

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
JTI-MACDONALD CORP.**

**TWENTY-SECOND REPORT OF THE MONITOR
January 15, 2025**

INTRODUCTION

1. On March 8, 2019, JTI-Macdonald Corp. (“**JTIM**” or the “**Applicant**”) filed for and obtained protection under the *Companies' Creditors Arrangement Act* (the “**CCAA**”). Pursuant to the Order of this Court granted on the same date (the “**Original Initial Order**”), Deloitte Restructuring Inc. was appointed as the Monitor in these proceedings (“**Deloitte**” or the “**Monitor**”). The proceedings commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”.
2. The CCAA Proceedings are being conducted in parallel with the CCAA proceedings of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, “**ITL**”), and Rothmans, Benson & Hedges Inc. (“**RBH**”, together with JTIM and ITL, the “**CCAA Applicants**”). The stated objective of these parallel, unconsolidated CCAA proceedings is to provide the CCAA Applicants with an opportunity to settle the almost \$1 trillion dollars of claims alleged against each of them through a structured process.

3. In furtherance of the collective goal of resolving the numerous, substantial and complicated claims against the CCAA Applicants, the Honourable Warren K. Winkler, K.C. was appointed as mediator (the “**Court-Appointed Mediator**”), with a mandate to oversee and coordinate a multiparty, confidential mediation among the CCAA Applicants and their key stakeholders (the “**Mediation**”).
4. On October 5, 2023, Chief Justice Geoffrey B. Morawetz issued an endorsement (the “**October 5 Endorsement**”) stating that “I am directing the three Monitors, to work in conjunction with the Honorable Warren K. Winkler, Court-appointed Mediator, to develop Plans of Compromise or Arrangement. The Monitors and the Court-appointed Mediator are also directed to keep this Court updated as to their progress”.
5. As directed, on October 17, 2024, the Court-Appointed Mediator, the Monitor, FTI Consulting Canada Inc., in its capacity as court-appointed monitor of ITL (the “**TTL Monitor**”), and Ernst & Young Inc., in its capacity as court-appointed monitor of RBH (the “**RBH Monitor**”) filed plans of compromise and arrangement in respect of each of the CCAA Applicants as amended and restated as of December 5, 2024 (collectively, the “**CCAA Plans**” and in respect of JTIM, the “**JTIM CCAA Plan**”) under the CCAA.
6. On October 31, 2024, the Court issued the following orders:
 - a) A claims procedure order which, *inter alia*, established the procedure pursuant to which Claimants, as well as Putative Miscellaneous Claimants obtained the right to attend the meeting of Affected Creditors (the “**Meeting**”) and vote on the JTIM CCAA Plan; and

- b) A meeting order that, *inter alia*, accepted the filing of the JTIM CCAA Plan, approved the meeting materials, and directed the Monitor as to the conduct of the Meeting (the “**Meeting Order**”).
7. JTIM and its affiliate, JTI-Macdonald TM Corp. (“**JTI-TM**”) objected to the motion for the Meeting Order (as defined below) and the filing of the JTIM CCAA Plan. The Court deferred its objections to the Sanction Hearing (as defined below) for consideration, and the issues they raised remain unresolved as of the date of this Twenty-Second Report (the “**Report**”).
8. On December 12, 2024, the Monitor held the Meeting, and the Affected Creditors voted for the approval of the JTIM CCAA Plan by the Required Majority.
9. On December 23, 2024, the Court issued an order (the “**Sanction Protocol Order**”) which, *inter alia*, set a court hearing to approve and sanction the JTIM CCAA Plan commencing on January 29, 2025 (the “**Sanction Hearing**”).
10. Further information regarding the CCAA Proceedings and a background on JTIM have been provided in prior reports of the Monitor.
11. All Court materials filed and orders issued in these CCAA Proceedings are available on the Monitor’s website at: www.insolvencies.deloitte.ca/en-ca/JTIM (the “**Monitor’s Website**”).
12. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars. Capitalized terms used herein and not otherwise defined have the meanings set forth in the Original Initial Order, prior reports of the Monitor, or the JTIM CCAA Plan.

