

RUGBY FOOTBALL UNION

Incorporating Using a "two company" Structure

If your club owns significant assets such as land or property, you may wish to consider incorporating using a “two company” structure which allows property (and/or other assets) owned by the club to be held by one company (**the Property Company**); with the main operations of the club being run by a second company (**the Operating Company**). Under a typical two company structure the Property Company would grant a lease of the club’s property or land to the Operating Company.

1. Why incorporate using a two company structure?

A two company structure carries with it all the usual benefits of incorporation as well as providing extra protection for the club’s assets:

- Limited Liability – the liability of each company will extend only so far as its assets and any guarantees given.
- Separate Legal Personality – each company will be a legal entity in its own right so that it can sue and be sued, employ people, enter contracts and generally run operations in its own name.
- Additional security – a two company structure provides a "belt and braces" approach to the protection of the club’s significant and valuable assets.

2. Are there any risks clubs should be aware of?

Companies are entitled to arrange their affairs as they wish and a two company structure is a legitimate method to use to ensure that only the Operating Company will be liable if the club were to face claims arising from a disaster situation or from its normal operation. However, in the event of the Operating Company suffering financial difficulties and becoming insolvent, there is a risk that liquidators may attempt to set aside the restructuring of the club as two separate companies and attack the assets of the Property Company.

3. How does a two company structure work in practice?

3.1 Internal organisation and day-to-day management

The companies must be operated and governed entirely separately so that the assets held in the Property Company are protected from claims made against the Operating Company. In practice this means:

- the composition of the board of directors must be different in both companies (although there may be a degree of overlap, for example you might want the Chairman and Secretary to sit on both boards);
- the companies must not be connected through any group structure;
- the Property Company should not repeatedly assist the Operating Company if it enters financial difficulties or provide guarantees for the Operating Company; and
- the companies should be run as separate entities, for example, board meetings of each company must be kept distinct and not held simultaneously, and each company should prepare and file accounts.

3.2 Membership

The members of each company will be the same, and where an individual ceases to be a member of the Operating Company they will also cease to be a member of the Property Company.

3.3 Lease of land or property

The lease of land or property to the Operating Company must be carefully considered and clubs should take legal/tax advice on the implications in their own circumstances.

3.4 Rent

The Property Company will need to charge a rent for the lease of land or property in order to ensure it has sufficient income to operate. In order to ascertain a suitable level of rent it is advisable for the board of the Property Company to have an independent professional valuation. Depending upon whether the Property Company needs to be VAT registered in the future (which will depend upon the current VAT status of the property), the rent may need to be set above the VAT threshold. In addition, the club will need to consider Stamp Duty Land Tax (**SDLT**) implications as outlined below.

3.5 Tax

The two company structure should be achievable in a tax neutral manner. However, a club should take specific tax advice on its own circumstances as there may be specific issues to consider (eg carrying forward losses).

If the club is currently claiming the benefit of mutual trading status this will usually continue for the Operating Company (but not for the Property Company).

There is also a potential SDLT charge in relation to the lease between the Property Company and the Operating Company as the companies are connected companies by virtue of the fact that their membership will be identical. Again, clubs should take specific legal advice on how this can be minimised.

4. 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 decided how best to use the template documents for incorporation.

Guidance prepared by Farrer & Co LLP