

# FRANCHISE LAW JOURNAL

AMERICAN BAR ASSOCIATION

QUARTERLY JOURNAL OF THE FORUM ON FRANCHISING

VOLUME 24, NUMBER 2 • FALL 2004

## CANADIAN FRANCHISE LAW: A SYMPOSIUM

**Celebrating the 70th Birthday of Ken Taylor and the 25th Anniversary of the "Canadian Caper" . . . . . 62**  
WILLIAM L. KILLION

The editor-in-chief acknowledges the contributions of Ken Taylor as a "U.S. Canadian hero."

**A Practical Road Map to Entering the Canadian Market . . . . . 63**  
LARRY WEINBERG AND GEOFFREY B. SHAW

Geographic proximity, together with a common language, history, and culture, are the reasons why Canada is the first stop on the road to international markets for U.S. franchisors. The authors provide practical overview of the Canadian approach to franchises.

**The Case for the Use of Wrap-Around Disclosure Documents in Canada . . . . . 73**  
PETER MACRAE DILLON

The Ontario Act and Regulation contain many ambiguities, but no one so far has forwarded the argument that use of an Ontario addendum to a UFOC is inconsistent with the spirit of the Act. Arguments against doing so, although real, do nothing to advance simplicity and harmonization, let alone cross-border franchising.

**The Case Against the Use of Wrap-Around Disclosure Documents in Canada . . . . . 83**  
DEBI M. SUTIN AND ARTHUR J. TREBILCOCK

Not so fast, argue Ms. Sutin and Mr. Trebilcock. Specific requirements of Ontario's franchise legislation require a franchisor to add to and change a considerable portion of the body text law of the UFOC itself, often to such an extent that it may be easier simply to create from the outset a new, Ontario-specific disclosure document.

**The Duty of Good Faith and Fair Dealing in Canada . . . . . 89**  
ALLAN D.J. DICK AND MARKUS COHEN

Alberta and Ontario have enacted legislation that imposes a statutory duty of fair dealing upon parties to a franchise agreement in its performance and enforcement. This article examines the genesis of the statutory duty; the

available clues as to its scope; its possible effect on the further development of the common law on implied duties; and what its implications may be for drafting, performing, and enforcing franchise agreements in these provinces.

**Permission-Based Marketing Under Canada's New Privacy Laws . . . . . 96**  
PAUL JONES

Franchisors now need the consent of their system's customers for all marketing activities that involve the collection, use, or disclosure of personal information. But, in the process, they may well be laying the groundwork for compliance with the privacy laws of other countries, particularly those in Europe.

**Class Actions and the Franchise Relationship in Canada: Are the Floodgates Now Open? . . . . . 106**  
SARAH MILLAR AND FRANK ZAID

Canadian legal commentators have noted that the franchisor-franchisee relationship is spawning a wave of litigation. A review of Canadian case law shows that claimants in disputes involving franchise relationships are not always able to demonstrate sufficient commonality of issues to support a class action. Nevertheless, given the publicity surrounding certain high profile, high stakes certified claims, success in other class action proceedings will likely generate enthusiasm for class proceedings in the franchise context.

**Canadian Income Funds: An Attractive Financing Alternative for Canadian and U.S. Franchisors . . . . . 112**  
ALBERT J. HUDEC AND JOHN L. ROGERS

This article reviews the structure and history of Canadian income funds, examines the structure of franchise royalty income funds in Canada and income fund activity to date in the United States, and provides insights from Canadian franchisors that have actually established successful income funds.

**Franchising (& Distribution) Currents . . . . . 118**  
MICHAEL J. LOCKERBY, EDITOR; ALLAN P. HILLMAN, ELLEN R. LOKKER, AND W. ANDREW SCOTT

A review of recent court cases involving franchising and distribution law.

# Canadian Income Funds: An Attractive Financing Alternative for Canadian and U.S. Franchisors

ALBERT J. HUDEC AND JOHN L. ROGERS

This article reviews the structure and history of income funds in Canada generally, examines the structure of franchise royalty income funds in Canada and income fund activity to date in the United States, and provides insights from several executives of Canadian franchisors who have actually established successful income funds. Income funds can be structured as either income trusts or, as in some recent innovative deals, income deposit securities.



