

XVIII. A Charter for the Operation and Management of AURA's Observatory in Chile

Contents:

- 1. Introduction.**
 - 1.1 AURA-O Management.**
 - 1.1.1 Head of Mission.**
 - 1.1.2. Local Directors Committee.**
 - 1.1.2.1 Annual Director's Meeting.**
 - 1.1.3. AURA-O Users Meeting.**
 - 1.1.4. Resolution of Disputes.**
 - 1.2 Operating Principles of AURA in Chile.**
 - 1.2.1 Mission and Responsibilities.**
 - 1.2.2 General Principles for Resource Sharing.**
 - 1.3 The Legal Status of AURA in Chile.**
 - 1.4 Other Basic AURA-O Considerations.**
- 2. Appendix 1: A more Detailed History Concerning AURA's Legal Status in Chile.**
- 3. Appendix 2: Origin of the Exemption of the Observatories in Chile from Value-added tax.**

1. Introduction.

This new Charter defines the authority and role of the AURA Observatory in Chile. The services, functions, and legal responsibilities of site operations that were formerly the responsibility of the AURA Observatory Support Services (AOSS) unit have been assigned to NOAO within the context of the AURA cooperative agreement with the NSF for the management of NOAO.

There are several AURA business Units within its Observatory in Chile (and from time to time certain scientific collaborations and other guest programs involving non-AURA participants also operate on AURA's property in Chile). These various programs all operate under the umbrella of AURA's unique Chilean juridical regime and therefore benefit from AURA's status in Chile. These benefits carry corresponding responsibilities: (i) that AURA has to the Chilean authorities and (ii) that the business Units have to AURA; these are discussed in more detail in sections 1.2 and 1.3.

Note: An AURA Unit shall be defined as a Program or project resident in the AURA Observatory in Chile that:

- 1. Requires a telescope aperture of not less than 2.5 meters and that***
- 2. AURA directly operates (NOAO/CTIO and Gemini), or in which***
- 3. AURA has a significant management or governance role (SOAR). This role would include AURA membership on a Project or program's Board and a direct intellectual or scientific role in the Project***

1.1 AURA-O Management.

1.1.1 Head of Mission:

AURA-O shall be headed by a "Head of Mission" appointed by the AURA President for a term of up to three (3) years, renewable by the President. The Head of Mission shall be the primary representative of AURA in Chile including all Units operating or wishing to operate under the auspices of AURA in Chile and/or on AURA property in Chile. He/she shall be the sole point of contact with all Chilean governmental authorities, the Union and all Chilean institutions. The Head of Mission is responsible for all diplomatic matters relating to the operation of AURA in Chile and shall be responsible and accountable for carrying out the mission and activities set forth herein for AURA-O. The Head of Mission will endeavor to maintain the Programs informed of important interactions with Chilean governmental authorities, the Union and all Chilean institutions.

The AURA Santiago Office and personnel of this office are part of the AURA-O infrastructure, acting on behalf of AURA and reporting to the Head of Mission in support of the AURA-O mission in Chile.

AURA has delegated certain legal responsibilities to NOAO, including but not limited to purchasing, contracts, personnel, payroll, and other such functions as AURA deems necessary for carrying out the functions of the programs in Chile under its juridical auspices.

1.1.2 Local Directors Committee:

A Local Directors Committee is composed of the local directors of CTIO, SOAR, and Gemini (and any new "Unit", such as LSST, meeting the requirements described

above), together with the CTIO Administrative and Facilities manager. The committee will be chaired by the Head of Mission and meet monthly, or at the call of the Chair. The committee will discuss AURA operational and strategic issues affecting all Programs operating within the AURA Observatory. In addressing these issues, the Committee will provide for a forum for planning, consensus building, and decision making that will encourage uniform treatment and co-operation among and between Programs within the AURA Observatory.

1.1.2.1 Annual Directors Meeting:

In September of each year, the Local Directors will meet with the respective program “Unit” Directors (currently NOAO, SOAR, Gemini, and LSST) to discuss operational, infrastructure, and planning issues affecting the AURA Observatory, and its observatory-wide support service function provided by NOAO on behalf of AURA-O. It is expected that at this annual meeting, the “Unit” Directors will reach agreement on general issues and priorities affecting the operation of AURA Observatory support service functions.

