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In its Capacity as Monitor and 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.

Chapter 15

Case No. 19-10771( )

**EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND  
RELIEF PURSUANT TO SECTIONS 1519 AND 105(A) OF THE BANKRUPTCY CODE**

FTI Consulting Canada Inc. ("FTI"), in its capacity as the court-appointed monitor ("Monitor") and authorized foreign representative of Imperial Tobacco Canada Limited (the "Debtor"), by and through its undersigned counsel, respectfully makes this application (the "Application"), pursuant to Rule 65 of the Federal Rules of Civil Procedure made applicable to this adversary proceeding through Rule 7065 of the Federal Rules of Bankruptcy Procedure and sections 105(a), 1507, and 1519 of title 11 of the United States Code (the "Bankruptcy Code"), for (i) immediate entry, on an *ex parte* basis, of a temporary restraining order, substantially in the form attached hereto as **Exhibit A**, staying execution against the assets, business operations and supply chain, inventory management and distribution processes of the Debtor, applying section 362 of the Bankruptcy Code in this Chapter 15 case on a provisional basis, and scheduling a hearing on the



Monitor's request for a preliminary injunction; and (ii) if the Monitor's request for recognition of the Canadian Proceeding has not been adjudicated prior to the hearing on the Monitor's request for a preliminary injunction, entry of a preliminary injunction order, substantially in the form attached hereto as **Exhibit B**, extending the relief in the temporary restraining order until disposition of the Debtor's Chapter 15 petition (the "Petition"). In support of this Application, the Monitor respectfully states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).

2. This case has been properly commenced pursuant to Section 1504 of the Bankruptcy Code by filing the Petition for recognition of the proceeding (the "Canadian Proceeding") pending against the Debtor under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA").

3. Venue is proper pursuant to 28 U.S.C. § 1410.

4. The statutory bases for relief are sections 105(a), 1507, 1519, and 1521 of the Bankruptcy Code.

### **RELIEF REQUESTED**

5. By this Motion, the Monitor seeks entry of (i) an *ex-parte* temporary restraining order and stay of execution against the Debtor's assets, business operations and supply chain, inventory management and distribution processes in the United States and application of section 362 of the Bankruptcy Code in this Chapter 15 case on an interim basis pursuant to sections 1519(a)(1), 1519(a)(3), and 105(a) of the Bankruptcy Code, (ii) if the Monitor's request for recognition of the Canadian Proceeding has not been adjudicated prior thereto, after notice and a

hearing, an order granting a preliminary injunction until disposition of the Petition, and (iii) such other and further relief as the Court deems just and proper.

### **BACKGROUND**

6. As more fully described in the Affidavit of Eric Thauvette of the Debtor (the “ITCAN Affidavit”)<sup>1</sup>, the Debtor is one of the largest distributors of tobacco products in Canada. [ITCAN Aff. ¶ 28]

7. The Debtor currently purchases finished tobacco products from its affiliate British American Tobacco Mexico S.A. de C.V. (“BAT MX”) and imports them into Canada through the United States. [ITCAN Aff. ¶¶ 4, 19] En route to Canada, ITCAN warehouses finished products in two free trade zone distribution centers located in Ohio and Montana, to be transported on an “as needed” basis into Canada by ground with Ryder Dedicated (and/or Integrated Logistics, a division of Ryder Truck Rental Canada Ltd. (such Ryder entities, collectively with Ryder subcontractors, “Ryder”)) or Baine Johnston Corporation (“BJC”). [ITCAN Aff. ¶¶ 41, 68] Some product is also transported by UPS, Millenium Express and Loomis Express. [ITCAN Aff. ¶ 76] Based on historical 2018 data, approximately four weeks’ worth of finished product inventory is stored in the Debtor’s U.S. distribution centers and one and a half weeks’ worth of inventory is in transit at any given time. [ITCAN Aff. ¶ 68]

