

HUMPHRIES KIRK COMPLIANCE CHECKLIST

UK (English) Version July 2012

[HK can Train] means that HK can provide you or your staff with training and advice in relation to this topic

1) Company

- a) Chapter 2 Companies Act 2006 – General Directors of Duties [*consider minute at a board meeting once a year to say that the directors have noted and will comply*]
 - i) Section 171 CA2006 – Duty to act within powers
 - ii) Section 172 – Duty to promote success, in particular by being seen to have considered
 - (1) Long term consequences of decisions
 - (2) Employees interests
 - (3) Need to maintain relations with supplier customers and others
 - (4) Community and environment
 - (5) High standards of business conduct
 - (6) Fairness as between members
 - iii) Section 173 – Duty to exercise independent judgement
 - iv) Section 174 – Duty to exercise reasonable care, skill and diligence
 - v) Section 175 – Duty to avoid conflicts of interest
 - vi) Section 176 – Duty not to accept benefits from third parties
 - vii) Section 176 - Declaration of Interest in contracts etc...
- b) Company books – are they up to date?
- c) Company records – have they been filed at Companies House?
- d) Company accounts – have they been filed on time?
- e) Do we have all of the necessary company disclosure (company number, company name, registered office) in all of our published documents (letters, emails, cheque book, bills, orders, acknowledgements, purchase orders, invoices, financial statements, marketing publicity documents and website)?
- f) Where we are trading in a country but do not have a subsidiary, are we comfortable we have complied with local law as to registration of the company [*not necessary if you are simply trading through an agent and he is registered or through a distributor and they are registered, but necessary if through the agent you are actually trading in the country in question*]
- g) Articles of Association – Are they up to date? (important as the new Companies Act 2006 Model Articles contain an automatic indemnity for directors)
- h) Remember that HK offer discreet company secretarial services (through Humphries Kirk Services Ltd) and nominee holding services (through Humphries Kirk Nominees Ltd).

2) Agents Distributors Consultants Professional Advisors Suppliers and subcontractors

- a) Insurance
 - i) Do they carry appropriate insurance
 - ii) Are they covered by your insurance

- iii) Could they abrogate your insurance cover
- iv) Do they carry sufficient insurance cover for their services to you?
- b) Agents and Advisors selection procedures
- c) Agents and Advisors Vetting procedure (Trace)
- d) Professional Advisors terms of business
- e) Are Suppliers and Sub-contractors properly signed up on your Purchase T&Cs **[HK can Train]**
- f) Agents and Suppliers confidentiality obligations
 - i) Are they secured?
 - ii) Are they prevented from using your/your clients/customers data/ know – how when the contract is over? **[HK can Train]**

3) Employees **[HK can Train]**

- a) Employer's rights [*e.g. written contracts of employment, notice periods etc – you are well served by your personnel department*]
- b) Health and Safety [*ditto*]
- c) Bribery and Corruption
- d) Bullying and whistle blowing
- e) Confidentiality and Data Protection
 - i) Ensure that any employee who puts your client/customer/supplier etc. information onto his phone/Smartphone/computer must destroy it when he leaves
 - ii) Post employment restrictions- are they current? If not then not enforceable at all
- f) Fire and Emergency Procedures
- g) Records
 - i) Occupational Health Reports (if any)
 - ii) Personnel Files
 - iii) Medical Records (if any)
 - iv) Training Records
 - v) Risk assessments
- h) Anti Discrimination policies and procedures
 - i) Gender
 - ii) Age
 - iii) Race
 - iv) Religion
 - v) Homosexuality
- i) Discipline and Grievance policies and procedures
- j) Working hours
- k) Pension rights - are you ready for auto-enrolment?? **NB Important**
- l) Insurance
 - i) Are they covered by the group insurance arrangements
 - ii) Is the Company covered after an employee leaves?
 - iii) Could they abrogate the Companies insurance?

- m) Selection procedures and checking
- n) Waste management
- o) Sub-contractors- remember you are responsible for checking that your subby is properly licensed and working within authority and has seen of your HSE plans

4) **Premises and Real Estate**

- a) Leases
 - i) Do you have permission under the lease to do what you are doing?
 - ii) Maintenance
 - iii) Licences for alterations
- b) Fire regulations
- c) Health and Safety
- d) Planning permission
- e) Building regulation consent
- f) Tenants improvements [*have you captured all your tenant's improvements and/or fixtures?*]
- g) Environmental [*see below*]
- h) Warranties and bonds from builders and professionals if you have done any building work **[HK can Train]**
- i) Insurance

