

ENGLAND AND WALES / JUDGMENT

Petrofac Limited & Anor, Re

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NEUTRAL CITATION NUMBER:[2025] EWHC 859 (Ch) Claim Nos: CR-2025-001257 CR-2025-001258
IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND
WALES INSOLVENCY AND COMPANIES LIST (ChD) Heard at: 7 Rolls Buildings Fetter Lane
London EC4A 1NL Date: 20 March 2025 Before: MR JUSTICE MARCUS SMITH

- ----- Between: IN THE MATTER OF: PETROFAC LIMITED AND IN THE
MATTER OF: PETROFAC INTERNATIONAL (UAE) LLC AND IN THE MATTER OF THE
COMPANIES ACT 2006 Heard on 28 February 2025 and 20 March 2025
- ----- David Allison, KC, Henry Phillips, Ryan Perkins and Stefanie
Wilkins (instructed by Linklaters LLP) for the Plan Companies Daniel Bayfield, KC and Dr
Riz Mokal (instructed by Weil, Gotshal & Manges (London) LLP) for the Ad Hoc Group Jon
Colclough (instructed by Mayer Brown International LLP) for Saipem and Samsung William
Day (instructed by Stewarts Law LLP) for the Stewarts Creditors Andrew Blake (instructed by
Fox Williams LLP) for the Fox Williams Creditors Daniel Petrides (instructed by the Retailer
Investor Advocate) for the Retailer Investor Advocate The PL Insurance Restitutionary
Claimants notified the court on 26 February 2025 of their intention not to appear (the parties
are all defined in the Judgment: see Annex 1)
- ----- Approved Judgment
- ----- High Court Approved Judgment In the matter of Petrofac Limited
and another The judgment was circulated to parties and to the National Archives on 8 April
2025 MR JUSTICE MARCUS SMITH:

Introduction

1. 2. 3. 4. This is an application by two companies, Petrofac Limited (terms and abbreviations used in this Judgment are bolded) and Petrofac International (UAE) LLC (together the Plan Companies) for permission to convene various meetings at which there can be considered and, if thought fit, approved a restructuring plan under Part 26A of the Companies Act 2006 (the Plan). Although technically there are two applications before me and two plans, I shall use the singular because these matters can only be considered holistically. I use the term Plan to embrace all aspects of the restructuring, including aspects where the court's approval is not sought or required. The plans form part of a wider restructuring of the Group which was negotiated in consultation with an ad hoc group of senior secured lenders (the Ad Hoc Group) and reflected in the terms of a lock-up agreement dated 22 December 2024 (the

Lock Up Agreement). As at 25 February 2025, 70.4% in value of Existing Senior Secured Noteholders (representing 51.2% in value of the Senior Secured Funded Debt) have acceded to the Lock-Up Agreement. I prefer to avoid too close a distinction between plans and restructuring because a holistic view needs to be taken of both the Group (and the Plan Companies within the Group) and the restructuring (and the role of the Plan within that restructuring). I will not, therefore, differentiate between “plans”; nor between “plans” and the broader “restructuring”, unless this is absolutely necessary for the sake of clarity. The fact is that the approval of the Plan is a necessary condition for any broader restructuring. I will, in due course, come to discuss the Relevant Alternative to the Plan. The Plan Companies are members of the Petrofac Group, a leading international service provider to the energy industry, which engages in the design, construction and operation of energy facilities around the world. The Group currently employs around 7,334 people across a range of major infrastructure projects. Urgency 5. The Plan is said to be urgent. The Plan Companies make the following assertions: i) The Group has won a number of significant and valuable contracts from a leading European grid operator, TenneT B. V. (TenneT), on terms which require the Group to provide certain performance guarantees (as is customary in the Group’s industry). However, the Group’s perilous financial position has made it impossible for it to secure those guarantees. High Court Approved Judgment In the matter of Petrofac Limited and another ii) iii) iv) v) TenneT has agreed to defer the Group’s obligations to 31 December 2026, but only on the condition that the Plan is completed by a longstop date of 28 February 2025. The Group is seeking an extension to the longstop date. TenneT has indicated that it may be prepared to grant an extension but only for one month (ie, to 31 March 2025). As matters presently stand, no formal extension has been agreed. TenneT has informed the Group that existing contracts may be terminated if the Plan is not implemented on or around 31 March 2025. Those contracts are estimated to account for approximately 24% of the Group’s post-Plan revenue by 2027. If they are lost then (according to the Plan Companies) the Plan is unlikely to be viable, and the Group will likely collapse into insolvent liquidation. If the Restructuring is not completed by 14 April 2025 a contract relating to a US\$1.5 billion project in Algeria (the STEP Contract) is liable to be terminated. The STEP Contract is currently suspended due to a failure to obtain performance guarantees, and the counterparty has agreed to forbear from exercising its termination rights on terms which require the Restructuring to be completed by 14 April 2025. If the STEP Contract is terminated, PL and other Group entities will be exposed to material liabilities, and the Restructuring is unlikely to be viable. If the Plan’s Effective Date does not occur by a long stop date of 31 May 2025, the Lock-Up Agreement will automatically terminate unless extended by majority consent. Any extension beyond 30 June 2025 requires all party consent. If the Lock Up Agreement terminates, the backstopping arrangements for the injection of New Money will also terminate and the Plan Companies and other members of the Group will, according to the Plan Companies, likely enter into insolvency proceedings. 6. Whilst it can always be said that applications of this nature could and should have been moved earlier and that the urgency is, in fact, of the Plan Companies’ making, that does little justice to the transactional complexity that underlies the Plan, and it is quite clear that

a lot of people have been working very hard for a long time. Of course, this has meant that the commercial pressures have increased, meaning that the pressures on the advocates and the court have been considerable. The convening hearing(s) 7. At the first hearing before me – on 28 February 2025 (the First Hearing) – the Plan Companies were targeting a sanction hearing on 26 March 2025, which created an extremely tight timetable and informed the urgency of the convening hearing. Obviously, all interested parties (and I include the court) would have preferred for the matter to have come before the court sooner. But I accept that the complexity both of High Court Approved Judgment In the matter of Petrofac Limited and another the Group's operations and its financing arrangements have made it extremely difficult to identify a viable solution to its financial difficulties and once that solution was identified it has been negotiated and brought to court as quickly as possible. 8.

Unfortunately, for reasons that I do not need to go into, the First Hearing proved to be ineffective so far as actually convening meetings was concerned. By paragraph 1 of the order made on that occasion (the 28 February 2025 Order), the convening hearing was adjourned to 20 March 2025. Given the issues identified on 28 February 2025, there was no way in which a convening order could safely have been made, and the Plan Companies sensibly accepted this, constructively working instead to instruct a Retail Investor Advocate, lay down an appropriate timetable for the filing of evidence by the various groups of opposing creditors, make provision for prospective costs orders in favour of two groups of opposing creditors, and generally ensure that the hearing on 20 March 2025 (the Second Hearing) would be effective. Other relevant parties 9. It is necessary to refer to the following parties who appeared before me at the adjourned convening hearing on 20 March 2025. In addition to the Plan Companies (represented by Mr David Allison, KC, as lead advocate), these parties were as follows: i) ii) iii) iv) v) The Ad Hoc Group of supporting creditors, represented by Mr Daniel Bayfield, KC (as lead advocate). The Saipem and Samsung Opposing Creditors, creditors opposing the Plan, represented by Mr Jon Colclough. The Stewarts Creditors, represented by Mr William Day. The Fox Williams Creditors, represented by Mr Andrew Blake. Mr Daniel Petrides, acting for the Retailer Investor Advocate. Evidence before the court 10. In addition to the detailed written submissions I have received from all parties appearing, which I have very considerably relied upon for the purposes of this Judgment (but which I will not specifically cross-reference), I have been assisted by High Court Approved Judgment In the matter of Petrofac Limited and another and take fully into account the following evidence (which is not a complete list of the material before me): i) ii) iii) iv) v) vi) vii) The first, second and third witness statements of Afonso Maria Pacheco Pais Dos Reis E Sousa on behalf of the Plan Companies (Sousa-1, Sousa-2 and Sousa-2). The first, second and third witness statements of Alessandro Zorza on behalf of the Plan Companies (Zorza-1, Zorza-2 and Zorza-2). The first witness statement of Matthew Trevor Reach on behalf of the Fox Williams Creditors (Reach-1). The first witness statement of Frank Archibald Johnson, a Fox Williams Opposing Creditor, on his behalf and on behalf of other Fox Williams Opposing Creditors (Johnson-1). The first witness statement of Lucius Tybulewicz, a Fox Williams Opposing Creditor, on his behalf and on behalf of other Fox Williams Opposing Creditors (Tybulewicz-1). The first and second witness statements of Ms

Amy Jacks on behalf of Saipem and Samsung (Jacks-1 and Jacks-2). The first witness statement of Mr Jonathan Yorke as the Retail Investor Advocate appending his report (Yorke-1 and the Retail Investor Advocate Report). viii) The following Practice Statement letters: a) b) c) The Practice Statement Letter dated 24 December 2024, which was directed to the creditors of both Plan Companies (the PSL). The separate Practice Statement Letter, also dated 24 December 2024, which was directed solely to the Shareholder Claimants (a group which is described later in this judgment) (the Shareholder PSL). Various Supplemental Practice Statement Letters, dated 21 February 2025 and 19 March 2025. ix) The Explanatory Statement in relation to the Plan produced by the Plan Companies. This is not a complete list, but represents the most significant of the (considerable) material that was before me.

High Court Approved Judgment In the matter of Petrofac Limited and another The law as regards convening hearings 11. Section 901C (1) of the Companies Act 2006 provides that: The court may, on an application under this subsection, order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs. 12. The practice at a convening hearing under Part 26A of the Companies Act 2006 is provided for in Practice Statement (Companies: Schemes of Arrangement under Part 26 and Part 26A of the Companies Act 2006), [2020] 1 WLR 4493, issued by the Chancellor on 26 June 2020 (the Practice Statement). 13. The principal function of the court at the convening hearing (see [6] of the Practice Statement) is to address the following questions: i) ii) iii) iv) Notice. The question is whether the creditors and members to whom the Plan applies have been given sufficient notice of the convening hearing. Jurisdiction. The court must be satisfied that the jurisdictional conditions set out in section 901A of the Companies Act 2006 are met. Roadblock. The question is whether there is any “roadblock” which would prevent the court from sanctioning the Plan. Class composition. The court must consider whether more than one meeting of creditors and/or members is required, and to ensure that those meetings are properly constituted. 14. The role of the court at the convening hearing is “emphatically not” to consider the merits or fairness of the Plan, which will arise for consideration at the future sanction hearing if the Plan is approved by at least one of the plan meetings held in respect of each of the Plan Companies: see *Re Telewest Communications plc*, [2004] BCC 342 at [14] per David Richards J; *Re Thames Water Utilities Holdings*, [2024] EWHC 3310 at [36] per Trower J. 15. At the First Hearing, I directed that an agreed list of issues be submitted to the court by 4:00pm on 7 March 2025 (the Agreed List). That document unhelpfully unspecific: i) At [1] of the Agreed List there appears a list of generic matters that fall to be determined by the court. That is a list that could have been compiled by anyone vaguely conversant with the requirements of Part 26A of the Companies Act 2006 for the convening of meetings. ii) A list of five matters “in dispute” which is so vague as to be useless. High Court Approved Judgment In the matter of Petrofac Limited and another 16. After some urging of the Court, including at a pre-Second Hearing hearing on 19 March 2025, the points in dispute emerged with greater clarity. The essential point turned on class composition, and I will deal with that issue in detail later on in this Judgment. However, it is important – particularly since I will be unable to deal with these applications at the sanction hearing – that I set out the

position as I understand it to be in some detail. In doing so: i) ii) iii) I am conscious that most of the points addressed in this judgment were not controversial, and so were not the subject of argument. I am conscious that even though the description of the Plan in this Judgment is long, it is as nothing compared to the material before me. It doubtless contains simplifications and infelicities and should not be read (no judgment should) as a statute or as a conclusive statement of the Plan. There are a number of matters – particularly of discretion – which are for the sanction hearing and not the convening hearing. I have obviously endeavoured to steer clear of these points, but when I have been unable to do so, it is because I am considering questions of jurisdiction, not discretion. Question 1: notice (see [13 i]) of the Judgment) 17. 18. 19. The Practice Statement provides that unless there is good reason not to do so, all creditors or members affected by a restructuring plan be given sufficient notice of the matters to be addressed at the convening hearing to enable them to consider what is being proposed, to take advice, and, if so advised, to attend the convening hearing: [7] and [8] of the Practice Statement. No specific period for notice is specified. The requisite period of notice is fact- sensitive, and will depend on “the complexity of the scheme or plan, the urgency of the company’s financial position, the sophistication of the creditors” and any other relevant matters: *Re Project Lietzenburger Strasse Holdco*, [2023] EWHC 2849 (Ch) at [29] per Miles J; *Re NN2 Newco Ltd* [2019] EWHC 1917 (Ch) at [22] per Norris J. It will also be relevant to consider the degree of consultation with creditors prior to the launch of the scheme. As Snowden J observed in *Re ColourOz Investment 2 LLC*,

