

# myerson MAGAZINE

## A Modern Family

Alternative families  
and surrogacy law.

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# THINKING OF STARTING A FAMILY?



Deciding to start a family can be one of the most exciting decisions that you make in life.

If you are considering fertility treatment, it is important to seek out expert legal support to assist you in making the right decisions on your route to parenthood.

## Who is the Legal Parent?

The woman who gives birth to the child is always the legal mother, whether or not donor eggs and/or donor sperm were used as part of the treatment. If the mother is married or in a civil partnership, her husband, wife or civil partner will be the other legal parent.

If the mother is unmarried or not in a civil partnership, signed consent forms will need to be given to the fertility clinic stating who the mother intends to be the legal parent. As long as the mother and the other intended legal parent sign the correct consent forms, they

will both be legal parents of the child at birth.

It is very important that treatment takes place at a HFEA (Human Fertilisation and Embryology Authority) licenced UK fertility clinic, otherwise this can affect parental rights.

Single parents can also go through fertility treatment. In this scenario, the birth mother will be the only legal parent of the child.

It is important to note that legal parenthood is not the same as parental responsibility.

Parental responsibility is only given to the non-birth parent if they are married to the mother at the time of birth or, they are registered as the parent on the birth certificate. If there is a dispute about parental responsibility, you will need legal advice.

## Donors

Every year, around 3,500 children are conceived with the help of donor eggs and/or donor sperm. Individuals who are able to donate often recognise the extraordinary gift they can give and the fact that they do not remain anonymous does not affect their choice to donate.

The law surrounding donor anonymity has changed over the years. Anyone who donated before 1 April 2005 is automatically an anonymous donor. For any donors who donated after this date, the children born from the donation can ask for their donor's name and last known address, once they reach 18 years of age.

## Storage and future use of embryos

After treatment, you may have excess embryos and you can choose to store these for up to 10 years for future use or longer, in special circumstances. After the end of the chosen storage period, the embryos will be allowed to perish.

If the embryos were created using both you and your partner's eggs and sperm, you can choose how long they are stored for, up to

the 10-year limit. However, if the embryos were created using donor eggs and/or donor sperm, the consent of your donor(s) would be needed for the continued storage and future use.

Donor sperm from one donor can only be used for 10 families and it is therefore possible to "reserve" sperm for your future use. This is an option for those who are wanting further children who are genetically related.

## Surrogacy

If you are using a surrogate to start a family you will undergo fertility treatment with your surrogate.

At birth, the surrogate mother will be the legal mother of the child, regardless of the presence of any genetic connection. If the surrogate is married, the legal father will likely be her husband. If the surrogate is unmarried, the legal father will likely be the intended father.

For that reason, after birth, the intended parents will need to make a special court application to obtain parental rights, known as a parental order. Couples and single parents can apply for a parental order.

Commercial or legally binding surrogacy arrangements are not allowed in the UK, like they are in some other countries.

It is possible to use a surrogate from another country and have your fertility treatment abroad. If you are using an international surrogate, you will also need to get legal advice from a lawyer in the foreign country, as well as in the UK.



If you need fertility or surrogacy law advice, contact one of our specialist solicitors within our Family Law team. Call us on **0161 941 4000** or email [lawyers@myerson.co.uk](mailto:lawyers@myerson.co.uk)

**Nichola Bright**  
Senior Solicitor - Family Law

# THE RIGHT WAY UP



**Building your dream home or making sizeable improvements can be a significant life event.**

**However, failing to avoid the common pitfalls could cause your dream project to crumble down.**

## **Select the right team**

Selecting the right team for your project is crucial and it is vital that you do your research on the designers as well as the builders to determine their suitability for your project. Questions to ask should include:

- Is the architect registered?
- Do the architect and builder specialise in projects of the size and scale of yours and build the kind of home you want to live in?
- Do they have a style that fits with what you want?
- Have you seen their work?
- Have you spoken with previous clients or others with experience of working with them and would they personally recommend them?
- Are they personally suitable?
- Do you have a personal bond with them?



Remember that you need to be able to communicate clearly and candidly about what you want. Their role is to transfer your vision into reality, not make their vision your reality. A great relationship with the team can overcome many issues.

### Contract is king

Make sure you have contracts in place. Architects are expected to enter into a written agreement before they commence work as part of their code of conduct, but builders rarely have anything formal.

You should not allow the contractor to carry out any work without a written contract in place. The contract should contain details of the works, the price and the terms and conditions.

A contract is not just intended to set out what happens when things go wrong. It should also detail the rules which govern the project including when payments are to be made, what happens if you want to change the works or what happens if there are delays.

When purchasing shopping online, you will be agreeing to terms and conditions which are far more detailed than what many people have in place with a builder, who is working on what is often their most valuable asset. If your builder is not prepared to sign a formal contract, then you should seriously consider their suitability for the job.

