OUTER HOUSE, COURT OF SESSION

[2024] CSOH 61

F86/22

OPINION OF LADY CARMICHAEL

In the cause

PATINA OMAROVA or MACKAY

Pursuer

against

COLIN MACKENZIE MACKAY

Defender

Pursuer: J Scott KC; Drummond Miller LLP
Defender: Hayhow KC; Gibson Kerr Family Law

21 June 2024

Introduction

[1] This is an action for divorce. The pursuer seeks various orders for financial provision.

[2] The parties met in Baku, Azerbaijan in 2006 and lived together there from 2006 until they moved to Scotland in 2013. They were married on 8 March 2014 and ceased to cohabit on 30 April 2017, which is the relevant date for the purposes of the Family Law (Scotland) Act 1985. The pursuer is a Russian national. She lives in Scotland with the parties' two sons, who are aged 15 and 14. The defender lives in Baku. Neither party seeks any orders in respect of arrangements for the children, and I am satisfied that no order is required.

[3] As the defender lives in Azerbaijan, he is not subject to the jurisdiction of the child support commissioner in terms of section 44 of the Child Support Act 1991, and the orders sought include orders to pay aliment for the children.

[4] I am satisfied that the marriage has broken down irretrievably, and that I should grant decree of divorce.

[5] The values of most of the matrimonial property at the relevant date were agreed. It was agreed also that the defender is the proprietor of two heritable properties in Brora, each with a current value of £230,000, and of an apartment in Baku with a current value of £164,500. None of that heritable property is matrimonial property.

[6] The defender is the director of a group of companies collectively known as Laser Gulf, and which are engineering and fabrication companies serving the oil and gas industry. At the relevant date the defender held all the shares in a company called Argyle Star Limited ("Argyle Star") through a nominee, Wai Man Chan. Argyle Star held shares in Laser Gulf Fabrication LLC; Laser Gulf Fabrication Limited (Hong Kong) ("LG Fabrication HK"); Laser Gulf Engineering Limited (Hong Kong) ("LG Engineering HK"); and Laser Gulf Limited (Hong Kong) ("Laser Gulf HK"). For brevity I refer to the defender's interests in these companies as his shareholdings in them. The shares in Laser Gulf HK, it was agreed, had a value of nil at the relevant date. There was no dispute about the value of the shares in Laser Gulf Fabrication LLC. There was a minor difference between the parties' respective forensic accountants about the value of LG Fabrication HK.

[7] The significant difference between parties was in relation to the value of the shares in LG Engineering HK. There was also a dispute as to whether there ought to be any departure from equal sharing.

[8] The companies through which the defender has operated have varied over the years. They are helpfully set out in a table prepared by Mrs Annette Barker, the forensic accountant instructed by the pursuer and which I attach as an appendix to this opinion. The table shows the dates at which the defender had interests in the various companies relative to the period during which the parties were married, and presents the information with more clarity than is easily achieved in narrative form.

[9] Unless otherwise specified, references to statutory provisions in this opinion are to the provisions of the Family Law (Scotland) Act 1985.

Summary of decision

[10] I assessed the total value of the matrimonial property at the relevant date as £3,527,562, set out in the table below. There were no matrimonial debts at the relevant date. It was not disputed that the pursuer had retained her property, and that the defender had retained the sum of £791 in a joint account.

	Joint	**Pursuer**	**Defender**
Assets			
Motor vehicles			
BMW			£17,000
Fiat		£3,000	
Bank accounts/pensions/investments			
ADCB *1001			£162,161
ADCB *8001			£4
ADCB *4001			£5,063

AG *1002			£22,015
AG *0001	£791		
Clydesdale *8389			£7,953
Clydesdale *2694		£499	
CETV of 4 Countrywide pensions referable to the period of the marriage			£7,712
Shareholdings (through Argyle Star Ltd – holding company)			
Laser Gulf Fabrication LLC			£483,017
Laser Gulf Fabrication HK			£1,802,772
Laser Gulf Engineering HK			£535,451
Other			
Defender's cash in Argyle Star Ltd			£274,091
Dividends due to Argyle Star Ltd			£206,033
Totals	£791	£3,499	£3,523,272

[11] I took into account special circumstances relating to the pre-marriage source of funds for the defender's pension and in relation to the three Laser Gulf companies mentioned in the table above in the following way. I deducted the sum of £7,712 which is the CETV of four pensions referable to the period of the marriage, and one-fifth of the relevant date values of the defender's interests in those companies from the total for division between the parties. That produced a sum of £2,955,602. I concluded that equal sharing of that sum

would be in accordance with the principles in section 9(1). That would entitle the pursuer to receive £1,474,302 after taking account of the items retained by her.

[12] I will make the following orders in favour of the pursuer:

(a) an order in terms of section 8(1)(baa) providing that the defender's shareable rights in his four Countrywide pension policies shall be subject to a pension sharing order to the extent of one hundred per cent, and for the defender to bear the charges for implementing the order; and

(b) an order for payment of a capital sum of £1,400,987 to be payable in instalments as follows; the first instalment of £477,000 will be payable within 12 weeks of decree of divorce, with interest running at 8% per year thereafter and the balance will be payable in three equal instalments on the anniversary of decree of divorce in each of 2025, 2026 and 2027 with interest at 5% per year from decree until the due date and thereafter at 8% per year;

(c) periodical allowance of £2,600 per month until such time as payment of the first instalment of capital has been made;

(d) aliment for each of the children of £500 per month while each child is under the age of 19 and in full-time secondary education.

Procedural history and motion to amend

[13] The defender previously raised an action seeking divorce from the pursuer in Tain Sheriff Court in March 2019, on the grounds that the parties had not cohabited for two years. The proceedings were transferred to Forfar Sheriff Court. The sheriff heard a preliminary proof on the relevant date and found that date to be 30 April 2017: *CM* v *PO or M* [2022] SC

FOR 39. That date which was less than two years earlier than the date on which he had commenced the action. The sheriff dismissed the action.

[14] Proceedings in this court started in August 2022. A proof was fixed for 13 June 2023. That proof was discharged on 27 April 2023 on the pursuer's motion. She had instructed KPMG in relation to forensic accountancy evidence, but had been unable at that stage to recover sufficient information about the defender's various business interests to permit her to proceed to proof. The defender accepted that the proof could not proceed at that stage. His counsel submitted that the defender had instructed a forensic accountancy report from Ms Christine Rolland which he expected to receive in May 2023. A further proof was set for 5 December 2023.

[15] The defender's agents withdrew from acting on 21 July 2023. The defender represented himself for a period. When the case called for a pre-proof hearing on 17 August 2023 senior counsel for the pursuer raised concerns that KPMG needed to liaise with the defender's Chinese accountants in order to produce their report. The defender had produced a "binder" of information, but it did not contain sufficient information. The defender said that he was unaware that he required to provide any information other than that which he had already provided. He said he was relying on a letter provided by an accountant called Mr McLeod, who knew the defender's businesses. He confirmed that he would represent himself at the proof.

[16] The case called to deal with an opposed motion by the pursuer, but the defender did not appear. A commission took place on 18 October 2023. On 24 October 2023 agents intimated that they were acting for the defender. When the case called for a further pre-proof hearing on 25 October 2023, the pursuer indicated that a substantial amount of material had been supplied and passed to KPMG. The defender moved to discharge the

proof. The motion was not opposed, on the basis that a new diet would be fixed quam primum. A further diet of proof was fixed for 20 February 2024.

[17] On 12 January 2024 I heard the defender's opposed motion to discharge that diet. Junior counsel appeared. He submitted that Mrs Rolland, the forensic accountant instructed by the defender, would not be able to complete her investigations in time to be able to produce a report before the proof. He produced a timeline indicating that her firm had been contacted on 7 November, and had met with Mr McLeod. The pursuer had produced a lengthy report from KPMG which the defender had received on 20 December. The defender as well as the pursuer had experienced difficulties because it was not easy for him to produce the information required by the forensic accountants. Junior counsel submitted that until he received the report from KPMG, the defender had not known what the case against him was going to be. He submitted that although the pursuer had a case on record, "it could have been changed at any moment", and that it was therefore reasonable and prudent for the defender to have refrained from seeking expert advice of his own until after he had received the KPMG report. Ms Rolland had been instructed to do "the bare minimum" and to value the companies which were matrimonial property, and could not complete that task until the end of January. I refused the motion. There appeared to be a reasonable prospect that a report from Mrs Rolland would be available by the end of January, and the pursuer was content to try to deal with that report when it became available. I did not accept the proposition that the defender had not required to investigate the case made on record against him or to vouch the value of his assets and resources, past or present, until such time as the pursuer had produced her report.

[18] The case called for further case management on 25 January 2024. The defender did not make any further motion to discharge the proof. I was told that Mrs Rolland had

confirmed that she would be able to report by 31 January. Arrangements were in hand for parties' forensic accountancy witnesses to meet shortly after that. Senior counsel for the defender indicated that it might be necessary to amend in the light of Mrs Rolland's report.

[19] The defender produced a minute of amendment on 12 February, eight days before the proof was due to start. I heard the opposed motion for amendment on the first day of the proof. The defender's case on record was that he, through his shareholding in Argyle Star, held 50% of the shares in Laser Gulf Engineering Limited (Hong Kong), and 25% of the shares in Laser Gulf Fabrication Limited (Hong Kong). He sought to introduce averments that since 2014 Argyle Star had held a proportion of each of those holdings in trust for an Azerbaijani company, MST LLC. The proposed averments relating to the constitution of this trust were brief:

> "Argyle Star and the other 50% shareholder [in Laser Gulf Engineering Limited (Hong Kong)] had however agreed in July 2014 to transfer 20% of the company's shares (10% from each) to an Azerbaijani company, MST LLC, all as part of an arrangement between the companies whereby MST LLC procured work for the company in Azerbaijan. Following said agreement Argyle Star held 10% of its original shareholding in Laser Gulf Engineering Ltd (Hong Kong) for the benefit of MST LLC and 40% as its own."

The proposed averments relating to Laser Gulf Fabrication Ltd Hong Kong were in similar terms, referring to the "agreement above condescended upon" and narrating the defender's interest in that company was 12.5%.

[20] Although the KPMG report contained consideration of a number of companies in which the defender had interests during the time the parties cohabited, and during the marriage, before and after separation, it proposed substantial relevant date values for his interests in respect of only three companies. These were Laser Gulf Fabrication Limited (Hong Kong), Laser Gulf Engineering Limited (Hong Kong) and Laser Gulf Fabrication LLC.

[21] There was no material difference between Mrs Barker and Mrs Rolland in relation to the valuation of LG Fabrication HK. Mrs Rolland's valuation, for reasons that I will discuss below, was slightly higher than that of Mrs Barker. Their respective valuations of a 25% shareholding were £1,819,181 and £1,802,772. Mrs Barker valued a 50% shareholding in LG Engineering HK at £535,000 and Mrs Rolland valued it at nil. Both witnesses valued the defender's interest in LG Fabrication LLC at £483,017.

[22] The first intimation of the defender's change of position about the extent of his interest in these companies came in Mrs Rolland's report of 5 February 2024. Senior counsel for the pursuer objected to the parts of the minute of amendment that sought to introduce the averments just mentioned, and also parts seeking to expand on the defender's case about the resources available to him. She said that it would be impossible to remedy the prejudice to the pursuer that would arise from such a late and material amendment, even with a discharge and an award of expenses. The pursuer was legally aided and there would be a clawback in relation to any sums she recovered. I should bear in mind that the defender had been found liable in expenses of about £75,000 in the Forfar Sheriff Court action, a sum that he had not yet paid. If I allowed the minute of amendment, it should be on the basis that the pursuer did not accept that the averments regarding the constitution of the purported trust were sufficiently relevant and specific for proof.

[23] Senior counsel for the defender accepted that the amendment came very late. The pursuer's accountant had been able to respond in the sense that there was no dispute as to what the values would be if the shareholdings were reduced by particular proportions. The issue had arisen because the defender had not appreciated that there was an issue, or the importance of the issue, until he had received the KPMG report. He had misstated what he believed to be the true position as to the ownership of the shares. He hoped to be able to

lead evidence to demonstrate that the position was as he now sought to aver it was. The defender could not recall the date in January when he had raised the issue in discussions with Henderson Loggie. Senior counsel understood it to be in the middle of January. There would be significant prejudice if the defender were not permitted to introduce averments and lead evidence about the trust. So far as the averments about resources were concerned, those did not come out of the blue but represented a development of the case already on record.

[24] For the following reasons I refused amendment in terms of those parts of the minute of amendment (paragraph 3(e) and (f)) relating to the ownership of shares in the two companies just mentioned. I gave considerable weight to the circumstance that the minute of amendment came very late indeed. The present proceedings started in August 2022, and in a context in which the defender had himself initiated proceedings for divorce more than three years before that. The minute of amendment was moved at the third diet of proof. I regarded the explanation that the defender had realised there was an issue about who owned the shares only when he saw the pursuer's valuation of them as entirely inadequate. The defender is someone who, on his own pleadings, has operated a number of businesses in a number of jurisdictions and must be taken to have understood the basis on which they were operating, and had operated since 2014. Accepting that the defender had raised the issue with Henderson Loggie in mid-January, I noted that there had been no mention of the issue at the hearing on 25 January. Although counsel had mentioned a possible need to amend, that had been on the basis that it might arise from the forensic accountancy report, and not because of a significant change of position by the defender as to the ownership of shares in two companies. The proposed amendment did not provide notice as to what the applicable law was said to be in relation to what appeared to be an undisclosed trust.

