

The Insolvency Act 1986  
Notice of Result of  
Meeting of Creditors

**S.24(4)/25(6)**

Pursuant to Section 24(4)/25(6) of the  
Insolvency Act 1986

To the Registrar of Companies

For official use

Company Number

925768

Name of Company

Insert full name of  
company

Belfast Freight Ferries Ltd

We S S Dubey, M D Rollings, A R Bloom  
Ernst & Young LLP  
1 Lambeth Palace Road  
London  
SE1 7EU

administrators of the company attach a copy of our report to the Court dated

10 April 2003

detailing the resolutions passed at a meeting of creditors held on

10 April 2003

Signed



Dated 15 April 2003

Presenter's name,  
address and  
reference (if any):

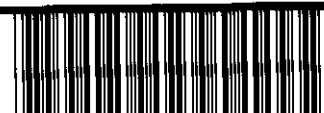
M D Rollings  
Ernst & Young LLP  
1 Lambeth Palace Road  
London  
SE1 7EU

SSD/SCA/LO1337/43

For Official Use

Insolvency Section

Post Room



\*AJ3RCKQ9\*

A11  
COMPANIES HOUSE  
A45  
COMPANIES HOUSE

0820  
07/05/03  
25/04/03

**CENARGO LTD  
CENARGO LEASING LTD  
PROOFBAND LTD  
BELFAST FREIGHT FERRIES LTD  
CENARGO NAVIGATION (HONG KONG) LTD  
(ALL IN ADMINISTRATION)**

**Statement of Proposals for the Companies  
pursuant to Section 23 of the Insolvency Act 1986**

**Report and Information in Respect of the Companies  
pursuant to Rule 2.16 of the Insolvency Rules 1986**

**10 April 2003**

**STRICTLY PRIVATE & CONFIDENTIAL  
NOT FOR PUBLICATION**

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PRIVATE AND CONFIDENTIAL

10 April 2003

TO ALL KNOWN CREDITORS

BH9/MDR/SSD/RJH/SA

Dear Sirs

**Cenargo Ltd  
Cenargo Leasing Ltd  
Proofband Ltd  
Belfast Freight Ferries Ltd  
Cenargo Navigation (Hong Kong) Ltd  
(All In Administration) (together "the Companies")**

As you may be aware, A R Bloom, M D Rollings and I were appointed Joint Administrators of the Companies on 7 February 2003, with the exception of Cenargo Navigation (Hong Kong) Ltd where we were appointed on 20 February 2003.

We are required to present proposals to creditors in accordance with Section 23 of the Insolvency Act 1986 and enclose these together with associated information.

Yours faithfully  
for the Companies

Michael Rollings  
Joint Administrator

The Association of Chartered Certified Accountants authorises M D Rollings and the Institute of Chartered Accountants in England and Wales authorises A R Bloom and S S Dubey to act as Insolvency Practitioners under Section 390(2)(a) of the Insolvency Act 1986.

The affairs, business and property of the Companies are being managed by the Joint Administrators, M D Rollings, A R Bloom and S S Dubey, who act as agents of the Companies only and without personal liability.

The UK firm Ernst & Young LLP is a limited liability partnership registered in England and Wales with registered number OC300001 and is a member practice of Ernst & Young Global. A list of members' names is available for inspection at the above address which is the firm's principal place of business and its registered office.

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## ABBREVIATIONS

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### ABBREVIATIONS

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Cenargo Group or the Group	Cenargo International plc (in Administration) together with its subsidiary and associate undertakings
the Companies	Cenargo Ltd, Cenargo Leasing Ltd, Proofband Ltd, Belfast Freight Ferries Ltd and Cenargo Navigation (Hong Kong) Ltd
International	Cenargo International plc
Leasing	Cenargo Leasing Ltd
Proofband	Proofband Ltd
BFF	Belfast Freight Ferries Ltd
Navigation (HK)	Cenargo Navigation (Hong Kong) Ltd
the Act	The Insolvency Act, 1986
the Joint Administrators or the Administrators	M D Rollings, A R Bloom and S S Dubey
the Administration Orders or the Orders	The Administration Orders made by the High Court on 7 February 2003 in respect of the Companies