PURPOSE

13. The purpose of this Report is to provide the Court with information, analysis and the Monitor's recommendations regarding the sanctioning of the JTIM CCAA Plan and the CCAA Plan Administrator Appointment Order.

SANCTION PROTOCOL CONSIDERATIONS

14. The Sanction Protocol Order, among other things, approved the Omnibus Sanction Hearing Notice and the Omnibus Sanction Hearing Notice Program.
15. In accordance with the Sanction Protocol Order and the Omnibus Sanction Hearing Notice Program, the Monitor posted the Sanction Protocol Order, the Omnibus Sanction Hearing Notice and the Sanction Hearing Objection Notice (collectively, the "**Sanction Protocol Documents**") on the Monitor's Website on December 24, 2024. On the same day, the Monitor issued a press release with the Omnibus Sanction Hearing Notice on Cision Newswire.
16. On December 27, 2024, the Monitor delivered the Sanction Protocol Documents to each person on the Common Service List, the Negative Notice Claimants and the Putative Miscellaneous Claimants.
17. On January 7, 2025, the Omnibus Sanction Hearing Notice was published in The Globe and Mail (National Edition), the National Post (National Edition) and in Le Devoir newspapers.

18. The Sanction Protocol Order set a bar date of January 15, 2025 for Putative Miscellaneous Claimants to advise the Monitor of their intention to object to the Sanction Order. As of January 15, 2025, the Monitor did not receive any objections from Putative Miscellaneous Claimants.

SANCTION ORDER

Background to the Development of the JTIM CCAA Plan

19. The Monitor has been extensively involved in the CCAA Proceedings since commencement and has issued 21 reports to this Court outlining the activities of the Applicant and the Monitor throughout the CCAA Proceedings.
20. To the best of the knowledge of the Monitor, JTIM has complied with the Orders granted by this Court during the CCAA Proceedings in all material respects and has acted in good faith and with due diligence.
21. The Monitor is not aware of any actions taken or purported to have been taken by JTIM that are not authorized by the CCAA.
22. To the best of its ability, the Monitor has participated in the development, filing and other aspects of the CCAA Plans with the Court-Appointed Mediator, the ITL Monitor and the RBH Monitor, as directed by Chief Justice Morawetz in the October 5 Endorsement. The Monitor has attempted to do its part to forward the development of the CCAA Plans.
23. The Monitor observes that the terms of the CCAA Plans are the result of countless hours of difficult and good faith negotiations during the Mediation. The sanctioning of the JTIM

CCAA Plan and appointment of the CCAA Plan Administrator are crucial and necessary steps toward the resolution of the CCAA Proceedings.

Overview of the JTIM CCAA Plan

24. The Monitor has previously provided certain of its comments on the JTIM CCAA Plan in detail in the Eighteenth Report of the Monitor dated October 26, 2024 (the “**Eighteenth Report**”) and the Twentieth Report of the Monitor dated December 5, 2024 (the “**Twentieth Report**”).
25. Given the time that has passed since those comments and the existence of a number of unresolved issues regarding the JTIM CCAA Plan, the Monitor provides a refreshed summary¹ of key terms of the JTIM CCAA Plan as follows.