[25] The consequence for the pursuer if I were to allow the amendment at such a late stage was that she would not be in a position to investigate the truthfulness or accuracy of the new averments other than by cross-examination in the course of the proof itself. She would not be in a position to investigate any matters of foreign law that might be relevant to the purported trust. I considered that a further discharge would itself be prejudicial to her. Her case would be delayed to a fourth diet of proof. I was not confident, in the light of the failure of the defender to pay the expenses found against him in the earlier action, that any award of expenses I made against him would be effective. He resides in Baku, and owns only a limited amount of property in the United Kingdom. I regarded the new averments about the defender's resources as an elaboration of a case already on record, and not one likely to give rise to any real difficulty for the pursuer in the conduct of the proof, and so permitted them to be introduced by amendment.

The evidence

[26] The pursuer led evidence from Mrs Annette Barker, consultant forensic accountant, a partner in KPMG, and gave evidence herself. She relied on the unchallenged affidavit evidence of Anzelika Svartskopf so far as the merits of the action and the arrangements for the children were concerned.

[27] The defender led evidence from Mrs Christine Rolland, forensic account, who is a director of Henderson Loggie, gave evidence himself, and relied on the unchallenged affidavit evidence of Fidan Agayeva, under exception of passages relating to matters raised in the minute of amendment. That evidence was to the effect that the pursuer had never had any involvement in the defender's businesses, and that all contracts in the early days of

those businesses had been in English. Local authorities used the Azeri language. The witness had worked for the defender continuously since March 2011.

The forensic accountancy evidence

[28] Both Mrs Barker and Mrs Rolland are forensic accountants with many years of experience and relevant expertise. There was no issue as to the qualification of either to provide valuation evidence of this sort. The most significant disputed issue about which they gave evidence was the valuation of LG Engineering HK. There was a modest difference between their respective valuations of LG Fabrication HK, with Mrs Rolland's being higher than Mrs Barker's. The witnesses met using video conferencing on 7 February 2024 and had provided a joint note, number 53 of process.

[29] Mrs Barker and Mrs Rolland agreed that LG Engineering HK should be valued on a net assets basis as it was loss-making. They considered the financial statements for the years ending 31 December 2016 and 31 December 2017. They adjusted the net assets as at 31 December 2016 to take account of losses incurred in the following year, pro-rated to 30 April 2017, and taking into account a capital contribution from Laser Gulf BVI, less dividends paid. The difference between them was that Mrs Rolland deducted USD 1,883,490, as provision for potentially irrecoverable related-party debts, which created a net liability of USD 496,788, resulting in an equity valuation of nil.

[30] The debts in question were debts transferred to LG Engineering HK from Laser Gulf BVI ("BVI") on the dissolution of the latter in 2015. They formed the capital contribution. The capital contribution was accounted for in the financial statements for the year ending 31 December 2017. The debts, and debtor companies, were as follows:

(a) Laser Gulf Engineering UK: USD 934,744

(b) AIS Management Limited: USD 887,028

(c) Laser Gulf Limited HK: USD 61,718

[31] The witnesses agreed in principle that if debts were not recoverable, it would be reasonable to adjust for them in a net assets valuation. Where they differed was as to whether the debts should be considered bad debt.

Mrs Barker

[32] Mrs Barker worked with a team in KPMG with skills in making international inquiries. She had been asked to look at the value of the defender's business interests at the relevant date, and also to consider his interests at the time the parties formed a relationship and at the time they married. She had been asked to consider his current resources only to the extent of seeing what business interests he might still have. She had prepared a chart detailing the businesses in which he had interests from 2006 to the present day. It was all based on incorporation records or information from the defender. She adopted her report.

[33] The defender's business interests in 2006 consisted of a shareholding in Kylestar Limited. Mrs Barker assessed its value at £63,168. The company owed him £3,666 by way of a director's loan.

[34] Mrs Barker's evidence was that before the debts were transferred from BVI, an assessment ought to have been carried out to provide comfort that the debts were recoverable. There would have been an opportunity at that time to consider recoverability, and to write off the debts. That did not happen. Mrs Barker inferred from the fact that it did not that the management considered them to be recoverable.

[35] The accounts relating to the year ending 31 December 2016 were signed on 31 December 2019, and those relating to the year ending 31 December 2017 were signed on

10 March 2021. The defender was appointed as a director on 11 April 2019. The director in 2016 and 2017 was Lee Henderson. Both sets of financial statements contained a report by the auditors, KNC & Company, Certified Public Accountants, Hong Kong. That report confirmed that the auditors had a responsibility to identify and assess the risks of material misstatement and to evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the directors.

[36] Note 10 to the 2017 financial statements narrated:

> "During the year, as agreed by the shareholders of the Company, a related company, which under controlled [sic] by shareholders of the Company, transferred the receivables from related companies amounting to USD 1,769,427 to the Company, as equity contribution by shareholder without any issuance of the shares. Accordingly the balance was credited to capital contribution reserve. The balance was distributable as its [sic] was realised in nature."

[37] Mrs Barker took into account that the accounts were audited. The key thing was the risk of material misstatement. The debts constituted a material proportion of the assets of the company, and she assumed that the auditors had tested the information provided to them. She placed weight also on the fact that a dividend of USD 532,000 had been paid in 2017. The director at the time would have had to consider whether there were sufficient distributable reserves to permit the payment of a dividend. Consideration must have been given to the recoverability of the debts. If they had been irrecoverable no dividend should have been paid, as without them there would not have been sufficient distributable reserves. The dividend was significantly more than the company's retained earnings at year end 2016. The dividend had been enabled by the capital transfer from BVI.

[38] She had also considered unaudited financial statements for the years ending 2018 to 2021. Those disclosed no writing off of inter-company debt, and gave her no reason to depart from the valuation at which she had arrived. On the contrary, the information

tended to show that at least until 2021 the directors considered that the debts were recoverable.

[39] Mrs Barker pointed out that LG Fabrication HK and LG Engineering HK both paid dividends in 2015, 2016 and 2017. The financial statements did not disclose the date on which dividends were paid in 2017. She noted that the financial statements for Argyle Star did not record any dividend income. It was not clear why, as Argyle Star held shareholdings in both companies. The defender had produced information which he said set out all dividends paid to him between 9 September 2016 and 23 September 2022, but that did not align with the dividends paid by the companies just mentioned and therefore due to Argyle Star. The audited financial statements for Argyle Star for 2018 did include HKD 783,370 in dividend income, and it was possible that this included dividends from those companies declared during earlier years. She calculated the additional dividends due to Argyle Star and under the defender's control as being either £206,033 or £631,195, depending on whether dividends in 2017 were paid before or after the relevant date.

[40] Mrs Barker had been asked to consider various corporate entities in which the defender had an interest as at 8 March 2014, when the parties married. With the exception of Kylestar, which she considered was likely to be of limited financial value, she had been unable to assess the value of his interest in these.

[41] She had formed the view that at that point the various Laser Gulf businesses had started to grow. She confirmed that she had seen 7/88 of process, a business and asset purchase agreement between Hertel Industrial Services BV Branch Office in the Republic of Azerbaijan ("Hertel") and LG Fabrication HK. In terms of that agreement LG Fabrication HK (along with its Azeri branch) were the purchaser of a business and assets for the sum of USD 386,000, and the completion date was 10 September 2014. The accounts for

LG Fabrication HK covered the period 8 July 2014 to 31 December 2015. If the directors of the company had funded the purchase she would expect to see that reflected as a liability. Instead, the statement of financial position disclosed a sum of USD 362,000 owed by "director/shareholder" to the company. Note 10, headed "Amount due from shareholder" indicated that the balance was unsecured, interest-free and repayable on demand. It indicated that money was owed to the company, not by the company.

[42] In relation to the defender's current resources, Mrs Barker had identified, on the basis of information from the defender himself, a number of companies in which he had an interest. She had not been asked to value those interests. The companies in question were: Kylestar; AIS Management; Laser Gulf Engineering UK; Laser Gulf HK; Laser Gulf Engineering (branch); Laser Gulf KZ LLP; Laser Gulf Fabrication LLC; Jo-Mila; Laser Gulf Services & Trading LLC and Maviray.

[43] Cross-examined, Mrs Barker accepted that valuation might involve adjustment to balance sheet values. It was desirable to have as much information as possible that was contemporary with the date as at which the entity was to be valued. Mrs Rolland had been provided with information that was not available to Mrs Barker. Although Mrs Rolland had shown Mrs Barker her working, the information was information that the defender and Mr McLeod had provided to Mrs Rolland in the course of conversations. She accepted that as at 2014 she had valued AIS Management Limited, one of the debtor companies, at nil.

[44] Senior counsel suggested that although the directors of LG Engineering HK must have been satisfied that the debts were recoverable, they were not acting as valuers. Mrs Barker responded that there was an obligation to consider whether they were recoverable and transferred at cost and their true value. Although a valuer would interrogate the figures to a greater extent, the directors had an obligation to consider

whether the debts were likely to be realised. They required to consider whether an asset or debt was held at the right value in the accounts that they signed off. They might have views about long-term recoverability that a valuer or buyer might not have or accept. Senior counsel suggested also that there might have been tax advantages associated with avoiding writing off debt. Mrs Barker's evidence was that she was not a tax expert but she did not think that potential tax efficiencies provided a sufficient justification for maintaining a set of financial statements that were not supportable. She accepted that it was possible that directors might be mistaken about the recoverability of debt, and that in an ideal world a valuer would have access to all the available contemporaneous information and would do full due diligence. She did not know what other conversations Mrs Rolland had or what evidence she had seen to permit her to carry out such an exercise.

[45] The audited accounts, signed off by the directors, were an important point of reference. The debts represented 93% of the assets of the company. Their value was so material a matter that if the auditors were doing their job she would have expected them to have done some testing and received some assurance about it.

[46] Senior counsel asked whether, if a valuer had known that the debtor companies were worth nothing at the relevant date and that they were loss-making at the relevant date, that valuer would have interrogated the recoverability of the debts. Mrs Rolland responded that the valuer would be interested. Simply because a business was loss-making did not mean that it would not "come good". If it were not able to support its debts, then one would not expect it to be trading as a going concern. The missing information was the strategic plan to which the directors would be privy.

[47] If one simply adjusted for the debts, then one would require to do more diligence and "unpick" the dividend that had been paid. It would have to be reclaimed.

[48] Mrs Barker maintained that it was legitimate that she refer to later financial statements. She had not based her opinion on them, but had consulted them to see whether there were any indicators in them, particularly in view of the paucity of information about the inter-company debts, that would tend to support Mrs Rolland's opinion and undermine her own. She had not, and the information had tended to confirm her view.

[49] Had the company been valued at the relevant date, the valuer would have spoken to the directors. One had to consider what they would have told the valuer, in the light of the financial statements. The directors would have had to consider whether paying the dividend would put the business in difficulties.

[50] Senior counsel referred Mrs Barker to footnotes 6 and 7 to her appendix to the joint note and the text to which those related. The relevant passages record that the financial statements recorded that the related company balances were interest free and repayable on demand; and that the directors of LG Engineering HK had control over the related companies over if and when the debts were called in. She responded that that was relevant to the strategic thinking of the directors as to the recoverability of the debts, in the light of events that they knew were going to happen.

[51] In relation to LG Fabrication HK, Mrs Rolland's valuation had been slightly higher than Mrs Barker's. Mrs Barker had deducted all liabilities from cash at bank whereas Mrs Rolland had deducted only amounts due to related parties. In considering related parties, Mrs Rolland had also included what LG Fabrication HK was due from related parties, and in particular had not included a sum due from LG Limited HK because she did not regard it as recoverable. Asked about this, Mrs Barker said she did not accept Mrs Rolland's assumption that the inter-company debts should be written off.

[52] Asked whether it was possible that dividends payable to Argyle Star might have been recorded as sums due to shareholders, she said that she had been trying to carry out a reconciliation of the figures with that in mind. She accepted that the financial statements for Argyle Star for the period to 31 December 2018 included a figure that might also include dividends. Dividends had been declared in the accounts of LG Fabrication HK and LG Engineering HK. Dividend income to Argyle Star should have been shown separately as such for tax purposes.

[53] In re-examination Mrs Barker said that the fact that directors had signed off accounts was helpful to a valuer, particularly in relation to a group of related companies, as the directors would be fully aware of the dynamics and direction of the organisation. In carrying out her investigations, Mrs Barker had asked about related party transactions. Appendix four to her report contained the list of questions she had asked and the defender's response to them. She had asked for detailed breakdowns of amounts due from related parties in respect of both LG Engineering HK and LG Fabrication HK. The response had been that the information was being prepared. Mrs Barker had used the information that the defender provided to her, and had not seen further information to contradict such information as she had.

Mrs Rolland

[54] Mrs Rolland agreed that on the transfer to LG Engineering HK of debts owed to BVI, the directors should have carried out an assessment to make sure that they were recoverable, and that they must have concluded that they were. The directors were not, however, carrying out the same function as a valuer would carry out in a willing buyer and willing seller situation. The directors could take a long term view on recoverability and

might have thought the debts were recoverable in the long term, whereas a buyer would be thinking about "immediacy". In some jurisdictions writing off an inter-company debt might create taxable income in one company with no allowance being made for the write-off in the other, thereby increasing the tax due over all. Difficulties might arise where the companies were in different jurisdictions. Two of the debtor companies were in the United Kingdom and one in Hong Kong.

[55] A valuer would have to take into account what the directors thought about recoverability, but also the reality of whether the debts were recoverable. A valuer might conclude that directors were genuinely mistaken about the matter.

[56] Mrs Rolland agreed that the auditors had statutory responsibilities so far as substantial or material misstatements were concerned. She accepted that the auditors must have obtained sufficient evidence from the directors that they felt the debts were recoverable. Where one was not aware of what assurances had been given to the auditors, it would be prudent to consider the balances individually and look behind the audited figures. That would be particularly important where the related companies were loss-making at the time.