[2020] BCC 926 at [46], the requirement to give adequate notice is primarily designed to ensure that any creditors who have not previously been involved in negotiating the scheme (and/or who have not already agreed to support it) are given sufficient time to consider and respond to the proposals. 20. In previous cases, the court has stated that it is the usual practice to provide 14 to 21 days’ notice of the convening hearing, unless there is evidence of urgency: see for example *Re House of Fraser (Funding) plc*, [2018] EWHC 1906 (Ch) per Birss J High Court Approved Judgment In the matter of Petrofac Limited and another 21. 22. (where 12 days’ notice was adequate); *Re NN2 Newco*, per Norris J (where 21 days’ and 7 days’ notice for each of the interconditional schemes was adequate); *Re Noble Group Ltd*, [2019] BCC 349 (convening judgment) per Snowden J (where 21 days’ notice was adequate); *Re Virgin Atlantic Airways Ltd*, [2020] BCC 997 (convening judgment) per Trower J (where 21 days’ notice was adequate). In a very urgent case, meetings of creditors may be convened even where they have had little or no notice of the convening hearing. For example, in *Re Thomas Cook Group plc*, [2019] EWHC 2494 (Ch), the scheme companies notified their creditors of the convening hearing only two days in advance. In cases where the court is not satisfied that the period of notice given is adequate, it may nevertheless make a convening order, and direct that creditors are not precluded from raising issues of jurisdiction and class composition at the sanction hearing: see *Re Thomas Cook Group plc*, [2019] EWHC 2494 (Ch); *Re Swissport Fuelling Ltd*,

[2020] EWHC 1499 (Ch) per Miles J (where just over a week's notice was given); Re HEMA UK I Ltd, [2020] EWHC 2219 (Ch) per Falk J (where 13 days' notice was given); Re Port Finance Investment Ltd, [2021] EWHC 378 (Ch) (where the Practice Statement Letter was issued 16 days' prior to the convening hearing but it took up to 5 days to reach the scheme creditors, who were noteholders, through the clearing system); and Re Virgin Active Limited, [2021] EWHC 814 (Ch) (where two weeks' notice was given, the proposed restructuring plan was complex and contentious, and there was limited consultation with certain creditor groups prior to the convening hearing). 23. In the present case: i) ii) iii) Each of the PSL and the Shareholder PSL was distributed on 24 December 2024, some 66 days in advance of the First Hearing (which took place on 28 February 2025). The PSL stated that the Plan Companies expected the convening hearing to be held on 28 January 2025 (which obviously has not taken place). The steps that the Information Agent and the Group took to notify the creditors and members are set out in Zorza-1 (which I shall not specifically set out in the Judgment). Further steps taken to notify creditors and members are summarised in Sousa-1 (at [15.1] to [15.18]). In addition to contacting Plan creditors directly, the Plan Companies placed advertisements in leading publications in the UK, Spain, Switzerland, US, Bahamas and Luxembourg, which are the top six jurisdictions in which the Plan Companies believe the highest number of shareholder creditors are located. The Plan Companies also contacted the top eighteen brokers of Petrofac Limited's shares. High Court Approved Judgment In the matter of Petrofac Limited and another iv) v) In the weeks leading up to 28 January 2025, steps were taken to finalise the terms of a new performance guarantee required to lift the suspension on the STEP Contract. However, those negotiations fell apart such that a new solution was required, which was ultimately found. However, this necessitated a deferral of the proposed date for the convening hearing. On 23 January 2025, Linklaters (the solicitors retained by the Plan Companies) distributed a notice of amended convening and sanction hearing dates to Plan creditors through the same means, informing them that the date for the convening hearing had moved to 25 February 2025. (This date was not held: the First Hearing took place on 28 February 2025.) The terms of the CBG Notes were eventually agreed on 21 February 2025. However, Plan Creditors had not been made aware of their existence in the PSL (because at the time of the PSL a different solution for the STEP Contract had been envisaged). Accordingly, on 21 February 2025, notices were sent to Plan Creditors informing them that the hearing date for the convening hearing had moved to 28 February 2025 and informing creditors that a supplemental PSL would be available on the Plan websites. A supplemental PSL was made available on the plan websites on 21 February 2025. 24. The question of notice was live before me at the First Hearing. Although it was accepted that generally most of the interested creditors had proper notice as regards some of the opposing creditors who are potentially litigating shareholders but not within the represented parties comprising the Stewarts Creditors or the Fox Williams Creditors, there was a question of notice that I was obliged to consider, in particular as regards unrepresented potentially litigating shareholders (the Unrepresented Shareholders). 25. Apart from the question of notice to the Unrepresented Shareholders, I conclude that

adequate notice of the Second Hearing for consideration of the Plan has been given to Plan creditors, such that the questions which are conventionally determined at the convening hearing may properly be determined: i) The PSL and Shareholder PSL were distributed well before the date initially proposed for the convening hearing and some 66 days before the date of the actual First Hearing (28 February 2025). The PSL is a detailed document which addresses the terms of the Plan, the purpose the Plan is intended to achieve, the Plan Companies' proposals in respect of class composition and the court's jurisdiction to sanction the Plan. The impact of the Plan on Shareholder Claimants remained consistent from the distribution of the PSL and Shareholder PSL until the First Hearing, although material changes were made between the First Hearing and the Second Hearing. High Court Approved Judgment In the matter of Petrofac Limited and another ii) iii) The Supplemental PSL was circulated a week before the First Hearing. Its purpose was to update Plan creditors on certain developments which had taken place since the PSL had been launched. The matters addressed in it do not materially impact on the matters to be determined at this stage. This is because the Supplemental PSL was principally concerned with updating Plan creditors on (i) the existence and consequences of the Thai Oil PG Call, (ii) the terms of the new funding arrangements contemplated by the Plan and (iii) the existence and terms of additional equity investment. Nevertheless, there were some new features articulated. The Supplemental PSL also (i) informed Plan creditors of the arrangements to be put in place in connection with the CBG Notes, (ii) provided an update as to the estimated value of the equity entitlements included in the Work Fee and Backstop Fee in light of the results of Teneo's Going Concern Valuation. 26. I am satisfied that sufficient notice of the convening hearing had been given to all interested creditors for the purposes of properly convening meetings apart from the Unrepresented Shareholders, whose position I consider further below. Question 2: jurisdiction (see [13(ii)] of the Judgment) 27. There are in fact a number of distinct jurisdictional questions that arise for consideration. I shall break these down into the following sub-questions: i) ii) iii) iv) Sub-question 2(a). Satisfaction of Condition A in section 901A of the Companies Act 2006. Sub-question 2(b). Satisfaction of Condition B in section 901A of the Companies Act 2006. Sub-question 2(c). Is there international jurisdiction? Sub-question 2(d). Are there any other jurisdictional hurdles capable of amounting to a "road-block"? Sub-question 2(a): Condition A 28. Section 901A of the Companies Act 2006 lays down the threshold conditions for proposing a compromise or arrangement under Part 26A. So far as material, it provides that:

- (1) The provisions of this Part apply where conditions A and B are met in relation to a company.
- (2) Condition A is that the company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern. High Court Approved Judgment In the matter of Petrofac Limited and another
- (3) Condition B is that—

- (a) a compromise or arrangement is proposed between the company and –
- (i) its creditors, or any class of them, or (ii) its members, or any class of them, and
- (b) the purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the financial difficulties mentioned in subsection (2).
- (4) In this Part...“company”...means any company liable to be wound up under the Insolvency Act 1986” 29. 30. 31. I shall consider Condition A in this section and Condition B (under Sub-question 2(b) below). As to Condition A, the court has held that the concept of “financial difficulties” should be given a broad interpretation: see *Re Gategroup Guarantee Ltd*, [2021] EWHC 304 (Ch) at [177]-[180]. The present case involves a straightforward fact pattern of an established trading business which has run into obvious financial difficulties and is now faced with very substantial liabilities which it is unable to pay. From the evidence before me, it is plain that the Plan Companies have encountered, and are likely to encounter further, financial difficulties that are affecting, and will affect, their ability to carry on business as a going concern. Absent the Plan, it seems very likely that the Group would be unable to obtain alternative funding, and in the absence of further support from stakeholders (which appears to me unlikely to be forthcoming), the directors of the Plan Companies would be forced to file for insolvency. For purposes of convening and for purposes of preparing the evidence for the sanction hearing, I should say that the Relevant Alternative is the insolvency case put forward by the Plan Companies. This was not seriously gainsaid by anyone. In any event, for the purposes of Condition A, these findings are sufficient to enable me to conclude that this Condition is met, and obviously so. Sub-question 2(b): Condition B 32. Condition B can be divided into two limbs: i) ii) The Plan Companies must be proposing a “compromise” or “arrangement” with their creditors or any class of them; and The purpose of the compromise or arrangement must be to eliminate, reduce or prevent, or mitigate the effect of, any of the company’s financial difficulties under Condition A. High Court Approved Judgment In the matter of Petrofac Limited and another 33. The meaning of the first limb of Condition B was considered by Trower J in *Re Virgin Atlantic*, [2020] BCC 997 (convening judgment) at [38]: As to Condition B (section 901A(3)), the proposal must be for a compromise or arrangement between the Company and its creditors, or any class of them. It is well-established that for the purposes of Part 26 the compromise or arrangement requires some element of give and take between a company and its scheme creditors, but a definition is neither necessary nor desirable (see, by way of example, *Re Savoy Hotel Ltd*, [1981] Ch 351, 359 and *Re Lehman Brothers International (Europe)*, [2019] BCC 115 at [64]). There is no reason to think that the concept of what is capable of amounting to a compromise or arrangement for the purposes of section 901A is any different to the same phrase used in Part 26. Indeed, quite the contrary, there is every reason to think that Parliament has intended the same language should be construed in the same way. In my view, the Restructuring Plan satisfies this aspect of Condition B.” 34. Although I am satisfied that Condition B is met – and no-one sought to dispute this before me – it is necessary for completeness to set out the Plan that I have referred to, but not described, in some detail.

When I have done this, consideration of Condition B will be resumed. A description of the Plan: phases of analysis 35. This question needs to be considered in three phases: i) The factual background to the Plan, and the financial position of the Group, needs to be understood before the Plan can be evaluated. ii) The liabilities to be compromised by the Plan need to be set out. iii) The Plan itself needs to be described. Factual background to the Plan The Petrofac Group 36. The Plan Companies are members of the Group. The Group operates in three main divisions: i) ii) The Engineering and Construction (E&C) division, which provides engineering, installation, commissioning and other services, principally to the oil and gas industry. The E&C business includes energy transition projects, which are delivered through the “ETP” unit. The Asset Solutions division, which manages and maintains onshore and offshore client operations and provides concept, feasibility and engineering services. High Court Approved Judgment In the matter of Petrofac Limited and another 37. 38. 39. 40. iii) The Integrated Energy Services division, which is the upstream oil and gas business and involves in the exploration and extraction of natural resources. Petrofac Limited is incorporated in Jersey, and its shares are traded on the London Stock Exchange. It is the ultimate parent company of the Group and primarily operates as a holding company. Petrofac Limited is the borrower and issuer of the Group’s principal “funded” financing arrangements and certain of its “unfunded” financing arrangements. It is also a guarantor of certain unfunded liabilities, and guarantor of the Group’s obligations under certain customer contracts (although it does not itself carry out services for customers). “Funded” financing arrangements involve money being advanced to the Group (whether by way of loans, revolving credit facilities or the issuance of debt instruments). “Unfunded” financing arrangements involve facilities under which performance guarantees and similar instruments are issued by the guarantee provider to the Group’s customers. The Group’s liability in respect of such “unfunded” facilities crystallises once the performance guarantee has been called upon by the customer, and the guarantee provider seeks to recover amounts paid out from the Group. Petrofac International (UAE) LLC is incorporated in Sharjah, in the United Arab Emirates (the UAE), and is an indirect subsidiary of Petrofac Limited. Petrofac International (UAE) LLC is a key operating company, and is the counterparty to various customer contracts for the Group’s E&C business, as well as being the parent (directly or indirectly) of other entities which hold such contracts. The Group’s financial difficulties 41. 42. 43. The genesis of the Group’s financial difficulties goes back to May 2017, when the Serious Fraud Office (SFO) commenced an investigation into Petrofac Limited (and others) for suspected bribery, corruption and money laundering. Petrofac Limited ultimately pleaded guilty to seven offences (contrary to section 7(1) of the Bribery Act 2010) of failing to prevent bribery by associated persons between 2011 and 2017 in respect of projects in Iraq, Saudi Arabia and the UAE. In October 2021, Petrofac Limited paid a £70 million fine, and £7 million in costs in respect of those convictions. Following the SFO investigation, the Group undertook an extensive corporate governance review (with the assistance of specialist external advisers) which has led to a complete overhaul of its compliance systems and controls. The SFO investigation has – notwithstanding these efforts – had a lasting adverse

effect on the business of the Group. In the UAE, a key customer suspended the Group from bidding for new tenders between March 2021 and March 2022. The Group was High Court Approved Judgment In the matter of Petrofac Limited and another not invited to tender for new work in Iraq for a period of time, and it was removed from Saudi Aramco's bid list (and has not been reinstated). 44. In consequence, the Group focused on new markets and won bids for work of greater complexity and risk. This included a project commissioned by Thai Oil Public Company Limited (Thai Oil) relating to the expansion of a refinery in Thailand to facilitate increased efficiency and cleaner fuel production (the Clean Fuels Project). The Clean Fuels Project has experienced substantial challenges and (according to the Plan Companies) is hugely (and unsustainably) loss making: it is one of the major causes of the Group's present financial challenges. The Saipem and Samsung Opposing Creditors are involved in the Clean Fuels Project; and the manner in which the Plan proposes to deal with the Plan Companies' and Group's obligations in regard to the Clean Fuels Project is the source of their opposition (at least in the First and the Second Hearings). 45. In November 2021, the Group completed a refinancing. This was intended to "right size" the balance sheet and enable the Group to recover from the effects of the SFO investigation. However, the Group's financial position has continued to deteriorate. The following circumstances or events appear to have caused this: i) ii) iii) iv) The COVID-19 pandemic has had a lasting effect on the business of the Group, which has not been able to recoup the losses in full. These losses continue to affect the Group's overall financial stability. In the 2022 financial year, the Group terminated its operations in Russia as a result of the war in Ukraine, which led to the loss of certain contracts, as well as exit costs. The conflict also caused disruption to the supply chain for several projects, and led to cost overruns. The Group has had difficulty in obtaining performance bonds and advanced payment guarantees, which are required to execute new and existing contracts. This has been a consequence of the Group's own financial position, and the decreased appetite of financial institutions to provide performance guarantees, or to be exposed to oil and gas projects in the UK and continental Europe. This difficulty has led to projects being delayed, and consequent loss of revenue. The challenges the Group has faced in obtaining performance guarantees is one of the major reasons for the Restructuring. In turn, the difficulty in accessing performance guarantees has necessitated the Group using its own cash for the purpose of making alternative arrangements (in the form of cash collateralising the financial institutions who provide the guarantee, and/or agreeing that customers may retain cash from payments otherwise owing to the Group). This has reduced the liquidity available to the Group. High Court Approved Judgment In the matter of Petrofac Limited and another v) vi) The Group has experienced difficulties with collecting some US\$300 million in payments in respect of "legacy" projects (ie, those which are complete, or near completion). The Group has a highly leveraged balance sheet: it has more than US\$880 million in funded debt, with servicing costs of US\$91.1 million per annum. This is an unsustainable position, which affects both liquidity and the ability to secure new performance guarantees, which are vital for the conduct of the Group's business. vii) In the second half of 2024, certain Group entities entered into time to pay