8. The Debtor is facing serious financial challenges to its continued operations as a result of multiple class actions and other ongoing product liability and consumer litigation requiring defense across Canada (the “Tobacco Litigation”). In the aggregate, the plaintiffs in the Tobacco Litigation seek hundreds of billions of dollars in damages, which exceed the Debtor’s

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<sup>1</sup> The ITCAN Affidavit has been filed as Exhibit A to the Declaration of Paul Bishop in Support of (I) Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief, (II) Application to Approve Notice Procedures and (III) *Ex Parte* Application for Temporary Restraining Order and Relief Pursuant to Sections 1519 And 105(a) of the Bankruptcy Code (the “Bishop Declaration”). Dkt. No. [5].

total assets by many orders of magnitude. Recently, the Quebec Court of Appeal substantially upheld a trial judgment in the maximum amount of approximately C\$13.6 billion (the “Damages Award”) arising from the May 27, 2015 judgment (the “Quebec Class Action Judgment”) in the Letourneau and Blais class actions (bearing court file numbers 500-06-00070-983 and 500-06-000076-80). [ITCAN Aff. ¶¶ 6, 133, 139] The Debtor’s share of the Damages Award alone is over C\$9 billion. [ITCAN Aff. ¶ 139] Not only does this amount exceed the Debtor’s ability to pay, there are many other competing and potential claims that have been brought or that could be brought under applicable law in relation to the development, manufacturing, production, marketing, advertising of, representations made in respect of, the purchase, sale, and use of, or exposure to tobacco products (collectively, with the Tobacco Litigation, the “Tobacco Claims”). [ITCAN Aff. ¶ 143]

9. Given the magnitude of the Damages Award and the publicity the Quebec Class Action Judgment has received in both Canada and the United States<sup>2</sup>, the Debtor fears that, absent a restraining order, claimants may attempt to try to seize, freeze, or otherwise enjoin the Debtor’s assets in the United States, block the Debtor’s access to inventory housed in the United States or disrupt the Debtor’s distribution processes. Such a result would effectively cripple the Debtor’s business. Given the likelihood of irreparable harm to the Debtor without a restraining order, the Debtor requires immediate relief on an emergency basis.

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<sup>2</sup> See, e.g., Natnicha Chuwiruch & Jeff Sutherland et al., *Japan Tobacco Wins Court Protection in Canada Over Smoking*, BLOOMBERG (Mar. 8, 2019), <https://www.bloomberg.com/news/articles/2019-03-09/japan-tobacco-s-unit-granted-creditor-protection-by-quebec-court>; *Judgement against the tobacco companies suspended!*, CISION (Mar. 11, 2019), <https://www.newswire.ca/news-releases/judgment-against-the-tobacco-companies-suspended--884322451.html>; Stephanie Marin, *\$15B judgment in damages to Quebec smokers suspended because one tobacco company in lawsuit given creditor protection*, NATIONAL POST (Mar. 12, 2019), <https://nationalpost.com/news/canada/16b-judgement-in-damages-to-quebec-smokers-suspended-because-one-tobacco-company-in-lawsuit-given-creditor-protection>

## ARGUMENT

### **I. The Relief Requested Is Authorized by Sections 1519 and 105**

10. Upon this Court’s final recognition of the Canadian Proceeding as a “foreign main proceeding,” the automatic stay provided by section 362 of the Bankruptcy Code will immediately apply with respect to all of the Debtor’s property that is within the territorial jurisdiction of the United States. *See* 11 U.S.C. § 1520(a)(1). However, unlike in a typical corporate reorganization case under Chapter 11 of the Bankruptcy Code, in an ancillary proceeding commenced under Chapter 15, no automatic stay protects the Debtor’s assets and operations in the United States during the period between the petition date and the date on which the Court enters an order recognizing the Canadian Proceeding as a foreign proceeding.