[57] Mrs Rolland accepted that the later unaudited financial statements did not demonstrate any writing off of the debts. It was, however, not legitimate for a valuer to have regard to information post-dating the date of valuation. In relation to the circumstance that a dividend had been paid, Mrs Rolland agreed with senior counsel that it was necessary to look beyond assumptions about what the directors may have been doing.

[58] Mrs Rolland noted that LG Limited HK also received a transfer of related party balances on dissolution of BVI, although, again those were not accounted for as a capital contribution until a later date (2018). LG Limited HK owed LG Fabrication HK. Even with

the capital contribution from BVI, LG Ltd HK had net liabilities and was loss-making in 2015 to 2017. She therefore assumed that a buyer of LG Fabrication at the relevant date would not have paid full value for the debt, and she did not include it in her calculation of net cash. She had deducted only liabilities due to related parties, and not accounts payable or other sums due to creditors from cash at bank.

[59] In cross-examination Mrs Rolland confirmed that she met Mrs Barker virtually. She said she had shown Mrs Barker an inter-company schedule as at December 2016. It was her own working document and she had prepared it on the basis of intercompany balances with which she had been provided. She made sure they reconciled and that all the figures fitted. Alan McLeod provided the information. She said she had been provided with accounts that were relevant to the workings in her schedule. She accepted that those documents did not appear in the schedule to her report. Nor were the three years of financial statements for AIS Management Limited to which she referred at paragraph 2.1(w) of her report. She said she had not shared those with Mrs Barker because she thought that she had referred to them in her own report.

[60] Table 20 in Mrs Rolland's report related to the valuation of LG Engineering HK and included provision for "potentially irrecoverable related party debts", including one of USD 934,744 from Laser Gulf Engineering UK. Senior counsel referred Mrs Rolland to the unaudited financial statements for Laser Gulf Engineering UK for the year to 31 May 2017, which included also figures for the preceding year. Mrs Rolland confirmed that she had not obtained that figure from these accounts; the analysis of inter-company or related party debt was part of the management accounts or consolidated accounts that Mr McLeod had supplied to her. Those accounts showed a liability of £936,380 to group undertakings and undertakings in which the company had a participating interest. Those were the

intercompany debts to which she was referring, but the matter was complicated because the documents relating to LG Engineering HK were in USD and the UK company had a year end of 31 May, whereas the other companies had years ending 31 December. Although BVI had been dissolved in 2015, the 2017 accounts of the UK company would have shown them as due to BVI, rather than to LG Engineering HK.

[61] So far as the accounts for AIS Management Limited were concerned, Mrs Rolland thought that they were with Mrs Barker's report.

[62] Mrs Rolland accepted that the payment of dividend suggested that the directors had been satisfied that the debts were an asset of the company. She said that the directors were in a position to take long term view, but accepted that a buyer might also take a long term view.

[63] Mrs Rolland's evidence was that it was not clear whether dividends due to Argyle Star had been accounted for in Argyle Star's financial statements. Mrs Rolland dealt with that in a letter (7/87). Her approach did not differ from that of Mrs Barker.

The pursuer

[64] The pursuer is 44 years of age. She grew up in Dagestan, where most of her family live, although one of her sisters lives in Italy, and another in the same town in Angus where the pursuer now lives. She started to study journalism at Dagestan State University when she was 19, but stopped her studies after two years, because local conditions were difficult at that time because of the Chechnya conflict. In 2005 she went to live with her sister in Udine and completed an Italian language course. She wanted to study in Italy. She overstayed her visa by a few days, and left Italy. She worked for a time in Moscow, and then moved to Baku. The pursuer said that she had hoped to continue her studies, but that things changed

when the children were born, and she brought up the children to allow the defender to continue his career.

[65] When the parties met, the defender was employed by an engineering company. The parties moved briefly to Malaysia in 2008 when the defender was offered a post there, but his employment there was short lived, following a dispute between the defender and his employer. They then spent a short time in both Dubai and Georgia. The pursuer said that she persuaded the defender to consider starting his own business. During that period they were short of money. They had to stay in the cheapest hotels in Georgia as a result.

[66] They then returned to Azerbaijan in August 2008 and the defender started the first of the LG companies. The pursuer's evidence was that she helped him set up the business by finding premises, looking at phone contracts and helping with networking. The pursuer went to Russia for the birth of their first child because the parties did not have enough money to pay for private healthcare in Baku. After the child was born in November 2008 she supported the defender. He travelled abroad and to offshore locations. They would occasionally attend networking events together. The parties were in Inverness for Christmas in 2009 when the pursuer began experiencing contractions and it was felt she should not fly. The defender returned to Baku without her, and she travelled by bus to her aunt's home in Angus with the older child. The parties' second child was born in Dundee in January 2010.

[67] The parties became engaged in 2007 when the pursuer was pregnant with their older child. They had planned to marry in the United States but the pursuer was refused a visa. She believed that it was refused because she was pregnant. In order to marry in the United Kingdom, the defender would have required to stay in the United Kingdom for a period, which would not have been possible given his work commitments. They were refused permission to marry in Malaysia and Azerbaijan because neither of them was a national of

the country in question. It was only when the parties moved to the United Kingdom in 2013 that they had an opportunity to get married.

[68] The pursuer's evidence was that it had been difficult to start a career because the children needed her care, and because the defender was hostile to her working. The children had a nanny from the time that the elder was about 18 months old, but her duties were mainly housekeeping, and the pursuer cared for the children. The nanny worked five days a week initially, but that reduced to three, and she left after two years. The cost of a nanny in Baku was modest; about £250 per month. The defender did very little childcare and treated that as the responsibility of the pursuer. The parties had a cleaner. It was normal practice for companies to provide cleaners for their staff. It was relatively inexpensive for them to do so; a cleaner cost about £75 per month. The defender already had a cleaner when he met the pursuer.

[69] In Inverness in 2015 she took two courses: Introduction to Business and Management, and English for Foreign Nationals. She had been hoping to work in the defender's office, but he said that there was a rule against partners working in the office. After they married, the defender spent more and more time in Baku. The marriage became unhappy.

[70] In addition to the proceedings in Forfar, the defender had raised a divorce action in Russia, using the address of a friend of the pursuer's mother as the address of the pursuer. It was an address she had provided him with in case he should need to contact her in summer 2021 when she was visiting family members in Russia. On 14 November 2021 she learned that there had been an attempt to serve papers on her at that address. She telephoned the Russian court and was shocked to learn that the defender had raised proceedings for divorce. The defender knew that she did not reside at the address at which

service was attempted. The pursuer engaged a Russian lawyer. The court dismissed the action.

[71] After the parties separated, the pursuer moved from Inverness to stay with her aunt in Angus in May 2017. The defender provided her with money to pay bills and for the care of the children. She moved to her current address on 23 September 2017. The lease was initially in the joint names of the pursuer and the defender, because she was unable to get a lease in her own name. The flat had two bedrooms. The boys had a bedroom each and the pursuer slept in the living room. Before the pandemic she worked in a local supermarket. At the time of the proof the pursuer had started studying a level one online course in psychology and counselling with the Open University. She was studying part-time, but had applied for a grant to study full-time the following year. She had wanted to study for a long time, but she had not had enough money. She had already bought a laptop for study, and would require to buy books.

[72] So far as she was aware the property of the defender before and at the time of the marriage consisted of a plot of land in Brora, and a house there. He had built two houses on the plot of land, and the completion certificate had been granted two months before the parties married. He had sold the house without her knowledge. When the parties married the defender also had an account with AG Bank, but she did not know what the balance had been.

[73] Her income had been very limited following separation. Before an award of interim aliment in December 2022, the defender had been paying monthly expenses directly of £890 (rent, council tax and utilities including Wi-Fi) and aliment of £1,083.33. The award of £3,600 per month had made a significant difference to her circumstances and that of the parties' children. She now met the rental and utilities costs from the aliment. She had been

able to apply for UK citizenship. The application had cost £1,300 and she had been unable to afford it before the award of aliment. She had been able to buy new clothes, having previously required to buy her clothes in charity shops. She had taken the children on holiday and provided them with classes in Russian and sporting activities. She considered that the Russian classes benefited them, both in enhancing the closeness of their relationship with her, and in enhancing the opportunities that would be open to them as speakers of more than one language.

[74] Interim aliment had also enabled her to purchase new pillows and bedding. She continued to sleep in the living room on a sofa bed. She wished to secure accommodation in which she would have a bedroom, and in which she would have the chance to accommodate visiting family. The cost of a four-bedroomed house in the town in which she lived was between £360,000 and £400,000 and she estimated that it would cost about £20,000 to furnish a new home. She would need to purchase furniture. Ideally she would wish for the defender to pay for the children to attend a private school. She did not wish to have the defender's properties in Brora transferred to her. She did wish to have his pension transferred to her.

[75] Both children were doing well at their current school, and had friends there. They spent holidays with their father and spoke to him online.

[76] In cross-examination senior counsel suggested to the pursuer that she had been married before and asked her to confirm when she had been divorced. Her evidence was that her marriage had not been formally registered, and similarly there had been no formal divorce. Her husband had divorced her according to Sharia practice by saying that she was divorced. I noted that there was no suggestion on record that the marriage between the pursuer and the defender was not a valid marriage.

[77] The pursuer maintained that she had assisted the defender in obtaining a mobile phone in Baku, because he had not been entitled to purchase one because he did not have the right to stay there. She had helped him with translations, including translations of mobile phone contracts. She accepted that the defender had conducted business discussions with BP in English, and said that she had helped him at an early stage, before the children were born. The pursuer said that she had socialised with the defender after work when she could, and had assisted with networking in what was a small expatriate community in Baku.

[78] Senior counsel suggested that the pursuer could have begun a career between 2001 and 2005, or in Baku when her children were young, because she had the services of a nanny and a cleaner at that time. She said that from 2001 she had been working hard trying to save money to enter university in Udine. After her children were born, they had needed their mother. She had tried to do evening courses in English at the British Consulate, but that had displeased the defender. She had stopped both because of his displeasure and in order to be with the children. The defender had been opposed to her working. When the subject had come up it would give rise to an argument and she became afraid of talking about it. He had told her that rather than learning in college, she should learn to "look after men". She had completed an English course in Inverness. She had passed her assessments in the business course but had failed one of the examinations. She said she had credits for having undertaken the course.

[79] The pursuer explained that her mental health had suffered in the aftermath of separation from the defender. She had had to beg the defender to provide financially for essential items, such as school uniform, for the children. He had taken expensive holidays, but asked her to provide vouching for the costs of school uniform for the children. She had not worked after the pandemic in order to be available for the children. She had been

anxious about their being unsupervised during their teenage years. The pursuer had attempted at some point in 2022 or 2023 to study a course entitled Families and Beyond with the Tavistock Institution. She had not been able to do so because of the stress involved in the divorce proceedings.

[80] Senior counsel suggested that the pursuer could have embarked on a career at any time since arriving in Scotland. She disagreed. She said that the defender had cut off the opportunity for her to have a job or study. When the subject was raised it caused an argument and she became afraid of talking about it. She had been taking antidepressants and had not been ready to put herself together.

[81] She was unaware that the earliest date at which she could access funds from the defender's pension, if it were to be transferred to her, would be her own 55th birthday, and that she would only be able to obtain one quarter of it tax free.

[82] Senior counsel put to the pursuer that the defender had urged her to rent a three bedroomed property. She responded that there had been a house available to rent with three bedrooms and a garden for £800 per month. The defender had declined to pay more than £600 per month. He had then suggested a three-bedroomed house that was far from the school the children were attending and at which they had established friendships.

The defender

[83] Some parts of the defender's affidavit related to the arrangement with MST referred to in the minute of amendment. I left those parts of his affidavit out of account.

[84] The defender is 55 years of age. He grew up in Brora and has worked in the oil and gas industry since he was 18 years old. In addition to the children already mentioned, he has a son born in 2005 with a previous partner, and a 2 year old son with his current partner.

[85] According to the defender the pursuer had no education when the parties met and showed no interest in furthering her career before the children were born. She had plenty of free time after the children were born, because she had the assistance of a nanny and a cleaner in Baku. She spent most of the day sleeping and the evenings on calls to friends and family. The parties had a good relationship until their first son was born. The pursuer had only ever worked as a barmaid during the relationship. She had attended Inverness College only for a matter of days. There had been "lots of talk" about further education and developing her career, but it was "just talk". The pursuer was extremely lazy. There was no good reason why she had not returned to work after the pandemic.

[86] The defender's evidence was that from 2008 he started running his own business. He did so initially through BVI and its branch in Azerbaijan, and another company, Laser Gulf Engineering LLC, incorporated in Azerbaijan. Initially he offered only his own specialist skill in dimensional control survey, but clients also asked for services in engineering and design. He persuaded Lee Henderson to run that side of the business. The defender's business partner at that time was Donnie McLean, who opened a Laser Gulf company in the United Kingdom. It was not successful, and the defender moved to the United Kingdom in 2014 to build it up, leaving the Azerbaijan operations in the hands of Mr Henderson. Mr Henderson had been running AIS Management Limited, but did not have time to work on it after 2014 and it was not successful.

[87] Clients raised questions as to why United Kingdom expatriate owners of a company operating in Azerbaijan had a head office in the British Virgin Islands. The banking system in the British Virgin Islands came under scrutiny. There were difficulties associated with getting medical cover for employees working Azerbaijan. It began to appear to the defender

that operating from the British Virgin Islands might be "more hassle than it was worth". The defender decided to establish companies in Hong Kong instead.

[88] Accounts of the acquisition of the goodwill and assets of Hertel appear in paragraphs 21 and 74 of the defender's affidavits. In February 2014 the defender and Mr Henderson bought Mr McLean out of his share in BVI and LG Engineering LLC. The operation was profitable and there was no difficulty with buying him out. In August 2014 Mr Henderson and the defender bought the goodwill and assets of Hertel, which had a fabrication business in Azerbaijan, based in a yard in Baku. They did so using LG Fabrication HK. LG Fabrication LLC then acquired the goodwill and assets of Hertel. It was set up to for that purpose and to trade BP's production sharing agreement contracts. The defender and Mr Henderson each invested about USD 190,000 to purchase the Hertel assets. The purchase was key to their success as it meant they could offer oil industry clients a broad range of services.

