
AGREEMENT MADE AS OF July 31, 2008 Amongst

Her Majesty in Right of Canada as represented by The Minister of National Revenue

And

The Minister of Revenue of Quebec, represented by the Deputy Minister of Revenue

And

Her Majesty in Right of Ontario as represented by the Attorney General of Ontario

And

Her Majesty in Right of Nova Scotia as represented by the Attorney General of Nova Scotia

And

Her Majesty in Right of New Brunswick as represented by the Minister of Finance

And

Her Majesty in Right of Manitoba as represented by the Minister of Finance

And

Her Majesty in Right of British Columbia as represented by the Attorney General of British Columbia

And

Her Majesty in Right of Prince Edward Island as represented by the Attorney General of Prince Edward Island

And

Her Majesty in Right of Saskatchewan as represented by the Minister of Finance

And

Her Majesty in Right of Alberta as represented by the Minister of Finance

And

Her Majesty in Right of Newfoundland and Labrador as represented by the Minister of Finance; the Minister of Justice and Attorney General; and the Minister for Intergovernmental Affairs

THIS AGREEMENT RESPECTING CERTAIN FUNDS RECEIVED FROM ITCL and RBH (the "Agreement") is made as of July 31, 2008.

AMONGST

Her Majesty in Right of Canada as represented by The Minister of National Revenue (hereinafter "Canada")

and

The Minister of Revenue of Quebec, represented by the Deputy Minister of Revenue (hereinafter "Quebec")

and

Her Majesty in Right of Ontario as represented by the Attorney General of Ontario (hereinafter "Ontario")

and

Her Majesty in Right of Nova Scotia as represented by the Attorney General of Nova Scotia (hereinafter "Nova Scotia")

and

Her Majesty in Right of New Brunswick as represented by the Minister of Finance (hereinafter "New Brunswick")

and

Her Majesty in Right of Manitoba as represented by the Minister of Finance (hereinafter "Manitoba")

and

Her Majesty in Right of British Columbia as represented by the Attorney General of British Columbia (hereinafter "British Columbia")

and

Her Majesty in Right of Prince Edward Island as represented by the Attorney General of Prince Edward Island (hereinafter "Prince Edward Island")

and

Her Majesty in Right of Saskatchewan as represented by the Minister of Finance (hereinafter "Saskatchewan")

and

Her Majesty in Right of Alberta as represented by the Minister of Finance (hereinafter "Alberta")

and

Her Majesty in Right of Newfoundland and Labrador as represented by the Minister of Finance; the Minister of Justice and Attorney General; and the Minister for Intergovernmental Affairs (hereinafter "Newfoundland and Labrador")

(the "Provinces" and collectively with Canada, the "Governments")

WHEREAS

1. During the period from January 1, 1985 to December 31, 1996 ("the Material Time"):
 - (a) Canada imposed excise duties, federal taxes and customs duties on cigarettes, cigars and other tobacco products ("Tobacco Products") manufactured or imported for sale and consumption in Canada;
 - (b) Provincial taxes were payable by the purchaser of Tobacco Products;
 - (c) Tobacco Products imported into Canada and intended for consumption in Canada were subject to customs duties, federal taxes and applicable provincial tobacco and retail taxes; and

- (d) Exemptions from applicable taxes and duties were permitted on the lawful export of Tobacco Products from Canada.
2. A significant difference in price developed between the Tobacco Products sold in the domestic Canadian market and the products exported and sold in the United States which stimulated a growth in contraband activity in Tobacco Products.
 3. Canada and the Provinces suffered the loss of applicable taxes and duties as a result of that contraband activity during the material time.
 4. The Governments have resolved their potential civil claims against Imperial Tobacco Canada Limited ("ITCL") and Rothmans, Benson & Hedges Inc. ("RBH") together with affiliates and related entities of each in accordance with the terms of the Settlement Agreements, with respect to their activities which led to the growth in the contraband tobacco products market during the Material Time and the loss of applicable taxes and duties in accordance with the terms of comprehensive settlement agreements as defined below. It is acknowledged, understood and agreed by the Governments that, except as provided therein, nothing in the Settlement Agreements or this Agreement affects, resolves or releases any claims in respect of any existing or future claim by any Government for damages relating to healthcare costs or the recovery thereof, and that the Settlement Agreements so provide.
 5. The Governments acknowledge their awareness of the resolution, concurrent with but separate from this Agreement, of criminal investigations into the activities of ITCL and RBH during the period January 1, 1985 to December 31, 1996 through the plea of guilt by ITCL to an offence contrary to section 240(1)(a) of the *Excise Act*, R.S.C. 1985, chapter E14, as amended, in the Cour du Québec/Court of Quebec (Chambre criminelle/Criminal Division) (Montreal), and the payment by ITCL of a fine in the amount of Cdn. \$200 million; and through the plea of guilt by RBH to an offence contrary to section 240(1)(a) of the *Excise Act*, R.S.C. 1985, chapter E 14, as amended, in the Ontario Court of Justice (Toronto), and the payment by RBH of a fine in the amount of Cdn. \$100 million (collectively the "Criminal Fines") both of which must ultimately be remitted to the Receiver General for Canada.