Contributions under the JTIM CCAA Plan

26. The Global Settlement Amount of \$32.5 billion, to be paid by the Applicants, is comprised of the Upfront Contributions at the Plan Implementation Date, and the Annual Contributions until the Global Settlement Amount is fully paid.
27. The Upfront Contributions will be equal to (i) the cash on hand of each Applicant as at the month end prior to the Plan Implementation Date, plus (ii) the Cash Security Deposits, less (iii) \$750 million. As such, the exact sum of the Upfront Contributions will not be known until the month end prior to the Plan Implementation Date; however, it is currently

¹ The summary does not purport to be exhaustive nor address each and every provision of the CCAA Plan. For greater detail, reference should be made to the CCAA Plan. The summary provided and all references to the CCAA Plan herein are qualified by reference to the text of the CCAA Plan and, in the event of any discrepancy between the summary provided herein and the CCAA Plan, the CCAA Plan shall govern.

estimated to be \$12.456 billion as at December 31, 2024. An additional \$35.0 million can be contributed to the Miscellaneous Claims Fund (defined and discussed below) at the unanimous discretion of the CCAA Applicants and will not otherwise affect the economics of the JTIM CCAA Plan from the perspective of the Claimants.

28. The Annual Contributions will be calculated as a percentage of Net After-Tax Income subject to certain adjustments (the “**Metric**”). For example, for the first five years following implementation, 85.0% of the amount calculated pursuant to the Metric will be paid to the Claimants. The Metric is intended to capture the profits of the Canadian operating business and excludes non-operational transactions such as one-time accounting adjustments that are non-operational in nature, one-time restructuring and global settlement related adjustments that are non-operational in nature, and interest expense to related parties.
29. Due to the uncertain nature of the Applicants’ future profits, there is no fixed Contribution Period. Payments will cease when the aggregate Contributions reach \$32.5 billion. Until the Global Settlement Amount has been paid, the payment and performance of the Applicants’ obligations under each of the CCAA Plans and other Definitive Documents will be secured by a first ranking charge on the assets of each of the Applicants, for the benefit of those Claimants to whom amounts remain outstanding (the “**Impacted Claimants**”). In that regard, the JTIM CCAA Plan contemplates that its existing secured creditor, JTI-TM, will enter into a subordination agreement, subordinating its security in favour of the security granted to the Claimants.

30. The estimated distribution to the Claimants from the Global Settlement Amount is as follows (the “**Estimated Distribution Table**”):

Period	Upfront Contribution	Annual Contributions					Remainder to end of Contribution Period	Total
		Year 1 (2025)	Year 2 ('26)	Year 3 ('27)	Year 4 ('28)	Year 5 ('29)		
Amount Available	12.456	1.111	1.078	1.067	1.037	1.037	14.714	32.500
Provinces & Territories	6.202	0.361	0.682	0.942	0.912	0.912	14.714	24.725
QCAPs	3.869	0.250						4.119
PCCs	1.750	0.500	0.271					2.521
Cy-près Foundation	0.500		0.125	0.125	0.125	0.125		1.000
Tobacco Producers	0.015							0.015
<i>Knight</i> Class Action Plaintiffs	0.015							0.015
Miscellaneous Claims Fund	0.025							0.025
CCAA Plan Administration Reserve	0.075							0.075
PCC Compensation Plan Reserve	<u>0.005</u>							<u>0.005</u>
Total allocated²	12.456	1.111	1.078	1.067	1.037	1.037	14.714	32.500

31. The JTIM CCAA Plan contemplates, and the Monitor recommends, that Epiq Class Actions Services Canada, Inc. be approved as the Claims Administrator to manage the administration of the claims processes for both the Quebec Administration Plan and the PCC Compensation Plan. In addition, an Administrative Coordinator has been designated under the JTIM CCAA Plan to coordinate the administration of the QCAP and PCC claims

² This allocation table should be read with the notes to it in the CCAA Plans.

processes. This will render these complex claims processes more efficient and simplify them so that claims can be more easily processed and finalized in a shorter time. The Monitor recommends that Daniel Shapiro, K.C. be appointed as “Administrative Coordinator”.

