

EUROPEAN CO-PRODUCTION CHECKLIST

1 **PARTIES**

List the Co-Producers - their address, country of incorporation and the correct legal form (company/partnership/individual).

2 **UNDERLYING WORKS**

Who are the actual or proposed authors of the screenplay? What stage has the scriptwriting reached?

Is the screenplay based on any other literary work e.g. novel or stage play? If so, who are the authors of that other literary work and has it been published? If published, where, when and by whom?

What underlying rights have already been acquired, by which co-producer and under which agreements? What is the extent of the underlying rights already acquired e.g. option? Do the underlying rights include or should they include additional rights such as merchandising, novelisation, interactive, remake and sequel, television adaptation and spin off rights?

If an option has been acquired, what are the terms for exercising and extending the option - deadlines and payments? Which co-producer will be responsible for extending or exercising any option? How will the cost of extending or exercising the option be dealt with?

What further underlying rights still need to be acquired from whom, and by which co-producer?

How is ownership of underlying rights to be shared between the co-producers?

Which co-producer will be responsible for arranging US copyright registration of interests in the underlying works?

3 **TREATY CO-PRODUCTION**

Is the co-production to be based on one or more co-production treaties? If so which ones? What are the qualifying criteria?

4 **BUDGET**

What is the approved budget?

What does it include? (eg does it include a realistic provision for financing costs?)

5 **CONTROL**

Which co-producer is to have financial and creative control over production? Will there be consultation with other co-producers?

Are some matters to be decided jointly? If so, which co-producer will have the right to break deadlock?

Is the position different during principal photography?

Is there a mechanism whereby a co-producer can exit from the co-production? If so on what terms?

6 **OVERCOST**

If production threatens to go over budget, how will the responsibility for obtaining the necessary additional finance be allocated between the co-producers? Will there be a completion guarantor?

7 **COMPLETION GUARANTEE**

If there is to be a completion guarantee, which co-producer will be responsible for making the arrangements with the completion guarantor?

Is the form of guarantee to be approved by all co-producers? Who will be the beneficiaries of the guarantee?

Can a co-producer be a beneficiary of a completion guarantee?

Will all co-producers be required to join in the agreement with the Completion Guarantor and give a security interest in their rights in the Film to the Completion Guarantor?

How is any rebate of the completion guarantee fee to be dealt with?

8 **UNDERSPEND**

How will any underspend be allocated between the co-producers? Is there to be a facility for re-allocation of underspend between budget items?

- 9 **FINANCING PLAN**
 What will be the breakdown of co-producer contributions to the financing plan?
 Are the co-producers providing their contributions:
 - in cash from their own resources
 - in cash from a third party financier
 - in kind ie facilities?
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- 10 **NATIONAL AUTHORITIES/PUBLIC FUNDS**
 Which co-producer will be responsible for applying to which authority or funding body?
 Are co-producers obliged to co-operate with one another to enable each other to obtain consents or funds?
 How do the co-producers want to proceed if faced with an initial refusal or a conditional approval followed by refusal of final approval?
- 11 **CASHFLOW**
 What are the currencies of funding?
 What are the currencies of expenditure?
 How will the risk of currency exchange rate fluctuation be covered?
 Which co-producer will set up which co-production account and where?
 How will the money in production accounts be owned as between co-producers?
- 12 **SCREENPLAY**
 What will be the mechanism for approving the final screenplay?
- 13 **SPECIFICATIONS**
 What creative elements and technical specifications need to be agreed by all the co-producers?
 Which co-producer will be responsible for ensuring which creative elements or technical specifications?
 What details have been pre-approved and what is the method for approving substitutes if necessary?
- 14 **THIRD PARTY CONTRACTS**
 What parameters or approval requirements will be imposed on one co-producer by the other co-producers for talent agreements, e.g. moral rights waivers, attempted buy-out of rental rights? Will talent be on union terms, if so, which?
- 15 **INSURANCES**
 Will usual production insurances be required?
 Will E&O insurance be required? If so, which co-producer will be responsible for making the application? Is the cost budgeted? Are the co-producers to be named as principal insured parties or additional loss payees?
 How will sums paid by insurers be applied?
- 16 **PRODUCTION SCHEDULE**
 What is the proposed start date of principal photography? How will the co-producers address the question of possible postponement of the start date? What will be the consequences of failure to commence principal photography by the start date?
 How will the shooting schedule be agreed?
 What will the original language version be? Will there be double original language versions?
 Will all co-producers have access to the set?
 Who will control publicity about development and production?
 What will be the delivery date? Will there be a margin for postponement of the delivery date because of force majeure?
 What will the delivery schedule be and are all items budgeted?
 Which co-producer will be responsible for delivery and to which parties?
 In which laboratory will the materials be available for access?

17 OWNERSHIP OF RIGHTS IN THE FILM

How will the producers own the copyright in the programme?
Will there be an agreed copyright by-line?

18 DISTRIBUTION

Which will be the co-production territory of each co-producer? How will satellite rights be exploited where they cross over the co-production territories?
How will the programme be distributed to the rest of the world outside the co-production territories?

19 REGISTRATION WITH NATIONAL AUTHORITIES

Which co-producer will be responsible for which registration procedures and costs?

20 THEATRICAL RELEASE

Is it a requirement of any financier that the programme be released theatrically in any territory in any country?
If so, is there a release date?
Is there a P & A budget - how is it to be financed?

21 PHYSICAL MATERIALS

How will the negatives and other physical materials be owned as between the co-producers?

22 CREDIT

What will be the form of credit for the co-producers? Will the order of names of the co-producers vary in the different co-production territories?
Will official co-production countries require credit?
Which third party financiers require credits?
Who will be entitled to the individual producer credit? Will it be shared? If so how will it appear?

23 RECOUPMENT AND PROFIT PARTICIPATION

What will be the recoupment position of each co-producer?
Out of which receipts will each co-producer recoup?
How will receipts be defined for purposes of recoupment?
How will net profits be defined?
How will co-producers share in net profits?
From which receipts or share of net profits will talent participation be paid?

24 COLLECTION

How will receipts be collected? Will there be a Collection Agent?
How will interest accruing on collection accounts be allocated?

25 RECORDS

Who will maintain the main records of production?
Will co-producers be entitled to audit each other? If so on what basis?

26 CERTIFICATION OF COSTS

Will a certified cost statement be required? Will each co-producer be entitled to receive copies?
Which co-producer is to set up the arrangements?

27 WARRANTIES

Will each co-producer give standard warranties to the others?

28 INSOLVENCY

What should happen if a co-producer becomes or threatens to become insolvent? Particularly, if the other co-producers are not secured on the insolvent producer's rights.

29 BREACH

What should happen if a co-producer is in breach of its obligations?

- 30 **ASSIGNMENT**
Can the co-producers assign or charge their rights in the project without the written consent of the others?
- 31 **CHOICE OF LAW**
Which national legal system is to govern the co-production contract?
- 32 **JURISDICTION**
How do the co-producers want to deal with any disputes under the governing law of the co-production contract?
- 33 **SIGNATURES**
Who are the authorised signatories for each of the co-producers?
- 34 **DRAFT CO-PRODUCTION CONTRACT**
Is there to be:
(i) a short form deal memo or
(ii) a long form co-production contract or
(iii) a short form followed by a long form?
Which co-producer is to be responsible for proposing the first draft?

Autor: Peter Dally (Bird&Bird)

The information in this article is provided subject to this disclaimer. The law may have changed since first publication (1995) and the reader is cautioned accordingly.