5) **Environmental [HK can Train]**

- a) Hazardous substances
 - i) Storage
 - ii) Use
 - iii) Disposal
- b) Emissions
 - i) Gas/smoke/dust?
 - ii) Liquids
 - iii) Sewage
- c) Risk of historical pollution of land?
- d) Storage licences
 - i) Do you have them?
 - ii) Do you comply with them?
- e) Health and Safety

6) **Manufacturing and Engineering**

- a) Professional and trade bodies
 - i) Membership [*are we members of all the bodies we should be*]
 - ii) Compliance with membership requirements
- b) Health and safety – **[HK can Train]**

- c) Whistle blowing [*do we have procedures so that people who are unhappy about the safety aspects of our engineering can report it and do we have a mechanism that we can show that such reports are collated and kept and investigated even if then over ruled?*]
- d) Accident book
- e) FAT and best engineering practice [*do we have internal FAT automatically and quality control procedure?*]
- f) Insurance – does our insurance cover all risks in UK and overseas arising from the business?
- g) Jigs, tools and patterns
 - i) Are we satisfied that all sub-contractors acknowledge that jigs, tools and patterns belong to us (including anyone's that have to be rebuilt or recast)?
 - ii) Do we have a list of all our jigs, tools and patterns?

7) Intellectual Property [HK can Train]

- a) Patents
 - i) Are your own inventions and/or innovations and improvements covered by Patents/Design Patents (USA) or registered designs?
 - ii) Are you comfortable that you are not infringing someone else's patent?
- b) Designs [*including design right and registering design*] Plans Blueprints Software
 - i) Copyright – do we assert?
 - ii) Do we ensure that contractually our client can use our plans only for the purpose of the contract not for making e.g. spare parts?
 - iii) Do we recognise and assert Database Right?
 - iv) Do we ensure that we publish designs in the UK first in order to get UK Design Right as well as European Design Right?
- c) Brands
 - i) Trademarks
 - ii) Trade names [*do we register as trademarks out important brands? Do we check in the UK patent office that the brands names we want to use are not already registered as other people's trademarks?*]
 - iii) Do maintain a trademark watch?
 - iv) Do we check Domain names to ensure that no-one is registering a similar brand?
- d) Confidential Information and Know-how : do we identify and protect it?
- e) Pitching
 - i) Do you ensure that if you pitch unsuccessfully the customer cannot pinch your ideas know how information designs etc?
 - ii) Do you have pitch conditions?
 - iii) Do you ensure that your T&Cs apply to all pitches and quotations?

8) Website

- a) Are your website terms and policies up to date?
- b) Privacy policy/Data protection/cookies etc...
- c) Branding – is yours protected and are you infringing someone else's?
- d) Social networking policies and disclaimers

9) **Business**

- a) Bribery and corruption prevention policy and procedures (Bribery Act 2010) **[HK can Train]**
- b) Money laundering **[HK can Train]**
 - i) Do we have a director responsible for money laundering compliance?
 - ii) Have we carried out money laundering training?
 - iii) Do the accounts department have procedures in place to ask the question about what appear to be iffy transactions (such as a client paying an invoice before its due or double paying an invoice and then requesting repayment of the monies paid)?
- c) Data Protection **[HK can Train]**
 - i) Who is your data protection officer?
 - ii) How is client and employee data protected?
 - iii) How is your data protected?
- d) Know your Partner
 - i) Vetting procedures
 - ii) Credit Control
 - iii) Special Designation Nationals (US interest only)
- e) Training **[HK can Train]**
 - i) Do we have training in place to address the above and below recognised areas?
 - ii) Do we have continuing professional training for our engineers?
 - iii) Do we have “state of the art” and up to date training for engineers to bring them up to date?
 - iv) Do we have professional training for our professional staff and administrators?
- f) Insurance
 - i) Do we have product liability insurance – does it in fact cover all the areas in which we work?
 - ii) Third party liability insurance – if one of our flares blows up are we covered for the damage it does?
- g) Terms and conditions of sale and purchase **[HK can Train]**
 - i) Are they up to date?
 - ii) Are they reasonable (Unfair Contract Terms Act 1977 and Unfair Terms in Consumer Contract Regulations if you are trading with consumers)
 - iii) Incorporation – are they properly incorporated into contracts?
 - iv) Consumer Protection and Distance Selling Regulations
 - v) Are you trading on line?
- h) Where we can't get our terms and conditions of sale in place do we have mechanisms in place to ensure that the contracts are reasonable and to cover our “bastions” (such as not accepting liability for indirect or consequential loss)? **[HK can Train]**
- i) Contracts – do we have mechanism in place to ensure that no contract can be signed unless an appropriate officer is comfortable that its terms are reasonable?
- j) Records – we need to have records of all of these issues. Are they kept up to date? Are they available? Are they secure?
- k) Charges and mortgages on assets – do we have records of exactly what charges and mortgages we have? Do we have a mechanism in place to ensure that the assets in question that are mortgaged or charged cannot be disposed of by mistake?

