

# Feeling worse off? Indirect economic benefits too remote to prevent sanction of Petrofac restructuring plan

High Court decision in *Re Petrofac Ltd* [2025] EWHC  
1250 (Ch)



Two inter-conditional restructuring plans proposed by members of the Petrofac group have been sanctioned by the English High Court, despite challenges. An appeal of the convening order is scheduled to be heard by the Court of Appeal on 2-4 June 2025. Any appeal of the sanction order is expected to be heard at the same time.

## The plan

### Plan companies

Petrofac Limited (incorporated in Jersey)

Petrofac International (UAE) LLC (incorporated in the UAE)

### Industry

Energy

### Purpose of the plan

Restructuring of financial indebtedness to rescue the company, including a debt for equity swap, provision of new money and a compromise of certain unsecured liabilities.

### Challenges to sanction

The Saipem and Samsung Opposing Creditors were involved in a JV project with Petrofac. Liabilities in relation to that project would be compromised by the plan. Saipem and Samsung argued that:

- the relevant alternative was not a group-wide insolvency, but a different restructuring proposed by Saipem and Samsung;
- even if the relevant alternative was a group-wide insolvency, Saipem and Samsung would be worse off under the plan, principally because there was an indirect economic benefit to them of a liquidation scenario, in that Petrofac would no longer be operating as their competitor;
- the Court should decline to sanction the plans on fairness grounds.

## Court's findings

### Relevant alternative

- The relevant alternative was a group-wide insolvency as the plan company had argued, not an alternative plan proposed by Saipem and Samsung.
- The evidence was that the plan proposed by Saipem and Samsung was unlikely to be implementable. A factor in this was that there did not appear to be appetite from the new money providers, or other stakeholders, to reopen the deal.
- This case illustrates, as we have seen in previous cases, the difficulties for opposing creditors in showing that the relevant alternative is a different plan which treats them more favourably.

### No worse off

- The key question was whether factors beyond the direct financial benefits under the plan versus the relevant alternative could be considered in the no worse off assessment.
- The Court found that factors beyond direct financial benefits could be taken into account when assessing if the no worse off test is satisfied, but not if they are too remote, which the indirect commercial benefit of reduction in competition was in this case.

### Discretion / fairness

- The indirect commercial benefit could be included in the fairness assessment, but it did not render the plan unfair in this case.
- The benefits of the restructuring were not unfairly allocated. A 211% return to the new money providers was justified in the circumstances.

## What can we take away from the case?

- When assessing whether creditors are worse off under the plan than in the relevant alternative considerations can go beyond direct financial benefit but cannot be too remote.
- Indirect economic benefit can be considered as part of the fairness assessment.
- It remains difficult to show that an alternative plan would be the relevant alternative rather than an insolvency scenario.

# Key Contacts



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James Davison is a commercially focused and innovative Restructuring Partner. He has vast experience in corporate rescue and turnaround and typically works alongside corporates and their management teams, investors and financial institutions to protect and maximize value. James regularly advises on accelerated M&A transactions, debt and capital restructurings, and work outs and has led high profile restructuring mandates in a variety of sectors including hospitality and leisure, travel, retail and consumer, industrials and financial services.