



Directorate of Natural Resources - Fisheries Department

Fisheries (Conservation and Management) Ordinance 2005

Guidance on intermediate ITQ B arrangements

Introduction

Under the Fisheries (Conservation & Management) Ordinance 2005, as amended in 2021, a qualifying company undertaking the fishing of Catch Entitlement generated by ITQ B must be at least 51% owned by an ITQ B eligible company, or *by an intermediate ITQ company*.

Under section 17C(8) of the revised Ordinance, the Director of Natural Resources may approve or refuse an arrangement by eligible companies to use an intermediate ITQ company for the ownership of 51% of a qualifying company.

This guidance sets out how the Director intends to exercise that power.

Criteria

The Director will make an overall judgement against the following guidelines:

- The intermediate ITQ company must be incorporated in the Falkland Islands, and its principle place of business must be the Falkland Islands.

All shareholders in the intermediate ITQ company must be eligible companies, and must continue to commit Catch Entitlement to the venture each year.

- Each eligible company should be actively involved in the running of the intermediate ITQ company, which should include being represented on its board.
- Each eligible company should have an ownership and voting share in the intermediate ITQ company that (subject to the criterion below) is at least broadly equivalent to the share of ITQ/Catch Entitlement they are committing to the venture.
- Each eligible company should own at least 25.1% of the intermediate ITQ company, or have reserved matters written into a shareholders' agreement that gives them equivalent powers (eg. to block extraordinary resolutions).

These criteria are based on the principles of effective control, active involvement and economic efficiency (often referred to as 'the three tests') which have formed part of the Fisheries Ordinance since 2005, and are now found at section 17C(6)(e) of the revised Ordinance.

A proposed arrangement which fully meets the guidelines above will be approved by the Director. For any arrangement where there is any doubt as to whether the guidelines are met, the Director will refer to the underlying principles of the three tests.

Process

The proposed arrangements for the intermediate ITQ company should be set out in each application for ITQ eligibility (under section 17C) and each annual application for renewal of that eligibility. The supporting evidence should be sufficient to demonstrate that the guidelines above are met, and should normally include:

- a certified copy of the register of members for the intermediate ITQ company;
- a list of the directors and secretary of the intermediate ITQ company;
- a certified copy of the certificate of incorporation of the intermediate ITQ company;
- a certified copy of the articles of association of the intermediate ITQ company; and
- a copy of all agreements between shareholders of the intermediate ITQ company agreements.

These documents do not need to be resubmitted at each annual application for renewal, unless they have been amended since last submitted.

The Director is willing to discuss applications in draft, on the request of companies, in advance of formal submission, where that would be helpful.

For the avoidance of doubt, an intermediate ITQ company only requires approval for the purpose of owning at least 51% of a qualifying company to be used for fishing Catch Entitlement derived from ITQ B. Such structures do not require Director approval for the purposes of ITQ A. Any qualifying company that is at least 51% owned by an approved intermediate ITQ company will automatically meet the minimum ownership criteria for the purposes of ITQ A.

Review

If the Director refuses to approve a proposed intermediate ITQ company arrangement, the relevant eligible company or companies are entitled to request a review of the decision by Disputes Commission. Any application for review must be made in writing and delivered to the Registrar within 14 days of being notified of the refusal.