SANNE

Family values

Corporate-style governance for families and the role of advisors were among the topics of discussion at a recent *STEP Journal* roundtable, sponsored by SANNE

WORDS: JOHN READ

(L–R, back row)

+ **MIKE WALKER TEP**
  Partner, KPMG
+ **PHIL LE VESCONTE TEP**
  Head of Private Client, SANNE
+ **MATTHEW SPERRY**
  Global Private Client Practice Co-chair, McGuireWoods
+ **SALPY KOUYOUMJIAN**
  Partner, Boodle Hatfield
+ **RYAN MYINT TEP**
  Partner, Taylor Wessing
+ **DAVID KILSHAW TEP**
  Partner, EY

(L–R, front row)

+ **SIOBHAN CRICK**
  Director, Private Client, SANNE
+ **RUSSELL COHEN TEP**
  Partner, Farrer & Co
+ **KELLY NOEL-SMITH TEP**
  Partner, Forsters
+ **CHARLIE TEE TEP**
  Partner, Withers
+ **STEVE SOKIĆ TEP**
  Corporate and Private Client Managing Director, SANNE
+ **JOHN RICHES TEP (CHAIR)**
  (*not pictured*) Partner, RMW Law

In June 2017, 11 private client experts gathered at the Law Society, on London's Chancery Lane, for a roundtable discussion hosted and sponsored by SANNE. The overarching theme was the use of corporate-style governance strategies by wealthy families, including their utility and implementation. The discussion also covered the value of independent advisors, the role of trusts and audit assurance, and the use of information and education in families.

John Riches, Partner at RMW Law, who chaired the event, began the discussion by asking his fellow panellists what they thought of corporate governance frameworks in the family context. Mike Walker, Partner at KPMG, observed that, if one were to insert, for example, the *Sunday Times* Rich List into the FTSE 250, the majority of entries would be private individuals. Given their comparable wealth, size and complexity, he reasoned, why wouldn't one use them?

However, Kelly Noel-Smith, Partner at Forsters, believes that 'corporate governance is not family governance: there are some key differences, particularly where flexibility is needed on generational transitions.' In the experience of Steve Sokić, Corporate and Private Client Managing Director at SANNE, it is larger, complex, global clients that are more likely to favour corporate governance structures – 'where it's not that simple to do things the traditional way, at least in the client's eyes'. Some families will want to manage their family wealth in the same way as they run their businesses.

Turning to the challenges of using corporate structures in this way, Charlie Tee, Partner at Withers, feels that, in a corporate scenario, the path to decision-making is relatively clear, with legally

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– Ryan Myint

binding structures – 'but in a family situation, there can be many competing interests, and the processes are participatory. This blurs the lines.' Walker agreed, noting that governance structures are imposed on corporations, whereas, for families, they are voluntary.

For Ryan Myint, Partner at Taylor Wessing, a similar differentiator is that, at a corporate level, the players are chosen appointees, and change over time, in contrast to family members: 'Governance for families serves a different function. It needs to regulate relationships in a group of stakeholders who are basically stuck with each other.'

Matthew Sperry, Global Private Client Practice Co-chair at McGuireWoods, believes that the challenging dynamics of generational transitions demonstrate the importance of any governance structure evolving over time, to ensure its continued effectiveness. 'No single model may necessarily fit a particular family,' agreed Salpy Kouyoumjian, Partner at Boodle Hatfield. 'Sometimes, the asset classes and range of investments are so diverse that things need to be tailored from the bottom up.'

Taking a step back, David Kilshaw, Partner at EY, asked: 'When things go wrong, is it because of bad governance or bad people?' Riches favours good people over long rules: 'However good your governance, bad people can corrupt it.' For Sokić, 'if you end up with bad people, then your governance failed at some point: the two are related'.

Sperry, though, feels that governance is partly there to compensate for when you don't have good people: 'Sometimes, families end up with the wrong people serving in important governance roles. That happens in businesses all the time. Like in the business environment, a properly developed family governance structure provides the foundation necessary to ensure that the wrong people do not eviscerate the family's wealth and fuel conflict. The governance model employs checks and balances to ameliorate those issues.'

IMPLEMENTATION

Sokić asked: 'How far do you go in codifying a governance structure?' According to Phil Le Vesconte, Head of Private Client at SANNE, some flexibility is needed: 'Inevitably, something will come up for which your system doesn't cater.' Riches favours self-governing regulation to

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>
> **– Kelly Noel-Smith**

hardwiring it into trusts: ‘If all issues are on the table and seen by people with common oversight, to a certain extent the devolution of formal decision-making is secondary.’

Sokić agreed that ‘if you have the right people, a lot of the governance doesn’t need to be codified – they’ll come up with it. There’s your flexibility.’ For Noel-Smith, having the right people at the right time works, but what if things change? ‘One rule might work for one generation, but, ten years later, you might have others asking for something different.’ One answer, for Sperry, is staggered terms of office: ‘Fresh blood is always helpful, especially when counselling a large family with many willing participants.’

Another consideration, said Myint, is where a family has multiple trusts and trustees across several jurisdictions: ‘Trying to integrate it all into a single policy or strategy can be very challenging.’ One solution, said Tee, is a common protector across trusts; another, according to Walker, is a common investment committee and a holistic investment strategy.