[89] As a result of cash flow issues across the group, the defender and Mr Henderson provided further sums to keep LG Fabrication LLC and LG Fabrication HK going, and the total investment had risen to USD 1,450,088.54. He had invested USD 169,187.68. LG Incorporated and LG Engineering LLC, two pre-marriage companies, in each of which he had a one third shareholding, contributed a total of USD 1,031,647.28. His contribution therefore came to USD 513,069 from pre-marriage resources. In December 2014 LG Fabrication LLC owed the defender and Mr Henderson about USD 1.45m, all of which had been repaid by the relevant date. The growth of LG Fabrication HK did not derive from any work done by the defender, as he was not involved in running it, but from his investment of assets he had owned before the marriage. The pursuer had already benefited from that growth, as it had given rise to the payment of dividends during the marriage.

[90] It became more difficult to conduct business in Azerbaijan from around 2016 and the LG companies started to lose work. They were bidding for a major BP contract. They passed the technical and commercial elements of the tender, but eventually they were told that BP had changed strategy which had previously been to award the majority of the contract to a United Kingdom company, and the minority to LG Engineering LLC, with a view to the majority passing to the local company during the contract, to build local capability. They were later told that SOCAR, the Azerbaijani state oil company, had blocked the award of the contract to LG Engineering LLC. SOCAR owned the assets that BP operated. The LG brand in Azerbaijan came to an end and continued to operate only elsewhere. SOCAR had got rid of all the expatriates working in Azerbaijan, and pushed to use only local companies. There was now an unwritten rule that even local companies required to have a majority local shareholding.

[91] At the time of his marriage the defender owned the three properties in Brora already referred to, the property in which he still resides in Baku, and had bank balances totalling about USD 213,140. He had his interest in BVI, which at the time had net assets of USD 3.062m and net earnings before tax of USD 1.3m. He estimated the value of the company at the time as being USD 5.8m. He owned one third of the shares in the company. He owned one third of the shares in in LG Engineering LLC, a company which he estimated was worth about USD 3.3m. Those estimates were made by applying the same multiplier to net earnings as the forensic accountants had applied in valuing LG Fabrication HK and LG Fabrication LLC.

[92] The defender produced a bank statement from First Caribbean International Bank for a USD Savings Account ***8274 showing a balance of USD 590,913.10 on 7 March 2014, and an email showing that the customer on that account was Laser Gulf Incorporated (BVI). He

had been unable to provide vouching of the ownership of a sterling savings account with the same bank ***1308, but his evidence was that it also was owned by BVI. On 26 March 2014, shortly after the marriage, the balance was £667,905.97.

[93] All of the defender's business entities had suffered because of the downturn in the oil and gas industry caused by low oil prices and Covid. It had been difficult for personnel from Azerbaijan to travel to the Middle East to service projects there because of travel restrictions and conflicting vaccine requirements. He had had to work himself in a refinery in Qatar for a period. He had used the funds from the sale of a house in Brora to fund the United Kingdom LG company. He had used funds from LG Limited HK and a LG company based in Qatar to fund the business in Kazakhstan. He was hopeful of winning back contracts there. Only one LG company was operating profitably.

[94] The defender's evidence was that at the time of the proof he was a director of, and held shares in, LG Limited HK, LG Engineering Limited UK, LG Service and Trading LLC Qatar, and LG KZ LLP Kazakhstan. All of the other companies in which he had an interest were either not trading or in the process of closing down. He said that he was owed more than £500,000 in loans and outstanding salary from the first three of those companies. He charged his services at USD 550 per day, but had not received payment. He preferred to try to keep the companies afloat in the hope of receiving money due to him in the future. There was no possibility of his being able to withdraw any significant sums from the companies because they had limited working capital.

[95] He had little money in reserve. He had a young family in Azerbaijan who depended on his income. He also had an older son who was studying and he and his mother relied on the defender for support, as there was no system of state benefits in Azerbaijan. His older son was working part-time for a very modest wage as a trainee in Laser Gulf, and was

studying remotely at Istanbul University. The defender had no mortgage and lived in an apartment in Baku. In recent years he had managed to get the companies back to being close to breaking even, but had used all his savings to achieve this and to pay his legal bills, and was close to bankruptcy. He could not continue to maintain the defender at the rate of £3,600 per month. His stated monthly income, according to a schedule he had produced, was £3,580. Any capital he had was tied up in property or in the companies. He had had shares in a Commercial Bank trading account, worth about £70,000, but those had been exhausted by legal fees. His remaining assets were the cottages in Brora, £73,000 in pension funds and his home in Baku, which was worth around £160,000.

[96] He had at all times been willing to co-operate with the pursuer in disclosing his assets. It had been difficult to recover some of the information requested of him. He had offered to have his accountant, Mr McLeod, meet the pursuer's advisers to provide explanations about his financial situation. The defender had raised proceedings in Tain using his address in Brora because he regarded it as his residence in the United Kingdom. He had raised proceedings for divorce in Russia only to prevent the pursuer from dragging out the process to the detriment of his relationship with his partner. He had always known that he would require to have financial arrangements dealt with by the Scottish courts. He produced correspondence from 19 May 2020 in which he suggested that the Scottish Legal Aid Board should review the grant of legal aid to the pursuer because her agents had not engaged with an offer to settle the case. He produced correspondence from April 2021 relating to his wish to raise proceedings in Russia and showing that he understood that that would not resolve the financial issues between the parties.

[97] In examination in chief senior counsel asked what consideration was given to the recoverability of the intercompany debts from Laser Gulf Engineering UK, Laser Gulf

Limited UK and AIS Management Limited at the time the 2017 accounts were prepared. The defender said that he simply took advice from his "accounts people". The matter would have been discussed thoroughly between them and Lee Henderson. If there was any chance the debts would be recovered "we would sign up accordingly". Asked what the thinking was behind the decision to record the debts from those companies at the figures used in the accounts, the defender said that as Mrs Rolland had said, there could be various reasons. He said that he could give an example that would arise in the United Kingdom in relation to a potential tax advantage. He said there was advice from the accountants on "the pros and cons". He said that it had been necessary to think about whether the money was retrievable or not. The oil and gas industry was volatile and could go from nothing in one year to being a big project the next. The accountants would say that writing a debt off might give rise to costs further down the line, and that advice would be weighed up. Long term recoverability was a factor in the decision, but when asked to explain what he meant by that, the defender said that he was not an accountant and did not know how to "relay that information".

[98] In relation to the declaration of dividends in LG Fabrication HK and LG Engineering HK, as and when money became available, dividends were declared. Asked about the reason for the increases in amounts due to shareholder shown in the 2016 accounts of Argyle Star, he said both that he was not an accountant, and that those were the dividend payments due to him. Mrs Rolland had been correct to surmise that the Argyle Star accounts for 2017 might reflect the payment of dividends from the two Hong Kong companies, but some of the money transferred in had been loans rather than dividends.

[99] In cross-examination the defender accepted that he had not been living in Brora (where he was designed as residing) in the 40 days before raising the action in Tain Sheriff Court. He initially said that the pursuer was living in Inverness at the time he raised the

action. When shown email correspondence between him and the pursuer dated 31 August 2017 relating to a rental property in the town in Angus in which she now resides, he conceded that she had been living there for about 18 months before he raised the action in Tain Sheriff Court. When senior counsel suggested to him that the pursuer might have experienced difficulties in engaging in proceedings some 180 miles away from where she lived, he blamed her for "failing to engage with the process". By that he meant a process in which he said he had sought to resolve the financial issues between him and the pursuer before raising the action in Tain.

[100] Senior counsel put to the defender the terms of the record in the sheriff court proceedings in Forfar. The only business asset mentioned was Laser Gulf LLC, and there was no mention of the defender's interest in Argyle Star. She suggested to him that if the pursuer had engaged with him in negotiation before those proceedings, as the defender said she should have, she would never have known about the assets which came to be disclosed in the Court of Session proceedings. He responded that he was "sure it would have come out in the court." The defender accepted that in January 2021 the sheriff had ordered a preliminary proof, and that on 8 September 2021 the proof was assigned to take place on 26 November 2021.

[101] The defender was asked about proceedings for divorce which he had initiated in Russia while the sheriff court action was proceeding in Forfar Sheriff Court. They had been served at an address in Dagestan. Senior counsel referred him to a translated letter dated 30 November 2021 from a lawyer, M Aliyeva, to the pursuer, in the following terms:

> "This is to inform you that, according to the applications of [the defender], filed with Court Precinct No. 17 of the City of Makhachkala, Republic of Dagestan, he alleges that your current place of residence is: Russia, Republic of Dagestan, City of Makhachkala, ul. [a specified street address]. This appears from his application to dissolve the marriage concluded between you and [the defender]. The application,

> signed by his representative under a power of attorney, contains the following as the address of your residency: [same address as specified above].
>
> Furthermore, before the beginning of the hearing, the representative of [the defender], Temirbulatov Timur Nailyevich, responded to my question of why does the application contain an address of [the pursuer], where she has never resided and is not residing at present, by explaining to me that the said address was given to him by his principal – [the defender]."

The defender said he had never said that the pursuer lived at the address referred to in the Russian proceedings.

[102] Again in relation to the Russian proceedings, senior counsel referred to a decision of the court on 8 February 2022 dismissing the proceedings because there were concurrent proceedings in Forfar. Among the matters the court had found established was that there were no disputes regarding "alimony payments or dividing the joint property". The defender said that his Russian representative had made a mistake. He had not written or signed any statement to that effect. The lawyers in Russia had "got it wrong". They had been adamant that they could "put it [ie the divorce application] through". He had paid only 50% of their fees because they had advised him badly. The decision of the Russian court also narrated that the existence of the Forfar proceedings had been vouched by a letter from Forfar Sheriff Court dated 18 November 2021. The defender said that the Scottish solicitor acting for him at the time had told him he could proceed in Russia if he could not get a reply from the defender's lawyers. He said that that was months before the proof date in Forfar was assigned.

[103] Senior counsel asked the defender who had prepared 7/16, which bore to be a schedule detailing items of property and whether they were or were not matrimonial property. He said that he had probably been involved in preparing it. It suggested that the total profit of Laser Gulf Fabrication LLC from "inception" (presumably incorporation in

June 2014) to May 2017 was £241,691. He accepted, however, that Mrs Rolland had summarised the profit and loss accounts of that company for three years ending 2017, and that the total profit after tax for that period was about 3.24m Azerbaijani Manat ("AZN") (£1.47m). He said that the company had been running down in 2017. It was put to him that both forensic accountants had viewed the company as profitable and falling to be valued on a going concern basis, with a multiplier of 4.5. He said that he disputed that, and said the company had been on its way down. He understood the exercise the forensic accountants had undertaken, but he was not an accountant and maintained that the company had required to be closed.

[104] Asked to explain the absence from 7/16 of any mention of Argyle Star, he said that it had been omitted because his shares were held for him by his nominee, Mr Chan. When it was put to him that it was disingenuous not to mention that he had valuable business interests held by a nominee he replied, "Possibly". He accepted that he had been inviting the pursuer and her lawyers to negotiate on the basis of the schedule. He said that a more recent schedule had been provided to the court.

[105] The defender had expressed unhappiness in his affidavit that material about Laser Gulf companies discovered in internet searches (6/7 and 6/8) had been lodged in process at an earlier stage. He accepted that they indicated that the companies were operating in a busy global market, and that he was an executive director. He was directed particularly to entries on the Laser Gulf website relating to a series of operations in various locations including Kazakhstan, Azerbaijan and Turkmenistan. One example was the overhaul of the BKE Saturn, a rig that had come from Turkmenistan. It was suggested to him that the website entries portrayed an extensive and successful inter-country operation. He agreed, but said that a lot of the companies were losing money. He said it was a website, and "not a

hundred per cent factual". Websites were designed to make one "look bigger and better", and to attract work. That was why he had offered to provide financial information.

[106] The defender said that 6/86, which bore to be a valuation of his interests in LG companies was a document prepared with the assistance of Mr McLeod and the solicitor then acting for the defender, sent to the pursuer's solicitor in April 2023. He said that Mr McLeod was not a friend of his. He knew him from Brora, but he was just an acquaintance. They had not gone to school together. Mr McLeod was a year older than the defender. The defender had proposed to discuss settlement on the basis of the document. It included a representation that the aggregate net asset value of LG Fabrication HK, LG Fabrication LLC, LG Engineering HK, and LG Limited HK "consolidating LG KZ LLP" as at 30 April 2017 was £38,931. Asked about that, the defender explained that was still Mr McLeod's position. If one consolidated all the companies and offset those that made a profit against those that made a loss that was the value. Mr McLeod stood by that. The defender said that he also stood by that figure personally, "looking at [his] financial situation". Reminded that Mrs Barker and Mrs Rolland agreed that his interest in LG Fabrication LLC was worth £483,017 he maintained that Mr McLeod had a more in-depth understanding. He had been involved for many years as an independent adviser. He went on to say that Mr McLeod had done work for "us" for maybe four or five years. The defender said that Mr McLeod was a fully qualified accountant and although he had given up his "chartership" recently he understood what he was doing. Mr McLeod had also provided a "consolidated valuation based on future maintainable earnings" valuing the defender's interest at -£9446.16. Mr McLeod's approach, with which the defender said he agreed, was to look at the various companies as a group. The defender disagreed with the

proposition that he had sought to negotiate on the basis of a document that grossly understated the value of his business assets at the relevant date.