## SUMMARY

## 1

- 1.1 The Companies are all part of the Cenargo Group, which operates as passenger and freight ship owners/operators, logistics and freight-forwarders and ancillary/supporting services.
- 1.2 On 7 February 2003 the Companies Division of the High Court appointed Michael David Rollings, Alan Robert Bloom and Shagun Sunil Dubey as Joint Administrators to 18 companies within the Group.
- 1.3 The appointments were made following petitions presented to the Court by the directors of the Companies.
- 1.4 On 20 February 2003, the Companies Division of the High Court appointed Michael David Rollings, Alan Robert Bloom and Shagun Sunil Dubey to a further two companies within the Group. These appointments were made following petitions presented to the Court by the Administrators of Cenargo International plc.
- 1.5 Shown at Appendix 2 to this report is a group structure, detailing the current status of each company. The companies dealt with in this report are predominately investment holding companies within the Group. Separate meetings are being convened in respect of other companies in the Group.
- 1.6 The Administration Orders were all made with the purpose of achieving the survival of the Companies, and the whole or any part of their undertakings, as going concerns and/or the sanctioning under Section 425 of the Companies Act 1985 of compromises or arrangements between the Companies and their Creditors, or any class of them.
- 1.7 Since their appointment, the businesses of the Companies have continued to trade under the control of the Joint Administrators whilst they investigated the assets and liabilities, assessed the future prospects of the Companies and entered into preliminary discussions with key financial creditors with a view to achieving the purpose of the Administration Orders.
- 1.8 At the time of preparing this report, the directors of the Companies have not sworn Statements of Affairs, as required under the Insolvency Act 1986, but these are currently being prepared.
- 1.9 In the absence of the Statements of Affairs, the financial information included in this report is based on unaudited balance sheets of the Companies as at 31 January 2003, prepared by the Companies' staff together with the Joint Administrators.
- 1.10 The Joint Administrators envisage that one or both of the purposes for which the Administration Orders were sought should be achieved in the near future. To enable matters to be progressed, the Joint Administrators seek the approval of the creditors to their proposals detailed in Section 5 of this report.

## EVENTS LEADING UP TO THE APPOINTMENT OF THE ADMINISTRATORS

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- 2.1 During the course of 2001/02 the Group experienced severe technical and operational problems with its vessels, which it attributed to poor service it was receiving from its ship manager.
- 2.2 These problems resulted in loss of operating performance and market share in its key operating areas. This led to severe adverse cash flow implications for the Group.
- 2.3 The cash flow problems were difficult for the Group to recover from and in early December 2002 the Group's management approached its financial creditors to discuss difficulties the Group would have in making interest payments due to its bondholders.
- 2.4 On 14 January 2003, 19 of the companies in the Group filed for protection under Chapter 11 of the Bankruptcy Code in the Southern District of New York Bankruptcy Court in the United States.
- 2.5 Following this, on 28 January 2003 Lombard Asset Leasing Ltd and Lombard Initial Leasing Ltd, both financial creditors under vessel leasing arrangements with Cenargo Leasing Limited and guaranteed by 12 other companies in the Group, obtained Orders from the Companies Court for the appointment of Michael David Rollings, Alan Robert Bloom and Shagun Sunil Dubey as Joint Provisional Liquidators to 13 of the companies.
- 2.6 These Provisional Liquidation Orders were sought in an effort to bring control of the insolvency procedures within the jurisdiction of the UK Courts as all of the companies within the Group are UK-registered and/or have their principal businesses based in the UK.
- 2.7 The appointment of Joint Provisional Liquidators is only a temporary measure and their duties to the Court included, among others, investigating options for the future of the Companies and presenting recommendations to the Court.
- 2.8 However, significant conflicts between the US Chapter 11 process and the UK Court Orders created an untenable position for the Companies, their creditors, directors and the Provisional Liquidators.
- 2.9 After much discussion between the Companies and their US advisers, the directors petitioned the UK Court for the appointment of Administrators to 18 companies on 6 February 2003. These Order were granted on 7 February 2003. On 20 February 2003 a further two Orders were granted in respect of other companies in the Group at the petition of those companies' directors. The Orders granted on 20 February 2003 included the one for Cenargo Navigation (Hong Kong) Ltd.