Global Releases of the Applicants, Parent Companies and Tobacco Company Groups

32. In exchange for the Upfront Contributions, the promise to pay the Annual Contributions, the subordination by JTI-TM of its security interests in the assets and undertaking of JTIM, and the agreement for the Parent Companies and relevant affiliates to provide shared services and other operational support to the Applicants, each of the CCAA Plans provide for broad and comprehensive releases to be granted to the Applicants and their Tobacco Company Groups for all Tobacco Claims. Broadly speaking, the Claim of any person, organization or party that may have an Affected Claim or Released Claim is being released. In addition, all Claimants will provide a contractual release to each of the Applicants which shall release any claims they may have, including claims addressed by subsections 5.1(2) and 19(2) of the CCAA (the “**Claimant Contractual Releases**”). The full execution of these Claimant Contractual Releases is a condition precedent to the implementation of each of the CCAA Plans.
33. The JTIM CCAA Plan contemplates the release of certain third parties (the “**Released Third Parties**”), most notably the Tobacco Company Group of JTIM. The Monitor is of the view that the releases of third parties contemplated by the JTIM CCAA Plan are necessary for the JTIM CCAA Plan to be implemented, as the Released Third Parties are providing consideration absent which the JTIM CCAA Plan could not succeed. Such

releases benefit both JTIM and the Affected Creditors by allowing the JTIM CCAA Plan to gain the support of the Released Third Parties, which is necessary for JTIM to continue as a going concern and for the Affected Creditors to see recoveries from the JTIM CCAA Plan, both of which are primary purposes of the JTIM CCAA Plan. The Eligible Voting Creditors (as defined in the Meeting Order) were provided with the JTIM CCAA Plan and associated materials before the Meeting, all of which outlined the nature and effect of the releases in favour of the Released Third Parties.

34. In connection with these broad releases being granted, the Released Parties and the Provinces and Territories recognize that a legislature's sovereign power to enact, amend and repeal legislation cannot be fettered. However, in the event that any legislation (including any regulations promulgated thereunder) similar or analogous to the HCCR Legislation may be enacted or amended by a Province or Territory at any time after the Plan Implementation Date, the Released Parties and the Provinces and Territories are in agreement that the enactment of such future legislation shall not render unenforceable or otherwise make ineffective any of the terms of the Claimant Contractual Releases or releases granted pursuant to the CCAA Plans.

Miscellaneous Claims Fund

35. The JTIM CCAA Plan contemplates the establishment of a fund (the “**Miscellaneous Claims Fund**”) containing \$25 million (which amount can be increased to \$60 million upon the unanimous agreement of the Tobacco Companies) to be held in the event that any Miscellaneous Claims are determined to be valid by the Court. Putative Miscellaneous Claimants may bring an application before the Court for determination of their purported

Miscellaneous Claims and may only receive payment from the Miscellaneous Claims Fund and only following a determination by the Court that their Miscellaneous Claim is valid.

Timing for Implementation of the CCAA Plan

36. The JTIM CCAA Plan is designed to be implemented on the Plan Implementation Date at the Effective Time. At the date of this Report, the Monitor is not able to estimate with any certainty when the Plan Implementation Date will occur as that is dependent upon the various Plan Implementation Conditions, certain of which are discussed further below, being satisfied or waived by the Court-Appointed Mediator and Monitor, subject to approval of the Court, where applicable.
37. The JTIM CCAA Plan and the Sanction Order contemplate that, upon the various Plan Implementation Conditions being satisfied or waived, the Monitor shall deliver to JTIM, serve on the Common Service List, post on the Monitor's website and file with the Court a certificate confirming that the Plan Implementation Date has occurred.

Key Issues Which Remain Unresolved as at the Date of this Report

38. For some time, certain parties, including JTIM, have identified issues relating to the fairness, reasonableness, and workability of the CCAA Plans. Certain of the most material issues to the JTIM CCAA Plan are discussed below, based on the public assertions by the Applicant and JTI-TM, taking into consideration that existing Mediation confidentiality requirements prohibit a full and complete account of all matters pertaining to the issues.

