KIRKLAND & ELLIS

Kirkland Alert

English Court Approves Madagascar Oil's Restructuring Plan, Despite Significant Challenge

18 August 2025

At a Glance

The English Court on 15 August 2025 approved the restructuring plan of Madagascar Oil, which had been opposed by one of only two creditors under the plan. This is the first written restructuring plan judgment to be handed down following the Court of Appeal's seminal judgment in *Petrofac.* (See our *Alert*.) Echoing *Petrofac*, the court held that "the proper use of the cross-class cram down power is to enable a plan to be sanctioned against the opposition of those unreasonably holding out for a better deal, where there has been a genuine attempt to formulate and negotiate a reasonable compromise between all stakeholders."

In this midmarket case (involving <$100 million of debt, plus large intercompany loans), the plan company's shareholder, BMK, was the only other creditor under the plan. BMK effectively sought to "cram across" Outrider and force Outrider's exit. Despite multiple grounds of challenge, the court held that:

- the correct relevant alternative to the plan was liquidation in which (as the plan company had argued) BMK would acquire the shares of the plan company's subsidiary;
- an "in the money" class (BMK) had voted in favour of the plan and the dissenting class (Outrider) would be no worse off under the plan than in the relevant alternative;
- the plan achieved a fair allocation of the benefits of the restructuring, despite treating BMK and Outrider (whose claims ranked equally) differently;
- there was a reasonable likelihood of international effectiveness (following extensive consideration of this issue, including competing expert evidence), such that the

court would not be acting in vain in approving the plan; and
- accordingly, the court would exercise its discretion to approve the plan.

The case illustrates the continued ability for an "insider" creditor (here, the plan company's shareholder) to retain control and upside under a restructuring plan, provided the court is satisfied as to the fair allocation of the benefits of the restructuring.

Despite the Court of Appeal's ruling in *Petrofac* that the burden rests on the plan company to show that returns on new money are either (a) equivalent to that which could be obtained in the market or (b) justified as a fair allocation of post-restructuring benefits, the court approved the new money terms under the plan on the basis that such terms were not part of the permitted grounds of challenge. Accordingly, the plan company could not be criticised for not adducing expert evidence as to what lending might have been available in the market and on what terms. The fact that the burden of proof lay on the plan company did not avoid the need for the opposing creditor to put the matter in issue in the first place.

The case marked a few notable firsts for restructuring plans:

- the first plan to involve one single creditor "cramming across" another;
- the first challenge on the basis that there was no "in the money" consenting class;[1] and
- the first case management conference (to determine which grounds of objection the challenger would be permitted to take). We expect to see additional case management hearings in future restructuring plans, where appropriate, as contemplated in the forthcoming revision to the official court practice statement on schemes of arrangement and restructuring plans.[2]

Background

Plan company:	Madagascar Oil Ltd, incorporated in Mauritius. The plan company's only asset is the shares in its Madagascan operating subsidiary, Madagascar Oil S.A. (the Subsidiary).

Aim:	To restructure the debt of the plan company and its Subsidiary in order to enable the injection of capital to restart production at a large but difficult-to-exploit oilfield in Madagascar.		
Relevant alternative:	Mauritian liquidation of the plan company, in which BMK would buy the shares of the Subsidiary for $10,000 plus the costs of the liquidation.		
Outline terms:	Class	Proposed Treatment	Voting
	1. BMK class	Injection of $7.5 million new money Retention of existing equity (100%) and preservation of $600 million intercompany loan	100% approved
	2. Outrider class	Debt written off in full, with choice of (i) $200,000 upfront cash payment or (ii) 1.25% of the Subsidiary's net revenue, up to 12 years — akin to synthetic equity. Plus "Restructuring Surplus Payment": 19% of cash received following any change of control	100% rejected
Grounds of opposition:	Outrider asserted that the plan was plainly an attempt by the group to avoid its c.$71 million liability to Outrider and to stifle insolvency proceedings commenced by Outrider against the plan company in Mauritius. It argued that: 1. **Relevant alternative**: the correct relevant alternative was a liquidation in which either: a. Outrider would put the Subsidiary into liquidation in Madagascar — resulting in there being no return to creditors in the liquidation of the plan company — such that BMK was therefore not an "in the money" creditor — therefore the court lacked jurisdiction to bind Outrider as a dissenting class;[3] or b. a better offer (likely from Outrider) would emerge for the purchase of the plan company's shares in the Subsidiary;		

	2. **"No worse off" test**: Outrider would be worse off under the plan than in the relevant alternative, even if the court accepted the plan company's relevant alternative; 3. **Fairness**: the genuine purpose of the plan was not to mitigate the effect of the plan company's financial difficulties in line with the business plan (the focus being on whether the business plan was realistic) and, even if the plan did have that purpose, the plan did not achieve a fair distribution of the benefits created or preserved by the plan, between the only two stakeholders; and 4. **International effectiveness**: the plan company had not discharged the burden of proving that there was a reasonable prospect that the plan would be effective in Mauritius or Madagascar, particularly in view of ongoing insolvency proceedings and injunctive orders currently in force against the plan company in Mauritius; accordingly, the court would be acting in vain were it to sanction the plan.
Open offer from Outrider:	Outrider made an open offer to purchase the company's shares in the Subsidiary for $700,000.

