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**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF ALASKA**

In re  TERCON INVESTMENTS LTD., Debtors in a Foreign Proceeding	CASE NO.: A13-00015-HAR In Chapter 15 [Lead Case of Jointly Administered Cases A13-00015 through A13-00025-HAR]
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**RECEIVER'S MEMORANDUM SUBMITTING PROPOSED  
ORDER GRANTING RECOGNITION**

FTI Consulting Canada Inc. (“the Receiver”), the Receiver appointed in *Dumas Holdings, Inc. Petitioner, v. Tercon Investments Ltd., et. al.*, Case No. S 128887 (“the Canadian Proceedings”) in the Supreme Court of British Columbia, Vancouver Registry, (“the Canadian Court”), hereby submits a proposed order, attached hereto as Exhibit A, granting its petition for recognition.

The Receiver also wishes to bring to the attention of this Court an issue that has recently surfaced, namely that the Interim Stay imposed by this Court on January 18, 2013, at Docket No. 11, as well as the permanent stay sought by the Receiver sought by the Petitions herein and discussed in the Receiver’s *Memorandum in Support of Chapter 15 Petitions for Recognition of Foreign Proceedings, and Related Relief*, Docket No. 8, impose a Section 362 stay without any

modification. An unconditional Section 362 stay does, of course, prohibit post-petition perfection of consensual security interests.

However, the stay imposed in the Canadian Proceedings authorizes such post-petition perfection of security interests. Paragraph 10 of the Order appointing FTI Consulting Canada Inc., attached to the Petitions herein, Docket No. 1, provide as follows:

NO EXERCISE OF RIGHTS OR REMEDIES

10. All rights and remedies (including, without limitation, set-off rights) against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended, except with the written consent of the Receiver or leave of the Court, provided however that **nothing in this Order shall** (i) empower the Receiver of the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) **prevent the filing** of any registration **to preserve or perfect a security interest**, or (iv) prevent the registration of a claim for lien. The stay and suspension shall not apply in respect of any “eligible financial” contract as defined in the BIA.

(emphasis added).

As referenced in the Receiver’s memorandum at Docket No. 25, Dumas Holdings, Inc. and HSBC Bank, as Administrative Agent, filed UCC-1’s on January 26, 2013, and January 28, 2013, respectively against Tercon Equipment Ltd.

It is unclear at present whether there is any significance to the fact that Canadian stay order has a carveout for perfecting security interests whereas the American interim stay order does not. It is also unclear whether there is any significance to the permanent stay having the carveout or not. HSBC Bank has recently brought to the attention of the Receiver the variation between the Canadian and American stays. The Receiver believes that, because the creditors have had no notice of such a carveout, it would be inappropriate for a recognition order to be en-

tered following the February 19, 2013 hearing to contain such a carveout. However, the proposed order attached hereto does hold the issue open, so that HSBC or any other creditor seeking a modification of that aspect of the order can do so, on proper notice to all affected parties.

DATED this February 18, 2013.

LAW OFFICES OF CABOT CHRISTIANSON, P.C.  
Attorneys for FTI Consulting Canada Inc.

By: /s/ Cabot Christianson  
Cabot Christianson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 18, 2013, a true and correct copy of this memorandum was served by electronic means through the ECF system as indicated on the Notice of Electronic filing.

By: /s/ Margaret Stroble  
Margaret Stroble

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**ORDER GRANTING RECOGNITION**

FTI Consulting Canada Inc. (“the Receiver”), the Receiver appointed in *Dumas Holdings, Inc. Petitioner, v. Tercon Investments Ltd., et. al.* Case No. S 128887 (“the Canadian Proceedings”) in the Supreme Court of British Columbia, Vancouver Registry, (“the Canadian Court”) filed Verified Petitions for Recognition of Foreign Proceedings commencing these Chapter 15 cases in this Court. Notice of the petitions was given to the matrix as evidenced by Docket No. 20. The petitions were supported by the Receiver’s *Memorandum in Support of Chapter 15 Petitions for Recognition of Foreign Proceedings, and Related Relief*, Docket No. 8, and by the *Affidavit of Nigel D. Meakin*, Docket No. 9. A hearing on the petition was held February 19, 2013. Good cause appearing, this Court finds and concludes as follows:

(A) This Court has jurisdiction of this case under 28 U.S.C. §§ 157, and Section 1501 of the Code.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

(C) Venue is proper in this district pursuant to 28 U.S.C. Section 1410(1) and (3).

(D) The Receiver is, within the meaning of Section 101(24) of the Code, the duly appointed foreign representative of Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd., Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises, Ltd., Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership, and Tercon Alaska Ltd. (collectively, the “Debtors” or the “Tercon Group”).

(E) The Canadian Proceedings are “foreign proceedings” within the meaning of Section 101(23) of the Bankruptcy Code<sup>1</sup>:

i. The Canadian Proceedings are “judicial proceedings” in that they were commenced by a petition filed in a court and because they involve judicial resolution of disputes.

ii. The Canadian Proceedings are taking place in a foreign country under laws relating to insolvency or the adjustment of debts, namely the Bankruptcy and Insolvency Act, R. S. C. 1985 c. B-3, as amended, and Section 39 of the Law and Equity Act, R. S. B. C. 1996 c. 253, as amended.

iii. The Canadian Proceedings are collective in nature because they

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<sup>1</sup> Section 101(23) provides: “The term ‘foreign proceeding’ means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.”

consider the rights and obligations of all creditors; in contrast, for example, to a receiver instigated at the request, and for the benefit, of a single secured creditor. *In re Betcorp, Ltd.* 400 B.R. 266, 281 (Bankr. Nev. 2009).

iv. The assets and affairs of each member of the Tercon Group are subject to control or supervision by a foreign court, for the purposes of liquidation.

(F) These Chapter 15 cases were properly commenced pursuant to Sections 1504 and 1515 of the Bankruptcy Code.

(G) The Canadian Proceedings are entitled to recognition by this Court pursuant to Section 1517 of the Code.

(H) The Canadian Proceedings are pending in Canada, which is the location of each Debtor's center of main interests and as such, constitute foreign main proceedings pursuant to Section 101(24) of the Code.

(I) The Receiver is entitled to all the relief provided in Section 1520 without limitation.

(J) The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, warranted pursuant to Section 1521 of the Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting that relief.

(K) The interests of the public will be served by this Court granting the relief requested by the Receiver.

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Canadian Proceedings are hereby recognized as foreign main proceedings pursuant to Section 1517 of the Code.

2. All provisions of Section 1520 of the Bankruptcy Code apply in these Chapter 15 cases including, without limitation, the stay under Section 362 and the provisions of Section 363 of the Code throughout the duration of these Chapter 15 cases or until otherwise ordered by this Court; provided, however, that (i) the rights of all parties to seek to modify the imposition of the stay under section 362 are preserved, (ii) imposition of the stay under section 362 is merely for the convenience of the parties to continue their ongoing discussions, and (iii) entry of this order shall not prejudice any party's arguments regarding the applicability of the stay, including any arguments that the stay should be modified or vacated *nunc pro tunc* to the date of Ex Parte Order Imposing Interim Stay [Docket No. 11].

3. This Court shall retain jurisdiction with respect to the enforcement or modification of this Order, any request for additional relief or any adversary proceedings brought in and through these Chapter 15 cases, and any request from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

4. Notwithstanding Bankruptcy Rule 7062, made applicable to these Chapter 15 cases by Bankruptcy Rule 1018, the terms and conditions of this Order shall be immediately effective. This Order is final and appealable.

Dated February 19, 2013.

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Herbert A. Ross  
U. S. Bankruptcy Court Judge