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Item 8 of the provisional agenda

Best practices

Example agreement

Note by the secretariat

I. Introduction and mandate

1. At its seventy-seventh session (June 2018), the TIR Executive Board (TIRExB) adopted an updated version of the example agreement, which is contained in Chapter 6 of the TIR Handbook and requested the secretariat to transmit the amended example of best practice to the Administrative Committee (AC.2) for endorsement and subsequent inclusion in the next version of the TIR Handbook. The Board recommended contracting parties to make use of the example agreement when establishing or renewing their agreement with the national association(s).
2. The secretariat prepared this document to provide background information and the draft example agreement.

II. Background

3. At its thirty-first session (October 2001), AC.2 endorsed the work by TIRExB on the example agreements, which consisted of two documents: The first setting an example for the act of authorization as a unilateral act by the Governments, and the second an example agreement or any other legal instrument to be established between the competent authorities and the national association(s) on the basis of national law (ECE/TRANS/WP.30/AC.2/63, paras. 18–20). The existing text of both examples are contained in Chapter 6 of the TIR Handbook.
4. The two examples were prepared, taking into account the rights and obligations of the competent authorities and of the national associations as provided for in Article 6 and Annex 9 of the TIR Convention and aimed at offering guidance to contracting parties that

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recently acceded to the Convention or that wished to harmonize the application of the Convention at the national level. Since the establishment of the example authorization and agreement, their wordings have been updated various times, in order to reflect changes in the legal text of the Convention, mainly, but not limited to, as a consequence of the entry into force of Amendments 29 and 31, of 1 January 2012 and 10 October 2013, respectively.

5. At its seventieth session (December 2016), TIRExB commenced consideration of an updated example agreement for inclusion in Chapter 6.2 of the TIR Handbook. The Board decided that it would be appropriate to update the example agreement contained in the 2013 version of the TIR Handbook to reflect latest developments in the TIR system. During the discussions at the following sessions, the Board concluded that the new agreement should reflect the TIR guarantee raise to EUR 100,000, include the obligations of customs vis-à-vis associations and be drafted in a way to also correspond to the mandatory use of the International TIR Data Bank (ITDB) when achieved in the future (ECE/TRANS/WP.30/AC.2/2017/9, para. 24; ECE/TRANS/WP.30/AC.2/2018/4, paras. 48–51). In the end, TIRExB prepared the draft example agreement as contained in annex to this document.

III. Considerations

6. The Committee may wish to consider and endorse the attached example agreement.

Annex

Example Agreement*

[New text is in **bold**, deletions are in ~~strike through~~.]

Guarantee agreement between the (name of competent authorities) of (name of country) and the (full name of association and abbreviated form)

In accordance with Annex 9, Part I, paragraph 1 (d) of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention, 1975) done at Geneva on 14 November 1975, as later amended (hereafter referred to as TIR Convention) the (name of competent authorities).... of (name of country/Customs or Economic Union) and the (name of association) hereby agree as follows:

A. Undertaking

1. By accepting this agreement in the appropriate form, in accordance with national legislation and administrative practice, the (name of association) undertakes, in accordance with Annex 9, Part I of the TIR Convention, to:

(a) comply with the obligations laid down in Article 8 of the TIR Convention, particularly those contained in Section B below;

(b) accept the maximum sum per TIR Carnet determined by (name of country/Customs or Economic Union) which may be claimed from (name of association) in accordance with Article 8, paragraph 3 of the TIR Convention, as indicated in detail in Section ~~ED~~ below;

(c) verify continuously and, in particular, before requesting authorization for access of persons to the TIR procedure, the fulfilment of the minimum conditions and requirements by such persons as laid down in Part II of Annex 9 of the TIR Convention;

(d) comply with its obligation on data submission under Annex 9, Part II of the TIR Convention;

~~(de)~~ provide its guarantee for all liabilities incurred in (name of country/Customs or Economic Union) in which it is established in connection with operations under cover of TIR Carnets issued by itself and by foreign associations affiliated to the same international organization as that to which it is itself affiliated;

(ef) cover its liabilities to the satisfaction of the competent authorities of (name of country/Customs or Economic Union) in which it is established with an insurance company, pool of insurers or financial institution. The insurance or financial guarantee contract(s) shall cover the totality of its liabilities in connection with operations under cover of TIR Carnets issued by itself and by foreign associations affiliated to the same international organization as that to which it is itself affiliated. **As documentary**

* Or any other legal instrument in accordance with Annex 9, Part I, paragraph 1(d)

evidence on a yearly basis.... (name of association).... shall produce a certificate of insurance (or other appropriate document);