11. Therefore, to prevent any irreparable harm during the “interim period” between commencement of a Chapter 15 proceeding and entry of an order recognizing the foreign proceeding, section 1519(a) of the Bankruptcy Code authorizes courts to grant “relief of a provisional nature” from the time of filing a petition for recognition until the court rules on the petition, where such relief is “urgently needed to protect the assets of the debtor or the interests of the creditors,” including “staying execution against the debtor’s assets.” 11 U.S.C. § 1519(a)(1). Pursuant to section 1519(a)(3) of the Bankruptcy Code, courts are authorized to grant, on a provisional basis, the relief available under section 1521(a)(7) of the Bankruptcy Code, which in turn provides for any relief available to a trustee in a case under the Bankruptcy Code, subject to certain statutory exceptions not relevant here.<sup>3</sup> *See* 11 U.S.C. §§ 1519(a)(3), 1521(a)(7).<sup>4</sup>

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<sup>3</sup> Section 1521 provides that the court may grant appropriate relief, including “any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724 (a).” 11 U.S.C. § 1521(a)(7).

<sup>4</sup> Section 362 of the Bankruptcy Code provides relief to a trustee by, among other things, enjoining creditor actions against debtors and their property, and is an essential feature of the Bankruptcy Code. Further, section 105(a) of the Bankruptcy Code allows courts to “issue any order . . . necessary or appropriate to carry out the provisions of [title

12. Courts commonly grant provisional relief to protect a debtor's assets until a recognition hearing, and at least one court has granted provisional relief to protect inventory specifically. In *In re Innua Canada Ltd.*, the court found that the debtor would suffer irreparable harm absent an injunction, because, in part, warehouses that housed the debtor's inventory might sell the inventory in their possession as compensation for unpaid invoices. No. 09-16362, 2009 WL 1025088, at \*4 (Bankr. D.N.J. March 25, 2009); *see also In re Caledonian Bank Ltd.*, No. 15-10324 (MG) (Bankr. S.D.N.Y. Feb. 16, 2015) (granting a stay of execution against the debtor's assets because, absent such relief, the Debtor would "suffer irreparable harm to the value of its business, assets, and property"); *In re Tibanne Co. Ltd.*, No. 15-10355 (REG) (Bankr. S.D.N.Y. Feb. 13, 2015) (granting injunction and finding that an attack on the debtor's assets in the United States would cause harm to the debtor's efforts to liquidate); *In re Sifco S.A.*, No. 14-11179 (REG) (Bankr. S.D.N.Y. May 7, 2014) (finding a material risk that creditors or other parties in interest would attempt to control or possess the debtor's assets existed absent an injunction).

## **II. The Debtor's Circumstances Satisfy the Standards for Injunctive Relief**

13. Relief under section 1519 is available where the foreign representative can satisfy the applicable standard for injunctive relief. 11 U.S.C. § 1519(e). To obtain injunctive relief, the movant must make a showing of (1) a likelihood of success on the merits; (2) irreparable harm in the absence of an injunction; (3) a balance of the hardships tipping in their favor; and (4) non-disservice of the public interest by issuance of a preliminary injunction. *Secured Worldwide LLC v. Kinney*, No. 15 CIV. 1761 CM, 2015 WL 1514738, at \*10 (S.D.N.Y. Apr. 1, 2015) (citing

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11].” Therefore, the Court may apply section 362 of the Bankruptcy Code in this Chapter 15 case as the protections afforded by that section constitute “relief that may be available to a trustee.” 11 U.S.C. §§ 1519(a)(3) and 1521(a)(7).

*Winter v. Natural Res. Defense Council*, 555 U.S. 7, 20 (2008)). The Debtor's circumstances satisfy the requirements for injunctive relief.

**A. The Monitor Has a Likelihood of Success on the Merits**

14. To demonstrate a likelihood of success on the merits, a foreign representative must demonstrate that (i) the Canadian Proceeding is a foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code and (ii) the Canadian Proceeding is pending in the country where the debtor has its center of main interests. *See* 11 U.S.C. § 1517(b) (identifying the criteria for recognition).