agreements with HMRC in respect of employee tax liabilities. 46. As a result, the Group is now in default in relation to its Existing Senior Secured Notes. There is currently over US\$200 million payable in interest and amortisation under the Existing RCF and Existing Term Loans; Petrofac Limited is unable to pay these amounts. Petrofac Limited is therefore reliant on rolling waivers and forbearances from its noteholders and bank lenders. In addition, in excess of US\$600 million of payments are overdue to suppliers, resulting in suppliers suspending or threatening to suspend services and supply of materials. Further, on 19 February 2025, one of the Group's unfunded creditors, Argonaut Insurance Company (Argonaut), served a statutory demand on Petrofac International Limited in Jersey in relation to sums owed under the Argonaut Guarantee Facility. 47. It had become apparent by September 2023 that the November 2021 refinancing had not provided the hoped-for benefits. Since then, the Group has explored a variety of options to alleviate its financial position. Since December 2023, it has done so with the support of the Ad Hoc Group. Liabilities to be compromised by the Plan

Introduction

48. The Plan will compromise the Group's main financial indebtedness and certain liabilities associated with the SFO investigation and the Clean Fuels Project. It is in regard to these latter aspects that the disputes and opposition regarding the Plan essentially arise. The secured financing arrangements 49. The Plan will compromise four financing agreements (described herein as the Senior Secured Funded Debt) in an aggregate amount of circa US\$909,605,101.41 (exclusive of fees and interest). Petrofac Limited is the borrower or issuer in respect of the Senior Secured Funded Debt (all of which is governed by English law and guaranteed by Petrofac International (UAE) LLC (among other Group entities)). High Court Approved Judgment In the matter of Petrofac Limited and another 50. 51. The Senior Secured Funded Debt shares a common guarantee and security package and is subject to the terms of an English law governed intercreditor agreement (the ICA). The Plan Companies also have certain other secured liabilities that will not be compromised by the Plans. I will return to these. Claims associated with the SFO investigation The claims identified 52. Three groups of liabilities fall under this head: Shareholder Claims; Director Claims and PL Insurance Restitutionary Claims. I describe them briefly in turn. Shareholder Claims 53. 54. 55. 56. As described, Petrofac Limited pleaded guilty to seven offences under the Bribery Act
2010. In October 2021, Petrofac Limited paid a £70 million fine, and £7 million in costs in respect of those convictions. Some shareholders or former shareholders of Petrofac Limited have brought, or have threatened to bring, claims against Petrofac Limited pursuant to sections 90, 90A and Schedule 10A of the Financial Services and Markets Act 2000. It is alleged that as a result of the Group's failure to disclose (accurately or at all) the issues to which the SFO investigation related, the Group made misleading statements and/or dishonest omissions or delays in its public disclosures. It is alleged that this resulted in Petrofac Limited's share price being unduly inflated, causing loss to relevant shareholders. Some of these shareholders are represented and have either commenced or threatened to commence

proceedings. The opposing creditors described herein as the Stewarts Opposing Creditors and the Fox Williams Opposing Creditors have commenced proceedings. Thus, and purely by way of example (I have no intention of going into the minutiae of the proceedings), on 21 February 2025, a group of 48 institutional investors represented by Stewarts Law LLP (the Stewarts Opposing Creditors) served particulars of claim on Petrofac Limited seeking damages or compensation pursuant to section 90A and Schedule 10 of the Financial Services and Markets Act 2000. The particulars of claim do not disclose the total losses claimed by the Stewarts Claimants. Petrofac Limited denies the claims that have been commenced and/or threatened, and it may be that some claims may be defeated in any event by lack of standing, failure to demonstrate reliance or the expiry of a limitation period. The litigation or threatened litigation is in its very early stages and the claims are difficult to quantify. However, the quantum is potentially very high and may have a value exceeding £500 million. High Court Approved Judgment In the matter of Petrofac Limited and another 57. Shareholders and former shareholders not forming part of the Stewarts Creditors or the Fox Williams Creditors may have claims and these will be affected by the Plan (as well as the claims of the Stewarts Creditors and the Fox Williams Creditors). The Ad Hoc Group and the investors in the New Money have stated that they would not support a restructuring that did not compromise these claims and provide a “clean break” from all such liabilities. In order to achieve this, the Plan (specifically, the plan relating to Petrofac Limited) will, if sanctioned, compromise (i) any and all claims by current and former registered or beneficial shareholders who acquired, held or disposed of shares in Petrofac Limited during the period from 7 October 2005 to 5 October 2021 (the Shareholder Claimants) (ii) arising out of or in connection with misleading statements and/or dishonest omissions or delays alleged to have been made in the Group’s published information between 7 October 2005 and 5 October 2021 in connection with the commission by former employees of historical instances of bribery and/or a failure to prevent those instances (or other similar or related allegations), (whether pursuant to sections 90, 90A or Schedule 10A of FSMA or otherwise). These are what I have referred to as the Shareholder Claims. 58. The proposed compromise of Shareholder Claims is not intended to affect: i) ii) Shareholder Claimants’ rights against Petrofac Limited’s insurers under the Third Parties (Rights Against Insurers) Act 2010. Their rights to claim against any third party (including directors) in respect of the facts and matters underpinning the Shareholder Claims. In a change to the Plan since the First Hearing (I should say that the Plan has been a thing in progress before and after the First Hearing) the claims included in the compromise exclude time-barred claims, on the basis that (i) such claimants should not be able to claim in regard to the monies made available under the Plan and (ii) such claimants cannot pose any financial risk to the Plan Companies, because their claims are time-barred. Director Claims 59. During the course of the SFO investigation, a number of directors and employees of the Group were interviewed. Most (if not all) retained independent legal advisers to represent them for that purpose. Petrofac Limited paid for the fees of these legal advisers for 42 individuals across the Group, in a total amount of approximately £10.3 million. In this regard, certain directors and employees have the benefit of indemnity /

contribution arrangements in place which entitle them to recover such fees from Petrofac Limited. In other cases, the legal fees were voluntarily paid by Petrofac Limited. 60. The majority of these fees were incurred prior to October 2021, when Petrofac Limited paid the fine associated with its guilty pleas. Petrofac Limited does not High Court Approved Judgment In the matter of Petrofac Limited and another anticipate further claims for the fees of these legal advisers from the majority of directors. However, the possibility cannot be excluded. It is possible that former directors or employees who are the subject of ongoing criminal proceedings may seek to recover further costs from Petrofac Limited. It is also possible that additional fees may be incurred by directors or employees in relation to any litigation brought by the Shareholder Claimants, and that those directors or employees would seek to recover such costs from Petrofac Limited. These claims (to the extent they exist) are contingent, and Petrofac Limited considers that they are of little or nil value. Of course, that stance is somewhat inconsistent with Petrofac Limited's proposal to compromise them under the Plan to achieve a "clean break" from liabilities associated with the SFO investigation. The point I would make – both as regards these claims and (more importantly) the Shareholder Claims is that the Plan Companies cannot have things both ways: they cannot without further articulation assert that these claims are of no value, whilst at the same time saying that their compromise is of critical importance to the future of the Group. That is a point I will be returning to. To achieve a "clean break", the Plan will, if sanctioned, compromise any and all actual or potential claims (including certain potential contribution or indemnity claims) that have been, or may be, brought against Petrofac Limited by certain directors or employees of the Group (the Director Claimants) based on English law agreements or legal principles arising out of or in connection with the Shareholder Claims or the SFO investigation and/or the facts and matters to which they relate (the Director Claims). 61. 62. PL Insurance Restitutionary Claims 63. 64. The Group has corresponded with its D&O Policy Insurers in respect of the Shareholder Claims (represented by Reynolds Porter Chamberlain LLP (RPC)) since 2020. On 5 November 2024, the insurers of Petrofac Limited's D&O Policy purported to elect to avoid the D&O Policy insofar as they insure Petrofac Limited and other companies in the Group, on grounds of fraudulent non-disclosure and / or fraudulent misrepresentation. The gravamen of the allegation made by the insurers is that it is said that Petrofac Limited deliberately misrepresented the risks that the insurers were being asked to insure at the time that the policy was taken out in 2016, and the D&O Policy is voidable (and, they say, has been avoided) as a result. The insurers have asserted that, as a consequence, they have a claim against Petrofac Limited and other companies in the Group for restitution of any payments made under the D&O Policy. High Court Approved Judgment In the matter of Petrofac Limited and another 65. 66. 67. Petrofac Limited has disputed the insurers' entitlement to avoid the D&O Policy, and does not accept the allegations of misconduct or their entitlement to restitution. However, if the claim for restitution were to succeed, it would be an unsecured claim. Again, Petrofac Limited proposes to compromise that claim under the Plan to achieve a clean break from liabilities associated with the SFO investigation. In order to do this, the PL Plan will, if sanctioned, compromise any actual or potential claims that

the providers of the primary, first excess and second excess layers (the PL Insurance Restitutionary Claimants) of PL's D&O policies for the period 1 April 2016 to 31 March 2017 (the Policies) may have against Petrofac Limited for the return of insurance proceeds on the basis that the PL Insurance Restitutionary Claimants are allegedly entitled to avoid the Policies and/or rely on exclusion clauses or coverage defences due to alleged conduct issues, including alleged fraudulent misrepresentations and/or non-disclosures made to insurers at the Policies' inception. These are what I have referred to as the PL Insurance Restitutionary Claims. Following a request for clarification from RPC, Linklaters (on behalf of the Plan Companies) have confirmed that the Plan is not intended to impact the PL Insurance Restitutionary Claimants' rights to assert that the D&O Policy has been avoided and have agreed to include a declaration to that effect in any future order sanctioning the Plan. As a result of these discussions and agreements, the PL Insurance Restitutionary Claimants have no issues with the Plan, and were not represented before me on the First Hearing, nor subsequently. Claims connected to the Clean Fuels Project 68. The Clean Fuels Project is a complex project in relation to the Sriracha Refinery in Thailand. The Clean Fuels Project is primarily governed by the terms of an engineering procurement and construction contract (the CFP Contract). The CFP contract is a comprehensive agreement, governed by English law, that consolidates detailed engineering, procurement and construction responsibilities under a single overarching contract. 69. The parties to the CFP Contract are Thai Oil (as the customer) and a consortium of members split between the onshore and offshore elements of the project (the Consortium). The Consortium are as follows: i) The Offshore Contractor: PSS Netherlands B. V. (PSS BV). PSS BV is a joint venture owned by Petrofac International (UAE) LLC, Saipem S.p. A (Saipem Parent) and Samsung E&A Co Ltd (Samsung Parent). High Court Approved Judgment In the matter of Petrofac Limited and another ii) The Onshore Contractor: an unincorporated joint venture between PSEAL (a subsidiary of Petrofac Limited), Saipem Singapore Pte Ltd (Saipem Singapore, a subsidiary of Saipem Parent) and Samsung E&A (Thailand) Co. Ltd (Samsung Thailand, a subsidiary of Samsung Parent). Saipem Parent together with Saipem Singapore, Samsung Parent and Samsung Thailand are referred to as the JV Partners. 70. 71. 72. Petrofac Limited has issued an English law governed parent company guarantee in favour of Thai Oil securing the obligations of each of PSEAL and PSS BV under the CFP Contract. There are a number of other English law governed contractual arrangements apportioning liability between the Consortium members in connection with the obligations of the Onshore and Offshore Contractor in respect of the project. In addition, members of the Group have a number of liabilities under other agreements relating to the Clean Fuels Project. The Clean Fuels Project is the most financially challenging project that the Group is involved with. It was awarded by Thai Oil on a fixed sum basis, and has been beset with problems which have increased the anticipated cost. The Consortium presently anticipates that additional funding in excess of US\$1.515 billion is required to complete the Clean Fuels Project. The Group cannot afford to finance its exposure in this amount, and considers that its continued involvement in the heavily loss-making project, which sits outside its core markets, is not viable and cannot be made viable. For these reasons the AHG and new

