Special General Meeting

Incorporation

19th July 2018
7.30pm

1) Summary

2) That we amend rules

2) So that we can become a Company limited by Guarantee (With Articles and appended rules)

3) That we transfer all assets to this CLG

4) That the Trojans Club as an association is then dissolved

5) That members of GC proceed in accordance with plan and timetable outlined by the Chair

In parallel

6) we change arrangements with PLC repaying outstanding loan and releasing charge. PLC will work with us to reduce their potential liability and gift back monies.

Why are we doing this?

Club has grown in complexity significantly over recent years, with increased numbers of members, staff, contracts, leases and external funding, the committee has discussed moving to an incorporated body for some time, as it is a much more appropriate structure than our current unincorporated association.

An ‘unincorporated association’ is an organisation set up through an agreement between a group of people who come together for a reason other than to make a profit (for example, a voluntary group or a sports club).
You don’t need to register an unincorporated association, and it doesn’t cost anything to set one up.
Individual members are personally responsible for any debts and contractual obligations.

Advantages of Incorporation

Ability to access external funding – such as that being offered [illegible] RFU

Increased professionalism and accountability through Directors

An unincorporated association cannot hold property in its own name and therefore any property is held by trustees. Each time one of those trustees retires or dies, the property has to be transferred to the new trustees. This involves time and expense.

Advantages of Incorporation

Members of clubs set up as unincorporated associations may be personally liable for the debts of the club, if these debts cannot be met from the assets of the club or under an insurance policy. If those committee members were instead directors of a company, co-operative or CIO they would have limited liability and may only be personally liable if they had committed some wrongdoing or if the organisation continued to trade when insolvent.

Unincorporated associations cannot sue or be sued in their own name. Legal proceedings must be brought and defended in the names of the committee members. Conversely companies, co-operatives and CIOs can sue and be sued in their own name.

Potential Disadvantages of Incorporation

Unincorporated associations are not generally subject to any outside scrutiny and their rules and accounts are private documents.

Conversely, companies are subject to outside scrutiny.

Companies must file certain documents at Companies House including annual reports and accounts and these are therefore public documents
(co-operatives and CIOs are under similar obligations to file documents with the Financial Conduct Authority and the Charity Commission respectively).

This will involve time, effort and some minor expense in preparing returns and accounts. Estimate from HWB (our accountants) is that this is about £1,000 in year one and less in following years.

Why now?

Apart from the risks to Trustees, Committee and Other Members, the club unanimously agreed at a SGM in October 2017 to move forward with the RFU on the development of an ATP.

There have been lots of discussions on lots of different topics to move this forward, the final remaining condition is that the RFU will not deal with unincorporated associations on this issue.

So to progress the 3g Pitch, we need to incorporate by the 24th August.

The excepted timetable from the RFU is shown below

- Provide evidence of incorporation 24th August
- RFU Steering Committee Approves - September
- February – Commencement date
- February – Facilities management decision by Trojans
- March – Build starts
- May Completion

Sport › Rugby Union

Exclusive: RFU to halt £50m plan for artificial grass pitches

share

7

June 2018

The artificial turf at the Allianz Park, home to Saracens Rugby CREDIT: ANDREW MATTHEWS/PA

Last week

Following a recent RFU Board meeting, a decision has been taken to take a build break for Phase 4 of our Rugby365 programme, to undertake a strategic review of the impact of the project to date.

We are keen to reassure those who have had confirmation that they will host an AGP at their club, and as such wanted to reiterate our continued support and long-term commitment to the facility.

We remain fully committed to supporting Trojans launching your new AGP, and engaging with the local community to encourage use of the pitch throughout the year.

Structure

We have asked and paid for formal advice on what sort of incorporation to pursue

Recommendation is that we become a Company Limited by Guarantee.

‘Based on how the Club is currently constituted and its not-for-profit objectives, as well as our experience of advising other sports clubs on the incorporation process, **we would recommend the company limited by guarantee structure** for the Club.’