15. Section 101(23) defines “foreign proceeding” as “a collective judicial or administrative proceeding in a foreign country . . . under a law relating to insolvency or adjustment of a 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.” 11 U.S.C. § 103(23). The Canadian Proceeding fits squarely within this definition. The Canadian Proceeding was filed pursuant to the CCAA—Canada’s counterpart to the United States Bankruptcy Code. This Court commonly recognizes CCAA proceedings as “foreign proceedings” within the meaning of section 101(23) of the Bankruptcy Code. *See, e.g., In re Sino-Forest Corp.*, 501 B.R. 655, 666 (Bankr. S.D.N.Y. 2013); *In re Metcalf & Mansfield Alternative Invs.*, 421 B.R. 685, 688 (Bankr. S.D.N.Y. 2010); *In re Baronet U.S.A. Inc.*, No. 07-13821 (Bankr. S.D.N.Y. Jan. 10, 2008); *see also In re G.T.T. - Stats Int’l, Inc.*, No. 07-11886 (Bankr. N.D.N.Y. Sept. 21, 2007).

16. The Canadian Proceeding is also pending in the country where the Debtor has its center of main interests. The Bankruptcy Code provides that a foreign proceeding for which Chapter 15 recognition is sought must be recognized as a “foreign main proceeding” if it is pending in the country where the debtor has its center of main interests. 11 U.S.C. §§ 1517(b)(1), 1502(4). Although “center of main interests” is not defined in the Bankruptcy Code, courts in the U.S. have

generally found the center of main interests to be where the debtor conducts the administration of its interests on a regular basis and is, therefore, ascertainable by third parties. *See Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 136 (2d Cir. 2013) (“[t]he relevant principle . . . is that COMI lies where the debtor conducts its regular business, so that the place is ascertainable by third parties”); *In re Basis Yield Alpha Fund (Master)*, 381 B.R. 37 (Bankr. S.D.N.Y. 2008); *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122 (Bankr. S.D.N.Y. 2007), *aff’d*, 389 B.R. 325 (S.D.N.Y. 2008); *In re SphinX, Ltd.*, 351 B.R. 103 (Bankr. S.D.N.Y. 2006), *aff’d*, 371 B.R. 10 (S.D.N.Y. 2007). In the absence of evidence to the contrary, the debtor’s registered office is presumed to be the center of its main interests. 11 U.S.C. § 1516(c).

17. In the instant case, the Debtor’s registered office is located in Canada. Accordingly, in the absence of evidence to the contrary, its center of main interests is presumed under the Bankruptcy Code to be in Canada. Even in the absence of this presumption, however, it is axiomatic that Canada is the Debtor’s center of main interests. Virtually all of the Debtors’ revenue is generated through sales of tobacco products in Canada. The Debtor’s head office, its senior management, and nearly all of its employees are in Canada. [ITCAN Aff. ¶¶ 4, 7]. Also, the Debtor’s central decision-making function, both long-range and day-to-day, takes place in Canada. [ITCAN Aff. ¶ 17]

18. Based on the foregoing, it is clear that the Debtor’s center of main interests is in Canada, the Canadian Proceeding is a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code and the Debtor will be entitled to the relief requested upon entry of the order for relief. Thus, the Monitor is highly likely to succeed on the merits.

**B. The Debtor Will Suffer Irreparable Harm Absent the Provisional Relief Requested**

19. The Debtor will face irreparable harm if the Court does not grant the provisional relief requested. The Debtor's viability as a business depends upon the seamless continuation of its supply chain from Mexico to Canada. As explained above and in the Verified Petition and the Bishop Declaration, the Debtor's supply of tobacco is mostly routed through the United States and a substantial amount of finished product is warehoused in distribution centers in the United States, pending import and sale in Canada. Any attempt to freeze, seize, or otherwise control the Debtor's products at any point in the distribution system would cripple the Debtor's business or even bring the debtor's business to an abrupt halt.

