

Registration of IARU as a Swiss Association

Background

IARU is a “unincorporated association”. It has a constitution and bylaws, but it is not registered as a corporation, association or society in any jurisdiction. Of the three IARU regional organizations only IARU Region 1 is incorporated (in Switzerland). IARU Regions 2 and 3 are similarly unincorporated associations.

The IARU enjoys fee exempt status as a member of the Radio and Development Sectors of the International Telecommunication Union (“ITU”). The ITU is facing a number of financial challenges and has over the past several years been seeking ways to increase revenue. Most Administrations have been reluctant to increase the fees that they pay to ITU. Accordingly, ITU has looked at organizations other than Administrations as a means of generating further fees. The ITU Constitution and Convention provides for various categories of membership including membership for “non-profit” organizations. The IARU is currently listed as an “organization of international character and organized on a non-profit basis”. We are presently exempt from fees under the Constitution and Convention. If we were to lose the exempt status we would be looking at a fee in the neighborhood of CHF 75,000 per year to maintain membership in both the Radio and Development Sectors.

The ITU Constitution and Convention can be modified at Plenipotentiary conferences which are held every four years. The day-to-day business of ITU between the Plenipotentiary conferences is governed by the ITU Council which meets once a year. In the past IARU has sought and obtained permission to attend the Council meetings as an observer. We no longer attend Council on a regular basis simply because of the expense (observers are required to attend for the full two weeks in Geneva).

IARU monitors the proceedings at Council remotely through one of our experts, Bob Jones VE7RWJ (the former Director of the Radio Bureau at ITU). Bob is ideally suited for such a task as he still has a number of contacts within the ITU Administration and in the Canadian delegation.

Each year, a number of organizations seek fee exempt status from ITU. ITU Council approves such fee exempt status until the next Plenipotentiary Conference. At the Conference the fee exempt status is reviewed and confirmed. Accordingly, every four years all of the organizations which have fee exempt status need to reapply to maintain that privilege. IARU last did so in 2014. Currently, there are 117 exempted regional and international organizations. To put that into perspective, about 1 in 5 sector members at ITU are exempt from fees. Over the last 3 years, ITU has taken a harder look at those organizations which are fee exempt to see if they are truly “non-profit”.

ITU has recently established a number of criteria for organizations to maintain fee exempt status. IARU meets all of these criteria except for one. The one criteria where we face an issue is that ITU is now proposing, in order to continue to enjoy fee exempt status, organizations must “be a legally-recognized non-profit organization, representing members which also have non-profit status”. IARU clearly represents members who have non-profit status. However, as an unincorporated organization it is arguable that we are not “legally recognized”. This position

was not helped when one of the ITU lawyers at the last meeting of Council, gave a very clear definition of “legally recognized” (essentially an organization must be “registered” in some capacity).

Our participation in the ITU is well recognized by ITU senior leadership, we are seen as a valuable and important part of the ITU process. Our status in part is reflected in Rod Stafford’s recognized efforts in the ITU Development Sector, our role on the board of the Smart Sustainable Development Module and the important part radio amateurs play in emergency communications.

In all honesty, I do not expect ITU to look too hard at IARU’s non-profit status given the positive role we play in that organization. However, I can envision a number of non-profit organizations who stand to lose their fee exempt status will take a very hard look at those who are able to maintain it. For example, several of the organizations which purport to represent various satellite organizations hold themselves out as non-profit, but in fact are heavily funded by the satellite industry. I fully suspect those organizations will lose any fee exempt status for that reason alone. If IARU is challenged, we need to have a clear and succinct position to confirm that we meet the new criteria.

ITU Council 2017 (being held in mid-May), will consider implementing the new criteria and requiring about 25% of the current fee exempt members to pay the appropriate fees (more likely the targeted organizations will simply drop membership). IARU is not currently one of the organizations who are on the list to lose that status. However, if the criteria are implemented all non-profit associations will face a review in the future.

The present IARU Constitution and Bylaws are not in a form which would allow us to register IARU as a non-profit organization in most common law jurisdictions (including the United States, Canada and England). Amending the Constitution and Bylaws under the present structure would be very difficult and time consuming given our voting procedure (essentially changes explained the Constitution would have to be put at each of the Regional Conferences over the next 3 years and then a vote taken by mail/email, with approval by 2/3 of the currently active Member Societies required for adoption. There is no guarantee we would meet the required threshold to amend).

Proposal

IARU registers a new operating corporation “Op Co” in an appropriate jurisdiction which would act as the “face” of the IARU to the ITU and other Regional Telecommunication Organizations. The sole purpose of the operating corporation would be to register delegates at meetings and deal with the ITU on any administrative matters. A form of management agreement would be put in place between IARU and “Op Co” which would clearly set out the roles of both organizations. The “General Assembly” of Op Co would be the present IARU Administrative Council and the Officers of Op Co would be the same Officers of IARU. All of this would be confirmed in the Management Agreement. A diagram of the proposed structure is attached. In addition, I have attached the appropriate clauses and schedules from the proposed Management Agreement as to what services “Op Co” will provide.

Proposed Jurisdiction

The laws in Switzerland allow for a non-profit “association” which is separate and distinct from a corporation. The registration requirements for an association are relatively straight forward. In that sense, we are being assisted by Matthias Schumacher HB9JCI who is a Swiss lawyer. The proposed registration of “Op Co” will be transparent to third parties and to Member Societies and all it would really do is provide IARU with a Swiss “address” and standing under Swiss law. It would have no effect on the present structure of IARU, nor the role of the International Secretariat. It would simply allow us to be seen as “legally recognized” to meet ITU criteria.

Proposed Timeline

Preliminary discussions with Swiss lawyers have already been held (on a no fee basis). A draft of the proposed Management Agreement is being reviewed and discussed by the Officers. A likely in person meeting will be held at Friedrichshafen in order to review any final paperwork. Approval from the Administrative Council would be sought over the Summer with a goal to have Op Co in place by the time of the IARU AC Meeting in September.

Pros:	Cons:
<ul style="list-style-type: none">• Allow IARU to meet the ITU non-profit criteria.• A Swiss association has minimal registration requirements, fees or tax obligations.	<ul style="list-style-type: none">• Will add another “layer” between Member Societies and our most important work (but one that is transparent).• Some additional upfront costs, but outweighed against the repercussions of IARU being required to pay fees.

PROPOSED NEW STRUCTURE

