 among Imperial Tobacco Canada Limited, Imperial Tobacco Company Limited and Bass Americas, SA
- Distribution Agreement dated September 11, 2017, between Imperial Tobacco Canada Limited and Nicoventures Trading Limited.
- Distribution Agreement dated July 18, 2017, between Imperial Tobacco Canada Limited and Nicoventures Trading Limited.

APPENDIX D

**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 NANCY ROBERTS

(Sworn March 12, 2019)

I, Nancy Roberts, of the City of Toronto, in the municipality of Metropolitan Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a partner at Osler, Hoskin and Harcourt LLP, counsel to the Applicants, Imperial Tobacco Canada Limited (“ITCAN”) and Imperial Tobacco Company Limited, and therefore 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 belief and believe them to be true.
2. I understand that the Applicants have filed an affidavit of Eric Thauvette sworn March 12, 2019 (the “Thauvette Affidavit”), in support of their application for an Initial Order and related relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “CCAA”). I am swearing this affidavit to supplement the Thauvette Affidavit and provide evidence in support of the Applicants' request for the appointment of the Honourable Warren K. Winkler as the “Tobacco Claimant Representative” on an interim basis.
3. Any capitalized terms not defined in this affidavit have the meaning given to them in the Thauvette Affidavit.

4. In the Initial Order, the Applicants are requesting that the Tobacco Claimant Representative be appointed on an interim basis until April 30, 2019 or as may be agreed to by the Applicants and the Monitor (the “Interim Period”) as an officer of the Court to represent the interests of all persons (other than any defendant or respondent, any of their respective affiliates, and the federal, provincial and territorial governments of Canada) in these proceedings (the “Tobacco Claimants”) in connection with any Tobacco Claim. During the Interim Period, the Tobacco Claimant Representative will, among other things, be authorized to take the following steps (the “Interim Duties”):

- (a) retain independent legal counsel and such other advisors and persons as the Tobacco Claimant Representative considers necessary or desirable to assist him in relation to the Interim Duties;
- (b) consult with Tobacco Claimants, the Monitor, the Applicants and other creditors and stakeholders of the Applicants, including in connection with any recommendations that the Tobacco Claimant Representative has in respect of (i) establishing a committee of Tobacco Claimants to consult with and provide input to the Tobacco Claimant Representative and the procedures to govern the formation and operation of such an “Interim Tobacco Claimant Committee”; and (ii) procedural mechanisms to be implemented to facilitate the resolution of the Tobacco Claims;
- (c) accept a court appointment of similar nature to represent claimants with interests similar to the Tobacco Claimants in any proceedings under the CCAA commenced by a company that is a co-defendant with any of the Applicants in any action brought by one or more Tobacco Claimants; and

(d) apply to this Court for advice and directions at such times as the Tobacco Claimant Representative may so require.

5. The Applicants will, before the end of the Interim Period, bring a motion seeking the permanent appointment of the Tobacco Claimant Representative to represent the interests of all Tobacco Claimants in negotiating a settlement with the Applicants and others.

6. In order to appreciate the fundamental role of the proposed Tobacco Claimant Representative in managing the claims of the various litigation stakeholders, it is essential to consider the nature and extent of the existing Canadian claims held by Tobacco Claimants other than Government Claimants (*i.e.*, the claims / claimants captured by the ongoing proceedings, as well as the nature and scope of the potential claims / claimants that are outside the scope of the existing litigation).

7. The tobacco industry has been the subject of significant product liability and consumer litigation in recent decades. ITCAN is currently facing more than 20 large tobacco litigation claims that have been filed across Canada (four of which are in Ontario), with claims for damages totalling well over \$600 billion. A chart outlining these proceedings and certain other litigation across Canada is appended at Schedule A of the Thauvette Affidavit. These proceedings include the Government Medicaid Actions, the Class Actions, Other Proceedings, and the Ontario Tobacco Grower Class Action.