Why a CLG

CLGs do not require any upfront capital commitment from members and there is no need for shares to be issued and transferred among members. Instead, the members undertake to contribute a predetermined nominal sum (£1) to the liabilities of the company, which will only be called upon when the company is being wound up.

- CLGs can benefit from a separation of management and ownership and are run by a board of directors which will often be separate from members. Directors of a private limited company are not, as a general rule, personally liable for the debts of the company. However, a company's directors may incur liability to the company's creditors or other third parties in certain circumstances, including where fraudulent or wrongful trading has occurred and where directors have otherwise breached their fiduciary duties.

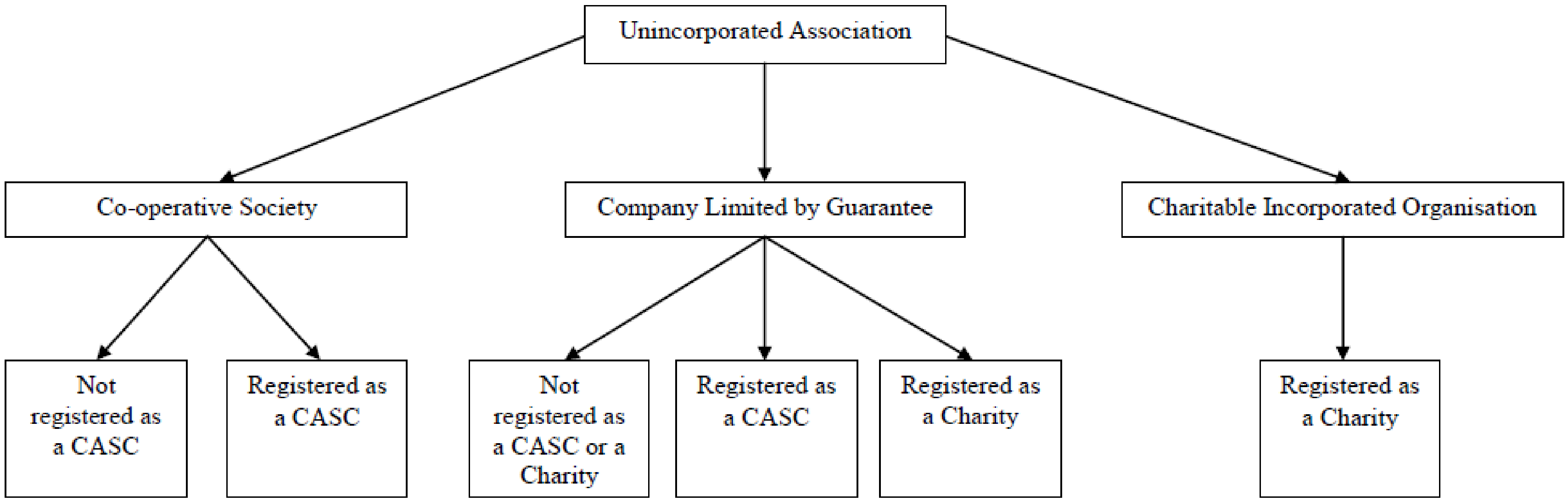
What happens after CLG is formed?

‘Given the different activities carried on by the Club, it might be worth considering at a later stage incorporating subsidiaries to sit beneath the CLG parent company. For example, the club bar is presumably run as a profit making enterprise and this could be incorporated as a separate company limited by shares with dividends paid up to the parent. The different sporting divisions of the Club (e.g. hockey, rugby etc.) might also benefit from separate wholly owned subsidiary status. ‘

This could also include a move to charitable status if required, which is quite straightforward.

Incorporation

<u>Choice of Structure</u>



Company limited by Guarantee

Benefits

A company is the most common type of corporate structure. It is also the most commonly understood structure. Counterparties (such as trading partners, banks etc.) will easily understand a company structure. It is most like our current membership structure.

