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BAT CO LTD
IMASCO MONTREAL

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BARRISTERS AND SOLICITORS - PATENT AND TRADEMARK AGENTS

January 8, 1988

Mr. Purdy Crawford
Chairman, President and
Chief Executive Officer
Imasco Limited
4 Westmount Square
Suite 260
Montreal, P.Q.
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Dear Purdy:

Shortly after the federal government released the draft Trust and Loan Companies Act, you asked me to consider the application of certain provisions of the draft Act to transactions by BAT Industries plc in shares of Imasco Ltd. I am writing to confirm my preliminary advice that, if the Act is adopted as drafted, BAT would require the consent of the Minister of Finance before purchasing or otherwise acquiring shares of Imasco. As will be evident from the discussions below, an application for the Minister's permission to increase BAT's interest in Imasco would involve a number of considerations from Imasco's point of view.

The Requirement for Ministerial Approval

Paragraph 3B1.3(1)(b) of the draft Act provides that no person [BAT] shall, without the approval of the Minister of Finance purchase or otherwise acquire any share of a body corporate [Imasco] that controls a trust or loan company [Canada Trustco] if the person [BAT] already owns more than ten percent of the issued and outstanding shares of any class of shares of the body corporate [Imasco] and the acquisition of the share would increase the "interest" of the person [BAT] in the company [Canada Trustco]. Ministerial approval would also be required under subsection 3B1.3(1) for the acquisition from BAT of Imasco shares which resulted in a purchaser holding in excess of 10% of any class of Imasco shares.

The draft Act does not specify what is meant by the "interest" of a person in a company. In paragraph 3B1.3(1)(b) the term "significant interest" (a term defined in section 10B.8) is used in relation to the body corporate [Imasco] and not the company [Canada Trustco] as is the term "interest". In view of the fact that any purchase of a

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share in a body corporate which controls a company would imply an increase in indirect beneficial ownership of the company and the rule of statutory construction that a provision of a statute must be presumed to have been inserted for a purpose, it may well be that the reference to an increase in "interest" refers to an increase in beneficial ownership of fully voting and participating equity of a company. Thus interpreted, the paragraph would permit BAT to acquire shares of Imasco to maintain its level of ownership, but not to increase it without the Minister's consent. However, other interpretations which would be less favourable are possible.

We should seek clarification of the policy intention behind the reference to an "increase the interest of the person in the company" in paragraph 3B1.3(1)(b). The same question of interpretation arises in connection with the commercial link issue in paragraph 3B2.1(2)(a), which talks about an increase in "the interest of a commercial enterprise in the company" where a commercial link exists, for example, by the commercial enterprise having a significant interest in the controlling shareholder of the company. We would suggest that this question be raised in the latter context so as to avoid casting the spotlight on Division C of Part III of the draft Act. As will be evident from the discussion below, the non-resident ownership provisions of the draft Act modify existing legislation in a manner which is as favourable as is likely to be achieved from the point of view of Imasco and BAT. Accordingly, focusing attention on these provisions involves a risk that they will be reconsidered.

Under subsection 10B.3(1) of the draft Act, for the purposes of section 3B1.3 "control" includes de facto control. Accordingly, the requirement for Ministerial approval would technically apply to the acquisition of more than 10% of any class of shares of BAT if it could be said that BAT is in de facto control of Imasco. This is unlikely to present a practical problem except in unusual circumstances.

The requirement for Ministerial approval in section 3B1.3 will affect all shareholders holding more than 10% of any class of shares of a corporation which controls a trust or loan company. Accordingly, some significant Canadian financial and industrial groups such as the Power and Edper groups will be affected and vigorous debate on this requirement can be expected during the comment period.

Non-Resident Ownership Constraints

Division C of Part III of the draft Act would constrain the ownership of trust companies by non-residents on a virtually identical basis to the "10%/75%" rule found in sections 44 to 48, inclusive, of the

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existing Loan Companies Act. Under this rule no single non-resident is permitted to acquire more than 10% of the issued and outstanding shares of a trust or loan company and non-residents are not permitted, in the aggregate, to acquire more than 25% of such shares. The draft Act contains only one material amendment to these provisions, the addition of the definition of "control" in subsection 3C1.2(2). The proposed Free Trade Agreement with the United States will render these provisions inapplicable to U.S. non-residents. Since the non-resident ownership rules must be borne in mind by BAT when it deals in Imasco shares, it may be useful to briefly summarize these rules.

For the purposes of these rules a "non-resident" includes a corporation incorporated outside Canada and one controlled directly or indirectly by such a corporation. Accordingly, BAT is, for these purposes, a non-resident and, if it was to "control" Imasco, so would be Imasco. As a non-resident, Imasco (through its wholly-owned subsidiaries) would be prohibited from exercising the voting rights attached to all shares of Canada Trustco held by it, thereby disenfranchising CT Financial Services Inc. See sections 3C1.8 and 3C2.4 of the draft Act and subsections 46(2) and 48(4) of the existing Loan Companies Act.

The concept of "control" is defined for the purposes of Division C of Part III of the draft Act (in subsection 3C1.2(2)) as being legal control, that is, the ownership of shares to which are attached more than 50% of the voting rights and such voting rights being sufficient, if exercised, to elect a majority of the directors. The same concept is also defined, in this case to include "de facto" control, "for the purposes of this Act" in subsection 10B.3(1). On the basis of the usual rules of statutory interpretation, our view is that a court would apply the more narrow definition of "control" in determining the status of an entity as a "resident" or "non-resident". On this basis Imasco and its subsidiaries (including CT Financial Services Inc.) would be "residents" for the purposes of the draft Act.

Conclusion

The amendment to the existing non-resident rules contained in section 3C1.2(2) of the draft Act is most helpful in that it clarifies that the basis for determining status under the non-resident rules is legal rather than de facto control. Nevertheless, depending on the meaning ascribed to the concept of an "increase in interest" in paragraph 3B1.3(1)(b), any increase in BAT's level of ownership of Imasco will require the consent of the Minister of Finance once the draft Act has been proclaimed. The enforcement provisions (specifically subsections 3B4.1(2) and (3)) suggest that the draft Act will, in effect, be

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applied to transactions after December 18, 1986 and before first reading of the Bill only if such transactions resulted in the acquisition of de facto or legal control of Imasco.

The non-resident question is to be borne in mind in connection with any dealings with government or, because of the enforcement mechanism relating to a change of status in sections 3C1.8 and 3C2.4 of the draft Act and the corresponding provisions of the existing Loan Companies Act, the board of Canada Trustco. The current situation between BAT and Imasco has been accepted by both government and the Canada Trustco board of directors insofar as neither have raised objections on this basis in the eighteen months since Imasco acquired Genstar. Any increase in the share ownership of Imasco by BAT from its present level would provide a basis for reconsideration of this view, particularly if such increase occurred prior to the enactment of the draft Act. Any proposed increase to in excess of 50% of the voting shares would require such reconsideration, even under the existing Loan Companies Act.

Yours very truly,


Brian M. Levitt

BML/sh
Enclosures

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