### Be decisive

Problems will arise which could stop or delay the works, so being decisive to solve problems quickly for the project to move on is very important.

We often come across projects where work has stopped because of a problem and the builder has moved onto another job. Getting them to return may then have to wait until that job completes.

**If you allow the contractor to move to other jobs, completion of your works may be delayed by weeks, months or sometimes, years.**

### Make sure you have the right insurance

Check your insurances by speaking to your house insurers or broker. You need to review your policy terms and if necessary inform them about the works whilst they are ongoing. If you do not, you risk having no cover.

You should also check your chosen team's insurances. The designers should have professional indemnity insurance whilst the contractor should have an 'all-risks' policy. You need to ensure that the insurances are adequate.

As an example, the all risks policy should cover the works but may not cover an existing building which is being extended. Also check if they cover damage to neighbouring property, temporary site buildings, hired plant and materials stored on site. The works are being carried out on your property so the risk of damage to any of these may be yours.



To speak with one of our experienced construction lawyers about a building project, contact a member of our Construction Law team.

Call us on **0161 941 4000** or email [lawyers@myerson.co.uk](mailto:lawyers@myerson.co.uk)

**Neil Armstrong**  
Partner - Head of Construction

# What is a Family Investment Company?

A family investment company or FIC is nothing new.

Essentially, it is a company which is used for investment purposes and people have been using them for decades.

But why have FICs become so popular in recent years?

## In short, the reasons are twofold:

1. In 2006, the government made a change to how trusts are taxed making them less attractive to hold investment assets.
2. In comparison, corporation tax, the tax paid by companies, has reduced from 20% in 2015 to the current rate of 19% and is due to be reduced further to 17% in April 2020.

When you consider the highest rate of income tax payable by individuals is 45% (38.1% on dividends), the rates of corporation tax are very attractive.





## Why use a FIC?

In simple terms, the reason is wealth accumulation. As a FIC pays less tax than you would if you personally invest in assets or held them in a trust, the income earned, or payment received on the sale of those investments, are taxed at a lower rate, which means the FIC has more money to re-invest in further investments.

**Over a number of years, provided that the FIC re-invests its gains, it will accrue greater wealth faster.**

Accordingly, FICs are set up for the long-term and not the short-term, the idea being that the founders of the FIC, being mum and dad, set up the FIC and inject the initial funds to invest in assets. Their children, and in some cases their grandchildren will also be shareholders and benefit from the growth created by the investments held by the FIC.

Another reason is that FICs like all companies, have their own legal identity separate from the shareholders that own the shares in them.

This has two benefits in that the shareholders of the FIC benefit from limited liability, i.e. losses are limited to the value of the shares held by the shareholders.

Further, the assets held by the FIC may fall outside your tax estate for the purposes of inheritance tax (provided the FIC is properly structured).

FICs are therefore a very tax efficient structure to maximise accumulation of private wealth whilst also ensuring that any future inheritance tax bill is kept to a minimum.

## Setting up a FIC

If you are considering using a FIC, there are a number of initial steps that you need to think about, such as how much you are going to invest in the FIC and what assets the FIC will invest in. Are these existing assets or new assets?

Whilst we can advise you in relation to the legal structure of the FIC and drafting the relevant documents, you should also seek advice from your accountant or tax advisor and your financial advisor. If you don't have such advisors, we would be happy to make the necessary introductions.



If you have any questions about FICs and would like to receive further information, please contact one of our expert solicitors in our Corporate and Commercial team.

Call us on **0161 941 4000** or email [lawyers@myerson.co.uk](mailto:lawyers@myerson.co.uk)

**Scott Sands**

Partner - Corporate and Commercial

# The changing face of Buy to Let

There has been much media coverage of the Buy to Let (BTL) market and the continued attacks from a taxation perspective. But will the recent changes affect the thriving market in our local area?

The North, in particular Stockport and Manchester, continue to rank in the top 10 best BTL areas in England. The last BTL index of 2018, published by Lendinvest, ranked Stockport as the second and Manchester as the third best places to invest in buy to let property.

## Tax changes affecting buy to let property

Private landlords have come under attack in recent years and significant changes have been made to the way investment property and rental income is taxed. The rise of accidental landlords, those who have relocated or separated from a partner and let out their property, has been a heavy contributing factor.

## Stamp duty

When you purchase a second property, or the purchase is in a company name then there is an additional 3% charge to stamp duty in both England and Wales.

## Mortgage interest relief

Landlords used to be able to deduct all mortgage interest and other allowable costs before calculating their income tax liability. However, in April 2017 mortgage interest tax relief started to be phased out and will disappear completely by 2020/21.