money providers have made it clear that they will only support the Plan if the liabilities associated with the Clean Fuels Project are compromised. 73. The potential liabilities associated with the Clean Fuels Project are substantial: i) ii) Thai Oil has claims against various Group obligors (including Petrofac Limited) in relation to contracts associated with the project. Those liabilities are estimated to be in the region of US\$1.64 billion. HSBC, ABN Amro (ABN) and Argonaut have claims against various Group obligors (including Petrofac Limited and Petrofac International (UAE) LLC) in relation to performance guarantees and counter-guarantees that have been issued in support of the Consortium's obligations. On 8 January 2025, Thai Oil issued a demand under those guarantees (referred to in this Judgment as the Thai Oil PG Call), leading to further demands made under the counter-guarantees. The Plan Companies' liability in respect of these instruments (some of which remains contingent) is estimated to be in the region of US\$114.32 million. iii) Members of the Consortium – Saipem Parent, Samsung Parent and PSS BV (the joint venture vehicle, and its co-owners) – have (or may have) a variety of High Court Approved Judgment In the matter of Petrofac Limited and another claims against Petrofac Limited and Petrofac International (UAE) LLC arising from the agreements which regulate the arrangements between Consortium members. Those liabilities are estimated to be in the region of US\$119.51 million. 74. The Plans, if sanctioned, will compromise all of the Group's obligations and liabilities in relation to the Clean Fuels Project, save that the HSBC guarantee claims will be compromised outside the Plan. It is this compromise that informs the opposition of the Saipem and Samsung Opposing Creditors. Liabilities not included in the Plan 75. There is no jurisdictional requirement to include all of a company's creditors in a restructuring plan: a company is entitled to decide which creditors are included in a scheme or plan: *Re Virgin Atlantic Airways Ltd*, [2020] BCC 997 (sanction judgment) at [58] and [60] per Snowden J (citing *Re PT Garuda*, [2001] EWCA Civ 1696 at [51] per Peter Gibson LJ); *Re Virgin Active*, [2021] EWHC 1246 (sanction judgment) at [259] to [265] per Snowden J. The court will assess the justification for the exclusion of any particular creditor as part of the exercise of discretion at the sanction hearing. 76. In the present case, the liabilities excluded from the Plan are described in the Explanatory Statement at [3.9] and further explained in section 12 of Sousa-1. This is a summary: i) ii) HSBC: HSBC has a claim in relation to the HSBC Guarantee Facility, provided as part of the Clean Fuels Project. This is governed by UAE Law, and is guaranteed by Petrofac Limited, under a Jersey law governed guarantee. Owing to uncertainty about the effectiveness of a compromise of these liabilities under an English plan, this has been compromised on a consensual basis outside the Plan and the lack of an available local restructuring process. Project Liabilities: Petrofac International (UAE) LLC is the contractor in respect of other projects, a number of which are supported by parent guarantees from Petrofac Limited. Other than liabilities in relation to the Clean Fuels Project, the Plan will not compromise any of Petrofac International (UAE) LLC's or Petrofac Limited's projects-related liabilities. There are a number of reasons for this, including the profitability of those projects, the governing law of the relevant contracts, the need to maintain strong relationships with the relevant customers and the potentially damaging impact of compromising those projects on the Group's reputation.

The Clean Fuels Project is an exception, since continuing with it threatens the Group's ability to operate as a going concern. High Court Approved Judgment In the matter of Petrofac Limited and another iii) iv) v) vi) vii) Guarantee Facilities: Other than those provided in connection with the Clean Fuels Project, the Plans will not compromise the Group's existing Guarantee Facilities. This is principally because maintaining those facilities is a condition of a number of the Group's project agreements which require performance bonds, without which those projects would be liable to be terminated thereby undermining the Group's ability to continue as a going concern. Certain Director Claims: Any claims that current Petrofac Limited directors may potentially have against Petrofac Limited in connection with the facts and matters underpinning the SFO investigation or the Shareholder Claims will not be compromised under the Plan. This is because the ongoing involvement and confidence of current management is said to be vital to deliver the Group's business plan and secure the success of the Restructuring. Ongoing Litigation: The Group is involved in a number of ongoing pieces of litigation and arbitration. Certain of these sets of proceedings concern the Plan Companies. Other than the Shareholder Claims, the Plan Companies do not propose to compromise any other litigation or arbitration liabilities. In most instances they are of modest size, concern ongoing/live projects with key counterparties of the Group, and/or relate to other liabilities which are excluded from the Plans. Trade Liabilities: Petrofac International (UAE) LLC, and to a lesser extent Petrofac Limited, are customers under certain contracts for the supply of goods and services. These trade liabilities will not be compromised under the Plans as the continued supply of services by such creditors is critical to enable Petrofac Limited and Petrofac International (UAE) LLC to continue operating as going concerns. Intra-Group Liabilities: There are significant intercompany liabilities owed by Petrofac Limited and Petrofac International (UAE) LLC to other members of the Group. As part of the broader Restructuring, the intercompany liabilities of Petrofac Limited and Petrofac International (UAE) LLC will be discharged including by way of release or set-off (to the extent permitted under any applicable laws). The Plan Basic terms of the Plan 77. The Plan will, if sanctioned, effect different compromises on different groups of creditors: i) Senior Secured Funded Creditors will exchange their Senior Secured Funded Debt in full for new ordinary shares in Petrofac Limited (the New High Court Approved Judgment In the matter of Petrofac Limited and another Ordinary Shares) based on a commercially negotiated conversion ratio. The Plan will result in the Senior Secured Funded Creditors owning between 16.38% and 17.25% of the post-Plan equity. Senior Secured Funded Creditors who provide New Money will receive a greater percentage of the equity in the restructured Group. ii) As to the claims associated with the SFO Investigation: a) b) The Shareholder Claimants will release in full all Shareholder Claims. In return for that release, the Shareholder Claimants were initially entitled to participate in the Shareholder Claims Settlement Fund, the total size of which fund will be £1 million. Shortly before the adjourned convening hearing, the consideration to be made available to Shareholder Claimants was increased in the manners set out in Sousa 3, paragraphs 2.2.2, 2.3 and 2.6 - 2.8, including through the issue of warrants. The Director Claimants and the PL Insurance Restitutionary Claimants – all of whom have

unsecured claims – will release their Director Claims and PL Insurance Restitutionary Claims in full, and in exchange will be entitled to participate in a Non-Shareholder Claims Settlement Fund, the total size of which was initially to be £1 million, but which was increased in line with the Shareholder Claims Settlement Fund. iii) As to the claims associated with the Clean Fuels Project: a) b) c) Under the Plan, both Petrofac Limited and Petrofac International (UAE) LLC will be released from any and all obligations they owe to Thai Oil and the members of the Consortium (ie, PSS BV, and the JV Partners, who are Samsung Thailand, Samsung Parent, Saipem Singapore and Saipem Parent). Claims by Thai Oil and members of the Consortium against Petrofac Limited will be released in full, in return for an entitlement to participate in the Non-Shareholder Claims Settlement Fund. Claims by Thai Oil and members of the Consortium against Petrofac International (UAE) Limited will be released in full, in return for an entitlement to receive cash or equity representing 110% of their likely high case return in the Relevant Alternative (subject to a cap on their equity entitlement). That distribution (if in cash) will be funded by a “PIUL Non-Lender Settlement Fund” of approximately US\$9 million (albeit not capped in the same way as the other settlement funds). High Court Approved Judgment In the matter of Petrofac Limited and another d) e) f) Argonaut’s claims in connection with the Clean Fuels Project (the Thai Oil Argonaut Claims) will be compromised in return for New Ordinary Shares representing approximately 0.18% of the post- Restructuring equity. ABN’s claims in connection with the Clean Fuels project will be compromised in return for New Ordinary shares representing approximately 0.93% of the post-Restructuring equity. Certain of Argo and ABN’s Plan Claims may remain contingent as at the Restructuring Effective Date. Accordingly, Plan consideration in respect of their accrued claims will be issued on the Restructuring Effective Date, whereas Plan consideration in respect of any contingent claims will be issued if and when the relevant contingency occurs. 78. The technical mechanics for effecting the arrangement is by conferring a power of attorney on the Plan Companies to execute on behalf of Plan Creditors the necessary contractual documents (including, in particular, a Restructuring Implementation Deed and Deed of Release). As to this: i) Use of a power of attorney to confer on a company the power to execute the relevant contractual documentation on behalf of creditors is known: see, for example, *Re Jain International Trading B00V*, [2021] EWHC 1812 at [11]; *Re ColourOz Investment 2 LLC*, [2020] EWHC 1864 (Ch) at [74]-[75] per Snowden J, following *Re Premier Oil plc*, [2020] CSOH 39 at [218]-[230] per Lady Wolffe. ii) That being said, this power would be exercised in the teeth of opposition of (at least) the Saipem and Samsung Opposing Creditors, as presently advised. 79. As part of the Plan, the existing ICA will be amended and restated. One aspect of the amendments is that the existing security may be released, and new security will be put in place in respect of (amongst others) the Senior Secured Unfunded Debt (which has the benefit of the existing ICA) and the New Money Notes (which are one of the means by which the Plan will raise funds). A plan or scheme has in the past been used to obtain the consents required from creditors to effect changes to an intercreditor agreement, particularly where the amendments are required to enable new money to be provided on a super senior basis: see, for example, *Re Chaptre Finance plc*, [2024] EWHC

2908 (Ch) at [1410]-[142] per Miles J; Re Swissport, [2020] EWHC 1499 (Ch) at [5], [16], [19], [400]. The Claims Adjudication Process 80. The Plan incorporates a claims determination and adjudication process to determine the entitlements of certain Plan Creditors to receive distributions from the Shareholder Claims Settlement Fund and the Non-Shareholder Claims Settlement Fund (the High Court Approved Judgment In the matter of Petrofac Limited and another Claims Adjudication Process). Similar valuation and adjudication procedures have been used in previous schemes: eg, Noble Group, [2019] BCC 349 (Snowden J) at [8]-[9]; Re Amicus Finance, [2021] EWHC 2255 (Ch) (Snowden J) at [47]-[51]; Re All Scheme Ltd, [2022] EWHC 549 (Ch). 81. The Claims Adjudication Process applies to claims by Thai Oil, the JV Partners, the Director Claimants, the PL Insurance Restitutionary Claimants and the Shareholder Claimants (the Adjudicated Creditors). It has been structured to provide a fair and efficient means of determining the value of Adjudicated Creditors' entitlements to the Plan Consideration. Full details of the procedure are set out in Part 5 of the Explanatory Statement and in the "Letter to Shareholders". It is also explained in detail in Section 9 of Sousa-1. It is unnecessary for me to say more about this process in this Judgment. Third Party Releases 82. 83. Pursuant to the Deed of Release, the Plan will provide for the release of other obligors, Group security providers, certain advisors and their respective affiliated parties from claims arising out of or related to the Plan Claims. In the case of claims associated with the SFO Investigation, this expressly includes a release of claims arising out of wilful or intentional conduct or fraud. Such a release is necessary given the nature of those claims. The Plan also provides for a customary release of the professional advisers to the Plan Companies, the directors of the Plan Companies and various other persons involved in the Plan from any liability arising out of the negotiation and implementation the Restructuring. New Money Need for an injection of New Money 84. 85. The Group forecasts that it will require a minimum of US\$350 million of New Money in order to deliver its business plan. That funding is, according to the Plan Companies, essential and without it they say that there is no viable restructuring and the Group will be unable to continue operating as a going concern. The New Money is needed to: (i) increase the Group's working capital to normal levels; (ii) enable the Group to perform its US\$7.1 billion contract backlog in accordance with the Group's business plan; and (iii) to settle or compromise certain historical liabilities owed by the Group, including key trade suppliers and contractors who are presently owed approximately US\$600m. High Court Approved Judgment In the matter of Petrofac Limited and another 86. 87. Following extensive negotiations with prospective investors (and the AHG) the Group has secured that investment as part of, and contingent upon, the Plan. Over the previous twelve months the Group has had extensive negotiations with multiple parties in respect of new money investment. The Group's distressed financial state, together with the absence of a sufficient number of interested parties to create competitive tension in negotiations, have left it in a weak bargaining position. Ultimately, the Plan Companies are confident that the terms of the funding are the best available. 88. In broad terms, the New Money comprises two elements: New Money Equity and New Money Notes. New Money Equity 89. The New Money Equity comprises US\$218.75 million of new equity

funding issued in exchange for New Ordinary Shares. The New Ordinary Shares will be issued by reference to a notional post-Plan equity value of US\$376 million. The expected post-Plan equity value is greater than this (in the range of US\$1.46 billion to US\$1.81 billion). 90. It has not been possible to identify a single party or source willing or able to provide the entirety of the New Money Equity. Instead, it is being raised as follows: i) US\$93.75m from secured creditors (namely, the Senior Secured Funded Creditors and ABN (if it elects to participate)). This portion of the New Money Equity is referred to as the New Backstopped Equity. This is because it has been guaranteed pursuant to a backstop agreement dated 22 December 2024 (the Backstop Agreement). All of the Senior Secured Funded Creditors and ABN have the right to participate in the New Money under the Plans. The right to elect to participate remains open until one business day after the proposed Plan meetings (which are considered further below). The New Backstopped Equity will represent between 24.32% and 26.71% of the post-Restructuring equity. ii) US\$125 million from existing stakeholders and new investors of which: a) US\$37.5 million is being provided by a financial investor (the New Financial Investor), who is also a Senior Secured Funded Creditor. The New Financial Investor is receiving a fee for that investment, in the form of 434,770,907 New Ordinary Shares. The shares issued to the New Financial Investor (excluding this fee portion) will represent between 9.73% and 10.68% of the post-Restructuring equity. b) US\$87.5m is being provided by certain major existing shareholders (the Existing Shareholder Investors (US\$35 million)) and other new High Court Approved Judgment In the matter of Petrofac Limited and another c) investors (including certain of the directors of Petrofac Limited (including Mr Sousa)) (US\$52.5 million). The shares issued to these investors will represent between 21.43% and 22.90% of the post-Restructuring equity. The Existing Shareholder Investors are shareholders who, collectively, hold 37% of Petrofac Limited's shares. Their support for the Plan is necessary to pass the special resolutions required in order to authorise the issuance of New Ordinary Shares pursuant to the Plan. In order to secure their support for the Restructuring, and their commitment to provide at least US\$35m of New Money Equity, the Existing Shareholders are being provided with certain warrants over ordinary shares in Petrofac Limited, exercisable for nil consideration subject to certain market-capitalisation thresholds being met. If the warrants become exercisable in full, the shares issued under them are expected to represent approximately 6.23% of the post-Restructuring equity. d) The participation by the directors in the New Money Equity was requested by one of the Existing Shareholder Investors to demonstrate their support for the business. The New Money Notes 91. The New Money Notes comprise US\$131,250,000 of new senior secured notes (net of fees and OID of 7.5%) issued by a newly incorporated entity ("AS HoldCo"). The funding for the New Money Notes is to be provided as follows: i) US\$93.75m from secured creditors (namely, the Senior Secured Funded Creditors and ABN). All of the Senior Secured Funded Creditors and ABN have the right to participate in the New Money Notes under the Plan. Each creditor that participates in the New Money Notes will receive: (i) for every \$1 of participation (net of OID), reinstatement of US\$0.68174 of its Funded Debt as senior Reinstated Notes (which form part of the New Notes Issuance); and (ii) a pro-rata amount of additional equity

