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Hearing Date and Time:
August 28, 2024 at 11:00 am
Objection Deadline:
August 21, 2024 at 4:00 pm

*Attorneys for FTI Consulting Canada Inc.,
in its Capacity 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.¹

Chapter 15

Case No. 19-10771 (JPM)

**NOTICE OF MOTION OF THE FOREIGN REPRESENTATIVE FOR
RECOGNITION OF THE ORDER OF THE CANADIAN COURT
APPROVING TERMINATION OF THE IHGI RETIREMENT
PLAN AND AUTHORIZATION TO FUND PLAN TERMINATION COSTS**

PLEASE TAKE NOTICE that, on August 1, 2024, 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*

¹ 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.

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”), filed a motion seeking (i) recognizing the order of the Canadian Court dated March 25, 2024 approving the Debtor’s termination of the Imasco Holdings Group Inc. and Participating Affiliates Retirement Plan (the “IHGI Plan”) effective as of August 31, 2024 and (ii) authorizing, pursuant to sections 363(b)(1) and 1520(a) of title 11 of the United States Code (the “Bankruptcy Code”), the payment of any funding obligations under the IHGI Plan by the Debtor through cash or the purchase of an annuity contract or contracts as required by Title IV of the U.S. Employee Retirement Income Security (“ERISA”) up to an aggregate of \$6 million, excluding the financial year 2024 contribution (the “Motion”).

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court has scheduled a hearing to consider the relief requested in the Motion on **August 28, 2024 at 11:00 a.m., prevailing Eastern Time** (the “Hearing”) or as soon thereafter as counsel may be heard, before the Honorable John P. Mastando III, United States Bankruptcy Judge, the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), One Bowling Green, New York, NY 10004-1408. The Hearing will be conducted remotely. Any person wishing to attend the Hearing must register their appearance using the eCourt Appearance tool at <https://www.nysb.uscourts.gov/ecourt-appearances> by 4:00 p.m. (prevailing Eastern Time) the business day before the Hearing. Any person who registers to participate in the Hearing remotely in accordance with the foregoing instructions will receive a separate email with participation information.

PLEASE TAKE FURTHER NOTICE that a copy of the Motion and/or related documents are available free of charge by visiting the website of Verita, formerly Kurtz Carson Consultants, LLC, at <https://veritaglobal.net/ITCAN>. You may also obtain copies of any pleadings by visiting the Bankruptcy Court's website at <https://www.nysb.uscourts.gov/> in accordance with the procedures and fees set forth therein. Documents relating to the Canadian proceeding can be obtained from the Monitor's website at <http://cfcanada.fticonsulting.com/imperialtobacco/default.htm>.

PLEASE TAKE FURTHER NOTICE that any party in interest wishing to submit a response or objection to the Motion, or the relief request therein, must do so in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules for the U.S. Bankruptcy Court for the Southern District of New York, setting forth in the writing the basis thereof. Any responses or objections must be filed with the Bankruptcy Court no later than **4:00 p.m., prevailing Eastern Time, on August 21, 2024** (the "Objection Deadline") and served upon Morgan, Lewis & Bockius LLP, counsel to the Monitor, 101 Park Avenue, New York, NY, Attn: Jennifer Feldsher (jennifer.feldsher@morganlewis.com) and One State Street, Hartford, CT, Attn: David Shim (david.shim@morganlewis.com).

PLEASE TAKE FURTHER NOTICE that all parties in interest opposing the Motion, or the relief requested therein, must appear at the Hearing as set forth above.

PLEASE TAKE FURTHER NOTICE that, if no response or objection is timely filed and served on or before the Objection Deadline, the Bankruptcy Court may grant the relief requested in the Motion without further notice.

PLEASE TAKE FURTHER NOTICE that the Hearing may be adjourned from time to time without further notice other than an announcement in open court, or a notice of adjournment filed with the Bankruptcy Court, of the adjourned date or dates of the Hearing or any other further adjourned hearing.

Dated: August 1, 2024
New York, New York

MORGAN, LEWIS & BOCKIUS 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.¹

Chapter 15

Case No. 19-10771 (JPM)

**MOTION OF THE FOREIGN REPRESENTATIVE FOR
RECOGNITION OF THE ORDER OF THE CANADIAN COURT
APPROVING TERMINATION OF THE IHGI RETIREMENT
PLAN AND AUTHORIZATION TO FUND PLAN TERMINATION COSTS**

FTI Consulting Canada Inc. (“FTI”), 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”), hereby seeks an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), (i) recognizing the order of the Canadian Court dated March 25, 2024 approving the Debtor’s termination of the Imasco Holdings Group Inc. and Participating

¹ 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.

