

BNO guide to Setting up a Family Investment Company in the UK

This guide is intended for people from Hong Kong settling in the UK via the British National (Overseas) (BNO) visa. Geldards is one of the UK's leading full-service law firms, with experience of helping individuals in the UK and internationally. Our experienced professionals can help guide you through your relocation to the UK and provide advice and support to help you start your new life.

If you are considering setting up a trust to manage your wealth and pass it onto the next generation, you may like to consider as an alternative setting up a Family Investments Company (FIC).

What is a family investment company?

A family investment company ("FIC") is a private limited company used as an alternative to family trusts. A FIC is flexible as it allows the founders (usually parents) to create a structure where they can grow and manage the family wealth and eventually transfer the company to the next generation.

How to set up a FIC?

- A FIC is usually incorporated with subscriber shares issued at nominal value to the relevant family members and the shares can be issued with different voting and income rights (e.g. a particular class of shares can be non-voting but entitled to an income at the discretion of the directors).
- Following the incorporation of the FIC, the next step is to fund the FIC by either:
 - gifting the assets which can be made up of cash, property, or investments. If property or shares are transferred to the FIC, stamp duty land tax or land transaction tax (property) or stamp duty (shares) may be payable, and the value of the asset transferred will be attributable to Inheritance tax ("IHT") and not after the asset appreciates in value i.e. any increase in value of the asset will not form part of the estate for IHT purposes; or

- if the asset consists of only cash, it can be loaned to the FIC. A loan allows the founders to extract cash from the company through repayment of the loan rather than through a dividend. The repayment of the loan will not be subject to any tax and can provide the loan holder with an income. Eventually the loan can be assigned to other family members and if the founder (donor) survives seven years from the gift of the loan, no IHT will be payable but if the donor dies within the seven year period, IHT would be payable but taper relief may be available.

- Once the cash/non-cash asset has been transferred (by way of loan/gift) to the FIC, the investments are managed by the directors to generate income and/or capital growth.
- Gifting of assets can trigger a liability to capital gains tax even though no cash is received for the asset and any chargeable gain will have to be managed.

Which taxes will apply in respect of a FIC?

- Inheritance tax - if the FIC is set up correctly in accordance with the principles discussed in this article, it is likely that little or no IHT would be payable.
- Corporation tax - would be payable on any profits. From April 2023, corporation tax will be increased to 25% for investment companies (FICs will not benefit from the 19% rate of corporation tax after April 2023. Dividend income received by the FIC is usually corporation tax free but where cash is extracted from a FIC, there is a risk of a double taxation (e.g. corporation tax and then income tax on the payment of the dividend).
- Capital gains - any capital gains by a FIC is chargeable to corporation tax.

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- Income tax - salaries may be paid to directors to manage the investments as well as pension contributions and other benefits but note that once the annual personal allowance of £12,500 is used up, income tax would be payable.

Why choose a FIC over a family trust?

- The use of family trusts has significantly reduced since the introduction of a tax charge on trusts which receive assets at 20% on the value settled to the extent it exceeds the settlor's nil rate band. Also, family trusts will pay periodic charges of up to 6% every 10 years and on an exit.
- Anti-avoidance legislation will apply to family trusts where a settlor makes a gift and retains any interest in the assets which has the effect of the value of the assets forming part of the estate for IHT purposes.
- A FIC would be more beneficial compared to a family trust for investments over £1,000,000 and family trusts would be more beneficial where the value of the assets is under the nil rate band and would therefore not trigger an IHT charge in the first 10 years and maybe beyond.

Other points to consider

- The value of shares in a FIC for IHT purposes are worth less than owning the assets in the FIC outright due to minority shareholder discount (e.g. if shares are transferred, shares will not be valued in proportion to the value of assets which sit in the FIC as a third party would not pay full value for shares where they do not hold full control).

- A FIC can be structured to prevent spouses of children/grandchildren holding shares and in the event of a divorce, it is unlikely family courts will become involved in the business of a FIC.
- The government can change the law and therefore clients should regularly review the structure with us to minimise risk.

What should I do next?

If you require any assistance, guidance or advice, please contact the **Geldards BN(O) team**.

Language Notification

We can only deliver our advice and services to you in English. By instructing us to act for you in this matter, you accept that it is your responsibility to arrange for correspondence and documents sent to you to be translated so that you understand them and to have translated into English any correspondence you send to us. We will act upon your instructions based upon the English translation.

嚟英國購買房產嘅 BNO指南

本指南適用於透過英國國民（海外）（**BNO**）簽證嚟英國定居嘅香港人。**Geldards**係英國領先嘅全方位服務律師事務所之一，擁有幫助英國和國際個人嘅經驗。我們經驗豐富的專業人員可以幫助您完成搬遷到英國的旅程，並提供建議和支持，以幫助您開始新的生活。

When you are considering buying a property in the UK to make your new home, consider that there are two types of property in England and Wales, 'Freehold' which are usually houses and 'Leasehold' which are usually flats.

The basic process to buy each type of property is the same, but varies slightly for leaseholds as the Landlords' requirements also need to be considered.

Once You Have Found A Property

Once you have found the property to purchase you will need to:

- Instruct a solicitor
- Let the estate agent know who your solicitor will be
- Arrange your finances
- Arrange for a survey to be carried out to ensure that there no defects and that the asking price is correct.

Basic Procedure

- The estate agent will issue details to both the buyer's solicitor and seller's solicitor
- The sellers will prepare the draft Contract documentation
- The buyer's solicitor will review and raise enquiries and request conveyancing searches
- Further enquiries may be necessary following receipt of the searches
- Once all enquiries have been resolved and searches are back, a date for moving (completion) can be agreed

- On the agreed completion date, you collect the keys and move into your property
- The process usually takes about 20 weeks from instruction to completion

Leasehold Property

With a leasehold property you will pay certain charges to the building owner called ground rent and service charge. The service charge is a proportion of the charges incurred for the maintenance of the building and the ground rent is an additional charge payable to the landlord.

Other Considerations

In addition to your solicitors' fees, there will also be charges for disbursements these include searches, Land Registry fees, Stamp Duty, which is a government property tax (if you are not resident in the UK for at least 183 days in the 12 months prior to purchase a higher rate of stamp duty will apply) and if leasehold, fees payable to the landlord.

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