



**International Amateur Radio Union
Administrative Council Meeting
Landshut, Germany
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Registration of IARU as a Swiss Association

The submissions set out below represent an important change to the present IARU structure. While we have touched on this subject in past meetings, we are now at a point where we need to enact a new body that will act as our “agent” in representing our interests at the ITU level.

The Officers are recommending that this proposal be approved at this meeting and implemented shortly thereafter. It is vital that all of the members of the Administrative Council (“AC”) understand the background to this proposed change and be prepared to discuss it during the first day of our meeting.

Proposal

IARU will establish a separate entity under Swiss law (a Swiss association). The registration of this new body as a Swiss association will allow us to meet the new criteria proposed by the ITU to maintain fee exempt status.

The present IARU Officers will be the officers of the new entity. The officers and the Presidents/Chairman of the three regions will make up the Board and will similarly constitute the General Assembly of the new entity for the purposes of Swiss law. A detailed management agreement between IARU and the new entity will clearly spell out the rights and obligations of both parties.

The new entity will be the public “face” of IARU at ITU and allow us to meet the requirement that fee exempt bodies must have some legal recognition (which IARU presently does not have).

Attachments

1. Document CWJ-FHR7/2 Rev.1 (February 17, 2017) Council Review of Fee Exemptions
2. Document CWJ-FHR7/23 (February 13, 2017) Summary Report of the Seventh Meeting of the Council Working Group on Financial and Human Resources
3. A background paper from a meeting on June 21, 2017 attended by Andreas Thiemann, Matthias Schumacher (Swiss legal counsel), Don Beattie and Tim Ellam (by phone). The questions raised with this group are outlined in the paper with the responses in bold.
4. Draft Articles of Association for the new entity
5. A background paper on the registration of IARU as a Swiss association and a pictorial of the proposed new structure (this was prepared primarily for the International Secretariat)

6. The proposed Management Agreement between IARU and the new entity. The new entity is identified as “Op-Co” in this agreement to distinguish it from IARU. The thought was that the new entity would be the “operating” body for dealing with ITU.

Background

During the 2014 Plenipotentiary Conference, council was instructed to “review the practice and criteria for exempting entities from membership fees and, if necessary, make changes to tighten the criteria to help bring greater clarity, consistency and fairness between paying and non-paying members and to reduce the total of exempted entities”. As you are aware, ITU is facing a number of financial challenges and reducing the number of fee exempt parties and tightening the criteria for fee exempt status has been paramount for ITU over the last few years.

IARU meets all of the fee exempt criteria except for one. IARU is presently a “non-incorporated association” which means it is not legally registered in any jurisdiction.

At Council, the ITU legal advisor has indicated that “legally recognized” means that the entity is one having its own juridical personality and the capacity to take commitments, contracts and issue legal proceedings on its own.

As presently structured, IARU does not meet the “legally recognized” test.

Our expert consultant, Bob Jones, has been closely monitoring this issue for us. While no steps were taken to formally incorporate the new criteria for fee exempt organizations during the most recent meeting of Council, steps were taken to remove a number of entities from fee exempt status as they did not meet certain of the other criteria.

It is felt that at the next meeting of the ITU Plenipotentiary in 2018 that the criteria for fee exempt status will be formally implemented and enforced.

Given the IARU has excellent standing within the ITU and has been participating in meetings for decades, it is likely assumed by then that we meet all of the criteria. While ITU will probably not take any proactive steps to question our fee exempt status, there is a distinct possibility that those entities which lose fee exempt status will take a closer look at those who have managed to maintain it and potentially raise questions as to whether or not all of the criteria have been met.

Losing our fee exempt status would be devastating to IARU. The present fee structure to participate in both ITU-R and BDT would be somewhere in the neighborhood of CHF 75,000 per year. We simply do not have those funds available.