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## ADMINISTRATION PERIOD

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- 3.1 Following the granting of the Administration Orders, we considered the available options with a view to achieving one or more of the purposes for which the Order was made.
- 3.2 Since the Administrators' appointment, the directors' powers have been suspended and the Administrators have implemented measures to take control of the day-to-day management of the Companies. In addition to this, the Administrators have taken control of the assets and undertaken an assessment of the liabilities.
- 3.3 The trading activity of the Companies is the chartering of vessels to other companies within the Group or external parties.
- 3.4 The charters include providing the crewing and maintenance of the vessels, which is contracted to a third party agent, Bluewater Marine Management Ltd.
- 3.5 In conjunction with other companies within the Group and in order to maintain operation of the vessels, these arrangements have continued during the administration period with the Joint Administrators controlling/reviewing the expenditure incurred.
- 3.6 Further details on the vessels, operating routes and charterers are provided in Section 4 of this report
- 3.7 An effort by Cenargo Limited to sell the Group's head office, Puttenham Priory, prior to the Administration Order is being continued. An offer in the region of £5.6 million has been received and is being progressed. The property is subject to a mortgage, which is discussed later.

## THE ESTIMATED FINANCIAL POSITION

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- 4.1 At the date of preparing this report, the directors of the Companies have not submitted formal Statements of Affairs. In order to assist the creditors, the Joint Administrators detail below the unaudited balance sheet of the Companies as at 31 January 2003. These have been prepared by the Companies' staff.

### UNAUDITED BALANCE SHEETS AS AT 31 JANUARY 2003

£	Cenargo Ltd	Cenargo Leasing Limited	Proofband Limited	Belfast Freight Ferries Ltd	Cenargo Navigation (Hong Kong) Ltd
<b>FIXED ASSETS</b>					
Goodwill	-	-	-	-	-
Investments in group undertakings	-	-	-	-	-
Trade investments	-	-	-	-	-
Tangible assets	63,335,505	-	6,519,714	42,805,004	8,227,853
	<u>63,335,505</u>	-	<u>6,519,714</u>	<u>42,805,004</u>	<u>8,227,853</u>
<b>CURRENT ASSETS</b>					
Stocks	-	-	-	-	-
Debtors	169,473	-	-	24,781	-
Intra-group debtors	3,126,579	-	-	-	-
Cash	1,145,822	-	-	392,438	-
Encumbered deposits	5,057,768	-	-	-	-
Other	2,442,261	2,107,097	-	379,865	-
	<u>11,941,903</u>	<u>2,107,097</u>	-	<u>797,084</u>	-
<b>CURRENT LIABILITIES</b>					
Trade creditors	(630,026)	-	-	-	-
Intra-group creditors	(55,721,134)	(1,005,208)	(5,812,659)	(249,717)	(15,727,992)
Bank loans	(28,100)	-	-	(3,580,091)	-
Accruals and deferred income	-	-	-	(212,102)	(44,563)
	<u>(56,379,260)</u>	<u>(1,005,208)</u>	<u>(5,812,659)</u>	<u>(4,041,910)</u>	<u>(15,772,555)</u>
<b>LONG-TERM LIABILITIES</b>					
Bank loans	(2,165,700)	-	-	(32,987,618)	-
Obligations under leases	-	-	-	-	-
Other creditors	-	-	-	-	-
	<u>(2,165,700)</u>	-	-	<u>(32,987,618)</u>	-
<b>NET ASSETS/(LIABILITIES)</b>	<u>16,732,448</u>	<u>1,101,889</u>	<u>707,055</u>	<u>6,572,560</u>	<u>(7,544,702)</u>

- 4.2 The above balance sheets are prepared on a going-concern basis and do not take account of the Companies' exposure to guarantees offered in respect of borrowings of other companies in the Group.
- 4.3 Accordingly, in addition to the creditors reported above, the bondholders, who are guaranteed by the Companies, would claim in the estates the under secured element of their claim. The debt due to the bondholders is approximately £125 million, which is secured against Cenargo Group assets (principally vessels) that we estimate to have a value of £50-70 million.