Affiliates Retirement Plan (the “IHGI Plan”) effective as of August 31, 2024, (ii) authorizing, pursuant to sections 363(b)(1) and 1520(a) of title 11 of the United States Code (the “Bankruptcy Code”), the payment of any funding obligations under the IHGI Plan by the Debtor through cash or the purchase of an annuity contract or contracts as required by Title IV of the U.S. Employee Retirement Income Security (“ERISA”), and (iii) after termination of the Plan, authorizing Verita Global (formerly Kurtzman Carson Consultants), as claims and noticing agent, (the “Noticing Agent”) to remove plan participants and beneficiaries of the IHGI Plan from the Chapter 15 Notice Parties², to the extent such parties have not formally appeared or requested service in this case (the “Motion”).

Filed contemporaneously herewith is the declaration of Paul Bishop in support of the Motion (the “Bishop Declaration”). The Monitor submits and incorporates by reference the Bishop Declaration and respectfully states as follows:

BACKGROUND

1. 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., and imports them through the United States for sale in Canada.³

2. On March 12, 2019, the Debtor, along with its affiliate, ITCO, commenced the Canadian Proceeding to address mounting claims and ongoing product liability and consumer litigation across Canada in a comprehensive fashion.

² As defined in the *Application for an Order Scheduling Recognition Hearing, Specifying Deadline for Filing Objections and Specifying Form and Manner of Notice* [Docket No. 3].

³ See *Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief* (the “Verified Petition”) [Docket No. 2], at 4. Capitalized terms not defined herein shall have the meanings ascribed to them in the Verified Petition.

3. On March 13, 2019, the Monitor, in its capacity as foreign representative of the Debtor, 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. This Court recognized the Canadian Proceeding as a foreign main proceeding and granted related relief by order dated April 17, 2019 (the "Recognition Order"). [Docket No. 40].

4. In connection with certain historical operations in the United States, long since terminated, Debtor affiliates Genstar Company, Hardee's Food Systems Inc., and Fast Food Merchandisers Inc. (collectively, the "Debtor Affiliates"), sponsored the IHGI Plan, a U.S. tax-qualified defined benefit pension plan that covered approximately 935 former employees of the Debtor Affiliates. Despite the Debtor Affiliates ceasing operations by December 2009, the Debtor, through its wholly-owned subsidiary, Imasco Holdings Group Inc. ("IHGI"), continued to administer and fund the IHGI Plan.

5. The Debtor has determined, in its business judgment, that the rationale for continuing to fund the IHGI Plan has shifted, largely due to ongoing financial commitments and current economic conditions. The Debtor estimates that termination of the IHGI Plan in the near term will result in over \$2 million of savings for the Debtor. Accordingly, the Debtor sought permission from the Canadian Court to terminate the IHGI Plan in accordance with section 4041(b) of ERISA and subpart B of Pension Benefit Guaranty Corporation's standard termination regulations, found at 29 CFR § 4041.21–4041.31.

6. On March 25, 2024, the Canadian Court authorized the Debtor, in consultation with the Monitor, to proceed with terminating the IHGI Plan in compliance with applicable U.S. laws and regulations if deemed in the interests of the Debtor and ITCO, provided that the total

termination costs did not exceed \$6 million, excluding the financial year 2024 contribution (the “Stay Extension Order”).⁴

7. The Debtor believes it can terminate the IHGI Plan in accordance with ERISA’s standard termination requirements, within the cost parameters approved by the Canadian Court. The Debtor has issued, or intends to issue, the required notices to affected parties describing the proposed termination date, benefit amounts, and annuity information, in anticipation of the August 31, 2024 termination date⁵ and anticipates settling any underfunding obligations by funding the approximately \$1.3 million financial-year 2024 contribution with cash on-hand and purchasing an annuity contract or contracts to cover all remaining obligations. As the payments are likely to be made by IHGI or the Debtor in the United States and substantially all of the participants and beneficiaries under the IHGI Plan are located in the United States, out of an abundance of caution, the Monitor seeks recognition by this Court of the Stay Extension Order and authorization for the Debtor to make the required payments to terminate the IHGI Plan in the United States.

JURISDICTION

8. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code, and the *Amended Standing Order of Reference to Bankruptcy Judges of the District Court for the Southern District of New York, dated January 31, 2021* (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper

⁴ A copy of the Stay Extension Order with its endorsement dated March 25, 2024 is attached as **Exhibit 1** to the Bishop Declaration.

⁵ To satisfy ERISA’s requirements for a standard termination of a pension plan, IHGI, as plan administrator, is required to send a “written notice of intent to terminate” to affected parties, which includes the proposed termination date, and to file the termination notice with the PBGC. 29 U.S.C. § 1341(a)(2); *see also* 29 C.F.R. § 4041.21(a)(1). IHGI must also issue a “notice to each person who is a participant or beneficiary under the plan . . . specifying the amount of the benefit[s]” to which the individual is entitled and provide annuity information. 29 U.S.C. § 1341(b)(2)(B); *see also* 29 C.F.R. § 4041.21(a)(2).

before this Court pursuant to 28 U.S.C. § 1410. The statutory predicates for the relief requested herein are sections 362, 363(b), 1507(a) and 1520 of the Bankruptcy Code.

RELIEF REQUESTED

9. By this Motion, the Monitor seeks (i) recognition of the Stay Extension Order approving the Debtor's termination of the IHGI Plan effective as of August 31, 2024; (ii) authorization, pursuant to sections 363(b)(1) and 1520(a) of the Bankruptcy Code, for the Debtor to make any payments and/or purchase any annuities as required by applicable law to cover obligations under the IHGI Plan in or through the United States; and (iii) after termination of the IHGI Plan, to avoid confusion for plan participants and beneficiaries, authorization for the Noticing Agent to remove plan participants and/or beneficiaries of the IHGI Plan from the Chapter 15 Notice Parties, unless such parties have formally appeared or requested service in this case.

BASIS FOR RELIEF

I. The Requested Relief Is Appropriate Under Chapter 15 of the Bankruptcy Code

10. Once a bankruptcy court grants recognition of a foreign proceeding, relief is available to the petitioner under sections 1520, 1521 and 1507 of the Bankruptcy Code. *See* 11 U.S.C. §§ 1507 (additional assistance), 1520 (effects of recognition of foreign main proceeding), 1521 (relief that may be granted upon recognition). Specifically included within the relief available to a foreign representative as a matter of right under section 1520 of the Bankruptcy Code is the relief allowed under section 363 of the Bankruptcy Code. *See* 11 U.S.C. §1520(a)(2); *In re Artimm, S.r.L.*, 335 B.R. 149, 159 (Bankr. C.D. Cal. 2005) (“under chapter 15, § 363 (governing sale, use or lease of property of the estate) . . . appl[ies] to any transfer of an interest of the debtor in property within the territorial jurisdiction of the United States to the same extent that the sections

would apply to property of a domestic bankruptcy estate.”) (citing 11 U.S.C. § 1520(a)(2)); *see also In re SPhinX, Ltd.*, 351 B.R. 103, 115 (Bankr. S.D.N.Y. 2006) (citing 11 U.S.C. § 1520(a)(2)).

11. The Recognition Order provides that the Canadian Proceeding has been recognized by this Court as a foreign main proceeding and this Court has previously found that retiree claims should be addressed through the Canadian Proceeding.⁶ However, as the IHGI Plan is a U.S. retirement plan, and payments related to its termination are likely to be made from and through bank accounts located in the territorial jurisdiction of the United States, out of an abundance of caution, the Monitor seeks recognition of the Stay Extension Order and authorization for the Debtor to pay all such amounts, including the financial-year 2024 contribution and the annuity purchases under section 363(b) of the Bankruptcy Code.

II. Funding the Plan Termination Payments is a Sound Exercise of the Debtor’s Business Judgment and is in the Best Interests of the Debtor and ITCO

12. Section 363(b)(1) provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts have routinely held that the debtor’s sale or use of property of the estate outside the ordinary course of business should be approved if the debtor can demonstrate a sound business justification for the proposed transaction. *See In re Chrysler LLC*, 576 F.3d 108, 117-18 (2d Cir. 2009) (citing *In re Iridium Operating LLC*, 478 F.3d 452, 466 (2d Cir. 2007) (“In this Circuit, the sale [or use] of an asset of the estate under § 363(b) is permissible if the ‘judge determining [the] § 363(b) application expressly find[s] from the evidence presented before [him or her] at the hearing [that there is] a good business reason to grant such an application.’”)). Once a debtor articulates a sound business justification, a strong presumption arises that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest

⁶ [Docket No. 40].

belief that the action was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations and quotations omitted), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

13. In the instant case, the Monitor submits that ample business justifications support the Debtor’s termination of the IHGI Plan. Stay Extension Order ¶ 3. Terminating the plan allows the Debtor to take advantage of favorable market conditions to remove a significant liability from its balance sheet along with the risks associated with continued funding. Terminating the plan will also simplify the Debtor’s operations and reduce the administrative burden and costs associated with ongoing compliance and reporting. At the same time, payments under the IHGI Plan are not anticipated to be impacted as, through the annuity, a third-party insurance company will take responsibility for continuing to provide benefits to plan participants and beneficiaries. Based upon the foregoing, the Monitor submits that termination of the IHGI Plan is in the best interest of the Debtor, its estate and creditors.

WAIVER OF STAY

14. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” The Monitor respectfully requests that, to the extent applicable, the Proposed Order become effective and enforceable immediately upon entry notwithstanding the 14-day stay of effectiveness of the order imposed by operation of the Bankruptcy Code or the Bankruptcy Rules, including Bankruptcy Rules 6004(h) and 9014. Such a waiver is appropriate in these circumstances to allow the Debtor to obtain the benefit of current favorable market conditions and promptly terminate the IHGI Plan.

NOTICE

15. Notice of this Motion has been provided to the U.S. Trustee for the Southern District of New York, the Pension Benefit Guaranty Corporation, and the Chapter 15 Notice Parties.

WHEREFORE, the Monitor respectfully requests that the Court grant the relief requested herein, as set forth in the Proposed Order submitted herewith, and grant the Monitor such other and further relief as may be just and proper.

Dated: August 1, 2024
New York, New York

MORGAN, LEWIS & BOCKIUS LLP

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EXHIBIT A

Proposed Order

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

In re:

IMPERIAL TOBACCO CANADA LIMITED,

Debtor in a Foreign Proceeding.¹

Chapter 15

Case No. 19-10771 (JPM)

**ORDER GRANTING THE MOTION OF
FOREIGN REPRESENTATIVE FOR RECOGNITION OF THE ORDER
OF THE CANADIAN COURT APPROVING TERMINATION OF THE IHGI
RETIREMENT PLAN AND AUTHORITY TO FUND PLAN TERMINATION COSTS**

This matter was brought by FTI Consulting Canada Inc. (“FTI”), the authorized foreign representative of Imperial Tobacco Canada Limited (the “Debtor”) and the court-appointed monitor (the “Monitor”)² of the Debtor and Imperial Tobacco Company Limited, upon its filing of the *Motion of the Foreign Representative for Recognition of the Order of the Canadian Court Approving Termination of the IHGI Retirement Plan and Authority to Fund Plan Termination Costs* (the “Motion”), pursuant to sections 362, 363(b), 1507(a) and 1520 of title 11 of the United States Code (the “Bankruptcy Code”) and rule 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

At a hearing held on _____, 2024, the Court considered and reviewed the Motion, exhibits attached thereto and the other pleadings submitted in support thereof.

¹ 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.

² FTI was appointed as Monitor pursuant to Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, by order dated March 12, 2019.

After due deliberation and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code, and the *Amended Standing Order of Reference to Bankruptcy Judges of the District Court for the Southern District of New York, dated January 31, 2021* (Preska, C.J.).

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

C. Venue is proper before this Court pursuant to 28 U.S.C. § 1410.

D. Due and proper notice of the Motion was provided. No other or further notice need be provided.

E. The relief granted herein is necessary and appropriate, in the interests of public and international comity and consistent with the public policy of the United States.

F. The relief granted herein is reasonable and appropriate, and consummation of the transactions contemplated by the Motion is in the best interests of the Debtor and its estate and represents an exercise of the Debtor's sound business judgment.

NOW THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:³

1. The Motion is hereby **GRANTED** as set forth herein.

2. The order of the Canadian Court dated March 25, 2024 authorizing, among other things, the Debtor to terminate the IHGI Plan is hereby recognized and given full force and effect in the United States. The Debtor, in consultation with the Monitor, is hereby authorized, pursuant to section 363(b) of the Bankruptcy Code, as made applicable to this chapter 15 case by section 1520(a)(2), to take any and all actions reasonably necessary or appropriate to consummate

³ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

termination of the IHGI Plan in accordance with applicable law and is authorized to satisfy obligations under the IHGI Plan, whether through cash and/or the purchase of an annuity contract or contracts or otherwise, as required by Title IV of ERISA, up to \$6 million, exclusive of the financial year 2024 contribution, in or through the United States.

3. Subject to the termination of the IHGI Plan and purchase of annuities, the Monitor is hereby authorized to remove the IHGI Plan participants and beneficiaries from the Chapter 15 Notice Parties.

4. Notwithstanding any provision in the Bankruptcy Code or the Bankruptcy Rules to the contrary, including but not limited to Bankruptcy Rules 6004(h) and 9014, (a) this Order shall be effective and enforceable immediately upon entry, (b) the Monitor or the Debtor is not subject to any stay, including the automatic stay imposed by section 362 of the Bankruptcy Code, in the implementation, enforcement, or realization of the relief granted in this Order, and (c) this Order shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

5. This Court shall retain jurisdiction with respect to the enforcement, implementation or interpretation of this Order.

Dated: _____, 2024
New York, New York

HONORABLE JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE