RUGBY FOOTBALL UNION

Guidance for the proposed Directors and Secretary on the administration of companies limited by guarantee

1. Introduction

The purpose of this guidance is to provide a brief general introduction to some of the more common legal and practical issues which may be encountered in connection with the administration of your new company (a private company limited by guarantee) (the **Company**) and a brief summary of the main duties owed by the directors of the Company.

It is not possible to cover all the matters which may arise and, where you are in any doubt about a specific matter, please seek legal advice either from Farrer & Co LLP or your usual solicitors.

As Company law changes frequently (and significant reforms have come into place following the implementation of the Companies Act 2006 (referred to below as the **2006 Act**)), it is important that regard is had to the current state of the law before taking any major steps or implementing any major changes in relation to the Company, its structure, administration or operations. Please note, also, that some rules regulating the administration of the Company will derive not from statute but from the Company's own constitutional documents, principally its Articles of Association (referred to below as the **Articles**). Reference should always be made to the Articles of the Company before any step is taken.

2. Notepaper and Publicity for Name

2.1 Notepaper

One of the first steps you will have to take is to organise business notepaper for the Company. The information which must appear on the Company's letters, website, emails and order forms, in characters that can be read by the naked eye, is:

2.1.1 the full name of the Company, exactly as shown on its Certificate of Incorporation (although you may include "trading as [●***name***]" if you use a trading name);

2.1.2 the place of incorporation of the Company - the words "Registered in England and Wales" are sufficient;

2.1.3 the Company's registration number; and

2.1.4 the registered office of the Company. It is best to say "Registered Office" followed by the actual address. A (fictional) example appears below:

ABC Limited. A company registered in England and Wales with Company number 00123456. Registered office: Nowhere House, Noplace, England NO1 222.

2.2 Publicity for Name

The information in paragraph 2.1.1 above must also appear in legible characters on all "official" papers of the Company, including notices, official publications, bills of exchange, promissory notes, endorsements, cheques and orders for money or goods signed by or on behalf of the Company, invoices, receipts and letters of credit.

In addition, the Company's full name must be displayed in a conspicuous position and in easily legible letters:

2.2.1 at its registered office;

2.2.2 at any location at which a Company keeps records (ie company books) available for inspection; and

2.2.3 at any location at which it carries out business.

If the Company uses a name other than its full corporate name, then there are additional requirements to be observed and we can advise upon these if requested to do so.

3. Management of the Company: Directors and Secretary

3.1 Number of Directors and Changes in Directors and Secretary

The number of directors must not fall below the minimum prescribed by the Articles. The Articles may also prescribe a maximum which cannot be exceeded.

Provisions regarding the tenure, nomination and appointment of directors differ widely from one company to another and in every case reference must be made to the Articles.

All changes must be duly recorded and notified to Companies House using the relevant forms (see paragraph 7.3) for details). The form must also be counter-signed by a serving director or the company secretary (if the Company has one).

Please note that the 2006 Act also includes some significant changes relating to director appointments, including:

3.1.1 companies must have at least one director who is a natural person;

3.1.2 the minimum age for a director is 16 years; and

3.1.3 a director can now use a service address rather than a residential address on the Company's register of directors, however directors must still give Companies House and the Company their residential address (although this will be kept on a separate, secure register).

3.2 Directors' Powers and Duties

The 2006 Act provides that the objects of a Company incorporated after 1 October 2009 will be unrestricted unless the Articles specifically restrict them. We anticipate that some Companies will wish to specify the objects of the Company and these should be set out in the Company's Articles.

For Companies incorporated prior to 1 October 2009, unless the objects clause of the Memorandum of Association is deleted, the activities of such Companies will continue to be restricted by their objects.

Where the Company chooses to list/retain its objects, it may only carry out those objects. It is therefore important that the objects are drafted as widely as appropriate to allow the Company to operate fully. It is possible to amend the objects at any point (by a special resolution) to add, remove or alter the objects but note that the change will not be effective until it is registered with Companies House.

Your Articles may permit the appointment of non-executive directors. Non-executive directors are equal members of the board and therefore the choice of non-executive directors is of significance to the Company. Non-executive directors should be of a calibre such that their views will carry weight in the board's decisions. They should have independence of judgment and they should therefore be independent and free of any business or financial connection with the Company apart from their fees and any declared interests or authorised conflicts (see paragraph 3.3.2). A non-executive director should be entitled to seek professional advice, initially from the Company's advisors and, if necessary, independent advisors at the Company's expense. There should be a formal selection process of non-executive directors to ensure they are chosen for merit and not patronage. Their appointment should be for a specified term and their reappointment should not be automatic; the board must make a conscious decision to reappoint them. This should be done in an endeavour to maintain the non-executive director's independence.

3.3 Statutory Duties of a Director

3.3.1 Codified Duties Under the 2006 Act

Previously, the duties imposed on directors were a mixture of common law and statutory duties. The majority of the common law duties have now been codified under the 2006 Act as the following statutory duties:

- A duty to act in accordance with the Company's constitution, and to use powers only for the purposes for which they were conferred.

- A duty to promote the success of the Company for the benefit of its members.

  In fulfilling this duty a director must have regard (amongst other matters) to:

  (i) the likely consequences of any decision in the long term;

  (ii) the interests of the Company's employees;

  (iii) the need to foster the Company's business relationships with suppliers, customers and others;

  (iv) the impact of the Company's operations on the community and the environment;

  (v) the desirability of the Company maintaining a reputation for high standards of business conduct; and

  (vi) the need to act fairly as between the members of the Company.

- A duty to exercise independent judgment.

  This duty is not infringed by a director acting in accordance with an agreement entered into by the Company that restricts the future exercise of the director's discretion.

  Note that this duty does not confer a power on the directors to delegate, nor does it prevent a director from exercising a power to delegate conferred by the Company's constitution, provided that its exercise is in accordance with the Company's constitution.

- A duty to exercise reasonable care, skill and diligence.

  A director must exercise the care, skill and diligence which would be exercised by a reasonably diligent person with both the general knowledge, skill and experience that may be reasonably expected of a person carrying out the functions carried out by the director in relation to the Company and the general knowledge, skill and experience that the director actually has. Regard must be had to the functions of the particular director, including his specific response and the circumstances of the Company.

- A duty to avoid conflicts of interest.

  Directors must avoid situations in which they have, or may have, a direct or indirect interest that conflicts with, or may conflict with, the Company's interest:

  (i) in particular, the exploitation of property, information or opportunity; and

  (ii) whether or not the Company could take advantage of such property, information or opportunity.

  This duty is not breached:

  (i) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest;

  (ii) in relation to a transaction or arrangement with the Company (providing it has been declared – see paragraph 3.3.2 below); or

  (iii) the conflict has been authorised by directors who are genuinely independent (ie have no direct or indirect interest), unless the Company's Articles prevent such authorisation.

- A duty not to accept benefits from third parties.

  Directors must not accept any benefit (including a bribe) from a third party which is conferred because of his being a director or his doing or not doing anything as a director. This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

- A duty to declare to the Company's other directors any interest a director has in a proposed transaction or arrangement with the Company.

  See paragraph 3.3.2 below for details.

  The codified duties are owed to the Company and broadly speaking, only the Company will be able to enforce them (although the shareholders may be able to bring a derivative action in certain circumstances).

  Please note, the statutory duties listed above do not cover all the duties that a director may owe to the Company. Additional duties include:

- the duty to consider or act in the interests of creditor during times of threatened insolvency (see paragraph 3.9 below); and

- the duty of confidentiality owed by a director to the Company.

All of these duties apply as much to non-executive directors as to the executive directors who are actually involved in running the Company. It is therefore important for a non-executive director to ensure that the Company administration is properly handled.

For more detailed information on directors duties please seek legal advice.

3.3.2 Interests in Company Transactions

Directors are obliged to disclose to the board of directors their interests in a Company's contracts and transactions.

The 2006 Act divides the duty of directors to declare their interests in transactions and arrangements into two provisions:

(a) directors declaring their interests in transactions or arrangements which are proposed but have not yet been entered into by the Company; and

(b) directors declaring their interests in relation to existing transactions or arrangements that the Company has already entered into.

Either declaration described above must be of both the nature and extent of the director's direct or indirect interest and a further declaration must be made if an earlier declaration proves to be, or becomes, inaccurate or incomplete.

There is no need to disclose anything which cannot reasonably be regarded as a conflict of interests or if it is something the other directors already know about or ought reasonably to have known.

A declaration of interest in a proposed transaction or arrangement must be made before the transaction is entered into and must be made in one of the following ways:

(a) at a board meeting;

(b) by way of a written notice sent to all directors, in accordance with the 2006 Act; or

(c) by way of general notice either given at a board meeting, or brought to the attention (by the interested director) of the directors at the next board meeting after the notice is given.

A declaration of an interest in an existing transaction or arrangement must be made as soon as reasonably practicable (rather than being declared at the first board meeting held after the director becomes so interested, as was previously the case). There is no set method which directors are required to use to make such a declaration, they may use any of the methods listed above in respect of declaration of interests in existing transaction, amongst others.

3.4 Directors' Meetings (Board Meetings)

Subject to the provisions of the Company's Articles, it is up to the directors themselves to decide how often they should meet to conduct their business. It is recommended that meetings should be held on a regular basis.

All decisions of the board must be recorded in writing and retained for ten years. It is best practice for minutes of all board meetings to be kept, regardless of whether any decisions are taken.

These minutes must be kept in the Company's books or separate minute books, and should be signed either by the Chairman of the relevant meeting or, if the minutes are presented to the next meeting for approval, by the Chairman of that subsequent meeting if the Chairman of the earlier meeting is not available.

In order for board decisions to be valid, notice of the proposed meeting must usually be given to all the directors (although in certain circumstances it will not be necessary to send notice to directors which are absent from the UK).

The Articles usually specify how many directors must actually be present at a meeting for it to be valid, (i.e. the **quorum**). In all cases a majority of those directors present and voting must actually vote in favour of the motion in order for it to be passed.

3.5 Written Resolutions of Directors

If for some reason it is not practicable for all the directors to meet, then, subject to any restrictions in the Articles, a written resolution signed by all of the directors indicating their consent is sufficient and constitutes a valid decision. Such signatures need not be on the same piece of paper.

3.6 Delegation of Directors' Powers

It is perfectly in order for the board to delegate any of its powers to a sub-committee. However it is the directors themselves who remain responsible for the proper management of the Company.

3.7 Company Secretary

Under the 2006 Act, there is no longer a statutory requirement to appoint a company secretary. However, depending on the size of the Company, it may be prudent to appoint a company secretary as the administrative role undertaken by such person must still be completed.

Although the company secretary will have many duties some of the most common will be:

(a) to sign and file the annual return;

(b) to make other filings at Companies House;

(c) to send out notice of general meetings;

(d) to keep the statutory books of the Company up to date; and

(e) to keep minutes and to make minutes of general meetings available for inspection.

Companies who no longer wish to have a company secretary should delete any provisions requiring the appointment of such person from their Articles.

Further guidance on administrative matters is available from Cheryl Boyce at Farrer & Co LLP (company secretarial services), Companies House www.companieshouse.gov.uk); and The Institute of Chartered Secretaries and Administrators (www.icsa.org.uk).

3.8 Accounts and Reports

Companies are required to keep proper accounting records and, in respect each accounting period, the directors must prepare and file accounts. Smaller companies are able to make use

of various exemptions but the accounts usually comprise a profit and loss account and a balance sheet. A profit and loss account must give a true and fair view of the Company's profits or loss for the accounting period to which they relate and a balance sheet must give a true and fair view of the state of the Company's affairs at the end of that accounting period.

In line with removing the obligation to hold an AGM (please see below), there is no longer an obligation to lay accounts before the members at the AGM, unless expressly required to do so by the Articles. Instead, the Company is required to circulate copies of annual accounts and reports to every person who is entitled to receive notice of general meetings not later than the end of the period for filing the accounts (nine months from the end of the accounting period) or, if earlier, the date on which the Company actually delivers its accounts and reports to the registrar.

3.9 Duties to the Company's Creditors

Provisions in the Insolvency Act 1986 can be applied to penalise directors for malpractice before as well as during liquidation.

In particular, wrongful trading under Section 214 of the Insolvency Act 1986 imposes personal liability on directors who knew or ought to have known that there was no reasonable prospect of the Company's avoiding going into insolvent liquidation and did not take every step to minimise the potential loss to creditors. A liquidator can go to the court to ask for a declaration to this effect. The court then has discretion as to the extent of the contribution which the director will be ordered to make.

It should be noted that a claim may be made against directors personally if, in the course of the winding-up of a Company, it appears to the court that a Company's business has been carried on with intent to defraud its creditors. A court may declare that any persons who were knowingly parties to carrying on the Company's business in that way shall make such contribution to the assets of the Company as the court thinks proper, without any limitation of liability. It must however be proved that the director was guilty of fraud, not merely of negligent mis-management.

You should also note that where a Company is insolvent, or of doubtful solvency, a director should exercise duties referred to in paragraph 3.3 above, not only having regard to the interests of the Company's members but also to the interests of the Company's creditors.