1.1.3 AURA-O Users Meeting:

Representatives from each Unit, as well as other “tenants” within the AURA Observatory such as SMARTS, may also participate in the AURA-O Users’ Meeting. They will meet annually (normally in the July-September timeframe) and will evaluate and suggest initiatives concerning the existing or future service demands of the Users’ community at large. This activity will include AURA-O wide functions involving houses, the campus, meal service, transportation, etc. Results from the Users’ Meeting will be advisory in nature. It is expected that the Users will recommend or promote actions, including infrastructure improvements. These recommendations will be reviewed by the Local Directors Committee and the Head of Mission for prioritization. The Head of Mission will forward these prioritized recommendations to NOAO for implementation.

1.1.4 Resolution of Disputes:

When disputes arise between business Units, including, but not limited to, interpretation of regulations or jurisdiction, that cannot be resolved at a staff level, the responsible party for any Program or business Unit may request a review at an expedited meeting of the Local Directors Committee. In this context, the AURA-O Head of Mission will seek to achieve a satisfactory resolution of the issue. If a resolution is not forthcoming, the responsible party may request a review by the **President of AURA, who is the final authority on all dispute resolutions.**

1.2 Operating Principles of AURA-O in Chile.

AURA has set out the following principles for operation of its Observatory in Chile:

1.2.1 Mission and Responsibilities:

- a. The primary mission is to advance science. The AURA-O Head of Mission provides leadership in observatory-wide matters and is responsible for observatory-wide concerns including safety and general site coordination.

- b. NOAO is responsible for site operations supporting all Programs, and is responsible for managing the resources that are involved in site operations.
- c. The Local Directors of the individual Programs are responsible for operations and implementing safety policies and procedures within their respective areas, generally taken to be “within the dome”.
- d. AURA-O promotes resource sharing among Units in their mutual interests to enhance productivity and ensure that science operations are conducted as efficiently and cost-effectively as possible. “General Principles for Resource Sharing”, as set out in 1.2.2, are incorporated herein.
- e. AURA-O will support all Units on site in an equitable and fair manner in all observatory-wide matters and in the allocation of shared AURA-O resources, which specifically include housing, rental automobiles, and other shared assets that AURA deems may be beneficial to Programs, but are not included in fundamental site operations.
- f. Pursuant to 1.3 below, the AURA Observatory is the primary representative in Chile for AURA and all Units operating or wishing to operate on its property. AURA-O is the sole channel for all Units in all official dealings with Chilean authorities, with the Union, and with Chilean institutions. The Head of Mission is responsible for the stewardship of all AURA resources and property in Chile.
- g. The AURA-O Head of Mission allocates all AURA-O resources such as housing units, automobiles, etc. and coordinates other support to Units and individuals without bias for or against any Unit or employees of any Unit. If the Head of Mission is also the Director of one of the Units, she or he may allocate resources to his or her own Unit with appropriate co-ordination with the local Directors of the other Units.

1.2.2 General Principles for Resource Sharing:

- a. AURA property in Chile represents a unique and important resource. No functional or physical change may be undertaken without a thorough consultation with all Units and a clear effort to assess the impacts both short and long term on existing Units and future Units. The AURA-O Head of Mission is responsible for promoting this consultative process with the Local Directors and for informing the President of all functional and physical changes envisioned. Each Unit Director is responsible for communicating, on a regular and timely basis, Unit needs and potential functional and physical changes that may be proposed in the future.
- b. NOAO, on behalf of AURA, will execute agreements for the provision of sites and services with all tenants of the AURA property and/or users of AURA-O services.
- c. Sharing resources must be genuinely beneficial to each Unit of AURA-O.
- d. Risks must be shared by the Units in proportion to the benefits.
- e. Sharing resources must do no harm to any of the Units of AURA-O.
- f. Each Unit of AURA-O must retain control of its vital programmatic, legal and contractual interests, within the limitations imposed by AURA’s juridical role in Chile.
- g. Interests of third parties involved with the Units must be protected.
- h. Labor and facilities being shared at AURA-O must be accounted for and tracked so that the Units and AURA-O can assure their individual goals and legal requirements are met, interests of third parties respected and normal legal issues (e.g. institutional responsibility and liability) are resolved.

- i. While meeting the above requirements, the implementation of these principles must be as simple as possible so as to minimize the administrative burden on AURA-O staff (including those of the Units of AURA-O).
- i. The AURA-O Head of Mission may delegate AURA-O functions (eg. Safety) to individuals from any AURA “Unit” as defined above. Such individuals responsible for the function delegated will report to the “Head of Mission” on issues regarding that activity.

1.3 The Legal Status of AURA in Chile.

This section provides background to operating principle 1.2.1 (d).

