

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Golden Sea Ltd - Application to Transfer the Registration of the Fishing Trawlers 'Golden Touza' and 'Golden Chicha'
Paper No: 108/10
Date: 29 April 2010
Report of: Director of Community Safety

1.0 Purpose

The purpose of this paper is to invite Honourable Members to consider approval for the registration of the Falklands flagged fishing trawlers 'Golden Touza' and 'Golden Chicha' to be transferred to a new company, Golden Sea Ltd.

2.0 Recommendation

Honourable Members are invited to approve the registration of the Falklands flagged fishing trawlers 'Golden Touza' and 'Golden Chicha' to be transferred to a newly formed company incorporated in the Falkland Islands, Golden Sea Ltd, who are to be informed prior to the transfer of registration that:

- a. registration in the Falkland Islands does not in any way guarantee the award of ITQ or of fishing licences; and
- b. the vessel may be removed from the Register by the Registrar in any of the circumstances described under Regulation 51 or on the instruction of the Governor in any of the circumstances described under regulations 52.
- c. The Registrar of Ships is asked to provide a further report on the delegation of these functions.

3.0 Summary of Financial Implications

There are no financial implications.

4.0 Summary of Legal Implications

There are no legal implications.

5.0 Background

- 5.1** Golden Touza Ltd (GTL) of Atlantic House, Stanley, has owned and operated the fishing vessels ‘Golden Touza’ and ‘Golden Chicha’ as Falkland Islands registered fishing vessels since 02 January 1997 and 10 April 1997 respectively. It is a joint venture company whose shares are currently owned by Southern Cross Ltd (SCL): 29.5% (of which Mr Raymond Robson and Mr Peter Guilding, each have a 50% shareholding interest) and Chymar SA of Spain: 70.5%.
- 5.2** SCL owns the following Individual Transferable Quota (ITQ): 11.56% of the loligo gahi (C) fishery; 4.18 % of the Finfish (Hake A/Y) fishery and 7.71% of the restricted Finfish plus Illex (G) fishery. It currently assigns the catch entitlement generated by its ITQ to GTL which fishes that entitlement utilising the ‘Golden Touza’, ‘Golden Chicha’ and another non Falklands flagged chartered vessel.
- 5.3** For commercial reasons, the GTL joint venture partners are now wishing to re-structure which involves the formation of a new joint venture company incorporated in the Falkland Islands, Golden Sea Ltd (GSL) which (if approval to transfer the registration of the subject vessels to this new company is granted), the shareholding arrangements will be SCL: 29.52%, Turnsea Ltd of London (100% owned by Chymar SA of Spain): 70.48%). Under this restructure, GTL will then charter the ‘Golden Touza’ and ‘Golden Chicha’ from the new owning company GSL and continue to fish the catch entitlement generated by SCL’s ITQ.
- 5.4** On 11 March 2010, McGrigors LLP submitted on behalf of GSL, application forms and supporting documents in respect of the proposed transfer of registration of the subject vessels from GTL to GSL and provided details of the intended joint venture re-structuring as outlined at 5.2 and 5.3 above.
- 5.5** The ‘Golden Touza’ was built in Vigo, Spain in 1986 and is of 1,060 gross and 414 net registered tons. Her normal crew compliment is 29. The ‘Golden Chicha’ was built in Castropol (Asturias), Spain in 1990 and is of 1,345 gross and 620 net registered tons. Her normal crew compliment is 31.

6.0 Relevant Legislation and Policy

- 6.1** The Merchant Shipping (Registration of Ships) Ordinance 2001 and the Merchant Shipping (Registration of Ships) Regulations 2001 became law in the Falkland Islands on 15 September 2003.
- 6.2** In relation to fishing vessels registered on the Part II Fishing Vessel Register, regulation 12.2 stipulates that a fishing vessel shall not be registered without the consent of the Governor.
- 6.3** The qualification and eligibility to register requirements of regulation 12. (3) are applicable in respect of this application. GSL is a company incorporated in the Falkland Islands and as the shares issued in respect of this company

are owned in excess of 25% by persons who enjoy Falkland Islands status and the remainder by a body corporate incorporated in the United Kingdom, GSL is compliant with the regulated qualification and eligibility requirements.

6.4 Sections 9.(3) and 9.(8) of the Ordinance and regulation 12.(5) of the Regulations make provision for the Governor to refuse an application to register a fishing vessel, notwithstanding that the applicant meets the qualification and eligibility requirements of regulation 12.(3). Grounds for refusal under section 9.(8) include concerns regarding:

- a) the condition of the ship in question or their equipment so far as relevant to their safety or any risk of pollution;
- b) the safety, health and welfare of persons employed or engaged on board the ship;
- c) the possession of or compliance with the conditions of a licence in relation to any fishing operations carried on by the fishing vessel in respect of which a licence is required to be held and compliance in respect of the vessel with any conservation measures imposed by or under any law of the Falkland Islands or required by any such law to be complied.

6.5 Under regulation 32. (2) of the Ordinance, the Registrar of Ships may refuse to register a fishing vessel if he is not satisfied that there is in force any certificate required to be so in force by virtue of section 4 of the Fishing Vessels (Safety Provisions) Act 1970(g) in its application to the Falkland Islands.

6.6 The current policy relating to the Part II registration of fishing vessels of their type is:

- the owners must meet the qualification and eligibility requirements of regulation 12.3;
- the normal safety standards applicable to fishing vessels registered in the Falkland Islands are satisfied prior to registration being completed and should be maintained whilst so registered;
- vessels must have available sufficient fishing effort by way of at least one year remaining of a long term licence or other licences that will provide fishing opportunities such as to in other country's controlled fisheries or on the high seas (this has been largely superseded by the introduction of the ITQ system in respect of the Falkland Islands' fishery);
- that the registration of a fishing vessel does not in any way guarantee the award of fishing licences (or as is now also applicable, of ITQ);

- a Part II registered fishing vessel may be removed from the register in any of the circumstances described under regulations 51. or 52.

6.7 Previously it was also policy for all applications to register fishing vessels to be referred to the Fisheries Committee. However, due to changes in its membership and terms of reference, a revised policy was agreed by Members at the 25 February 2010 meeting of Executive Council that applications should now only be referred to the Director of Fisheries (ExCo Paper 30/10 – Argos Marine Ltd. - Application to Bareboat Charter Register the Fishing Trawler ‘Argos Marine’). It was also then agreed that the Director of Fisheries and Registrar of Ships should undertake a review of general policy in respect of the registration of fishing vessels.

To date, it has not been possible to complete this, but as both of the vessels are already operating in the fishery this should not raise any particular concerns in regard to this application.

6.8 Regulation 13. provides that: ‘the Governor may if he sees fit require as conditions of his consent to registration of a fishing vessel –

(a) that the fishing vessel is managed, and its operations controlled and directed from within the Falkland Islands, and

(b) that any charterer, manager or operator of the vessel satisfies the requirement of subparagraphs (a) to (c) of regulation 12.(3) (eligibility of fishing vessels for registration under this Part).’

No such conditions have previously been attached to the registration of any fishing vessel in the Falkland Islands other than the regulation 12.(3) eligibility requirements in relation to the charterers of bareboat charter ships registered on the Part IV Bareboat Charter Register who must meet the same eligibility requirements as if they were the owners.

6.9 Both of the subject vessels have been fishing in Falkland Islands waters for many years and are fully compliant with the safety standards and certification requirements as apply to fishing vessels registered in the Falkland Islands and hold valid International Fishing Vessel Certificates. The most recent general certification audit of these vessels was conducted by Customs and Immigration staff on 13 January 2010 and 06 February 2010 respectively and everything was found to be satisfactory. In relation to the

6.10 Regulation 35. provides that the registration of a fishing vessel, unless terminated under the regulations, will be valid for a period of five years and shall then expire unless it is renewed in accordance with regulation 38. (application for renewal of registration).

6.11 Under regulation 51. the Registrar may close the register in respect of a fishing vessel-

(a) on being directed so to do by the Governor pursuant to regulation 52

below;

- (b) on application by the owner;
- (c) on the ship no longer being eligible to be registered;
- (d) on the destruction of the ship;
- (e) when a vessel which has been licensed to fish in Falkland Islands waters or elsewhere ceases to be so licensed for a continuous period of six months or more;
- (f) when a vessel which requires a licence to fish at the time of registration but at the time of registration did not have such a licence and has not acquired such a licence within six months of the issue of its certificate of registry;
- (g) when any penalty imposed on the owner of a ship in respect of contravention of the Merchant Shipping Acts, or of any instrument in force under those acts, or under any Ordinance of the Falkland Islands relating to fishing, or of any instrument in force under such an Ordinance, has remained unpaid for a period of more than three months (and no appeal against that penalty is pending);
- (h) when any summons for any such contravention has been duly served on the owner of the ship but the owner has failed to appear at the time and place appointed for the trial of the information or complaint in question and a period of not less than three months has elapsed since that time.

6.12 Regulation 52(1) provides for the removal of vessels from the fishing vessel Register by the registrar on instruction of the Governor:-

- a) where there are concerns regarding the condition of the vessel as is relevant to any risk of pollution or to the safety, health and welfare of persons on board the ship, he considers it inappropriate for the ship to remain registered in the Falkland Islands;
- b) taking into account any offence of which any owner or charterer of the vessel has been convicted under any Ordinance of the Falkland Islands relating to fishing, he considers that it would be inappropriate for the ship to remain registered in the Falkland Islands;
- c) the registered owner has not informed the registrar that the ownership of the vessel has changed.

7.0 Views of the Director of Natural Resources (section written by DNR)

7.1 “The proposal involves the transfer of ownership of two FI registered vessels from one company registered in the Falkland Islands (GTL) to another

company registered in the Falkland Islands (GSL). The level of FI shareholding in the new company is similar to that in the old company and the FI shareholders remain unchanged. Apart from the work involved in transferring the registrations there is little impact in the fishery. The number of FI registered vessels remains unchanged so there are few implications and the application is supported.”

8.0 Conclusion

8.1 Honourable Members are recommended to approve this application on the basis of the following:

Golden Sea Ltd meets the qualification and eligibility requirements as outlined at paragraph 6.3;

- There is no reason to refuse the application on the grounds of there being concerns regarding the condition of either of the vessels, the safety of persons engaged in them, or of previous non-compliance with the conditions of fishing licences as described at 6.4;
- There is no reason for the Registrar of Ships to refuse registration in relation to 6.5 above, as the vessels are already flagged in the Falkland Islands and are in possession of International Fishing Vessel Certificates and all other relevant certification appears to be in order;
- The first three paragraphs of the current registration policy requirements as detailed at 6.6 above appear to be fully met;
- The Director of Natural Resources is in support of this application as per his views provided at 7.1 above.

9.0 Financial Implications

There are no financial implications.

10.0 Legal Implications

There are no legal implications.

11.0 Human Resources Implications

There are no human resources implications.