For more detailed information on director's duties to creditors please seek legal advice.

3.10 Cheque Signing

Board minutes and a completed bank mandate form will determine how the Company's bank account is to be operated and who has authority to sign cheques on behalf of the Company. These arrangements can be changed at any time by resolution of the board and by the execution of a fresh bank mandate and its submission to the Company's bank. As mentioned earlier, cheques should always bear the full name of the Company.

3.11 Execution of Documents

Each agreement or other document to which the Company is to be a party should be presented to the board for approval prior to execution. Different requirements apply as regards valid execution depending on the type of document. If the document is a deed it can be executed on behalf of the Company by (i) a director in the presence of a witness, (ii) by two directors, or (iii) by a director and the company secretary. If the document is a simple

contract it can be signed by a director or another person properly authorised on behalf of the Company.

3.12 Communication with Members

The Company may provide in its Articles for communicating with the members in electronic form (ie email, fax, or disc) or by means of its website instead of by post.

Please remember that (even if the Articles permit communication in electronic form or through the Company's website) for the Company to communicate with its members in either of these ways, the Company must obtain consent from each individual member. There is therefore an administrative process to go through before the Company can communicate with its members in these ways and legal advice should be sought to ensure that all relevant aspects of the legislation (particularly as to consent) are complied with.

4. Meetings of the Members (General Meetings)

General meetings are meetings of the members of the Company. There are two types of general meeting, namely Annual General Meetings (**AGMs**) and General Meetings (**GMs**).

The Articles will (together, potentially, with any rules or regulations of the Company) contain detailed provisions as to who may become a member and on what terms. They will also set out how membership ceases.

4.1 Annual General Meetings of the Members (AGMs)

Under the 2006 Act, there is no longer a legal requirement for private companies to hold an annual general meeting. However, it is likely that some companies and particularly those with a large membership will want to retain the requirement to hold an AGM as this provides a useful forum for the transaction of routine business on an annual basis (e.g. the election of officers) and to report to and update members generally. It is also likely to be a more convenient method of obtaining members' consent than circulating written resolutions to individual members for signature.

Note that under the 2006 Act, the notice period for AGMs (and indeed all other general meetings) can be reduced to 14 clear days (rather than 21 days as was previously the case). The number of members who may consent to a shorter notice period being given can now also be reduced to 90% (and must not exceed 95%). However, in order to benefit from any of these changes under the 2006 Act the Company's Articles must be amended so as to be consistent with the 2006 Act position; if the Articles require an AGM to be held, a notice period longer than 14 days to be given or 95% of members to vote for short notice, these requirements will bind the Company.

4.2 Other General Meetings

The board of directors has the power to call a GM and the vast majority of GMs will be called by the board. However, under the 2006 Act (as amended) members representing at least 5% of the voting rights have the right to require the directors to call a GM.

4.3 Resolutions

In such meetings, certain matters are required to be approved or effected by an ordinary resolution of the members ie by more than 50% of those present and voting at the relevant meeting (whether in person or by proxy). Other matters are required to be approved by a special resolution ie by at least 75% of those members actually present and voting at their

relevant meeting (in person or by proxy). Again, this is an area where legal advice may be needed.

4.4 Proxies

The 2006 Act introduces enhanced rights for proxies allowing them to attend and speak at meetings, and to vote both on a poll and on a show of hands. While a Company's Articles can grant more extensive rights to proxies than the minimum set out in the 2006 Act, any provisions in the Articles seeking to reduce the rights below such minimum will be void.

4.5 Written Resolutions of Members

Under the previous legislation, written resolutions of members had to be passed (ie signed) by every single member of the Company. Most companies' Articles reflect this. However, the 2006 Act has changes this so that resolutions are passed if the appropriate majority (more than 50% for an ordinary resolution or 75% for a special resolution) sign the written resolution approving the passing of the resolution. This provision is effective notwithstanding the wording of the Articles but to avoid confusion we suggest that you check your Articles are consistent with this position.

The resolution sent to members must be accompanied by a statement informing the member how to signify agreement to the resolution and as to the date by which the resolution must be passed if it is not to lapse.

Please also note that written resolutions cannot be used to remove:

- a director from office before the expiration of his term in office; or
- the auditors from office before the expiration of their term in office.

Both of these decisions require actual meetings of the Company's members to be held.

