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SCOTTISH RUGBY UNION LIMITED

MINUTE OF MEETING OF THE BOARD OF SCOTTISH RUGBY UNION LIMITED
HELD AT 12PM ON FRIDAY 26 AUGUST 2022

MEETING HELD BY TEAMS VIDEO CALL

Present:

John Jeffrey	(JJ)	Chairman
Colin Rigby	(CR)	President
Shona Bell	(SB)	Chief People and Engagement Officer
Julia Bracewell	(JB)	Independent Non-Executive Director
Mark Dodson	(MD)	Chief Executive
David McMillan	(DMcM)	Independent Non-Executive Director
Bob Richmond	(BR)	Council Nominated Non-Executive Director
Hilary Spence	(HSp)	Chief Financial Officer
Hazel Swankie	(HSw)	Council Nominated Non-Executive Director
Murdo Gillanders	(MG)	Council Nominated Non-Executive Director
Lesley Thomson	(LT)	Senior Independent Non-Executive Director

In Attendance:

Robert Howat	(RH)	General Counsel & Company Secretary
[NAME OF INDIVIDUAL]	()	[] (<i>Minute Taker</i>)
Angela McCracken	(AM)	Senior Solicitor and Council Secretary
[NAME OF INDIVIDUAL]	()	Shepherd and Wedderburn
[NAME OF INDIVIDUAL]	()	Johnston Carmichael

Apologies:

Keith Wallace	(KW)	Vice-President (Observer)
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1. Introduction & Opening Remarks

ACTION

1.1 Quorum, Apologies and Welcome

The Chairman noted that a quorum was present and opened the Meeting.

Everyone was thanked for their attendance. A special welcome was offered to MG after having been elected to the Board as a Council Nominated Non-Executive Director, and to KW, who had been newly elected as Vice President at the AGM and who provided his apologies for being unable to attend the Meeting.

[NAME OF INDIVIDUAL] and [NAME OF INDIVIDUAL] were welcomed to the Meeting. There was a single item agenda, with the Chairman noting some concerns about the timescales available to provide feedback on the governance documentation ahead of its planned circulation to the Union's membership.

All papers were to be taken as read.

REDACTED FOR PUBLICATION**1.2 Declaration of any conflicts**

Board members were asked to declare where they were subject to any conflicts of interest which would prevent them from taking part in discussions during the Meeting.

No conflicts were declared.

2. Governance Review**2.1 Update report and documentation**

The Chairman advised that the Chief Executive, Chairman and Company Secretary had met with the Chair of SCOG, the previous week to discuss elements of the governance documentation. The meeting had been positive, with many suggestions taken on board.

The Company Secretary was invited to talk through the circulated papers, which included the following:

- i) a Board update paper;
- ii) an updated draft of the Relationship Management Agreement;
- iii) the draft Memorandum of Understanding between SRL and CRB setting out the scope of the CRB role in overseeing domestic rugby and how the budget allocated to that would be applied;
- iv) draft amended SRL articles of association;
- v) draft CLG articles of association; and
- vi) draft Council motion.

Under reference to the update paper and earlier communications, the Company Secretary noted that a significant amount of time had been spent developing the previous version of the Relationship Management Agreement which had been shared with the Board. Almost all comments made during that had been accepted.

One significant area in the update related to the issue around budgeting and costs, which had been the subject of previous conversations.

It was explained that the CLG would incur a number of costs or liabilities arising from its activity but as structured did not have a separate revenue stream of its own to meet those. This could create an issue for both corporate entities and the responsibilities of their directors under company law and insolvency law if not resolved. It had been set out in the documentation that the costs of the CLG would be met by SRL (the subsidiary). The Relationship Management Agreement contained some high level wording about how this might best be dealt with and accounted for, which had followed on from discussions with external solicitors and auditors.

Key elements of Relationship Management Agreement also included:

- i) Interactions between the CLG and SRL boards; and
- ii) How financial objectives would be created and agreed.

Reference was then made to the two sets of Articles of Association, which were now available. They reflected elements of the information contained in the Relationship Management Agreement and Memorandum of Understanding and encompassed the existing rights of member clubs under the Bye-Laws of the Scottish Rugby Union. CLG

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Custodians would assume responsibility for holding an AGM and other general meetings, and for the production of group accounts.

It was highlighted that due to the Companies Act parameters there would also have to be some changes as to how members' motions would be dealt with in future, although the underlying right to requisition motions and a right to suggest amendments had been preserved.

The Articles of Association for SRL contained references to the composition of the Board of SRL – with the initial position being that the Board largely continued in its current form, with the two Council appointed Non-Executive Directors (BR and HSw) remaining.

After their terms of office came to an end, the CLG would discuss with the SRL Board whether it would be of value to appoint up to two directors to replace these roles. The CLG retained the right to do so, if it wished, after that discussion.