20. If the Debtor is unable to operate as a going concern, it certainly will not be able to undergo a successful restructuring, thereby thwarting the purpose of the Canadian Proceeding and Chapter 15 of the Bankruptcy Code to the detriment of all of the Debtor's stakeholders. Accordingly, provisional relief is required and justified to prevent such irreparable harm.

**C. Balancing the Hardships Favors the Debtor**

21. The balancing of the hardships tips decidedly in favor of the Debtor. Injunctive relief on a provisional basis will help preserve the Debtor's business and its estate for all stakeholders. Absent the requested relief, the Debtor's business operations could be severely impacted calling into question the ability of the entire Imperial Tobacco corporate group to continue as a going concern and threatening the recoveries of all stakeholders. Parties seeking to act against the Debtor's assets, in turn, will have little or no harm as they will be able to participate on equal footing with all creditors in the reorganization of the Debtor on an equitable basis.

**D. The Relief Requested is in the Public Interest**

22. Finally, the relief requested is in the public interest. Protecting the Debtor's assets, business operations and processes within the United States will assist the Canadian court in its efforts to oversee an equitable reorganization under the CCAA.

23. In the context of a bankruptcy proceeding, the public interest is "in promoting a successful reorganization." *In re Lazarus Burman Assocs.*, 161 B.R. 891, 901 (Bankr. E.D.N.Y. 1993); *Rehabworks, Inc. v. Lee (In re Integrated Health Servs., Inc.)*, 281 B.R. 231, 239 (Bankr. D. Del. 2002) ("In the context of a bankruptcy case, promoting a successful reorganization is one of the most important public interests."). In the instant case, a successful reorganization hinges on preservation of the Debtor's business enterprise while it pursues a streamlined resolution of all Tobacco Claims under the Canadian Court's jurisdiction. Moreover, granting the requested relief furthers the cooperation between courts of the United States and foreign courts—one of the core purposes of Chapter 15. *See* 11. U.S.C. § 1501(a) ("The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of . . . cooperation between courts of the United States . . . and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases.").

**NOTICE**

24. The Monitor proposes to serve copies of the order in accordance with the notice procedures set forth in the proposed order attached hereto as Exhibit A. The Monitor further proposes to provide copies of the Application upon request by any party in interest to:

Bracewell LLP  
Attn: Mark E. Dendinger  
1251 Avenue of Americas  
New York, New York 10020-1104  
Email: Mark.Dendinger@bracewell.com

**NO PRIOR REQUEST**

25. No prior request for the relief requested herein has been made to this or any other court.

**WAIVER OF FEDERAL RULE OF CIVIL PROCEDURE 65(C)**

26. Bankruptcy Rule 7065 provides that “a temporary restraining order or preliminary injunction may be issued on the application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c).” To the extent Rule 65 of the Federal Rules of Civil Procedure applies, the Monitor believes that the security requirements imposed by Rule 65(c) are unwarranted under the circumstances and, accordingly, respectfully requests a waiver of such requirements pursuant to Bankruptcy Rule 7065.

WHEREFORE, the Monitor respectfully requests that the Court (i) enter the proposed order to show cause with temporary restraining order, substantially in the form attached hereto as **Exhibit A**, staying execution against the assets, business operations and supply chain, inventory management and distribution processes of the Debtor, applying section 362 of the Bankruptcy Code in this Chapter 15 case on a provisional basis, and scheduling a hearing on the Monitor’s request for a preliminary injunction; (ii) enter a preliminary injunction order, substantially in the form attached hereto as **Exhibit B**, extending the relief granted in the temporary restraining order until disposition of the Petition, if the Monitor’s request for recognition of the Canadian Proceeding has not been adjudicated prior thereto; and (iii) grant such other and further relief as the Court deems just and proper under the circumstances.