Albert J. Hudec



John L. Rogers

A Canadian income trust is a financing structure built around a business that has relatively stable and consistent revenues and that distributes available cash to its trust unitholders rather than retain it internally for management's use. The principal advantage of the income trust structure is that it permits single-entity, or flow-through, taxation of income at the unitholder level, leading to higher returns on investment. Such financing structures may be an attractive option for a U.S. franchisor seeking an opportunity to sell an interest in its business because the use of an income trust typically results in a higher exit price than a traditional leveraged private equity buyout, a strategic sale, or a conventional initial public offering (IPO).

The year 2002 brought the United States one of its slowest IPO years in history<sup>1</sup> while Canada enjoyed one of its most active.<sup>2</sup> In that year, IPOs of trust units in Canada accounted for 94 percent of the value of Canadian IPOs<sup>3</sup> and represented more than 50 percent of the total number of completed Canadian IPOs.<sup>4</sup> This trend continued almost unabated through 2003 with a total of 136 income trusts now listed on the Toronto Stock Exchange.<sup>5</sup> The current market capitalization of income trusts in Canada is approaching \$90 billion,<sup>6</sup> even though income trust IPOs dropped from over 50 percent in 2002 to represent 38 percent of the total IPOs completed in 2003.<sup>7</sup> The year 2003 saw fewer income trust IPOs than the previous year: twenty-one valued at \$3.8 billion versus thirty-eight valued at \$5 billion in 2002, representing a slightly diminished, but still robust, market.<sup>8</sup>

From 2000 to 2003, trusts outperformed the broader Canadian market by almost 900 basis points.<sup>9</sup> As more

issuers have gone public using an income trust structure, and as more already-public corporations have converted to trusts, the number and volume of secondary and follow-on offerings from such issuers has increased correspondingly.

## Basic Income Trust Structure

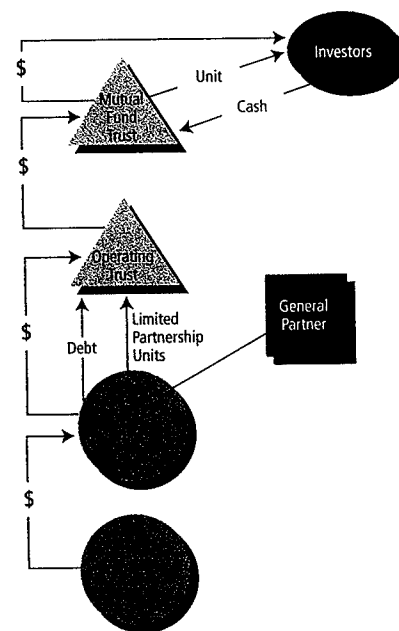
A Canadian income trust is an unincorporated, open-ended mutual fund trust established for the benefit of security holders who subscribe to trust units pursuant to a public offering. The trust units are publicly traded and entitle the holder to one vote at all meetings of unitholders and the right to participate equally in distributions from the fund.

A mutual fund trust is not permitted to carry on the underlying acquired business directly, but must structure its investment in the underlying business through an underlying trust, partnership, or corporation. Accordingly, in a basic income trust structure (see Figure 1), a publicly listed mutual fund trust owns all of the securities of an operating trust, and the trust in turn owns all of the units of a limited partnership that holds an active business. All entities have income flow-through status for Canadian tax purposes and are exempt from capital tax. Cash generated by the underlying business flows up through the intermediate entities on a nontaxable basis and is distributed out to the unitholders who, if taxable, will pay Canadian tax at that level.

The income fund must be structured as a mutual fund trust to achieve the optimal income flow-through treatment for Canadian tax purposes, avoid capital tax, and qualify for

Figure 1

## Basic Income Trust Structure



*Albert J. Hudec and John L. Rogers are partners in the Vancouver, British Columbia office of Davis & Company, a national Canadian law firm. The authors thank their colleagues Lorne Beiles and Joel Schuster for their kind assistance in the preparation of this article.*

investment by certain statutory plans and other tax-exempt investors. The intervening vehicles are, wherever possible, flow-through entities themselves that do not pay capital tax.

