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Amendments to the Model Regulation for the
Control of the International movement of Firearms,
their Parts and Components and Ammunition,
proposed by the Group of Experts – Broker Regulations

DRAFT MODEL REGULATIONS FOR THE CONTROL OF BROKERS OF FIREARMS, THEIR PARTS AND COMPONENTS AND AMMUNITION[1]

Preamble

These Model Regulations reflect the Member States' conviction that illicit international trade in firearms, their parts and components and ammunition constitutes a specific risk to the security and well-being of member states and that measures to promote further cooperation among them, in particular by the promotion of harmonized broker controls with respect to the international movements of firearms, their parts and components and ammunition and a system of procedures for applying them, will assist in preventing their diversion to unlawful ends.

National controls on brokering should complement, and wherever feasible, be integrated in control mechanisms already established by Member States in other related areas, including export, manufacturing and marking of firearms, their parts and components and ammunition.

Member States that presently lack legislation or regulatory regimes to control the activities of brokers may seek to adopt the proposed Model Regulations in accordance with the provisions of their legal systems and their fundamental laws

Article 1.

Definitions

The following definitions shall be applicable throughout the text of these Regulations except when another meaning is expressly indicated:

"**Ammunition**" means the complete round or its components, including cartridge cases, primers, propellant powder, bullets, or projectiles that are used in any firearm, as defined in Article I of the Inter-American Convention.

"Broker" or "Arms Broker" means any natural or legal person who, in return for a fee, commission or other consideration, acts on behalf of others to negotiate or arrange contracts, purchases, sales or other means of transfer of firearms, their parts or components or ammunition.

"**Brokering activities**" means acting as a broker and includes, manufacturing, exporting, importing, financing, mediating, purchasing, selling, transferring, transporting, freight-forwarding, supplying, and delivering firearms, their parts or components or ammunition or any other act performed by a person, that lies outside the scope of his regular business activities and that directly facilitates the brokering activities.

"**Explosives**" means any substance or article that is made, manufactured, or used to produce an explosion, detonation, or propulsive or pyrotechnic effect, except:

a. substances and articles that are not in and of themselves explosive; or

[1] Upon adoption of these provisions by the Inter-American Drug Abuse Control Commission (CICAD), it is proposed that they be included as a new chapter of the Model Regulations for the Control of the International Movement of Firearms, their Parts, Components and Ammunition, and renumbered accordingly.

b. substances and articles listed in the Annex to the Inter-American Convention;

as defined in Article I of the Inter-American Convention.

"**Firearms**" means:

a. any barreled weapon which will or is designed to or may be readily converted to expel a bullet or projectile by the action of an explosive, except antique firearms manufactured before the 20th Century or their replicas; or

b. any other weapon or destructive device such as any explosive, incendiary or gas bomb, grenade, rocket, rocket launcher, missile, missile system, or mine;

as defined in Article I of the Inter-American Convention.

"**Inter-American Convention**" means the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials.

"**License**" or "**licensing**" means the license required for a person to perform brokering activities pursuant to Article 4.

"**Parts and components**" means, in relation to firearms, those elements that are essential to their operation.

"**Person**" includes natural and legal persons.

"**Registration**" means the registration of a natural or legal person as a broker in accordance with Article 3.

"**Serious crime**" means conduct constituting an offense punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

(*What constitutes a "serious crime" may differ from country to country, and in other countries, may not be defined in national law. In these Regulations, the expression is used in Articles 3 and 4 for the purpose of determining an applicant's eligibility for registration and/or licensing, with the idea of rejecting applicants convicted of a type of crime that would make it undesirable that they engage in arms brokering, for example, an offense that suggests a connection to organized crime. The same definition is used in the United Nations Transnational Organized Crime Convention.*)

Article 2.

National Authority

(1) The National Authority for the registration or licensing of brokers shall be the Office of _____, situated in the Ministry of _____.

(2) The National Authority shall designate the officials authorized to conduct the registration of brokers and/or the licensing of brokering activities in accordance with Articles 3 and 4 respectively.

(3) The National Authority shall make available the name of the officials authorized to carry out licensing or registration to national authorities of other member states upon request.

(*The sharing of the identity of officials of the National Authority referred to in paragraph (3) is for purposes of effecting cooperation among countries to facilitate exchanging information about brokers*.)

Article 3.

Registration

(*Registration is largely viewed as an additional and optional element of brokering controls. At a practical level, the information required on an application for a brokering license can provide the basis for a de facto registry of brokers. A registration regime may be viewed as an optional element of these Model Regulations*.)

Registration [*For application by countries which adopt a registration and licensing system*.[2]]

(1) Every person who performs or intends to perform brokering activities within the territorial jurisdiction of _____ (country), and where required by the national legislation of the country in which the person is resident or carries on business, shall register with the relevant National Authority by providing to that authority information in the form prescribed in Annex I to these Regulations. In the case of legal persons, the form shall be signed by the duly authorized/legal representative of the enterprise.

(2) Every applicant for registration shall submit original or certified copies of information that demonstrates that it is currently authorized to carry on business in the country of_____.

