IMPORTANT NOTICE

The judgment was delivered in private. The judge has given leave for this version of the judgment to be published. The parties and their children may not be identified by name or location. The anonymity of everyone other than the lawyers and anyone else specifically named in this version of the judgment must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Neutral Citation Number: **[2022] EWFC 20**

Case No: RS20D03594

IN THE FAMILY COURT

Attended hearing at the Royal Courts of Justice

Strand

London

WC2A 2LL

Date: 29 March 2022

Before :

Mr Justice Moor

- -

Between :

IR

Applicant

-and-

OR

Respondent

- -

- -

Miss Deborah Bangay QC and Mr Richard Sear (instructed by Penningtons Manches Cooper LLP) for the **Applicant**

Miss Lucy Stone QC and Mr Duncan Brooks (instructed by Stewarts Law) for the **Respondent**

Hearing dates: 8th to 11th and 15th March 2022

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JUDGMENT

MR JUSTICE MOOR:-

1.I have been hearing applications for financial remedies following the breakdown of the marriage of IR and OR. I intend to refer to them respectively as “the Husband” and “the Wife” for the sake of convenience. I mean no disrespect to either by so doing.

The relevant history

2.Both parties are nationals of Country X, although the Wife is also a British citizen through her father. The Husband is in his early 60s. He resides primarily in Country X but, when he has been in London, he has been staying at the Wife's property in West London. The Wife is in her early 50s. She resides primarily in London at present. She has rented accommodation in Prime Central London. They began to cohabit in Country X in 1996 and married there in December 1997.

3.It is clear that, shortly before the marriage, the Husband approached a family lawyer, Mr B to prepare a Pre-Nuptial Agreement. I have seen a draft of such an agreement but it has been impossible to locate a signed copy, even though both parties are clear that they did sign such a document. They dispute, however, whether it was signed at the solicitors' offices or informally at home. Unfortunately, Mr B cannot assist as he has since passed away and the file cannot be located. On the basis that it is agreed that the document was signed, it seems likely it was signed in the same form as the draft that has been disclosed. The draft provided, in essence, for separation of property, with particular reference to the Husband's family business. It says that both parties have taken legal advice although it is clear that the Wife did not do so. I am sure, however, that she was advised to do so. There is financial disclosure attached to the draft, although it does not give any value for the R Family business assets. Given that the Wife had virtually no assets at the time of the marriage, this agreement did not provide for her to have even her reasonable needs met, in the absence of voluntary provision by the Husband or his family. At first sight, I believed that the agreement, at clause 12, provided that it was only to last for three years, or until the birth of a child of the parties, if earlier, with provision for a review at that point. Clause 13, however, states that, in the absence of a new agreement following the review, the existing agreement "shall continue in full force and effect". Having said that, the Husband accepts that the only potential relevance of this Pre-Nuptial Agreement is the way in which it excludes the R Family business from sharing.

4.The parties have five children. The eldest, Child A is in their mid 20s and lives independently in Country X in a property owned by Child A but financed by the parties and subject to a loan in their favour. Child A is midway through an undergraduate degree. Child B is in their early 20s and is undertaking a degree in mainland Europe. Child C is adult and is in the first year of an undergraduate degree in England. Child D is aged 13 and is currently a boarder in England. Child D's future education is not agreed and will be determined by a Judge at a hearing due to start at the end of March 2022. The Wife wishes Child D to attend a public school in England. The Husband wants Child D to return to Country X and attend a fee-paying boarding school there. Finally, Child E is aged just nine and is a flexi-boarder at a school in England (not the same school as is currently attended by Child D). I have seen a delightful photograph of all five children taken last Christmas. They are clearly a great credit to their parents.

5.In the 1950s, the Husband's father, JR, established a retail shop in Country X. At the time, JR was aged about 23. I am sure he was a very determined and able retailer but there is not much doubt in my mind that this was a small operation for many years. On 26 June 1975, the R Family Trust was established by JR.

6.The Husband graduated from university in 1983 with a degree in economics before obtaining a postgraduate diploma in financial management the following year. He worked as an accountant from 1984 to 1987 before joining the family business in 1987, initially as an accountant. The business was renamed again in 1992 and the Husband became Chief Executive Officer in 1993. The business undoubtedly began to grow at a fast rate. I will have to determine exactly when and why this occurred. It appears that a major part of its success was an arrangement called a "joint venture partnership" in which new stores were opened as partnerships with the local manager of the store on

a profit sharing basis with that manager. This clearly gave the manager a significant incentive to ensure the store was profitable. There is a dispute between the parties as to the extent that the Husband was involved in this development. His case is, broadly, that everything was down to his father, whereas the Wife's case is that he was instrumental in transforming the business ("ABC Inc") from a small local chain of shops to a very large and successful brand operating throughout Country X. Indeed, I was told that, by the time the business was sold several years ago, it had the highest turnover of any retail store chain operating in this field in Country X.

7.On 25 June 1993, JR established the Investment Trust. At the time the parties married in December 1997, the business had nineteen stores. Three of these were solely owned by the business, whereas the other sixteen were joint venture partnerships ("JVPs"). On 30 June 1998, the Property Trust was established, followed, on 30 June 1999, by the Distribution Trust and the IR Family Trust. The IR & OR Family Trust is dated 4 July 2003. This one is significant in that it is named after the two parties, who are beneficiaries. Further Trusts were established on a fairly regular basis. It is clear to me that the exact details are not material to this judgment but, other than the Family Trust and the Investment Trust, all post-date the marriage.

8.In 2005, the Husband became the Executive Chairman of ABC Inc after Mr C was appointed as Chief Executive Officer. The Husband told me in oral evidence that Mr C was appointed "to get the business ready for sale". He added that Mr C brought in a "new sophisticated management team" and the Husband put much of the subsequent growth in the business down to this. There was a dispute as to how many stores were operating when Mr C was appointed. The Husband said it had increased from nineteen at the date of the marriage to approximately forty five but the Wife suggested it was sixty by then.

9.On 29 March 2006, a "family succession plan" was drafted for JR by a Mr D of a firm of business advisors and Chartered Accountants. By then, JR was aged 76. The memorandum describes him as the "family patriarch" and "the ultimate controller of the majority of the R family assets". Whilst personal assets were to pass from JR to his wife, KR, on his death and then equally to the Husband and his sister, CR, the business assets were to be treated differently. Overall, an indicative value is given in the memorandum for the business of between c. $210 to c. $260 million. The capital value was to be allocated as to 60% to the Husband, increasing to 75% on the death of his parents, with the remaining 25% being allocated to CR. JR, KR, the Husband and CR all signed this document. It ends by saying that "IR is the family member who is the key family member in the ongoing management of the family business assets". JR was "no longer involved in the day to day management of the family business assets" and was soon to resign his directorships.

10.In May 2007, a sum of $340 million was distributed to JR as part of the succession planning exercise, although it was structured as a loan. JR then gifted half of this sum, namely $170 million to the Husband. It is clear that, until then, the Husband had received a relatively modest salary of $150,000 per annum but with further distributions on an ad hoc basis when required. During the same year, the Husband set up a new business called DEF Inc, with a business partner, Mr E. He wanted to do something entirely independently of JR but in the area of his expertise. The concept, however, was slightly different, and the original stores were often in the same locations as ABC Inc shops. The Husband loaned c. $30 million to get the business up and running. It is clear that, for a long period, the business struggled to move into profit until the Covid-19 pandemic led to a surge in interest in the field in which the business operates with resulting profits. The expert valuer was told there are now more than 30 stores in operation but this seems to exclude a further total of around 15 acquired a few years ago when another existing business was acquired.

11.JR died just over ten years ago. In his Eulogy at JR's funeral, a family friend paid tribute to the man who "revolutionised the retailing industry in Country X". He added, however, that "in the 1980's, JR and (the Husband) developed the most revolutionary concept that had taken place in the industry. The concept of JVPs was introduced where ABC Inc would invite selected individuals to jointly own and operate each store. The concept was brilliant and its implementation was efficiently developed. ABC Inc was born". JR's Will was dated shortly before his death. Subsequently, KR divested herself of her remaining loan accounts, assigning 75% of these to the Husband. These loans assigned to the Husband had a value of $94.5 million.

12.In 2012, the Husband sold half of DEF Inc to a private equity company ("the PE company"). He received c. $10 million. At the time, the business had eleven stores. Mr E was subsequently bought out. As at today's date, the Husband holds 46.55% of the equity shares due to shares being granted to management. The voting rights are slightly different. I will return to this in due course. The Husband also set up a further business in 2016. This business has, so far, not been successful. Indeed, it does not appear to have generated any revenue to date but has accumulated losses of c. $10 million with further forecast losses of c. $2 million for 2022.

13.In 2015, the Wife and two youngest children moved to England to educate the two youngest children here in school. There is a dispute as to the extent that the Husband moved here as well. A couple of years later, ABC Inc was sold for a net figure of c. $590 million. At the time, the business had more than 100 stores but I am clear that the price achieved was excellent. In addition, commercial premises were sold for c. $130 million. The Husband received a total of c. $420 million gross, which was c. $330 million net. Of this sum, c. $310 million was paid into GHI Capital, whose shares are held by the IR Holding Trust, established by the Husband in June 2015. This money was used to buy and refurbish a whole series of very high quality but expensive assets. Indeed, these acquisitions had really commenced the previous year, in 2015, with the purchase of a boutique hotel in City Y ("the Z Street Property") for $8.5 million, after which c. $20 million was spent on converting it to a luxurious private home. The previous family home was sold for c. $30million.

14.In January 2017, a private jet was purchased for $6,950,000, although this was the second private plane owned by the family. It had running costs, after income generated from hiring it out, of $1,918,000 in 2019, $1,677,000 in 2020 and $1,745,000 in 2021. In May 2017, a country property near City Y ("Property J") was purchased for c. $20 million. Since then, a further $44 million has been spent on renovating the property. In 2017, the property in West London was purchased for £11.24 million. It was purchased in the Wife's name due to her British citizenship. In 2018, a more modest property was acquired in City Y ("Property W") for c. $5million in the IR & OR Family Trust No 2. This was purchased primarily for the parties' use whilst the Z Street Property was being renovated. Two further flats in the same building in central London were purchased in the Wife's name in 2018. Flat 1 cost £8.5 million and Flat 2 cost £4.4 million, although Flat 2 was sold in 2019 for £4.4 million and the proceeds paid to the Wife. In June 2019, the parties purchased a property in City Y for Child A for c. $4 million. Very sensibly, they secured the purchase by making a loan of this money. It is, however, clear that the intention all along was to forgive this loan when the time was right.

15.The parties had previously owned a motor yacht which was used in the resort where they owned a property in Country X. This yacht was relatively modest in comparison to the other assets in the case and was sold in 2018 for c. $3million. It was replaced by a luxury yacht in 2019 at a purchase cost of $24.6 million. The running expenses of this yacht were $1,801,882 in 2020 and $1,897,184 in 2021. Unlike its predecessor, this yacht is based in the Mediterranean Sea and used by the family primarily during the summer months.

The breakdown of the marriage

16.The Wife indicated to the Husband in August 2019 that she viewed the marriage as over. She puts the date of separation as being November 2019. The Husband filed a petition on 7 May 2020 in this jurisdiction, followed by a Form A on 3 November 2020, which has made him the applicant in these financial remedy proceedings. A decree nisi was pronounced on 16 November 2020. It has not, as yet, been made absolute. The Husband was in Country X for the vast majority of 2020 due to the Covid-19 lockdowns. He indicated, however, an intention to return to this country in early 2021 and to reside at the West London property. The Wife, understandably, was not prepared to occupy that property with him. She therefore rented a property from September 2020 at a rent of £6,000 per week. The rent was, at least largely, offset by the rent she has been receiving for Flat 1. It was, however, was an unfurnished property. She therefore spent approximately £260,000 in furnishing the property. That tenancy has since come to an end. On 5 November 2021, she rented another property in Prime Central London at £7,950 per week for two years but with a break clause after one year.