The requirement that the income trust be a mutual fund trust dictates many of the structural features of income trusts. Mutual fund trusts must be structured as open ended and their units, although they may be listed on a Canadian stock exchange, must be redeemable at the option of the holder in accordance with a specific formula for determining the redemption price. As the redemption provision is added to qualify the fund as a "mutual fund trust" for tax purposes and is not intended to be the principal means by which investors achieve liquidity, the redemption price is typically set at a discount (for example, 5 percent) from the trading price of the trust units on the stock exchange where they trade. Total monthly cash redemptions are typically subject to a relatively low dollar cap limitation, after which redemptions are to be made in kind out of assets of the trust (typically ownership interests or debt issued by one of the underlying entities).

### Historical Evolution of Income Trusts

The Canadian income trust structure was developed as a variation on the Canadian oil and gas royalty trust, which originated in the mid-1980s, and shares many features in common with U.S. master limited partnerships.<sup>10</sup> Its structure is also similar to the manner in which real estate investment trusts (REITs) are organized in both the United States and Canada.

Initially, income trusts were limited to investment in real estate and producing oil and gas assets, but over time their use expanded to long-life power and pipeline assets. In recent years, the income fund structure has become a popular vehicle for taking a variety of businesses public in Canada. There appears to be no limit to the type of business for which this structure can work, provided that the assets of the operating business generate (and are expected to continue to generate) a consistent cash flow.

### Structural Variations

There are three basic variants of the Canadian income fund structure; each presents complex commercial, tax, and other considerations that are discussed in detail later in this article:

The Toronto Stock Exchange (TSX)-listed Canadian income trust for Canadian based businesses in deals marketed principally to Canadian resident investors;

The TSX-listed income deposit security (IDS) structure for \$50 to \$250 million offerings by smaller U.S.-based businesses marketed principally to Canadian investors; and

The AMEX/TSX-cross-listed IDS structure for U.S.-based businesses with an offering of \$250 million or more where marketing to American in addition to Canadian investors is considered desirable for optimal distribution.

### Rationales for Income Trusts

#### *The Issuer Perspective*

The Canadian income trust structure provides a public market alternative for franchises and other appropriate traditional economy businesses that satisfy these basic criteria: (1) stable, long-life cash flows (preferably protected by a

strong market position); (2) low and predictable capital expenditure requirements; (3) low to modest growth prospects; and (4) willingness of management to distribute the bulk of cash flows from the business. Such companies might otherwise be candidates for a strategic sale (either "en bloc" or by spin-out of a division) using a leveraged recapitalization LBO-type private equity capital structure. Because the offerings are priced on the basis of cash-on-cash yield, rather than pursuant to traditional public equity or private sale earnings multiples, the public income trust structure typically provides established franchisors and other vendors with a sale price that is compelling when compared with traditional valuation methods and exit alternatives.

#### *The Investor Perspective*

Income trusts are attractive to investors since they: (1) allow investors to participate in cash flow from an operating business without the imposition of a corporate layer of taxation; (2) provide a more attractive yield than traditional debt instruments in the current low-interest-rate environment; and (3) impose discipline on management to maximize cash distributions, reducing the temptation to manage short-term earnings and requiring management to return to the capital markets for funding of expansion or diversification. Although initially targeted at retail investors, the larger, more liquid, income trusts are now attracting substantial interest from Canadian institutional investors.

Income trust offerings are principally sold on the basis of distributable cash, that is, the net cash generated by the trust's underlying business or property and available for distribution. These distributions may fluctuate depending upon the performance of the trust's underlying business or assets and may include a return of capital rather than income. Also, the nature of distributions will affect investors' after-tax returns on such distributions.

### Income Trusts and Cross-Border Franchises

#### *Recent Income Trust Offerings by Canadian Franchisors*

Recently, a number of significant Canadian restaurant franchise systems have established income trusts, including A&W Revenue Royalties Income Fund (February 2002), The Keg Royalties Income Fund (May 2002), Boston Pizza Royalties Income Fund (July 2002), Prime Restaurants Royalty Income Fund (July 2002), Prizm Canadian Income Fund (October 2003), and PDM Income Fund (May 2004). To date, these offerings have been strictly Canadian, but there may be an attractive opportunity for U.S. franchisors to finance their rights either in Canada or in the United States using recently developed variants of the basic Canadian income fund structure.

