

Stephenson Harwood's Johnston on the Evolving Expectations found in the Wealth Management Industry

Suzanne Johnston is a private wealth, trust and tax partner with Stephenson Harwood in Singapore, where she has made her home since 2013. Hubbis met with her recently to learn of her views on the evolving needs and expectations of her clients, which include HNW and UHNW individuals and families, trust companies, family offices, international banks and fiduciary service providers. We found someone who is very evidently passionate about the law and her current role and who is evidently enjoying life with her young family. And we also discovered a person who is committed to helping women progress their careers and, in her spare time, to supporting those who – like her - have suffered the heartbreak of infertility and recurrent pregnancy loss.

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Suzanne Johnston
Stephenson Harwood

Suzanne has practised in Singapore since 2013, first working for an international law firm and subsequently for a leading private bank, advising both its trust company and wealth planners. She has worked with many high-profile families and entrepreneurs throughout Southeast Asia, and particularly enjoys helping families implement practical and effective succession planning structures harnessing the use of family offices and trust structures.

ESG in the evolving investment landscape

She opens the discussion by focusing on the trend toward ESG investing globally, remarking that it is inevitable that trustees will need to increasingly engage in this sphere of investment.

She cites a prediction from Bloomberg Intelligence that by 2025, 33% of all global assets under management will have ESG mandates. And she notes that triggered by the Paris Agreement on climate change, the International Finance Corporation estimates that between now and 2030 there will be USD23 trillion worth of investment

opportunities in this growing segment of the market.

She comments that against this backdrop, investing in ESG will increasingly align with a trustee's duties to preserve and safeguard trust assets.

"According to investment management firm BlackRock, during the peak of the COVID-19 pandemic in 2020, more than eight out of ten sustainable investment funds outperformed non-ESG-based share portfolios," she reports. "Of course, as with all types of investment, conventional or ESG,

"As ever, the decision for the trustee is a balancing act between the competing interests of the beneficiaries and the settlor's rationale for establishing the trust. But how can advisors like me help trustees facilitate these discussions? Well, the answer is we need to use responsible, holistic structuring to minimise the risk of inter-generational disputes."

there are good and bad apples, and of course, it remains the duty of the trustee to exercise diligence and pick investments benefiting the beneficiaries, so trustees are obligated to work with investment experts to evaluate ESG investments, just as they would any mainstream investments they handle."

She says there are markers a trustee can look for when evaluating the worth of an ESG investment. Trustees should be alive to companies with B-corporation certification, noting that these B-corps, as they are known, are for-profit organisations that manage themselves to place social and environmental responsibility at the

core of their operations, pursuing both purpose and profit.

"But naturally, trustees need to be mindful and wary of a lack of clarity, of wool potentially pulled over investors' eyes and, of course, to greenwashing. They need to properly determine whether the targets are genuine ESG proponents."

New case law on ESG

She points to new case law emerging on charitable trusts, such as Butler-Sloss (and others) vs the Charity Commission for England and Wales, wherein the trustees of

two charities sought to clarify if it was a breach of their duties to adopt an ESG investment policy. The trustees acknowledged that pursuing an ESG investment policy would likely yield lower investment returns for the trust, at least in the short term. But the High Court of England and Wales gave the trustees permission to adopt the ESG Investment Policy, despite the potential financial implications.

"The High Court held that the trustees, if exercising their discretion to exclude investments they considered conflicted with the charitable purposes of the trusts, must balance all relevant factors," she explains. "Those relevant

factors include the extent of any potential conflict with the charitable purposes weighed against the risk of financial detriment. The financial detriment encompassed the risk of losing support from donors and potential reputational damage to the charities.”

ESG and the younger generations

Suzanne says this is especially relevant because there are different generational outlooks on ESG investing. She notes that according to the Saltus Wealth Index in 2021, young investors in the UK (aged 18-24) are over three times as likely to invest in ESG, green and impact funds than their older family members (aged 65+).

“It’s very clearly no stretch to say that younger beneficiaries want their trust fund invested in different ways to older beneficiaries in the family,” she comments. “As ever, the decision for the trustee is a balancing act between the competing interests of the beneficiaries and the settlor’s rationale for establishing the trust. But how can advisors like me help trustees facilitate these discussions? Well, the answer is we need to use responsible, holistic structuring to minimise the risk of inter-generational disputes.”

The Butler-Sloss decision and family trusts

Suzanne notes that this particular case related to two charitable trusts, and that as yet it is unclear if the Court will extend its decision beyond charitable trusts to private family trusts. The trustees of both types of trust are subject to fiduciary investment duties, but the purpose of a charitable trust is to further a charitable cause, which may, for example, include environmental

Key Priorities

Suzanne says her first mission is to see the firm’s Singapore private wealth practice ranked in Legal 500 and Chambers. The second objective is to boost visibility amongst families, trustees, and advisors in Singapore to consider the firm for any work around trusts, family offices, family constitutions, personal UK tax advice and any and all areas of estate and succession structuring.