A CLG offers the most flexibility for the club's structure. It is the easiest structure to have different classes of members (e.g. voting, non-voting or honorary), or more complicated decision making processes (e.g. special majorities for certain matters, or only selected classes of members being able to decide certain matters).

Company limited by Guarantee

Drawbacks

. More documentation is required.

A CLG can be suitable for any club.

It is likely to be the best structure for:
- clubs that are, or have ambitions to be, semi-professional;
- clubs with more complex trading operations; or
- clubs with a large and diverse membership.

Cooperative

Benefits

the procedure for transferring assets is usually simpler.

Who this is suitable for

A co-operative will be most suitable for:

- clubs with a smaller and/or more straightforward membership;

or

- clubs with more limited resources.

Cooperative

Drawbacks

A co-operative is less flexible than a CLG. There can, broadly, be only one class of member (although it is possible to have a form of associate member with no voting rights).

While a co-operative is usually cheaper and more straightforward to incorporate, registering as a co-operative is expensive where a club has a more complicated constitutional structure.

The Financial Conduct Authority (FCA), which is the registration body for co-operatives, charges significantly more fees if a club makes amendments to their rules.

Charitable Incorporated organisation

Benefits

CIOs are subject to the accounting and reporting requirements set out in the Charities Act 2011, which is less onerous than the Companies Acts accounting regime. Unlike Companies House, the Charity Commission does not currently charge for registration or the filing of information; nor does it levy late filing fees. This may change in the future in line with CLGs and co-operatives.

Charitable Incorporated organisation

Drawbacks

The legal framework for CIOs is new. As such, it may take some time for clubs and other parties (such as funders and lenders) to understand with the various requirements. There are no plans to maintain a searchable register of charges over CIO assets comparable to that maintained for companies by Companies House. This may discourage some lenders.

Suitability

A CIO will be most suitable for a club with access to detailed professional advice. As this is a new structure, and the law around this is not yet clear, clubs should take their own detailed advice before embarking on this structure. May be unsuitable for clubs wishing to obtain loan finance.

Are there any tax implications?

No.
We have received generic advice from the RFU, and specific advice on VAT and stamp duty land tax from the RFU which has been paid for, reviewed and approved by our accountants HWB

VAT advice sought. No adverse VAT implications to incorporation.

Capital Gains Tax and Stamp Duty advice sought, along with valuation on premises completed (there is no change in value if RFU pitch is built)

No adverse implications of a chargeable event so long as Trustees are not directors of new CLG

Are there any tax implications?

This has been confirmed by our accountants HWB.

They also recommend sending the RFUs tax clearance letter to HMRC, which has now been done by HWB. (which is why the resolution states –subject to the necessary tax clearances)

There are of course tax changes – if our income goes up from RFU pitch we pay more tax etc, but there is no direct tax issue linked to incorporation.

We intend to look into optimisation of VAT position in long term.

Constitution

Drafted following RFU generic guidance for unincorporated associations becoming incorporated.

Discussed with general committee, PLC and trustees, opportunity for whole club to comment.

Then redrafted and checked and approved as compliant and meeting company law by Solicitors which Trojans paid for.

Legal Advice also to append existing club rules, subject to amendment to remove Duplication from articles, and any updates from Companies act 2006

Draft constitution

Objectives

Continue the structure and practices of existing members club, but as a CLG.

- Multi sports club for whole community
- Allow different classes of membership
- Open to everyone
- Not profit making
- Able to remove or not allow membership for good reason
- Upon dissolution any remaining assets are given to non profit sports organisation
- Directors not able to be paid for being directors
- AGM for members
- CASC regulation compliant
- Continue VAT exemptions
- Continue exemptions which currently give us discretionary 100% rate relief
- No change to existing rules and regulations
- Valid according to companies Act 2006

Differences

Very few

Main one that a board of directors

One each elected by sections and others by Members which must meet up at least 4 times a year,

Effectively replaces part of role of our trustees, sitting above the general committee to who the day to day running of the club is delegated

Requirement to declare any interests

Ability to have proxy votes

Directors

Names for Directors on draft articles are those that will be sent to companies house for incorporation.

