

Family Investment Companies (FICs)

Andrea Jones
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Introduction



Andrea Jones

Partner & National Head of Private Client Advisory

Andrea.Jones@irwinmitchell.com

Mobile: 07701396810

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FICs for Succession Planning

Trusts have long been the traditional way of passing on wealth within a protective environment

The overhaul of trust taxation in 2006 and ongoing/upcoming tax changes (BPR restrictions) have chipped away at the attraction and usefulness of trusts as an estate planning tool

FICs are useful to transfer significant surplus wealth in a controlled manner (onshore and offshore)

Founders are attracted by the opportunity to be the caretaker of the legacy that they have created in an environment which allows scope for education and gradual involvement of the next generation in the stewardship of family wealth whilst maintaining control

Combining the use of a FIC and a trust is common as can afford enhanced control and gives ability to provide for a flexible class of beneficiaries including unborn grandchildren

Structuring a FIC

- Usually set up as a private limited company which can be onshore or offshore (an unlimited company can offer greater privacy but undesirable if FIC engaged in activity which involves risk such as owning and managing rental properties)
- Typically involves two or more classes of shares with founder retaining those to which voting rights attach (or voting shares can be diluted amongst shareholders or held via a trust)
- Other share classes (e.g. A, B, C shares) can have different dividend rights or payment dates attached
- Founder is usually the sole director: capital and control can be transferred as and when appropriate
- Bespoke governance achieved via tailored constitutional documents to address specific risks and requirements (for example: to restrict transmission of shares to within the family bloodline and require shareholders to have appropriate Wills and nuptial or cohabitation agreements in place)
- We are talking about FICs but worth noting that a similar approach can be adopted by family companies which are trading

Key Benefits

Flexible and tax-efficient

No restriction on value or type of asset held

No upfront, exit and decennial IHT charges compared to a trust

Bespoke structuring

Enables founders to stay in control of their assets

Efficient way to fund university fees and expenses through dividends to children

Shares gifted to family fall outside charge to IHT, provided founder lives for seven years after the gift

Tax efficient accumulation of profits depending on investment strategy

Tax efficient income withdrawals via dividends

Shareholders receiving dividends benefit from tax allowances and lower rates of income tax

Founder loans enable tax-free capital withdrawals to fund lifestyle and holiday costs

A loan can be assigned to children or a trust as a PET if the “asset” isn’t needed in the future

Is a FIC suitable?

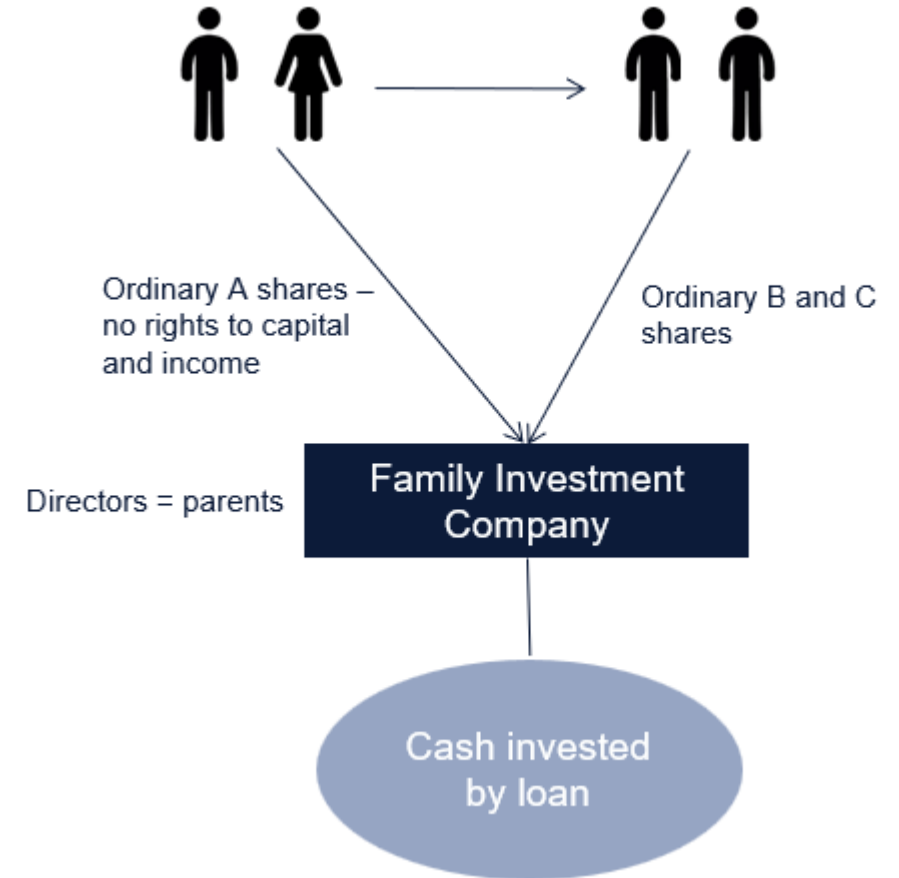
Key Considerations For Your Client

This is dependent on a number of factors including but not limited to:

- Who'll benefit from the structure and how
- How to fund the structure
- Flexibility to exit and unwind the structure in future should circumstances change
- The level of control you wish to retain, hybrid trust structure?
- How value will be extracted and the use of different classes of shares.