(3) Registration shall not be complete until the completed registration form containing all of the information in Annex I has been recorded in the registry of brokers, a broker registration number in accordance with paragraph (10) is assigned, and a copy evidencing approval of the registration by the National Authority is provided to the applicant. Prior to authorizing the registration the National Authority may require verification of the information submitted through original or certified copies of documentation.

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[2] Countries that prefer to have only a licensing system need not apply the provisions of Article 3. At a minimum, however, a licensing system as set out in Article 4 needs to be imposed. Application of these Model Regulations using only a licensing system should include the maintenance of the information provided on an application for a brokering license as the basis for a de-facto registry of brokers.

(4) Registration is effective for two years from the date of approval. Subsequent registration can only be effected by the submission and approval of a new registration form.

(*Countries may wish to provide for a different period, however, two years has been suggested as a maximum. It was pointed out by some countries that the same period of registration that exists for exporters of firearms could also be used for brokers*.)

(5) Throughout the validity period of the registration, any change in the information provided by an applicant on the registration form shall be communicated in writing to the National Authority by its authorized/legal representative within __ days of the change.

(*Generally 30 to 60 days is recommended. As with paragraph 3 above, the communication of a change may be subject to verification and require approval of the amended registration form by the National Authority*.)

(6) The following persons are exempt from registration under this Article:

(a) Employees or officials of the Government of the country of_____ acting in their official capacity; and
(b) Employees or officials of foreign governments or international organizations acting in their official capacity.

(7) Every applicant for registration as a broker who is already registered as a manufacturer, an exporter or an importer must also provide notification of these additional functions to the National Authority.

(8) No person who has been convicted of a related serious crime in any jurisdiction shall be eligible for registration.

(9) The fee for registration as a broker shall be _____.

(10) A broker registration number shall be assigned to each registered broker.

(11) Each National Authority shall maintain a registry of brokers. Countries may choose to have the registry of brokers available for public inspection

(12) National Authorities shall cooperate with one another to exchange information, contained in their respective registry of brokers, including information relative to ineligibility, debarments and denied applicants

(*Conceptually, the registry of brokers would consist of a data base in electronic form and could contain other information on individual brokers such as, for example, the reports referred to in Article 9 or any sanctions applied against persons once registered as brokers*.)

Article 4.

Licensing [*For application by all countries*.]

(1) Every person who performs or intends to perform brokering activities within the territorial jurisdiction of _____ (country) shall obtain a license issued by the National Authority prior to each brokering activity that he or she performs.

(2) To obtain a license, the applicant shall provide to the National Authority the information in the form prescribed in Annex II. Before it issues the license, the National Authority may require verification of the information submitted through original or certified copies of the documentation supporting the application.

(3) No person who is not registered with the National Authority in accordance with Article 3 shall be entitled to receive a license issued under this section.

[*This provision only applies to countries which have adopted a registration and licensing system*.]

(4) A license authorizing brokering activities shall be valid for a period of _____.

(5) No license shall be issued to a person who has been convicted of a related serious crime in any jurisdiction.

(6) No license shall be issued that would authorize a person to engage in brokering activities with respect to the following classes of firearms, parts and components, and ammunition…

(*This provision would apply to a country that has classes of weapons in relation to which it will not issue a license because it will not authorize their export. Another approach would be to cross-reference the classes of firearms prohibited for export under the country's export control legislation. Regardless of approach, countries need to ensure that this provision is consistent with the prohibitions that the state applies with respect to the export of firearms*.)

(7) No license shall be issued that would authorize a person to engage in brokering activities with respect to any country or countries that are the subject of an arms embargo of the United Nations Security Council or other multilateral sanctions to which the country adheres, or that it unilaterally applies.

(8) Brokering activities undertaken by or for an agency of the Government of _____ (country) may be conducted without registration or a license, however each brokering activity shall be authorized by or require notification to a committee of the Government that includes representation by senior officials of the Ministries of_____or the National Security Committee of that country.

(9) In the case of brokering activities under paragraph (7), the decision to authorize or refuse to authorize brokering activities shall be based upon the same considerations referred to in paragraphs (1) to (3).

[*As noted above, the application of paragraph 3 would only affect countries which have adopted a registration and licensing system.*]

(10) A license issued under this Article is not transferable.

Article 5.

Prohibitions

(1) The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to:

(a) result in acts of genocide or crimes against humanity;

(b) violate humans rights contrary to international law;

(c) lead to the perpetration of war crimes contrary to international law;

(d) violate a United Nations Security Council embargo or other multilateral sanctions to which the country adheres, or that it unilaterally applies;

(e) support terrorist acts;

(f) result in a diversion of firearms to illegal activities, in particular, those carried out by organized crime; or

(g) result in a breach of a bilateral or multilateral arms control or non-proliferation agreement.

Article 6.

Offences

In accordance with its internal norms, each country will, as necessary, adopt legislation that penalizes the following acts and prescribe the appropriate penalties.

