



Private Client and Wealth Structuring

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Paintings, Pearls and Port: Considerations for trustees when holding valuable chattels

In recent years there has been a significant increase in the number of trust funds which are comprised of physical assets rather than stocks, shares, bonds and money held in bank accounts. In addition, recent reports suggest that holdings of certain collectibles have outperformed equities and commodities over similar timeframes.

Why use a Trust?

The trustees should ensure that they understand why they are holding the assets on trust. If the chattel is being held as an investment class or as a diversifier asset then the trustees should ensure that the trust contains appropriate wording to ensure that the management decisions (such as whether to keep or sell the asset) are made by the investment manager. If the chattel is being held on trust for succession planning and not necessarily to make a profit, then likewise the trustees should ensure that the trust contains the appropriate diversification and retention protections to reflect the donor's intentions.

Transferring the assets to the trustees

The following points need to be considered:

- Are there any legal or taxation considerations for the donor of the assets, such as gift or inheritance tax?
- Provenance and valuation of the assets. In the case of artwork, care should be taken to ensure that it is not looted art. It may be necessary to engage art specialists, such as the **Commission for Looted Art in Europe**, to assist with the relevant enquiries.
- Documenting the transfer of ownership of the asset to the trustees
- Insurance
- Arranging shipment and storage of the asset by specialists, as necessary
- Drawing up a detailed inventory of the artwork
- Liquidity - how will the trustees be provided with the cash to maintain the assets?

Ongoing administration

Once the trustees hold the assets, the real work begins. The main concerns are:

Valuation and Insurance

Trustees should arrange valuations at least every three years to ensure that the assets are insured at the correct value and arguably should also update valuations in response to significant changes to the market. There has been great fluctuation in such markets in recent years meaning that insurance valuations can become outdated very quickly. Trust advisors must be alert to the fact that a failure to procure an accurate and up-to-date insurance valuation will mean that if items are stolen or destroyed then there will be a shortage when replacing the item. For instance, jewellery may not be replaced with metals and precious stones of the same quality.

Security

Another key concern for trustees when holding such assets is to ensure that they are kept secure from damaging environments and theft. For works of art, the beneficiaries of the trust may have preferences as to how the artwork should be kept; for instance that the artwork should be displayed in a certain gallery or museum or in a beneficiary's home. Such an arrangement will usually be by way of a loan and may or not be on commercial terms, depending on the circumstances. For instance, loaning artwork to a museum for no consideration but on the basis that the museum will insure and secure the artwork will mean a saving for the trustees. The loan should be in writing and cover all major issues.

Depending on the value of the assets held, freeports (also known as bonded areas or, in the US, foreign-trade zones) may also be considered as a storage facility by the trustee. There has been significant growth recently in these warehouses which offer storage facilities for high value items and, due to their port status, potential tax advantages. Some freeports boast biometric security, vaults with seven tonne doors, armed guards and round the clock surveillance, as well as all of the ancillary services including insurance, shipping, restoration

continued overleaf

and valuation services that one would expect. Whilst in many cases the costs of making use of such facilities may be disproportionate, trustees should make every effort to ensure that they are applying proportionate measures to protect the security and integrity of the particular assets they hold. For instance, this would include ensuring that fine wine is stored in a light, temperature and humidity-controlled environment.

Can the trustees sell the assets?

The trustees should seek the donor's views on whether they should ever sell the assets, and if so, under what circumstances. Does the donor have any "trigger events" in mind, or are the assets to be regarded as the inheritance of future generations of the donor's family?

Is the donor or another beneficiary to enjoy the assets?

If the asset is a piece of art, and the donor or other beneficiary would like to display them at home, will this cause any tax issues for the donor or beneficiary?

Conclusion

These assets come with particular considerations and trustees must ensure they consider all of these when deciding how to manage their trust funds. Burges Salmon regularly advises trustees on the holding of artwork and other valuable assets. We also work with art advisory firms who can assist in a number of areas, including provenance, valuation, and sale of specific works of art.

Contact

For further information, please contact either **Suzanna Harvey**, partner or **Ronnie Myers**, solicitor.

Details about Burges Salmon's international private client services can also be found by following these links:

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