

**DECISION AND REASONS FOR DECISION**

FISHERMEN CLAIMS APPEAL BOARD

CASE NO. TP0013

Between

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KO FOR KAN (高火根)

*Appellant*

And

THE INTER-DEPARTMENTAL WORKING GROUP

*Respondent*

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Dates of Hearing: 29 April 2016

Date of Decision and Reasons for Decision: 13 September 2016

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**DECISION AND REASONS FOR DECISION**

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1. This is an appeal by the Appellant, Mr. Ko For-kan of Case No. TP0013 against the decision of the Inter-departmental Working Group (“**IWG**”) dated 21 December 2012 to issue to him the amount of HK\$4,394,990.00 in respect of the ex-gratia allowance (“**EGA**”) provided by the government (“**the Appeal**”).
2. The Appeal was heard on 29 April 2016. Before the hearing, the Appellant had entered notice (dated 21 April 2016) that he would not appear at the hearing and would not appoint a representative to appear on his behalf. The IWG was represented by Dr. So Chi-Ming and Ms. Teresa Yuen.
3. After considering all materials submitted by the parties, the Board now gives

its decision and reasons for the decision.

### **Pertinent facts and the IWG's decision**

4. On 13 October 2010 (“**the Cut-off Date**”), the Chief Executive announced that the Government would implement a basket of management measures including banning trawling in Hong Kong waters (“**the Trawl Ban**”) through legislation in order to restore our seabed and marine resources as early as possible. The Trawl Ban took effect on 31 December 2012.
5. In light of the Trawl Ban, an assistance package was approved by the Legislative Council Finance Committee in June 2011. This was a “*One-off assistance package to trawler vessel owners, local deckhands and fish collector owners affected by the trawl ban and other related measures*”. This led to the setting-up of the IWG which was responsible for handling all matters relating to applications received under the assistance scheme. The Appellant was such an applicant.
6. In assessing EGA applications, the IWG would assess the type of the subject vessel and consider whether it fell into the category of a larger trawler that generally did not operate in Hong Kong waters or inshore trawler. If it were the former, a lump sum EGA of HK\$150,000 would be paid to the applicant. If it were the latter, the IWG would further assess and categorize the subject vessel into specific tiers in terms of its dependence on Hong Kong waters and other special cases. This meant that subject to the category of the subject vessel and the applicable apportionment criteria, an applicant could be eligible to apportion a total amount of the HK\$1,190 million of EGA with other eligible inshore trawler owners.
7. According to the IWG's records, the Appellant's fishing vessel (license no. CM69595Y) (“**the Vessel**”) had 1 engine and measured 20.25 metres in length, with propulsion engine power coming up to 130.55 kilowatts, whereas the fuel tank capacity was 6.76 cubic metres.

8. On 3 October 2012, the IWG made the preliminary decision that the Vessel fell into the category of an inshore trawler, and in observing that the time claimed to be spent fishing in inshore waters (100%) was higher than that spent by trawlers of comparable type and length (according to statistical data collected by the Agriculture, Fisheries and Conservation Department (“AFCD”)), the Appellant was requested to provide more evidence/documents to substantiate his claims.
  
9. By reply dated 10 October 2012, the Appellant asserted that because the Vessel was small with low engine power, it had always operated in the vicinity of Crooked Island, Tolo Harbour, Grass Island, the vicinity of Tuen Tsui and Cheung Tsui Chau(i.e. 長短咀) and the Ninepin Group of islands. During the days when the conditions for fishing were satisfactory, he would venture out to sea at around 3:30pm and fish until 5:00am the next morning before returning to Tai Po or Grass Island, whereby the catch would be delivered and sold to a Mr. Ho Chi-kwong (transliteration) of 三有海鮮. Thereafter, the Vessel would be moored, and then those onboard would have a meal, mend their fishing nets and sleep until 3:30pm when they would go out to sea again. The Vessel itself would be moored at Sam Mun Tsai at Tai Po and Grass Island. A few handwritten receipts for the sale of seafood were enclosed. Although the Appellant did aver that he would provide a number of other evidence (such as ice and fuel purchase receipts), such evidence was never provided.
  