## THE ESTIMATED FINANCIAL POSITION

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4.4 The key assets and secured liabilities of each of the Companies are as follows:

£000's	Cenargo Ltd	Cenargo Leasing Limited	Proofband Limited	Belfast Freight Ferries Ltd	Cenargo Navigation (Hong Kong) Ltd
<b>TANGIBLE ASSETS</b>					
Freehold Property (Note 1)	5,034	-	-	-	-
Vessels:					
Dawn Merchant	25,448	-	-	-	-
Brave Merchant	25,848	-	-	-	-
Mistral	6,969	-	-	-	-
Merchant Brilliant	-	-	2,610	-	-
Merchant Bravery	-	-	2,250	-	-
Merchant Venture	-	-	1,660	-	-
Lagan Viking	-	-	-	21,549	-
Mersey Viking	-	-	-	21,256	-
Saga Moon	-	-	-	-	4,218
River Lune	-	-	-	-	4,010
Other	36	-	-	-	-
	<u>63,335</u>	<u>-</u>	<u>6,520</u>	<u>42,805</u>	<u>8,228</u>
<b>SECURED LIABILITIES</b>					
Sun Life of Canada (Note 1)	(2,194)	-	-	-	-
Bondholders (Note 2)	(105,570)	-	(105,570)	-	(105,570)
Scotia Capital	-	-	-	(32,987)	-
	<u>(107,764)</u>	<u>-</u>	<u>(105,570)</u>	<u>(32,987)</u>	<u>(105,570)</u>

Note 1: This debt is secured by a mortgage over the Group's head office, Puttenham Priory, and represents only the principal and interest due at 31 January 2003. We are aware that a penalty for early repayment of the loan (estimated at £1.1 million) will be also be due and secured on the property.

Note 2: This represents the whole debt due to the bondholders from Cenargo International plc, which is guaranteed by and secured on the assets of the Companies.

4.5 As stated earlier, Puttenham Priory is being marketed for sale and an offer in the region of £5.6 million has been received and being progressed at the current time.

4.6 Consultations to date with the Bondholder representatives lead the Administrators to conclude that:

- (i) An immediate liquidation of the shipping assets will produce a substantial loss and, therefore, result in a significant claim from the Bondholders
- (ii) Any return to the unsecured creditors would be minimal
- (iii) The intended restructuring of the principal shipping subsidiaries, together with sufficient liquidity for the post-restructuring period, is in the best interest of all creditors.

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## PROPOSALS TO THE CREDITORS

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- 5.1 The purposes for which the Administration Order in respect of the Companies was made were (a) the survival of the Companies, and the whole or any part of its business as a going concern, (b) the sanctioning under Section 425 of the Companies Act 1985 of compromise or arrangement between the Company and its creditors or any class of them.
- 5.2 The Administrators' proposals in respect of the Companies to achieve one or more of these purposes are set out on the following page.

PROPOSALS TO THE CREDITORS

5

CENARGO LTD  
CENARGO LEASING LTD  
PROOFBAND LTD  
BELFAST FREIGHT FERRIES LTD  
CENARGO NAVIGATION (HONG KONG) LTD  
(ALL IN ADMINISTRATION)

Statement of the Joint Administrators' Proposals  
under Section 23 of the Insolvency Act 1986

The Joint Administrators propose that:

- (a) They continue to manage the business, affairs and property of the Companies in order to achieve the one or more of the purposes for which the Administration Orders were made.
- (b) They be empowered to pursue the implementation of compromises or arrangements with creditors of the Companies should they consider this to be:
  - (i) viable; and
  - (ii) more beneficial to the creditors than sales of the assets of the Companies.
- (c) They continue to negotiate a solution with the bondholders and other key stakeholders, which will allow:
  - (i) a dividend to be paid to Creditors that suitably reflects the financial position of the Companies;
  - (ii) essential contracts to be preserved; and
  - (iii) sufficient liquidity be retained within the businesses to meet post-restructuring funding requirements.
- (d) To the extent that it may be possible and they consider it appropriate, the Joint Administrators be empowered to realise the assets of the Companies at such time and on such terms as they consider to be most beneficial to the creditors of the Companies.
- (e) They investigate and, if appropriate, pursue any claims the Companies may have against any third person, including, without limitation:
  - (i) officers and former officers; and
  - (ii) advisers or former advisers.
- (f) The creditors consider and, if thought fit, establish Creditors' Committees to exercise the functions conferred upon them by or under the Insolvency Act 1986.
- (g) If established, the Joint Administrators consult with the Creditors' Committees at appropriate intervals concerning the conduct of the Administrations and the implementation and development of these proposals. Where they consider it appropriate, to obtain the sanction of the Creditors' Committees on behalf of the creditors (without further reference to the general body of creditors) to any proposed action on the part of the Administrators.
- (h) To empower the Joint Administrators to act with the authority of a simple majority of the Creditors' Committee, should one be formed, in case of matters arising where the Joint Administrators are required to take decisions on matters not covered by these proposals. In the absence of a Creditors' Committee, the Joint Administrators are to act in a manner they see as being fit for the interests of the creditors as a whole.
- (i) They carry out any other act and generally exercise their powers in a manner conducive to the successful achievement of the proposals outlined above including, without limitation, to appoint solicitors, agents and other professionals as appropriate
- (j) The Joint Administrators be authorised to charge fees based on time properly incurred in exercising their duties and draw such fees on account, subject to Creditor Committee or Court approval.

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## THE MEETING AND VOTING

6

- 6.1 The meeting is being held at the New Connaught Rooms, Covent Garden Exhibition Centre, 61-65 Great Queen Street, London WC2B 5DA on 10 April 2003 at 2.00 pm.
- 6.2 The provisions relating to the entitlement of creditors to vote at the meeting are set out in Appendix 3. Please note that a creditor is entitled to vote only if he/she has given to the Administrator, not later than 12.00pm on 9 April 2003, details in writing of the debt which he/she claims to be due to him/her from the relevant company and there have been lodged with the Administrators any proxy which the creditor intends to be used on his/her behalf.

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## STATUTORY INFORMATION

1

### CENARGO LTD

Name of Company	Cenargo Ltd		
Trading Name	Cenargo Ltd		
Date of Incorporation	20/06/1979		
Company Number	1431420		
Names of Directors	M A W Hendry R P Gregory A P T Hendry R A Harrison		
Name of Company Secretary	RP Gregory		
Details of Issued Share Capital	<u>Issued</u>	<u>No</u>	<u>Value</u>
	Ordinary	100	£100
Name of Auditors	Moore Stephens London EC4P 4BN		
Name of Bankers	HSBC Bank plc London EC2P 2BX		
Nature of Business	Chartering, operating, managing and owning ships.		

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STATUTORY INFORMATION

1

CENARGO LEASING LIMITED

Name of Company	Cenargo Leasing Limited						
Trading Name	Cenargo Leasing Limited						
Date of Incorporation	01/11/1999						
Company Number	03869417						
Names of Directors	M A W Hendry R P Gregory						
Name of Company Secretary	R P Gregory						
Details of Issued Share Capital	<table><thead><tr><th><u>Issued</u></th><th><u>No</u></th><th><u>Value</u></th></tr></thead><tbody><tr><td>Ordinary</td><td>1</td><td>£1</td></tr></tbody></table>	<u>Issued</u>	<u>No</u>	<u>Value</u>	Ordinary	1	£1
<u>Issued</u>	<u>No</u>	<u>Value</u>					
Ordinary	1	£1					
Name of Auditors	Moore Stephens London EC4P 4BN						
Name of Bankers	HSBC Bank plc London EC2P 2BX						
Nature of Business	Vessel operating						

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STATUTORY INFORMATION

1

**PROOFBAND LTD**

Name of Company	Proofband Ltd		
Trading Name	Proofband Ltd		
Date of Incorporation	14/04/1993		
Company Number	02809057		
Names of Directors	M A W Hendry R P Gregory		
Name of Company Secretary	R P Gregory		
Details of Issued Share Capital	<u>Issued</u>	<u>No</u>	<u>Value</u>
	Ordinary	2	£2
Name of Auditors	Moore Stephens London EC4P 4BN		
Name of Bankers	n/a		
Nature of Business	Ship owning		

STATUTORY INFORMATION

1

**BELFAST FREIGHT FERRIES LIMITED**

Name of Company	Belfast Freight Ferries Limited		
Trading Name	Belfast Freight Ferries Limited		
Date of Incorporation	11/01/1968		
Company Number	925768		
Names of Directors	M A W Hendry R P Gregory		
Name of Company Secretary	R P Gregory		
Details of Issued Share Capital	<u>Issued</u>	<u>No</u>	<u>Value</u>
	Ordinary	100,000	£100,000
Name of Auditors	Moore Stephens London EC4P 4BN		
Name of Bankers	HSBC Bank plc London EC2P 2BX		
Nature of Business	Ship owning		

