

# RFU REGULATIONS

## RFU REGULATION 4 – CLUB OWNERSHIP, MERGERS & ACQUISITIONS (APPENDIX 1)

### Proposed Guidance to Regulation 4

It is proposed that Regulation 4 be supplemented with the following guidance:

#### REGULATION 4

##### Guidance

##### 1. Introduction

1.1 The first object of the RFU's constitution is to "grow the Game in England through the Union's values and performance." In particular, it is a fundamental principle of the RFU league competition that there exists a pyramid structure based on promotion and relegation and (subject to certain caveats), on sporting merit. In its role as national governing body, the RFU must strive to ensure such principles are upheld and not circumvented by Clubs looking to create a de facto franchise system where league positions or even promotions are not exclusively achieved on merit but potentially also by changes of ownership, mergers or reorganisations.

##### 2. Changes of Control

2.1 When considering a change of ownership, the RFU shall take account of the following at all times:

###### a. Financial Sustainability of the Club

The RFU should consider whether the club will be financially sustainable (in at least the short to medium term), and in no worse position to its current position, as a result of the change of ownership, for example, the RFU may review current P&L and balance sheets and examine forecasts for the three years after the change of control; and how any working capital is to be financed if the club is not to be self-sustaining, and this is deemed appropriate by the RFU.

###### b. Reputability of New Ownership and Management

The RFU Regulations do not include a formal fit and proper persons test. Nevertheless, the RFU should have regard to:

- (i) the knowledge, experience, and competency of a proposed owner and management to operate the Club effectively; and if so whether or if such operation may bring the Game into disrepute, as a subjective test; and
- (ii) if the proposed owner(s) has/have ever been disqualified as a director, any unspent criminal convictions, involvement in other clubs (including insolvent clubs), any relevant bans, been the subject of bankruptcy proceedings etc, as an objective test (subjectively applied as and when necessary); which shall include a written declaration by the

proposed owner.

**c. Common Ownership**

Common ownership of more than one Club, whether both in England or one overseas, is subject to World Rugby Regulation 14 which is replicated in Regulation 4.2.

The RFU should have regard to the effect any common ownership of two Clubs would have on the integrity of the leagues in which either of those Clubs has. This may include, without limitation, the ability, or any perceived ability, of commonly owned Clubs:

- (i) to interfere with the integrity of a match between them;
- (ii) to work in such a way as to disadvantage third party Clubs (for example where the performance of one Club will affect the other commonly-owned Club in the same competition, such as in EPCR group stage competition); or
- (iii) to allocate resources such as to artificially distort competition (for example by manipulation of any salary cap, or another Club to become a “feeder club”).

The RFU should also have regard to the broader interests of rugby union in England, including:

- (i) The development of players qualified to play for England;
- (ii) Any effect on England representative teams; and
- (iii) The development of young players, whether professional or amateur.

**d. General Considerations**

In addition to the above, the RFU should also have regard to:

- (i) any other relevant regulations, by way of example, RFU Regulation 4.2, World Rugby Regulation 14, and the EPCR participation requirements (where applicable);
- (ii) any material effects on other stakeholders e.g. if a club is in a particularly parlous financial position, and in significant danger of insolvency, the RFU may view a more speculative takeover more favourably than if the same takeover was proposed for a more solvent club (this is particularly the case where a Club may otherwise fail to fulfil fixtures and therefore compromise the integrity of a league, and/or have an adverse financial impact upon other Clubs);
- (iii) the needs of the relevant Club balanced with the wider interests of the Game;
- (iv) consider whether there are any other proposals to consider (or likely to be able to consider in the short term); and

when making its decision, the RFU may reject, approve, or approve with conditions.

The ability of the RFU to consider whether it would be possible to impose any conditions on a change of ownership would resolve any concerns the RFU has in a more proportionate way than refusal.

### **3. Mergers**

- 3.1 The same considerations must be borne in mind for mergers as those set out above for changes in control. The RFU should have regard to the reason for the merger, which shall not be approved where the intention is in effect to transfer the league position of one (lower placed) Club to another (higher placed) Club. However, the Club(s) should generally be able to decide which name and league position the newly merged Club should take.
- 3.2 The RFU should have regard to whether the Clubs subject to the proposed merger are sustainable in their own right. This is likely to include analysis of the ownership of those Clubs' grounds. If there is a corresponding application for a ground move, then RFU Regulation 3.8 shall apply, however the result of a Club's application for a ground move shall have no bearing on the outcome of the RFU's consideration of such Club's proposed change of ownership, merger or reorganisation (and vice versa) and the RFU shall reserve its right to consider both proposals together.
- 3.3 The RFU should have consideration as to whether the reorganisation will result in two (or more) stronger Clubs better able to serve their players and supporters. Where two Clubs serve two different communities within the Game (such as amateur versus professional, or men's versus women's), then the RFU should have regard to whether a rationalisation would be in the best interests of those Clubs' communities.

### **4. De-mergers and Solvent Reorganisations**

- 4.1 There may be occasions when Clubs are the proposed subject of de-mergers and material reorganisations. Broadly, the same principles should apply as changes of control or mergers. The nature of the reorganisation will depend upon a number of factors including but not limited to the extent of due diligence done on financial sustainability, ownership and management. Such examples will turn on their own facts, and the RFU's decision shall not necessarily act as a precedent for the purposes of considering future cases.
- 4.2 Ultimately, the RFU should take the view that it is in the wider interests of the Game for Clubs to be fully integrated and offer more than just first XV rugby. In general, therefore, the RFU shall be reluctant to approve a proposal for a Club's first XV to split from the remainder of the Club if such a split is proposed as a means of circumventing RFU Regulation 13.2.4 (i.e. to allow what would otherwise be a second XV to play higher than Level 8). A better approach would be for the Club to consider how second XV rugby can be provided in an alternative manner.