(g) provide TIRExB, annually, before 1 March, with the price of each type of TIR Carnet it issues;

(h) allow the competent authorities to verify all records and accounts kept relating to the administration of the TIR procedure;

(g) accept a procedure for settling efficiently disputes arising from the improper or fraudulent use of TIR Carnets, if possible without recourse to Courts;*

(k) agree that any serious or repeated non-compliance with the present minimum conditions and requirements, pursuant to Article 6 of the TIR Convention and as expressly stipulated in Annex 9, Part I of the TIR Convention, shall lead to the revocation of the authorization to issue TIR Carnets—being revoked (as stipulated in paragraph 3 of the example authorization);

(j) comply strictly with the decisions of the competent authorities of (name of country/Customs or Economic Union) in which it is established concerning the exclusion of persons in line with Article 38 and Annex 9, Part II of the TIR Convention;

(m) agree to implement faithfully all decisions adopted by the TIR Administrative Committee and TIRExB in as much as the competent authorities of (name of country/Customs or Economic Union) in which the association is established have accepted them.

B. Obligations of the (name of competent authorities)

2. The.... (name of competent authorities), undertakes to fulfil its obligations as stipulated in the TIR Convention, 1975, namely:

(a) notify the TIR Carnet holder and the association in cases of non-discharge within the deadlines prescribed in Article 11, paragraph 1 of the TIR Convention;

(b) require payment of sums due, so far as possible, from the person(s) directly liable before making a claim against ... (name of association) ...;

(c) comply with the deadlines for claims as stipulated in Article 11, paragraph 3 of the TIR Convention;

(d) reimburse the sums paid by the ... (name of association) ... in cases falling under Article 11, paragraph 5 of the TIR Convention.

BC. Liability

(see Section A, paragraph 1 (a))

23. The (name of association) undertakes to pay import /or export duties and taxes, together with any default interest, due under the customs laws and regulations of (name of country/Customs or Economic Union) ... if an irregularity has been noted in

* May be annexed to the agreement. See also the Inquiry and Recovery Procedure in Chapter 5.4 of the TIR Handbook, which provides information on existing procedures.

connection with a TIR operation. **Without prejudice to Article 11, paragraph 2 of the TIR Convention and in line with Section B, paragraph 2(b) of the present agreement, the ... (name of association) ...** shall be liable, jointly and severally with the persons from whom the sums mentioned above are due, for payment of such sums.

34. The liability of the association follows from the provisions of the TIR Convention. In particular, the liability of the association shall commence at the times specified in Article 8, paragraph 4 of the TIR Convention.

ED. Maximum guarantee per TIR Carnet

(see Section A, paragraph 1 (b))

45. The maximum amount that may be claimed by the competent authorities of (name of country/Customs or Economic Union) from (name of association) shall be limited to a sum equal to ~~\$US 50,000 — (fifty thousand)~~ **[€100,000 - (one hundred-thousand)]** per TIR Carnet.

56. In the case of transport of alcohol and tobacco, details of which are given in Annex 6, Explanatory Note 0.8.3 of the TIR Convention and which exceeds the threshold levels mentioned therein, the maximum amount that may be claimed by the competent authorities of (name of country/Customs or Economic Union) from (name of association) shall be limited to a sum equal to \$US 200,000 - (two hundred- thousand) per "Alcohol/Tobacco" TIR Carnet.

67. The value of the above amounts in national currency shall be determined ... (daily/monthly/annually) ... on the basis of ... (conversion rate)

DE. Entry into force

78. This agreement shall enter into force on (date) (month) (year) on condition that documentary evidence for coverage of all liabilities incurred in (name of country/Customs or Economic Union) by (name of association) as referred to in ~~Part A.1 (e)~~ **Section A paragraph 1 (f)** above is produced. In case documentary evidence is not provided by this date, the agreement shall enter into force on the date at which such documentary evidence is provided.

EF. Termination

89. The present agreement can be terminated unilaterally at any time if the association or the competent authorities so decide, provided that a notice period of (length of notice period to be agreed by the parties or applicable national law) is given.

910. The termination of this agreement shall be without prejudice to the responsibilities and liabilities of the (name of association) under the TIR Convention. This means that termination of the agreement shall not affect the liabilities incurred by the (name of association) in (name of country/Customs or Economic Union) in connection with operations under cover of TIR Carnets accepted by the.... (name of competent authorities) before the date of termination of this agreement and issued by itself and by foreign associations affiliated to the same international organization as that to which it is itself affiliated.

~~1011.~~ Date and signature of competent authorities and association.
