

# RFU REGULATIONS

## **RFU REGULATION 5 – FINANCIAL (APPENDIX 2)**

### **PROTOCOL**

#### **Introduction**

If an Insolvency Event applies to a Club, the Club will be subject to the relevant regulations and a points deduction will be made under the Regulations. Those involved with the Club may wish the Club to continue in its position in the league as a different legal entity (the “Phoenix Entity”). The RFU will only agree to this if all conditions set by the RFU are satisfied.

#### **Continuing to Play**

The RFU may allow a Club to which an Insolvency Event has occurred to continue to fulfil its league fixtures on such conditions as the RFU may specify. The RFU may also permit a Phoenix Entity to fulfil the insolvent Club’s league fixtures pending a decision by the RFU as to whether the league position of the insolvent Club can be transferred to that Phoenix Entity (or another Phoenix Entity). That licence may have such conditions as the RFU specifies, and may be withdrawn by the RFU at any time.

#### **Decision Making Process**

In deciding whether to grant approval for the Phoenix Entity to take over the league position of a Club, the Club must satisfy the primary considerations listed below, and the conditions set out in this Protocol. The deadline for satisfaction of the considerations and the conditions shall be as determined by the RFU. Any evidence of details required must be full and accurate and the RFU may require further information or evidence as a result of what is supplied.

#### **The RFU’s Primary Considerations**

The primary considerations for the RFU if the Club wishes to transfer its membership to a Phoenix Entity are:

- Will the Phoenix Entity be able to play at its current ground next season and beyond?
- Does the Phoenix Entity have sufficient financial backing to operate in its current league (and any other league specified by the RFU) for the following season and beyond?
- Will all the outstanding rugby creditors of the insolvent Club be paid?
- Are any new ownership arrangements for the Phoenix Entity suitable and will the new owners and management of the new entity be satisfactory to the RFU?
- The circumstances of each Insolvency Event are likely to be different, and therefore the RFU may take any other matters into consideration it sees fit.

## **Further Conditions**

### **Information Required in Relation to the Existing Club**

The Phoenix Entity must provide such information concerning the insolvent Club as the RFU requires. Examples of the type of information and evidence required are set out below. The list is not exhaustive and the RFU reserves the right to require such other evidence as it deems necessary.

### **Ownership of the Existing Club**

1. Evidence of the ownership structure of the existing Club.
2. The provision of a copy of the existing Club's constitution.

### **Ownership of the Ground**

3. Evidence as to how the ground is held and what rights the existing Club has to play at the ground.
4. Evidence of any rights of third parties to the ground (including but without limitation charges, restrictions, rights of access).

### **Financial State of Existing Club**

5. The provision of a full and accurate list of all the creditors of the existing Club.
6. Full details of any proceedings against the existing Club either current or anticipated (eg application to wind up the club).
7. Evidence of all assets owned by the Club and an up-to-date valuation of them.

### **Information Required in Relation to the Phoenix Entity**

The Phoenix Entity must provide such information concerning the Phoenix Entity as the RFU requires. Examples of the type of information and evidence required are set out below. The list is not exhaustive and the RFU reserves the right to require such other evidence as it deems necessary.

### **Financial**

8. A proper business plan (with such level of detail as the RFU shall require) covering the next three years. This must be satisfactory to the RFU.
9. Information and evidence as to how the Phoenix Entity will be financed going forwards (for example, whether it will be raising capital or rely on trading to create its working capital). The RFU will need to be satisfied that the Phoenix Entity has sufficient working capital and banking facilities to be able to operate effectively in the relevant league.

### **Ownership and Management**

10. Details of the ownership and management of the Phoenix Entity in such detail as the RFU shall require. This must be satisfactory to the RFU.

## **Membership Requirements for the RFU**

11. The Phoenix Entity will need to provide evidence that it can comply with the relevant provisions of RFU Regulation 3.4.

## **Consents**

12. The Phoenix Entity must evidence the consent of the relevant Constituent Body to new arrangements.
13. The Phoenix Entity must evidence any necessary consents that are needed from anyone (e.g. local authority) to the transfer of the existing Club to a new entity.

