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*Attorneys for FTI Consulting Canada Inc., in its Capacity as Court Appointed Monitor and Authorized Foreign Representative for the Debtor*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

IMPERIAL TOBACCO CANADA LIMITED,

Debtor in a Foreign Proceeding.<sup>1</sup>

Chapter 15

Case No. 19-10771 (SCC)

**RE: Docket No. 67**

**THIRD STATUS REPORT**

1. FTI Consulting Canada Inc., the authorized foreign representative of Imperial Tobacco Canada Limited (the “Debtor”) and the Court appointed monitor (the “Monitor”) of the Debtor and Imperial Tobacco Company Limited (“ITCO”) in a proceeding (the “Canadian Proceeding”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended, pending before the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario (the “Canadian Court”), by its undersigned United States counsel, respectfully files this status report (the “Third Status Report”) to advise the Court, pursuant to 11 U.S.C. § 1518, of ongoing developments in the Canadian Proceeding since the filing of the Monitor’s second status report on May 3, 2021 (the “Second Status Report”) [Dkt. No. 67]. Filed contemporaneously

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<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 4374. The Debtor’s registered office is located at 30 Pedigree Court, Brampton (Ontario) Canada L6T 5T8.



herewith is the Monitor's declaration in support of the Third Status Report (the "Bishop Declaration").

### **I. Background**

2. The Debtor is the largest distributor of tobacco products in Canada. It purchases, among other things, finished tobacco products from its Mexican affiliate British American Tobacco S.A. de C.V. ("BAT MX") and imports them, through the United States, for sale in Canada.<sup>2</sup>

3. On March 12, 2019, the Debtor, along with its affiliate ITCO, commenced the Canadian Proceeding to restructure and compromise its liabilities and address in a comprehensive fashion pending and future Tobacco Claims.<sup>3</sup> On March 12, 2019, the Canadian Court issued the Canadian Order for Relief (as amended), which, among other things, stayed ongoing and potential litigation arising from the Tobacco Claims (the "Stay"). The Stay has been extended several times and is currently set to expire on September 30, 2022.

4. On March 13, 2019, the Monitor commenced this case seeking recognition of the Canadian Proceeding and related relief to protect the Debtor's supply-chain running through the United States, while the Debtor pursues a comprehensive restructuring in Canada.

5. On April 17, 2019, the Court recognized the Canadian Proceeding as a foreign main proceeding, *see* Dkt. No. 40, and recognized and implemented the Court-to-Court

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<sup>2</sup> *See Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief* (the "Verified Petition," Dkt. No. 2), at 4.

<sup>3</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Verified Petition.

Communications Order<sup>4</sup> with the Canadian Court, *see* Dkt. No. 61. A complete list of the orders issued to date in the Canadian Proceeding are attached to the Bishop Declaration as **Exhibit A**.

## **II. Previous Status Reports**

6. On April 8, 2020, the Monitor reported to the Court that (i) the Debtor was engaged in court ordered confidential mediation with the goal of achieving a pan-Canadian global settlement of the Tobacco Claims (the “Mediation”);<sup>5</sup> and (ii) the Stay in the Canadian Proceeding was extended to September 30, 2020. *See* Dkt. Nos. 64 and 65.

7. On May 3, 2021, the Monitor filed its Second Status Report and advised the Court that (i) the Canadian Court had continued to extend the Stay to advance the Mediation; (ii) the Debtor had taken steps to address supply-chain disruptions and inventory shortfalls in Canada predominantly caused by the COVID-19 pandemic; and (iii) increased sales in Canada had helped to mitigate the pandemic’s impact on the Debtor’s operations, leaving the Debtor with sufficient cash to operate in the ordinary course. *See* Dkt. Nos. 67 and 68.

## **III. Further Update on Canadian Proceeding and Extension of the Stay**

8. On September 27, 2021, the Canadian Court extended the Stay to March 31, 2022 (the “March 2022 Stay Extension Order”), and issued its endorsement of the March 22 Stay Extension Order (the “Endorsement”). In doing so, the Canadian Court found that the Debtor and ITCO “continue to act in good faith and with due diligence[,]” and that the Stay extension “will not cause material prejudice to the creditors.” Endorsement at 2.

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<sup>4</sup> As defined in the *Monitor’s Motion for Order Recognizing Canadian Court’s Court-to-Court Communications Order* [Dkt. No. 54].

<sup>5</sup> Pursuant to the Canadian Order for Relief (as amended), the Canadian Court appointed the Honourable Warren K. Winkler, Q.C., former Chief Justice of Ontario and President of the Court of Appeal for Ontario, as the Mediator (as defined in the Second Status Report).

9. On March 22, 2022, the Canadian Court further extended the Stay to September 30, 2022 (the “September 2022 Stay Extension Order,” together with the March 2022 Stay Extension Order, the “Stay Extension Orders”). *See* September 2022 Stay Extension Order.

10. Thereafter, on July 11, 2022, the Canadian Court entered an order authorizing the Debtor to post a security no more than \$5 million with the Canada Revenue Agency to ensure compliance with recent amendments to the Excise Act (the “New Excise Security Order”). Copies of the Stay Extension Orders, the Endorsement, the New Excise Security Order, and the Monitor’s reports filed in support thereof are attached to the Bishop Declaration as **Exhibit B**.

11. Although the Mediation remains highly confidential, the Monitor can report that the Mediation is ongoing and that the parties are continuing to work towards a pan-Canadian global settlement of the Tobacco Claims.

#### **IV. Operational Update**

12. As previously described in the Second Status Report, the Debtor experienced some supply chain disruptions and other challenges as a result of the lockdown orders and COVID-19 restrictions affecting BAT MX’s operations in Mexico. Since then, the COVID-19 restrictions have been lifted and BAT MX has resumed normal operations.

13. The Debtor, with the assistance of its parent, British American Tobacco has continued to make modifications to its operations in an effort to prevent or mitigate future disruptions and is working to modernize its offices to account for hybrid work arrangements. Among other things, the Debtor has invested in upgrades to its technology infrastructure and increased, and in some cases, reallocated, manufacturing and packaging equipment to the United States and Chile. Installation of the additional equipment in the United States was completed in April 2022 and is expected to be completed in Chile by September 2022.

14. The Debtor's business remains cashflow positive, resulting in a cash balance as of June 30, 2022 of \$2,785 million.

15. In accordance with 11 U.S.C. § 1518, the Monitor will continue to keep the Court apprised of substantial developments in the Canadian Proceeding. The Monitor is also available for a telephonic or in person status conference at the Court's convenience.

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Dated: July 15, 2022

**MORGAN, LEWIS & BOCKIUS LLP**

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