FAMILY INVESTMENT COMPANIES

BRIEFING NOTE

A Family Investment Company (FIC) is an option for individuals who are considering a wealth preservation and succession planning strategy.

FICs provide an alternative to trusts as they enable family wealth to be passed to future generations in a tax efficient manner whilst allowing the founder to retain significant control of the assets. As well as being tax efficient, the flexible structure also offers increased asset protection in relation to divorce proceedings and creditors.

KEY BENEFITS

Tax Efficiency

- **Inheritance tax** – shares in the FIC can be given to family members and, seven years, the value of the gifts will fall outside of the founder's estate for inheritance tax purposes.
- **Tax efficient accumulation of wealth** – income and gains are taxed on the FIC at the corporation tax rate (20% for 2015/16). This rate is far lower than the current rate of income tax for trusts of 45%, and the higher and additional rates of income tax for individuals of 40% and 45% respectively.
- **Dividend income** – there is no tax payable on UK, and most offshore, company dividends received by the FIC.
- **Capital gains** – FICs can benefit from indexation allowance.
- **Inheritance tax** – FICs are not subject to the 20% entry charges and 10-yearly for inheritance tax that are applicable to trusts.

Bespoke Structure

- **Alphabet shares** – may be appropriate for each family member to hold a different class of share with different levels of voting rights, rights to income and rights to capital on a winding up.
- **Funding** – the FIC may be funded partly or wholly by way of loan and this will allow the founder to withdraw capital from the FIC tax-free.
- **Flexibility** – the bespoke Articles of Association (and optional Shareholders' Agreement) are drafted to meet the precise needs of the family.

Asset Protection

- **Divorce** – FICs benefit from the 2013 Supreme Court decision in Prest v Petrodel that reinforced the inability of the family courts to "pierce the corporate veil" to seize the assets of a company on a divorce.
- **Restriction on transfer of shares** – the Articles of Association of the FIC can provide restrictions on the transfer of the shares to spouses and to non-family members.
- **Shareholders' agreement** – additional protection can be achieved under a separate agreement between the shareholders.

Control

- **Distribution of profits to shareholders** – the directors (who normally include the founder) have the power to decide the level and timing of any dividends.
- **Investment decisions** – the directors have completed control.
- **Appointment/removal of directors** – the structure can require approval of the board before changes can be made.
- **Voting** – the founder can retain voting shares if appropriate, and give away non-voting shares.

Privacy

- **Unlimited company** – an FIC can be structured as an unlimited company so that there is no requirement to file publicly available annual accounts at Companies House.
- **Nominee arrangements** - if complete anonymity is preferred, it is possible for nominee directors and nominee shareholders to be appointed.

KEY RISKS

Taxation

- Capital gains tax on establishment – if capital assets (as opposed to cash) are transferred to the FIC, there may be a capital gains tax charge on the transfer. Holdover relief or entrepreneurs' relief may be available in limited circumstances.
- Risk of double taxation – income and gains of the FIC will be subject to corporation tax and, to the extent that profits are distributed, the shareholders may be subject to further tax on the receipt of dividends. This may be mitigated through effective planning.

Costs

- Initial costs – these are likely to be higher than for a standard discretionary trust.
- Ongoing costs – annual running costs include filing fees with Companies House, accountancy fees and ad hoc legal fees.

Liability

- Unlimited company – if the FIC is set up as an unlimited company for the purposes of privacy, the shareholders face unlimited personal liability for the debts of the FIC. The FIC can be set up as a limited company.