AURA, Inc. started to operate in Chile in 1960-1961, as the result of a scientific cooperative agreement signed between the President of AURA and the Rector of the University of Chile. The following three-and-a-half decades of legal history behind AURA's current status - as an accredited International Organization in Chile – are reviewed in Appendix 1.

As a result, AURA has the juridical capacity to act in Chile in pursuit of its recognized objectives under the safeguard of international law, and can enter into agreements with other institutions or public organizations in order to fulfill its declared scientific mission. Included in AURA's objectives is the operation of AURA's Observatory (AURA-O) in Chile for the benefit of US and international astronomy.

AURA's legal regime imposes certain Chilean requirements with which all Programs at AURA's Observatory must comply. It is AURA's responsibility to meet these requirements. AURA therefore has final authority to interpret these requirements and assure compliance by all the Units and Programs on the AURA property.

AURA has charged the Head of Mission, with the responsibility to support, monitor, and ensure compliance by all business Units and Programs on the AURA Observatory property. AURA-O will assist each group in understanding the juridical requirements as they apply to the activities of that group. It will review and provide advice on compliance options. In extreme cases it may take such actions as may be necessary to enforce compliance, subject to oversight and dispute resolution procedures provided herein. However, within the framework of acceptable legal options, as interpreted by AURA, the various Units have sole discretion to implement their missions as they see fit in the best interests of their respective Programs.

1.4 Other Basic AURA-O Considerations

- a.** Though there may be some exceptions, generally the AURA property consists of three types of areas: 1) undeveloped land, 2) areas and facilities used in common by more than one Program (e.g. multiple-use offices, dormitories, cafeterias, warehouses, utility plants, roads, etc.), 3) areas and facilities dedicated to the exclusive use of one Program (e.g. "inside the dome", dedicated service buildings, staging areas, etc.) Normally, AURA-O will have direct day-to-day responsibility for managing the undeveloped and common-use areas. The individual Programs will be responsible for the day-to-day management of their respective exclusive-use areas, subject to reasonable juridical-compliance oversight by AURA-O. In all cases, however, the actual use of AURA land shall be in conformance with the provisions of 1.2.2 noted above.
- b.** For juridical purposes AURA must continue to be the one unique legal entity in Chile. Users of AURA services in Chile, must adopt the norms and legal guidelines originating from AURA's legal condition. This requisite will have to be expressly entered into the language of their corresponding agreements with AURA.
- c.** Personnel contracted in Chile for AURA-managed Units can only be hired by AURA (there is no other juridical entity that can legally assume this function for these AURA-managed projects). Therefore, personnel management policies will have to adhere to general, basic principles (e.g. pay rates), in order to offer equal opportunities to all of our local employees across the organization, obtain mutually beneficial affiliation contracts with labor related organizations, etc.
- d.** The "Head of Mission" will be responsible for carrying out these negotiations on behalf of AURA-O and its business Units, using advice and co-operation from representatives of these User Units. Note that many Union matters are beyond AURA-O' legal control, as the Law allows employees to freely join the Union Association(s) of their choice, stay out of them, or start new ones.
- e.** Because of its juridical regime – and especially because AURA has been recognized by the Chilean Government as an International Organization, AURA will have the exclusive right and responsibility of representing all the Units in Chile under its juridical umbrella, with the purpose of extending to them the use of the special legal faculties, prerogatives and exemptions granted to AURA by the Government of Chile.

1.5 Safety

AURA-O is committed to preserving the workplace safety and health of its workers and visitors, and the integrity and quality of its physical property and assets, in accordance with the principles and mandates of the Chilean Accident Prevention and Occupational Health Law, the environmental protection laws, appropriate United States OSHA mandates, and best practices of the industry.

Chilean Law, No. 16.744, also mandates the establishment of one or more Comités Paritarios de Higiene y Seguridad (Health & Safety Committees) in any company of 25 or more employees. In accordance with the Law, AURA-O maintains three Safety Committees, one in La Serena, one on Cerro Tololo and one on Cerro Pachón.

AURA-O is committed to the preservation of the natural environment under its custody, and to keeping it free of contaminants or pollution, as well as to the preservation of the natural life, bio-diversity, historical and other environmental assets under its jurisdiction.