Interest relief will be replaced with a credit of 20% of the rental income only against the final liability. These changes could result in many landlords' income being moved up into the next income tax bracket, lowering their returns substantially.



## Capital Gains Tax and lettings relief

Capital Gains Tax (CGT) is nothing new to landlords' but for those accidental landlords who have resided in the property for a period of time prior to letting, recent charge changes and the removal of lettings relief could have a significant impact on the amount of CGT liability on a sale.

If you had lived in the property you are selling at any point, you were able to obtain lettings relief worth up to £40,000 (£80,000 for a couple). However, this relief will no longer be available from April 2020.

## Incorporation

In order to minimise tax liability many landlords with an existing portfolio are considering transfers of their existing properties to a company. Some of the tax benefits include:

- **Property rental companies will not be affected by the loss of mortgage interest relief.**
- **Companies pay corporation tax at 19%, reducing to 17%, in 2020 on the disposal of residential property as opposed to capital gains tax which will be either 18% or 28%.**

It may be possible to obtain CGT and stamp duty relief on the incorporation provided that the property rentals are being operated as a business.

Consideration should also be given, as to whether new properties should be bought using a company in order to obtain the above benefits. It may also be possible to structure such companies as family investment companies.

## Energy Performance Certificates – are you up to speed?

An EPC (Energy Performance Certificate) gives a property a rating for its energy efficiency – a score of A being the most energy efficient and score of G being the least. Every property that is tenanted must have an EPC.

For new tenancies (or tenancy renewals) entered into after 1st April 2018, the property must have an EPC rating of E or higher. If the property has an F or G rating, the landlord must not let it out to tenants until energy efficiency improvements have been made to the rating.

For continuing tenancies (those which were already in place on 1st April 2018) with an EPC rating lower than an E, the landlord has until 1st April 2020 to make the energy efficiency improvements.

Letting a property which does not meet the minimum energy efficiency requirements can result in a significant financial penalty for the Landlord.

At Myerson, our residential property solicitors can help existing landlords with any of the recent taxation changes. Alternatively, if you're looking to climb the Buy to Let ladder, speak with one of our property experts to see how we can help you.



Speak with one of our residential property lawyers

Call us on **0161 941 4000** or email [lawyers@myerson.co.uk](mailto:lawyers@myerson.co.uk)

**Heather Adams**

Senior Solicitor - Head of Residential Property

# Foreign Connection:

The importance of planning when you own property abroad



**Property interests in more than one country? Careful estate planning across different jurisdictions is necessary to ensure that property remains safe for future generations.**

In England and Wales, people have what is known as “testamentary freedom”, meaning they can make a Will and leave their assets to anyone they wish (limited to the circumstance). Despite this, many overseas jurisdictions have “forced heirship” rules which stipulate who inherits an estate by law. These rules override anything that is written in a Will.

It is important that advice is sought from an expert in the jurisdiction where assets are held. An expert lawyer can prepare a Will which deals with your global assets, but it can often be better to have a separate Will in the foreign jurisdiction where you own a sizeable asset. The planning that is put in place will depend on which jurisdictions are involved and what their laws say.

If you own property in different EU countries then regulations introduced in 2015, known as “Brussels IV” will be relevant to you.

These regulations attempt to reduce the uncertainty that people face regarding inheritance when owning property in different jurisdictions. All EU member states signed up to this regulation, with the exception of the UK, Ireland and Denmark.

Even though the UK did not opt in to the new rules they are still relevant where people own property in an EU country that did. Essentially, the regulations offer a default position if no planning has been done, but also give you the option of electing that the laws in your country of nationality will be the laws which will govern your estate as a whole. This means that English or Welsh people who have assets in the EU can bypass the “forced heirship” rules.

### For individuals who own property outside the EU

Which laws apply will depend on where the individual is domiciled (resides) and whether or not Wills have been made in different jurisdictions.

Domicile is not a clear-cut subject and needs to be looked at in detail. If you were born in England and have always had your main home in England, then you will be domiciled in England.

For those people who now reside somewhere different to their country of birth, the situation is more complicated.

It is difficult to change your country of domicile and it will also depend on individual circumstances.

Unlike other taxes, your inheritance tax position depends on your country of domicile.



If you are domiciled inside the UK, you will only pay UK inheritance tax on your global assets. If you are domiciled outside the UK, you will only pay UK inheritance tax on your UK assets. Other taxes may apply in other jurisdictions.

Our estate planning experts are able to advise you on the best way to deal with your foreign assets to achieve the best outcome for you and your family. We also regularly advise bereaved families on the estate administration process when there is foreign property involved.



Speak with one of estate planning lawyers

Call us on **0161 941 4000** or email [lawyers@myerson.co.uk](mailto:lawyers@myerson.co.uk)

**Clara Staunton**

Senior Solicitor - Wills, Trusts & Probate

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