[107] Senior counsel asked the defender about 6/87, a document which the defender agreed was produced in about October 2023. The defender said it was prepared by Mr McLeod with the assistance of accountants in Azerbaijan.

[108] The defender said that the absence of Argyle Star from the document was because it had not held his shares as at 30 April 2017, and that it was not active at that time. That was contrary to his position on record. It contained valuations similar to those contained in 6/86. He said he had not had time to pull together a full valuation.

[109] Senior counsel asked the defender about an offer by SOCAR (the state oil company of the Republic of Azerbaijan) to purchase a number of LG companies. The defender said the offer had been made in 2018. He was unclear as to how much SOCAR had offered. He suggested that it might have been £5m. Senior counsel put to him that it was a sum of USD 3m with USD 6m "earnout". The defender responded that SOCAR had "struggled to get to" USD 3m. SOCAR's interest had arisen in the context of a possible award of a contract with BP. The defender said that SOCAR had not been able to value the companies sufficiently highly and had not proceeded. The BP contract had not materialised. Had the purchase proceeded, senior management would have required to remain in post. Senior counsel suggested to the defender that that was inconsistent with paragraph 81 of his affidavit, which was to the effect that SOCAR favoured local Azerbaijani companies, and had got rid of all the expatriates working in Azerbaijan. The defender responded that SOCAR had drawn a distinction between senior management whose expertise they would have needed to retain, and other expatriate workers, such as designers and engineers.

[110] The defender was unable to say how much his business interests had been worth at the start of the marriage. He was unable to explain why the accounts for LG Fabrication HK for the period 8 July 2014 to 31 December 2015 disclosed a sum due to the company from a director/shareholder of USD 362,000, suggesting that either he or Mr Henderson had borrowed that sum from the company. He insisted that that was the money that they had contributed in order to purchase Hertel. Again, he said he was not an accountant.

[111] The defender said he had derived no advantage or assistance from the pursuer in relation to his business interests in Baku. It was true that as a Russian citizen she had been entitled to stay there for a particular period, but that did not place her in a better position than he had been so far as obtaining a phone contract was concerned. Her Russian language skills had been of no assistance because the local language was Azeri, which she did not speak. He needed no assistance with networking because he knew everyone. He had derived no advantage from her looking after the children while he worked, because there was a nanny available. When senior counsel suggested that the pursuer had needed to feed the children, he responded, "Why, was she breastfeeding?"

[112] He maintained that he had provided a full account of his current assets, and that Mr McLeod had spent many months pulling all the information together, at great cost. He had not asked Mrs Rolland to report on his current resources. There had been some money in Argyle Star when he closed it down, but he had spent that on funding three families and making loans to companies in which he had an interest. When asked about the sum of approximately £631,000 due to Argyle Star, he said it had all been paid to MST.

[113] The audited accounts for Argyle Star for year ending 31 December 2018, which the defender had signed on 20 May 2020, showed a sum of HKD 2,953,748 owing to the director, bank balances of HKD 3,598,857 and net assets of HKD 645,324. The defender was unable to

say what had happened to those sums. The accounts for the following year showed a sum of HKD 2,967,587 due to the director, bank balances of HKD 3,609,017 and net assets of HKD 628,784. The defender said that the sum due to the director would have been transferred to his bank in Abu Dhabi.

[114] Senior counsel referred the defender to a note in the unsigned financial statements for LG Limited HK for the year ended 31 December 2018, dated 4 November 2022. Note 11 indicated that the shareholder had contributed capital of USD 2,232,901. He said he did not know who had put the money in, and that "we" had had to move money around in the group of companies to maintain cashflow.

[115] She asked the defender about the accounts of LG Services and Trading WLL, a company registered in Qatar, for the year ending 31 December 2022. These had been audited, subject to certain matters in respect of which the auditors had expressed a qualified opinion. The accounts disclosed a sum due to the defender of QR 160,874. A debt of QR 566,400 due to Colin MacKay Consultancy at the end of 2021 appeared to have been paid by the year end in 2022. Senior counsel asked him whether it had indeed been paid and he responded, "I cannot sit here and itemise every single expenditure". He said he had formerly had access to a staff house in which to stay when in Qatar, but that it had been given up. He could not remember the address.

[116] The defender gave evidence that he had a one-third interest in Maviray, a company registered in Azerbaijan. When asked why he had provided no information about that interest, he said variously that he thought that the documents were not complete and that Mrs Rolland should have the information. He then said that he did not know whether Mrs Rolland had been asked to assess his current resources. The defender had provided a note (6/158) in which he indicated that two further companies, Khazar Engineering and

Khazar Fabrication, had been formed. The shares in Khazar Engineering had initially been held by himself and Mr Henderson with each having a 50% holding. The defender had transferred his holding to Jamila Huseynova (his partner in his personal life). She also held 25% of the shares in Khazar Fabrication.

[117] Senior counsel asked the defender about the manner in which he had responded to a specification of documents calling for documents showing sums due to him from various specified companies as at the relevant date and the date of the specification (December 2022). He had not produced the documents vouching these matters, but a statement written by him to the effect that LG Engineering Limited, LG Services and Trading, LG Limited and Jo-Mila LLC owed him a total of £600,417, and that in his opinion that was unlikely to be repaid within five years, and that the probability of his being paid in full was no more than 30%. A letter bearing to be from the finance and office manager of LG (6/57) related that there was no formal documentation relating to loans by the defender to LG Engineering Limited, and that the total of loans he had advanced between October 2021 and November 2022 was £65,000. That was different from the figure (£34,815) that the defender had included in his note (6/56). Senior counsel put to the defender that he had no professional view to support his contention that the sums were not recoverable. He responded that one just had to look at the failings of the companies in order to understand that the potential for getting money back was "not fantastic".

[118] The defender said that he had spent months pulling all of the information about his resources together, because it had "not exist[ed]". Some of it related to matters from years ago. It was the fault of the pursuer for having dragged the situation out. He had sold one of his properties in Brora (which was not matrimonial property) in order to fund aliment payments to the pursuer and to pay legal fees.

[119] The defender said that he had not paid the account of expenses relating to the sheriff court proceedings. He said he had not received "the bill" and was at a loss. It might have gone to his solicitor but he had not received it personally. He maintained that his solicitor had not told him an order had been made against him in respect of taxed expenses. It was suggested to him that his then solicitor had told the pursuer's solicitor that he (the defender) had no intention of paying it. The defender said he could not recall whether he had given instructions to that effect to his solicitor.

[120] A bank statement dated 10 January 2024 from the Commercial Bank in Qatar for savings account xxx151 disclosed a balance of USD 119,151 as at 10 December 2023. He said that the sum had been expended largely on legal costs between that date and the date of the proof. A current account xxx2001 with the same bank had a balance of QR 31,806.04 at 11 December 2023. Bank Respublika account xxxx0002 had a balance of USD 30,374.29 on 16 January 2024.

[121] The defender had an account with Interactive Investor. The sterling balance on 27 January 2023 was £40,925. The defender said he had closed it down, because it was going to "confuse things" if he had that account in the United Kingdom. He had transferred the balance to the Commercial Bank in Qatar. He denied doing so with a view to putting it beyond the reach of the pursuer for the purposes of diligence. He also had a Revolut statement which had a balance of USD 92,692 at the end of January 2023. He said there would still be some money in it, but that he had been using it to pay legal expenses.

[122] Senior counsel asked the defender where he was resident for taxes. He said that there were no taxes in Qatar. He would draw a salary from whichever company had money and if that was an Azerbaijani company, he would pay tax in Azerbaijan. Although he charged his services to the companies at USD 550 per day, that simply meant that he would

raise an invoice, and he would not necessarily be paid. He did not work for a set number of weeks each year. If there was work to be done he worked. He would issue invoices either in his own name or in the name of his consultancy to the Qatari company, and also to LG Ltd HK. When asked about recent accounts, he said that he did not have them because "she" (presumably the pursuer) had not asked for them.

[123] Asked about financial support for the pursuer and the children, the defender said that he had been paying £300 per month in addition to the costs of accommodation and utilities, but had reduced it to £250 because the pursuer had "hassled his family". He said that that was the only thing he could do to make her stop. His view was that the pursuer had had many years in which she could have become financially independent. She had been talking for years about getting an education and had not followed through. Rather than pursuing Open University Studies it would be better if she got a job. When asked whether she was intelligent, he said that he would not wish to comment on that. He did not think the children were interested in Russian lessons.

[124] In re-examination the defender said that the balances on Commercial Bank accounts xxx2001 and xxx151 at 7 February were, respectively, QR 50,985.15 and USD 4,849.99, vouched in a screenshot (7/58). He said that 7/53 disclosed a balance of USD 26,708.48 in the Respublika Bank account already mentioned. His Revolut account had a balance of £278.30.

Submissions

Pursuer

[125] The pursuer sought:

(a) a pension sharing order in respect of the defender's Countrywide Assured Pension Plan, with the charges for implementation to be met by the defender;

(b) a capital sum payable by instalments;

(c) periodical allowance of £2,400 per month until payment in full or of a substantial part of the capital sum; and

(d) aliment for each child of £600 so long as the child is under 19 and in full-time secondary education.

[126] I should accept the pursuer's evidence. The defender's evidence was not credible and reliable. The matters on which senior counsel founded in that connection were those which she put to the defender in cross-examination. There was no issue as to the credibility or reliability of either forensic accountant, but Mrs Rolland's evidence was undermined because material on which she had relied had not been produced and I should accept Mrs Barker's evidence as to the value of the defender's interest in LG Engineering HK.

[127] It was a matter for the court whether to exclude, on the basis of special circumstances, the defender's pension, on the basis that it derived principally from contributions made in the 1990s. It was more important as a resource to meet the pursuer's claim for financial provision. So far as the contention that the defender might claim that some part of the business enterprise derived from accumulation before marriage, Mrs Barker had considered whether there were increases in the value of Laser Gulf businesses between 2006 and the date of the marriage. In 2006 the defender's interest in Kylestar had been worth £63,000 and he had had a director's loan of £3,666. She had been unable on the

information available to her to assess the value of his business interests at the date of the marriage. The defender's assertion that he and Mr Henderson had funded the purchase of the business and assets of Hertel was not supported by the accounts of Laser Gulf Fabrication HK, which showed that there was a loan to, not by, the director/shareholder.

[128] It might be that there was money held by BVI at the time of the marriage, but that might require to be looked at in the light of his challenge to Mrs Barker's valuation of LG Engineering HK, which had received a capital contribution from BVI following the dissolution of BVI.

[129] Any special circumstances argument required to be balanced against the fact of a lengthy cohabitation. In the early stages of that cohabitation funds had been very limited. The pursuer had assisted the defender to a modest extent at the time he established his businesses and contributed indirectly by caring for the children. She had had assistance from a cleaner, and from a nanny who assisted with housework between 2011 and 2013. Her contribution during that whole period of cohabitation should offset any potential special circumstances claim.

[130] Fair sharing of the net value of the matrimonial property would satisfy any claim the pursuer had under section 9(1)(b) regarding economic advantage or disadvantage. Given the ages of the children, there was little scope for the application of section 9(1)(c). A maintenance calculation using the online tool provided by the CMS provided a guide as to the appropriate level of aliment for the children. The defender charged his time at USD 550 (£436) per day. Assuming a five day working week over 40 weeks per year, he had an income of about £10,000 per month. Senior counsel submitted that the defender's schedule of income and outgoings was inconsistent with the access to funds demonstrated in his bank

statements. The schedule produced for the pursuer for the purposes of submissions suggested that the court should not depart from equal sharing.

[131] The pursuer required to adjust to loss of support. Interim aliment had allowed her to start to emerge from significant deprivation. She would need sufficient capital to buy a house and furnish it, while maintaining herself and the children and pursuing her Open University course. Without a capital sum long-term periodical allowance would be required to alleviate serious financial hardship.

[132] The defender had failed to demonstrate a lack of resources, and there was otherwise an assumption that his resources remained as they were as at the relevant date: *Foster* v *Foster* [2023] CSIH 35, paragraph 35; *Fulton* v *Fulton* 1998 SLT 1262, 1263L-1264A. The defender appeared to be an active participant in substantial business enterprises, dealing in substantial sums of money.

[133] The houses in Brora, although not matrimonial property, were a resource. They were subject to inhibitions. The pursuer did not wish to have them transferred to her, as she would incur costs in realising their value. They were distant from where she lived.

[134] The defender had consistently sought to resolve financial provision on his own terms. He had refused to pay the expenses for which he had been found liable in the Forfar action. Most of the defender's assets were outside the United Kingdom. The pursuer reasonably feared that the defender would not pay sums ordered in this action, and sought orders to maximise the prospects of recovery. For that reason she sought a pension sharing order and a periodical allowance pending receipt of all or part of the capital sum due.

[135] The Hague Maintenance Convention would shortly be in force between the United Kingdom and Azerbaijan. It would permit enforcement of decrees related to maintenance. Senior counsel submitted that assistance might be derived from jurisprudence relating to the

allocation of parts of sums awarded by way of financial provision in proceedings where the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters had been the relevant instrument. Senior counsel invited me to attribute all or part of the capital sum payable to maintenance, as it would make provision for support.

Defender

[136] The defender submitted that I should find the pursuer entitled to:

(a) a capital sum of £476,508 payable within 12 weeks of the decree of divorce;

(b) periodical allowance at the rate of £3,090 per month for the 12 week period between decree of divorce and payment of the capital sum; and

(c) payment of aliment of £255 per month in respect of each child until the 16th birthday of the child.

[137] The pursuer was a poor historian. She exaggerated the extent of her involvement in the defender's business activities. She blamed him for her own poor choice of accommodation and for her claimed and unfounded inability to work since coming to the United Kingdom. The criticisms levelled at the honesty and probity of the defender were unfair.