“We have not had a comprehensive private wealth coverage in Singapore before, so we need to elevate ourselves to be front-of-mind when people are considering law firms to work with,” she explains. “We are incredibly well known in the shipping industry in Singapore, for example, and the mission is to become far better known in the private wealth industry too.”

Her third objective is to grow the team. She mentions the team’s managing associate, Yi Lee, who is a fluent Mandarin speaker and is working to lead the North Asia clients, while Suzanne herself focuses more on the Southeast Asian clients, and both work together on key issues and projects.

“I believe that as a major full-service law firm, we can fill a gap we see in the market for commercial private wealth advice. My own mission statement for my team is to keep the advice clear, concise, and commercial and to answer the question, instead of beating around the bush. Having worked as in-house legal, I understand that clients need clarity and solution oriented advice, they do not need confusion.”

protection. In contrast, she notes that the rationale for a private family trust is often to preserve family wealth for future generations.

“Of course,” she observes, “there is arguably little point preserving family wealth for the future if there isn’t a sustainable future for the next generations to enjoy that wealth. Further, ESG investing is just as likely, possibly more so, to result in financial enhancement rather than a financial detriment.”

The implications for advisors

Suzanne says advisors should strive to provide both commercial

and practical advice. As with any investment, before investing in an ESG product, trustees should be mindful to exercise diligence, care and prudence in selecting ESG investments and carefully review those investments, seeking ESG-specific advice as required. They need to review ESG investments more frequently to consider whether they should be diversified/varied. And they should actively reach out to beneficiaries to discuss and assess their needs and investment appetite.

“Communication is key for the trustees,” she reports. “Talk to your beneficiaries so you can



arrive at a well-rounded plan for the investment of trust assets. This can be facilitated by a well-written family constitution involving different generations in decision making from day one. If the trust is specifically settled with ESG investments in mind, the trustees could include a provision in the trust deed indemnifying the trustee for loss due to pursuing an ESG-based investment strategy. Moreover, if the trust reserves the investment powers to the settlor, then that can make the transition to ESG investing simpler.

“Most family trusts are set up with the apparent or stated aim of benefitting future generations, and my view is that in those circumstances trustees should be starting to pay attention to ESG, because arguably, unless we start investing for a more sustainable future, there will not be a future for those beneficiaries, or anyone else, to properly enjoy. As you can see, I think that ESG is vitally important.”

On the flip side, she adds that trustees may want to consider including similar wording if they choose to ignore ESG investments altogether.

The linkages to estate and succession planning

Suzanne says that as ESG is clearly here to stay, there are clear tracks through to the succession planning structures that wealthy clients put in place. “Most family trusts are set up with the apparent or stated aim of benefitting future generations, and my view is that in those circumstances trustees should be starting to pay attention to ESG, because arguably, unless we start investing for a more sustainable

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She also believes that trustees and banks are all going to have to meet, eventually, minimum requirements for responsible investing, whether ESG, or some form of impact investing. “I think, for example, the banks will be obliged to even have a certain percentage of portfolios that meet those requirements,” she states. “That pressure is coming from

demand amongst the younger generations of investors, and from governments as well, because it is a neat way for governments to push the environmental and social impact agenda without having to spend their own money.”

The snowball effect

And as to transparency around ESG, she says there is already major progress. Suzanne points to Singapore, for example, where she notes the regulator has set out clear requirements listing eligibility, with some of those linked to ESG. “And that is why I said this is no longer something that people can dismiss as a fad. It is here to stay, and people need to engage with it,

and understand what the different offerings are out there," she asserts.

From the trustee's perspective, she explains that this might mean that they hire legal advisors to tweak the trust deed, including adding additional indemnity wording to address any requirements or requests to follow an ESG friendly investment policy, in case there is any loss to the trust fund as a result.

"If as a law firm one is acting for the trustee, naturally we are looking at how we can protect the trustee in case things go wrong, specifically related to ESG investments, but, of course, these protections are simply extensions of the types of wording seen in relation to traditional investments," she explains.

A clear statement of intent

If working for the settlor, the same would be true in other ways, Suzanne elaborates. "If they tell us they want ESG in the portfolios, to whatever extent, we advise them to

state this explicitly in the letter of wishes, and perhaps also the family constitution," she explains.

She says this helps the settlor to thereby set out a clear mission statement on why this type of investing is important to them and address how they might want the beneficiaries and future generations of the family to think about ESG in the event of their passing. "Actually, I normally extend this further to encompass the whole approach to investing for a family trust, so that from day one, beneficiaries can see the entire vision as crystallised in the mission statement," she reports.