39. The issue of the allocation of responsibility for payment of the Global Settlement Amount is a common issue in the CCAA Plans. The issues involving JTI-TM are unique to the JTIM CCAA Plan. Although unique, the JTIM-TM issues could impact the relative contributions of the Tobacco Companies under the CCAA Plans, particularly because allocation remains unresolved.
40. Chief Justice Morawetz directed in his endorsement issued on November 4, 2024 at paragraphs 56 and 57 that, in summary, the Monitors and the Court-Appointed Mediator are to continue to develop the CCAA Plans through the existing process of the Mediation; such process could be the basis to resolve outstanding issues.

Issue 1: Allocation of Responsibility for Payment of the Global Settlement Amount as Between the Tobacco Companies

41. Section 5.2 of the CCAA Plan states: “The issue of allocation of the Global Settlement Amount as between the Tobacco Companies in the three CCAA Proceedings remains unresolved.” As at the date of this Report, the allocation issue remains unresolved.
42. JTIM’s position, as set out in its responding motion record to the motion for the issuance of the Meeting Order, is that allocation needs to be resolved prior to the sanctioning of the JTIM CCAA Plan as this unresolved issue has the potential to introduce significant commercial uncertainty and ambiguity in the application of the settlement on the Canadian tobacco industry. As a result, JTIM has advised the Monitor that JTIM and its Tobacco Company Group do not support the JTIM CCAA Plan in its current form; this creates an implementation risk given that the Contribution Period may extend for 15 to 20 years or more.

43. RBH stated in its submissions to the Court in advance of the hearing for the approval of the Meeting Order that, “solely for the avoidance of doubt, RBH has not agreed to the Proposed Plan with the Allocation Issue unresolved.”³
44. The working assumption of the Monitor in seeking the Meeting Order and the Sanction Protocol Order was that the issue of allocation had a reasonable prospect of being resolved in the existing Mediation process prior to the sanctioning of the CCAA Plan and therefore the JTIM CCAA Plan was not doomed to fail.
45. In the Monitor’s view, addressing the uncertainty arising from the allocation issue is a significant consideration in the workability of the JTIM CCAA Plan.
46. If the parties do not agree on allocation, or allocation is not otherwise settled, there is an implementation risk.
47. Despite the JTIM CCAA Plan noting in Section 5.2 that allocation is unresolved, the CCAA Plans do contemplate that each Tobacco Company will contribute the vast majority of both its upfront cash and Net After-Tax Income, which the CCAA Plans set out in some detail. This is the only allocation regime that appears in the CCAA Plans and that has been contemplated publicly to date. In the Monitor’s view, this allocation represents a viable way forward that is affordable to all of the Tobacco Companies. At this time, there are no other alternatives presented for consideration.

³ RBH Submissions dated October 29, 2024 at para 5.

Issue 2: Treatment of JTI-TM Under the JTIM CCAA Plan

48. JTI-TM asserts a secured interest in JTIM, pursuant to security provided under ten secured convertible debentures (the “**TM Debentures**”), in the principal sum of \$1.2 billion. As at the date of this Report, total obligations owed to JTI-TM by JTIM are approximately \$1.8 billion. JTI-TM is subject to private receivership proceedings initiated by JT Canada LLC Inc. (“**JT-LLC**”), the parent of JTIM, pursuant to security agreements granted by JTI-TM in favour of JT-LLC.
49. On March 1, 2019, Monitor’s counsel provided an opinion (the “**Monitor Opinion**”) with respect to the security held by JTI-TM. In the Report of the Proposed Monitor dated March 8, 2019, the Monitor advised that, subject to the assumptions and qualifications as more particularly described in the Monitor Opinion, JTI-TM holds a valid security interest in the personal property of JTIM located in Nova Scotia, Ontario, Alberta and British Columbia and in the personal property and real property of JTIM located in Quebec. The Monitor indicated that a copy of the Monitor Opinion would be made available to the Court and to stakeholders on appropriate arrangements regarding confidentiality, reliance and privilege. In 2005, the court-appointed monitor of JTIM in its previous CCAA proceedings also arranged for a legal opinion regarding the security of JTI-TM and received and disclosed a similar positive opinion.
50. However, certain parties have raised concerns about the legitimacy of these intercompany contracts and on March 19, 2019, Justice McEwen issued an endorsement (the “**March 19 Endorsement**”) suspending the payments of principal, interest and royalties from JTIM to JTI-TM.