17.The parties conducted a private FDR before Lord Wilson of Culworth on 3 November 2020. Sadly, it was not successful. It does appear to me to have taken place very early in the litigation process, albeit with the provision of informal Forms E. It is perhaps regrettable that a further attempt was not made to settle the dispute, later in the litigation but, given that I approved the case moving straight to a final hearing, I cannot now be seen to criticise this failure.

The respective Forms E

18.The Wife's Form E is dated 5 July 2021. She describes herself as a homemaker. She deposes to total net assets of £28,245,274, being made up, broadly, of the flat in West London at £11.2 million; Flat 1 at £8.5 million and her half interest in the Z Street Property, valued at £13.6 million gross. She had £2.2 million in her bank accounts, which was largely the remainder of the net proceeds of sale of Flat 2. She describes the standard of living enjoyed during the marriage as "exceptionally high", referring to the ownership of seven properties, the private jet and the yacht. She says she made a full and equal contribution, during the marriage. She makes the point that ABC Inc went from less than 20 stores when they married to more than 100 stores when the business was sold. She adds that the parties founded DEF Inc together in 2007. She describes the Husband producing the Pre-Nuptial Agreement "out of nowhere" at home one evening and saying that his father, JR, insisted on it. She said that it was signed without formality or witnesses at home that evening. She cannot remember whether the version she signed was the same as the draft or not.

19.The Husband's Form E is dated 5 July 2021. He describes himself as a company director. He says his gross assets are worth £229 million but, after liabilities of (£89 million), he puts his net assets as £139 million. He valued the Z Street Property considerably higher than the Wife, namely at £18.6 million. At the time, he had £11,774,305 in bank accounts. He was owed £89,091,477 by the Trusts. The liabilities deposed to are almost entirely tax liabilities that I will return to in due course. He valued the various Trusts at £117.8 million. The parties, and on the Husband's case, his mother, had put assets of $50,096,786 in a Trust for the benefit of the children. The Wife disputes the involvement of the Husband's mother, arguing that she was involved simply to assist in avoiding UK tax consequences. In any event, the money was then loaned back to the other Trusts so it could continue to be utilised by the parties. The Husband put his income needs at £394,866 per annum for himself but with the running costs of the various assets of the Trusts, such as the yacht and the aircraft at £3,861,065 per annum. Like so many husbands, he underplays the standard of living saying that it

was “high but family orientated”. He says that the entirety of the family wealth emanates from non-matrimonial assets, namely the endeavours of JR in setting up ABC Inc.

The evidence before me

20.The case was listed for a First Directions Appointment before me on 29 July 2021. In the run up to that hearing, the Wife applied pursuant to Part 25 of the Family Procedure Rules for the valuation of various assets, including the shares in DEF Inc and the business founded in 2016. On the day, the Husband agreed to these valuations. The parties had already been able to agree the value of seven other assets, namely six properties and the plane. I made various directions as to valuation evidence; actual and latent tax liabilities; and in relation to the Pre-Nuptial Agreement. In relation to the latter, if the Husband wished to rely on the Agreement, he was to serve a witness statement by 21 October 2021, restricted to addressing the circumstances under which it was signed; any legal advice taken; and what effect it should have on the outcome of the financial remedy application. I made provision for the Wife to respond. I specifically directed that, if the parties were so advised, they could apply to me for permission to rely on the evidence of a Single Joint Expert as to the effect of the (draft) Agreement under the applicable law.

21.The Husband filed his statement as to the Pre-Nuptial Agreement on 22 October 2021. He gave his address as being the Z Street Property, although it is abundantly clear that neither party has stayed at that address for any length of time to date. In his statement, he said that he was not asking for an order in the terms of the Pre-Nuptial Agreement. He said, however, that the document was considered in great detail by the Wife. He asserted that it goes into elaborate detail. He said it was signed at the solicitors’ offices not at home, as it had to be witnessed. He added that there was financial disclosure and that it was strongly recommended that the Wife take legal advice but she refused. He then dealt with his case as to the effect of the agreement at the time in Country X. I have subsequently directed that this section of the statement be redacted on the basis that it should have been dealt with by expert evidence from a single joint expert. I do, however, consider it fair to note that the Husband was not saying that, at the time, this Agreement would have been considered binding by the court in Country X. In his conclusion, he said that he does not seek an order to implement the Agreement but that any outcome must respect the spirit of the Agreement and reflect the dynastic and separate character of the business assets brought into the marriage, he would say, as non-matrimonial property.

22.The Wife’s statement in reply is dated 3 December 2021. She asked, rhetorically, whether the Husband was arguing that she should get less than would otherwise be the case as a result of the Pre-Nuptial Agreement as she said this was unclear. She made it clear that her case was that it should have no effect at all. She added that her recollection is very different to that of the Husband. She said that the Husband had clearly told her that it was being raised only at his father’s insistence, adding that he seemed embarrassed. She said they had never discussed it before the evening during which he raised it. She was told it would only last three years or until they had a child. She made the point that there is no mention on the bill submitted by Mr B of a charge for a signing meeting. Finally, she reminded the court that there were no figures in the draft for the value of ABC Inc.

The position of the PE company

23.The case then took an unfortunate turn but one that, fortunately, has proved to have no significant ill effects. In the course of obtaining expert evidence as to the valuation of DEF Inc, it came to the attention of the PE company that the parties were going through a divorce. It appears that this was in breach of a covenant in the shareholders’ agreement. Moreover, there had been a further breach at an

earlier stage when the parties had not notified the PE Company of a change of Trustees. In one sense, this was more significant as it meant that the Wife still had to sign any agreement reached between the Husband and the PE Company as to the effect of the default. Having said that, both breaches were entirely technical. They did not affect, in any way, the operation of the business and, although I have not heard from the PE Company, it does not seem to me to have done them any credit that they sought to take ruthless advantage of these breaches.

24.The PE Company argued that, as a result of the breaches, they were entitled to exercise a clause in the agreement that would have enabled them to acquire the Husband's entire shareholding, including, according to the Husband, his very substantial preference shares, for only $189,000. It does appear that this was supposed to be "market value" but calculated in accordance with clause 13.3 of the Shareholders' Deed. The figure of $189,000 would have been a discount, per the Husband at the time, of $25 million. The PE Company was, however, prepared to forego this compulsory purchase if the Husband and Wife agreed to give the PE Company 60% of the voting rights in DEF Inc. This does, of course, have more significance in that it would give the PE Company the ability to control the process for a sale of DEF Inc, although given that the aim of both the PE Company and the Husband is to maximise value and then sell, the difference may be more technical than real. This proposal was made on 11 October 2021.

25.The Husband's solicitors in this jurisdiction drew this development to the attention of the valuer of the shares, Mr I of ABCD Advisory on 21 October 2021 and copied in the Wife's English lawyers. The documentation sent included a detailed letter of advice from a lawyer from Country X dated 19 October 2021. In essence, the letter said that the parties had no alternative other than to agree to the terms imposed by the PE Company. Both parties have been incredibly critical of the approach of the other in relation to what then transpired. If I wished to do so, I consider I could be very critical of both. The Wife's solicitors did not respond until 16 November 2021, some twenty six days later, seeking, perhaps inevitably, considerable further information. The Husband's team then did not respond to that letter until 15 December 2021, twenty nine days later. By then, the matter had become incredibly urgent. The PE Company required the agreement of both parties, including their respective signatures on a Side Deed, by the close of business on 21 December 2021. The Wife's team felt extreme pressure as a result of this very short time scale. The Husband's team, on the other hand, became increasingly exasperated on the basis that, if the Wife did not agree, a very significant asset would be almost entirely lost. Moreover, there was a heated discussion between the parties over the telephone as to the terms on which the Wife might be prepared to sign, in relation to which I will have to make findings of fact. In short, the Husband asserts that the Wife said she did not care about DEF Inc and would only sign if the Husband agreed to Child D remaining in this country and attending the school proposed by her. The Wife denies both comments.

26.In any event, on the last day of term, 21 December 2021, the Husband's lawyers indicated an intention to make an application to the court on short notice that afternoon for a mandatory injunction that the Wife sign the documents. There was some suggestion that they could simply come before me to argue this, but I had four other substantial cases that day. The applications judge was Arbuthnot J but she has limited experience in this work and Sir Jonathan Cohen agreed to take the case. I take the view that, in the circumstances, it was inevitable that an order would be made that the Wife sign. As it was, she agreed during the hearing to do so. Sir Jonathan therefore made a mandatory injunction that she sign but on terms that any deleterious financial consequences should be borne by the Husband, and that the valuation report should be prepared on the basis of the existing shareholding. Regrettably, there remains a costs argument arising out of this hearing.

Section 25 statements

27.In early 2022, both parties filed their section 25 statements. The Wife's is dated 7 January 2022. She made the point that the Husband has had an extremely successful business career, increasing the number of ABC Inc stores out of all recognition during the marriage until the business was eventually sold. She adds that the business was one of the largest privately owned retailers in Country X when sold. She says that the dispute in relation to Child D's education and an application made by the Husband to remove Child D from this jurisdiction to reside in Country X will be heard at the end of March 2022 with a time estimate of three days. I am not hearing that application but I will have to say a little about it later in this judgment. I was told that the independent social worker instructed to report on the application has recommended that Child D return to Country X and attend a particular school there, based, as I understand it, on Child D's wishes and feelings. Understandably in my view, the Wife said in oral evidence, that, if this was the decision of the court, she would also have to return to Country X with Child E as well, even though she does not believe such a move is in the best interests of either child. Her statement then deals with Property W. The Husband has proposed that this is her home in City Y. She responds in her statement by saying that this property has been promised to Child B, although the Husband's reply to that is to say that Child B doesn't want it. She adds that she would like to retain the West London property and buy a property in the English countryside near the schools currently attended by Child D and Child E, but I am clear that this depends on both children attending those schools. She reminds the court that she has dual citizenship. She says that the Husband underplays his role in the business. She asserts that he was responsible for renaming the company "ABC Inc" from its previous name, and that he coined a marketing phrase that was extremely successful. She adds that it was the Husband who rolled out the JVP model, which enabled the business to expand so rapidly. She then says that she was responsible for the "project management" of the many property refurbishments and developments undertaken during the marriage. She says she found all the properties. In relation to DEF Inc, she says that there are now approximately 30 stores. The business had been discussed and planned by both spouses together. She says that the decision to sell ABC Inc was taken as neither parent wanted the children to feel pressurised to work for it. She refers to the purchase of a spectacular property on a private island in 2011; the two yachts and the private jet. She makes the point that neither party has yet lived in the Z Street Property or, indeed, Property J since their respective renovations although the Husband has spent a few days at both very recently. She describes Property J as a "phenomenal" property set in 73 acres with a huge lake. There is no doubt that the pictures of the property are very impressive. She says that, since the sale of ABC Inc, money had been "no object". She accepts that she has used the proceeds of sale of the Flat 2, in the sum of £4.29 million, to meet her legal costs and day to day expenditure. She was told by the solicitor acting for the Husband in Country X in relation to DEF Inc, that the business would be sold "if not now, then shortly".