- l) Licensing- do you have all necessary governmental/local/industry licences are they renewed and up to date and are you operating within them?
- m) Resale Price Act 1976 – Competition Law (Lisbon Treaty Article 101 and Competition Act 1998)
 - i) We have no contracts or “arrangements” with “competitors”
 - ii) Training – have we carried out training so that people know how to recognise anti competitive issues
 - iii) Abuse of dominant position
- n) Restrictive Trade Practices Act 1976- do we recognise the risks and avoid them?
- o) Export Control do we understand and avoid the risks of being involved in
 - i) Sanctioned countries (e.g Iran)
 - ii) Sanctioned goods (e.g Arms to certain countries)
 - iii) Sanctioned people
 - iv) OFAC (very important if you are US owned or doing business in the US)

10) IT Systems

- a) Licences for software
 - i) Do we have mechanisms to ensure that we are not abusing the licences (more people using than actually permitted under the licences)?
 - ii) Do we have records for the licences that we have for software?
- b) Software maintenance
 - i) Do we have the source codes?
 - ii) Do we have maintenance agreements?
- c) Hardware maintenance
 - i) Do we have a hardware maintenance contract?
 - ii) Do we have access?
- d) Own software or software where we are building on somebody else’s platform but are building applications for clients
 - i) Do we have the source codes for our own software?
 - ii) Are we comfortable that the software writing is only carried out by employees (where it is covered by the employment contract)? *[if it is carried out by sub-contractors you need to ensure that you own the software copyright]*
- e) Back up
- f) Disaster Security

11) Banking

- a) Signatories – do we have a list or book of approved signatories? Is it on our website?
- b) Standing orders
 - i) Are they up to date?
 - ii) Do we have a mechanism for reviewing them?
- c) Bank guarantees
 - i) Do we have a mechanism for getting them? If so do we record exactly what we have got?
 - ii) Do we have a mechanism for notifying the bank when a guarantee is no longer needed?

- d) Money laundering
 - i) See above
 - ii) Checking whether the bank accounts to which we send or receive money have a history of money laundering involvement
- e) Inter-group loans and inter-group guarantees
 - i) Do we have these?
 - ii) If so are they recorded in writing and is there a loan agreement?
 - iii) Do we have a mechanism for ensuring that any inter-group loans that are no longer necessary are terminated?
 - iv) Do we have an inter-group loan book?
- f) Letters of comfort
 - i) Have we given letters of comfort for our subsidiaries?
 - ii) Have we given letters of comfort to customers?
 - iii) Have we given letters of comfort to our subsidiaries bank accounts?
 - iv) Have we given letters of comfort to our subsidiaries directors?
 - v) Do we have a letters of comfort book?
 - vi) Do we have a mechanism for terminating the effect of letters of comfort that are no longer needed?

12) Credit Control

- a) Vetting of customers/clients
- b) Personal Guarantees/money on account etc...
- c) Credit reviews
- d) Do you T&Cs tie up with your current procedures (and exclude rights of set off/withholding/ROT/Liens etc)?
- e) Debt Collection

13) Health and Safety

- a) Employees
 - i) On site
 - ii) Off site
- b) Premises and Real estate
- c) Environmental
- d) Engineering
- e) Procedures
- f) Risk assessments
- g) Training and awareness
- h) Fire Safety policy and procedure
 - i) Disaster security and recovery
- j) H&S officers

14) Taxation

- a) Do we keep our information for the requisite amount of time? [*at least six years*]
- b) Do we have mechanisms in place to ensure that transactions between UK companies and overseas subsidiaries are at a proper and accepted value level?
- c) Do we have the records we need for VAT purposes?
- d) Do we have a mechanism to ensure that no employee is paid (whether cash or value) unless tax is deducted?
- e) Do we recognise that in some cases withholding tax may apply to payments?
- f) Are we making royalty payments – if so are we comfortable about the taxation implications thereof?
- g) Do we make commission payments – if so are we satisfied about the taxation/money laundering implications thereof? [*in particular commission earned by one person but paid to another, commission earned in one country but paid into another*]

Note: This list is not exhaustive but is intended to act as an aide memoire.

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