51. As at September 30, 2024, JTI-TM is owed approximately \$623 million in unpaid interest and approximately \$90 million in unpaid post-filing royalties as a result of the March 19 Endorsement.
52. The JTIM CCAA Plan treats JTI-TM, with its existing security over JTIM's assets, undertakings and properties, as an Unaffected Creditor. Section 3.7 of the JTIM CCAA Plan states that Unaffected Claims are not compromised by the JTIM CCAA Plan and amounts due under such claims should be paid in the Ordinary Course of Business of JTIM. Section 5.14 of the JTIM CCAA Plan indicates that, as consideration for a release of any claims against JTI-TM by Affected Creditors, JTI-TM will subordinate its security to the Collateral Agent and defer exercising any recourse until the Global Settlement Amount is paid in full. Payments by JTIM to JTI-TM are permitted but are limited to available Net After-Tax Income that, pursuant to the Metric, would be available to JTIM, as described below. The inclusion of a plan condition for JTI-TM to subordinate does not in itself make JTI-TM "affected" by the JTIM CCAA Plan because the condition is not binding on JTI-TM, JTI-TM is not compelled to subordinate its position, and the condition may be waived.
53. Under the terms of the JTIM CCAA Plan, JTI-TM is to recover principal and interest payable under the TM Debentures and unpaid post-filing royalties out of Net After-Tax Income, after Annual Contributions are made towards the Global Settlement Amount. Interest under the TM Debentures continues to accrue at approximately \$91 million annually, before default interest accruing on interest and principal payments due and unpaid. As stated above, unpaid interest and post-filing royalties total in excess of \$700 million at the date of this Report. Average Net After-Tax Income available to satisfy the

above amounts is \$25 million per annum based on the latest 5-year projections prepared by JTIM. From the above, it is apparent that, after Annual Contributions are made by JTIM towards the Global Settlement Amount, the satisfaction of all amounts owed to JTI-TM could not occur in the Ordinary Course of Business under the JTIM CCAA Plan without accommodations from JTI-TM. Accordingly, there are serious workability issues in the JTIM CCAA Plan in relation to the above, unless the receiver of JTI-TM agrees to subordinate JTI-TM's position.

54. The Monitor's working assumption to date has been that the receiver of JTI-TM would agree to subordinate its position if a CCAA plan could be tabled that is acceptable. In part, this has driven the activities that have resulted in the preparation and filing of the JTIM CCAA Plan under the timelines prescribed to date.
55. However, as at the date of this Report, the receiver of JTI-TM continues to oppose their treatment under the JTIM CCAA Plan as being unfair, which presents an implementation risk.

The Monitor's Consideration of the CCAA Plan Sanctioning Requirements

56. The Monitor has considered whether the JTIM CCAA Plan complies with the statutory requirements under the CCAA and has considered whether it is fair and reasonable and has set out its views on these issues below.

Statutory Requirements

- a) *Classification of creditors and results of the Affected Creditors' vote:* In the Meeting Order and the accompanying endorsement of Chief Justice Morawetz

dated November 4, 2024, this Court approved the classification of creditors into a single class for the purposes of the Meeting and voting on the JTIM CCAA Plan. No party sought to vary or sought to appeal the classification of creditors as set out in the JTIM CCAA Plan and approved by the Court. All of the Affected Creditors under the JTIM CCAA Plan voted in favour of its approval; accordingly, the JTIM CCAA Plan was approved by the Required Majority of Affected Creditors voting at the Meeting. However, as noted above, fairness of the treatment of JTI-TM as an Unaffected Creditor was not addressed by the Court at the hearing for the Meeting Order but deferred until the Sanction Hearing.