Finalising a governance structure can be problematic, noted Tee: ‘We set up a complex structure for a particular client, with a buyout system. The family readily agreed that a member could be bought out for just a fraction of the total worth of the business, but agreeing that number took about three years.’

Setting up a corporate governance structure is one thing, but – asked Riches – how does one discipline families to abide by it in practice? Can it work effectively in the family context? For Sperry, what is needed is a collaborative process: ‘Educating family members on the governance structure, and bringing in case studies, or client models, that have been successful. Many families conclude that you really do need to bring in outside people to encourage discipline.’

As Le Vesconte noted, a key factor in successful governance implementation is dealing with the emotions that inevitably pervade family situations, in contrast to the relatively sterile corporate environment. ‘Happy, functional families don’t see the need for governance,’ noted Russell Cohen, Partner at Farrer & Co, ‘whereas dysfunctional, warring ones can’t implement it.’ Tee agreed, saying that emotions are ‘the fatal flaw at the heart of any family governance. Any such system can be brought down by conflicts between members.’

TRUSTS AND INDEPENDENT ADVICE

In the corporate governance context, asked Riches, what role does the traditional trust play? Kilshaw said that, in his view, trusts are still a force for good, and he encourages their use wherever possible. Le Vesconte said that, 20 years ago, most trusts were made for UK families, to whom the concept was familiar: ‘Now, the majority are made for families all over the world, who often have no tradition or understanding of the concept. Perhaps that’s why you need to start introducing the bells and whistles of corporate governance.’

Sperry noted that, even in Jersey, where the trust has 'reigned supreme', very few families want immediately to give up significant control to a trustee: 'Governance tools can empower families, while retaining control and stability at the trust level.' For Myint, the concept of building in structures highlights how the use of the trust has changed: 'Historically, the trustee was the guardian of the settlor's wishes. Now, the modern approach is participatory, with beneficiaries expected to have more of a say. Trusts aren't intrinsically built with consultation mechanisms.'

'Many of the competing interests in a family come from distrust between members,' said Sokić. 'Elements of independence and objectivity can help mitigate those issues.'

Going further, Cohen reasoned that there is something to be said for attaining a degree of independence within the family: 'For example, the head of the family shouldn't necessarily be the person who runs the business.'

Tee agrees in principle with the value of independence, using the example of non-executive directors, but noted that there can often be strong resistance from family members reluctant to let in all but a few trusted advisors. 'Moreover,' he said, 'even if you do get an independent voice, it can take much longer for that person to become part of the governance structure than in a corporate scenario. We all know of cases where the head of the family wants to run everything, even though it's causing problems. It often takes a generational transition for that to change.'

Noel-Smith believes that the management of such a transition is where independent counsel is particularly effective – and also where a corporate governance structure can be too rigid. 'Where generation two are putting forward their views regarding the business, the independent advisor can consolidate them, and remove some of the negative aspects to which the head of the family might react badly,' she said. 'It's an easier way for the family head to save face, acknowledge that he or she won't be around indefinitely, and buy into the future plans for the business.' Myint observed that this was similar to the collective, 360-degree feedback that takes place in a corporate context.

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AUDITS, INFORMATION AND EDUCATION

Discussing the role of audit assurance in governance, Walker said that many families are asking for audits of their processes, systems and controls: 'In one case, the highest risk was identified as the head of the family office, who had governance all around, but not over, him.' Sperry feels that audits can help with transparency, 'the lack of which is the largest cause for fractures in families'. Sokić has seen increasing use of risk-mapping in larger and more complex families, but Walker has found that, often, 'people react only when something has gone wrong, such as a cyber-attack'. Kilshaw feels that, overall, audit assurance 'can be a force for good or evil – it depends on who has access to the information and how it is used'.

On that note, Myint provided an extreme example of information control: 'The younger generation were allowed only to view documents, in order to minimise the chances of that information falling into the hands of spouses.' That clearly reflects a level of distrust in the younger generation, but, said Kouyoumjian, 'it's not just age that creates issues. I'd add gender and cultural dynamics. If someone is in a same-sex marriage, are they still allowed to be involved? It is often a strong patriarch who is forcing those cultural or religious issues.'

Turning to the engagement of young family members, the general consensus was that involving them sooner, rather than later, is best practice. Cohen feels that, 'if you delay, it's much harder to tell them that they need to be careful with social media, or enter into prenuptial arrangements.' In Tee's experience, 'prenups' are a useful route into these discussions with children, who are already talking about them at school. Cohen dryly observed that the conversation there has moved on from safe sex to safe marriage.

However, it's not always possible to introduce children gradually, as Kilshaw noted: 'Children might find out about family wealth online.' Walker agreed, saying that many families also have concerns about their privacy being eroded by initiatives such as registers of trusts, registers of onshore and offshore companies, and unexplained wealth orders – another new proposal that will require families to expose more of their financial position to the relevant bodies: 'Will regulators and authorities keep all this information private?'

'Education should come before access,' said Kouyoumjian. Cohen agreed, noting that obtaining economic benefits doesn't necessarily create a sense of engagement or responsibility. 'It's critical we don't overlook that family values are imperative,' said Kilshaw. 'If you can implement governance in a value-driven way, that's ideal.'

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