6. The Minister of National Revenue and the responsible Minister of each Province represents and warrants that he or she has authority of his or her respective Government to enter into this Agreement, and that all approvals or authorizations required to enter into, execute and implement this Agreement and bind that Government to the terms hereof have been obtained.
7. The Governments have entered into a Comprehensive Settlement Agreement with each of ITCL and RBH each made as of July 31, 2008 (the "Settlement Agreements"); and
8. The Governments are desirous of entering into this Agreement to authorize, facilitate and provide for the verification of payments and distribution by Canada, under the terms of this Agreement, of funds received by Canada on behalf of Canada and on behalf of the Provinces from ITCL and RBH.
9. THEREFORE and in consideration for the mutual covenants contained in this Agreement and the performance thereof, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Governments agree as follows:

Recitals

10. The Recitals form part of this Agreement.

Receipts by Canada on behalf of All

11. The Governments acknowledge and confirm their agreement to the terms of each of the Settlement Agreements and specifically to the receipt by Canada for Canada and as agent for and on behalf of all Governments of all fixed and variable payments received from ITCL and RBH pursuant to each of the Settlement Agreements as estimated in Schedule A hereto (Financial Settlements Schedule), which schedule forms part of this Agreement.
12. For greater certainty, the Governments acknowledge and confirm that the amounts received by Canada on behalf of the Provinces include amounts to be paid by ITCL and RBH to the Provinces to resolve the potential civil claims in accordance with the terms of the Settlement Agreements of each of the Provinces relating to the loss of applicable

taxes and duties arising from activities which led to the growth in the contraband tobacco products market during the Material Time.

13. The Governments acknowledge and confirm that Canada will be responsible for any necessary verification of and reporting to the Provinces concerning variable payments received from ITCL and RBH pursuant to the Settlement Agreements.

Payment of Funds by ITCL and RBH Received by Canada

14. The Provinces acknowledge that it is expected that Canada shall receive funds from ITCL and RBH in respect of separate and wholly distinct matters, and therefore in correspondingly separate and wholly-distinct capacities as follows:
 - (a) Canada shall receive from ITCL Criminal Fines in the amount of Cdn. \$200 million as a payment of a fine levied against ITCL by the Cour du Québec/Court of Quebec (Chambre criminelle/Criminal Division) (Montreal) following a plea of guilt by ITCL to an offence contrary to s.240(1)(a) of the *Excise Act*, R.S.C. 1985, Chapter E14, as amended;
 - (b) Canada shall receive fixed and variable payments from ITCL in the approximate amount of Cdn. \$400 million pursuant to the terms of the Settlement Agreement in respect of civil claims;
 - (c) Canada shall receive from RBH Criminal Fines in the amount of Cdn. \$100 million as a payment of a fine levied against RBH by the Ontario Court of Justice (Toronto) following a plea of guilt by RBH to an offence contrary to s.240(1)(a) of the *Excise Act*, R.S.C. 1985, Chapter E14 as amended; and
 - (d) Canada shall receive fixed and variable payments from RBH in the approximate amount of Cdn. \$450 million pursuant to the terms of the Settlement Agreement in respect of civil claims (this amount and the amount referred to in paragraph (b) collectively referred to as the "Settlement Amounts").