representing 15.33% and 16.38% of the post-Plan equity. The right to elect to participate in the New Money Notes remains open until 1 business day after the Plan Meetings. ii) US\$37.5m from the New Financial Investor in exchange for US\$44 million of New Notes. High Court Approved Judgment In the matter of Petrofac Limited and another 92. Those Plan Creditors entitled to participate in the New Money are required to do so on the basis of a 50:50 split between New Money Equity and New Money Notes. As at 20 February 2025: eligible plan creditors holding claims worth US\$449,013,372 are Participating Secured Lenders (meaning that they have committed to provide New Money) and eligible plan creditors holding claims worth US\$469,591,729 are Non- Participating Secured Lenders (meaning that they have not committed to provide New Money). The CBG Facility 93. 94. 95. 96. As described, the Group has faced difficulties in obtaining uncollateralised performance guarantees and advance payment guarantees that are contractually required on many of its projects. This has led to one of the Group's key customers suspending a circa US\$1.5 billion project in Algeria (the STEP Contract). Obtaining an adequate performance bond to release the suspension of the STEP Contract is a condition of the Plan. In order to facilitate this, an agreement has been reached with two Existing Secured Noteholders (together, the CBG Notes Subscribers) for the provision of US\$80 million of cash collateral to support the provision of a new cash-backed guarantee facility (the CBG Facility). The arrangements in relation to the CBG are complicated. They are explained in Sousa-1 [10.57]-[10.58] and in the Explanatory Statement at Part 3, section 3, but I do not need to refer to the detail for the purposes of this Judgment. In consideration of the above, the CBG Notes Subscribers will receive US\$19.57 million of New Notes. New Money Equity Upsize 97. Further New Money may also be raised in connection with the Plan, in the form of equity in Petrofac Limited (New Money Equity Upsize). This money will be raised at the same subscription price as the New Money Equity, so that those who participate in the upsize will be doing so at the same price available to 98. secured creditors. Fees 99. A number of fees will be paid on the effective date of the Plan. These fees are described in the Explanatory Statement at [5.1]-[6.7] and in Sousa-1 at [10.21]- [10.43]. More specifically: i) Work Fee: The five members of the AHG will be paid a work fee (the Work Fee) in consideration for the work undertaken by them in connection with the High Court Approved Judgment In the matter of Petrofac Limited and another Plan. The Work Fee was agreed in an aggregate amount of US\$7,092,750 payable in cash. However, in the event that the Plans are sanctioned, that cash entitlement will be converted to New Ordinary Shares based on an allocation of equity agreed on the same terms as the providers of New Money Equity. If the Group is able to deliver on its business plan then the equity allocated to the Work Fee is estimated to have a value of between US\$23 million and US\$29 million. ii) Backstop Fee. There is an Initial Backstop Fee and a Backstop Premium: a) b) The Initial Backstop Creditors (namely, members of the AHG and three additional bondholders who decided to underwrite the entirety of the New Money prior to the launch of the Restructuring) will be entitled to the Initial Backstop Fee which is (i) 3.75% of the New Backstopped Notes (structured as an OID) that will be paid in the form of New Money Notes; and (ii) 3.75% of the New Backstopped Equity to be paid in the form of New Ordinary Shares. All Senior

Secured Funded Creditors were entitled to accede to the Backstop Agreement as additional backstop providers, and earn the Backstop Premium, which is (i) 3.75% of the New Backstopped Notes (structured as an OID) that will be paid in the form of New Money Notes; and (ii) 3.75% of the New Backstopped Equity to be paid in the form of New Ordinary Shares. The Initial Backstop Lenders are said to be entitled to a greater fee than other backstopping creditors to reflect the additional risk that those creditors have assumed, and the fact that they committed capital earlier in the process. Together, the Initial Backstop Fee and Backstop Premium have an aggregate value of approximately US\$8 million for the New Backstopped Notes and US\$55 million for the New Backstopped Equity.

iii) iv) Consent Fee: Under the terms of the Lock-Up Agreement, each Senior Secured Funded Creditor who committed to support the restructuring by 5pm on 15 January 2025 is entitled to the Early Bird Consent Fee, in an amount equal to 0.25% of their locked-up debt holdings. The Early Bird Consent Fee will be paid in cash on the Plan becoming effective.

Advisor Fees: The Group have agreed to indemnify members of the AHG and lenders under the Existing RCF and Term Loans in respect of professional fees that they have incurred in connection with the negotiation and documentation of the Restructuring (the Advisor Fees). Liability to pay such fees is not conditional upon the Plan becoming effective. Other elements of the Restructuring High Court Approved Judgment In the matter of Petrofac Limited and another 100. There are a variety of other elements which are to be effected not as part of the plans whose sanction is sought but outside these plans, as part of the wider Plan: i) ii) iii) iv) HMRC settlement: There has been a settlement with HMRC of an alleged liability owed by a subsidiary of the Group. Whilst not a liability of a Plan Company, the size of the liability was such that resolution of the dispute was critical to securing support for the Restructuring from the Group's lending banks and the AHG.

Corporate Restructuring: All material subsidiaries, other than PSEAL, will be transferred into a newly incorporated and wholly owned indirect subsidiary of Petrofac Limited (HoldCo 2), which will itself be owned by a newly incorporated wholly owned subsidiary of Petrofac Limited (HoldCo 1). This amended structure will be put in place to make creditor enforcement easier (via a single point of enforcement) in the event of a post-Plan default, and was a condition of the AHG's support for the Plan.

Business Transformation Plan: Following the Plan's effective date, Petrofac Limited will separate each of the Group's three business segments. The purpose of this is to facilitate access to further performance guarantees where required, and to facilitate future disposals of part(s) of the Group.

Customer arrangements: Amendments have been made to certain project documents entered into with ADNOC and TenneT, who are key customers. These customers have permitted the Group to delay in providing performance guarantees that would otherwise be required. In the case of TenneT, these arrangements are conditional upon the Plans being sanctioned before a set longstop date of 28 February 2025 (an extension to which is being negotiated).

101. Having set out the nature of the Plan in sufficient detail for the purposes of this Judgment, it is possible to return to Sub-question 2(b) and Condition B. Sub-question 2(b) resumed 102. The question is whether the Plan involves the requisite element of "give and take" between

the Plan Companies and the Plan creditors. In the context of compromises or arrangements under Part 26A, this is (still) a somewhat novel question, but no-one at the Second Hearing contended that there was an absence of “give and take” so as to undermine jurisdiction. Of course, when considering fairness, the question may be whether the requisite element of “give and take” must subsist as between each class of Plan creditor or whether it need only subsist as between the Plan Companies and Plan creditors generally. But these questions are not for me. However, there is one (related) point that I should deal with since I raised it with counsel: i) In this case, it is – as I will come to describe – common ground between all appearing before me that the Shareholder Claimants must constitute one class High Court Approved Judgment In the matter of Petrofac Limited and another and that the JV Partners and PSS BV (which class includes the Saipem and Samsung Opposing Creditors) constitute another. Although it is to anticipate, I agree with these limited propositions. ii) In their written submissions for the adjourned convening hearing, the Saipem and Samsung Opposing Creditors say: Saipem and Samsung are very substantial actual and contingent creditors of the Plan Companies – hundreds of millions of dollars (there is some debate about the precise number). It is proposed that the Plans will release the claims of Saipem and Samsung for, in the case of [Petrofac Limited], 0.1% of their value...Saipem and Samsung are, in substance, the primary targets of the restructuring. The Saipem and Samsung Opposing Creditors make the additional point that although these are contingent claims, “it is very likely that the relevant contingency will occur”. iii) iv) v) The same point could be made by the Stewarts Creditors and the Fox Williams Creditors, although (because the contingencies are less clear-cut both in terms of occurrence and value, and the terms of the Plan have changed) it is a weaker point. I asked counsel to assist me on whether there is an Article 1 Protocol 1 (right to property) question under the European Convention of Human Rights (ECHR) as incorporated into English law under the Human Rights Act 1998 (HRA). As regards the Shareholder Claims, there is also an Article 6 ECHR (right to a fair trial) point, given that the objective of the Plans is to close out contentious claims against the Plan Companies for what may be a fraction of the value.

103. Mr Allison, KC helpfully addressed me on these points. I am satisfied that they do not constitute issues for this hearing. That is because the Part 26A process is a judicially supervised process and the courts are alive to their own obligations under the HRA. Accordingly, safeguards – specifically, the sanction hearing – have been built into the process, so as to enable a court to refuse to sanction a scheme that is not ECHR / HRA compliant. That is the substance of two authorities that were cited to me, *Re Equitable Life Assurance Society*, [2002] BCC 319 at [86]; and *Re Noble Group*,

[2018] EWHC 2911 (Ch) and 3092 (Ch) at [72] – [76].

104. As to the second limb of Condition B, the purpose of the Restructuring Plans is clearly to address the financial difficulties which the Plan Companies are currently in and thereby enable the Plan Companies to continue trading as a going concern. Although (i) there are two Plans, not one and (ii) a great deal of compromise and re- High Court Approved

Judgment In the matter of Petrofac Limited and another negotiation is going on outside the scope of the Plans, the Plans are an essential part of the overall restructuring, and I find the second limb of Condition B to be satisfied. Sub-question 2(c): international jurisdiction 105. 106. Section 901A(4) of the Companies Act 2006 provides that the court has jurisdiction to sanction a restructuring plan provided that the company is a “company liable to be wound up under the Insolvency Act 1986”. Petrofac Limited is incorporated and registered in Jersey. Petrofac International (UAE) LLC is incorporated and registered in Sharjah in the UAE. I consider that the Court would have jurisdiction to wind up each of the Plan Companies as an unregistered company pursuant to sections 220 and 221(5) of the Insolvency Act

1986. On that basis, each of the Plan Companies is a “company” within section 901A: see (in the context of the identical provision in section 897 CA 2006 or its statutory predecessor) *Re Drax Holdings*, [2004] BCC 334 per Lawrence Collins J at [24]-[26], *Re Rodenstock GmbH*, [2011] Bus LR 1245 per Briggs J at [56]; *Re Noble Group Ltd*, [2019] BCC 349 (convening judgment) per Snowden J at [68].
107. Because the Plan Companies are incorporated in a foreign jurisdiction, it is necessary for the court to be satisfied that: i) ii) There is a “sufficient connection” to this jurisdiction: *Re Drax Holdings Ltd*, [2004] BCC 334 at [29]; and The proposed restructuring plans will be effective in the key foreign jurisdictions in which it is necessary that the restructuring plans should have effect: *Re Magyar Telecom BV*, [2014] BCC 448 per David Richards J at [16]. 108. I remind myself that questions of international recognition, and the extent of the connection between each of the Plan Companies and the jurisdiction of England go to the exercise of the court’s discretion to sanction the Plans. As Snowden J explained the position in *Re ColourOz Investment 2 LLC*, [2020] BCC 926 at [57]: ...the questions (i) whether there is a “sufficient connection” with England, and (ii) whether the scheme will have international effectiveness do not go to the existence of jurisdiction: they go to the exercise of the court’s discretion whether or not to sanction the scheme, and should therefore not be determined at the convening hearing. [emphasis in original] See also *Re Project Lietzenburger Strasse Holdco* [2023] EWHC 2849 (Ch) at [56] per Miles J.
109. Accordingly, I find that there is international jurisdiction in regard to the Plan Companies. To anticipate the question of a jurisdictional “road-block”, I should state (without in any way anticipating the exercise of discretion at the sanction stage) that: High Court Approved Judgment In the matter of Petrofac Limited and another i) ii) I see nothing in the connection between the Plan, the Plan Companies and this jurisdiction to prevent there being a sufficient connection with this jurisdiction so as to constitute a “road-block”. It seems to me well arguable (to put it no higher than this) that the Plan will have substantial effect in all relevant jurisdictions and that no “road-block” issue arises here either. 110. I was taken to the relevant law in this regard, but I do not consider that it is appropriate to say any more than I already have at this (convening) stage. I stress that this is a matter on which the judge dealing with the question of sanction will need to be addressed. Sub-question 2(d): other

jurisdictional hurdles?