Swiss Association

The Officers looked at a number of jurisdictions for possible registration of IARU. Unfortunately, as presently drafted the IARU Constitution would not meet the formal requirements to allow us to register as a legal entity in a number of countries. The Constitution would have to be amended and approved, which from past experience has shown this has been a difficult and time consuming task (given the process we have to follow in order to have any constitutional amendments approved by the Regions and ultimately the Member Societies). The Officers quickly realized that the most effective way of obtaining the legally recognized criteria would be to incorporate a new body which would act as the interface between IARU and ITU.

The Swiss Civil Code under Article 60 allows for the creation of an “association”. The requirements of an association are not as rigid or extensive as would be required for a Swiss corporation and in addition the costs to implement same would be minimal. However, the association would be legally recognized under Swiss law. In fact, many non-governmental organizations within the UN system are registered as Swiss associations.

The key points of registering the new entity as an association:

- Creation of Articles of Association which must meet certain requirements of the Swiss Civil Code.
- Definitions of the Members of the association (contemplated to be the three IARU Officers as the officers of the new entity and the Regional Presidents / Chairman together with the officers to form the Board).
- The requirements of a membership fee which we contemplate would be the neighborhood of CHF 1.00 per year. The requirement for a “General Assembly” of the association which, given the makeup of the Board, would be held either concurrently or immediately after the present AC meeting. The General Assembly would be no more than a pro forma meeting to meet the legal requirements under the Swiss code.
- While some consideration was given to registering the association in Geneva, it was determined it was far more cost effective to register in the Canton of Zug. Documents need only be in the English language to be filed with the Swiss authorities in Zug while in Geneva they have to be translated into French.
- The requirements of a Swiss national to be on the Board of the association. This individual would be an *ad hoc* appointment and would have no vote or participation in the affairs of the new entity. It is envisioned that this individual would be Andreas Thiemann.
- The initial set up costs would be in the neighborhood of CHF 1,000. Matthias Schumacher has generously volunteered to do the legal work on a pro bono basis to keep the fees as low as possible. There are no further fees or costs after other than the annual preparation of accounts and the General Assembly minutes and an annual report. This could easily be handled by our existing Secretary. The new entity would have a bank account in Switzerland but it is not envisioned that any of the funds from IARU would flow from that account. Expenses for our attendance at ITU meetings would continue to be paid by IARU in the normal course.

For Member Societies, the use of the new entity would be transparent. All that would essentially change is that registration of delegates and communications with the ITU would take place through the new entity with letterhead and signature blocks confirming that it is a Swiss association and has a Swiss address. In essence, this will completely satisfy the “legally recognized” requirement which is being imposed by ITU and allow us to maintain the fee exempt status.

Management Agreement

The key feature with respect to the obligations between IARU and the new entity have been set out in the attached Management Agreement. The bulk of the document contains the legal “boiler plate” required for such an agreement. The operative sections are found in the appendices to

that agreement and warrant your careful review. It is not envisioned this Management Agreement will become public (it would not be filed with the Swiss authorities, for example), but will satisfy the International Secretariat as to the operations of the new entity.

Conclusion

The Officers strongly recommend that the necessary steps be taken to register the new entity as a Swiss association. In order to continue the goals of IARU we need to be able to maintain our fee exempt status in ITU. We cannot risk losing that status or having it questioned by third parties.

The Officers envision that after discussion, we can take immediate steps to register the new entity in order to be prepared to have that new entity commence dealing with the ITU later this year and well before any changes are made at the next meeting of the ITU Plenipotentiary in 2018.

While the Officers believe that this is a relatively straight forward solution to maintaining our fee exempt status, it obviously represents a significant structural change to IARU. It is vitally important that you review the attached documents and be prepared to discuss any issues that you might have. The Officers want to make sure that all member of the AC understand the background to this change and are comfortable with how we intend to proceed going forward.

We should also be prepared to discuss when and how we advise the Member Societies of this change (if approved by you) as we will want to keep it fairly low key and not draw attention to the fact that we have been operating as a “non-legal entity” over the past several decades.