15. The Governments agree and acknowledge their mutual intention to distribute amounts equal to all Criminal Fines and Settlement Amounts received by Canada from ITCL (collectively the "ITCL Amounts") and from RBH (collectively the "RBH Amounts") in satisfaction of all Government civil claims for loss of applicable taxes and duties as a result of that contraband activity in the proportions enumerated on Schedule "B" hereto (the "Distribution Schedule", which forms part of this Agreement) and subject to the terms hereof.
16. Canada undertakes to distribute to each of the Provinces its share of the ITCL Amounts and the RBH Amounts as soon as possible but no later than 30 days after receipt of such Amounts by Canada according to the terms of this Agreement.
17. The Governments acknowledge that the payment of the Criminal Fines to Canada in 2008 affects the timing of payment to the Provinces of their shares of the ITCL Amounts and the RBH Amounts as reflected in the Distribution Schedule.
18. Accordingly, Canada will not participate in distributions of the variable Settlement Amounts, except as otherwise provided in paragraph 19 hereof, until such time as the Provinces have received their full shares (in the percentage shares in Schedule "B" hereto) of all fixed payments received in 2008, including the amounts equal to the Criminal Fines, which is estimated to take approximately two years.
19. In recognition of Canada's anti-smuggling expenditures during the Material Time and its role in facilitating the Settlement Agreements, it is understood, acknowledged and agreed that, in accordance with Schedule "A", Canada shall retain twenty-five (25) million dollars of the Settlement Amounts received in each of 2009 and 2010 before distribution to the Provinces of their shares of the variable Settlement Amounts received in those years. In the event that the variable Settlement Amount received in either 2009 or 2010 is less than scheduled, then the \$25 million dollars to be retained by Canada in each year shall be reduced by the same percentage as the variable Settlement Amount received is less than the amount scheduled. The amount by which Canada's \$25 million is reduced in either year shall carry forward to following years. If there is an amount carried forward from 2009 to 2010 it shall rank ahead of the \$25 million amount to be retained by Canada

in that year and before distribution to the Provinces of their shares of the variable Settlement Amount received in those years. If there is an amount carried forward from 2010 it shall be retained by Canada from subsequent year payments before distribution to the Provinces of their shares of the variable Settlement Amount received in those years.

20. In the event that the variable Settlement Amounts received between 2009 and 2011 are less than scheduled, and as a consequence the Provinces have not received their full share of the fixed payments retained by the Government of Canada in 2008, the Governments agree to adjust and re-calculate in 2012, such that the full share of the fixed amounts for each province, as set out in the Distribution Schedule, is satisfied.

Default By ITCL or RBH under Settlement Agreement

21. In the event that ITCL or RBH defaults in respect of their respective variable payment obligations under the Settlement Agreements before the Provinces have received their full shares of all the fixed payments received in 2008, the Governments agree to readjust and re-calculate payments made as necessary as soon as the default for any one year is finally determined such that all ITCL Amounts or RBH Amounts actually received by Canada from ITCL or RBH in 2008 are distributed to each Government according to the percentage shares in the Distribution Schedule hereto.

Effect of Release and Claim Over

22. Each of the Governments acknowledges the terms of the Settlement Agreements and particularly paragraph 7 of the ITCL Settlement Agreement and paragraph 8 of the RBH Settlement Agreement which provides for a reduction of the Payments to be made by ITCL and/or RBH pursuant to the Settlement Agreements, in the event that ITCL and/or RBH are required and in fact do pay to a particular Government, directly or indirectly, funds in addition to those payable pursuant to the Settlement Agreements, but in respect of Released Claims.
23. Accordingly, each Government agrees that if it receives, directly or indirectly, such an amount from ITCL and/or RBH in respect of Released Claims such that the Payments received under either or both Settlement Agreements are reduced in accordance with the

terms of each, any then outstanding distributions payable to that Government pursuant to the Distribution Schedule of this Agreement from either or both of ITCL and RBH shall be reduced and/or adjusted to give effect to the distributions and allocations provided for in the Distribution Schedule as expeditiously as possible.