She adds that while this is important for any family trust, irrespective of what it invests in, it is especially vital where the trust is being established for a broader mission and 'higher' purposes, and not only for financial gain. "We are seeing more of that type of bigger purpose mission-setting in our family trust work here in Asia for very wealthy clients," she reports.

A major commitment

Returning specifically to the expanding universe of ESG, Suzanne notes that Stephenson Harwood has a dedicated ESG lawyer based in Hong Kong (Tze-wei Ng), who has been instrumental in setting up a number of B Corps in that jurisdiction, and helped draft the B Corp legislation there, as well. Whether in relation to the advice we give clients, or to how we approach our own operations, ESG is high on the strategic agenda for Stephenson Harwood.

"We know that it is very pertinent for our clients for the future, and highly relevant to our own business ahead," she says. "I think Stephenson Harwood is one of the real leaders amongst law firms in this engagement. Moreover, as I hope I have conveyed, this is something I believe in myself, for our collective futures." ■

Getting Personal with Suzanne

Suzanne has practiced in Singapore since 2013 working for an international law firm and subsequently, a leading private bank advising both its trust company and wealth planners. She has advised many high-profile families and entrepreneurs throughout Southeast Asia. Suzanne enjoys helping families implement practical and effective succession planning structures harnessing the use of family offices and trust structures.

She is qualified in England and Wales and practiced law in London, training and qualifying at a magic circle law firm before relocating to Singapore, where she advises high-net worth individuals, trust companies, family offices, international banks and fiduciary service providers.

In advising high-net worth individuals, she understands the importance of family dynamics and the complexities that can arise from family members residing in multiple jurisdictions. She takes a holistic approach to planning for individuals assisting with the set-up of family offices, family constitutions, trust structures, wills, lasting powers of attorney and private trust companies. Suzanne has also acted on cross-jurisdictional probates in Southeast Asia and provides UK personal tax advice.

According to her bio, her experience at an international private bank has taught her the value of practical, concise and business-oriented advice when acting for institutional clients. She can readily identify the key

business drivers and risk considerations in taking instructions. She advises on a wide range of matters for institutional clients, including, pre/post IPO trusts, trustee duties, template trust and contractual documents, employee benefit trusts, life insurance products, regulatory and legal compliance.

Suzanne hails from Preston in the North of England. She attended Catholic state schools that she says no-one will have heard of and excelled to such an extent that she read history at Christ Church College, Oxford. While there, she did a working holiday placement with Linklaters, which then sponsored her to take the law conversion, and she then ended up working for, training with and then qualifying at Linklaters as well.

"I still have a passion for history and architecture, the castles of England, Scotland and Wales, and coming from the north I am fascinated by the Wars of the Roses and Tudor history," she reports. "But I certainly do not regret shifting to law, as I am passionate about my job and my clients."

Her early career in law was in London for seven years, moving from Linklaters to Maurice Turner Gardner, Alan & Overy's private wealth spinoff, before moving to Singapore. "In those years I met and worked with some real personalities in the field of law and private wealth," she reports, "all of which stood me in good stead for my move to Singapore almost a decade ago now."

Suzanne is an open type of personality and does not shy away from saying that she met her husband in Singapore on Tinder. "We are a Tinder success story," she quips, "and we have made our home here, with two children now of six and two years old," she reports. "Singapore has been wonderful for us all in so many ways and we are permanent residents with a dog and two cats as well. When I first arrived, I was thinking about a two- or three-year stint, but this is where we plan to be now."

Spare time is spent fairly typically in the heat of Singapore with a young family, centred around children, friends, swimming pools, barbeques, and sociability.

"Since the pandemic lessened, we have also managed to get to the Maldives, to Phuket, and we have bought a small holiday home in the Lake District, where we will go soon, and we have plans for Australia for a wedding.

She closes off an interesting and engaging conversation by adding that she is also a passionate advocate in the areas of infertility and pregnancy loss.

"I have done lot of work with the firm, helping to launch our own fertility policy and pregnancy loss policies, and speaking at and hosting events on these topics. I am so incredibly passionate about this because to have my son, I had five rounds of IVF and five miscarriages. I believe in speaking openly about these issues. It's important to have clear policies on how you are treated if you are going through IVF and pregnancy loss. I am committed to the cause and to moving these conversations forward."

She closes with a statement of another passion, namely encouraging women in law. "We need to help each other develop our careers, and mentor each other," she says. Women need to promote other women and celebrate other women's successes. And there needs to be a recognition that women have very different career paths to men, especially when pregnancy, fertility and loss are in the mix."