*[Remainder of Page Intentionally Left Blank]*

Dated: March 13, 2019  
New York, New York

**BRACEWELL LLP**

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

In re:

IMPERIAL TOBACCO CANADA  
LIMITED,

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 19-10771( )

**ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER**

FTI Consulting Canada Inc. (“FTI,” or the “Monitor”) is the Court-appointed monitor for Imperial Tobacco Canada Limited (“ITCAN” or the “Debtor”) in a 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) at Toronto (the “Canadian Proceeding”). The Monitor is authorized to serve as the foreign representative of the Debtor as defined by section 101(24) of title 11 of the United States Code (the “Bankruptcy Code”).

On March 13, 2019, the Monitor commenced this Chapter 15 case (the “Chapter 15 Case”) by filing, on behalf of the Debtor and pursuant to sections 1504 and 1515 of the Bankruptcy Code, the Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief (the “Verified Petition”) along with the Official Form 401 (*Chapter 15 Petition for Recognition of a Foreign Proceeding*); the Application for an Order (I) Scheduling

Recognition Hearing, (II) Specifying Deadline for Filing Objections and (III) Specifying Form and Manner of Notice (the “Notice Application”); and an Ex Parte Application for Temporary Restraining Order and Relief Pursuant to Sections 1519 and 105(a) of the Bankruptcy Code (the “Application for Provisional Relief” and, collectively with the Verified Petition and Notice Application, the “First Day Motions”).

The Monitor has also filed a memorandum of law (the “Memorandum of Law”) and a Declaration of the Monitor (the “Bishop Declaration”) in support of the First Day Motions.

By its Application for Provisional Relief, the Monitor requested entry, on an *ex parte* basis, of a temporary restraining order staying execution against the assets, business operations and supply chain, inventory management and distribution processes of the Debtor, and applying section 362 of the Bankruptcy Code in this Chapter 15 case on a provisional basis pending the earlier of (i) adjudication of the Monitor’s request for Recognition of the Canadian Proceeding or (ii) after notice and a hearing, entry of an order granting a preliminary injunction extending the provisional relief in the temporary restraining order until disposition of the Verified Petition.

The Court has considered and reviewed the Application for Provisional Relief, the Verified Petition, and the Bishop Declaration and all related documents filed contemporaneously therewith. Based on the foregoing,

**THE COURT FINDS AND CONCLUDES AS FOLLOWS:**

a) The Monitor has demonstrated a substantial likelihood of success on the merits that the Debtor is the subject of a pending foreign main proceeding and the Monitor is the foreign representative of the Debtor;

b) The Monitor has demonstrated that, without a stay of execution against the Debtor’s assets, business operations and processes and the protections of section 362 of the Bankruptcy

Code, there is a material risk that the Debtor will suffer irreparable harm to the value of its business, assets, and property as a result of potential enforcement and collection efforts of claimants pending the disposition of the Verified Petition;

c) No injury will result to any party that is greater than the harm to the Debtor in the absence of the requested relief;

d) The interests of the public will be served by this Court's granting of the relief requested by the Monitor;

e) Due to the nature of the relief requested, the Court finds that no security is required under Rule 65(c) of the Federal Rules of Civil Procedure to the extent applicable in these cases by Rule 7065 of the Federal Rules of Bankruptcy Procedure;

f) It would not be feasible, prior to entry of this Order, for the Monitor to serve prior notice of the Application for Provisional Relief on parties in interest, and giving such prior notice would create the risk that creditors would rush to take actions that would undermine or defeat the purposes of the relief that the Monitor seeks.

g) This Court has jurisdiction over this matter pursuant to 28 U.S.C §§ 157 and 1334 and Section 1501 of the Bankruptcy Code;

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

i) Venue is proper in this District pursuant to 28 U.S.C. § 1410.

**NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Monitor's application is **GRANTED** as of [\_\_\_\_\_];
2. All parties in interest shall show cause before the Honorable [\_\_\_\_\_], United States Bankruptcy Judge for the Southern District of New York, at a hearing at [\_\_\_\_\_] on

[\_\_\_\_\_] (the “Hearing”), at the United States Bankruptcy Court, One Bowling Green, New York, New York 10004, Courtroom [# ] as to why an order should not be entered:

- i. establishing the Monitor as the “foreign representative” of the Debtor as defined in section 101(24) of the Bankruptcy Code;
  - ii. enjoining all persons and entities subject to this Court’s jurisdiction from taking or continuing to take any act to seize, attach, possess, execute upon, exercise control over and/or enforce liens against any assets of the Debtor located in the territorial jurisdiction of the United States, its business operations and supply chain, inventory management and distribution processes; and
  - iii. directing that the automatic stay set forth in Section 362 of the Bankruptcy Code shall be applicable, within the territorial boundaries of the United States, to the Debtor and its assets, business operations and processes.
3. Subject to paragraph 4 below, pending the Hearing:
  - i. the Monitor is established, on an interim basis, as the “foreign representative” of the Debtor as defined in section 101(24) of the Bankruptcy Code;
  - ii. Pursuant to sections 1519(a)(1) and 105(a) of the Bankruptcy Code, all persons and entities are enjoined from seizing, attaching, possessing, executing, and/or enforcing liens against the assets, business operations and processes of the Debtor; and
  - iii. Pursuant to sections 1519(a)(3) and 105(a) of the Bankruptcy Code, the automatic stay pursuant to section 362 of the Bankruptcy Code is applicable

in this Chapter 15 case within the territorial jurisdiction of the United States; *provided, however*, that the automatic stay shall not enjoin a police or regulatory act of a governmental unit to the extent provided in Section 362(b)(4) of the Bankruptcy Code.

4. Pursuant to Federal Rule 65(b)(4), any party in interest may make a motion seeking relief from or modifying this Order on no less than two (2) business days' notice to the Monitor's United States counsel, by filing a motion seeking an order of this Court dissolving or modifying the injunction entered in this proceeding.

5. Pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure, the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure are waived.

6. Notice of entry of this Order and of the Hearing shall be served within two business days of its entry by United States mail first-class postage prepaid, by electronic mail or by fax on all parties against whom relief is sought, or their counsel, if applicable, including such parties as set forth in the List Pursuant to Bankruptcy Rule 1007(a)(4) filed concurrently herewith.

7. Service in accordance with this Order shall constitute adequate and sufficient service and notice.

8. Responses or objections to the Monitor's request for a preliminary injunction shall be (i) made in writing and shall set forth the basis therefor, and such responses or objections, if filed by an attorney, must be filed in accordance with General Order M-399 and the Court's Current Guidelines for Electronic Filing (copies of which may be viewed on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)), and by all other parties in interest in hard copy filed with the Office of the Clerk of the Court, One Bowling Green, New York, New York, with a hard copy to be sent to the chambers of the Honorable [ ], United States Bankruptcy Judge and (ii)

served by electronic mail and United States mail upon Bracewell LLP, Attn: Jennifer Feldsher and Mark E. Dendinger, 1251 Avenue of the Americas, New York, NY 10020-1100, counsel to the Monitor, so as to be received on or before [\_\_\_\_\_] at [\_\_\_\_\_] , prevailing Eastern Time.

9. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2019  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE

Bracewell LLP  
1251 Avenue of the Americas  
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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

IMPERIAL TOBACCO CANADA  
LIMITED,

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 19-10771( )

**ORDER GRANTING PRELIMINARY INJUNCTION**

FTI Consulting Canada Inc. (“FTI,” or the “Monitor”) is the Court-appointed monitor for Imperial Tobacco Canada Limited (“ITCAN” or the “Debtor”) in a 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) at Toronto (the “Canadian Proceeding”). The Monitor is authorized to serve as the foreign representative of the Debtor as defined by section 101(24) of title 11 of the United States Code (the “Bankruptcy Code”).