24. In addition, each Government acknowledges the terms of each Settlement Agreement and particularly paragraph 19 of the ITCL Settlement Agreement and paragraph 20 of the RBH Agreement providing that the Release by ITCL and RBH in favour of the Governments is ineffective, and will be inoperative, in any proceeding in which a Released Claim is made (or a Claim Over results in a claim being made) against ITCL or RBH or subsidiaries they control, by a Government or any party claiming through or on behalf of a Government, or a Government's Crown-controlled corporation or Crown agency.
25. Each Government hereby agrees that, in the event that the Release is not operative as a result of a Released Claim or Claim Over being made by that Government, as contemplated in paragraph 19 of the ITCL Settlement Agreement and paragraph 20 of the RBH Agreement, it shall indemnify and make whole the other Governments in respect of all reasonable costs, legal fees and disbursements and expenses incurred, and for all damages, costs, penalties, fines or interest awarded, all on a full indemnity scale, as a result of the release having been rendered inoperative in accordance with the terms of the Settlement Agreements.

Form of Payment

26. All payments under this Agreement shall be made by electronic funds transfers to the account coordinates to be provided by each province to the Government of Canada.

Notices

27. All notices required and/or made under this Agreement shall be given by facsimile and all notices under this Agreement shall be given by facsimile or e-mail and confirmed by courier to the following:

(a) **HER MAJESTY IN RIGHT OF CANADA AS REPRESENTED BY THE
MINISTER OF NATIONAL REVENUE**

Attention: Assistant Commissioner
Legislative Policy and Regulatory Affairs Branch
Canada Revenue Agency
320 Queen Street
Place de Ville, Tower A
Room 22-03, 22nd Floor
Ottawa, ON K1A 0L5

Fax: 613-957-2067

(b) **THE MINISTER OF REVENUE OF QUEBEC, REPRESENTED BY THE
DEPUTY MINISTER OF REVENUE**

Attention : Sous-ministre adjoint
Direction Générale de la législation et des enquêtes
Revenu Québec
Gouvernement du Québec
3800, rue de Marly
Secteur 5-2-6
Québec G1X 4A5

Fax: 418-643-9381

(c) **HER MAJESTY IN RIGHT OF ONTARIO AS REPRESENTED BY THE
ATTORNEY GENERAL OF ONTARIO**

Attention: Assistant Deputy Attorney General – Legal Services Division
Ministry of the Attorney General
720 Bay Street, 6th Floor
Toronto, Ontario
M5G 2K1

Fax: 416-326-6996

(d) **HER MAJESTY IN RIGHT OF NOVA SCOTIA AS REPRESENTED BY
THE ATTORNEY GENERAL OF NOVA SCOTIA**

Attention: Senior Counsel
Nova Scotia Department of Justice
400 – 151 Terminal Road
P.O. Box 7
Halifax, NS B3J 2L6

Fax: 902-424-1730

(e) **HER MAJESTY IN RIGHT OF NEW BRUNSWICK AS REPRESENTED
BY THE MINISTER OF FINANCE**

Attention: Provincial Tax Commissioner
Department of Finance
Government of New Brunswick
Centennial Building
PO Box 6000
Fredericton, New Brunswick
E3B 5H1

Fax: 506-453-3275

(f) **HER MAJESTY IN RIGHT OF MANITOBA AS REPRESENTED BY THE
MINISTER OF FINANCE**

Attention: Senior Assistant Deputy Minister
Manitoba Finance
1000-386 Broadway
Winnipeg, Manitoba
R3C 3N9

Fax: 204-948-3553

(g) **HER MAJESTY IN RIGHT OF BRITISH COLUMBIA AS
REPRESENTED BY THE ATTORNEY GENERAL OF BRITISH
COLUMBIA**

Attention: Deputy Minister
Ministry of Small Business and Development

PO Box 9290 STN PROV GOVT
1001 Douglas Street
Victoria, British Columbia
V8W 9J7

Fax: 250-387-6224

- (h) **HER MAJESTY IN RIGHT OF PRINCE EDWARD ISLAND AS REPRESENTED BY THE ATTORNEY GENERAL OF PRINCE EDWARD ISLAND**

Attention: Provincial Tax Commissioner
Taxation and Property Records
Department of Provincial Treasury
Government of Prince Edward Island
First Floor, Shaw Building
95 Rochford Street
PO Box 2000
Charlottetown, Prince Edward Island
C1A 7N8