28.The Husband's section 25 statement is also dated 7 January 2022. Again, he gives his address as the Z Street Property. He confirms that he has one sister, CR, who is now in her 50s. He says that the Wife was an estate agent when they met. She did not work after the birth of Child A. The properties in London were placed in her name solely due to tax advice. He ascribes the concept of JVPs to his father, JR and says that JR remained "hands on" well into his late 70s. JR was his mentor and strategic advisor. The business was sold as the JVPs were finding it more and more difficult to adhere to the ever growing requirements of running a workplace, such as more and more stringent employment and consumer laws. The market place was becoming increasingly competitive and this led to greater risks. The business therefore called in all the JVP agreements. The sale took 12 months. He says that he co-founded DEF Inc with Mr E in 2007 and invested c. $20 million followed by a further c. $10 million. In

2012, the PE Company came onboard. As part of the introduction of the PE Company into DEF Inc, the original structure was sold to a new holding company for c. $20 million and he received c. $10 million. He refers to the divorce being a default event and leading to a notice of default on 11 October 2021. He says the Side Deed was effectively forced upon him, with his voting shares reduced to 40% and the PE Company moving up to 60% but this does not affect the equity interests at all. If it had not been done, there would have been a forced sale which would have been catastrophic. He says that the Wife spends 95% of her time in London. The Trust for the children is now worth $50 million. The parties loaned c. $4 million to Child A in May 2019 to enable Child A to buy a property and he would like to do so the same for the other children. He says that the total matrimonial pot is worth £183 million gross of which £66 million is personal assets and £117 million is held in the R Group Trusts. He adds that he intends the Z Street Property to be his primary home but that is very controversial as the Wife seeks the transfer of the property to her as well. He then deals with a tax audit that has been going on in Country X since the mid 2010s and relates to a couple of tax years. He says that the latest figure he has for the potential tax arrears, including interest and penalties, is a liability of between c. $40 million to c. $70 million, if the claim succeeds. He adds that there will be tax payable if all the money has to be removed from the trusts by way of dividend, after all the loans he is owed are repaid. He quantifies this liability as being between $38.1 million and $37.7 million. He then says that the Wife has made it clear that she will make her primary home in England but I am satisfied that is only if both the youngest children are at school here. In such circumstances, he will need to rent a property in London and in vicinity of the schools as well. He adds that it costs $7 million per annum to maintain all the assets and, even though this is funded through the trusts, it is unsustainable in the long term. He told me in oral evidence that he had come to the conclusion that he would have to sell both the property on the private island and the private jet, particularly as the latter has been used primarily to get to the island. He describes the Wife's budget of £1.85 million per annum as aspirational and that she could manage on £400,000 per annum. His case to me, however, was that she required a budget of approximately £645,000 per annum. Although his spending between 2007 and the sale of the business a few years ago was $106.7 million, the vast majority of this had been spent on the accumulation of assets. He had received c. $420 million on the sale of ABC Inc, as well as c. $90 million from the commercial properties that were sold separately, but he paid tax of c. $90 million.

29.Both parties filed short statements in reply. The Husband's is dated 20 January 2022. He says that it was his father, JR who changed the name to "ABC Inc" following a business trip. Equally, the Husband says that he did not come up with the successful marketing slogan to which she refers. That was coined by a JVP. He says that the Wife does not need the Z Street Property as she will be based in England, whereas he needs it to parent Child D. She had lost her interest in the property during its conversion and refurbishment. She has recently incorporated an art business and rented a studio for five years. The valuations that were agreed at the time of Property J at $51 million and the one on the private island are far higher than their true value. He puts these at $35 million and $20 million respectively. The DEF Inc concept was entirely his. Finally, he complains that the Wife has threatened him with publicity if the case proceeds. I believe this refers to proposed changes to the rules on anonymity in financial remedy proceedings but they are not in place yet. I am clear that, until I am told I have to permit publication, litigants are entitled to their privacy in the absence of special circumstances, such as where they having already courted publicity for the proceedings which is not the case here.

30.The Wife's statement in reply is dated 25 January 2022. The Husband had suggested that the proceeds of any sale of DEF Inc should be assigned to the children but she is clear that this is not

appropriate as they have already been handsomely provided for. In any event, I am clear that, in the absence of agreement, I cannot direct such provision is made for the children as it would be in breach of established legal authority.

31.A final statement was filed on behalf of the Husband. It is dated 25 January 2022 and is from his former business partner in DEF Inc, Mr E. Mr E says that the business was the Husband's idea, although Mr E did the research. The relevant market was under-contested. The Husband financed it and Mr E ran it. He was given 25% of the equity, although he owed his share of the cost of the shares to the business. He was entitled to 50% of any net profit. The first store was opened in 2007. The business needed further capitalisation, so they approached the PE Company. An enterprise value for the business was agreed at $22 million. The Husband received back part of his funding. The net result of the reorganisation was that the PE Company had 50% of the equity, whilst the Husband had 33% and Mr E had 16%. He was the Managing Director from 2012 to 2014. In 2019, he left the Board and cashed in his shares which, as far as I can see, were purchased by the Husband as his share went up correspondingly. The Wife's lawyers indicated that they did not wish to cross-examine Mr E so his evidence is agreed.

The valuation of DEF Inc and the other business

32.I heard the Pre-Trial Review on 28 January 2022. The valuation of Property J was agreed at $35 million, which is significantly less than its cost, if the refurbishment works are included, and the property in the private island at $20 million. The valuation of DEF Inc and the husband's other start-up business by ABCD Advisory had still not been received. I made various directions including a polite request for information from Mr F of the PE Company and a suggestion that Mr F meet Mr I of ABCD Advisory. As it transpired, it proved impossible to make the arrangements for the meeting with both sides blaming the other for the failure to agree dates. As already noted, I directed redaction of various parts of the Husband's statement on the Pre-Nuptial Agreement.

33.The valuation of Mr I of ABCD Advisory in relation to DEF Inc and the other company is dated 27 February 2022. It is, fortunately, agreed, save in relation to the treatment of interest on loan notes. In relation to DEF Inc, Mr I assessed future maintainable earnings at c. $13 million per annum and an EBITDA multiple of 9. This valued the business at c. $120 million, less liabilities of (c. $40 million), giving a net valuation of c. $80 million. There should be no discount for lack of control as the PE Company wish to maximise value by sale. The value to the family is therefore c. $40 million on the basis of a shareholding of 46.55%, the balance to 50% being owned by management. In addition, the preference shares are entitled to interest totalling c. $30 million as shown in the accounts of DEF Inc. There is no indication of any diminution in valuation caused by the Side Deed following the defaults, as the interest of the PE Company is merely in securing an exit. Turning to the detail, there are now more than 30 stores, with a revenue of c.$160 million. I note that revenue was only c. $90 million before the advent of Covid-19 and the acquisition of another business a few years ago, which is a factory outlet, warehouse and online store. DEF Inc has a market share of 5% and is the third largest store in its field in Country X. The Gross Profit margin is currently 43.2%. A net loss of (c. $20 million) in 2017 became a profit of c. $5 million in 2021, with a budget for 2022 forecasting a profit of c. $10 m. The overall result is a share price of $1.39 per share, which compares favourably to the price at which shares were brought back from minority shareholders a few years ago of $1 per share. An issue has arisen as to the treatment of the interest owed on the preference shares as it appears that this interest has been written off as irrecoverable by the Husband's accountants in the trust accounts.

34.Mr I then turns to the husband's other start-up business. The business has generated losses of (c. $10m). The forecast losses for 2022 are (c. $2million). The business has no revenue and there is a net tangible asset deficiency of (c. $10 million). The value of the shares is therefore nil and the loan notes may not be repaid.

Statement of Issues

35.A composite statement of issues has been filed. Despite the value of the vast majority of the assets being agreed, there are still a number of issues that I will have to resolve in relation to the Schedule of Assets. These include whether to include dividend tax on the extraction of funds by dividend from GHI Capital and JKL Ltd and what allowance should be made for potential liabilities for tax following the audit by the tax authority in Country X. There is then an issue as to the extent of the matrimonial property. In particular, the Husband says that all the proceeds of sale of ABC Inc is non-matrimonial, given its source from JR's business, whereas the Wife argues that it became in large part matrimonial following its transformation during the marriage from a business with less than twenty stores to one with more than one hundred on sale. I must decide on the relevance, if any, of the Pre-Nuptial Agreement. There is an issue as to the structure of the award and, in particular, what should happen to the Z Street Property, Property W, and Flat 2. The size of the lump sum that the Wife should receive is also in dispute and, finally, there is the question of whether or not the shares in DEF Inc should be divided between the parties or assigned to the Trust for the children, although I have already given my view as to that latter point.

Open proposals

36.I now turn to consider the various open proposals made by the parties. The first such proposal was made by the Husband on 21 July 2021. His proposal was that the Wife should exit the marriage with total provision of £50 million. This was said to be 54% of the matrimonial assets and 38% of the non-matrimonial assets but it was entirely based on her needs. The letter says that the magnetic factor is the inherited or non-matrimonial genealogy of the wealth, such that it is a needs case. The offer was predicated on the Z Street Property being transferred from joint names to the Husband but with Property W being transferred out of trust to her. The Wife would retain the two London properties (put at £19.4 million) and receive a lump sum of £26.8 million. On 14 January 2022, he repeated the offer, albeit saying that the asset base had decreased but the proposals remained the same. He offered £30,000 per annum per child, which has been agreed, although I am not entirely sure if this offer extends to Child D if Child D goes to Country X and the Wife and Child E return as well.

37.The Wife's open offer is dated 25 January 2022. She seeks a transfer of the Z Street Property to her. She will transfer a London property to the Husband. She then seeks a lump sum of £57 million. She will give the Husband an indemnity for 33% of any liability to the tax authority of Country X relating to the investigation if the Husband has to make a payment within three years. She should receive 50% of any proceeds of sale of DEF Inc or the other company on sale. The Husband responded on 16 February 2022 complaining that this proposal was for provision in excess of £100 million and arguing that this would not be anything like a fair outcome.

38.By way of short comparison, the Husband's costs of this litigation are £1,381,000, of which he has paid £817,754. The Wife's costs are £1,700,000 of which she has paid £688,000. In addition, there is the children dispute to be determined in March 2022. The Wife's additional outstanding costs of that dispute come to £279,000 and the Husband's additional outstanding costs are £147,413.

The Tax enquiry

39.Turning to the issue of the enquiry by the tax authority of Country X, the investigation has been handled on behalf of the Husband by a director of an accountancy firm, Mr G. On 16 October 2020, he said that the claim by the tax authority was for c. $120 million plus penalties and interest that would take the total liability up to c. $180 million. A further request was made to Mr G, leading to a second letter on 30 June 2021. At that point, Mr G said that the primary tax liability was put at c. $50million with penalties of c. $15 million and interest of c. $10 million, making a total of c. $75 million of which the Husband would be responsible for 75% or c. $55 million, with CR taking on the remainder of the liability. On the same day, he wrote a separate letter in which he confirmed that the tax, if the Husband had to remove all the assets from the trusts by way of dividend, after he had been repaid his loans, would be c. $30 million. This was slightly revised, on 14 December 2021, to c. $40 million plus a further sum of c. $400,000. In relation to the tax enquiry, the figures were still broadly as above but the tax authority had said, informally and on a without prejudice basis, that it would take c. $40 million to compromise the claim.

40.The Wife then instructed Mr H to respond. On 25 February 2022, he wrote to say that he considered the likely tax due, including interest and penalties, would be c. $20 million. It was accepted that Mr H did not have all the relevant documents that the firm would need to see to form a firm view of the liabilities but a number of points were made that, in the view of Mr H, would reduce the overall liability. These included matters such as deductibility of ex-gratia payments; a reduction of 50% on the basis that the tax authority accepted that the Husband had “a reasonably arguable position”; capital losses available if the Tax authority was successful on various tax rules and tax deduction for income earned in the year that interest had to be paid to the Tax authority. In relation to the issue of dividend tax, Mr H considered it highly unlikely it would ever all be paid and that, if payments had to be made, it was likely they would be many years in the future. He made some further points about the Husband changing his tax residency and making payments via the children that I consider to be speculative and not a proper basis on which to reduce the claimed tax liability.

