• HOLDING ARTWORK IN TRUSTS - KEY CONSIDERATIONS

There has been greater interest in recent years for the use of trusts to hold artwork, whether to keep art collections intact, or as a “diversifier” asset class which is less correlated with stock markets. Since the market crisis in 2009, there has been an increase of nearly two-thirds in the global art market, according to the latest figures from the European Fine Art Foundation (TEFAF), suggesting a figure of $46.1bn in 2011, represented by public auctions and estimates of private sales.

Recent research from JP Morgan has also shown that the volatility of art prices was lower than US and international equities as well as commodities over the last 25 years. The performance of the Mei Moses World All Art Index (tracking prices across various genres of art) almost matched returns from the S&P 500 index over 50 years, and actually outperformed the S&P 500 over the last 10 years.

In addition to newer structures, works of art will also form part of many existing trust structures, including those which hold landed estates.

There are a number of key considerations for settlors and trustees, where artwork might be held in trust structures:

RATIONALE FOR USE OF A TRUST STRUCTURE

Some of the benefits may include:

- succession planning to ensure a family art collection remains intact after the settlor’s death
- building an art collection in a trust, as an investment class to benefit future generations of beneficiaries
- a diversifier asset class for a trust which holds other conventional investments

FORM OF TRUST STRUCTURE

If the structure will be used solely to hold works of art, then a discretionary trust is unlikely to be the most suitable form of trust, given the asset concentration risk for the trustee. A reserved powers trust, private trust company or foundation may be better suited in this scenario.

TRANSFERRING WORKS OF ART INTO TRUST

There will be a number of matters to consider, including:

- Provenance of paintings - confirming identity of the artist, originality of the painting and that there are no issues with previous ownership. It may be necessary to engage art specialists to assist with the relevant enquiries. Defective title insurance can be taken out; this will often be subject to full enquiries being made in advance.
- Changing the ownership of the artwork - legal agreement / gift documentation between donor and trustee
- The trustee will need to arrange suitable insurance; a specialist insurer may be required
- Ensuring careful shipment by fine art shippers and storage of artwork, as necessary
- Are there any legal or taxation considerations for the person who will be transferring works of art into the trust - such as gift taxes?
- Ensure a detailed inventory of the artwork is drawn up and kept up-to-date

ONGOING ADMINISTRATION

- Where will the artwork be kept? At the beneficiary’s residence, in storage, or might it be loaned to galleries, museums or others - possibly for a fee?
- Ensure whoever physically holds the art (if not the trustee) fully understands that the trust is the legal owner - prepare agreements as necessary
- If the beneficiary will enjoy the artwork at their residence, will this give rise to any taxable benefit on them?
- Ensure adequate security and insurance for paintings
- Arrange periodic valuations of artwork - usually every 3 years
- Arrange periodic inspections, particularly if older works of art - which may require restoration from time-to-time
- What are the donor’s views as to the possible sale of the artwork in the future - are there any “trigger events” or price targets? Or will the artwork simply be held for future family enjoyment?
- Liquidity - will there be sufficient cash in the trust structure to meet ongoing costs relating to the artwork, as well as professional fees?

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COLLAS CRILL TRUST
Collas Crill Trust acts as trustee to a number of structures holding works of art. We also work with art advisory firms who can assist in a number of areas, including provenance, valuation, and identifying the most favourable cities and auctioneers for the sale of specific works of art.

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