Apart from that, it would be for the SRL Board to choose its own membership, although the CLG would also have a right to approve the SRL Chair as one of the matters that required Custodian Consent. The SRL Board could decide how many directors to have, and whether those should be executive or non-executive, subject to there being a minimum of seven directors.

All existing Independent Non-Executive Directors would be entitled to serve out their current terms, including the recently extended term of the Senior Independent Non-Executive Director, but for any new Independent Non-Executive Directors their total term of office would be capped at six years.

It was noted that there was no change to the Articles in connection with the indemnity to directors and officers or for directors' and officers' liability insurance, notwithstanding the fact that there would be separate boards; current wording was sufficient to cover both.

The approach taken with the documentation had been to try and stay as close as possible to the resolution passed at the SGM in June. The members of the Union at that time would become members of the CLG under the new structure.

It was noted that as Scottish Rugby Union would become a company limited by guarantee it would formally be renamed Scottish Rugby Union Limited. It would drop the word "Limited" from its everyday title and be known as "Scottish Rugby Union" but this meant that the current Scottish Rugby Union Limited would have to change its name to Scottish Rugby Limited or something similar. This would create significant administrative work in notifying this change to suppliers, creditors, banks etc which would take some time to implement fully.

[NAME OF INDIVIDUAL] was then asked to comment on some of the discussions which had taken place and processes which had been considered in relation to the questions surrounding liabilities and income streams.

It was explained that under the proposed arrangements and documentation the Boards of the two companies would need to come together on an annual basis to agree a budget for the group. The SRL board would prepare and send the proposed budget to the CLG for review and approval. The budget would take into account the expected costs and expenses of the CLG.

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SRL would hold all the money, and would pay the costs on behalf of the CLG as a form of “group treasury”, creating an intercompany balance. In the annual budget documentation there would need to be budgeting for some level of surplus being generated by SRL to use for the purpose of a distribution to the parent company, which could then settle the intercompany balance. An accounting entry would then be needed to reflect those transactions. This could work well so long as an annual budget could be agreed with sufficient surplus to allow CLG’s costs to be settled, which would ensure that both companies would be acting lawfully.

2.2 *Director Feedback and Discussion*

There followed a period of discussion between the Directors, where a number of queries were raised.

i) VAT recovery on invoicing

A query was raised regarding invoices paid by SRL on behalf of the CLG, specifically around which entity would be invoiced and whether the VAT on invoices would be recoverable if SRL itself was not being invoiced.

It was suggested by [NAMEOF INDIVIDUAL] that in this situation the VAT might not be recoverable by the CLG. [NAME OF INDIVIDUAL] had suggested to SCOG’s external solicitors that the CLG and SRL form a VAT group between the two of them, which may assist in recovery of certain VAT to CLG (but it may not). [NAME OF INDIVIDUAL] agreed that the possibility of forming a VAT group should be explored.

ii) Costs incurred by CLG

The CFO estimated that the cost attributable to the CLG could be up to £250k per year (although further work would need to be carried out to fully assess this). Such costs would include meeting costs (including AGM), and £30,000 for the proposed honorariums for the President and Vice President, although these would not necessarily be entirely incremental, or may be offset by savings. At the point of setting up the CLG it would be incurring costs, prior to SRL having made any distributions to the CLG to meet these costs. Concerns were raised as to whether this might affect the going concern status of the CLG and potentially expose Custodian Directors and SRL directors to liability or issues over directors’ duties.

[NAME OF INDIVIDUAL] explained that costs would be recorded on an SRL debtor ledger, with the CLG owing SRL the equivalent money. As things stood, SRUL had already accrued distributable reserves on its balance sheet, and it was anticipated that the CLG’s liabilities could be settled via a distribution.

It was noted that it may be necessary for the Company to use strategic funds to make the required distributions to the CLG, if the company was not otherwise generating a surplus to allow distributions to be made.

Some concern was expressed at the possibility of doing this, because of the risk it would pose to the longer-term stability of the organisation and its ability to undertake strategic and transformation projects.

The CFO would pick up with [NAME OF INDIVIDUAL] to work through the detail around payment of CLG costs. [NAME OF INDIVIDUAL] noted that some companies paid a fee to

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their holding or parent company in return for the services being provided by it, and which then gave the parent company a source of income. Given the CLG had some oversight responsibilities that mechanism could be explored further.

iii) Change of SRUL Company Name

It was envisaged that a lot of work would be required in order to fully implement a change of company name of SRUL. It was queried whether the CLG could have a slightly different name in order to prevent the need for an SRUL name change and thus save time and resource.