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STATUTORY INFORMATION

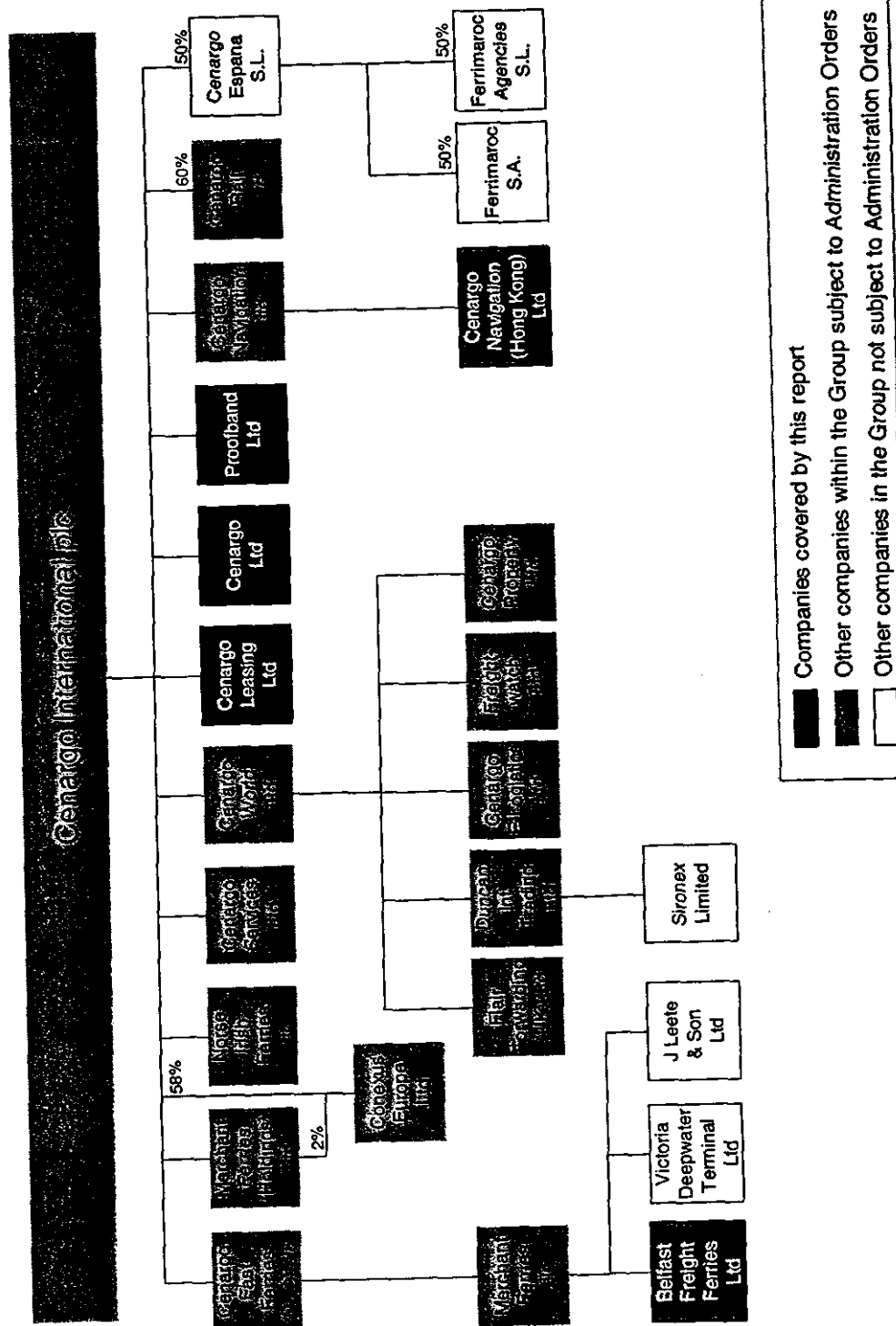
1

**CENARO NAVIGATION (HONG KONG) LIMITED**  
**(Registered in Hong Kong)**

Name of Company	Cenargo Navigation (Hong Kong) Limited		
Trading Name	Cenargo Navigation (Hong Kong) Limited		
Date of Incorporation	16/08/1994		
Company Number	489030		
Names of Directors	M A W Hendry R P Gregory R B Morton		
Name of Company Secretary	SHL Services Ltd		
Details of Issued Share Capital	<u>Issued</u>	<u>No</u>	<u>Value</u>
	Ordinary	2	HK\$10
Nature of Business	Vessel owning		