In a typical franchise/income trust conversion, a fund is created to acquire the trademarks and other intellectual property applicable to a chain of restaurants. The franchisor, as owner of the trademarks, systems, and other intellectual property used in connection with the operation of the franchise system, including the associated goodwill, will transfer these rights to an operating entity, generally a limited partnership whose limited partnership units are held

indirectly by the mutual fund trust. Consideration given to the franchisor for the transfer of rights will include a long-term license allowing the franchisor to continue to use those rights<sup>11</sup> and cash (a lump-sum payment up front, and typically another deferred amount due, for example, within five years). Under the license, the franchisor agrees to pay a yearly royalty, generally between 3 percent and 4 percent of the gross revenues of all of its franchised restaurants. The royalty is based on the number of restaurants in existence as of the date of the offering, so that as more restaurants are opened, the franchisor will receive further units in the fund or one of the fund's subsidiary entities, or cash to compensate for the additional royalties to be paid.

### U.S. Historical Evolution of Cross-Border Income Trust Structure

In 2002, Canadian investment bankers began actively promoting the Canadian income trust structure to U.S. companies and their private equity sponsors. The first cross-border trust, Heating Oil Partners Income Fund, went public on the TSX in May 2002.<sup>12</sup> Other examples of Canadian cross-border income trusts include Specialty Food Group Income Fund, KCP Income Fund, Associated Brands Income Fund, ACS Media Income Fund, Custom Direct Income Fund, Sun Gro Horticultural Income Fund, IPC-U.S. REIT, and Great Lakes Carbon Income Fund.

Initially, cross-border income trust transactions were structured using a conventional Canadian income trust structure, with trust units of a Canadian TSX-listed fund being sold to

Canadian investors and the proceeds of the offering used to fund a U.S. operating entity (see Figure 2). Under this structure, the income trust typically invests in shares of a Canadian corporation, which invests in a U.S. holding corporation, which in turn indirectly acquires the U.S. operating corporation. Income trust advisors have developed a wide array of techniques to adapt the income trust structure to acquire and hold U.S. businesses in a tax-efficient manner.

Specific techniques can be utilized to ensure that entity-level taxation of the U.S. entity is minimized by capitalizing the entity to the maximum extent possible with interest-bearing debt. Sound structuring is essential because the U.S. Internal Revenue Code imposes stringent restrictions on the use of leverage for this purpose.

### Achieving Tax Efficiency

Often the debt investment in a U.S. corporation is made through a special type of Canadian corporation known as an unlimited liability corporation (ULC),<sup>13</sup> incorporated under Alberta or Nova Scotia provincial law, which is controlled by a U.S. holding corporation and is treated as a regular taxable Canadian corporation for Canadian income tax purposes. The ULC uses the proceeds that it receives from debt financing to subscribe to preferred shares of the U.S. holding corporation.

Although the ULC is treated as a taxable corporation for Canadian tax purposes, it is a disregarded entity for U.S. tax purposes so that, for most U.S. tax purposes, there will be a "flow through" under which indebtedness of the ULC will be treated as indebtedness of the U.S. holding corporation. Provided that the appropriate debt-to-equity ratio is maintained, the characterization of the debt as debt will be respected and the debt will not be recharacterized as equity for U.S. tax purposes.

If the Canadian mutual fund trust qualifies as a fixed investment trust for U.S. tax purposes, the interest payable on the indebtedness by the ULC should not be subject to U.S. earnings stripping rules and will be eligible for the U.S. withholding tax exemption on portfolio interest, provided that the ultimate holders of the mutual fund units meet applicable tests.

### Income Deposit Securities

Currently, a new cross-border income fund structure is evolving, where the trust is replaced by an ordinary corporation issuing high dividend-bearing common shares and high-yield subordinated notes with covenants consistent with those contained in public high-yield debt. The debt and equity is sold as a unit although the securities are not "stapled" and may be separated and separately traded. The use of the so-called income deposit security minimizes issuer-level tax liability through the shelter created by the high level of deductible interest payments. However, careful structuring is required to ensure that the U.S. Internal Revenue Service will acknowledge the characterization of the debt as debt and not treat it as equity. Recent representative transactions include offerings by Volume Services America Holdings Inc., American Seafoods Corp., and Medical Facilities Corp. (see Figure 3).