- b) *Provisions of the BIA*: The JTIM CCAA Plan does not include any provision that sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* do not apply in respect of the JTIM CCAA Plan.
- c) *No unauthorized compromise of Affected Claims*: The Monitor is not aware of any Affected Claims that are being compromised under the JTIM CCAA Plan which are prohibited from being compromised or affected pursuant to the CCAA including:
 - (i) any Claim of any Government against JTIM in respect of any amounts that are outstanding, provided for in section 6(3) of the CCAA;
 - (ii) any Claim for accrued and unpaid wages and vacation pay owing to an employee of JTIM whose employment was terminated between the Filing Date and the Plan Implementation Date; and
 - (iii) any Claim for unpaid amounts provided for in sections 6(5)(a) and 6(6)(a) of the CCAA.

- d) *Compliance with Court orders:* The Monitor believes JTIM has complied with orders granted by this Court during the CCAA Proceedings in all material respects.

Other factors

- e) *Viable alternatives to the JTIM CCAA Plan:* The Estimated Distribution Table presented above and in Article 16 of the JTIM CCAA Plan sets out the estimated recoveries to Affected Creditors under the JTIM CCAA Plan, including estimated contributions from the CCAA Applicants. In the Monitor's view, the JTIM CCAA Plan is the only and best available option presented at this time to achieve the following objectives: (i) implementing the resolution of significant claims of creditors, (ii) providing certainty of distributions to Affected Creditors, especially individual claimants, in the near term, and (iii) bringing an end to these lengthy and complex CCAA Proceedings. As noted above, risks to implementation of the JTIM CCAA Plan exist. In the alternative that the JTIM CCAA Plan is not sanctioned by this Court and implemented, a likely outcome is the resumption of litigation of certain claims against the Applicant. There would be significant risk, time and expense associated with litigation, which would delay distributions to Affected Creditors, including individual claimants, potentially for years.
- f) *Whether there is any oppression to the rights of creditors:* The Monitor believes that Affected Creditors are fairly treated under the JTIM CCAA Plan. A previous discussion has been provided with respect to the interests of JTI-TM.
- g) *The public interest:* In the Monitor's view, there is nothing in respect of the implementation of the JTIM CCAA Plan that is contrary to the public interest. In

fact, the JTIM CCAA Plan provides for the establishment of a \$1.0 billion public charitable foundation designed to provide indirect benefits to the public in the form of research into methods for earlier diagnosis and better treatment of tobacco-related cancers and Emphysema/COPD and/or other tobacco-related harms. Further, the JTIM CCAA Plan is expected to allow the Applicant to emerge from the CCAA Proceedings as a going concern, which will benefit its approximately 471 employees and other stakeholders. Finally, the JTIM CCAA Plan advances the important goal of bringing these CCAA Proceedings, which affect the interest of a very large number of creditors, to completion.

Monitor's Overall Observations on the Sanctioning of the Plan

57. These CCAA Proceedings are extremely complex, and the parties have expended significant time, effort and resources in the restructuring process with the result that the JTIM CCAA Plan is now tabled for sanction. This is a significant accomplishment under the circumstances.
58. No plan of arrangement under the CCAA is perfect. The JTIM CCAA Plan is not perfect and contains implementation risks.
59. There is unanimous support for the JTIM CCAA Plan from its Affected Creditors. This is a significant accomplishment which must be front and centre in the consideration of the sanctioning of the JTIM CCAA Plan. The Monitor is of the view that the JTIM CCAA Plan is fair and reasonable to the Affected Creditors. Among the Affected Creditors are individual claimants who have been waiting for years for a recovery for damages.