8. The ongoing proceedings do not represent all of the potential Tobacco Claims that may be commenced against the Applicants. For example, the two Quebec class proceedings encompass a fixed class and do not include the following claims or claimants:

- (a) claims for individual pecuniary damages (the Quebec class counsel renounced these claims and the Quebec Class Action Judgment is limited to moral and punitive damages only);
- (b) all claims by non-residents of Quebec;
- (c) addiction or health claims by Quebec residents who started smoking after 1998;
- (d) claims for lung cancer, throat cancer or emphysema by Quebec residents who were diagnosed after March 2012;
- (e) all claims for diseases other than lung cancer, throat cancer or emphysema (*i.e.*, claims for heart disease, other types of cancer, etc.);
- (f) all claims with respect to diseases related to second-hand smoke; and
- (g) Restitutionary Claims.

9. In another example, class proceedings have been commenced in Alberta, Manitoba, Nova Scotia, and Saskatchewan seeking damages for “tobacco-related” disease and a disgorgement of revenues or profits, among other things. Each of these proceedings seek recovery on behalf of national classes of smokers (which arguably includes residents of Quebec who fall outside the ambit of the Blais or Letourneau proceedings).

10. The claims in Ontario are more circumscribed as the proposed class (also a purported national class) is limited to smokers who have been diagnosed with chronic obstructive pulmonary disease, heart disease or cancer. No other Personal Injury Claims are currently asserted in Ontario. Similarly, two class actions have been commenced in British Columbia seeking damages in respect of heart disease and chronic respiratory disease, respectively. Both of these

again purport to be national in scope. No other Personal Injury Claims have been asserted in British Columbia, nor have any Addiction Claims been advanced.

11. A further class action has been commenced in British Columbia asserting only a Restitutionary Claim with respect to the improper marketing of “light” and “mild” products by the Applicants. This Restitutionary Claim is limited to residents of British Columbia and others who opt into the B.C. proceeding. Notably, no similar Restitutionary Claims have been commenced as yet in any of the other Canadian provinces (other than in Newfoundland, where certification was denied).

12. No class proceedings or individual proceedings have been commenced as yet in New Brunswick, Newfoundland, Prince Edward Island, or any of the Territories with respect to any of the above-noted categories of potential claims.

13. Similarly, no Addiction Claims have been commenced as yet in any of the common law provinces (other than an Ontario Small Claims Court action that has been in abeyance since 2003), and no Personal Injury Claims with respect to second-hand smoke exist in any Canadian province (including Quebec).

14. As is evident from the foregoing, the litigation landscape against the Applicants consists of a patchwork of overlapping claims which have been advanced on behalf of various subgroups of Canadian consumers over the years. In addition, the Applicants are potentially exposed to as-yet-unasserted claims on behalf of other Canadian consumers. The Applicants need to identify and resolve all potential, yet unasserted claims, even if many or most of them may well be time-barred.

15. It will be critical for the success of the Applicants' restructuring initiatives that the claims of all Tobacco Claimants be considered under one umbrella to ensure uniformity of treatment, to avoid economic tensions as between Tobacco Claimants, to deal with competing claims of class counsel, and to streamline the process for the resolution of such claims. Therefore, the Applicants anticipate that on the motion to confirm the Tobacco Claimant Representative's appointment, they will request that he have the mandate to:

- (a) represent the interests of Tobacco Claimants in the CCAA proceedings, including in relation to any negotiations to settle with the Applicants, the BAT Affiliates and others, and the development of a plan of compromise or arrangement;
- (b) negotiate on behalf of Tobacco Claimants with class counsel in the various class actions to ensure fair and reasonable class counsel fees;
- (c) negotiate and consult with the Government Claimants;
- (d) commence the process of constituting a committee (the "Tobacco Claimant Committee") to consult with him in connection with his mandate, at such times and intervals as the Tobacco Claimant Representative may deem appropriate;
- (e) be at liberty to consult with the Monitor in connection with the negotiations of the settlement of any Tobacco Claims and the development of a plan of compromise or arrangement; and
- (f) report to this Court and to Tobacco Claimants at such times and intervals as the Tobacco Claimant Representative may deem appropriate with respect to his mandate.

16. Subject to this Court's approval, the proposed Tobacco Claimant Representative has engaged Lax O'Sullivan Lisus Gottlieb LLP to act as his independent legal counsel in these proceedings and he may seek to engage financial and other advisors as necessary.

17. In connection with his appointment, it is proposed that the Tobacco Claimant Representative, along with his counsel and financial and other advisors, be granted a Court-ordered charge as security for their respective fees and disbursements relating to services rendered in accordance with its Court appointment up to a maximum amount of \$1 million (the "Tobacco Claimant Representative Charge"). The Tobacco Claimant Representative Charge is proposed to rank *pari passu* with the Administration Charge and to have first priority over all other charges.