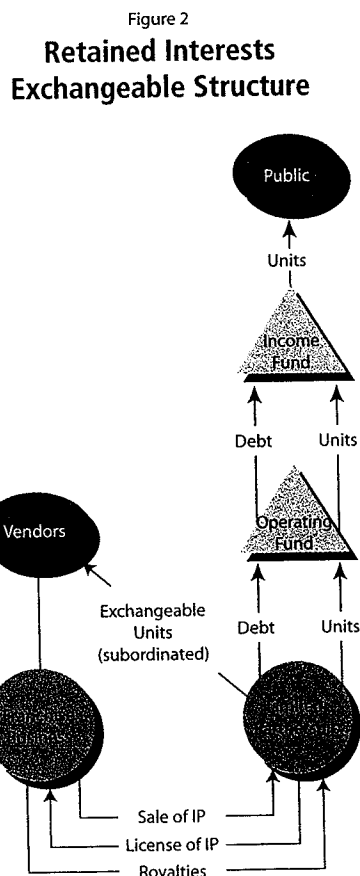
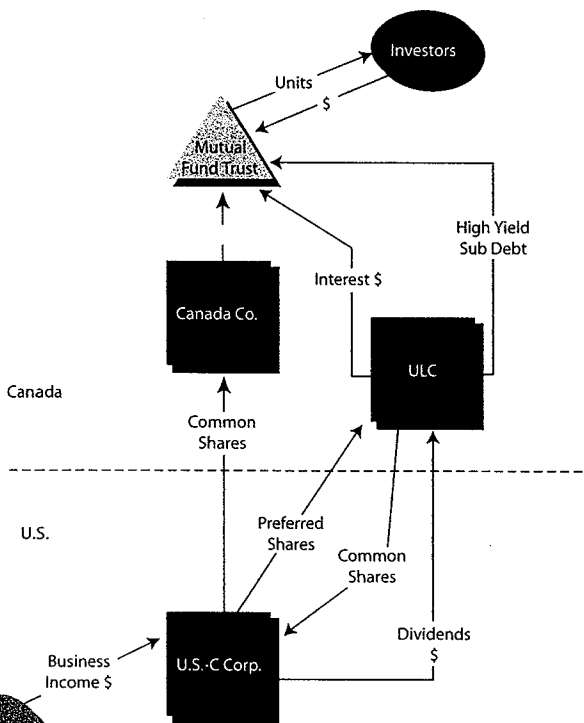


Figure 3  
**Cross-Border Income Trusts  
 Corporate/Trust Structure**



Concerns about the ability of “fixed investment trust” structures under U.S. tax law to avoid the imposition of the U.S. earnings stripping rules are causing a migration away from Canadian trust structures in cross-border deals and a movement towards corporate IDS structures where U.S. businesses and assets are involved. In addition, because Canadian capital markets do not easily accommodate large offerings (that is, over a \$250 million threshold), except for those involving highly recognized brand names, and because the use of the trust structure does not provide the same tax efficiencies for U.S. investors that it does in Canada (except in the case of REITs), the cross-listed IDS structure is now favored for larger cross-border offerings. U.S. investors do participate, however, on a limited basis, primarily through 144-A private placement transactions by institutional investors, in Canadian-only offerings.

### Issues to Be Considered

#### *Transfer of the Franchise Business to the Trust*

Canadian tax legislation does not permit a deferral on a direct transfer of assets to a trust. Accordingly, if the vendor of the underlying business wishes to transfer the business on a tax-deferred basis, a corporation or limited partnership must be used at the bottom of the structure to facilitate giving the vendor a “rollover” (transfer at tax cost) for tax purposes. The use of a limited partnership, rather than a corporation, is preferable because partnerships are flow-through entities and are not subject to capital tax under Canadian law.

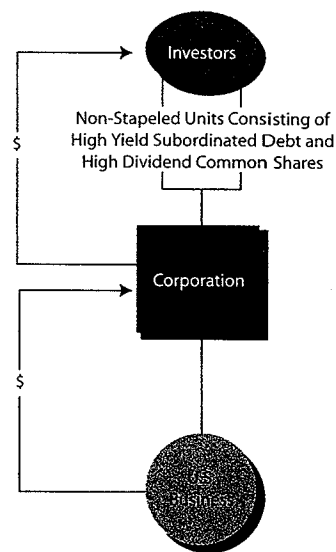
If it is necessary to utilize a taxable corporation in the structure to achieve other objectives, such as assurances of limited liability, the corporation’s income is sheltered to the maximum extent possible through the use of high-yield subordinated debt to increase leverage and interest expense at the corporate level. In the typical restaurant franchise trust, for example, royalty obligations are used to create shelter.