The Company Secretary referred to the contents of the Crerar Report where this aspect had been set out in one of the recommendations. His understanding was that this had been discussed within SCOG and there had been a desire to keep the name "Scottish Rugby Union" at the CLG level to preserve continuity. This had been part of the proposals that members had voted on at the SGM in June. It was unclear whether SCOG had considered the administrative implications of changing the name.

It was explained that whilst a straightforward change of company name would be unlikely to bring key contracts to end, all sponsors and suppliers would still need to be notified for invoicing purposes. Some major contracts may have change of control provisions requiring notification or require consent to be sought from the other contracting party.

Some concern was expressed by Board members that a detailed cost analysis and assessment of the risks of unintended consequences of the governance proposals had not yet been fully undertaken. That exercise should be done before the Board finally signed off on the documentation from the Company's perspective.

It was confirmed that no formal dialogue had yet taken place with sponsors, the bank, the Scottish Government or other key stakeholders. The governance documentation needed to be available in final form to facilitate those conversations and this was only now available. A meeting with the bank was due to take place the following week in order to discuss the planned changes in more detail and obtain their feedback.

iv) *Community/Club Rugby*

There was some discussion around the Club Rugby Board and what the residual obligations of the SRL Board would be for the club game.

The Company Secretary explained that the CRB would operate as a committee of the CLG, with oversight of the club game, and it would report directly to the CLG on that. Operational responsibility for implementation of the strategic plan and the annual budget in relation to the domestic game remained with the Rugby Development Department and through it, the SRL Board. SRL was responsible for preparing the overall budgets for the Group. The Rugby Development Department would prepare its own section of those budgets in relation to the domestic game, in conjunction with the CRB, to then be included in the Group budget, with sums equivalent to 15% of average turnover being allocated for those purposes. The Group budget, once finalised by SRL, then had to be approved by the CLG. Once approved, responsibility for implementing that budget would flow back through SRL, to the Rugby Development Department which would then carry out the budgetted activity. They would have reporting requirement to the CRB as part of the CRB's oversight, and in turn there was a direct reporting line from the CRB up to the CLG.

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- v) Shareholder awareness

A query was raised regarding whether an additional circular or document needed to be prepared for the benefit of the members, setting out costs, risks, benefits and advantages of the new arrangements so that the members could make an informed decision, noting that there was no document of that type with the paperwork from SCOG so far. It was suggested that this may be a worthwhile exercise for SCOG and the members.

2.3 *Outcomes and Next Steps*

The President explained that it was still SCOG's intention to hold SGM 2 following the second part of the AGM, on 28 September. At present, SCOG's intended effective date for the proposals was 1 October. However, it was acknowledged that extra thought may need to be given to a transition period, and the President would consult SCOG and in particular the Chair of SCOG on this point. It was noted that it would not be possible to complete all administrative requirements that would come with implementation of the governance proposals in the period between 28th September and 1st October.

It was recognised that there was a very clear mandate from clubs to move forward with governance changes. However, concerns remained about moving too quickly without understanding the risks involved, both for the benefit of the organisation and the clubs, so that any unintended consequences were identified and mitigated.

The President queried whether it would be possible to push back the date for AGM 2 (and therefore SGM2) to allow further time to work through matters.

The Company Secretary advised that although this was notionally possible, the financial statements were being prepared in time for AGM Part 2 on 28th September. Some additional time to enable the accounts to be prepared and laid before the members had already been agreed with the Board and having done so, there had been a clear desire to then lay these before the membership as soon as possible. Holding AGM2 and SGM2 at the same time would be more convenient for the membership and more cost effective for the business.

Due to the Bye-Law requirements, if the Company Secretary received a requisition to call an SGM he would be obliged to do so, and in order for that meeting to take place on 28 September he would need to receive this direction by Monday 29 August. Otherwise, a different date for SGM2 would then be needed, with an additional cost involved.

Following the discussion, the following action points were agreed:

- i) The Executive would prepare an implementation plan to include an assessment of whether the governance proposals would be practicably capable of being implemented.
- ii) Comparisons of members rights had been prepared and provided to the membership for their information in the past, when proposals for change had been made. It was suggested that SCOG might wish carry out a similar exercise to present to the membership to assist with informed consent.
- iii) Key contracts would be reviewed to ascertain whether consents needed to be obtained regarding a change of company name and/or a change of control.

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- iv) Conversations would take place with the bank and key stakeholders to make them aware of the planned governance changes.
- v) The CFO would meet with [NAME OF INDIVIDUAL] and [NAME OF INDIVIDUAL] to work through some of the outstanding financial queries, including any tax implications or implications for accrued tax losses.
- vi) The President would speak to the Chair of SCOG to update him on the Board's discussions and discuss the suggested effective date and the implementation points raised.

3 AOB

With no other business raised, the Chairman thanked everyone for their participation and closed the Meeting.

**APPROVED BY THE BOARD
15 SEPTEMBER 2022**