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Recognition Hearing, (II) Specifying Deadline for Filing Objections and (III) Specifying Form and Manner of Notice (the “Notice Application”); and an Ex Parte Application for Temporary Restraining Order and Relief Pursuant to Sections 1519 and 105(a) of the Bankruptcy Code (the “Application for Provisional Relief” and, collectively with the Verified Petition and Notice Application, the “First Day Motions”).

The Monitor has also filed a memorandum of law (the “Memorandum of Law”) and a Declaration of the Monitor (the “Bishop Declaration”) in support of the First Day Motions.

By its Application for Provisional Relief, the Monitor requested entry, on an *ex parte* basis, of an order to show cause with temporary restraining order staying execution against the assets, business operations and supply chain, inventory management and distribution processes of the Debtor and applying section 362 of the Bankruptcy Code in this Chapter 15 case on a provisional basis pending either the adjudication of the Monitor’s request for recognition of the Canadian Proceeding or a hearing on the Monitor’s request for a preliminary injunction, and granting such other relief as the Court sees just and proper.

The Court has considered and reviewed the Application for Provisional Relief, the Verified Petition, the Bishop Declaration and all related documents filed contemporaneously therewith. Based on the foregoing, **THE COURT FINDS AND CONCLUDES AS FOLLOWS:**

a) The Monitor has demonstrated a substantial likelihood of success on the merits that the Debtor is the subject of a pending foreign main proceeding and the Monitor is the foreign representative of the Debtor;

b) The Monitor has demonstrated that, without a stay of execution against the Debtor’s assets, business operations and processes, and the protections of section 362 of the Bankruptcy Code, there is a material risk that the Debtor will suffer irreparable harm to the value of its business,

assets, and property as a result of potential enforcement and collection efforts of claimants pending the disposition of the Verified Petition;

c) No injury will result to any party that is greater than the harm to the Debtor in the absence of the requested relief;

d) The interests of the public will be served by this Court's granting the relief requested by the Monitor;

e) Due to the nature of the relief requested, no security is required under Rule 65(c) of the Federal Rules of Civil Procedure to the extent applicable in these cases by Rule 7065 of the Federal Rules of Bankruptcy Procedure;

f) This Court has jurisdiction over this matter pursuant to 28 U.S.C § 1334;

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

h) Venue is proper in this District pursuant to 28 U.S.C. § 1410.

**NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Monitor's application is **GRANTED**.
2. Until such a time as an order adjudicating the Monitor's request for recognition of the Canadian Proceeding is entered, or as otherwise ordered by this Court:
  - i. the Monitor is established as the "foreign representative" of the Debtor as defined in section 101(24) of the Bankruptcy Code;
  - ii. Pursuant to sections 1519(a)(1) and 105(a) of the Bankruptcy Code, all persons and entities are enjoined from seizing, attaching, possessing, executing, and/or enforcing liens against the assets, businesses operations or processes of the Debtor; and

iii. Pursuant to sections 1519(a)(3) and 105(a) of the Bankruptcy Code, the automatic stay pursuant to section 362 of the Bankruptcy Code is applicable in this Chapter 15 case within the territorial jurisdiction of the United States; *provided, however*, that the automatic stall shall not enjoin a police or regulatory act of a governmental unit to the extent provided in Section 362(b)(4) of the Bankruptcy Code.

3. Notice of this Order shall be served within two business days of its entry by United States mail first-class postage prepaid, by electronic mail or by fax on all parties against whom relief is sought, or their counsel, if applicable, including such parties as set forth in the List Pursuant to Bankruptcy Rule 1007(a)(4) previously filed by the Debtor.

4. Service in accordance with this Order shall constitute adequate and sufficient service and notice.

5. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2019  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE