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*Attorneys for FTI Consulting Canada Inc.  
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(\_\_\_\_)

**APPLICATION FOR AN ORDER (I) SCHEDULING  
RECOGNITION HEARING, (II) SPECIFYING DEADLINE FOR FILING  
OBJECTIONS AND (III) SPECIFYING FORM AND MANNER OF NOTICE**

FTI Consulting Canada Inc., in its capacity as court-appointed monitor (“Monitor”) and authorized foreign representative of Imperial Tobacco Canada Limited (the “Debtor”) in proceedings (the “Canadian Proceedings”) 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, by its undersigned counsel, hereby submits this application (the “Application”) for entry of an order (i) scheduling a hearing on the relief requested in the *Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief* and all exhibits appended thereto (the “Verified Petition”) filed contemporaneously herewith, (ii) setting a deadline by which all objections to the Verified Petition must be filed and (iii) approving the



form of notice of the Recognition Hearing (defined below) and the manner of service described herein. In support of this Application, the Monitor respectfully represents as follows:

### **BACKGROUND**

1. The Monitor filed the Official Form 401 (the "Petition") and the Verified Petition on March 13, 2019. Further background information is set forth in the Verified Petition.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157(a) and 1334.

3. Venue is proper before this court pursuant to section 28 U.S.C. § 1410.

### **RELIEF REQUESTED**

4. The Monitor seeks entry of an order substantially in the form attached hereto as **Exhibit A** (i) setting April 15, 2019 10:00 a.m. prevailing Eastern Time, or as soon thereafter as the Court's calendar permits, as the date for a hearing (the "Recognition Hearing") on the relief sought in the Verified Petition; (ii) setting the seventh day before the date of the Recognition Hearing as the date by which any responses or objections to such relief must be received (the "Objection Deadline"); (iii) approving the form of notice of the Recognition Hearing substantially in the form attached hereto as **Exhibit B** (the "Notice"); (iv) approving the manner of service of the Notice described herein; and (v) granting related relief.

### **BASIS FOR RELIEF**

5. Rule 2002(q)(1) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") provides that "the clerk, or some other person as the court may direct" shall provide 21 days' notice by mail of the Recognition Hearing to the following parties: (i) the debtor, (ii) persons or bodies authorized to administer foreign proceedings of the debtor, (iii) entities against whom

the debtor is seeking provisional relief pursuant to section 1519 of the Bankruptcy Code, including such parties as set forth in the List Pursuant to Bankruptcy Rule 1007(a)(4) filed concurrently herewith, (iv) all parties to litigation in the United States in which the debtor is a party at the time of filing the petition, and (v) any other entity as the court may direct (together, the “Chapter 15 Notice Parties”). Fed. R. Bankr. P. 2002(q)(1). Local Bankruptcy Rule 2002-4 directs the foreign representative to provide the notice required by Bankruptcy Rule 2002(q)(1) and to file proof of service in accordance with Local Bankruptcy Rule 9078-1.

6. Bankruptcy Rule 2002(q)(1) does not specify the form and manner in which notice of the Recognition Hearing must be given. Instead, Bankruptcy Rules 2002(m) and 9007 allow the court to designate an appropriate form and manner of notice. Fed. R. Bankr. P. 2002(m), 9007. Accordingly, the Monitor requests that this Court approve the Notice and the form and manner of service of the Notice described herein as consistent with Bankruptcy Rules 2002(m), 2002(q) and 9007, and Local Bankruptcy Rule 2002-4.

7. The Monitor respectfully submits that service of the (i) Notice, (ii) the Verified Petition, and (iii) Memorandum of Law in Support of the Verified Petition (collectively, the “Notice Documents”) by United States mail, first class postage prepaid, upon the Chapter 15 Notice Parties constitutes adequate and sufficient notice of this Chapter 15 case, the relief sought in the Verified Petition, the time fixed for filing objections to the relief sought in the Verified Petition, and the time, date, and place of the Recognition Hearing. The Monitor shall then file proof of service in accordance with Local Bankruptcy Rule 9078-1 by the earlier of (i) three (3) days following the date of service, and (ii) the hearing date.

8. Bankruptcy Rule 1011(b) provides that a party objecting to the petition filed to commence an ancillary proceeding under Chapter 15 of the Bankruptcy Code has 21 days from

the date of service of the petition to respond thereto (except that if service is made by publication on a party not residing within the state in which the court sits, the court shall prescribe the time for filing and serving the response). Fed. R. Bankr. P. 1011(b). Similarly, Rule 2002(q)(1) requires 21 days' notice of the Recognition Hearing. The Monitor submits that (i) scheduling the Recognition Hearing to be held on April 15, 2019 at 10:00 a.m. prevailing Eastern Time, or as soon thereafter as the Court's calendar permits, and (ii) setting the seventh day before the date of the Recognition Hearing as the Objection Deadline will comply with both applicable Bankruptcy Rules.

9. The Monitor further respectfully requests that the Court waive the requirements set forth in section 1514(c) of the Bankruptcy Code that notification of the commencement of a case to foreign creditors include, among other things, the time period for filing proofs of claim, specify the place for filing such proofs of claim, and indicate whether secured creditors need to file proofs of claim. 11 U.S.C. § 1514(c). As a practical matter, it is not clear that section 1514 applies in the context of ancillary cases under Chapter 15. As explained in a leading treatise on bankruptcy law, section 1514(c) is the "last in a series of sections dealing with the international aspects of cases under *chapters other than chapter 15* that began with section 1511" 8 COLLIER ON BANKRUPTCY ¶ 1514.01 (A. Resnick & H. Sommer, eds., 16th ed. 2013) (emphasis added), and the Monitor has not sought to commence a case under any other chapter of the Bankruptcy Code. While a claims process will undoubtedly be established in the Canadian Proceeding in due course, it has not been established yet. Once established, however, appropriate notice will be provided to creditors of the Debtor pursuant to Canadian law at the direction of the Canadian Court. Therefore, out of an abundance of caution, the Monitor respectfully requests that the requirements of Section 1514(c) be waived in this instance.

**NOTICE**

10. Notice of this Application will be provided to the Chapter 15 Notice Parties.

**NO PRIOR REQUEST**

11. The Monitor has not previously sought the relief requested herein from this or any other court.

**WHEREFORE**, the Monitor respectfully requests (i) entry of an order in the form of the Proposed Order attached hereto, (a) setting a hearing date for the Recognition Hearing, (b) setting a deadline for filing objections to the relief requested in the Verified Petition and (c) approving the form of Notice and manner of service of the Notice and (ii) such other and further relief as may be just and proper.

Dated: March 13, 2019  
New York, New York

By: /s/ Jennifer Feldsher  
Jennifer Feldsher  
Mark E. Dendinger  
**BRACEWELL LLP**  
1251 Avenue of Americas  
New York, New York 10020-1104  
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Jennifer.Feldsher@bracewell.com  
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*Attorneys for FTI Consulting Canada Inc.  
In its Capacity as Monitor and Foreign  
Representative for the Debtor*

**Exhibit A**

**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 (I) SCHEDULING RECOGNITION HEARING,  
(II) SPECIFYING DEADLINE FOR FILING OBJECTIONS  
AND ( III) SPECIFYING FORM AND MANNER OF NOTICE**

Upon the application (the “Application”)<sup>1</sup> of FTI Consulting Canada Inc., in its capacity as the court-appointed monitor (“Monitor”) and authorized foreign representative of Imperial Tobacco Canada Limited (“Debtor”) for an order (i) scheduling a hearing (the “Recognition Hearing”) on the relief requested in the *Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief* and all exhibits appended thereto (the “Verified Petition”), (ii) setting the seventh day before the date of the Recognition Hearing as the deadline by which all objections to the Verified Petition must be filed and (iii) approving the form of notice of the Recognition Hearing, it is hereby

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<sup>1</sup> Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Application.

**ORDERED**, that the Recognition Hearing shall be held before this Court in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York, on [\_\_\_\_\_] at [\_\_\_\_\_]; and it is further

**ORDERED**, that the form of notice of the Recognition Hearing annexed to this Order as **Exhibit A** (the “Notice”) is hereby approved; and it is further

**ORDERED**, that the notice requirements set forth in section 1514(c) of the Bankruptcy Code are inapplicable in the context of this Chapter 15 case or are hereby waived; and it is further

**ORDERED**, that copies of the Notice Documents shall be served by United States mail, first class postage prepaid, upon the Chapter 15 Notice Parties within three days of entry of this Order; and it is further

**ORDERED**, that any party in interest wishing to submit a response or objection to the Verified Petition or the relief requested therein must do so in writing, and in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules for the Bankruptcy Court for the Southern District of New York, setting forth the basis therefor, which response or objection must be filed electronically with the Court on the Court’s electronic case filing system in accordance with General Order M-399 and the Court’s Procedures for the Filing, Signing and Verification of Documents by Electronic Means (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 on a compact disc (CD), preferably in Portable Document Format (PDF), Word Perfect, or any other Windows-based word processing format, which CD shall be sent to the Office of the Clerk of the Court, One Bowling Green, New York, New York. A hard copy of such response or objection shall be sent to (i) the chambers of [\_\_\_\_\_] , United States Bankruptcy Judge, and (ii) served 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 no later than [\_\_\_\_\_]** (New York time), on [\_\_\_\_\_]; and it is further

**ORDERED**, that service pursuant to this Order shall be deemed good and sufficient service and adequate notice of the Recognition Hearing.

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

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**Notice of Filing and Hearing on Petition for Recognition  
Under Chapter 15 of the Bankruptcy Code and Motion for Related Relief**

**Bracewell LLP**

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*Attorneys for FTI Consulting Canada Inc.  
In its Capacity as Monitor and Foreign Representative for the Debtor*

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

In re:	Chapter 15
IMPERIAL TOBACCO CANADA LIMITED,	Case No. 19-____ (____)
Debtor in a Foreign Proceeding.	

**NOTICE OF FILING OF AND HEARING ON  
PETITION FOR RECOGNITION UNDER CHAPTER 15 OF THE  
UNITED STATES BANKRUPTCY CODE AND MOTION FOR RELATED RELIEF**

**PLEASE TAKE NOTICE** that on March 13, 2019, FTI Consulting Canada Inc., in its capacity as the court-appointed monitor (“Monitor”) and authorized foreign representative of Imperial Tobacco Canada Limited (the “Debtor”) 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) at Toronto, commenced a Chapter 15 case ancillary to the Canadian Proceeding, seeking recognition of such foreign proceeding as a “foreign main proceeding” and relief in aid of the Canadian Proceeding in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) with respect to the Debtor.

**PLEASE TAKE FURTHER NOTICE** that the Monitor seeks entry of an order (i) recognizing the Canadian Proceeding as a “foreign main proceeding” pursuant to section 1517 of Title 11 of the United States Code (the “Bankruptcy Code”), (ii) granting all relief automatically available pursuant to section 1520 of the Bankruptcy Code, including a stay of execution against the Debtor’s assets in the United States and express authorization from the Court for the Debtor to maintain its supply chain, inventory management and distribution processes and otherwise continue its business operations in the United States in the ordinary course, and barring, enjoining, and staying, pursuant to section 362 of the Bankruptcy Code, any action to interfere with these assets, business operations and processes, (iii) the extension of any provisional relief granted under

section 1519(a) on a permanent basis in accordance with section 1521(a)(6) of the Bankruptcy Code; and (iv) such other and further relief as is appropriate under the circumstances pursuant to sections 105(a) and 1507 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that the Bankruptcy Court has scheduled a hearing to consider the relief requested by the Monitor for [\_\_\_\_\_] on [\_\_\_\_\_] (the “Recognition Hearing”). Copies of the Monitor’s Verified Petition for Recognition of Foreign Main Proceeding and Related Relief (the “Verified Petition”) and all other accompanying documentation are available to parties-in-interest on the Bankruptcy Court’s Electronic Case Filing System, which can be accessed at the Bankruptcy Court’s website at <http://nysb.uscourts.gov> (a PACER login and password is required to retrieve a document) or upon written request to the Monitor’s counsel (including facsimile or email) addressed to:

Bracewell LLP  
Attn: Mark E. Dendinger  
1251 Avenue of Americas  
New York, New York 10020-1104  
Facsimile: (212) 508-6101  
Email: [Mark.Dendinger@bracewell.com](mailto:Mark.Dendinger@bracewell.com)

**PLEASE TAKE FURTHER NOTICE** that, at the hearing, the Court may order the scheduling of a case management conference to consider the efficient administration of the case.

