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**DRAFT MODEL REGULATIONS FOR THE CONTROL OF BROKERS OF
FIREARMS, THEIR PARTS AND COMPONENTS AND AMMUNITION**

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.

Article 1.

(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:

- (a) 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; or
- (b) Performs brokering activities.

“Brokering activities” includes financing, mediating, purchasing, selling, insuring, transferring, transporting, freight-forwarding, supplying, and delivering firearms, or any other action that *directly* facilitates those activities.

(The scope of the definitions of “broker” and “brokering activities” are very broad and many of the experts commented on a need for some further precision. The definition must necessarily be broad to reflect the number of actors who can be involved in the facilitation of a firearms transaction”. In an attempt to reflect the Group’s requirement for greater precision, the word “directly” has been added.)

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

¹ Upon adoption of these provisions by the Inter-American Drug Abuse Control Commission (CICAD), they will 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.

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 transactions 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 criminal offense” means, an offense determined by the legislation of a state for which a penalty of not less than two years and/or a fine not less than the equivalent U.S. \$10,000 may be imposed.

(What constitutes a “serious criminal offense” may be different in different countries, and in others, may not be defined in national law. As an example, Mexico considers a “serious crime” to be one for which bail will not be granted.

In these Regulations, the definition 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.

Countries may wish to use some other legal basis for disqualifying applicants, but the idea is not to make an applicant ineligible simply because, for example, he has been convicted of an offense such as drunk driving.)

(2) Explanatory

For convenience of reference in these Regulations, except where the context of a provision calls unambiguously for another interpretation, the word “firearms” shall be taken to include their parts and components and ammunition.

(As noted in footnote 1, once these provisions have been approved, they will be rolled into the existing model regulations as a new chapter. The provision immediately above may need to undergo modification to reflect how ammunition should be treated in the context of “brokers” and “brokering activities”, separate from the remainder of the regulations. For information, the term “parts and components”, in relation to firearms, is already defined in the regulations as “those elements that are essential to their operation”.)

Article 2.

National Authority

- (1) The National Authority for the registration 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 the licensing of 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 is for purposes of effecting cooperation among countries to facilitate exchanging information about brokers.)

Article 3.

Registration

- (1) Every person domiciled in _____(country) or who is otherwise subject to the jurisdiction of _____(country), who acts as a broker or who performs brokering activities within the jurisdiction of _____ (country) or outside of it, shall register with the 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* shall submit *original or certified copies* of information that demonstrates that it is *currently* authorized to carry on business in the country of_____.

(This provision is intended to ensure that the applicant has been otherwise duly authorized by the state to carry on business as a proprietorship, corporation or other form of business entity required under national law.)

- (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.*

(The reference to the recording of a form can include its recording by electronic means where a country uses this approach. Evidence of approval of the form can be given by

means of a stamp or some other means of corroboration of approval issued by the National Authority.)

- (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 will 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 serious criminal offense in any jurisdiction shall be eligible for registration.*

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

(The amount of the fee for registration as a broker will be as determined by each country. As an example, the United States charges \$600.00 for a registration period of one year.)

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

(The provision is intended for identification purposes including, for example, for the information required to be submitted for a license in Annex II.)

- (11) *Each National Authority shall maintain a registry of brokers. The registry of brokers shall be available for public inspection*

- (12) *National Authorities shall cooperate with one another to exchange information contained in their respective registry of brokers.*

(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

(1) Every person domiciled in _____(country) or who is otherwise subject to the jurisdiction of _____(country), who performs or intends to perform a brokering transaction within the jurisdiction of _____ (country) or outside of it, is required to obtain a license issued by the National Authority for each brokering transaction 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.

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

(5) 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.)

(6) No license shall be issued that would authorize a person to engage in brokering activities with respect to countries that are the subject of an arms embargo of the United Nations Security Council.

(7) A license authorizing brokering activities undertaken by or for an agency of the Government of _____ (country) shall have the prior approval of a committee that includes representation by senior officials of the Ministries of _____ or the National Security Committee of the country of _____.

(The concept of the provision is that although a license should always be issued, individual countries will also require that approval for a brokering transaction carried out by or for an agency of the government will be made by more than one authority. One example could be to designate officials of ministries such as defense, foreign affairs and economy to authorize the activity. Despite this intermediate step, for purposes of transparency ultimately the license would still be required to be treated as any other license by its subsequent submission to, and approval by, the National Authority.)

(8) 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).

(9) 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;
- (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 holds himself out to be a broker or 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 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 Republic 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 individual who has committed the offense.

(National norms of certain countries may not contemplate this form of sanction, in which case this provision may not be enforceable.)

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 transactions in which it took part.
- (2) *A failure to file a report within the period specified in paragraph (1) shall 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) *The provision of false information or a material omission in the report, in the discretion of the National Authority, shall result in the permanent suspension of the broker from eligibility for registration. The foregoing shall be considered an offense under the provisions applicable to providing false information under the penal code.*
- (4) *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.*
- (5) *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 and Title of Authorized Representative:***
- I. *Name and address of person responsible for management and control of enterprise (if different than F):***
- 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.***

(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**
- C. Date of birth**
- D. Broker registration number**
- E. Identification of Goods by classification-description**
- F. Nature of participation in the transaction (Indicate whether participation is in financing, mediating, purchasing, selling, insuring, transferring, transporting, freight-forwarding, supplying, and delivering firearms, or other action or if the participation 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 end-user**

(Individual countries may require additional information.)