Fax: 902-368-6584

- (i) **HER MAJESTY IN RIGHT OF SASKATCHEWAN AS REPRESENTED BY THE MINISTER OF FINANCE**

Attention: Assistant Deputy Minister, Revenue Division
Ministry of Finance
5th Floor, 2350 Albert Street
Regina, SK
S4P 4A6

Fax: (306) 787-0241

- (j) **HER MAJESTY IN RIGHT OF ALBERTA AS REPRESENTED BY THE MINISTER OF FINANCE**

Attention: Assistant Deputy Minister
Tax and Revenue Administration
Finance and Enterprise
Government of Alberta
2nd Fl Sir Frederick W. Haultain Building
9811-109 Street
Edmonton, Alberta
T5K 2L5

Fax: 780-422-0899

(k) **HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR AS
REPRESENTED BY THE MINISTER OF FINANCE**

Attention: Assistant Deputy Minister Taxation and Fiscal Policy Branch
Department of Finance
Government of Newfoundland and Labrador
Confederation Building
PO Box 8700
Prince Phillip Drive
St. John's, Newfoundland
A1B 4J6

Miscellaneous

27. The Parties acknowledge that this Agreement when executed may be made public.
28. In the event that any Party hereto or its representatives are subpoenaed or otherwise compelled by law to give evidence with respect to this Agreement or the matters contained herein, such Parties shall provide notice forthwith to all other Parties.
29. Both versions of this Agreement in the official languages of Canada are equally binding, enforceable and authentic.
30. This Agreement may be executed in counterparts and by facsimile with originals to follow, and such counterparts, taken together, shall be deemed to constitute one and the same instrument and such facsimiles shall be deemed to be originals.
31. This Agreement may be modified, waived or amended only by the written agreement of authorized representatives of the Parties and not by acquiescence or conduct.

32. The Parties agree to take such further acts and steps, and execute and deliver such further documents as may be reasonably required to implement and/or give effect to this agreement and its terms.
33. This Agreement shall be governed by and interpreted in accordance with the laws of Canada.

Schedule A
Financial Settlements Schedule

Financial Settlements Schedule

	2008	2009	2010	2011-2018	2019-2023	TOTAL
Imperial	200 ¹					200
Tobacco	50 ²					50
Canada Ltd.		30	30	30 per year	10 per year	350
	250	30	30	240	50	600
Rothmans, Benson & Hedges Inc.	100 ¹					100
	50 ²					50
	50	35	35	35 per year		400
	200	35	35	280		550
Canada Stipend		(25)	(25)			(50)
TOTAL	450	40	40	65 / 520	10 / 50	1100

(All dollar amounts in millions)

1. Criminal Fine.

2. Contribution.

• 2008 Amounts Are Fixed.

Schedule A

Schedule B
Government Distribution Schedule

Distribution Schedule

(All dollar amounts in millions)

		2008	2009	2010	2011	2012-2018	2019-2023
	%	TOTAL					
Alberta	1.545	17.0	1.3	1.3	1.6	1.0/6.9	0.15/0.8
British Columbia	4.2	46.2	2.5	2.5	8.0	3.1/21.8	0.40/2.10
Manitoba	1.055	11.6	0.9	0.9	1.1	0.7/4.7	0.10/0.5
New Brunswick	2.0	22.0	1.7	1.7	2.1	1.3/9.0	0.20/1.0
Newfoundland & Labrador	2.05	22.6	1.8	1.8	2.2	1.3/9.2	0.20/1.0
Nova Scotia	2.5	27.5	2.2	2.2	2.6	1.6/11.2	0.25/1.2
Ontario	14.267	156.9	12.3	12.3	15.1	9.1/64.0	1.42/7.1
Prince Edward Island	0.261	2.9	0.2	0.2	0.3	0.2/1.2	0.03/0.1
Quebec	19.134	210.5	16.5	16.5	20.2	12.3/85.9	1.90/9.5
Saskatchewan	0.727	8.0	0.6	0.6	0.8	0.5/3.3	0.07/0.4
Canada	52.261	574.9	0.0	0.0	10.9	34.0/237.8	5.24/26.2
TOTAL	100	1100	40	40	65	65/455	10/50

Schedule B

[Subject to Rounding Adjustments]