## **The Ground**

14. The Phoenix Entity will need to provide evidence satisfactory to the RFU that it will be entitled to use the usual home ground of the insolvent Club for a minimum of three years and enter into any lease or licence required by the RFU to ensure this.

## **Financial Provisions**

15. The Phoenix Entity must pay all the rugby creditors as determined by the RFU within 28 days of being granted a licence to play in one of the RFU's leagues. Examples of "rugby creditors" are set out in the schedule to this protocol.
16. The Phoenix Entity must provide a bond to the RFU to guarantee its obligations to the RFU. This bond must be deposited in cash with the RFU and the RFU will hold it for a period of three years from the start of the following season. The RFU is entitled to use the bond to fulfil any obligations of the existing club or the Phoenix Entity as set out in the agreement to be entered into with the RFU and to meet any liabilities that the RFU reasonably believes should be paid in order to help safeguard the future existence for the club or to compensate any party in the case of any default of the Phoenix Entity. The bond will be the greater of 10% of the annual turnover of the old club as set out in their latest annual accounts or 10% of the average projected annual turnover for the Phoenix Entity as set out for its first two years of trading in its business plan.
17. In addition, the RFU may decide that personal guarantees are required from any owner or owners or third parties to ensure that obligations are complied with.

## **Agreement**

18. The RFU will require the Phoenix Entity to enter into an agreement (in a form required by the RFU) with the RFU setting out the existing club's and the Phoenix Entity's agreement to the various conditions to be met. That agreement must be entered into before the new entity can become a member of the RFU or participate in any League matches. In addition to those requirements set out above, examples of conditions that may be imposed are set out below.
  - (a) The Ground

Any necessary lease or licence arrangements required to satisfy the RFU that the Phoenix Entity has the right to use the ground will need to be entered into.

- (b) Financial

Agreement to supply management accounts (including cash flow forecasts and other relevant management information) on a quarterly basis or more frequently if required by the RFU.

The RFU shall have access to the Phoenix Entity's financial books, accounts and records on request.

(c) Rugby Creditors

Evidence of payment of the rugby creditors.

(d) Membership of the RFU, any League Organising Committee and the Constituent Body

The Phoenix Entity must agree to become a member of the RFU and to abide by the rules and regulations of the RFU and the World Rugby and, in the case of a club proposing to take the place of a Premiership Club, become a member of Premier Rugby Limited.

The Phoenix Entity must agree to become a member of any relevant League Organising Committee and the relevant Constituent Body.

The existing Club must agree to resign its membership of the RFU, the relevant League Organising Committee and the relevant Constituent Body and (in the case of a Premiership Club) to transfer any share to the Phoenix Entity.

(e) Other

A representative of the RFU shall be permitted to attend each board meeting or other meeting of the officers of the club for the purposes of observing the conduct of such meetings. For the avoidance of doubt, any such representative shall only attend such meetings as an observer and shall not have any influence over the proceedings of any such meeting, including the right to vote on any business conducted during the same.

The granting of an indemnity to the RFU against any claims made against them of any nature by a creditor, or an appointed Administrator, Receiver (of whatever nature) or Liquidator (such definitions as interpreted according to the provisions of the Insolvency Act 1986 (as amended) or similar office holder.

## **SCHEDULE**

### **Rugby Creditors**

#### **The following are examples of rugby creditors:**

1. Wages, redundancy payments and expenses for players, ex-players and employees of the Club, including any awards by employment tribunals.
2. Payments owed to the RFU and any RFU subsidiary or associated undertaking or to any Constituent Body.
3. Payments owed in respect of referees.

4. Payments owed in respect of coaches.
5. Payments owed in respect of medics, physiotherapists, strength and conditioners.
6. Payments owed to other rugby clubs or rugby bodies in England or elsewhere.
7. Payments owed to Registered Agents in respect of Agency Activity (as defined in RFU Regulation 8).