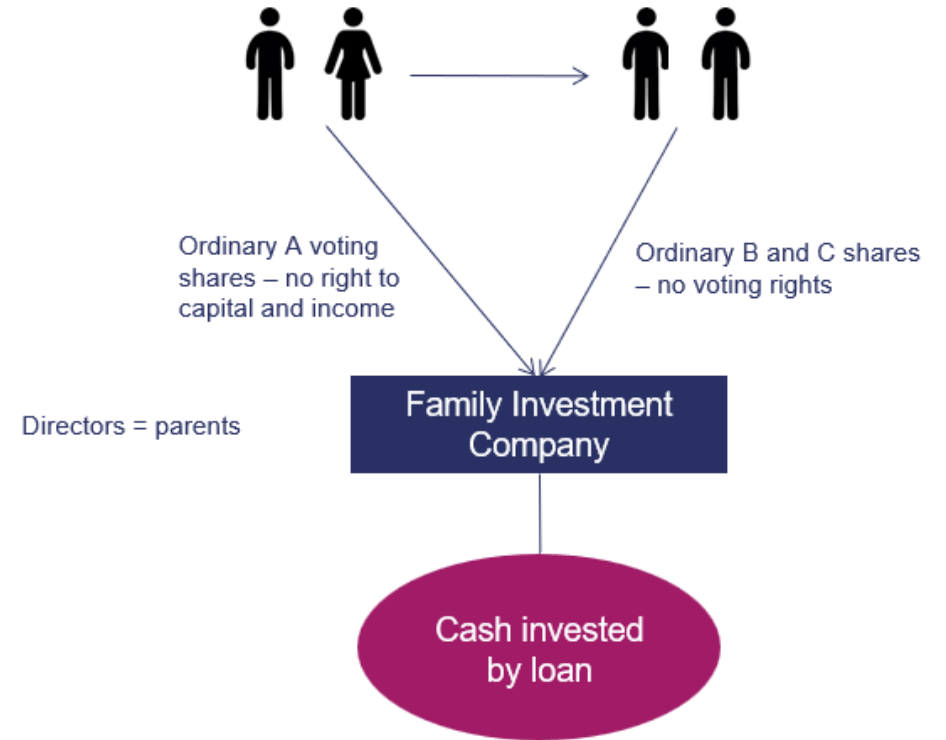
Typical FIC Planning

- A shares are voting shares = retention of control
- Value of retained interest: shares to which voting rights attached have inherent value (could be as much as 25% of net company asset value)
- As directors the founders have enhanced powers over dividend policy changes of share capital and general director consents
- Directors can only be removed/appointed with the consent of all shareholders
- Funding via loan or share capital
- Option to gift cash to children to fund their share subscription – PET for IHT so need to survive seven years (insure the IHT risk) or to gift shares at par value before funding the FIC