[138] Senior counsel invited me to accept Mrs Rolland's evidence. Mrs Barker's approach was flawed. She had no information as to the deliberations of the directors of LG Engineering HK or of any discussions they might have had with the auditors. She had failed to distinguish between the respective roles of directors and auditors and had taken into account information that was not available at the relevant date. I should accept Mrs Rolland's approach to the valuation of LG Fabrication HK which was consistent with

her approach to LG Engineering HK so far as the treatment of inter-company debt was concerned.

[139] It was not legitimate to consider dividends from those two companies which were not accounted for in the financial statements of Argyle Star. The companies in which it had an interest were valued by the accountants, and the parties otherwise agreed that cash in the company was an asset of the defender. To do so would be inconsistent with the terms of the joint minute between the parties.

[140] The pursuer had no claim under section 9(1)(b) for loss of career. She had worked only as a barmaid and had never taken the opportunities open to her to develop a career. She had chosen to be "kept" by the defender since they began to live together in 2006. She had enjoyed the economic advantage of being supported at a level she could not have achieved through her own efforts. The defender had derived no economic advantage from any support provided by the pursuer. There was no imbalance of economic advantage or disadvantage.

[141] The pursuer had produced no evidence to demonstrate the nature or extent of the economic burden of childcare that would fall upon her for the purposes of section 9(1)(c).

[142] The defender accepted that the pursuer had been dependent on the financial support of the pursuer. She would not, however, require a periodical allowance after divorce to allow her to adjust other than for the 12 week period already mentioned. The pursuer was able to work and did not have childcare commitments preventing her from doing so. Her studies had started only recently and Open University studies were of their nature compatible with being done by people also in paid work. She had chosen not to find work or to adjust to separation for a period of seven years.

[143] The increases in the values of the defender's pensions were not attributable to the economic efforts of the parties during the marriage and should be left out of account on the basis of that special circumstance. A pension sharing order would be of no practical use to the pursuer for at least 11 years and should not be made.

[144] The defender's pre-marriage property and in particular his interests in BVI and Laser Gulf Engineering LLC was the source of the wealth used to create the Hong Kong companies (LG Ltd HK, LG Engineering HK and LG Fabrication HK) and the holding company Argyle Star. The marriage took place on 8 March 2014 and later that year LG Fabrication was incorporated, and LG Fabrication HK acquired the Hertel business and assets. There was no evidence that the incorporation, capitalisation and trading of those companies was financed by external borrowing, and the only possible source of finance was the pre-marriage wealth of the defender. As it was the value of the defender's interest in those companies that constituted most of the matrimonial property, the non-matrimonial source of funds was a very weighty special circumstance. The court should give weight to the defender's unchallenged evidence that he was not a director of LG Fabrication HK and did not work for the company. The marriage lasted barely three years and only 20% of the value of the defender's corporate interests at the relevant date should be shared between the parties.

[145] The defender's resources were very limited. His pre-marriage heritable property was limited and would be depleted by the costs of sale. Sale of his home in Azerbaijan would make him, his partner and his child homeless. Sale of the Laser Gulf companies in Azerbaijan would be impossible given the attitude of SOCAR to those companies. Sale of the other companies would be impossible given their debts to the defender. He would be entitled to draw 25% of his pension tax free. Any award of capital would have to be met

from his non-matrimonial resources. Payment by instalments would not be appropriate unless the court were satisfied that there were foreseeable means by which those instalments could be met in the future: *Foster*, paragraphs 39-43.

[146] It was difficult to see as a matter of principle why alimentary provision for a child in Scotland should be greater where a payer lived abroad than where he lived in the United Kingdom, and the guideline CMS calculation provided a useful cross-check. Based on taxable income of £3580 per month the amount for each child on that calculation was £254.89. That was in any event at the furthest limit of the defender's means. Aliment should be payable only until the sixteenth birthday of each child.

[147] I should decline to allocate any particular sum to maintenance. The convention on which the pursuer relied was not yet in force so far as Azerbaijan was concerned. It was not obvious that the case law relating to the Brussels convention would be of assistance in proceedings for enforcement under the Hague Convention. The court was being asked to engage in an exercise that was of academic interest only. Senior counsel did not proffer an analysis of what might and might not be categorised as of the nature of maintenance in a capital payment in this case.

Decision

Assessment of witnesses

[148] I regarded the pursuer as generally credible and reliable. There is, however, relatively little in her evidence on which I have founded in determining how to share the value of the matrimonial property. I accepted her account of having provided some modest assistance to the defender in the early days of his business, by assisting him with obtaining a

mobile phone contract and in attending networking events. There was, however, no evidence that he derived any discernible economic advantage from that.

[149] There were some discrepancies between the oral evidence and affidavit evidence of the pursuer as to when she had engaged in education. These were not significant discrepancies. Her oral evidence was, for example, that she went to Udine in 2005, and the date given in her affidavit was 2004. She had checked a certificate and realised she had been mistaken. She had overstayed in Italy by two days, and had left the country. I did not regard these matters as significant in assessing her credibility and reliability.

[150] I did not accept the defender's derogatory characterisation of the pursuer as lazy. I believed and accepted her evidence that during the period she cohabited with and was married to the defender it was difficult for her to work or to further her education. In the first place, there was a period when she had two very young children. She had no paid childcare available to her after the parties moved to Scotland in 2013. I accepted her evidence that the defender was hostile when she mentioned wanting to work or study and that this was very discouraging.

[151] Her explanation as to why she had not resumed work after the pandemic was based on a subjective view that she held genuinely that the children would benefit from her complete availability. I was not, however, satisfied objectively that there was anything that had prevented her from resuming some form of work, particularly given that she had worked locally for a period before the pandemic. Both of the children are in senior school and have been for some time. I accept that the divorce proceedings will have been stressful for the pursuer, and also that the financial support provided by the defender was, until the motion for interim aliment, of a very limited nature.

[152] The defender was not an impressive witness. He insisted that the pursuer had been living in Inverness when he raised an action in Tain until he was shown correspondence that demonstrated that he knew she had been living in Angus for 18 months by then.

[153] The defender is prepared to provide inaccurate information in court proceedings. His designation in the sheriff court proceedings was inaccurate. He was residing in Baku when he raised them, not in Brora.

[154] The defender provided inaccurate information about the defender's address to a court in Russia in 2021. The proceedings there included representations made on his behalf that there were no disputes about financial matters. The defender's response both in relation to the matter of the address and those representations was to blame his Russian agents. He said they had advised him badly. I accepted that he was aggrieved and unhappy with his Russian agents because he had not succeeded in obtaining a divorce in Russia. I also accepted that he knew that he would not avoid resolution of the financial issues between the parties by raising proceedings in Russia. I did not believe him when he said he had not provided instructions to his Russian agents in the terms reflected in the letter from the pursuer's Russian agent and in the decision of the Russian court. I infer from those documents that he did provide instructions that the defender resided at the address where the proceedings were served, and that he provided instructions that there were no financial disputes.

[155] The defender was given a number of opportunities in the course of his evidence to explain why the debts had been included at the stated values in the 2017 financial statements of LG Engineering HK. He did not provide an explanation. His responses, even to his own counsel, as I note below, were evasive and uninformative.

[156] His explanation of the absence from 7/16 of his interest in Argyle Star was disingenuous and unsatisfactory. It is clear that he embarked on attempts to resolve the financial issues between the parties by producing to the pursuer an incomplete and inaccurate picture of the matrimonial property, and in particular of his business interests. Rather than using the services of a reputable forensic accountant he produced both in April 2023 and in October 2023 inadequate documents prepared by Mr McLeod. The representations in 6/86 and 6/87 of process very materially understated both the extent and the value of his business interests at the relevant date.

[157] I formed the impression that the defender believed that he had no obligation to make any payment by way of financial provision other than at the level he thought fit, and that he had no obligation to provide any true account of his financial affairs in these proceedings. He seemed to draw a distinction between his former partner, the mother of his eldest child, whom he regarded as deserving of support, and the defender, whom he did not regard as deserving of support.

[158] The defender repeatedly answered questions about his business interests by saying he was not an accountant. That was unsatisfactory. He is a business man who has operated his enterprises successfully through a variety of companies. I did not accept that he did not understand the financial positions of the businesses in which he had an interest. He has been a shareholder, and also, at times, director, of those companies. They have been the source of his income and his wealth. I regarded his professed ignorance as disingenuous. The defender also said on a number of occasions that material was not available, particularly in relation to his current resources, because the pursuer had not asked for it, notwithstanding that he had put the sufficiency of his current and foreseeable resources in issue.

[159] In consequence of these matters I have treated the evidence of the defender with caution and been reluctant to accept it where not supported by other evidence.

Forensic accountancy evidence

[160] In relation to the valuation of the defender's interest in LG Engineering HK I have accepted the evidence of Mrs Barker and rejected that of Mrs Rolland for the following reasons.

[161] Mrs Barker's evidence was based on the contents of audited accounts. The contentious item, namely the inter-company debt, represented a very significant proportion of the company's assets. To have included them at value if they were in truth without value and prospect of recovery would have been a material misstatement. It is reasonable to infer that professional auditors had been provided with material which they scrutinised and on the basis of which they felt able to say that they had assessed the risks of material misstatement and evaluated the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the directors.

[162] The witness used the subsequent unaudited financial statements in a legitimate way. She did not base her opinion on them, and she acknowledged that they would have been unavailable to a valuer at the material time. Rather, she interrogated them to see whether there was anything in them which was inconsistent with what appeared on the face of the audited financial statements and which would undermine her view. There was nothing of that nature. In particular, there was no subsequent writing-off of the debts.

[163] I regarded the payment of a dividend as a matter of significance. Without the inter-company debt there would not have been sufficient funds for a dividend to be paid.

[164] Mrs Barker's investigations included requests to the defender specifically for detailed breakdowns of amounts due from related parties in respect of both LG Engineering HK and LG Fabrication HK. The defender did not provide her with any information of that sort.

[165] The defender was not the director of the company at the relevant date, but did sign the accounts covering that date at a later stage. His counsel gave him a number of opportunities in examination in chief to explain what the thinking had been in relation to the inclusion of the debts as an asset at value in the financial statements. He gave no satisfactory answers. His answers were evasive and uninformative. He repeatedly said that he was not an accountant. Mr Henderson was not a witness, so no explanation was available from him.

[166] Mrs Rolland's opinion was founded on information that she received from Mr Alan McLeod. Mr McLeod is not an independent accountant providing expert evidence. He has worked with the defender over a period of about five years, on the defender's own account of matters. The analysis prepared by him was not produced, and was not available for scrutiny by counsel or the court. Mrs Rolland did not show Mrs Barker any documents that supported Mr McLeod's analysis. No underlying documents vouching any part of his analysis were included as appendices to Mrs Rolland's report. No documents of that sort were produced. Mr McLeod was not tendered as a witness.

[167] I am unable to rely on Mrs Rolland's opinion because it is based to a material extent on information emanating from Mr McLeod and which has not been produced and cannot be scrutinised. I found that information that the defender said emanated from Mr McLeod was unreliable. I have in mind in particular 6/86 and 6/87 of process. They contain an incomplete and inaccurate summary of the defender's business interests and their values.

The summary was partial both in the sense that it was incomplete, and in the sense that it understated the assets of the defender to the advantage of the defender in these proceedings.

[168] In relation to the valuation of LG Fabrication HK I have accepted the evidence of Mrs Barker rather than that of Mrs Rolland. That is because the evidence of the latter again proceeds on the basis that inter-company debt ought to be discounted.

Dividends due to Argyle Star

[169] There was no dispute between Mrs Barker and Mrs Rolland that dividends were declared by LG Engineering HK and LG Fabrication HK in 2015, 2016 and 2017. Both would have expected those to be accounted for in the accounts of Argyle Star. There was no dispute that it was not stated in the 2017 financial statements of the Hong Kong companies when the 2017 dividends were paid.

[170] Senior counsel for the defender submitted that the accountants agreed that the relevant date value of Argyle Star was nil. Parties had agreed in the joint minute that the cash in the company (£274,091) was an asset of the defender. He said that that precluded the pursuer from arguing that any sum owed to Argyle Star by way of dividend at the relevant date ought to be taken into account. It would require the re-drawing of Argyle Star's accounts.

[171] There is a distinction between the cash balance that the defender would have received had Argyle Star been wound up at the relevant date, and the additional dividends due to Argyle Star. The former was the subject of agreement in the joint minute between the parties. The latter was not. I do not regard the pursuer's position that dividend owed to Argyle Star at the relevant date should be included in the matrimonial property to be one precluded by the terms of the joint minute. The contention is that at the relevant date there

was a sum due to Argyle Star, and the sum due was an asset under the control of the defender. Neither Mrs Barker nor Mrs Rolland gave evidence that the valuation of Argyle Star would have to be revisited if the dividend owed were taken into account as an asset under the control of the defender.

[172] I do not consider that there is any basis in the evidence on which to conclude that the dividend was paid after the relevant date. I note that in the valuation of LG Engineering HK both accountants proceeded on the basis that the 2017 dividend declared by that company had been paid by the relevant date. Consistent with that approach I have used the figure adopted by each of the witnesses under the heading "scenario 1" in Mrs Barker's report and Mrs Rolland's letter.

Factors bearing on orders for financial provision

[173] The net value of the matrimonial property should be shared fairly, and is taken to be shared fairly when it is shared equally or in such other proportions as are justified by special circumstances: section 9(1)(a), 10(1). The policy of the 1985 Act is that in general the wealth acquired by the parties or generated by their activity and efforts during the course of their life together is, in the absence of special circumstances, to be shared equally: *Whittome* v *Whittome* 1994 SLT 114, page 126C. The existence of special circumstances will not necessarily require a departure from equal sharing: *Jacques* v *Jacques* 1997 SC HL 20, 22.