111. At the convening hearing, the court may consider whether there are any other jurisdictional hurdles that would prevent the ultimate sanction of the restructuring plan: *Re Noble Group Limited* [2009] BCC 349 at [76]. Again, this is not a matter primarily for this hearing, but it is a matter that will need to be considered by the judge dealing with the question of sanction of the Plan.
112. As noted above, the Plans also provide for the release of certain third parties pursuant to the Deed of Release. First, the Plans release other obligors and group security providers in relation to the Plan Claims. As to this: i) ii) It is well established that releases of these nature fall within the jurisdiction of Part 26 and Part 26A, as they are necessary in order to avoid any “ricochet claims” against the Plan Company, which would defeat the purpose of the Plan: see *Re Lehman Brothers (Europe) (No.2)* [2009] EWCA Civ 1161 per Patten LJ at 65; *Re Noble Group Ltd* [2019] BCC 349 (sanction judgment) at [24]-[35] and *Re Gategroup Guarantee Ltd* [2021] EWHC 304 (Ch) at [163] per Zacaroli J. Petrofac Limited has entered into a Deed of Contribution dated 22 February 2025 in favour of Petrofac International Limited in respect of that company’s liabilities to Argonaut (the Deed of Contribution). The effect of the Deed of Contribution will be that, as between the Plan Companies, Petrofac Limited will assume the position of a joint primary obligor in respect of the Argonaut liabilities. This means that, if Argonaut seeks to recover its claims from Petrofac International Limited, that company will have a contribution claim against Petrofac Limited. iii) There are many cases in which a deed of contribution has been used in order to create a “ricochet” claim. The technique is commonly used where (as here) a plan is proposed by a company which is a guarantor of some of the debt. The legitimacy of the technique was considered in some detail and endorsed by High Court Approved Judgment In the matter of Petrofac Limited and another *Trower J* in *Re Swissport Fuelling Ltd* [2020] EWHC 3413 (Ch) at [62]-[73]. In *Re E D & F Man Holdings Ltd* [2022] EWHC 687 (Ch), *Trower J* said, at [66]: In my judgment, there is no objection to the use of such a structural device so long as it is done with a view to achieving the best possible outcome for creditors as a whole. In *Re Swissport Fuelling Limited* [2020] EWHC 3413 (Ch), paragraph 62-73, I explained why I consider that this is the correct approach. iv) More recently, in *Re Revolution Bars Limited* [2024] EWHC 2014 (Ch), Sir Alastair Norris observed at [36]: ...the Plan Company entered into a Deed of Contribution to enable it to promote the Plan itself for the benefit, both of itself and of the Group as a whole. There is nothing out of the ordinary about this and it is a conventional mechanism. 113. Secondly, the Plans also release the Group Advisors and a broadly defined group of Related Parties (which includes but is not limited to affiliates, directors and employees) from claims arising out of or related to the Plan Claims. As to this: i) ii) iii) The Plans are not intended to release any Shareholder Claims against the Plan Companies’ directors. In addition, the Deed of Release expressly stipulates that the release shall not affect or prejudice the rights of any person (including, but not limited to, the Shareholder

Claimants) under the Third Parties (Rights Against Insurers) Act 2020. In *Re Noble Group* at [24]-[25], Snowden J held that a similar release was within the jurisdictional scope of Part 26A on the basis that the “necessity” test extended to a release of “claims closely connected to scheme claims”. In *Re All Scheme* [2022] EWHC 549 at [50], Snowden J held that a release of group companies, their directors and employees of claims arising out of or in connection with the claims which were the focus of the scheme created no obvious roadblock to the scheme (which was ultimately sanctioned). 114. 115. The Plan Companies submitted that there was no jurisdictional roadblock to the proposed release. Questions as to the fairness or appropriateness of the release are matters relevant to the exercise of the court’s discretion to sanction the Plans. That was not gainsaid by any of the other parties, and I agree. Thirdly, the Plans also provide for a customary release of the professional advisers to the Plan Companies, the directors of the Plan Companies and various other persons involved in the restructuring from any liability arising out of the negotiation and implementation the restructuring. The Plan Companies submitted that: High Court Approved Judgment In the matter of Petrofac Limited and another i) ii) This was a standard provision which has been held to fall within the concept of a compromise or arrangement between a company and its creditors in their capacity as such: see *Re Far East Capital Ltd SA* [2017] EWHC 2878 (Ch) at [13]-[14]; *Re Noble Group Ltd* [2019] BCC 349 (sanction judgment) at [20]-

[30] and *Re National Car Parks Limited* [2021] EWHC 1653 (Ch) at [52]. The release from liabilities arising out of the negotiation and implementation of the Restructuring expressly excludes any claim in respect of fraud or wilful misconduct.

116. No-one gainsaid this at the convening hearing, and I agree. Conclusion in regard to jurisdiction

117. Apart from the jurisdictional question in relation to the first limb of Condition B (see

[101] to [102]), for the reasons given above in answer to the sub-questions arising under Question 2 (jurisdiction) described at [27], I find that there is jurisdiction in this court to sanction the Plans, leaving altogether out of account whether the discretion to sanction should be exercised. That is not a matter for me at this hearing, and I do not consider the matter in this Judgment. Question 3: “road-block” (see [13 iii]) of the Judgment) Some non-issues on road-block

118. At the convening hearing stage, the court must consider if there are any “roadblocks” to the Plan, that is to say “anything which even now can be seen to present such an obstacle that there is no point in convening scheme meetings”: *Re CFG Investments*

[2021] EWHC 2780 (Ch) per Sir Alastair Norris. 119. 120. I have already considered whether there is any jurisdictional “road-block” and concluded that there is not. I say nothing more in this regard. Three other matters were drawn to my attention by the Plan Companies for my consideration in this regard. None of them constituted “road-blocks”, and no-one contended that they did. I deal with them briefly in the following sub-paragraphs.

However, I should place on the record now, that at the First Hearing, the Stewarts Creditors and the Fox Williams Creditors raised what they said was a “road-block” in regard to notice to those Shareholder Claimants not falling within the Stewarts Creditors and the Fox Williams Creditors groupings. Although that point ceased to be live at the Second Hearing, it is nevertheless necessary that I explain why I agree with this. I turn first, however, to the non-road-block issues: i) Proposed single member of a class. I will come to the classes to be convened and their composition next, but it has been drawn to my attention that the Plan Companies envisage there being at least one class comprising a single High Court Approved Judgment In the matter of Petrofac Limited and another ii) iii) member. In the case of the Plan, this is the case as regards ABN and Argonaut. Whilst this is undoubtedly a matter (i) that is relevant to class composition (to which I will come) and (ii) to discretion at the sanction stage (which I do not consider), this does not constitute a “road-block”. It is possible to have a class comprising only one member: *Re Altitude Scaffolding Limited*, [2006] BCC 904 at [18]. Conditions precedent to the Plan becoming effective. Schedule 2 to the Restructuring Implementation Deed states a number of conditions precedent to the effectiveness of the Plan. Whilst at the sanction hearing, the court will wish to be satisfied that there are “sound grounds for thinking” that the relevant conditions will be satisfied and that there is no known obstacle to completion (*Re Smile Telecoms Holdings Limited*, [2021] EWHC 685 (Ch) at [43]-[66]), at the convening stage I merely need to be satisfied that none of these conditions precedent is a “road-block”. No-one before the court has contended that these conditions constituted a “road-block” and plainly they do not. Indeed, the conditions seem to me to be both relatively common place and consistent with the overall objects of the Plan. There is a theoretical combination of Adversely beneficial outcomes. circumstances which might result in: Non-Participating Secured Lenders (ie, those Senior Secured Funded Creditors who do not participate in the New Money), ABN and Argonaut being better off in the Relevant Alternative high case as against the low case Plan outcomes. This does not present any “roadblock” to the Plan since (i) the most likely outcome is that none of those creditors will be any worse off under the Plan and (ii) the question of whether any creditor is worse off under the Plan is relevant to the exercise of the court’s cross-class cram down power under section 901G(3). It is not known, at this stage, whether it will be necessary to exercise that power in respect of the Senior Secured Funded Creditors, ABN or Argonaut, and this is clearly not a matter for the convening hearing. It certainly does not constitute a “road- block”. The question of notice 121. This was a point raised by the Stewarts Creditors and supported by the Fox Williams Creditors. It might be said that they were (at the First Hearing) opportunistically throwing a spanner in the works of the Plan, but that would be an incorrect characterisation of an important point. The point was this: i) Although neither of the Stewarts Creditors nor the Fox Williams Creditors were willing to concede that sufficient notice to them had been given (and for High Court Approved Judgment In the matter of Petrofac Limited and another reasons I will not go into, they certainly had a point at the First Hearing), the point they made was that altogether insufficient notice had been given to those Shareholder Claimants not falling within either of these two groups. ii) Although I

only heard brief submissions on this point at the First Hearing, there seemed to me to be sufficient force in the point to make it necessary that its adverse implications for the Plans were minimised. Put more brutally, it seemed to me it was possible to reduce the risk that I might – on the adjourned Second Hearing – find so great a road-block as to prevent my convening any meetings at all. The ameliorating measures that I directed were these: a) b) The appointment of the Retailer Investor Advocate, who has produced his Retail Investor Report and who (although paid for by the Plan Companies) has been acting independently of them. The substance of the evidence adduced by the Retailer Investor Advocate went to the question of notice. That both the Stewarts Creditors and the Fox Williams Creditors have the benefit of prospective costs orders: see paragraphs 12 to 16 of the 28 February 2025 Order. The point in making these orders was indirectly to ameliorate the adverse potential effects of the notice point. It seems to me that a relevant factor when considering notice is the extent to other parties (here: the Stewarts Creditors and the Fox Williams Creditors) take points at the convening hearing which are the same or similar to points which could have been taken by the unnotified and unrepresented parties. 122. I conclude that there is no “road-block” arising out of the question of notice to Shareholder Claimants, and no “road-block” generally. The Relevant Alternative 123. It is appropriate, at this point, and before considering the question of class composition (Question 4), to say a few words about the Relevant Alternative, which has been adverted to in earlier paragraphs of this Judgment. 124. The material before me comprised reports by Teneo written on behalf of the Plan Companies. These reports: i) Evaluated the likely returns for Plan Creditors in the event that the Plan is not sanctioned. High Court Approved Judgment In the matter of Petrofac Limited and another ii) iii) Evaluated the likely enterprise value of the Plan Companies and the Group in the event that the Plans are sanctioned and implemented. Compared outcomes for Plan Creditors in the event that the Plans are not sanctioned and in the event that the Plans are approved and implemented. 125. These are important materials, but mainly they go to matters relevant to sanction, rather than the convening of meetings. Accordingly, I should not stray into matters that are not for this hearing.

126. According to the Plan Companies, the most likely alternative to the Plans is a Group wide insolvency including the liquidation of Petrofac Limited, Petrofac International (UAE) LLC and other group entities in multiple jurisdictions. This, it was contended, constituted the Relevant Alternative for the purposes of Part 26A of the Companies Act 2006. The reports by Teneo sought to describe the outcomes of the Plan, if sanctioned, and the Relative Alternative, if the Plan was not sanctioned, and make a comparison between these two future alternative worlds.
127. According to the Plan Companies, the likely consequences for the Plan Companies and the Group in the event that the Plans are not sanctioned are that: i) ii) iii) iv) Petrofac Limited would need to make an immediate market announcement because of its listed status. Sums owed to the Secured Lenders would immediately become due and payable and Petrofac Limited would suffer an immediate and severe liquidity crisis. Confidence in Petrofac

Limited and the Group on the part of stakeholders and customers would inevitably collapse, leading to the termination of existing customer contracts and collection / enforcement action by the Group's creditors. The Group has already stretched creditors (including in respect of in excess of US\$600 million of trade payables, approximately two thirds of which are already overdue). It is highly unlikely that the Group's stakeholders would be willing to fund the group or coalesce around a different restructuring solution to the Plan.

Accordingly, the directors of the Plan Companies (together with local operating entities) would be forced to file for insolvency. 128. It seems to me that it is necessary at this stage that I "flush out" any dispute as to what is the Relevant Alternative. Clearly, all opposing creditors will be entitled, at the sanction hearing, to adduce evidence as to the comparative outcome as between sanction and non-sanction. The comparison exercise is a matter exclusively for the sanction hearing. But it is necessary that any points as to the nature of the Relevant Alternative be resolved now. That is for two reasons: High Court Approved Judgment In the matter of Petrofac Limited and another i) ii) If there is to be useful evidence adduced at the sanction hearing, it needs to be directed to the correct Relevant Alternative or Relevant Alternatives. It is imperative that that point be "flushed out" as soon as possible. The Relevant Alternative is an important factor in class composition. I shall, as appropriate, refer to the Relevant Alternative in the course of considering Question 4, but without seeking to encroach on matters that are properly for the sanction hearing. 129. There was no real dispute before me as to the nature of the Relevant Alternative, although variations to the Plan over time makes matters more complex. It is theoretically possible for a revised possible Plan to constitute the Relevant Alternative to the Plan presently on offer. This is unrealistic: there is only one Plan in this case, even if it is changing: the Relevant Alternative is clearly as described by the Plan Companies. Question 4: class composition ([13(iv)] of the Judgment) Legal principles 130. The principles regarding class composition are well-established, albeit mainly in relation to cases analogous to restructuring plans under Part 26A of the Companies Act 2006. Quite how analogous this law is a matter I do not comment on at this stage of the Judgment. For the present – given that this is a point of controversy, I confine myself to the articulation of a few obvious points: i) ii) iii) The essential principle is that a class "must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest": see *Sovereign Life Assurance v Dodd*, [1892] 2 QB 573 at 583 per Bowen LJ. In considering the "dissimilarity of rights" between persons affected by the Plan, it is necessary to consider both: (i) the existing rights that are to be varied by the Plan, and (ii) the new rights which are to be given by way of compromise. Where – as here – the Plan is proposed as an alternative to a formal insolvency procedure, then, in considering limb (i), the Court must identify what the existing rights would be in that insolvency procedure: *Re AGPS Bondco Plc*, [2024] EWCA Civ 24 at [109]-[114] per Snowden LJ. As recognised by Snowden J in *Re Virgin Active Holdings Ltd*, [2021] EWHC 814 (Ch) at [62], the class analysis in the context of Part 26A plans (where a dissentient class may be crammed down by another class) takes place in a different context to Part 26 schemes (where dissentients are outvoted within the same class).