CENARGO LTD  
CENARGO LEASING LTD  
PROOFBAND LTD  
BELFAST FREIGHT FERRIES LTD  
CENARGO NAVIGATION (HONG KONG) LTD

## GROUP STRUCTURE



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## PROVISIONS RELATING TO VOTING AT THE CREDITORS' MEETING

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The following provisions are extracted from the Insolvency Rules 1986 ('the Rules') and the section numbers refer to those in the Rules.

### 1. ENTITLEMENT TO VOTE

Subject as follows, at a meeting of creditors in administration proceedings a person is entitled to vote only if:

- (a) He has given to the Administrator, not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the debt which he claims to be due to him from the company, and the claim has been duly admitted under the following provisions of this Rule, and
- (b) There has been lodged with the Administrator any proxy which he intends to be used on his behalf.

Details of the debt must include any calculation for the purposes of Rules 2.24 to 2.27.

### 2. SECURED CREDITORS

At a meeting of creditors a secured creditor is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of his security as estimated by him.

### 3. HOLDERS OF NEGOTIABLE INSTRUMENTS

A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing:

- (a) To treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and
- (b) To estimate the value of the security and, for the purpose of his entitlement to vote, to deduct it from his claim.

### 4. RETENTION OF TITLE CREDITORS

For the purpose of entitlement to vote at a creditors' meeting in administration proceedings, a seller of goods to the company under a retention of title agreement shall deduct from his claim the value, as estimated by him, of any rights arising under that agreement in respect of goods in possession of the company.

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PROVISIONS RELATING TO VOTING AT THE CREDITORS' MEETING

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**5. HIRE-PURCHASE, CONDITIONAL SALE AND CHATTEL LEASING AGREEMENTS**

Subject as follows, an owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to him by the company as at the date of the Administration Order.

In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the presentation of the petition of an Administration Order or any matter arising in consequence of that, or of the making of the Order.

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## A CREDITORS GUIDE TO ADMINISTRATORS' FEES ENGLAND AND WALES

4

### 1. INTRODUCTION

- 1.1 When a company goes into administration the costs of the proceedings are paid out of its assets. The creditors, who hope eventually to recover some of their debts out of the assets, therefore have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner appointed to act as administrator. The insolvency legislation recognises this interest by providing mechanisms for creditors to determine the basis of the administrator's fees. This guide is intended to help creditors be aware of their rights under the legislation to approve and monitor fees and explains the basis on which fees are fixed.

### 2. THE NATURE OF THE ADMINISTRATION

- 2.1 Administration is a procedure which places a company under the control of an insolvency practitioner and the protection of the court in order to achieve one or more of the following statutory purposes:
- the survival of the company and its business in whole or in part;
  - the approval of a company voluntary arrangement;
  - the sanctioning of a scheme under section 425 of the Companies Act 1985;
  - a better realisation of assets than would be possible in a liquidation.

Administration may be followed by a company voluntary arrangement or liquidation.

### 3. THE CREDITORS' COMMITTEE

- 3.1 The creditors have the right to appoint a committee with a minimum of 3 and a maximum of 5 members. One of the functions of the committee is to determine the basis of the administrator's remuneration. The committee is established at the meeting of creditors which the administrator is required to hold within 3 months of the administration order to consider his proposals. The administrator must call the first meeting of the committee within 3 months of its establishment, and subsequent meetings must be held either at specified dates agreed by the committee, or when a member of the committee asks for one, or when the administrator decides he needs to hold one. The committee has power to summon the administrator to attend before it and provide such information as it may require

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A CREDITORS GUIDE TO ADMINISTRATORS' FEES ENGLAND AND WALES

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#### 4. FIXING THE ADMINISTRATORS' FEES

4.1 The basis for fixing the administrator's remuneration is set out in Rule 2.47 of the Insolvency Rules 1986, which states that it shall be fixed either:

- as a percentage of the value of the property which the administrator has to deal with, or
- by reference to the time properly given by the administrator and his staff in attending to matters arising in the administration.

It is for the creditors' committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if it is fixed as a percentage, to fix the percentage to be applied. Rule 2.47 says that in arriving at its decision the committee shall have regard to the following matters:

- the complexity (or otherwise) of the case;
- any responsibility of an exceptional kind or degree which falls on the administrator;
- the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties;
- the value and nature of the property which the administrator has to deal with.

4.2 If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed by a resolution of a meeting of creditors having regard to the same matters as the committee would. If the remuneration is not fixed in any of these ways, it will be fixed by the court on application by the administrator.

#### 5. WHAT INFORMATION SHOULD BE PROVIDED BY THE ADMINISTRATOR?

##### 5.1 When seeking fee approval

5.1.1 When seeking agreement to his fees the administrator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on:

- the nature of the approval being sought
- the stage during the administration of the case at which it is being sought; and
- the size and complexity of the case.

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5.1.2 Where, at any creditors' or committee meeting, the administrator seeks agreement to the terms on which he is to be remunerated, he should provide the meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.

5.1.3 Where the administrator seeks agreement to his fees during the course of the administration, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the administrator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the administrator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the administrator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 4.1 above. To enable this assessment to be carried out it may be necessary for the administrator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, but it will be helpful to be aware of the professional guidance which has been given to insolvency practitioners on this subject. The guidance suggests the following areas of activity as a basis for the analysis of time spent:

- Administration and planning
- Investigations
- Realisation of assets
- Trading
- Creditors
- Any other case-specific matters

The following categories are suggested as a basis for analysis by grade of staff.

- Partner
- Manager
- Other senior professionals
- Assistants and support staff

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The explanation of what has been done can be expected to include an outline of the nature of the assignment and the administrator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain:

- Any significant aspects of the case, particularly those that affect the amount of time spent.
- The reasons for subsequent changes in strategy.
- Any comments on any figures in the summary of time spent accompanying the request the administrator wishes to make.
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement.
- Any existing agreement about fees.
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees.

It should be borne in mind that the degree of analysis and form of presentation should be proportionate to the size and complexity of the case. In smaller cases not all categories of activity will always be relevant, whilst further analysis may be necessary in larger cases.

- 5.1.4 Where the fee is charged on a percentage basis the administrator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by an administrator or his staff.

## 5.2 After fee approval

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has subsequently completed his functions, the administrator should notify the creditors of the details of the resolution in his next report or circular to them. In all subsequent reports to creditors the administrator should specify the amount of remuneration he has drawn in accordance with the resolution. Where the fee is based on time costs he should also provide details of time spent and charge-out value to date and any material changes in the rates charged for the various grades since the resolution was passed. He should also provide such information as may be required in accordance with the principles set out in paragraph 5.1.3. Where the fee is charged on a percentage basis the administrator should provide the details set out in paragraph 5.1.4 above regarding work which has been contracted-out.

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**6. WHAT IF A CREDITOR IS DISSATISFIED?**

- 6.1 If a creditor believes that the administrator's remuneration is too high he may, if at least 25 per cent in value of the creditors (including himself) agree, apply to the court for an order that it be reduced. If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the administrator a copy of the application and supporting evidence at least 14 days before the hearing. Unless the court orders otherwise, the costs must be paid by the applicant and not as an expense of the administration.

**7. WHAT IF THE ADMINISTRATOR IS DISSATISFIED?**

- 7.1 If the administrator considers that the remuneration fixed by the creditors' committee is insufficient he may request that it be increased by resolution of the creditors. If he considers that the remuneration fixed by the committee or the creditors is insufficient, he may apply to the court for it to be increased. If he decides to apply to the court he must give at least 14 days' notice to the members of the creditors' committee and the committee may nominate one or more of its members to appear or be represented on the application. If there is no committee, the administrator's notice of his application must be sent to such of the company's creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid as an expense of the administration.

**8. OTHER MATTERS RELATING TO FEES**

- 8.1 Where there are joint administrators it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute arising between them may be referred to the court, the creditors' committee or a meeting of creditors.
- 8.2 If the administrator is a solicitor and employs his own firm to act on behalf of the company, profit costs may not be paid unless authorised by the creditors' committee, the creditors or the court.