

REITs and Income Funds

MARCH 31, 2003

Limited Liability Legislation for Ontario Income Trusts

On March 27, 2003, the Ontario Government declared its support for legislation to remove uncertainty concerning the limited liability of business trust investors.

Partners of Goodmans LLP worked closely with the Canadian Institute of Public and Private Real Estate Companies ("CIPPREC") over recent months in spearheading this initiative and assisting in drafting the proposed legislation to confirm that unitholders of real estate investment trusts ("REITs") and other income trusts are not personally liable for the activities or obligations of such trusts or their trustees.

A principal reason for the initiative was to address the concern, albeit a remote risk, that income trust units would not carry the same protection for unitholders of a trust as shares provide for shareholders of a corporation. Adoption of this legislation will ensure that the exposure of unitholders to claims against such a trust will be limited to the amount of their investment in the trust.

The proposed act will apply to any trust which is a "reporting issuer" within the meaning of the *Securities Act* (Ontario) and whose trust instrument is governed by Ontario law, whether the trust is created before or after the effective date of the act.

This issue has been one of the primary hurdles in obtaining inclusion of income trusts and REITs in the S&P/TSX Composite Index. Such inclusion is expected to enhance demand and liquidity for REIT and other income trust units.

The Ontario Government has also indicated that it will review governance standards for publicly traded trusts. This may result in legislation to codify provisions currently found in the documents governing REITs and income trusts and/or to mirror provisions found in the legislation governing business corporations.

Goodmans has been a pioneer in the REIT and income trust sector, playing a key role in structuring and implementing numerous income trusts, including Canada's first REIT IPO, Canada's first REIT to own an operating business and Canada's first cross-border REITs and income trusts. Goodmans was recently appointed the exclusive author of *The Canadian REIT Handbook* by the Canadian Institute of Public and Private Real Estate Companies.

If you would like to discuss the impact of the proposed legislation or possible transactions, we invite you to contact either Stephen Pincus at (416) 597.4104 / spincus@goodmans.ca or Allan Goodman at (416) 597.4243 / agoodman@goodmans.ca or any other member of the Goodmans REITs and Income Funds Group listed on the back of this page.

THE UPDATE

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