18. The proposed Initial Order also states that, in connection with his appointment or the fulfilment of his duties in carrying out the provisions of the Order, the Tobacco Claimant Representative shall have the same immunity from liability as a judge of the Ontario Superior Court of Justice and shall be afforded protection pursuant to Section 142 of the *Courts of Justice Act*, RSO 1990, c C-43.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, this
12th day of March, 2019.



Commissioner for Taking Affidavits

Evan M. Thomas (LSUC# 54447K)
Osler, Hoskin & Harcourt LLP
1 First Canadian Place, Suite 6100
Toronto, Ontario, Canada M5X 1B8



Nancy Roberts

**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:

Ontario

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

Proceeding commenced at Toronto

AFFIDAVIT OF NANCY ROBERTS
(Sworn March 12, 2019)

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

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
John A. MacDonald (LSO# 25884R)
Michael De Lellis (LSO# 48038U)

Tel: (416) 362-2111
Fax: (416) 862-6666

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

Matter No: 1144377

APPENDIX E

Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	11-Mar-19	18-Mar-19	25-Mar-19	1-Apr-19	8-Apr-19	15-Apr-19	22-Apr-19	29-Apr-19	6-May-19	13-May-19	20-May-19	27-May-19	3-Jun-19	13-Week Total	
Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	13		
RECEIPTS															
Trade Receipts	[2]	84,976	85,295	88,530	89,298	96,601	100,220	97,694	101,552	104,809	109,311	105,032	109,621	112,352	1,285,291
DISBURSEMENTS															
<i>Operating Disbursements</i>															
Taxes and Levies	[3]	(59,212)	(27,197)	(25,460)	(118,618)	(41,495)	(36,110)	(39,772)	(181,309)	(45,190)	(46,786)	(46,397)	(193,257)	-	(860,802)
Operations	[4]	(20,285)	(21,329)	(51,287)	(16,816)	(14,151)	(4,692)	(36,897)	(11,094)	(9,259)	(11,955)	(7,797)	(39,943)	(11,613)	(257,118)
<i>Total Operating Disbursements</i>		(79,497)	(48,525)	(76,747)	(135,434)	(55,646)	(40,802)	(76,668)	(192,403)	(54,449)	(58,741)	(54,194)	(233,200)	(11,613)	(1,117,920)
OPERATING CASH FLOWS															
		5,480	36,769	11,782	(46,136)	40,956	59,418	21,026	(90,851)	50,359	50,569	50,839	(123,579)	100,739	167,371
<i>Financing Disbursements</i>															
Interest and Related Fees on Existing Facilities	[5]	-	-	-	(56)	-	-	-	-	-	-	-	(21)	-	(77)
<i>Restructuring Disbursements</i>															
Restructuring Fees	[6]	(1,596)	(1,596)	(1,596)	(1,187)	(1,187)	(1,187)	(1,187)	(1,187)	(1,030)	(1,030)	(1,030)	(1,030)	(583)	(15,423)
NET CASH FLOWS															
		3,884	35,173	10,187	(47,379)	39,769	58,231	19,839	(92,038)	49,330	49,540	49,809	(124,629)	100,156	151,871
CASH															
Beginning Balance		304,700	308,584	343,757	353,943	306,565	346,334	404,564	424,403	332,366	381,695	431,235	481,044	356,415	304,700
Net Cash Inflows / (Outflows)		3,884	35,173	10,187	(47,379)	39,769	58,231	19,839	(92,038)	49,330	49,540	49,809	(124,629)	100,156	151,871
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-	-
ENDING CASH		308,584	343,757	353,943	306,565	346,334	404,564	424,403	332,366	381,695	431,235	481,044	356,415	456,571	456,571

Notes to the CCAA Forecast:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Company during the forecast period.
- [2] Forecast Trade Receipts include collections from the sale of tobacco-related products, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations.
- [3] Forecast Taxes and Levies disbursements reflect the remittance of the federal excise tax, provincial tobacco taxes, sales taxes, and the Company's corporate income taxes.
- [4] Forecast Operations disbursements include employee-related costs, purchase of tobacco-related products, royalties, IT-related costs, selling, general, and administrative costs.
- [5] Forecast Interest and Related Fees on Existing Facilities reflect all payments relating to the existing facilities.
- [6] Forecast Professional Fees include legal and financial advisor fees associated with the CCAA proceedings and are based on estimates provided by the advisors.