10. On 21 December 2012, the IWG wrote back to the Appellant to inform him that all relevant materials and evidence had been considered and that their assessment of his application was completed. In accepting that the Appellant was an inshore trawler owner who had been affected by the Trawl Ban, the IWG made the following decision:

Type of Vessel:	Shrimp trawler
Length of Vessel (in metres):	20.25
Category of dependency on Hong	Highly dependent on Hong Kong

Kong waters:	waters for trawling operations.
Amount of EGA payable:	\$4,394,990

11. By the same letter, the IWG also informed the Appellant that around 30% of the EGA payable to all eligible inshore trawler owners had been reserved and will be distributed by apportionment after the Board had determined all successful appeals.

**Grounds of Appeal**

12. Subsequently, the Appellant sought to appeal the IWG’s decision, and by letter dated 18 January 2013 addressed to the Board, asserted that he disagreed with the amount of EGA granted to him because he totally depended on Hong Kong waters for fishing. Besides, whilst the Vessel used to operate mainly in the Tolo Harbour area, since the Trawl Ban he was compelled to fish in outer waters which involved a 7-hour trip to and back, in other words one-third of the day. This did not leave much time for fishing at all and as such the Trawl Ban had a severe impact on him. Under the circumstances, the amount of EGA granted was unreasonable and by the appeal, he hoped that the Board could reassess his case.
13. In his appeal application dated 10 February 2014, the Appellant stated substantially the same grounds as those expressed in the said 18 January 2013 letter.

**Matters considered by the Board**

14. The Board notes that, in determining the amount of EGA payable, the IWG had relied on the General Guidelines in approving and assessing the EGA (“**the General Guidelines**”) which was appended to the Appeal Bundle as Appendix 4. The background information concerning the policy, the criteria

for entitlement to the EGA, the classification of vessels as inshore vessels or large vessels and the guidelines for calculating the amount of EGA are all set out in the General Guidelines. The Appellant has failed to adduce any evidence to show that the IWG erred in calculations or misapplied the wrong assessment criterion or data. Indeed, the Appellant was absent at the hearing. We could only ascertain his grounds and reasons of appeal by reading his 18 January 2013 Letter and 10 February 2014 appeal application.

15. This Board has carefully examined the evidence for the case at the hearing and accepts that the IWG had appropriately addressed their mind to the particular circumstances of the Appellant and had taken into account the materials that were available to them. We also take the view that the IWG's representatives have provided satisfactory explanations to our questions.
16. In particular, the IWG clarified that because the IWG was not in a position to determine the exact amount of time that any vessel spent trawling in Hong Kong waters, the categorization of tiers based on the degree of a Vessel's dependency on Hong Kong waters did not get any more specific than either highly dependent (higher tier) or not mainly dependent on Hong Kong waters for trawling operations (lower tier). Once the IWG was persuaded that the Vessel was highly dependent on fishing grounds in Hong Kong, the exact proportion of time spent by the Appellant would no longer matter. In arriving at this conclusion, the IWG emphasized that they would look at the overall circumstances of the case and consider a number of factors.
17. Also, the IWG has clarified our understanding of how the data in respect of the homeport and inshore sightings of the Vessel was compiled, explaining in particular how, where the Vessel has been sighted more than once per day, such sighting would only be counted once.

### **The Board's Decision**

18. Having carefully scrutinized all of the evidence placed before us, the Board has found no reason to disturb the findings and assessment made by the IWG, who according to the principles previously approved by the Finance Committee of the Legislative Council, already considered all of the materials before them and in having assessed that the Vessel belonged to the higher tier, already apportioned to the Appellant the highest amount of EGA payable to owners of inshore shrimp trawlers of comparable size as the Vessel.
  
19. To conclude, the Appellant has failed to discharge his burden to show that the IWG's Decision dated 21 December 2012 is wrong. The Appeal is therefore dismissed.

**Case No. TP0013**

Date of hearing : 29 April 2016  
Heard at : Conference Room 1, G/F, Central Government  
Offices, 2 Tim Mei Avenue, Tamar, Hong Kong.

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(signed)

Mr. YEUNG, Ming-tai

Chairman

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(signed)

Ms. AU Sin-lun, Catherine

Member

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(signed)

Miss CHAN, Nancy

Member

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(signed)

Mr. KONG Tze-wing, James, MH, JP

Member

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(signed)

Ms. WONG Pie-yue, Cleresa

Member

The Appellants, Mr. Ko For-kan (in absentia).

Dr. So Chi-ming, Fisheries Officer (Sustainable Fisheries) 1, AFCD, representative on behalf of the IWG.

Ms. Yuen Wing-sum Teresa, Fisheries Officer (Sustainable Fisheries) 4, AFCD, representative on behalf of the IWG.

Ms. Abigail Wong, Legal Advisor of the Board.