(1) Any person who performs brokering activities without registering as a broker in accordance with Article 3, or who fails to provide full and accurate information for the purposes of such registration is guilty of an offense.

(2) Any person who participates in brokering activities without a valid license issued by the National Authority in accordance with Article 4, or who fails to provide full and accurate information for the purpose of such a license is guilty of an offense.

(3) Any person who carries on a brokering activity in contravention of the prohibitions enumerated in Article 5 is guilty of an offense.

(4) The National Authority shall revoke the registration or license of any person who commits an offense under these Regulations or any other offense that would render the person ineligible for registration or licensing under Articles 3 or 4.

(5) The provision of false information or material omissions in the information reported as determined by the National Authority shall result in the suspension of the broker from eligibility for licensing, and where relevant, from eligibility for registration, for a period of time prescribed by the National

Authority. The foregoing shall be considered an offense under the provisions applicable to providing false information under the penal code.

(6) The National Authority shall determine the appropriate sanction in accordance with the gravity of the offense.

Article 7.

Liability of Legal Entities

(1) Where a person responsible for the management or control of a legal entity located in the territory of the country of _____ has, in that capacity, committed an offense under these Regulations, the legal entity shall be held liable for the offense. The liability may be criminal, civil or administrative and may include monetary penalties.

(2) The liability of the legal entity shall be incurred without prejudice to the criminal liability of the person referred to in paragraph (1) who has committed the offense.

(*National norms of certain countries may not contemplate penal sanctions against legal persons, in which case this provision may only be enforceable only with respect to civil or administrative penalties*.)

Article 8.

Scope of Authority

The provisions of these Regulations shall apply to all brokers and brokering activities whether or not:

(a) the brokers carry on their brokering activities in _____ (country) or in other countries; or

(b) the firearms, parts and components and ammunition enter into the territorial jurisdiction of _____ (country).

Article 9.

Reports and Inspections

(1) Any person required to register under these Regulations shall provide to the National Authority each year during the period of registration and within thirty days of the anniversary date of its registration, a report in the prescribed form enumerating and describing its brokering activities by quantity, type, classification-description, value in national currency, as well as the vendors and purchasers of firearms, parts and components and ammunition in the activities in which it took part.

(2) A failure to file a report within the period specified in paragraph (1) may result in the suspension of the registration or render ineligible any subsequent application for a new registration. The National Authority may also impose a fine for failure to report that increases progressively with the amount of time passing from the time that the report was originally required to be filed.

(3) A broker registered under national legislation shall, in accordance with national law, permit an authorized official of the National Authority to enter and inspect the records of his brokering activities.

(4) Refusal to permit a lawfully designated official of the National Authority to inspect the records of a registered broker or to otherwise interfere with that official in carrying out his official duties shall be considered an offense under the applicable provisions of the penal code.

Annex I
(Article 2)

Broker Registration Form

Date of Application to National Authority_____

A. Name

B. Address

C. Telephone/fax/email

For Individuals:

D. Date of Birth

E. Citizenship (if dual or multiple, specify)

F. National Identity Card No.

G. Photograph – including a certification that it was taken on a date that is within three months of the submission of this application

For Companies or Other Business Enterprise:

H. Name, Title, Address, Telephone, Fax and e-mail of Authorized Representative

I. Names, titles, dates of birth, citizenship, national identity card numbers or other identification of persons who own the company and those persons responsible for the day-to-day management and control of the enterprise (if different than H)

J. Certificate of Registration or Incorporation No. including date of incorporation

K. Other Registrations
- **Producer**
- **Exporter**
- **Importer**
- **Other**

L. Subsidiary offices (national and foreign)
Name
Address
Telephone/fax/email
Registration No. (If registered by the National Authority under a separate broker registration.)

(Individual countries may require additional information.)

Annex II
(Article 4)

Broker Licensing Form

Date of Application to National Authority_____

A. Name of Broker

B. Address, telephone, fax, e-mail

C. Date of birth (This is not necessary for those countries with a broker registration system. For countries without a registry, citizenship, national identity card and photograph should be required as part of the license application.)

D. Broker registration number (If assigned by the National Authority.)

E. Identification of goods by classification-description

F. Nature of participation in the brokering activity (Indicate whether participation is in manufacturing, exporting, importing, financing, mediating, purchasing, selling, transferring, transporting, freight-forwarding, supplying, and delivering firearms, parts or components or ammunition, or other action or if the participation directly involves the facilitation of these activities.)

G. Identification of other parties to the Transaction.

- **Name of Party**
- **Nature of participation (purchaser, vendor, shipper etc.)**
- **Nationality**
- **Country of Residence**
- **Location of Place of Business**

H. Identification of Manufacturers of firearms, parts or components, or ammunition.

- **Name of Manufacturer**
- **Nationality**
- **Residence**
- **Place of Business**

I. Identification of ownership/source of the firearms, parts or components, or ammunition. (Name, address, telephone, fax, e-mail etc.)

J. Identification of end-user (Include name, address, telephone, fax, e-mail etc.)

(Individual countries may require additional information.)