#### *Franchisor’s Retained Interest*

It is common for the existing owners of a franchisor that is being restructured and recapitalized through an income fund to retain an interest in the business (see Figure 4). In fact, in a royalty income trust structure (most often used by franchisors), the vendor continues to own the underlying business and remains as franchisor in relation to the unit franchisees (in effect, as a master franchisee of the licensed intellectual property).

Often this scheme provides pricing advantages to the franchisor because it provides comfort to the market that the franchisor remains financially committed to the business, with only a portion of the business being funded in the public market. Distributions in respect of the franchisor vendor’s retained interest are subordinated to distributions to public unitholders, increasing the security of investor cash flow. This reduces the yield required to market the offering and increases the price that the vendor receives for the interest vended. In a typical structure, the franchisor vendor retains an interest in the business through maintaining an interest in the underlying partnership, exchangeable into units of the trust, and entitled to a pro rata share of cash flow.

Figure 4  
**IDS Structure**



#### *Maintaining Limited Liability of Trust Unitholders*

Under Canadian law, the limited liability of trust unitholders for amounts beyond the amount of their initial investment has, until recently, derived from common law principles rather than statutes. Canadian corporate law statutes typically contain specific limitations of liability for shareholders,<sup>14</sup> but such provisions are not applicable in the income trust context. Without such statutory comfort, some institutional investors have been unwilling to invest in income trusts. This concern has been the primary impediment to the inclusion of income trusts in the S&P/TSX Composite Index.<sup>15</sup> Much of the common law jurisprudence has been developed in the context of estates and family trusts, and there is little express guidance as to its applicability to publicly held business income trusts.

Under applicable common law, although trust beneficiaries are generally not liable for liabilities or obligations

incurred by their trustees, there have been cases where an implied obligation by beneficiaries to indemnify trustees has been found or where the beneficiaries exercised such direction over the trust that the trustees have been regarded as mere agents of the beneficiaries. Although the risks posed by such cases might be remote to unitholders in a public income trust, they exist nonetheless. Consequently, protective steps such as placing an express exclusion of obligation to indemnify trustees in the trust indenture, or structuring an income trust such that it holds its operating assets and conducts its business through a subsidiary entity with statutory "limited liability" protection, are routinely taken by lawyers drafting the documents. The issue is soon to disappear, however, because the Provinces of Ontario and Alberta are in the process of passing statutes intended to eliminate the limited liability concern of trust beneficiaries.<sup>16</sup>

### *Management of Income Trusts*

Income trusts typically have organizational and management structures that differ from and are more complicated than those of conventional corporate entities. Early income trust deals were structured with external management provided by a third-party management company pursuant to a management agreement, but a trend has emerged toward internalization where internal management and employees operate the fund. This trend is similar to the trend evidenced by REITS in the United States several years ago.

The trustee of an income trust may be a corporate trustee or be a board of individual trustees. Generally, the trend has been away from the use of corporate trust companies, which are generally unwilling to play an active role in their capacity as trustees, and toward the use of a board of trustees that fulfills the functions typically performed by the board of directors of a public franchisor.

### *Use of Third-Party Debt by Income Funds*

Income trusts are showing increased sophistication in the use of operating and working capital lines to smooth distributions through the course of the year by providing for seasonal or other variations in cash flow. Similarly, a working capital reserve fund or a revolving line of credit may be used to smooth out the impact of maintenance capital expenditures. Nevertheless, banks are still relatively conservative in their willingness to lend to an income trust because of its commitment to distribute most of its available cash to investors.

### **How Do Income Trusts Work in Practice?**

The authors contacted Axel F. Rehkatsch, senior vice president and chief financial officer of A&W, and Mike Cordoba, chief executive officer of Boston Pizza International Inc., each of whom recently navigated the process of converting a traditional franchise structure to an income trust. We asked for their responses to ten questions that were provided to them in advance.

The reasons given for converting to an income trust structure were unique to each franchise system, but for the most part the liquidity (at an attractive price) offered by going public was a key rationale for making the change. Franchisors with significant debt, at both the company and

the founder level, were attracted by the prospect of a cash infusion that permitted the existing decision makers to retain control, a feat unlikely in a private sale. The franchisors also found that the public markets offered unique opportunities for retaining key management through the granting of incentive options.

Initially, the franchisors were concerned with the relatively complicated organizational structure embodied in income trusts, and found it necessary to fully investigate and contemplate how their franchise companies would operate under such a design. Most of the franchisors' management teams had extensive experience in private, but almost none in public, companies, thereby necessitating additional internal education to prepare for the change. It was pointed out, however, that the franchisor/franchisee relationship is somewhat analogous to that of the public company/investor, the latter including transparency and disclosure requirements, and thus the ultimate transition to public accountability was seen as an evolution as opposed to a revolution in thinking.

The difficulties experienced in actually completing a franchise income trust transaction differed. As is often the case, "early adopters" who were among the first to complete franchise conversions to a trust structure found unexpected, and at times hidden, costs in the process, such as unforeseen goods and services tax implications or the inability to properly estimate legal and accounting costs. Because the income trust in the franchise context is no longer a novelty, today this would no longer be an issue.

The respondents were positive about the income trust structure working well in the context of a franchise system, although significant changes to internal system organization were required. They emphasized that public scrutiny and reporting requirements forced them to restructure their management teams so that CEOs became more involved in high-level decisions, with presidents becoming more focused on day-to-day affairs. While the respondents generally lamented the burden of increasing public disclosure requirements, they found the solution lay in hiring knowledgeable staff for new investor relations departments.

With new internal structures in place, the franchisors were generally pleased with the scrutiny placed on their public income trusts, enjoying what is tantamount to free advertising through the public market system. Some respondents indicated that it was initially frustrating to read what they viewed as unfair reports or unfair characterizations of their companies, but with experience soon learned to take such press coverage in stride. The possibility of disgruntled franchisees making use of public reporting information to embarrass their franchisors, potentially to an extent that would require the filing of a responding press release or material change report, was mentioned. However, the respondents did not go so far as to be concerned with the impact of such events on the price at which their units were trading, believing that the best way to maintain value in such units was to run a strong franchise system.

At the same time, respondents were not perturbed by the ongoing requirement to distribute available cash to

unitholders. For the most part, franchisors typically do not require a significant amount of cash on hand for expansion; instead, such costs are borne by new franchisees. One respondent stated that his company's goal is to increase revenues per store, as opposed to increasing revenues by further expansion, but denied that this conflicted with the need to make distributions.

Respondents agreed that a key to crafting a good income trust is to have good people involved in the structure. Conventional reasoning might conclude that reporting results to trustees could be an onerous and somewhat frustrating experience, but our respondents were universal in their praise for their trustees, highlighting that by choosing trustees with backgrounds in public management, their executives were able to learn considerably and generally gain leverage from the experiences of their trustees. By making trustees "a part of" the franchise company, as opposed to viewing them simply as overseers, respondents claimed to have gained considerable goodwill. Engaging the right team to conduct the transaction appears equally important, especially in the realm of bankers and lawyers, where a proven ability to execute complex transaction structures is a key.

### Conclusion

The ideal candidate for an income trust conversion is a franchise system with a long history of stability, a future of stable growth, and a good management team. On the other hand, a company on the verge of large growth might be ill-suited to such a conversion. There is a tension in the income trust structure between funding growth and a commitment to distribute cash.