Currently have vacancy for one from Hockey section, and two further directors

These can be added - so no immediate urgency

Summary

The circulated and discussed articles and rules are suitable for our initial start and gives us flexibility to change if required.

Timeline - asset transfer

The transfer of the assets of the Club would be documented in a single asset purchase agreement between the Club's trustees and the company with the steps required to effect the transfer of the different assets (e.g. novation of third party contracts (e.g. with suppliers), conveyance of properties and assignment of IP and goodwill) being completed simultaneously with the completion of the agreement.

If certain assets of the Club are not held by the trustees, separate agreements will need to be entered into between the relevant owners and the company.

Timeline - Asset transfer

To incorporate a CLG, the memorandum of association and Forms must be lodged with Companies House with the appropriate fee. The incorporation process can be completed within 48 hours.

The timing of the transfer of the assets of the Club into the newly incorporated company will depend on the number and nature of the assets to be transferred, as well as the complexity of the ownership structure to which the assets are subject.

Advice from Solicitors is that this is not difficult or complex, and they are currently putting steps in place to achieve it.

When all the assets are transferred, the Trojans club as an incorporated association can be closed down

A short summary of where the PLC is, and what is happening

In 1983 a company was set with shareholders (the trojans PLC). It raised £53,000 from members, local businesses and donations, with a charge on the land.

This was loaned to the club, and managed by directors. Votes only with Directors' appointed by trustees of Trojans

The PLC has been formally dormant with companies house for some years, and the existing Directors, one of whom is also a trustee of the club, looking to wind this up.

The majority of the shares have been handed back to Trustees, i.e. the club, and there is £18,975 of shares still in existence, which the PLC have been trying to locate and arrange for them to be given back as well. – otherwise the loan is outstanding.

Shareholder Companies have gone out of business, shareholders have moved, died or can’t be located. There are a small number of existing members, who don’t want to give back their shares, or haven’t made the decision to do so yet.

A short summary of where the PLC is, and what is happening

The PLC will give up the charge on the land, and therefore allow the ATP to go ahead, if the remaining debt to the shareholders (c20K) is submitted to the PLC.

It is also a whole club debt, and so any section covering the initial risk to PLC directors, would expect to be recompensed in the medium term.

The rugby section are willing to commit £18.9k to a plc bank account to enable the charge to be cleared and to progress the AGP.

There is nothing to stop the PLC doing this, and it is a quick and pragmatic solution.

The club is paying for advice on how to ensure that this £18.9k does not disappear – if the PLC is wound up and money is remaining, it goes to the crown, and is lost to the club.

The RFU do not require the charge to be removed, and are happy with a short letter from the PLC consenting to the RFU lease, but the PLC require a formal legal review of the PLC constitution, and the new constitution of trojans club in order to do this, which is expensive and time consuming.

Summary

Rugby will pay £18,975 to replace the charge on land, which will allow charge to be released.

Club to work with PLC for optimum wind up.

Summary

Long been intention of club to incorporate

Part of journey of developing club and becoming more professional, giving opportunity to adapt and seize opportunities.

Catalysed by opportunity offered by RFU which club has unanimously voted to pursue

Had professional legal and financial advice

Consulted club and general committee.

Recently set timeframe of incorporation by 24th August

Enables club to generate RFU funding without limiting options in longer term

Next steps

SGM 19th July

Subject to agreement at SGM

- Final tax clearances received via HWB from HMRC
- Solicitors carry out asset transfer to new organisation with Trustees
- 24th August – evidence of incorporation given to RFU
- Post August – CLG begins existence
- Future - review of further development opportunities and development of trading subsidiaries / charitable status

In parallel

£18,975 payed back to PLC to cover potential risk to directors

PLC remove charge on land

PLC get advice on how to minimise £18,975k outstanding working with club to do so.

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Questions