**PLEASE TAKE FURTHER NOTICE** that any party in interest wishing to submit a response or objection to the Verified Petition or the relief requested therein must do so in writing, and in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules for the Bankruptcy Court for the Southern District of New York, setting forth the basis therefor, which response or objection must be filed electronically with the Court on the Court’s electronic case filing system in accordance with General Order M-399 and the Court’s Procedures for the Filing, Signing and Verification of Documents by Electronic Means (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 on a compact disc (CD), preferably in Portable Document Format (PDF), Word Perfect, or any other Windows-based word processing format, which CD shall be sent to the Office of the Clerk of the Court, One Bowling Green, New York, New York. A hard copy of such response or objection shall be sent to (i) the chambers of [\_\_\_\_\_] , United States Bankruptcy Judge and (ii) served 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 no later than [\_\_\_\_\_] (New York time), on [\_\_\_\_\_].**

**PLEASE TAKE FURTHER NOTICE** that all parties in interest opposed to the Verified Petition or the relief requested therein must appear at the Recognition Hearing at the time and place set forth above.

**PLEASE TAKE FURTHER NOTICE** that if no response or objection is timely served as provided herein, the Court may grant the relief requested in the Verified Petition without further notice.

**PLEASE TAKE FURTHER NOTICE** that the Recognition 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 Court, of the adjourned date or dates at the hearing or any other further adjourned hearing.

Dated: March 13, 2019  
New York, New York

By: /s/\_\_\_\_\_  
Jennifer Feldsher  
Mark E. Dendinger  
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**EXHIBIT B**

**Bracewell LLP**

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**NOTICE OF FILING OF AND HEARING ON  
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**PLEASE TAKE FURTHER NOTICE** that the Monitor seeks entry of an order (i) recognizing the Canadian Proceeding as a “foreign main proceeding” pursuant to section 1517 of Title 11 of the United States Code (the “Bankruptcy Code”), (ii) granting all relief automatically available pursuant to section 1520 of the Bankruptcy Code, including a stay of execution against the Debtor’s assets in the United States and express authorization from the Court for the Debtor to maintain its supply chain, inventory management and distribution processes and otherwise continue its business operations in the United States in the ordinary course, and barring, enjoining, and staying, pursuant to section 362 of the Bankruptcy Code, any action to interfere with these assets, business operations and processes, (iii) the extension of any provisional relief granted under

section 1519(a) on a permanent basis in accordance with section 1521(a)(6) of the Bankruptcy Code; and (iv) such other and further relief as is appropriate under the circumstances pursuant to sections 105(a) and 1507 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that the Bankruptcy Court has scheduled a hearing to consider the relief requested by the Monitor for [\_\_\_\_\_] on [\_\_\_\_\_] (the “Recognition Hearing”). Copies of the Monitor’s Verified Petition for Recognition of Foreign Main Proceeding and Related Relief (the “Verified Petition”) and all other accompanying documentation are available to parties-in-interest on the Bankruptcy Court’s Electronic Case Filing System, which can be accessed at the Bankruptcy Court’s website at <http://nysb.uscourts.gov> (a PACER login and password is required to retrieve a document) or upon written request to the Monitor’s counsel (including facsimile or email) addressed to:

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**PLEASE TAKE FURTHER NOTICE** that any party in interest wishing to submit a response or objection to the Verified Petition or the relief requested therein must do so in writing, and in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules for the Bankruptcy Court for the Southern District of New York, setting forth the basis therefor, which response or objection must be filed electronically with the Court on the Court’s electronic case filing system in accordance with General Order M-399 and the Court’s Procedures for the Filing, Signing and Verification of Documents by Electronic Means (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 on a compact disc (CD), preferably in Portable Document Format (PDF), Word Perfect, or any other Windows-based word processing format, which CD shall be sent to the Office of the Clerk of the Court, One Bowling Green, New York, New York. A hard copy of such response or objection shall be sent to (i) the chambers of [\_\_\_\_\_] , United States Bankruptcy Judge and (ii) served 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 no later than [\_\_\_\_\_] (New York time), on [\_\_\_\_\_].**

**PLEASE TAKE FURTHER NOTICE** that all parties in interest opposed to the Verified Petition or the relief requested therein must appear at the Recognition Hearing at the time and place set forth above.

**PLEASE TAKE FURTHER NOTICE** that if no response or objection is timely served as provided herein, the Court may grant the relief requested in the Verified Petition without further notice.



**PLEASE TAKE FURTHER NOTICE** that the Recognition 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 Court, of the adjourned date or dates at the hearing or any other further adjourned hearing.

Dated: March 13, 2019  
New York, New York

By: /s/\_\_\_\_\_  
Jennifer Feldsher  
Mark E. Dendinger  
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