41.Mr G responded to Mr H in an undated letter. Initially, I was asked not to read the letter but I was clear that I should do so, particularly given that I had read Mr H’s letter. Mr G’s basic point is that it is inappropriate to speculate on settlement but I find that hard to accept, particularly given the without prejudice offer made by the tax authority. I simply cannot see how the liability can be higher than that, despite Mr G’s best efforts. If the Husband’s team genuinely thought that they could not succeed on each point, the Husband would have accepted the without prejudice offer by now. Mr G does, however, make some points that may well be good ones, such as that the “reasonably arguable rule” merely relieves the tax payer of penalties and is not a justification for simply reducing the liability by half. He says that there is some merit in one of the other rules but it is not available if you fail to show a reasonably arguable position. Another rule may have merit but, to date, it has not been fully and critically examined.

42.The Husband has exercised his right to claim privilege in relation to advice that he has received in Country X. This is his absolute right. He cannot be criticised for so doing. Moreover, Miss Bangay QC, on his behalf, made the point that he could not do so as, if he did, the tax authority would be entitled to argue that he had waived privilege to enable the authority to see the advice. I have come across similar situations in litigation in this country. Miss Bangay then asked for a meeting between Mr G and Mr H to see if the differences could be narrowed. Miss Stone QC, on behalf of the Wife, opposed this on the basis that there would not be a level playing field as Mr H had not been given access to all the documents. I did not see that I could order a meeting in such circumstances. I made the point that this should have been dealt with by expert evidence from a Single Joint Expert. I will just have to do

the best I can in what is an uncertain position in any event. I will obviously return to this in due course.

The respective Position Statements

43.Both parties submitted detailed Position Statements prior to the case commencing. On behalf of the Wife, Lucy Stone QC and Duncan Brooks said that the overall wealth was in the region of £239 million gross, of which property and lifestyle assets amounted to approximately £89 million; bank/ investments to £123 million; and business assets of £27 million, namely the value of DEF Inc, but these figures do appear to include the Trust which is clearly for the children alone. Moreover, the figures do not include any tax liabilities as described above. Complaint was made that enormous amounts had been spent on properties that were now worth far less than had been invested in them. In particular, Property J is now almost complete other than further landscaping works to the grounds. $61 million had been spent but the agreed value is $35 million. The figures for the Z Street Property are total costs of $32.65 million, as against a current value of $19 million. The Wife should have the Z Street Property if the Husband is to have Property J and the property on the private island. If Property W is not to go to Child B, the Husband could have it, given that he considers it suitable for the Wife. The boat is worth €18.75 million, having cost €23 million in 2018. The plane is now worth $6.5 million. In relation to the dividend tax, the reality is that it will not be payable. The Husband has cash of £10 million and is personally owed £56 million. The liability to the tax authority of Country X cannot possibly be taken at any higher than the offer of c. $40 million that it has indicated it would accept and, in any event, the Husband's sister will be liable for 25% of this figure. DEF Inc is fully matrimonial and cannot be given to the children. The Wife should receive her share on its realisation. Turning to outgoings, it is said that the criticisms of the Wife's budget of £1.85 million per annum have to be seen in the context of the Husband putting the family's outgoings at between £2 million and £3.25 million per annum. To suggest that the Wife should have only £644,000 per annum would be quite wrong.

44.The Note prepared on behalf of the Husband by Deborah Bangay QC and Richard Sear says that the Husband's offer, which was worth £51.4 million, is now worth £48.2 million given the reduced asset valuations. This is more than sufficient to meet the Wife's reasonable needs, so the only issue is whether she has a sharing claim. The Wife's claim for £81.8 million is quite wrong out of net assets that the Husband puts at £144.5 million. If the DEF Inc deed had not been signed on 21 December 2021, the entire interest worth $27 million would have been acquired by the PE Company for $188,000. The relevance of the Pre-Nuptial Agreement is that it evidences the dynastic nature of the wealth generated from the sale of ABC Inc. There is a dispute about the loan interest payable on DEF Inc that I will have to resolve. In total, the Husband received c. $240 million from his parents tax free and he got a further c. $330 million from the sale of ABC Inc as well as c. $80 million from the sale of the property interests. The difference between the two asset schedules is almost all tax, other than the Wife wrongly including the Trust for the children at £27.5 million. There is significant criticism made of the Wife's spending from the proceeds of sale of Flat 1 and the reduction in the net proceeds of sale from £4.4 million to £1.1 million, even allowing for legal fees of £700,000. There are two valuable time shares in a ski resort that give four weeks per annum each. The Wife has expressed a wish to retain one of these time shares. The Husband agrees to her doing so but he will sell his timeshare. The point is then made that it is difficult to see why the Wife offers a tax indemnity amounting to only 1/3rd of the tax given that she is basically seeking equality. The Wife's claim to half of any proceeds of DEF Inc ignores the fact that the funding came from the Husband's inherited assets. The net value after the loans are repaid is only £4.3 million. The much higher standard of

living enjoyed by the parties only dates to after the eventual sale of ABC Inc. The Husband is prepared to let the Wife use the plane, although this would not be possible if he sells it. In oral evidence, he also offered to let her use the yacht, although I noted that this sort of sharing arrangement is unusual, absent consent, and the Wife was clearly not happy with such an offer. Finally, he argues that his budget for the Wife of £650,000 per annum net would require £16.3 million on a Duxbury calculation, whereas he offers a lump sum of £25 million, which would generate around £1 million per annum.

The Assets Schedule

45.A composite Assets Schedule was filed with the court prior to the commencement of the hearing, showing the various disputes between the parties. At that stage, the Wife's case was that there were total assets of £240,696,589 gross, reducing to £229,841,998 net of tax. The Husband's case, on the other hand, was that the assets amounted to £202,345,641 gross but that this had to be reduced for significant tax liabilities, which brought the total down to £148,259,844. There was agreement as to the gross values of all the main property assets. All are mortgage free. The gross values, ignoring costs of sale, converted to sterling, are as follows:-

(a)The Z Street Property (joint)£10,382,584

(b)The West London apartment (Wife)£11,240,000

(c)Flat 2 (Wife)£ 8,500,000

(d)Property J

(IR & OR Family Trust)£19,125,683

(e)The private island property

(IR & OR Trust)£10,928,961

(f)Property W (IR & OR No 2)£ 3,224,043

(g)Timeshares (IR & OR)£ 2,616,508

(h)Yacht (IR & OR No 3)£15,650,000

(i)Private plane (IR Trust)£ 3,551,912

£85,219,691

46.Over and above these figures, in the broadest of terms, there are bank and investments of approximately £123 million, the majority of which is held in trust, although the Husband does have funds worth just over £10 million in his own name. Finally, there are business assets of £27 million. There is, of course, the potential tax outlined above that the Husband asserts I should deduct from these figures. There seven main quantification disputes that I will have to resolve. They are, broadly, as follows:-

(a)The appropriate deduction for tax liabilities in relation to the enquiry by the tax authority in country X;

(b)The Husband's assertion that I should deduct income tax payable on the basis that all the assets are removed from the Trusts by way of dividend for use by the Husband;

(c)The treatment of the interest on the DEF Inc loan notes;

(d)The future costs of the Children Act proceedings;

(e)The treatment of the loan to Child A to purchase a home;

(f)The inclusion by the Wife in her schedule of the value of the Trust for the children;

(g)Two relatively small loans made by JR's estate and a trust belonging to KR to the IR Holding Trust.

The law I have to apply

47.I must apply section 25 of the Matrimonial Causes Act 1973, as amended, in deciding what orders to make pursuant to sections 23 and 24. It is the duty of the court to have regard to all the circumstances of the case. I must give first consideration to the welfare, while a minor, of the children of the family. I must then have particular regard to the matters set out in subsection (2), namely:-

(a)The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity, any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

(b)The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c)The standard of living enjoyed by the family before the breakdown of the marriage;

(d)The age of each party to the marriage and the duration of the marriage;

(e)Any physical or mental disability of either of the parties to the marriage;

(f)The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g)The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it; and

(h)The value to each of the parties to the marriage of any benefit which, by reason of the dissolution …of the marriage, that party will lose the chance of acquiring.

48.The overall requirement in applying section 25 is to achieve fairness. It was made clear in the seminal House of Lords decision of White v White [2000] UKHL 54; [2001] 1 AC 596 that there is to be no discrimination in financial remedy cases between a husband and wife. This was expanded upon in K v L [2012] 1 WLR 306, CA when Wilson LJ reiterated at [15]:-

"what is unacceptable is discrimination in the division of labour within the family, in particular between the party who earns the income and the party whose works is in the home, unpaid."

49.He went on to say that it is the essence of the judicial function to discriminate between different sets of facts and thus between different claims. I have to say that I prefer use of the word "differentiate" to "discriminate" but it is clear what he meant.

50.In the case of Miller/McFarlane [2006] UKHL 24; [2006] 2 AC 618, the House of Lords identified three principles that should guide the court in trying to achieve fairness, namely:-

(a)The sharing of matrimonial property generated by the parties during their marriage;

(b)Compensation for relationship generated disadvantage; and

(c)Needs balanced against ability to pay.

51.It follows that my first task is to assess the matrimonial property generated by the parties during the marriage. I must then decide in what proportions that matrimonial property should be shared, although the likelihood now is that it will be shared equally. There is no question of compensation for relationship generated disadvantage in this case. There may, however, be an issue as to needs if I decide that the matrimonial property is either very limited or that sharing it would be insufficient to provide for the Wife's reasonable requirements, generously assessed, taking into account the resources available, the standard of living enjoyed during the marriage and any other relevant matter.

52.It is therefore necessary first to consider the principles on which I assess quantification of the matrimonial property. The first issue is the question of how the court goes about valuing pre-marital assets that should be excluded from matrimonial property as being an "unmatched" contribution and, therefore, not be subject to the sharing principle. I was referred to a significant number of authorities that analyse these arguments in great depth. There are two main different approaches. The first can be described as the "broad-brush" approach and was articulated by the Court of Appeal in the case of Hart v Hart [2017] EWCA Civ 1306; [2018] 2 WLR 509, in which Moylan LJ said at Paragraph [96]:-

"If the court has not been able to make a specific factual demarcation but has come to the conclusion that the parties' wealth includes an element of non-matrimonial property, the court will also have to fit this determination into the section 25 discretionary exercise. The court will have to decide, adopting Wilson LJ's formulation of the broad approach in Jones, what award of such lesser percentage than 50% makes fair allowance for the parties' wealth in part comprising or reflecting the product of non-marital endeavour. In arriving at this determination, the court does not have to apply any particular mathematical or other specific methodology. The court has a discretion as to how to arrive at a fair division and can simply apply a broad assessment of the division which would affect "overall fairness". This accords with what Lord Nicholls said in Miller and, in my view, with the decision in Jones."

53.The second approach is to undertake a detailed calculation of the non-matrimonial property and then deduct the resulting figure from the overall assets to arrive at the matrimonial assets. Inevitably, this itself can be done in a number of different ways. The two most obvious are to be found in the cases of Jones v Jones [2011] EWCA Civ 41; [2012] Fam 1 and Martin v Martin [2018] EWCA Civ 2866, although even then there are a number of variations on the theme. The essential difference between the two approaches is that, at first instance, in Martin (then reported as WM v HM [2017] EWFC 25), Mostyn J used a straight-line approach to calculate the value of the non-matrimonial property. In other words, he calculated the number of years that a company existed before the marital partnership commenced and divided it by the total length that the company has been in existence. This gives a proportion of current value that can be excluded from the matrimonial pot. It has the benefit of simplicity. It does not require complex and expensive valuations many years after the event. Mostyn J said, memorably, that it resonated with fairness because "how could it be said that a day's work in 1980 in creating this company was less valuable than a day's work last week?". The difficulty, of course, is that it does not reflect the situation in this case where the company was commenced in the 1950s but had only grown to less than 20 stores by 1997, as against exponential growth thereafter to a total of more than 100 stores on sale. For that reason, I reject that approach in this case. I consider it is far more likely to be of use in a case where it is one of the spouses who formed the business prior to the date of the marital partnership commencing, as opposed to a previous generation founding the company.