Under the 2006 Act, a Company's auditors are entitled to receive all communications relating to a written resolution as are required to be sent to a member. It is best practice to send copies of the resolutions to the auditors at the same time as the resolution is sent to members regardless of whether the auditors have requested a copy.

4.6 Notice of General Meetings

Where the written resolution procedure is not followed, a general meeting must be convened and held. Notice of the meeting must be given in writing to all members and directors of the Company and to its auditors. Notices must be approved by the board before they are signed and dispatched and should:

4.6.1 state the name of the Company (and may also state its registered number);

4.6.2 be dated;

4.6.3 specify the place, day and time of the meeting;

4.6.4 state what type of resolution is to be considered at the meeting and in the case of a special resolution, the exact form of wording of the resolution;

4.6.5 in the case of special business, specify the general nature of that business;

4.6.6 state the members' right to appoint a proxy to attend, speak and vote (both on a poll and a show of hands) in the members' place; and

4.6.7 state the registered office of the Company.

Documents sent by post or electronic means are, broadly, deemed delivered 48 hours after being sent and documents supplied by website publication are deemed received when first made available on the website or, if later, when the recipient is notified of availability on the website. Please refer to paragraph 3.12 above to ascertain whether notice can be given electronically.

There are also procedures which can be utilised to shorten the necessary periods of notice. We can advise on these if necessary.

4.7 Proceedings at General Meetings

The rules for the conduct or proceedings at general meetings are generally set out in the Company's Articles. You are urged to study these in detail as failure to abide by the prescribed procedures may render resolutions invalid. The Articles will give details of the following:

4.7.1 the quorum requirements for a meeting to be valid;

4.7.2 the method(s) of voting;

4.7.3 the Chairman's casting vote (if any); and

4.7.4 the procedure for a vote by proxy.

For companies incorporated *after* 1 October 2007, the Chairman cannot be given a casting vote in relation to decisions of the members and any provisions in the Articles of such companies to this effect will be void. (For companies incorporated before 1 October 2007 and whose Articles provide for a casting cote, the right may be retained.) (Note: the Chairman may have a casting vote in respect of Board decisions.)

5. Statutory Books

You will receive a set of "**statutory books**" for the Company. This contains a register of members, a section for filing minutes, a section for recording the names of the directors and company secretaries and any changes and so on. We would ask you to check that each section has the correct information recorded in it. Each change, e.g. of directors and company secretary, should be noted. We would stress that it is very important for the Company's statutory books to be kept up to date and in good order. This task is usually performed by the company secretary.

6. The Seal

A Company may, but is no longer obliged to, have a company seal. Some companies continue to follow the traditional practice and execute documents under seal. Whether or not a Company has a seal, a document signed by a director in the presence of a witness, or a director and the company secretary, or by two directors and expressed to be executed by the Company, has the same effect as if executed under the common seal of the Company.

7. Companies House

7.1 Information must be filed at Companies House whenever there is a change in the administration arrangements of the Company. This includes the appointment, retirement or resignation of a director or the company secretary, or a change of registered office or accounting reference period of the Company. The relevant form must be filed within 14 days of the change to which it relates.

7.2 The Company is also required to file an annual return giving prescribed information about the Company as at the date of the anniversary of incorporation. Subsequent annual returns will give information as at the same date in later years, or as at the anniversary of the filing of the previous return, if this was on a different date. Each annual return must be filed within 28 days of the date to which the return is made out.

7.3 There are a number of other forms and returns which must from time to time be filed at Companies House. The most common documents which need filing and prescribed form numbers are:

7.3.1 Form AP01 (or AP02 for corporate directors), TM01 and CH01 – changes in directors;

7.3.2 Form AP03 (or AP04 for corporate secretaries), TM02 and CH03 – changes in secretary;

7.3.3 Form AD01 – change of registered office; and

7.3.4 Resolutions (special and some ordinary) – the original signed and dated resolution (or a filing print signed by a director) must be filed.

The time limit for filing these documents is generally 14 days from the date when the relevant event took place.

The address for filing is Companies House, Crown Way, Maindy, Cardiff, CF4 3UZ (Tel: 0303 1234 500). When filing documents it is advisable to send a copy of your covering letter and a stamped self-addressed envelope and ask for the copy letter to be stamped and returned by way of receipt.

8. Further advice

This publication is a general summary. It should not replace legal advice tailored to your club's specific circumstances. Please note the importance of seeking legal and tax advice when deciding how best to use the template documents for incorporation.

Guidance prepared by Farrer & Co LLP.