60. In addition, the JTIM CCAA Plan contains elements that are in the public interest. The JTIM CCAA Plan also allows for the continuation for JTIM as a going concern which has many benefits including continuing employment for JTIMs employees, business for its suppliers and continued tax revenue for the Provinces, among other things.
61. However, the JTIM CCAA Plan entails certain unresolved issues that could impair its implementation and cause even further delay in recoveries to Affected Creditors. The Mediation process has not resulted in a resolution of these unresolved issues.
62. Modifications could be made to the JTIM CCAA Plan that might alleviate certain critical implementation risks, however, the JTIM CCAA Plan in its current form is the only viable option presented at this time through the CCAA Proceedings that has the support of Affected Creditors.
63. The Monitor maintains that the remaining issues are solvable and, should they be solved, much of the implementation risk with respect to the JTIM CCAA Plan would be alleviated. The framework of the JTIM CCAA Plan represents the best opportunity for the outcomes for the Affected Creditors and the public noted above.
64. Although allocation of the Global Settlement Amount is not resolved to all parties' satisfaction, the existing allocation scheme in the JTIM CCAA Plan is affordable to all the Tobacco Companies. Further, the allocation scheme contemplated by the CCAA Plans is the only allocation scheme practically capable of evaluation at this stage in the process.
65. In the Monitor's view, the JTIM CCAA Plan, if executed, includes valuable releases in favour of the Released Parties, which the Monitor views as fair and reasonable.

66. Based on the above, the Monitor believes that the JTIM CCAA Plan should be sanctioned in accordance with the Sanction Order, subject to the Court's consideration of outstanding issues related to:

- a) Section 5.2 of the JTIM CCAA Plan (i.e. allocation);
- b) JTI-TM's treatment as an Unaffected Creditor; and
- c) The continued deferral of amounts owing under the TM Debentures and royalty and license arrangements.

If the Court directs, the JTIM CCAA Plan provides a mechanism for its amendment.

67. The above issues will be before the Court for adjudication at the Sanction Hearing. The Court's rulings on these matters are expected to give greater clarity on the scope and nature of the various implementation risks identified herein. The Monitor welcomes this guidance. Subject to any direction provided by the Court, the Monitor believes that, on balance, sanctioning of the JTIM CCAA Plan is in the best interests of all stakeholders considered as a whole.

CCAA PLAN ADMINISTRATOR APPOINTMENT ORDER

68. The JTIM CCAA Plan contemplates that, subject to court approval of the CCAA Plan Administrator Appointment Order, Deloitte will be appointed as CCAA Plan Administrator to administer the implementation of the JTIM CCAA Plan. In this capacity, Deloitte would be neutral and independent from the Tobacco Companies, the Tobacco

Company Groups and the Claimants and, in this capacity, shall report to the CCAA Court until the JTIM CCAA Plan is fully implemented.

69. The role of the CCAA Plan Administrator is set out in detail in the Eighteenth Report and in the JTIM CCAA Plan.
70. The Monitor is of the view that Deloitte's appointment as CCAA Plan Administrator will serve an important function in the administration of the JTIM CCAA Plan, acting as a conduit of information and dialogue between JTIM and the Claimants, overseeing the implementation of the JTIM CCAA Plan, including the PCC Compensation Plan, Quebec Administration Plan and Cy-près Foundation, and, along with the other CCAA Plan Administrators, coordinating activities regarding the banking arrangements and receipts and disbursements of the Upfront Contributions, Annual Contributions and Reserved Amounts.

CONCLUSIONS & RECOMMENDATIONS

71. The Monitor recommends the issuance of the Sanction Order, subject to the Court's consideration of the matters set out in paragraph 66.
72. The Monitor recommends the issuance of the CCAA Plan Administrator Appointment Order.

All of which is respectfully submitted this 15th day of January, 2025

**Deloitte Restructuring Inc.,
Solely in its capacity as Court-appointed Monitor
of JTIM and not in its personal capacity**

A handwritten signature in blue ink, appearing to read "Philip J. Reynolds", with a stylized flourish at the end.

Per:
Philip J. Reynolds, LIT
Senior Vice-President