Accordingly, in relation to a Part 26A plan, it may be necessary to take care against creditors

being placed into an artificially large High Court Approved Judgment In the matter of Petrofac Limited and another number of classes in order to provide a basis for invoking the cram down power. 131. The relevant principles were set out by Zacaroli J in *Re Gategroup Guarantee Ltd*,

[2021] BCC 549 in the following terms (at [183]): I do not need to refer to all of these authorities, but confine myself to stating the following points which are now well established (in particular by Chadwick LJ in *Re Hawk Insurance Co Ltd*, [2001] EWCA Civ 241; [2002] B. C. C. 300 and by Lord Millett in *Re UDL Holdings Ltd*, [2001] HKCFA 19; [2002] 1 H. K. C. 172), remembering that the essential test remains as expressed by Bowen LJ over a hundred years ago:

- (1) The creditors' rights that fall to be considered are both their existing rights against the company and the rights conferred by the scheme/plan;
- (2) The existing rights must be assessed in the context of the relevant comparator, described by Hildyard J in *Re APCOA Parking (UK) Ltd*, [2014] EWHC 997 (Ch), [2014] B. C. C. 538, at [32], as "what would be the alternative if the scheme does not proceed";
- (3) It is rights, not interests, that fall to be taken into account for the purposes of class composition. Without attempting an exhaustive definition, rights of the creditors against third parties (for example against guarantors for the company's debts) will generally constitute interests as opposed to rights; differences in interests may be relevant to the discretion to sanction the scheme/plan;
- (4) Even if there are differences in rights as between different groups of creditors, that is not necessarily fatal to them being placed in the same class: it is still necessary to consider whether the differences are such that it is impossible for them to consult together with a view to their common interest. This has been expressed (for example by David Richards J in *Re Telewest Communications Plc*, [2004] EWHC 924 (Ch); [2004] B. C. C. 342 at [40]) as whether there is more to unite than to divide the relevant creditors." 132. 133. It is well-established that creditors of different rankings or priorities should vote in separate classes, if the comparator or relevant alternative is a formal insolvency proceeding. This is because the difference in ranking is a difference in legal rights, which is sufficiently material to fracture the class. This approach has been taken in numerous schemes and plans, including *Re ED&F Holdings Ltd*, [2022] EWHC 433 (Ch) at [68] per Green J, and *Re ColourOz Investment 2 LLC*, [2020] BCC 926 at [82]-[83] per Snowden J. The courts have repeatedly emphasised the importance of avoiding the unnecessary proliferation of classes: *Re Anglo American Insurance Co Ltd*, [2001] 1 BCLC 755 at 764 (Neuberger J); *Re Hawk Insurance Co Ltd*, [2002] BCC 300 at [33] (Chadwick LJ); *Re UDL Holdings Ltd*, [2002] 1 HKC 172 at 183 (Lord Millett NPJ); *Re APCOA Parking Holdings GmbH*, [2015] Bus LR 374 at [54] (Hildyard J); *Re Hibu High Court Approved Judgment In the matter of Petrofac Limited and another Group Ltd*, [2016] EWHC 1921 (Ch) at [50] (Warren J). In *Re Noble Group Ltd*,

[2019] BCC 349 (convening judgment) at [87], Snowden J said: Different judges have sought to explain how to make this judgment in various ways, but the modern trend has certainly been to resist any tendency to increase the number of classes. So, for example, in *Re Anglo American Insurance Ltd*, [2001] 1 BCLC 755 (Ch) at 764, Neuberger J observed in the context of an insurance company scheme that practical considerations were not irrelevant, and that the court should not get “too picky” about potential different classes, or “one could end up with virtually as many classes as there are members of a particular group... 134. This approach is illustrated by the decision of Snowden J in *Re ColourOz Investment 2 LLC*, [2020] BCC 926. In that case, Snowden J reached the conclusion that a consent fee under a lock-up agreement was sufficiently material to influence the way in which a recipient was likely to vote. He nevertheless decided that the class should not be fractured in view of the undesirability of fracturing small classes, and the ability of the court to revisit the impact of the fee at the sanction stage (at [110]). The classes the Plan Companies seek to have convened 135. It is necessary to consider the various classes that the Plan Companies propose be convened, differentiating between (i) the classes proposed by Petrofac Limited (in regard to its application for sanction of its plan) and (ii) the classes proposed by Petrofac International (UAE) LLC (in regard to its application for sanction of its plan), always bearing in mind that these plans are each parts of a greater whole – the Plan. 136. Petrofac Limited proposes that the following meetings of creditors be convened in respect of the Petrofac Limited plan: i) ii) iii) iv) v) vi) The CBG Notes Subscribers. The Senior Secured Funded Creditors (other than the CBG Notes Subscribers). ABN. Argonaut. Thai Oil, the Director Claimants, the PL Insurance Restitutionary Claimants. The Shareholder Claimants. vii) The JV Partners and PSS BV. 137. Petrofac International (UAE) LLC proposes that the following meetings of creditors be convened in respect of the Petrofac International (UAE) LLC plan: High Court Approved Judgment In the matter of Petrofac Limited and another i) ii) iii) iv) v) The CBG Notes Subscribers. The Senior Secured Funded Creditors (other than the CBG Notes Subscribers). ABN. Argonaut. Thai Oil, the JV Partners, and PSS BV. 138. There is obviously a high degree of overlap between these various classes. To set them out in tabular form, the classes are as follow. For ease of reference, each proposed meeting has been given a unique number in square brackets: Classes proposed by the Plan Companies for the Petrofac Limited Plan Classes proposed by the Plan Companies for the Petrofac International (UAE) LLC Plan Comment

[1] The CBG Notes Subscribers

[8] The CBG Notes Subscribers

[2] The Senior Secured Funded Creditors other than the CBG Notes Subscribers

[9] The Senior Secured Funded Creditors other than the CBG Notes Subscribers

[3] ABN

[4] Argonaut

- [10] ABN
- [11] Argonaut
- [5] Thai Oil, the Director Claimants and the PL Insurance Restitutionary Claimants
- [6] The Shareholder Claimants The Saipem and Samsung opposing creditors contend that there should not be a single meeting of the Senior Secured Funded Creditors, but that the members of the Ad Hoc Group should be convened in a separate meeting. There is no exact equivalent between the two Plan Companies. Essentially, participants in Meeting [12] are split between Meetings [5] and [7]. High Court Approved Judgment In the matter of Petrofac Limited and another
- [7] The JV Partners and PSS BV
- [12] Thai Oil, the JV Partners and PSS BV Points arising 139. Three points arise. Two can be dealt with quickly. The third is of greater substance. 140. The first (short) point is this. It is clear that unless both plans are sanctioned, the Plan cannot go ahead. It therefore seems potentially problematic when considering the potential “cram-down” of a class – to have distinct classes for each of the plans. I raised this with counsel so that it was at least to be considered whether it would be possible to have the same classes voting in regard to both plans at the same meeting. The answer was that in theory this was right, but that first and foremost the classes had to be properly structured and convened, and that the reason for the different classes was because of their different rights. In short, seeking to impose consistency would do so at the price of having potentially wrongly constituted classes. It seems to me that this must be right, even if issues of difficulty arise at the sanction hearing because two plans need to be sanctioned; and if one fails, the whole Plan falls apart. 141. The second (short) point concerns the voting at Meeting [6], the meeting of the Shareholder Claimants. It is the assessment of those present and voting that matters. Absent Shareholder Claimants will obviously not vote: but I am residually concerned that the potential value of claims of those absent be before the court on sanction. I am satisfied that through the Retailer Investor Advocate, everything that can proportionately be done in this regard has been done. 142. I turn then to the point on which there was real dispute, the composition of Meetings
- [2] and [9]. Composition of meetings [2] and [9]
143. As regards meetings [2] and [9], the Saipem and Samsung Opposing Creditors contend that there should not be single meetings of the Senior Secured Funded Creditors, but that the members of the Ad Hoc Group should be extracted from the meeting, the meeting “fractured”, and this group be convened in a separate meeting. Meetings [2] and [9] are identical save as to the Plan Company, and I shall simply refer to the Proposed Class. 144. The members of the Proposed Class were notified of the Plan in December 2024. There have, of course, been changes to the Plan since that date, but none are material for present purposes. No member of the Proposed Class is objecting to the class as it is proposed. It is in

fact the Saipem and Samsung Objecting Creditors who do so. Although the Plan Companies suggested that this – not to put too fine a point on it – was none of Saipem's or Samsung's business, I disagree with that. It seems to me that High Court Approved Judgment In the matter of Petrofac Limited and another 145. 146. 147. 148. Saipem and Samsung have a right to take points about meetings that they will not be party to, and I am very grateful to Mr Colclough for his submissions on this point. But it does seem to me that the absence of objection from the Proposed Class members is a significant matter. The issue regarding class composition is this: the question is whether the Senior Secured Funded Creditors should vote in a single class or whether the Ad Hoc Group should form a separate class. The position of the Plan Companies was that the Senior Secured Funded Creditors should vote in a single class, and the Saipem and Samsung Opposing Creditors contended that the class should be fractured and the Ad Hoc Group constitute a separate class. Just to articulate what this means, the split in class is 65% non-Ad Hoc Group members, and 35% Ad Hoc Group members, that being the percentage split by value. The question is: what is the similarity of position between the members of this Proposed Class? The Senior Secured Funded Creditors are secured creditors with claims of the same ranking. They would recover the same amounts in the Relevant Alternative – that is to say in a formal insolvency process – and they will receive the same deal under the Plan. That being the case, the starting point is that the Senior Secured Funded Creditors ought to vote in a single class. The question is whether the different position of the Ad Hoc Group means that they should vote in a class of their own. The question of difference arises because of various additional benefits that have been or will be provided to the Ad Hoc Group in consideration for the Ad Hoc Group's provision of services in connection with the restructuring. This is a relatively common occurrence in restructurings, where one has groups of creditors who do the heavy lifting in seeking to push the restructuring ahead, and that is the distinct position of the Ad Hoc Group compared to what I shall term the non-Ad Hoc Group members of the Proposed Class. It is necessary to begin by considering the benefits that accrue to the members of the Ad Hoc Group in order to identify the unique benefits that they receive, but that the non-Ad Hoc Group members of the class do not. At this point it is necessary to note that a number of benefits to the Ad Hoc Group do accrue to the members of the non- Ad Hoc Group at their option. I will go through the various benefits that are relevant, but of the benefits that accrue to the Ad Hoc Group, only three are not expressly made available to all of the Senior Secured Funded Creditors. These three benefits are the Initial Backstop Fee (Equity) and (Debt), and the Work Fee. The other benefits are available to all of the Senior Secured Funded Creditors on a pro rata basis, and are therefore, it is submitted, irrelevant to the question of whether the Proposed Class should be fractured. High Court Approved Judgment In the matter of Petrofac Limited and another 149. It is at this point that a major point of difference arises between the analysis by the Plan Companies, supported by the Ad Hoc Group, and the position of the Saipem and Samsung Opposing Creditors. What was said by the Saipem and Samsung Opposing Creditors was that the fact that there was an option in the non-Ad Hoc Group members to acquire the benefits of the Ad Hoc Group was an irrelevant matter because these persons might choose not to acquire those benefits by not exercising the

option. It seems to me that that is a fundamentally misconceived way of approaching the question. It is trite that questions of class composition are addressed by reference to right and not interest. It does seem to me that to seek to evaluate whether members of the putative class will take up benefits or options of benefits which are before them is a question of interest, not a question of right. It is therefore, in my judgement, important that I consider only those benefits that are truly unique to the Ad Hoc Group in that they are not available under any circumstances to members of the non- Ad Hoc Group. It is an error to proceed on the basis that a non-Ad Hoc Group member is to be differentiated from an Ad Hoc Group member by reference to rights that they have an option to take up. 150. I turn, then, to the various benefits which the Ad Hoc Group will receive. These are set out in paragraph 105 of the Plan Companies' written submissions, and I am going to refer only to the benefits that are, on this basis, material, namely the three benefits which are differentiators in the true sense between the Ad Hoc Group and the non-Ad Hoc Group: i) ii) iii) Work Fee. This is a unique benefit valued at US\$27 million, representing 3.62% of the Ad Hoc Group's recoveries. This is a fee paid to the Ad Hoc Group for their extensive work in developing the restructuring. The fee is payable not in cash but in form of equity. Initial Backstop Fee (Equity). This is a unique benefit, valued at US\$21 million, representing 2.83% of the Ad Hoc Group's recoveries. Initial Backstop Fee (Debt). This is again a unique benefit to the Ad Hoc Group, valued at US\$3 million, representing 0.45% of the Ad Hoc Group's recoveries. As is so often the case, some of these benefits were also available to three other bondholders. No-one made anything of this in the hearing, and I simply note that the division is not quite as "brightline" as the foregoing paragraphs state. 151. It is trite that one needs to consider these benefits, these differences, not merely individually, but also to look at the cumulative position. Falk J explained in *Re Codere Finance 2 (UK) Limited*, [2021] 2 BCLC 396 that it is wrong to look at any particular fee or benefit in isolation. Rather, it is necessary for the court to identify the cumulative effect of the relevant benefits by reference to the overall benefits of the restructuring: High Court Approved Judgment In the matter of Petrofac Limited and another

[107] The court has indicated on a number of occasions that it is important to assess fees or benefits available to a creditor or a group of creditors on a cumulative basis: see for example *Re Codere Finance (UK) Ltd* [2015] EWHC 3206 (Ch) at [4]. Although there was some information about this in the Company's initial evidence, in my view it was not sufficient. I therefore required further evidence from the Company during an adjournment over a weekend, and in particular evidence that responded to Kyma's evidence about the cumulative benefit.