Judgment

In a 61-page judgment containing extensive details and analysis of the complex background to the case, the court held as follows.

Relevant alternative: The correct relevant alternative to the plan was indeed a Mauritian liquidation, in which BMK would buy the shares of the Subsidiary for $10,000 plus costs of the liquidation. This alternative was "realistic, commercially sensible and readily capable of implementation by BMK." The scenarios posited by Outrider appeared "to reflect either an aspirational investment, or a high stakes, but self-harming, strategy." Neither scenario was, in the court's view, a likely relevant alternative, let alone the *most* likely.[4]

"In-the-money" consenting class: Given the court's ruling as to the relevant alternative, Outrider's argument that there was no "in-the-money" consenting class (such that there was no jurisdiction to bind a dissenting class) fell away.

No worse off test: For various reasons, the court rejected Outrider's suggestion that it might receive more in a liquidation of the Subsidiary than under the plan; accordingly, the "no worse off" test was satisfied.

Fairness: The court acknowledged that the question of the plan's fairness was "less straightforward," in part because post-restructuring revenues depended on various unpredictable factors. However, in light of the evidence, the court was satisfied that the genuine purpose of the business plan was to turn around the fortunes of the Subsidiary's business and that the plan company and BMK were genuinely and reasonably of the view that the forecasts were realistic and achievable (notwithstanding the inherent uncertainty).

The court was also satisfied that the plan fairly allocated the benefits preserved or generated by the restructuring between the two plan creditors. In particular:

1. an "anti-embarrassment" clause afforded an effective protection against the plan company (and therefore BMK) obtaining "too good a deal," even though the prospect of a trigger event occurring in the relevant period was slim;
2. BMK was the key contributor to the benefits of the restructuring, in particular given its lending of $7.5 million as new money (which Outrider could not fund and without which the plan company would be unlikely to obtain funding);
3. a better deal was not realistically achievable in the circumstances (i.e. that the oilfield production project had effectively been mothballed since 2016; there was no realistic chance of investment from Outrider or any other investor; and BMK had stated it was unwilling to fund the oilfield unconditionally if the plan were not sanctioned, which the court accepted was "not an idle threat or ultimatum but a commercial reality");
4. the plan company and BMK had sought to reach a reasonable compromise with Outrider; and
5. Outrider was unreasonably holding out for a better offer.

International effectiveness:

1. Although the Supreme Court of Mauritius had declined to recognise the convening order for the company's plan,[5] and this might well impact any future application for recognition of sanction, it did not mean there was no reasonable prospect of Mauritian courts recognising the plan.
2. Despite a challenge as to the validity of the (Mauritian) plan company's purported shift of its centre of main interests (COMI) to England to facilitate the restructuring, in light of all the evidence, there was a reasonable chance that a

Mauritian court would (a) find the plan company's COMI to be in England and therefore (b) recognise the plan.

3. Recognition of the plan would not be likely to be held manifestly contrary to Mauritius public policy.
4. There was a reasonable prospect of any sanction order being recognised in Madagascar through the *exequatur* procedure.

Sanction: Accordingly, the court exercised its discretion to sanction the plan.

---

1. As required under s.901G(5) of the Companies Act 2006. ↩

2. The revised practice statement is expected to be issued in early September; further information here; see paragraphs 23 and 24. ↩

3. In accordance with s.901G(5) of the Companies Act 2006. ↩

4. *The 'aspirational investment'*: The court rejected Outrider's arguments that the relevant alternative was a liquidation in which Outrider, not BMK, would buy the shares of the Subsidiary. Although Outrider had expressed a continuing interest in bringing investment into the oilfield, the court had no confidence that Outrider was able to do so. Even if the $700,000 offer were viable, the court was far from satisfied that it would yield an outcome more beneficial than under the plan, given the $700,000 could quickly be consumed by liquidation costs, leaving no dividend for distribution (or certainly less than what could be achieved under the plan).

The 'high stakes, but self-harming, strategy': The court also rejected Outrider's alternative case that it would cause the Subsidiary to enter Madagascan liquidation, as the evidence showed significant uncertainty as to the manner and circumstances in which Outrider might do so. ↩

5. The Supreme Court of Mauritius dismissed the recognition application on paper and without a hearing, in a judgment of 12 May, rejecting the application as "devoid of merits". Madagascar Oil has appealed the judgment; the appeal is due to be heard in November. ↩

Author

Kate Stephenson

Partner / London

Related Services

Practices

- Restructuring

Suggested Reading

- 07 August 2025 Kirkland Alert Motor Finance — UK Supreme Court Allows Lenders' Appeal in Large Part; No Fiduciary or "Disinterested" Duty, but Possible Liability for "Unfair" Credit Terms
- 01 July 2025 Kirkland Alert Petrofac: Court of Appeal Overturns Restructuring Plans
- 20 May 2025 Kirkland Alert Petrofac: English Court Approves Restructuring Plan Despite Major Challenge From JV Partners; Appeal Likely