[174] Aside from the valuation of LG Engineering HK, the most significant issues between the parties were whether and to what extent I should (a) conclude that the net value of the matrimonial property derived from the pre-marriage wealth of the defender and (b) treat that as a special circumstance justifying a departure from equal sharing.

[175] The defender has not produced any analysis vouching the source of funds for the transactions that took place in 2014, after the marriage, involving the purchase of the goodwill and assets of Hertel, and the incorporation of LG Fabrication HK and LG Fabrication LLC. The financial statements of LG Fabrication HK for the period July 2014 to December 2015 vouch not an injection of money by the director or shareholder, but the extraction of money by them. The sum that appears is close, but not identical, to the purchase price for the goodwill and assets of Hertel.

[176] The defender did vouch the sums that he had in two bank accounts at about the date of the marriage. He also vouched that BVI, in which he owned one-third of the shares, had significant amounts of cash in the bank at the date of the marriage (USD 590,913 and £667,905). He produced a profit and loss account and balance sheet for that company for the year ended 31 December 2013. They showed EBITDA of USD 1,671,078, net profit before tax of USD 1,298,242 and net assets of USD 3,062,044. Mrs Barker was not provided with statutory financial statements for BVI, but did receive some management accounts. Management accounts for the six month period to 30 June 2014 showed EBITDA of USD 153,918, net loss before tax of USD 12,030 and net assets of USD 2,979,501. They suggested that a net dividend of USD 2,779,501 was to be declared. The draft management accounts for the period to 30 November 2014 indicated that a distribution of USD 2,979,500 was due to the founding shareholders in relation to the pre-1 July net assets. It was not known whether the distribution was made.

[177] The defender also produced a profit and loss account and balance sheet for LG Engineering LLC for the year ending 31 December 2013, showing EBITDA of USD 736,528, net profit of USD 730,681 and net assets of USD 737,667.

[178] The defender's evidence was that his personal investment in the Hertel purchase was USD 190,000. He thereafter invested more money in LG Fabrication LLC and LG Fabrication HK. He had only invested in the latter company, and not been involved in running it during the marriage. The purchase price of the Hertel goodwill and assets is vouched by the purchase agreement. Exactly where the funds came from for that purchase, and the source and extent of subsequent investment in LG Fabrication HK and LG Fabrication LLC is not vouched. There was no evidence specifically directed to the source of funds for any initial investment in LG Engineering HK, although it is clear that a substantial portion of its assets at the relevant date were debts due to it which had been transferred from BVI on dissolution. There is no valuation of BVI at the date of the marriage. There is evidence, in the form of the bank statements relating to accounts held by BVI and the management accounts examined by Mrs Barker, to suggest that at about the time of the marriage, that the defender's interest in BVI was a substantial asset. I am satisfied that it is more likely than not that the defender had access to significant sums of money by virtue of his interest in BVI. The defender's evidence about why he wished to cease trading through a British Virgin Islands company and decided to use companies incorporated in Hong Kong, and when he decided to do so, was not challenged. BVI was dissolved in 2015. In that context it is reasonable to infer, and I do, that the defender invested funds in the purchase of the Hertel assets which derived from wealth that he had acquired before the parties married.

[179] Senior counsel submitted that so far as the Hong Kong companies and LG Fabrication LLC were concerned, the parties should share only 20% of the relevant date value, to take account of the special circumstance regarding the source of funds for investment in those companies. I am not prepared to make an adjustment of that

magnitude. It is for the defender to establish that special circumstances exist, and that they merit, and merit to any particular extent, a departure from equal sharing. As I have just observed, a number of matters relating to the source and extent of investment in these companies remained unvouched. No analysis of any transfers of funds amongst the companies in which the defender had an interest in 2014 has been provided. LG Fabrication HK and LG Fabrication LLC were set up after the marriage in the context of an acquisition costing USD 386,000. The value of the defender's interest in them by the relevant date was substantial, and is wealth acquired by him during the marriage. It follows that any adjustment founded on the inference that the defender did invest some pre-marriage funds in the purchase of the Hertel assets can be made only a very broad basis.

[180] The total value of the matrimonial property is £3,527,572. I have determined to leave out of account £7,712 which is the CETV in the defender's pensions referable to the period of marriage. I have done so because the increase in the value of the pensions during the marriage was not referable to the economic activities of the parties during the marriage. That reduces the total to £3,519,850. I have taken account of the use of the defender's pre-marriage resources to the extent of deducting one fifth of the relevant date values of LG Fabrication LLC, LG Fabrication HK and LG Engineering HK from the fund available for division between the parties. That produces a total of £2,955,602. Equal sharing of that fund will represent fair sharing of the net value of the matrimonial property between the parties.

[181] In relation to section 9(1)(b), it is difficult to identify economic advantage to the defender from the contributions of the pursuer as a home-maker. During the marriage she did not have access to paid childcare. If she had not remained out of paid work there would have been a need for paid childcare. The costs of childcare would, as Lady Smith pointed out at paragraph 28 in *Coyle* v *Coyle* 2004 Fam LR 2, have had to be met from the combined

incomes of both the parties. That would have been an expense necessary to allow both parties to work. What the overall effect of paid childcare in the context of two incomes, as compared with a single income without the need for paid childcare, would have been on the combined wealth of the parties at the relevant date is unknown.

[182] I have no doubt that in remaining out of paid work, the pursuer has acquired some degree of economic disadvantage. I recognise that the pursuer did not have an established career which she "gave up". She had, however, engaged in paid work before the parties' relationship. The defender was free to, and did, engage in economic activity. That economic activity benefited both parties during the marriage, and the wealth accrued by the relevant date will be divided between the parties. When the parties separated, however, the pursuer had no recent work experience and a very limited capacity to earn, whereas the defender had a significant capacity to earn. I am satisfied, however, that given the size of the sum payable in this case, there is no need to depart from equal sharing to recognise that factor.

[183] So far as section 9(1)(c) is concerned, only a limited period remains when the children will be under the age of 16 years. The pursuer will require to provide them with accommodation, but equal sharing of the sum I have mentioned will permit her to do that.

[184] It is common ground that for the purposes of section 9(1)(d) there has been a fairly significant period of dependency in this case. The pursuer did not suggest that periodical allowance was required, other than as an interim measure until such time as she had received a capital sum of substance. No award of periodical allowance is permitted unless justified by a principle in section 9(1)(c), (d) or (e), and an order for a capital sum, transfer of property or pension sharing order would be inappropriate or insufficient to satisfy the requirements of section 8(2). The primary means of dealing with the lengthy period of dependency in this case, and the need to adjust to it, is by the award of a capital sum or

pension sharing order. I am satisfied that, other than in an interim period before payment of the first instalment of the capital sum that I am going to order, there is no need for a periodical allowance in order to enable the pursuer to adjust to loss of financial support.

[185] The pursuer will not suffer serious financial hardship if the net value of the matrimonial property is divided in the way I have already mentioned.

[186] The defender has asserted that he has limited resources, but has provided very limited vouching. It is for him to aver and to prove that his resources are not as they were at the relevant date: *Fulton*; *W* v *W* 2013 Fam LR 85, paragraph 53. He has not done so. In relation to the material that the defender did produce, I note the following. He appeared to accept that in 2018 and 2019 the accounts of Argyle Star showed substantial sums due to him. The accounts of LG Services and Trading WWL showed that the defender or his consultancy received QR 566,400, something between £100,000 and £120,000 during 2022. The defender charges his time at USD 550 per day. He is owed money by a number of companies, totalling, on his own account £600,417. He has provided no independent evidence or vouching as to the recoverability of those debts, and asks the court to rely on his own estimate that he is unlikely to do so within five years. The December 2023 balances on a number of the bank accounts he did produce were reasonably substantial. Such later balances as he produced were in the form only of screenshots.

[187] *Foster* does not vouch the proposition that the court may only make orders for instalment payments over a period of time if it is positively satisfied on the evidence that the paying party has and will have the resources to make such payments. What the court said at paragraph 35 was this:

> "What the court required were alternative illustrations of the necessary prospective resources required by Mr Foster as an individual depending on the result of the valuation dispute. Detailed projections of the future maintainable earnings of the

> business would have been a most useful starting point and these were not provided. It was for the respondent to demonstrate a lack of resources if he maintained that he was unable to meet his wife's claims over a period of time; he produced nothing to show that he could not do so." (Emphasis added.)

In the passages at paragraphs 39-43 on which senior counsel for the defender relied, the court narrates that it was presented at the hearing of the reclaiming motion with information about the current financial position of the company in question. It then proceeded on the basis of that fresh information. That does not in any way detract from the proposition that it was for the paying party to vouch the proposition that he would be unable to meet the claims of the party over a period of time.

[188] There is evidence that the business interests of the defender have changed in some respects since the parties separated. A number of the companies in which the defender had an interest before and during the marriage no longer exist. As is apparent from the appendix to this opinion, however, he retains an interest in a number of businesses, ten of which were incorporated after the marriage. He has not vouched the value of his interests in these businesses or the income that he derives from them. He has given evidence which consists of unvouched assertions that trading conditions are difficult and that certain of the companies owe him money that he does not expect to recover. He says that all of the companies in which he had an interest, other than the four specified in paragraph 94 had ceased to trade or were closing down. Again, these are assertions unsupported by vouching. In the light of my concerns about the defender's credibility and reliability, particularly as regards his financial affairs, I am not prepared to conclude on the basis of his unvouched assertions that he lacks the resources necessary to pay a capital sum by instalments.

Orders for financial provision

[189] I consider that the apprehensions of the pursuer that it will be difficult for her to recover money from the defender have a basis in fact. The defender has not paid a taxed account of expenses in other proceedings. I did not accept that he was unaware of his liability. He did not deny having told his solicitor to say that he had no intention of meeting it, but said that he did not recall giving instructions to that effect. The defender lives in another jurisdiction, and has relatively little by way of assets in this jurisdiction.

[190] I shall make an order in terms of section 8(1)(baa) providing that the defender's shareable pension rights in his four Countrywide pension policies shall be subject to a pension sharing order to the extent of one hundred percent, and for the defender to bear the charges for implementing the order. The value of those policies is £73,315. Notwithstanding that the pursuer will not be able to access funds from those policies until she is aged 55, in the circumstances of this case it is an appropriate to make that order with a view to securing an effective remedy for the pursuer.

[191] The pursuer will be entitled also to a capital sum of £1,400,987. The defender was prepared to consent to decree for a capital sum of £476,508 payable within 12 weeks of the decree of divorce. On that basis I will order that the first instalment be one of £477,000 payable within 12 weeks of decree of divorce, with interest running at 8% per year thereafter. The balance will be payable in three equal instalments on the anniversary of decree of divorce in each of 2025, 2026 and 2027 with interest at 5% per year from decree until the due date and thereafter at 8% per year. The rates of interest on the instalments are those selected by the Inner House when ordering payment by instalments in *Foster*.

[192] Periodical allowance will be payable at the rate of £2,600 per month until payment of the first instalment of £477,000. That replicates the level of support that the pursuer is

currently receiving by way of interim aliment under deduction of the sums that I am awarding in name of aliment for each of the children. The pursuer spoke in evidence to the schedule which had been presented at the motion for interim aliment. I was satisfied on the evidence that there was no basis on which to depart from the assessment at which I had arrived at the time of the motion for interim aliment.

[193] Both counsel proceeded on the basis that the calculator tool provided by the Child Maintenance Service would generate a figure that I should take into account in assessing the aliment payable in respect of each child. Each had used the figure she or he proposed I should accept as representing the income of the defender. In relation to aliment the relevant provisions are to be found in section 1 to 4. A child means a person who is under the age of 18 years or over that age and under the age of 25 and in appropriate educational instruction or training for a trade, profession or vocation. The matters to which the court must have regard are specified in section 4(1). There is no up-to-date vouching of the defender's income. He asserted that his monthly income was £3,580 in salary with an additional £191.67 from dividends. Based on the payments to the defender's consultancy of QR 566,400 in the year 2022, which would equate to approximately £113,000, I have proceeded conservatively on the basis that his income is in the region of £100,000. Using this as the defender's income the online calculator produces a figure of just over £500 per month per child. Considering the schedule of outgoings produced by the pursuer, it is reasonable to allocate about £1000 to the alimentary needs of the children in respect of food, accommodation, utilities, clothing and other needs and out of school activities. The orders for interim aliment will continue while the children remain both in full-time secondary education and under the age of 19 in case their secondary education might include a short period after each turns 18. Although each child would have capacity to sue for aliment in

his own name at the age of 16, I see no practical purpose in requiring him to do so rather than making an order at this stage that covers his secondary education.

Allocation of sums as representing maintenance

[194] In relation to matters potentially relevant to enforcement, senior counsel for the pursuer referred to two cases. The first was *Van Den Boogaard* v *Laumen* Case C-220/95 [1997] QB 759. An English court had made orders for financial provision on divorce. The wife applied in the Netherlands for enforcement. An issue arose as to whether the Netherlands court had jurisdiction under the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial matters. The Netherlands court made a reference to the Court of Justice for a preliminary ruling. The latter held that a decision ordering payment of a lump sum and transfer of property was to be regarded as relating to maintenance, and as such fell within the scope of the Convention. The court made the following observations at paragraphs 20 to 25:

> "20. As the Advocate General points out in paragraphs 54-62 of his opinion, on divorce courts in England and Wales have a wide discretion to make financial provision. They may, in particular, order periodical payments or lump sum payments to be made and ownership in property belonging to one spouse to be transferred to the former spouse. Thus, they have the task of regulating, in a single decision, the matrimonial relationships and maintenance obligations arising from dissolution of a marriage.
>
> 21. Owing precisely to the fact that on divorce an English court may, by the same decision, regulate both the matrimonial relationships of the parties and matters of maintenance, the court from which leave to enforce is sought must distinguish between those aspects of the decision which relate to rights in property arising out of a matrimonial relationship and those which relate to maintenance, having regard in each particular case to the specific aim of the decision rendered.
>
> 22. It should be possible to deduce that aim from the reasoning of the decision in question. If this shows that a provision awarded is designed to enable one spouse to provide for himself or herself or if the needs and resources of each of the spouses are taken into consideration in the determination of its amount, the decision will be

> concerned with maintenance. On the other hand, where the provision awarded is solely concerned with dividing property between the spouses, the decision will be concerned with rights in property arising out of a matrimonial relationship and will not therefore be enforceable under the Brussels Convention. A decision which does both these things may, in accordance with article 42 of the Brussels Convention, be enforced in part if it clearly shows the aims to which the different parts of the judicial provision correspond.
>
> 23. It makes no difference in this regard that payment of maintenance is provided for in the form of a lump sum. This form of payment may also be in the nature of maintenance where the capital sum set is designed to ensure a predetermined level of income.
>
> 24. In the present case, as the Advocate General points out in paragraph 59 of his opinion, the court of origin was under an obligation to consider whether it had to impose a clean break between the spouses and to order payment of a lump sum instead of periodical payments. It is clear that the choice of method of payment made by the court of origin cannot alter the nature of the aim pursued by the decision.
>
> 25. Likewise, the fact that the decision of which enforcement is sought also orders ownership in certain property to be transferred between the former spouses cannot call in question the nature of that decision as an order for the provision of maintenance. The aim is still to make provision, by means of a capital sum, for the maintenance of one of the former spouses."

[195] In *AB* v *CD* 2007 Fam LR 3, at paragraphs 25 to 29, Lord Brodie considered that case, and went on to allocate half of the capital sum to maintenance, while recognising that the allocation involved impression, rather than precise science. The pursuer would have to take steps to enforce the decree in her favour if it were not to be simply illusory. Lord Brodie noted that the question referred in *Van Den Boogaard* was:

> "Must the decision of the English judge, which in any case relates in part to a maintenance obligation, be regarded as a decision which relates (in part) to rights in property arising out of a matrimonial relationship within the meaning of the first indent of the second paragraph of article 1 of the Brussels Convention …?"

He went on to say:

> "[25] […] Therefore, when making an order for ancillary relief on divorce, an English court (and, I would add, when making an order for financial provision, a Scottish court) may be making both an order in respect of 'rights in property arising out of a matrimonial relationship' and 'maintenance' as these expressions are used, but not defined, in Brussels I. The importance of the distinction is, of course, that

while Brussels I provides that an order in respect of maintenance should be enforceable in a Contracting State it makes no such provision in relation to an order in respect of rights in property arising out of a matrimonial relationship. In drawing the distinction the form of the order is not critical. An order in respect of maintenance need not be by way of periodical payment. It may be made in the form of a lump sum. What is determinative is the aim of the court, as deduced from its reasoning. If this shows that a provision is designed to enable one spouse to provide for himself or herself or if the needs and resources of each of the spouses are taken into consideration in the determination of its amount, the decision will be concerned with maintenance. On the other hand, where the provision awarded is solely concerned with dividing property between the spouses, the decision will be concerned with rights in property arising out of a matrimonial relationship and will not therefore be enforceable under the Convention. A capital sum fixed with a view to ensuring a predetermined level of income may be of the nature of maintenance: *Van den Boogaard supra* at para 23, as may be an award designed to compensate as far as possible for the disparity which the breakdown of the marriage creates in the respective living standards of the spouses: *De Cavel* v *De Cavel* (No 2).

[26] A result of the potential for difficulty in discerning what is properly a matter of maintenance, as identified in *Van den Boogaard*, is to impose a duty on a court making an order which may have to be enforced as a maintenance provision in terms of Brussels I to make clear with what its decision is concerned: maintenance or division of property or both, it being borne in mind that, in accordance with art 42 of Brussels I, a judgment can be enforced in part if it clearly shows the aims to which its different parts correspond: *Van den Boogaard supra* at para 22. That being so, I must say something more about the basis upon which I propose to make an award in the present case.

[27] In Scots law marriage does not of itself affect the respective rights of the parties to the marriage in relation to their property: Family Law (Scotland) Act 1985, s 24(1). We do not have a regime of community of property consequent on marriage. There is no such thing as, for example, the *huwelijksgoederenrecht* recognised by Dutch law, as mentioned in *Van den Boogaard*. […] Financial provision may be made by any one of the orders identified in s 8(1) but, in terms of s 13(2), it is provided that the court may only make an order for periodical allowance where the order is justified by a (d) or (e) principle and the court is satisfied that an order for payment of a capital sum or transfer of property would be inappropriate or insufficient. It is therefore quite clear that an order for payment of a capital sum may (and commonly will) have among its aims the maintenance of the spouse in whose favour it is made (see, for example *McConnell* v *McConnell (No 2)* at 1997 Fam LR 108, para 20–36). As counsel for the pursuer pointed out in her submissions, that a spouse has not been adequately alimented during the subsistence of the marriage (as may be said to be the case here) does not prevent her relying on the (e) principle with a view to obtaining an award of financial provision with the aim of providing for her future maintenance: *Haugan* v *Haugan*.

> [28] Thus, as appears to be the case in England and as is recognised as conceptually possible by the European Court in the context of Brussels I, an award of capital payment by a Scottish court in terms of s 8(1)(a) of the 1985 Act may have as its justification and its aim (or part of its justification and part of its aim), the provision for the future maintenance of the spouse in whose favour it is made."

[196] I agree with and adopt with the reasoning in the passages just quoted. The instrument that may assist the pursuer with enforcement in this case is the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, which has as its object ensuring the effective international recovery of child support and other forms of family maintenance. I was told that it would shortly come into force in Azerbaijan. According to the website of the Hague Conference on Private International Law it came into force so far as Azerbaijan was concerned on 28 February 2024. Article 2 provides:

> "This Convention shall apply –
>
> a) to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years;
> b) to recognition and enforcement or enforcement of a decision for spousal support when the application is made with a claim within the scope of sub-paragraph a); and
> c) with the exception of chapters II and III, to spousal support."

Chapters II and III relate to administrative co-operation and applications through central authorities respectively. Chapter V of the Convention relates to recognition and enforcement of decisions in respect of maintenance obligations. Article 19, which defines the scope of that chapter, provides:

> "(1) This Chapter shall apply to a decision rendered by a judicial or administrative authority in respect of a maintenance obligation. The term 'decision' also includes a settlement or agreement concluded before or approved by such an authority. A decision may include automatic adjustment by indexation and a requirement to pay arrears, retroactive maintenance or interest and a determination of costs or expenses.

> (2) If a decision does not relate solely to a maintenance obligation, the effect of this Chapter is limited to the parts of the decision which concern maintenance obligations."

Article 20 provides that a decision made in one Contracting State (referred to as the state of origin) shall be recognised and enforced in other Contracting States in a number of situations. Those include where the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to jurisdiction at the first available opportunity; where the creditor was habitually resident in the state of origin at the time proceedings were instituted; and where the decision was made by an authority exercising jurisdiction on a matter of personal status, unless the jurisdiction was based solely on the nationality of one of the parties. If a state is unable to recognise or enforce the whole decision, it shall recognise or enforce any severable part of the decision which can be so recognised and enforced: Article 21.

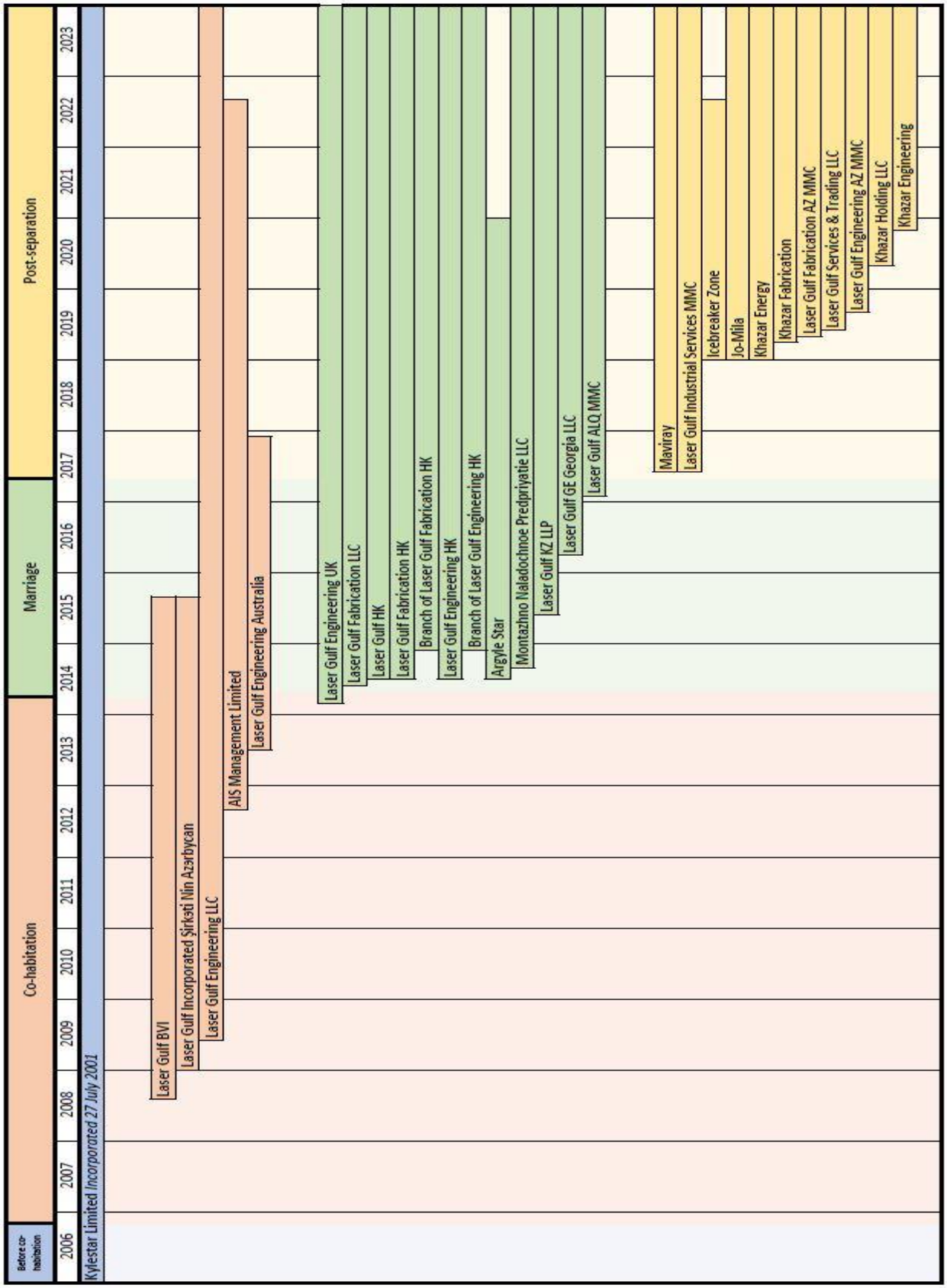
[197] I reject the proposition that this is a matter of academic interest only. There are grounds for the pursuer reasonably to apprehend that it may be difficult to recover the sums that I have found she should receive. The observations of Lord Brodie at paragraph 25 in *AB* are apposite: a decree for payment is only useful insofar as it is capable of enforcement. The convention relates to maintenance, and expressly recognises that parts of a decision may concern maintenance obligations and that other parts may not. There is a practical purpose, with a view to enforcement, in specifying what part of this decision relates to maintenance. In matters arising under other Hague Conventions it is not unusual to make reference to jurisprudence from the Court of Justice of the European Union. One example is the influence that Luxembourg jurisprudence has had on the concept of habitual residence for the purposes of the 1980 Hague Convention relating to the abduction of children.

[198] Senior counsel for the pursuer suggested that I should allocate £750,000 as attributable to maintenance, being about £600,000 for a house and furniture, and £150,000 for income support during a period of cessation of periodical allowance. I regard that as in principle an appropriate approach, and the defender offered no alternative analysis. On the evidence, however, the figures proffered by the pursuer in relation to accommodation in the area in which she current resides, and the cost of furnishing, suggest a figure of about £420,000. If she were to receive periodical allowance for a period of three years, less the 12 weeks I have ordered, the total sum involved would be £85,000. I therefore allocate £505,000 to maintenance for the purposes of enforcement.

Disposal

[199] I will put the case out for a hearing by order to address the precise terms of the interlocutor I should pronounce. The properties in Brora are currently subject to inhibition and the defender indicated that those inhibitions would require to be recalled to permit him to sell them so as to enable him to make a capital payment. That matter can be addressed at the hearing.

Appendix


Before co-habitation
Co-habitation
Marriage
Post-separation
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Laser Gulf BVI
Laser Gulf Incorporated Şirkəti Nin Azarbycan
Laser Gulf Engineering LLC
AIS Management Limited
Laser Gulf Engineering Australia
Laser Gulf Engineering UK
Laser Gulf Fabrication LLC
Laser Gulf HK
Laser Gulf Fabrication HK
Branch of Laser Gulf Fabrication HK
Laser Gulf Engineering HK
Branch of Laser Gulf Engineering HK
Argyle Star
Montazhno Naladochnoe Predpriyatie LLC
Laser Gulf KZ LLP
Laser Gulf GE Georgia LLC
Laser Gulf ALQ MMC
Maviray
Laser Gulf Industrial Services MMC
Icebreaker Zone
Jo-Mila
Khazar Energy
Khazar Fabrication
Laser Gulf Fabrication AZ MMC
Laser Gulf Services & Trading LLC
Laser Gulf Engineering AZ MMC
Khazar Holding LLC
Khazar Engineering