[108] I do accept that reaching a conclusion based on a straightforward aggregation of 'benefits' received by a group of creditors is far too simplistic. It is essential also to take into account what those creditors provide in exchange for the benefit asserted, for example an underwriting service. But with that caveat it is still critical that the cumulative position is considered. This is for the obvious reason that, commercially, the decision to agree to the arrangement will be influenced by the terms of the total 'package' of rights, rather than by

individual items taken in isolation from each other. 152. 153. In order to assess the cumulative effect of relevant benefits, it is necessary to quantify the percentage by which the Ad Hoc Group's recoveries would be enhanced as compared to other creditors' recoveries under the Plan: see [116] to [117] of *Re Codere*. The question that I must ask is whether the difference is a material one or not. That is taking the questions that I must ask myself a little bit out of order, because it was Mr Allison's primary position that because these unique benefits were accrued, or accruing, because of work done in the restructuring, I should in fact leave them out of account as being a difference for a reason. In other words, the Ad Hoc Group was being paid for work done, and that represented a difference between them and the non-Ad Hoc Group members. It seems to me that that is right and I will return to this point in due course: but I am going to consider first the question of materiality. 154. Together the three benefits I am considering represent 6.9% of the Ad Hoc Group's total recoveries. Put another way, 93% of the benefits to be received by the Ad Hoc Group are available, if they so elect, to all of the other Senior Secured Funded Creditors or non-Ad Hoc Group members. I do not see this difference as sufficiently material as to fracture the Proposed Class.

155. What is important is to compare the different recoveries of the two groups on the basis (i) the Plan is approved and (ii) the Plan is not approved and the Relevant Alternative takes effect. It is necessary to consider the "delta" that is the difference between the expected recoveries in the Relevant Alternative on the one hand, and the expected recoveries under the Plan on the other. In the Relevant Alternative, the Senior Secured Funded Creditors would all suffer losses of quite a serious magnitude. They would be likely to recover only 24.6% to 31.1% of the sums owing to them. Under the Plan, by contrast, the Senior Secured Funded Creditors will receive a High Court Approved Judgment In the matter of Petrofac Limited and another projected return of 157.1% to 198.3% excluding fees, provided, of course, they elect to participate in the New Money.
156. Viewed from this perspective, there is more to unite than to divide the members of the Proposed Class. At this point it is important to raise what was termed the "net/gross point". The point made by the Saipem and Samsung Opposing Creditors was that the figures as put forward by the Plan Companies were gross figures (as they indeed were) and it was necessary to look at the net figures instead. That is not the approach taken in other cases, although it is fair to say that the point has never been fully argued. Nevertheless, it seems to me that the points puts the focus on not quite the right question. The key question is not "What return will accrue at the delta?" but "Is the difference between the two groups in terms of difference in terms of comparative recovery so great as to be material?". The question is whether, as a matter of right, the non-Ad Hoc Group parties can put themselves in a similar position to the Ad Hoc Group. To the extent I have described, they can, and those differences are, as I have found, not material. Shifting between net and gross bases of assessment does not, as it seems to me, assist in determining this question. 157. 158. I therefore find, on the basis of these points alone, that there is no material difference between the Ad Hoc Group members and the non-Ad Hoc Group members sufficient to

justify the fracturing of the Proposed Class. I remind myself that the test is one of impossibility to consult, and it is quite clear that there is more to unite the members of the two classes under consideration than to divide them. For these reasons, I reject the argument that the class should be fractured. I should say that I have not said anything about the fact that these are work fees earned in order to progress the Plan. That, as it seems to me, is a further reason why the difference is one that is immaterial. The fact is that there is a difference between what the Ad Hoc Group gets and what the rest get for this reason: they have done a great deal of work on the restructuring. I note also that the payments are in large part not cash, that there is therefore a riskiness to these benefits; that these were, according to Mr Sousa's evidence, negotiated hard, and not particularly attractive rewards. Again, Mr Sousa makes the point that the Ad Hoc Group members did not take up all of their strict legal rights in order to inject money, and that is suggestive that the plan is riskier than one might otherwise think. Saipem and Samsung, for their part, say that the rates are extremely high, and unprecedentedly so. I was taken to a number of tables which showed, at least by reference to percentage terms, that these fees were high. It seems to me that a court needs to be quite cautious in evaluating whether fees paid to ad hoc groups like this are so high as to require a fracturing of a class. In this case, I express no view, but I make the point that I have decided that the class should not be fractured by reference to factors other than the fact that these are fees. 159. So, for these reasons, I am going to direct the meetings be convened as per the proposals of the Plan Companies, and not as proposed by the Saipem and Samsung Opposing Creditors. High Court Approved Judgment In the matter of Petrofac Limited and another Adequacy of Explanatory Statement 160. The Practice Statement at [15] requires the Court to consider the adequacy of the Explanatory Statement. As Snowden J explained in *Re ColourOz Investment 2 LLC*

[2020] EWHC 1864 (Ch) at [123]: The reference to the court "considering the adequacy" of the explanatory statement is not intended to suggest that the court will generally do anything other than ascertain that the essential elements which it would expect to see in an explanatory statement are present. If they are not, or if the form of the statement is for some other reason unsuitable, the court may decline to make a meetings order: see e.g. *Re Indah Kiat International Finance Co BV* [2016] BCC 418. As the New Practice Statement goes on to make clear, however, what the court will most assuredly not do is to approve or give its imprimatur to the contents or accuracy of the explanatory statement... 161. I have considered the Explanatory Statement. Exclusion of sanctioned creditors from voting 162. 163. 164. 165. 166. The draft order contains provision that in the event that any of the creditors of either Plan Company are sanctioned persons, such creditors will not be entitled to vote at the Plan Meetings. The authorities concerning schemes and restructuring plans have adopted the approach that sanctioned persons should not be entitled to vote at a meeting on the basis that the claims against the company represent "funds" for the purposes of the UK Sanctions Regulations. There are a number of cases in which the Court has directed that sanctioned persons are not able to vote (see, for example, *Re Nostrum Oil & Gas plc* [2022] EWHC 1646 (Ch) and *Re Veon Holdings BV*

[2022] EWHC 3473 (Ch)). In *Re Praesidiad Ltd*

- [2024] 1 BCLC 506, Sir Alastair Norris held (after hearing adversarial argument) that any attempt by a designated person under the Sanctions Regulations to vote at the scheme meeting would infringe Regulation 11: see [34]-[41]. In *Hellard v OJSC Rossiysky Kredit Bank* [2024] EWHC 1783 (Ch) Mr Nicholas Thompsell (sitting as a Deputy Judge of the High Court) held that a sanctioned creditor was entitled to exercise voting rights in a creditors' decision procedure in a bankruptcy. However, the Deputy Judge did not cite any of the plan / scheme cases. Subsequently, in *Re Mega Newco Limited* [2024] EWHC 3323 (Ch) at [9]-[13], Meade J (at the convening hearing) considered the (potentially differing) approaches that had been adopted (i) in the restructuring cases and (ii) in *Hellard*, and took the view that: High Court Approved Judgment In the matter of *Petrofac Limited* and another i) ii) It was appropriate to make a direction that sanctioned persons not be entitled to vote on the proposed scheme of arrangement; but The effect of any such order on the outcome of the voting could be considered at the sanction hearing. 167. I propose to adopt the same approach in the present case. Voting by beneficial owners of the Existing Senior Secured Notes 168. 169. 170. 171. The Existing Senior Secured Notes were issued in global form as a global note. Legal ownership of the notes passes by registration and the legal owner is a common depositary (or nominee) who holds the global note on behalf of the relevant clearing system. The term "creditors" in Part 26 and Part 26A of the 2006 Act includes contingent creditors: see *Re T&N Ltd* [2006] 1 WLR 1728 per David Richards J at [47]. It is well established that underlying beneficial holders of instruments held in global form are "contingent creditors" of the company, where the instruments provide that beneficial noteholders can acquire direct rights against the relevant issuer in certain circumstances: see *Re Castle Holdco 4 Ltd* [2009] EWHC 3919 (Ch) at [22]-[23]; *Re Noble Group* [2019] BCC 349 per Snowden J at [161]-[164] and *Re Port Finance*
- [2021] EWHC 378 (Ch) at [9]. In the present case, each of the Existing Senior Secured Note Holders can and should properly be regarded as contingent creditors of the Plan Companies because section 2.06(a) of the relevant indenture provides for certain circumstances in which "Global Notes" may be exchanged for "Definitive Registered Notes", including where a depositary is unable or unwilling to continue as a depositary for the Global Notes and where an Event of Default (as defined in the Existing SN Indenture) has occurred. In order to avoid any risk of double counting, the Plan Companies seek a direction that the chair of the Plan Meetings has discretion to disregard a vote cast by the legal holder of Existing Senior Secured Notes who does not also own the beneficial interest. This is a common approach that has been taken in schemes that concern instruments held in global form. Permission to appeal 172. The Saipem and Samsung Opposing Creditors sought permission to appeal my conclusion at [158]. I refused permission to appeal for reasons set out in the order consequential upon this judgment, which records my refusal of permission. I understand that the Saipem and Samsung Opposing Creditors are renewing their application for permission. I mention this in concluding because this further High Court Approved Judgment In the matter of *Petrofac*

Limited and another application caused a justifiable concern in the Plan Companies that an appeal – unless moved extremely quickly – might prejudice the sanction hearing presently listed for hearing at the beginning of next term. Given the urgency of applications of this sort, it is obviously important to have some form of process whereby appeals out of convening hearings can be resolved without prejudicing future sanction hearings. High Court Approved Judgment In the matter of Petrofac Limited and another ANNEX 1 TERMS AND ABBREVIATIONS USED IN THE JUDGMENT RELEVANT PARAGRAPH IN THE JUDGMENT WHERE TERM / ABBREVIATION FIRST REFERENCED TERM / ABBREVIATION ABN Ad Hoc Group Adjudicated Creditors Agreed List Argonaut Argonaut Guarantee Facility Asset Solutions Backstop Agreement Backstop Fee Backstop Premium CBG Facility CBG Notes CBG Notes Subscribers CFP Contract Claims Adjudication Process Clean Fuels Project Consortium Deed of Contribution Deed of Release Director Claimants Director Claims E&C ECHR Effective Date Existing Common Security and Guarantees Existing RCF Existing Senior Secured Noteholders Existing Senior Secured Notes Existing Shareholder Investors [74 ii)] [2] [82] [15] [47] [47] [37 ii)] [91 i)] [25 iii)] [99 ii)] [95] [23 v)] [95] [69] [81] [45] [70] [112 ii)] [79] [63] [53] [37 i)] [102 iv)] [5 v)] [141] [47] [2] [47] [91 ii) b)] High Court Approved Judgment In the matter of Petrofac Limited and another Existing Term Loans Explanatory Statement First Hearing Fox Williams Creditors Going Concern Valuation Group Advisors HoldCo 2 HRA ICA Information Agent Initial Backstop Creditors Initial Backstop Fee Integrated Energy Services Jacks-1 Jacks-2 Johnson-1 JV Partners Lock Up Agreement New Financial Investor New Money New Money Equity New Money Equity Upsize New Money Notes New Ordinary Shares Non-Participating Secured Lenders Non-Shareholder Claims Settlement Fund Offshore Contractor Onshore Contractor Participating Secured Lenders Petrofac Group Petrofac International Limited Petrofac International (UAE) LLC Petrofac Limited PL Insurance Restitutionary Claimants PL Insurance Restitutionary Claims Plan [47] [10 ix)] [6] [9 iv)] [25 iii)] [113] [100 i)] [102 iv)] [51] [23 ii)] [99 ii) a)] [99 ii)] [37 iii)] [10 vi)] [10 vi)] [10 iv)] [70] [2] [91 ii) a)] [5 v)] [89] [98] [80] [78 i)] [93] [78 ii) b)] [70 i)] [70 ii)] [93] [4] [47] [1] [1] [67] [53] [1] High Court Approved Judgment In the matter of Petrofac Limited and another Plan Claims Plan Companies Practice Statement Proposed Class PSEAL PSL PSS BV Reach-1 Related Parties Relevant Alternative Restructuring Implementation Deed Retailer Investor Advocate Retail Investor Advocate Report RPC Samsung Parent Samsung Thailand Saipem and Samsung Opposing Creditors Saipem Parent Saipem Singapore Second Hearing Senior Secured Funded Creditors Senior Secured Funded Debt SFO SFO Investigation Shareholder Claimants Shareholder Claims Shareholder Claims Settlement Fund Shareholder PSL Sousa-1 Soura-2 STEP Contract Stewarts Creditors TenneT Thai Oil Thai Oil Argonaut Claims Thai Oil PG Call [112] [1] [12] [142] [70 ii)] [10 viii) a)] [70 i)] [10 iii)] [113] [3] [79] [8] [10 vii)] [64] [70 i)] [70 ii)] [9 ii)] [70 i)] [70 ii)] [8] [78 i)] [2] [42] [78 ii)] [58] [53] [78 ii) a)] [10 viii) b)] [10 i)] [10 i)] [5 iv)] [9 iii)] [5 i)] [45] [78 iii) d)] [25 ii)] High Court Approved Judgment In the matter of Petrofac Limited and another Tybulewicz-1 UAE Unrepresented Shareholders Work Fee York-1 Zorza-1 Zorza-2 28 February 2025 Order [10 v)] [41] [24] [25 iii)] [10 vii)] [10 ii)] [10 ii)] [8] 53

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