### Endnotes

1. Mary Chung, *Your Money/Global Investing*, FINANCIAL TIMES FT.COM, Dec. 20, 2002, at [www.ipohome.com/ipoplus/press/ft\\_122002.asp](http://www.ipohome.com/ipoplus/press/ft_122002.asp).
2. SURVEY OF IPOs IN CANADA IN 2002 (PricewaterhouseCoopers LLP 2003), available at [www.pwcglobal.com](http://www.pwcglobal.com).
3. PAUL HALPERN & OYVIND NORLI, *INCOME TRUSTS: OLD WINE IN NEW BOTTLES?* (MFC Global Investment Management 2002), available at [www.mfcglobal.com](http://www.mfcglobal.com).
4. Randall Anthony Mang, *Income Trusts*, GLOBE&MAIL, June 21, 2004, at B9.
5. Stephen Rotz, *Income Funds in the Public Eye*, Presentation at the Canadian Association of Income Funds (Feb. 26, 2004). Notes available from authors. It should be pointed out that there have been different counts of income trusts depending on the criteria involved, such that figures report the number to be anywhere from 100 to 200 income trusts. See Michael R. King, *Income Trusts—Understanding the Issues*, Bank of Canada Working Paper 2003 (Sept. 2003).
6. *Study finds neutral effect of income trusts on government tax revenues*, CANADA NEWS WIRE, Mar. 11, 2004, at [www.newswire.ca/en/releases/archive/March2004/11/c9168.html](http://www.newswire.ca/en/releases/archive/March2004/11/c9168.html). All figures used in this article are Canadian dollars; the Canadian dollar was trading at \$0.7564 U.S. as of July 14, 2004. See The Bank of Canada, at [www.bank-banque-canada.ca/en/exchange.htm](http://www.bank-banque-canada.ca/en/exchange.htm) (exchange rate).
7. Mang, *supra* note 4, at B9.
8. Allan Robinson, *IPOs decline 20% in 2003*, GLOBEINVESTOR.COM, Jan. 8, 2004, at [www.globeinvestor.com/servlet/ArticleNews/trusts/GAM/20040108/RPWCIP008](http://www.globeinvestor.com/servlet/ArticleNews/trusts/GAM/20040108/RPWCIP008).
9. Dan Hallett, *Shelter of Income Trusts*, GLOBEADVISOR.COM, Nov. 21, 2003, at [www.globeadvisor.com/education/insight/article.html?education/insight/20031121.html](http://www.globeadvisor.com/education/insight/article.html?education/insight/20031121.html).

10. Bill Maclean, *The ins and outs of income trusts*, BENEFITS CANADA (Sept. 2003).

11. Generally for ninety-nine years.

12. See Laura Hodges Taylor, *Income Securities: The Next Generation of Income Trusts*, FindLaw Links, June 2004, available at [www.goodwinprocter.com/publications/hodges\\_taylor\\_6\\_04.pdf](http://www.goodwinprocter.com/publications/hodges_taylor_6_04.pdf).

13. At the present time, a ULC can only be formed under Nova Scotia corporate law. However, the government of Alberta has announced its intention to table legislation that would permit the creation of a ULC under Alberta's corporate laws. See *Alberta's Fiscal Plan 2004-7*, Mar. 24, 2004, at [www.finance.gov.ab.ca/publications/budget/budget2004/fiscal.html](http://www.finance.gov.ab.ca/publications/budget/budget2004/fiscal.html).

14. See, e.g., section 45(1) of the Canada Business Corporations Act, R.S. 1985, c. C-44.

15. See *Income trusts eligible for S&P/TSX Composite Index in the near future: report*, June 22, 2004, at [www.investmentexecutive.com/client/en/News/DetailNews.asp?Id=24722&IdSection=137](http://www.investmentexecutive.com/client/en/News/DetailNews.asp?Id=24722&IdSection=137), which also indicates that recent legislative moves in Alberta and Ontario might change this tide.

16. In Alberta, the Income Trusts Liability Act received Royal Assent May 19, 2004, and in Ontario, the Trust Beneficiaries' Liability Act, Bill 35, had its first reading in the Legislative Assembly of Ontario on December 18, 2003.

[www.ababooks.org](http://www.ababooks.org)

Save time drafting, negotiating and litigating franchise agreements

## Covenants Against Competition in Franchise Agreements Second Edition

Peter J. Klarfeld, Editor

This new book provides a state-by-state analysis of covenants against competition in the franchise context, addressing how franchise covenants have been interpreted and enforced under each state's law. It is an ideal tool to help you compare the approaches of different states, decide what needs to be in the agreement, and determine how it is to be presented. Last published in 1992, the book has been updated to reflect the significant developments in the law since the first edition was published.

November 2002  
523 pages  
7 x 10  
paperback

"An essential weapon in the arsenal of any lawyer whose practice involves drafting, enforcing or challenging such covenants. Peter Klarfeld and his all-star team of editors have produced a masterful summary of the law of all 50 states on this subject, and they are to be congratulated."

Lee Abrams  
Mayer, Brown,  
Rowe & Maw  
Chicago, IL

AMERICAN BAR ASSOCIATION

Phone: 1-800-285-2221  
Fax: 1-312-988-5568



[www.ababooks.org](http://www.ababooks.org)