54.An alternative approach, found in the case of Jones v Jones, is to attempt to value the asset at the date the marital partnership commenced, with an appropriate uprating to that value to take account of things such as inflation that have taken place since. In Jones v Jones, the concept of the "springboard" effect was raised. In other words, although the value of the asset was low at the time, the foundations had been established from which significant growth in value proved possible thereafter. One difficulty with this approach is that I do not have a valuation of the business in 1997. All I have is an indicative valuation found in the memorandum by Mr D in 2006. It does have to be acknowledged that the Jones approach would, in this particular case, enable the court to consider the origins of the JVPs and the effect they had on the valuation of ABC Inc but I am clear that it also has weaknesses, such as the exponential growth in the latter years. Other cases have considered concepts such as active and passive growth. I remind myself that, in this particular case, the issue is set out starkly by the fact that it is the Husband's case that the entirety of the proceeds of sale of ABC Inc should be excluded from the sharing principle because of the origins of the business long before the marriage. If I find that he is wrong about that, I will have to consider, in the round, the various approaches set out in the authorities. If I decide to go down this route, rather than the broad brush approach to be found in Hart, I will then have to come to a reasoned conclusion as to what proportion of the assets should be treated as non-matrimonial because of their origins. Whatever I decide, the result will clearly involve my making a number of findings of fact that are likely to lead me to a concluded view as to correct approach to adopt.

55.I was also referred to the cases on "matrimonialisation" and, in particular, the analysis by Wilson LJ in K v L (above) of Lady Hale's observations in Miller that "the importance of the source of the assets will diminish over time". Wilson LJ concluded, at [18] that the true proposition was that "…the importance of the source of the assets **may** diminish over time (my emphasis)". He continued:-

"Three situations come to mind. (a) Over time, matrimonial property of such value has been acquired as to diminish the significance of the initial contribution by one spouse of non-matrimonial property. (b) Over time, the non-matrimonial property initially contributed has been mixed with matrimonial property in circumstances in which the contributor may be said to have accepted that it should be treated as matrimonial property or, in which, at any rate, the task of identifying its current value is too difficult. (c) The contributor of the non-matrimonial property has chosen to invest it in the purchase of a matrimonial home which, although vested in his or her sole name, has – as in most cases one would expect – come over time to be treated by the parties as central matrimonial property".

56.Finally, I was taken to the cases on needs and, in particular, the decision of Roberts J in Juffali v Juffali [2016] EWHC 1684 (Fam). Needs do not exist in a vacuum. Roberts J identified a number of important principles:-

"(i) The first consideration in any assessment of needs must be the welfare of any minor child or children of the family.

(ii) After that, the principal factors which are likely to impact on the court's assessment of needs are (a) the length of the marriage; (b) the length of the period, following the end of the marriage, during which the applicant spouse will be making contributions to the welfare of the family; (c) the standard of living during the marriage; (d) the age of the applicant; and (e) the available resources as defined by section 25(2)(a).

(iii) There is an inter-relationship between the level at which future needs will be assessed and the period during which a court finds those needs should be met by the paying former spouse. The longer

that period, the more likely it is that a court will not assess those needs on the basis throughout of a standard of living which replicates that enjoyed during the currency of the marriage.

(iv) In this context, it is entirely principled in terms of approach for the court to assess its award on the basis that needs, both in relation to housing and income, will reduce in future in an appropriate case."

The evidence I heard

57.In the end, I only heard oral evidence from the two parties. As it is his application, the Husband gave his evidence first. In answer to questions put to him by his counsel, Miss Bangay, he told me the intention was that each child should get a property. He did, however, say that he would expect future properties to come out of the Trust for the children, but that Trust had not been set up when Child A's property was purchased. I have to say that I consider this to be a sensible approach. He said he intends to settle further assets into the Trust. He viewed the $50 million as a first tranche. Property W had been mentioned to Child B as it is available but Child B said it was not Child B's kind of property and was not in the location Child B would like to live. It is a four bedroom town house. He was then asked about DEF Inc. He said that the trusts have "impaired" the interest, by which he meant written it off, as they took the view the business would never make enough profit to repay it. The difficulty, of course, is that the business is now making a profit and Mr I's view is that the value of DEF Inc is sufficient to repay the interest. I cannot believe that the relevant trust would not be able to accept the interest, even though they had previously written it off. He was asked about his lawyer in City Y saying that he would soon expect DEF Inc to be sold. He said this was pure speculation, although he could understand why the lawyer might think that. He said that, initially, neither party could outvote the other so there would not have been a sale without agreement and he could stop a sale happening but that was not now the case. Whilst I accept that this is factually correct, I cannot see what difference it really makes as both the Husband and the PE Company want to maximise their return on the business. I therefore take the view that their respective interests remain entirely aligned. I do accept that one or other might, previously, have taken the view that they might do better to delay a sale. Such a position is not now available to the Husband, but, delaying a sale, would be a gamble and I cannot really see that the Husband is likely to be in any better position to assess future prospects than the PE Company. The Husband did then say that there are now more than 50 stores rather than the c. 30 reported by Mr I. Miss Stone made much of that in suggesting that Mr I had not been given the full picture but I am satisfied that the explanation is that a further fifteen or so stores were acquired when another business was bought a few years ago.

58.The Husband then said that the transfer of the shares in DEF Inc to the Trust for the children was the Wife's idea. She denied that was the case and, in any event, the position after the breakdown of a marriage is very different when the available assets have to be divided between the two spouses. He was then asked about the tax authority of Country X. He was adamant that you cannot negotiate with that authority as they only deal on the basis of tax principles. I regret to say that I am clear that he is wrong about that as the documents all indicate that negotiation is exactly what occurs. Moreover, the without prejudice indication given by the tax authority is clear support for this being the case. I do not underestimate how difficult such negotiations may be but I am clear that "horse-trading" is exactly what is likely to occur. He was then asked about ABC Inc. I have to say that, throughout his evidence, he downplayed his role in the business to the extent that he gave a picture of his father, JR and Mr C, the Chief Executive who succeeded him, being entirely responsible for every achievement, whilst the Husband really just got in the way. I simply cannot accept this presentation. He made the fair point that he had joined the business after it had already been in operation for over 30 years and that JR

had started it from scratch. That I accept. I also accept that it was well established with a nucleus of stores and staff in place when he took over, but I am clear that it was a small, albeit successful concern that was transformed during the Husband's time at the helm. A clear example of this is that I asked him if he was the Chief Financial Officer before he was Chief Executive Officer and he made the point, which I am sure is correct, that it was not a sophisticated accounts department that he joined. It was basically just him. He did say that the JVC concept was created by his father, which I accept. He added that his father was keen to roll that out but the simple fact was that it had only been done on a modest scale before the Husband arrived. I am clear that it was the Husband who took this on and developed it successfully as he himself says on his website and as was said in the eulogy to JR to which I referred above. The Husband then said that JR never released his grip on the business as he did not want to give up control. He said that JR held the purse strings right to the end. There may be some truth in this in relation to capital value but I am clear JR was not controlling the company at this stage. After all, JR was in his mid 60s when he appointed the Husband as CEO. I do not accept JR was the key figure thereafter. The Husband then said that Mr C was appointed as CEO in the mid-2000s as the business was growing at a pace. By then, JR would have been in his mid 70s and the fact the business was growing at a pace can only have been down to the Husband. The Husband added that, after he went to business school, he realised he was not up to being the CEO, but one of the great qualities of a successful businessman is getting in others to take the project forward. Moreover, the Husband remained as Chairman.

59.He then told Miss Bangay that the yacht has made the property on the private island and the airplane somewhat superfluous. He said it was time to move on but he had not wanted to sell either of these assets during these proceedings as it would have been likely he would have been criticised for doing so. He said that "we cannot do justice to so many lovely places". Miss Stone is critical of him in this regard but I consider she is wrong to be critical. It will, of course, be up to him if he does sell or not, but I found his justification for his approach persuasive. He added that he intended to get rid of his timeshare but he was happy for the Wife to retain the other one. Again, this seems sensible. He was then cross-examined by Miss Stone. She dealt first with the Pre-Nuptial Agreement. He said he relied on the spirit of the agreement, namely that the family trusts and the resources flowing from ABC Inc were non-matrimonial. He accepted that there were no valuations given for these assets. He also accepted that the Wife would have got no financial provision at all if the marriage had been dissolved whilst it was operative, if he had not given her any resources voluntarily. He stressed that its relevance was to establish the dynastic nature of the trusts. He did then accept that there had been a joint effort between himself and his father from the 1980s onwards when the business was "significantly enhanced". He accepted that every single trust was set up during the marriage, other than the two trusts set up by JR and that, in general, both himself and the Wife were beneficiaries of these trusts, as were the children. He did, however, make the point that the trusts were discretionary. He accepted that the Wife is a principal beneficiary of the trust that holds the shares in DEF Inc.

60.Miss Stone then asked him about his role in the business. He said that, as CEO from 1993 onwards, he was working with his father until Mr C was appointed in his place but I do consider that answer is not a true reflection of the position. I am sure JR was still interested and that he would have been consulted as Chairman, but the Husband was the driving force. I accept the Husband was rolling out the model that JR had crafted but it was the Husband rolling it out. He then said that he "stuck to the knitting and not stuffing it up" but I am clear that is not a true reflection of the position either. He then said that it was an officer of the company who recruited the JVPs and found new stores. Even if entirely true, the Husband chose the officer, entrusted him and approved his selections, which were clearly very successful. He was asked about the memorandum by Mr D in 2006 which put an

indicative value of between $210 – c. $260 million on the business. Miss Stone compared this to it selling a few years ago for a total in excess of $1 billion including the properties. I accept Miss Bangay's point that the 2006 figure was not a valuation but an "indicative figure" but I do consider there is considerable force in the comparison. There was huge growth in this business under the Husband's stewardship.

61.He was then asked about the eulogy spoken by JR's friend at JR's funeral. He talked about "JR and IR developing" the JVPs. The Husband's response that the friend knew the Husband was in the audience is not an answer. He was speaking at JR's funeral and would not have downplayed JR's role. The Husband did, however, accept that he and JR were "a great team" or "a dynamic duo" but he continued to stress his father's "heavy influence". He was then asked about his website and he confirmed that it does say that it was the Husband who achieved so much in the business. He said that it was JR who got the name of ABC Inc from his travels but it was the Husband who implemented it, apparently following some resistance from the JVPs. He said a lot of the team was in place when he joined but he accepted he added to the team. He then repeated that the real growth occurred when Mr C took over; and that it was Mr C who brought in a lot of the new sophisticated management team. Again, I find that he underplays his own role. He did accept that he led the company during a period of rapid growth. He said there were 16 JVPs at the time of the marriage and they had got to 45 when he "sacked" himself, although Miss Stone suggested it was 60 stores by then. I cannot resolve that dispute but it does not matter. He was asked about the successful marketing slogan, but he said it was the idea of one of the JVPs. Again, however, he was constrained to accept that he oversaw its implementation. Gradually, the other stores adopted it and, said the Husband, he and JR thought it was a good tool for marketing but it did take some time for it to catch on. He then repeated that his achievement was that he didn't "stuff it up". I find that he did far more than that but, in any event, not "stuffing it up" is an achievement in itself.

62.He said that the eventual purchaser of ABC Inc did approach him in 2009 about a sale but the company had not been put on the market in 2010. I accept that. He added that he did cultivate the relationship with the purchaser for several years, which I also accept. He said that the JVPs were becoming difficult to manage. He wanted to sell. He said the board engaged Mr C to get it ready for sale, although that is not strictly correct as Mr C was appointed in 2005. I accept the board directed Mr C to prepare the business for sale. He then said that the business could not have afforded to pay out $340 million in the mid 1990s, which I also accept. He said he had lost quite a lot of money as well. For example, $12 million was lost in a venture which went into administration in 2019 and the other start-up company referred to above is $11 million down. He said he hoped it would be a success but I doubt it will ever be in a position to repay that money. Such business failures, which have to be balanced against the great successes, are exactly what happens to businessmen such as the Husband. He then said that he could not see why the boat could not be used by the Wife notwithstanding the divorce. He said she could use it if she wants. He said similar things about Property J, the property on the private island and the jet. He said that it would be a waste of money to rent a separate boat but the difficulty with that is that the other spouse almost always feels completely differently and I entirely accept that this is true of this Wife. He was asked why all these assets were held in a trust named after both spouses, namely the IR & OR Family Trusts. He said that this trust was settled on 4 July 2003 and it is commonplace to name it after the parents. I accept this evidence. He was then asked about the Z Street Property. He told me that he had a "fitted study" at the property. I was shown photographs of a room that did not look particularly grand. It did have both a desk for him and one for the Wife in a window nook. I really cannot see that the existence of this study is a good reason for the Husband to keep this property. He did accept that the redevelopment of the Z Street Property

was a joint effort, although not 50/50. They each worked on different aspects as a team. It was to be the family home. He accepted that it had hardly been used to date due to the refurbishment and the various lockdowns. He said that Child D had stayed there for a few days at Christmas 2020 with the Wife and the other children. He had been there for ten days in November 2021 and the week before the trial, when he appears to have spent five days in the Z Street Property and three in Property J.

63.He said that Property W was not conducive for a young child to live in as it has an older demographic in the neighbourhood. It is a four bedroom property. One of the bedrooms is in an external bungalow. Miss Stone suggested that the Wife could not live, or even stay, there with all of the children. He seemed to accept that, saying that it was a temporary base whilst the work was done to the Z Street Property and that the older children could stay in the self-contained flat in the Z Street Property. He was asked about the costs of the boat. He said it had undergone a refit in 2020 at a cost of €330,000 as well as a further €70,000 in 2021 to get rid of unsightly marble interiors. It would cost around £300,000 per week to charter but it has not been rented out at all. Turning to the private plane, he said it was the second one he had owned. It was for travel within Country X. It did have annual running costs of £1,967,439 but it cost less after charters. The cost for 2021 was $1,745,042 but I do not believe this includes depreciation. He was unclear as to the charter costs, thinking it might be $12,000 per hour but he said the fuel alone costs $8,000 per hour. He was then asked about his expenses. He accepted that the schedule showed expenses of £4,255,931 per annum but this does not reflect the hiring out of the plane. A more accurate figure appears to be the sum of £3,144,640 for the year 2021. Miss Bangay, in her closing submissions, says that this figure is not reflective of the true position but I cannot accept that submission as it is only fair to include the costs of running Property J, the property on the private island, the yacht and the plane in a schedule of expenditure. The only item that I do accept is capable of deduction is the sum of $453,000 for running the family office.

64.Miss Stone then turned to the issue of the enquiry by the tax authority of Country X. I have already made some observations about this. She referred the Husband to references from Mr G to the hope that there would be “meaningful discussions” before Summer 2022 and that there was the “potential for a negotiated settlement”. There really is no answer to that. Nevertheless, the Husband insisted that he would have to pay somewhere between c. $40 million and c. $70 million but I consider that is quite wrong, given that the tax authority’s indicative position, admittedly without prejudice, is c. $40 million. I really cannot see how the liability can go above that figure unless it is handled incredibly badly on his behalf. He then accepted that CR, his sister, would be likely to pay 25% of whatever was the final figure as that had been the division of the assets. This must be right. He was asked about various points made by Mr H but I do not feel he was really in a position to respond to those points. I will have to do the best I can. He said he had invested c. $20 million in DEF Inc from non-matrimonial assets that originated from JR. Miss Stone did ask lots of questions about the pressure allegedly put on her client in relation to signing the DEF Inc Side Deed at the last minute. I do not propose to set out either the questions or the responses at this stage but will make some brief findings later in this judgment.

65.He was then asked questions by Miss Bangay in re-examination. In relation to some of the questions, she did not get the answer she had expected. I am clear that, in one respect, relating to whether he called a board meeting to obtain disclosure from the PE Company about DEF Inc, the Husband was wrong in his response, but I really do not think it matters. Miss Stone had been very critical of him in relation to the disclosure provided to the valuer but the valuer had been able to prepare his valuation, albeit it late in the day. Moreover, it does appear that Mr F was not as

cooperative as he should have been, perhaps as a result of the dispute about the Side Deed. Miss Bangay asked about the money the Husband had received before the distributions in 2007. The Husband responded that he had received $150,000 per annum as salary and distributions from the Trust in addition to the salary. He said that this was as and when needed. His sister and he “ran them past” his father before they were paid. I accept that evidence. In that respect, JR did keep control of the family money prior to 2007. JR’s only requirement was that the payments would not harm the business. He accepted that the Wife moved out of the property in West London when he returned and that he did not suppose she would have moved out unless she knew he was moving in. Given that he controlled all the assets in Country X and the boat, I consider it was ungallant of him to move back to the property in West London, particularly as it was in her name. It would have been far better if he had rented somewhere else, given that they were being divorced. It is, of course, clear that he did not want the divorce and does not see the need for it but that does not mean that it is reasonable simply to return to her property.

66.The Wife then gave evidence. She told Miss Stone in her evidence in chief that she was a corporate wife who supported the Husband. She believed in him. She was hardworking and had to juggle her various commitments, running a home and five children and attending functions at his request, including one very shortly after the birth of one of the children. The Husband did do a lot of travel in the early years, namely two to three nights per week. I accept this evidence. I accept that the contributions of each spouse during the marriage were equal but that does not deal with the main issue, namely the undoubted fact that ABC Inc was established decades before the marriage. She was asked about the Pre-Nuptial Agreement. She said she thought it only lasted for three years or until the birth of the first child. Although she is wrong about this, given that this was my reading of the document until Miss Stone got me to consider it carefully, I cannot possibly criticise the Wife for her understanding. I am absolutely clear that there was to be a review after three years, or the birth of the first child. This review never happened as the parties basically just forgot about the document. She was taken to her schedule of expenditure for the ten month period ending at the beginning of October 2020. It was in the sum of £1,363,780. I do consider this to be a very high level of expenditure. She probably justified it on the basis of the costs of running the plane and the yacht but the two are not really comparable. She did explain that she had rented a property in the country during lockdown but that only amounted to around £59,000. She added that she had rented an unfurnished property in Prime Central London so she had to spend £260,843 in furnishing it. Child A’s medical treatment had cost £68,451 and the Wife had been paying school fees. The rental of the property in Prime Central London had been £209,476 during this period. Miss Stone then asked her about the art business. She said that she had always wanted to study art but the Husband had not been supportive. She could not run a studio at her property so she had rented premises. It was on a five year lease but she can sub-let. I was surprised that she had done this before the issue of Child D’s education had been determined but, in the overall scheme of things, the cost is not excessive. She was then asked about her future plans if the court ordered Child D to go to the school in Country X proposed by the Husband. She told me that, if so, she considered that she and Child E would go as well. Her base would be back in Country X as that would be the only way she could parent both of the children. She said, however, that she would still maintain a home in London given that one child is studying here and another is studying in mainland Europe.

67.She was then cross-examined by Miss Bangay. She told Miss Bangay that she had made the decision to return to Country X if Child D went there. She said she had been giving it serious thought as to how they could parent two young children so far apart and she had decided it was impossible. She had been fairly certain even when Miss Stone and Mr Brooks had prepared their Case Summary

but she was now completely certain. She said she knew in her heart that there was no other option other than to take Child E back as well. She had not issued an application for permission to remove Child E from the jurisdiction. They would need to discuss the right time for Child E to move. There was some suggestion that the Husband might oppose Child E's removal but, although I am not hearing the Children Act proceedings, I doubt that the Wife would be forced to remain here with Child E against her wishes, particularly if Child D was back in Country X. Miss Bangay is critical of the way in which this evidence has emerged and she is entitled to be critical, although I do accept that, pending the receipt of the independent social worker's report in January 2022, the Wife might have been confident of success in her application for Child D to attend the school proposed by her. The Wife accepted that she would not need a country property in this country if Child D and Child E are in Country X, which is clearly right. She said, however, that she would want a country property in Country X to be able to offer the same experience as Property J. I will make my findings of fact in due course but I cannot, at present, see that a property akin to Property J would be appropriate in Country X.

68.She was asked about the two telephone conversations she is accused of having with the Husband in which it is said she attempted to put unfair pressure on him. The first was in relation to prospective changes to the privacy rules in relation to financial remedy proceedings. She said that she was concerned about changes to the privacy rules as the family are incredibly private and she could not see why they would want articles in the press that would affect them and the children. She denied saying it like the Husband said, saying there was no spite and vengeance, although she accepted she might have been emotional. I am satisfied the conversation was, essentially, as described by the Husband. She was also asked, later in the cross-examination, about the conversation prior to the application about signing the DEF Inc Side Deed. She said that the Husband called her to put pressure on her to sign. I accept that. She said that she got upset and was crying. I accept that. She denied saying she could not care about DEF Inc and that she would only sign if the Husband agreed to Child D remaining in this country but, again, I am satisfied that, in her distress, this is broadly what she did say. She was asked about her move to rented accommodation in Prime Central London and she said that the Husband made it clear that he was not moving out of the property in West London so she didn't have a choice as it was not possible for them to remain in the same house. I have already indicated that I accept this was a reasonable position to adopt. She was then asked about her offer to purchase a country estate. She said that she liked the look of the property; went to visit it; and recommended its purchase. She accepted that it is set in 89 acres; that there are ten bedrooms in the main house; and that it has four other properties, which she said she would rent out. Miss Bangay was very critical of her for considering this purchase but, in the light of the other properties, particularly Property J, the boat and the plane, I cannot say that a purchase for £7.5 million was really unreasonable at that time.

69.She was then asked about the art business and her taking a five year lease. She justified this on the basis that she is able to sub-let, although in the current climate I would have thought it was by no means certain she would be able to find a tenant. The rent is £45,000 per annum and she has spent £100,000 equipping it. She denied that this was her putting down roots but I have already indicated that I consider it would have been better if she had waited until the decision as to Child D's education had been taken. She then said that she would not intend to be here indefinitely and that there was no need for her to reside here if her children are not here. I have to say that I felt she responded badly to Miss Bangay's legitimate questions and she became quite argumentative at times, although she also became understandably distressed at others. Turning to the Pre-Nuptial Agreement, she said that the Husband told her it was solely to please his father and I am sure she is right about that. She

acknowledged that JR was the ruling patriarch and “a force”. She accepted that he wanted to protect his wealth and the family wealth. She said she didn’t have an understanding of the trusts. Indeed, she accepted that JR and KR controlled the assets at the time of the Memorandum written by Mr D. She added that she was not aware of the big distribution in 2007 when the Husband received $170 million out of the figure of $340 million. I was slightly surprised by that but have no reason to doubt it. She said that, at the time, there were more and more shops being opened. She is clearly correct about that. Each matrimonial home purchase was bigger but money was never discussed with her.

70.She said it was not her idea to put the proceeds of DEF Inc into the children’s trust. She did not know that the funds to start DEF Inc came from JR as it was not discussed with her. Miss Bangay then turned to the issue of the DEF Inc Side Deed. Not unreasonably, she said that she had to be guided by her legal team. She acknowledged that the loan to Child A in relation to Child A’s property purchase was intended to be written off at an appropriate moment. It follows that it must come off the assets schedule. Turning to the Trust for the children, she said that they had discussed placing a substantial sum of money into the trust openly and she agreed. She accepted that she received £4.4 million on the sale of Flat 1 in 2019. She said that the Husband told her that the receipt of this money would avoid his office having to send money over to her. She added that there had never been any constraint on her spending but I do not find that she had previously spent at the sort of rate she has spent since receipt of this money, although she has obviously previously enjoyed access to all the various properties, boats and planes owned by the parties. She said she had not provided a budget with her voluntary Form E as she had not known what the family had been spending. She was then asked about her schedule of expenditure from November 2019 to October 2020. She said she paid for Child A’s medical treatment. She had spent £47,000 on art, which I do not consider was unreasonable in the context of the wealth of this family. She could not remember how she spent £35,000 in cash but she was paying her cleaner and housekeeper in cash, which will largely explain it. The figure of £127,446 for the children included their school fees. She could not explain household/ groceries of £178,849, although she said that there had been renovations to the property in West London during that period. She spent money on her lawyers in the sum of £53,894 although some of that was medical bills. She defended the spending of £260,843 for furnishing her rented property in Prime Central London, saying she had had no choice. In the context of this case, it is not unreasonable to spend such a sum on furnishing a property, although it was largely wasted money. She was then asked about shopping of £148,623. She thought this was clothes, gifts and anything else not included elsewhere. She was asked about her clothes budget. She thought a reasonable budget was around £10,000 per month. She denied that, overall, this level of spending was, to quote Miss Bangay, “an extraordinary ramp-up” but I am satisfied that it was a considerably higher level of spending than she had been used to before.

71.She was re-examined by Miss Stone and she told me that the budget prepared for her by Pennywise, in the sum of £644,000 per annum did not include American Express spending although Pennywise had everything else. She made the fair point that she had not been able to spend properly on holidays during lockdown. She was asked about the Memorandum by Mr D which said that “IR is the key family member in the ongoing management of the family business” and that JR “is no longer involved in the day to day management of the family business assets” in 2006. All she could say was that the Husband was incredibly busy. She added that he would complain that his father would drop into the JVP stores and “aggravate” the JVP running it. I thought that this had the ring of truth.

<u>My assessment of the assets</u>

72.I propose to deal first with my findings as to the correct approach to the various disputes on the assets schedule. I will then deal with briefly with the Pre-Nuptial Agreement before deciding on the extent of the matrimonial property in this case. I will then deal with the issue of the DEF Inc Side Deed before coming to my conclusions as to the correct order to make in this case.

The appropriate deduction for tax liabilities in relation to the enquiry by the tax authority of Country X

73.I have already made a number of observations as to the tax authority enquiry. I accept that it has been ongoing for a long period of time and that it has been worrying the Husband considerably. I also accept that he has already spent around $2 million on legal and accountancy fees in Country X. I am also clear that the figures have fluctuated very considerably but this cannot be a criticism of the Husband as he has just provided the amounts given to him by Mr G. I am, however, clear that I cannot take the likely liability at the maximum sum sought by the tax authority, namely c. $70 million. I am clear that there will be a negotiation. The letters from Mr G make this clear. Indeed, it is made even clearer by the fact that the tax authority has asked for a further six months to consider the position put forward by the Husband's advisors. Moreover, Mr G thinks the tax authority may ask for a further six months thereafter. It is, therefore, entirely clear that the points raised on behalf of the Husband have not been simply brushed aside by the tax authority. Finally, the fact that the tax authority has made a without prejudice indication, whatever its status, that it would accept c. $40 million, makes it very difficult to accept that the liability could be higher than this for two reasons. First, if it was thought by the Husband's advisors that there was any danger of this, they would surely have immediately settled at that figure. Second, the reasoning for this offer is that, if they get their tax under one head, they would not pursue it under a different head, which is logical.

74.I have found it difficult to assess the likely amount that will finally be agreed. I cannot accept some of the points made by Mr H, such as the 50% deduction on the basis that the tax authority accepts that one point raised by the Husband's team is a "reasonably arguable position", although some of his other points seem to have more merit. Doing the best I can, I consider that there will be some further reduction from the without prejudice indication of c. $40 million. I assess the likely figure at c. $35 million, of which the Husband will be responsible for 75%, namely $26.25 million. I realise that this may be unfair one way or the other but it is the best I can do in the circumstances.

The Husband's assertion that I should deduct income tax on the basis that all the assets are removed from the Trusts by way of dividend for use by the Husband

75.The next issue is the assertion by the Husband that I should deduct the sum of $37.783 million and c. $400,000 for tax on the basis that I should treat all the assets as net of all tax. In particular, to get all the money from the various trusts, he would have to pay tax on dividends to withdraw those assets over and above the loans that are due to him. Miss Bangay and Mr Sear rely on the speech of Lord Nicholls in White v White [2000] 2 FLR 981 at 996E when he said:-

"Finally, Mrs White criticised the use of net values, arrived at after deducting estimates of the costs and capital gains tax likely to be incurred if the farms were sold. Mr White still owns and uses the farms. The farms have not been sold. Counsel submitted that use of net values in this situation should be discontinued. I do not agree. As with so much in this field, there can be no hard and fast rule, either way. When making a comparison it is important to compare like with like, so far as this may be possible in the particular case. In the present case, a comparison based on net values is fairer than would be a comparison of Mrs White's cash award and the gross value of the farms. Under her award, Mrs White will have money. She can invest or use it as she pleases. Mr White's equivalent as cash is the net value of the farms. The farms have to be sold before he can have money to invest or use in

other ways. What will be his financial position if he is able to retain the farms or parts of them? Will he be better off financially? Dairy farming is currently languishing in the doldrums. On the evidence, there is no reason to suppose that the farms are likely to yield a better financial return at present than the investment return to be expected if Mr White sold up and invested the net proceeds."

76.It follows that, although the court usually operates on net figures, I must consider the specific circumstances of this case. Miss Stone and Mr Brooks make a number of fair points, such as that some of the assets are bound to remain in the trusts, and that using the trusts provides a huge tax advantage. In so far as there is any tax, they say it is likely to be a long way off before it has to be paid. They point to the fact that Property J, the property on the private island, the yacht and the plane are all owned by trusts without any disadvantage to the family. On the other hand, I cannot ignore the fact that the Husband is going to have to raise a significant amount of money to discharge his liabilities to the Wife. She seeks a lump sum of £57 million. The Husband only has around £10 million in investments in his own name so, if that was the lump sum, he would have to extract £47 million from the trusts. Although, overall, he is owed some £94 million, he is only owed £24,388,881 by GHI Capital, which is likely to be the source of much of the lump sum, although he could borrow against other trust assets. Moreover, he owes various trusts £38,796,647. Finally, it is always possible that the law will change in Country X to make it very unattractive to hold property assets in trust. I have already indicated that I do not consider it would be right to require him to change his tax status to assist or to use any benefits available via the children, unless, of course, the money was being given to the children outright.

77.Again, I take the view that I must do the best I can. There is a liability but it is uncertain both as to quantum and timing. I propose to take the figure at half the maximum of $37,783,658, namely $18,891,829.

The treatment of the interest on the DEF Inc loan notes

78.Mr I of ABCD valued DEF Inc on the basis that it was a going concern, with a significant EBITDA that, in consequence, could meet all its liabilities, including interest on the Husband's preference shares. The fact that the trust has written off this interest is, I find, totally irrelevant. The interest has not been written off in the DEF Inc accounts and it is quite clear, given the valuation of Mr I, that it is now able to pay the liability. This means that the total value to the Husband of his interest in DEF Inc must include the interest on the preference shares. Indeed, given that Mr I was clear as to this, the only way that the Husband could have challenged this would have been to call Mr I and cross-examine him about it, which did not happen. It follows that I am clear that the value of DEF Inc must be included in the asset schedule at £26,740,512. In any event, if I had deducted the interest, it would just have increased the net proceeds of sale of DEF Inc by the amount of the interest deducted. Ironically, this would have meant that the Husband would receive slightly more for his interest, as the proceeds of the sale of the shares will be taxed as a capital gain at a lower rate than the interest. I propose to take the lower figure on the basis that the interest is paid in full.

The future costs of the Children Act proceedings

79. I am clear that I should deal with the parties on the basis of a level playing field going forward. The entirety of the Wife's unpaid costs in the sum of (£1,291,341) have been deducted. This includes the unpaid costs of both the financial remedy proceedings and the Children Act proceedings. The same must apply to the Husband, so I deduct a further sum of (£147,413) in addition to the existing sum of (£563,925). If there is any subsequent saving in costs, it is likely to benefit both parties equally so it is entirely fair to deal with it on this basis.

The treatment of the loan to Child A to purchase a home;

80.Both parties agreed that the loan given to Child A in relation to the house purchase would be forgiven in due course. I am quite clear that this is what they agreed and this is what will happen. The loan of £2.6 million is therefore not an asset of the parties and should be removed from the schedule.

The inclusion by the Wife in her schedule of the value of the Trust for the children

81.In the same way, the parties agreed that the money put into the Trust for the children was to be exclusively for their benefit. In one sense, this was dynastic assets cascading down the generations. Again, the parties will derive no benefit from this money and the value of £27.5 million should be removed from the schedule. It may, however, be relevant to the arguments on non-matrimonial property that this sum has already been dealt with in this way.

Two relatively small loans made by JR's estate and a trust belonging to KR to the IR Holding Trust

82.Miss Stone did not dispute that these loans are documented and outstanding. Her case was that they are "the softest of loans" as they are owed to JR's estate and KR's trusts. I do not accept that I should ignore them. It will be up to KR to decide how to leave her assets in her estate. She may leave them in part to the Husband although she may think he has had enough and leave them to CR or to the children of the family. Either way, they are legitimate loans and should be deducted from the asset schedule in the sum of £1.1 million.

The resulting overall figure

83.In calculating the resulting figure, I intend to use the Wife's schedule which shows total assets of £240,696,589. From this figure, I must deduct a total sum of £56,014,413, which brings the net figure down to £184,682,176 on the basis of the following deductions:-

(a)Country X tax enquiry£14,344,000

(b)Dividend tax£10,323,000

(c)Husband's costs£ 147,413

(d)Child A loan£ 2,600,000

(e)Trust for the children£27,500,000

(f)Loans to JR and KR£ 1,100,000

£56,014,413

The Pre-Nuptial Agreement

84.I turn to deal briefly with the Pre-Nuptial Agreement. I am clear that I should ignore it entirely, although I do accept that it raised the issue from the very beginning that the assets emanating from ABC Inc should be treated as non-matrimonial property. The way to factor this into my decision is to consider that in the context of deciding the extent, if any, that there is non-matrimonial property in the case. I ignore the Pre-Nuptial Agreement itself for numerous reasons. First, it fails the test in Radmacher v Granatino [2010] UKSC 42 as it provided no provision for the Wife at all, such that she would undoubtedly have ended up in a "predicament of real need". Second, it was only supposed to last for three years or the birth of the parties' first child, whichever was sooner. At that point, it was to be reviewed. The thinking behind this was clearly appropriate, namely that the Wife would require

and be entitled to provision at that stage but there was no review. The parties just forgot about the Agreement entirely. Although a careful reading of clause 13 shows that the Agreement was to continue in the absence of such a review, the continuation was only in the most technical of senses. Third, I am satisfied that it would not have been enforced in Country X. Fourth, the fact that the Husband could not even lay his hands on the executed document shows the extent to which the parties abandoned this Agreement, even if they had ever really intended to abide by it. I do not need to resolve the issue as to whether or not it was produced and signed one evening in the family home or whether the parties went to the solicitors' offices to do so, as that is irrelevant. It does show how memory can play funny tricks on the mind as I am quite clear that both parties genuinely believe their separate accounts of what happened, whereas only one can actually be correct.

The DEF Inc Side Deed

85.I must make some findings in relation to the DEF Inc Side Deed, if only because I have been given responsibility for dealing with the costs of the application to the court for the mandatory injunction on 21 December 2021. I am quite clear that the breaches of the agreement with the PE Company were entirely technical but the PE Company took advantage of them in a way that was entirely opportunistic but undoubtedly in its commercial interests. The Husband's lawyers informed the Wife in good time on 21 October 2021 of the breach and provided a good document from a corporate lawyer in Country X to explain what had happened. I am entitled to find that both parties' lawyers then took their eyes off the ball. The Wife's team did not respond until 16 November 2021, with a predictable list of questions. In fairness, they may not have realised the urgency. The Husband's team then did not respond to that letter until 15 December 2021. This may well have been, in large part, because the Husband's team did not realise that they required the Wife's signature, as they had not appreciated the second breach, namely the failure to inform the PE Company of the change of trustees. Even so, it does not really go to their credit as the Wife was entitled to answers to her questions.

86.I accept entirely that it all came to a head extremely quickly after 15 December 2021. I make the following findings of fact. The Husband needed the Wife's signature extremely urgently. If it was not provided, a large amount of money would have been lost. I am not able to find how much money would have been lost, as the documents suggest that the interest on the loan notes would still have been payable but there undoubtedly would have been a significant financial hit. There really was no alternative other than that the Wife sign quickly. The Wife herself was entirely dependant on her lawyers. They were given very little time to consider the matter. As so often, I am sure indemnity insurance worries played a large part in their thinking. The concern to avoid a liability for negligence can have the opposite effect if you are not careful and potentially give rise to a possible claim for negligence with significant financial loss. Despite the delays, I am clear that, when the Husband's lawyers said they would have to go to court on 21 December 2021 for a mandatory injunction, they were absolutely right to do so. Moreover, it was inevitable that the court would make an order that the Wife sign, albeit on the sort of terms that were eventually agreed as to responsibility for any resulting loss. It follows that, by lunchtime on 21 December 2021 at the latest, the Wife should have agreed to sign the Side Deed. She must pay the costs of the application to the court on the standard basis but not any costs of the investigation in the run up to the application itself, as I consider both sides bear responsibility for what occurred. The costs order is therefore limited to preparing the application and attending court to obtain the order.

My conclusions as to non-matrimonial property

87.I now turn to the most important issue in the case, namely the question of non-matrimonial property. There is absolutely no doubt that a significant source of the resources in this case emanated from the endeavours of JR. ABC Inc had been established in the 1950s. It had been going for more than thirty years before the Husband even joined the business. Moreover, when he did so in 1987, I am satisfied that he initially played a relatively minor role. Nevertheless, this all changed in 1993 when he became Chief Executive Officer. At that point, JR was in his mid 60s. During the Husband's tenure as CEO and then Chairman, the business changed out of all recognition from a relatively small regional chain of stores to one of the largest chains in Country X, with the highest sales of any company in its field. At marriage, there were less than 20 stores. On sale, there were more than 100. Whilst I accept that the JVP model was conceived by JR, it was clearly not easy to implement. You only have to look at the relatively modest progress between the 1950s and 1997, as against the enormous growth thereafter. It was necessary to find the right person to be the JVP and the right place for the store. The huge growth was achieved under the Husband's stewardship. The fact he may have found some excellent lieutenants is merely part of the skill base of all senior executives. Nobody can do everything themselves. It may be that JR tried to do so in a way that held him back, but that would be speculation. I am, however, absolutely clear that the Husband did not. Under his leadership, the business was transformed from a small regional chain to a national powerhouse that could be sold, including the business premises, for over $1 billion. This all occurred during the marriage. It leads inexorably to a finding of fact that the huge increase in value created matrimonial property, notwithstanding the origin of the business. The Wife is entitled to share in that matrimonial property. The fact that assets were put into a trust named "IR & OR Trust", after the parties, is irrelevant to this finding. I have not come to my conclusion on the basis of mingling of assets. I have done so on the basis of the Husband's matrimonial contributions.

88.Equally, however, I have no doubt that I must make allowance for the significant non-matrimonial element. After all, the Husband would not have been able to achieve what he achieved if JR had not started the business in the 1950s and, in effect, handed it over to the Husband in 1993. There are two different ways in which I can calculate the non-matrimonial property in this case. The first is to decide on a figure for the non-matrimonial element, deduct that from the assets of £184 million and award the Wife one-half of the resulting figure. Miss Stone cautions me in relation to this approach by reminding me that such a "top-slicing" of non-matrimonial assets can lead to a large departure from equality (see XW v XH [2019] EWCA Civ 2262). Whilst I understand the point she makes, I intend to approach the matter on both this basis and by conducting a broader Hart v Hart [2017] EWCA Civ 1306 evaluation.

89.One possible approach is to say that the sum of $170 million received by the Husband in 2007 was, in reality, non-matrimonial as being, in effect, the fruits of JR's work. If the other money received by the Husband is treated as matrimonial, namely c. $90 million following JR's death and c. $330 million after the sale a few years ago, the proportion of the total receipts that would be non-matrimonial would be c. $170 million out of c. $600 million or c. 30%. If this percentage is deducted from the assets figure of c. £190 million, the non-matrimonial element would be approximately £50 million and the matrimonial element around £130 million. This would suggest an indicative award to the Wife of £65.5 million. If I was to do such a calculation, both sides would undoubtedly raise issues with the figures. Miss Bangay would ask why I did not include the loan notes transferred to the Husband after JR's death as non-matrimonial. There would be two answers to that. First, given that $370 million had already been extracted, these remaining loan notes could only be honoured due to the very significant increase in value of the business under the Husband's stewardship. Second, in so far as there is force in this point, it is largely lost by the figure of $50 million already transferred to the Trust for the

children. Miss Stone, on the other hand, would argue that I had overstated the non-matrimonial element, given that the figure of $370 million was considerably in excess of the indicative value of the business in the Memorandum by Mr D the previous year, which was $210 to c. $260 million. I accept that this was only an indicative valuation but it does suggest that my initial approach may have been somewhat generous to the Husband.

90.I therefore performed, in addition, the broader brush Hart calculation. I consider that such an approach would be likely to produce a figure for the Wife of between 37.5% and 40% of the net assets. I accept that it could be said that these are arbitrary figures although they are well within the guidelines set out in the various cases. I consider that both percentages would give sufficient weight to the non-matrimonial origin of ABC Inc business, whilst reflecting the enormous matrimonial growth in value. On the basis of total assets of £184,682,176, this would lead to an award of between £69,255,000 and £73,872,000. An average of all three calculations is £69.5 million.

91.Overall, I am of the view that the figure produced by the first calculation, namely £65.5 million does not sufficiently reflect the huge increase in value during the marriage. I have decided that the proper award is £70 million, which is just under 38% of the assets. On this basis, the Wife will not have to share in any tax payable following the conclusion of the tax enquiry. If the Husband negotiates a better figure than the amount I determined, he will be able to keep that benefit. If the end result is a higher liability, he will just have to shoulder that burden out of his 62% of the assets, which I remind myself amounts to £114.7 million. I am also against any Wells v Wells sharing of the proceeds of the sale of DEF Inc. The dispute that arose over the Side Deed shows just how much scope such an arrangement would give for further dispute. I have taken the current value of DEF Inc, as assessed by Mr I, fully into account. The fact that it was financed from non-matrimonial assets is taken into account by the departure from equality for the non-matrimonial element. Any further increase in value from now to the date of sale will not be a fruit of the matrimonial partnership. Most importantly, this case cries out for a complete clean break now.

92.It is, however, important that I should just perform one final calculation to ensure that my award covers the needs of the Wife. I am absolutely clear that it does. I am of the view that she should have three properties. I say nothing as to the likely outcome of the dispute as to Child D’s schooling but, on a broad brush basis, she is entitled to a property in London regardless of where the children are living. The property in West London at £10,902,800 fits that bill. She is entitled to a property in City Y. For this purposes, I allocated a further sum of £10 million just because that is the value of the Z Street Property. Finally, she is entitled to a home in the country, either near their schools if the children are here or in Country X, if they are there. It does not need to be as grand as Property J or even the country estate she made an offer to purchase. I attribute £5 million for such a purchase, including the costs of purchase. This would give her a total housing need of £25 million. On the basis of an award of £70 million, she would have £45 million for a Duxbury fund. This would not quite provide her with her budget figure of £1,855,000 per annum, which would have needed £48.5 million, but it would get sufficiently close to cover her reasonable needs, very generously assessed.

The structure of the award

93.The Wife has the following assets:-

(a)the property in West London£10,902,800

(b)Flat 2£ 8,245,000

(c)One half of the Z Street Property£ 5,035,519

(d)Timeshare£ 1,308,254

(e)Her funds (after liabilities)£ 152,174

(f)Money owed to her by DEF Inc£ 120,479

£25,764,494

94.It is agreed that the Wife will assign the money owed to her by DEF Inc to the Husband, such that her assets should be taken as being £25,644,015. On this basis, she is entitled to a lump sum of £44,355,985. I would expect it to be paid within three months, with a part of it payable within one month. If the parties cannot reach agreement as to this, I will determine it on paper.

95.I now turn to the thorny topic of the Z Street Property. Both parties seek a transfer of the property to their sole name. In one sense, both their cases can be criticised. At the time the case commenced, the Wife was arguing that her main base should be in London, which would have made ownership of the Z Street Property, on the basis of very limited occupation, slightly surprising. On the other hand, the Husband was seeking a transfer to him of the Z Street Property on the basis he was also going to keep the extremely valuable Property J, and the property on the private island, even if he did later say he would sell the latter. His justification for keeping the Z Street Property on the basis of the study is wafer thin. Equally, he argued that the Wife could have Property W but so could he, given his ownership of Property J.

96.I have decided that the only way to deal with this is to place the property on the market for sale in two months' time, on the basis that the equity will then be divided equally. Prior to that happening, however, each party is entitled to send to the other one sealed bid to acquire the property. The bids must be delivered to the other's solicitors by 4pm London time on 14 April 2022. The party making the higher bid will keep the property and will have to pay half the value of the offer, less notional costs of sale at 3%, to the other, within one month thereafter. This will decide who really wants this property. I must, however, guard against one party taking a gamble and offering a ridiculously low price on the basis that he or she does not believe the other will bid. In consequence, I place a floor on the bids of $19 million. Any bid below that will not be binding on the other party.

97.There will be no order as to costs, other than in relation to the Side Deed. Miss Bangay made some submissions about an alleged failure to negotiate and a disparity in costs. I cannot possibly adjudicate on the former point given the rule that prevents Calderbank offers. Moreover, my award is considerably more than the Husband offered, even if considerably less than the Wife sought. I do not consider that any disparity in costs is sufficient to make an adjustment to the order I have otherwise decided upon.

98.Finally, I wish to pay tribute to the quality of the representation in this case. Nothing more could have been said or done on behalf of either party.

Mr Justice Moor

17 March 2022