In accordance with AURA's juridical status and the Chilean Civil Law, the legal responsibility for safety and environmental issues on the AURA Observatory rests solely with AURA, executed through the faculties of representation granted to its legal Representative. Each Program is responsible for complying with the fundamental safety policies and procedures defined by AURA-O. Every Program, however, is encouraged to devote whatever resources it deems appropriate to enhance workplace safety for their workers within their respective facilities above and beyond the minimum standards set by AURA-O policies and procedures. That effort should be undertaken in the context of the following framework:

- a. The Head of Mission appoints an AURA-O Safety Officer who must be licensed and approved by the Chilean Government. The AURA-O Safety Officer shall report directly to the Head of Mission.
- b. The AURA-O Safety Officer serves as the primary representative for AURA in all safety matters dealing with the Administrator Agency of Law 16.744.
- c. The AURA-O Safety Officer has the responsibility for establishing fundamental AURA-O safety policies and procedures that interpret and enforce compliance with the appropriate Chilean and U.S. safety and risk management laws and best practices for all persons and activities acting under the auspices of AURA-O and/or on AURA property in Chile. The AURA-O Safety Officer is also responsible for enforcement of said safety policies and procedures.
- d. Each Program should appoint a "key" safety representative who will be the sole point of contact with the AURA-O Safety Officer in all matters related to that Program's safety program, including that Program's implementation of AURA-O safety policies and procedures.

Safety issues and/or disputes shall be adjudicated by the Head of Mission.

2. Appendix 1

A More Detailed History Concerning AURA's Legal Status in Chile

In February 1963, the Chamber of Deputies of the Chilean Congress (Cámara de Diputados) voted in legislation that gave AURA, the legal right to import, free of duty, all property and equipment, goods etc. under the Agreement with the University of Chile (Official Gazette of 07-MAR-1963). This law mandated that all imports for CTIO had to be certified true and accurate by officials from the Universidad de Chile, appointed by the Rector to act on behalf of the University.

Also, almost at the same time (1963), AURA signed the statutes and started to operate in Chile under the guise of a "Sociedad Anónima" -a sort of agency of a foreign commercial corporation- obtaining juridical personality and tax registration to formally start business.

This condition actually implied that AURA was subject to Chilean commercial legislation, and that AURA was therefore compelled to follow existing Chilean trade norms as well as standard Chilean business practices - i.e. AURA would have to pay taxes and corresponding legal fees for its operations, keep accounting books, declare property, assets and liabilities under an approved bookkeeping system, issue year-end financial statements and balances. Furthermore, AURA was subject to full civil and penal responsibilities for any irregularities in its official activities performed in Chile.

By Article 11 of Law No 15.182 of Sept. 9, 1969, the Government of Chile granted AURA the same privileges and guarantees previously accorded to the European Southern Observatory in January 1964. This Law was essentially the same that had given birth and juridical personality to the Commission Económica para la America Latina (CEPAL) -a subsidiary agency of the United Nations. The Law explicitly applies to AURA the provisions of the United Nations Convention, the basis of the privileges and immunities given to specialized UN agencies. In effect, this law recognized AURA as an International Organization, giving it the same International Juridical Personality accorded by the Government to ESO (and formerly to CEPAL). AURA acquired, through the language of this act, the capacity to operate in Chile under that name, contract, acquire and dispose of immovable and movable property and institute legal proceedings. In addition, the Law granted AURA's property and assets title of complete immunity from any form of legal process except those waived by the immunity clause of the agreement. It also granted AURA the right to own property, hold and transfer funds or currency of any kind without legal restriction, financial barriers or moratoria of any kind, exemption from direct taxes, exemption from customs duties and prohibitions and restrictions on imports and exports for articles for its official use.

By mandate of this law, the representative members of AURA were also accorded similar privileges of immunity and facilities for themselves and their family members.

In 1970, the Government of Chile enacted Article No 48 of the Law No 17.318 that further refined the preceding law by including other organizations, or juridical persons entering the country for the construction, installation, maintenance and operation of astrophysical observatories that are installed in Chile as a result of agreements with Universidad de Chile.

For a short period of time AURA continued to operate with both legal names -i.e. under the commercial patent as well as under the International Organization status accorded by the

agreement between the Government of Chile and AURA. The commercial patent was cancelled in August 21, 1973, when the permit for AURA to operate as an agency of a foreign corporation was revoked, thus ending the confusing double juridical condition involving the organization since 1963.

An official letter of clarification was received by AURA in response to specific questions made by AURA in Nov. 1985. These questions concerned the legal grounds for starting project associations with local universities for developing joint research programs, and essentially for the import of property for these organizations under the duty exemption grant of AURA. This letter officially acknowledged that, from a juridical perspective, "AURA had the legal right to form alliances with local or foreign partners to further pursue its fundamental objectives in science research, and kept the right to extend the privileges of its legal status over to these alliances, operating under their name and responsibility..."

3. Appendix 2

Origin of the Exemption of the Observatories in Chile from Value-added tax

On November 6, 1963, the Government of Chile signed an international treaty with the European Organization for Astronomical Research in the Southern Hemisphere (ESO) for the establishment of an observatory in Chile. That treaty was promulgated by means of supreme decree N°18 of January 4, 1964 of the Ministry of Foreign Affairs, and published in the Diario Oficial N°25.808 of April 4 of the same year.

By means of this treaty, the Government of Chile grants to ESO the same immunities, prerogatives and facilities as those granted to the Economic Commission for Latin America (CEPAL), in accordance with a treaty signed in Santiago on February 16, 1953.

The treaty between the Government of Chile and ESO stipulates “ it will be interpreted in accordance with its fundamental objective of making it possible for ESO to fully and efficiently execute its functions and fulfill its purposes”.

Within the legal context of the treaty referred to in the previous paragraph, the Government of Chile issued Decree N°2.940 (October 26, 1965) of the Ministry of Finance, specifying the tax exemptions that would be granted to ESO, and that were considered necessary for the full and efficient execution of ESO’s functions and the fulfillment of its purposes. These exemptions were the following:

- a) Exemption from income tax and from land tax for the real estate property of ESO;
- b) Exemption from tax on purchase and sale of materials, purchased for the construction of the offices and branches in Vitacura Park, Las Condes, and the Observatory La Silla, its offices and branches in the Province of Coquimbo, as well as for furniture, machines and other goods purchased for the purpose of equipping and furnishing the above constructions.
- c) Exemption from the tax on the annual transactions volume for rendering services to ESO in relation to the above mentioned constructions.
- d) Exemption from the tax on Stamps, Seals and Official Stamped Papers for contracts signed for the projected work and that affect the referred constructions.

To clarify the interpretation of Decree 2.940 regarding the moment from which the exemption from the tax on purchase and sale and the tax on the annual transactions volume - currently called Value Added Tax - became valid, on February 23, 1966, Impuestos Internos issued Supplement 7-7 to the Service Manual. This document states that, given its character, the exemption should be there in principle and should only be withheld if the Organization so indicates in the Purchase Order. This way, Impuestos Internos granted to ESO the faculty of indicating in its Purchase Orders the origin of the exemption. The exemption was applied following this criterion, and this way ESO indicated each time when they wanted to apply the exemption from VAT for the purchases realized.

In relation to the exemption from VAT, the following was considered:

- a) That the observatory is an establishment in a situation of permanent development and construction;
- b) It should be realized that the purchase of instruments, equipment, furniture, machines and other goods is for an observatory, so that the expression “equipment and furnishing” has a different meaning than equipment and furnishing of other kinds of constructions, and therefore this activity should be interpreted with a wider criterion.

The exemptions to the ESO (La Silla Observatory) were granted to AURA under the same conditions, in virtue of Law N°17.182 of September 9, 1969, article 11, and Law N°17.318 of August 1, 1970, article 48, which establish that: “the Association of Universities for Research in Astronomy (AURA) and other foreign organizations, entities or persons with legal personality as well as the scientists, astronomers, teachers, engineers, technicians and employees belonging thereto, who enter the country for reasons related to the construction, installation, maintenance and operation of the astrophysical observatories installed in Chile according to agreement with the University of Chile, will be subject to the same regime and will be granted the same prerogatives and facilities as the ones established by the treaty of November 6, 1963, between the Government of Chile and the ESO.”

In May 1984, taking into account - the need for rules to cover the adequate fulfillment and full application of the agreement between the Republic of Chile and the ESO; - the need to support the scientific activities of the ESO in accordance with the spirit and the text of the referred agreement; and - the difficulties of a practical nature that arose when applying Decree N°2.940 of October 26, 1965 of the Ministry of Finance, and therefore, the need to clarify and to adjust it to the legislation in force; by means of Decree N°455 of May 25, 1984, modifications were introduced to permit recovery of the tax established in title II of decree-law N°825 of 1974, whether it had been applied to the purchase of goods or to the use of services destined to the construction, equipment and furnishing of its offices and branches in general.

Taking into account the above and after a number of difficulties for the Cerro Tololo observatory in obtaining the exemption from the Value Added Tax, on April 25, 1985, the management of the observatory sent a letter to the Minister of Finance, Mr. Hernán Büchi, asking for the promulgation of a decree that clearly established the way of regaining the VAT, given the difficulties and the lack of a legal pronouncement to make this exemption effective.

This note originated Decree N°560 of June 18, 1985, which established the procedures and the way to recover the Value Added Tax modifying therewith Decree N°56, of January 2, 1970.