Using a Gift

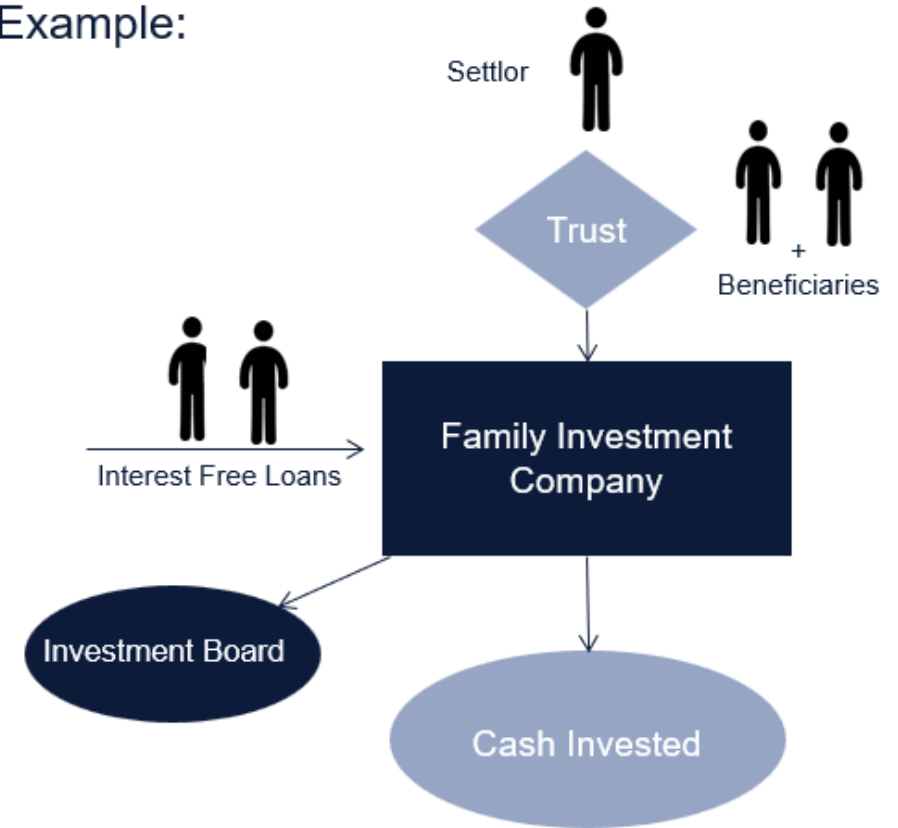
- Company formed with limited ordinary share capital – held by parents and children. Parents have voting shares, but with no income and capital rights
- Parents are the directors
- Directors have enhanced powers over dividend policy, changes of share capital, etc.
- Directors can only be removed/appointed with the consent of all shareholders (so low value in their estate)
- Ordinary shares subscribed for and gifted by parents
- Majority of funding can be provided by parent making interest free loans to company
- Parents can gift cash to children to fund their share subscription – Potentially Exempt Transfer for IHT so need to survive seven years (insure the IHT risk)
- Alternatively, parents gift shares at par value to children before funding the FIC.



Hybrid Structures

- Flexible structure using a trust and a FIC: capital for future generations but still controlled
- A trust can own the FIC or own some shares in it
- Consider IHT decennial and exit charges
- Minors – use flexible or bare trust
- Gives enhanced control and ability to provide for a flexible class of beneficiaries and unborn grandchildren

Example:



Addressing Asset Protection Concerns

- Family courts are willing to investigate the basis on which assets are held (to consider whether they can be determined to be matrimonial in nature and used to satisfy matrimonial claims)
- Pre-nuptial and Post-nuptial Agreements:
 - Can define assets as being non-matrimonial
 - Respected by the Court subject to overriding considerations of fairness and provided that the needs of the parties and children are met
 - Must conform to specific formalities
 - Can bolster protection for assets held in trust as well as those held directly
 - Restrictions in articles on share transmission and discounted value of minority interests represent additional protection
 - Appropriate Wills planning for all family members is equally important to keep assets within the family

FICs and Inheritance Tax

- Cash can be gifted to trustees to subscribe for shares to hold on bare trust for children at a time when the value of the shares is low (such gifts being potentially exempt for IHT purposes)
- Shares can be acquired by a family trust by way of gifts within the available nil rate band or loans to the trustees
- Asset value freezing effect: growth is removed from the estate of the founder for IHT purposes
- Discount on share values for minority holdings due to lack of marketability (helpful both for IHT purposes and in context of 3rd party claims on divorce)

FICs and Trusts Compared

FICs:

- Best suited as a vehicle for the accumulation and gradual handover of significant wealth (rather than short term extraction of profit)
- Requires bespoke input and advice from a range of professionals working collaboratively and therefore more significant set up costs as well as ongoing running costs

Trusts:

- Continue to be a good option for more modest gifting (e.g. limited to the available nil rate band every seven years or within the 100% APR/BPR cap or to use gifts out of income exemption)
- Scope to gift existing assets such as land with the benefit of holdover relief (whereas transfer of existing assets into a FIC can give rise to CGT and other tax exposures)

Careful assessment needed when considering whether opting for a FIC or a trust (or both)!

Both structures can offer a good degree of asset protection from 3rd party claims (on divorce for example)

Risks and Pitfalls to Consider

- Anti-avoidance provisions (transactions in securities/settlement provisions)
- Potential for increase in corporation tax rates or other tax changes
- Loaned money remains in the founder's estate
- Potential double charge to tax on extraction of profits
- Transfer of certain assets to the FIC can trigger CGT and stamp duty and/or SDLT
- Gifts to a company are subject to IHT: careful structuring required to avoid a CLT
- Benefit limited to shareholders unless a hybrid trust structure is used
- Importance of getting ongoing administration and governance right and keeping structure under review

Specialist joined up advice is key!

Any
questions?



Thank you