APPENDIX F



Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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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 IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED
(the "Applicants")

**March 12, 2019
REPORT ON CASH FLOW STATEMENT
(Paragraph 10.2(b) of the CCAA)**

The management of the Applicants has developed the assumptions and prepared the attached statement of projected cash flow as of March 12, 2019, consisting of a 13-week cash flow forecast for the period March 11, 2019 to June 9, 2019 (the "March 12 Forecast").

The hypothetical assumptions are reasonable and consistent with the purpose of the projections as described in Note 1 to the cash flow forecast, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the March 12 Forecast. All such assumptions are disclosed in Notes 2 to 6.

Since the March 12 Forecast is based on future events, actual results will vary from the information presented and the variations may be material.

The March 12 Forecast has been prepared solely for the purpose outlined in Note 1, using the probable and hypothetical assumptions set out in Notes 2 to 6. Consequently readers are cautioned that the March 12 Forecast may not be suitable for other purposes.

Dated at Toronto, Ontario, this 12th day of March, 2019.

Eric Thauvette
Chief Financial Officer
Imperial Tobacco Canada Limited



March 12, 2019

FTI Consulting Canada Inc.
79 Wellington Street West, Suite 2010
PO Box 104
Toronto, Ontario, M5K 1G8

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Re: Proceedings under the *Companies' Creditors Arrangement Act* ("CCAA") in respect of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, the "Company"). Responsibilities, Obligations and Disclosure with Respect to Cash-Flow Forecast.

To: FTI Consulting Canada Inc. ("**FTI**")

In connection with your proposed appointment as Monitor pursuant to a potential filing under the CCAA, we acknowledge that we are responsible for the accuracy of the financial records of the Company and the summaries and financial statements that we have prepared and provided to you or will provide to you.

Management of the Company has prepared the attached weekly cash flow forecast ("**Cash Flow Forecast**") and the assumptions on which the Cash Flow Forecast is based.

The Company confirms that:

1. The Cash Flow Forecast and the underlying assumptions are the responsibility of the Company;
2. All material information relevant to the Cash Flow Forecast and to the underlying assumptions has been made available to FTI; and
3. Management has taken all actions that it considers necessary to ensure:
 - a. That the individual assumptions underlying the Cash Flow Forecast are appropriate in the circumstances;
 - b. That the assumptions underlying the Cash Flow Forecast, taken as a whole, are appropriate in the circumstances; and

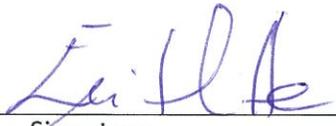
c. That all relevant assumptions have been properly presented in the Cash Flow Forecast or in the notes accompanying the Cash Flow Forecast.

4. Management understands and agrees that the determination of what constitutes a material adverse change in the assumptions underlying the Cash Flow Forecast or the financial circumstances of the business of the Company, for the purposes of your monitoring the ongoing activities of the Company, is ultimately at your sole discretion, notwithstanding that Management may disagree with such determination.

5. Management understands its duties and obligations under the CCAA and that a breach of these duties and obligations could make the Management liable to fines and imprisonment in certain circumstances.

6. The Cash Flow Forecast and assumptions have been reviewed and approved by the Company's board of directors or Management has been duly authorized by the Company's board of directors to prepare and approve the Cash-Flow Forecast and assumptions.

March 12th 2019
Date


Signature

Eric Thauvette

Chief Financial Officer
Imperial Tobacco Canada Limited

IN THE MATTER OF *THE COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C.1985, c. C-36, AS Court File No. CV-19-616077-00CL
AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

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

Proceeding commenced at Toronto

**PRE-FILING REPORT OF THE PROPOSED
MONITOR**

DAVIES WARD PHILLIPS & VINEBERG LLP
155 WELLINGTON STREET WEST
TORONTO, ON M5V 3J7

Jay Swartz (LSO #15417L)

Tel: 416.863.5520

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Natasha MacParland (LSO #42383G)

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Fax: 416.863.0871

Lawyers for the Proposed Monitor