

SHARE STRUCTURES

Family Investment Companies (FICs): Structure, Shares and Governance

How a family investment company separates control from growth through its shares and articles, and what to take tax advice on.

What a family investment company is

A family investment company (FIC) is an ordinary private company, incorporated under the Companies Act 2006, whose purpose is to hold a family's investments rather than to trade. Its share structure separates control from economic value. The parents, typically the first directors, keep control. Future growth accrues to shares held by the next generation.

Interest grew after 2006, when most lifetime gifts into discretionary trusts above the nil rate band became subject to an immediate 20% inheritance tax charge. Funding a company does not trigger that entry charge. Whether an FIC suits a family depends on the sums involved, the investments held and how long the money will stay invested. Those are questions for the family's tax adviser.

Typical share structure

The structure is created in bespoke articles of association. Model articles will not do the work.

- **Voting shares.** Held by the parents, usually with limited rights to capital. They carry control of the board.
- **Growth shares for each child.** One class per child, non-voting, with dividends declared class by class at the directors' discretion.
- **Freezer or preference shares.** Sometimes used for the parents' capital, fixed at the amount subscribed, so that future growth falls to the other classes.

Separate classes let the directors pay dividends to some family members and not to others. They should also be set out so that no class can be treated unfairly by accident.

Funding

Most families fund the company mainly by a loan from the parents, with modest share subscriptions from each shareholder. Loan repayments can be drawn later without a further layer of tax. Loans need a written agreement, and the order of steps matters: paying money into a company without issuing shares can move value between shareholders.

Key points

- Parents keep control through voting shares and their role as directors.
- Growth builds in the children's share classes, outside the parents' estates.
- Shares in an investment company do not qualify for business relief, because the company does not trade.
- Funding by loan, subscription or gift each has a different inheritance tax and extraction result.
- Shares held by a minor can bring the settlements rules into play. Dividends of more than £100 a year on shares funded by a parent can be taxed as the parent's income.
- Transferring existing assets, especially property, to the company can bring capital gains tax and stamp duty land tax.

Governance as the next generation comes in

The articles and a private shareholders' agreement carry most of the protection. Provisions we are often asked to draft include:

- restrictions on transferring shares outside the family, often limited to lineal descendants;
- compulsory transfer provisions on divorce, bankruptcy or death;
- pre-emption rights, so that shares for sale are first offered within the family;
- reserved matters needing the parents' consent, such as issuing new shares or winding up;
- the age at which a child's shares, or voting rights, take effect.

Children can hold shares at any age, but minors cannot act for themselves. Shares for a minor are normally held on their behalf or left without dividend rights until the child is 18. Where a grandparent funds the child's shares, the settlements rule affecting parents does not apply in the same way.

Running the company properly

An FIC is a company in the full sense. It needs board minutes for dividends and investment decisions, a record of each shareholder loan, up-to-date registers and a confirmation statement each year. Accounts are filed at Companies House and are public. Families who value privacy sometimes consider an unlimited company, which may not need to file accounts (s.448), but its members lose limited liability.

Directors and persons with significant control are now required to verify their identity with Companies House. We can do this for them as an Authorised Corporate Service Provider.

Running costs

An FIC is not a one-off project. Each year it needs accounts, a corporation tax return, a confirmation statement and board minutes, and the directors will usually want advice on investments and tax. Those costs should be set against the benefit the family expects, and reviewed as the sums change.

Points to take tax advice on

This guide describes structure and governance, not tax outcomes. The tax advisers should model:

- corporation tax inside the company, and how dividends received are treated;
- the cost of getting money out, including dividend tax;
- inheritance tax on loans, gifts and the children's shares;
- whether the sums justify the running costs against alternatives such as ISAs, pensions, direct gifts and trusts.

Questions to settle early

- Who will be the first directors, and what happens if one dies or loses capacity?
- Which share classes are needed, and for whom?
- How will the family be funded: loan, subscription or gift?
- What should happen if a child divorces or leaves the family arrangements?
- When will the shares of younger children carry votes or dividends?
- Who will keep the minutes, loan records and registers?
- How often will the structure be reviewed?

How MTM can help

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Many family investment company projects reach us through an accountant. We draft bespoke multi-class articles and shareholders' agreements, incorporate the company, carry out Companies House identity verification as an ACSP, handle allotments and transfers, and keep the registers and confirmation statements up to date. The tax modelling stays with you and your client's tax adviser.