

HONG KONG / JUDGMENT

CM v. GRP

[2022] HKFC 36**COURT**

Family Court

DECIDED

18 February 2022

CASE / FILE NUMBER

FCMC1915/2019

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bjbj FCMC 1915 / 2019

**[2022] HKFC 36 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NUMBER 1915 OF 2019**

BETWEEN CM Petitioner and GRP Respondent

Coram : Her Honour Judge Grace Chan in Chambers (not open to public) Date of hearing : 3-4
August 2021 Date of respondent s written closing submission : 17 August 2021 Date of petitioner s
written closing submission : 18 August 2021 Date of respondent s written closing submission in
reply : 24 August 2021 Date of judgment : 18 February 2022

JUDGMENT

(Ancillary relief : maintenance pending suit; prenuptial agreement; sharing of assets; children s
maintenance)

Background

The petitioner (wife) is a Chinese who was brought up in Holstebro, a small town in Denmark,
since she was about 7 years old. After graduation from her specialty in shipping and logistics
from a local college, she worked in Denmark for a while before she came to work in Hong Kong
in around 2005. The respondent (husband) is a German, born and brought up in Germany. After
he completed high school education, he started working including working in an international
company specialising in food and kitchen products purchase. In 2004, he came to Hong Kong as
was offered to work here as a senior merchandiser. He was married before. His first marriage

ended after 9 months, as his ex-wife could not adapt to the life in Hong Kong. There is no child in his first marriage. The parties met each other in 2008 in Hong Kong and started cohabitation in 2010. They married in March 2013. Two daughters were born in March 2015 and March 2019 respectively. They will turn 7 and 3 respectively this year. The elder daughter was born with the assistance of reproductive technology. Three properties were purchased during their marriage in the following sequence: the Holstebro property built in August 2013 in the sole name of the wife. As at July 2021, the outstanding mortgage is about DKK851,870, with monthly repayment of about DKK6,200. Its net value is agreed at DKK1,420,629 (equivalent to HKD1,760,585); the Copenhagen apartment purchased in July 2015 also in the sole name of the wife and is now free from mortgage. Its net value is agreed at DKK2,047,500 (or HKD2,537,466.75); the matrimonial home in Tai Po, Hong Kong purchased in January 2017 in the sole name of the husband and subject to existing mortgage. The net agreed value is HKD5,110,416.48. Sadly, marital discord took place even before the younger daughter was born. The wife filed her petition for divorce in February 2019. The husband moved out from the matrimonial home the following month. Decree nisi was granted on 31 July 2020. It is thus a marriage which lasted for about 7 years. Pursuant to an order made on 31 July 2020, the parties are granted joint custody, with care and control to the wife. The husband has access to the daughters. The wife is given leave to permanently relocate the daughters back to Denmark in the same order. An interim maintenance order for the children payable by the husband to the wife in the sum of HKD8,000 was made by a deputy judge on 21 November 2019. In addition, he was paying, without a formal court order, the wife HKD5,000 per month as interim spousal payment as at this trial. Matters for trial & their open proposal After a failed financial dispute resolution, this case is transferred to this court for trial of 3 matters: the final ancillary relief trial of the parties involving total net assets that are worth roughly about HKD12 million; the children maintenance to be payable by the husband; the wife's summons dated 15 June 2020 for her maintenance pending suit (MPS Summons) in the sum of \$5,000 per month, which is increased to DKK14,000 per month (equivalent to about HKD17,350) in this trial, until she receives her share of the family assets; and the reimbursement of air ticket expenses in the sum of HKD42,397.83 in relation to the flights between Hong Kong and Denmark taken by her and the children on business class with KLM on 30 April 2020. It is not in dispute that the parties had during their marriage signed 2 agreements in relation to their financial arrangement. The 1st agreement is the prenuptial agreement dated 24 March 2013 (Prenuptial Agreement). Later, they signed a property agreement dated 26 July 2015 (Property Agreement). I shall refer to the terms of these Agreements later in this judgment. The husband says that the court should uphold both the Prenuptial Agreement and Property Agreement, in which case he shall keep the matrimonial home and the Copenhagen apartment whereas the wife would keep the Holstebro property. The wife, however, argues that the Prenuptial Agreement should not be upheld because it was superseded by the Property Agreement under which she is to keep the Holstebro property. However, this is not the end of the matter, because she argues that fairness dictates that the parties shall share equally the rest of their other assets, in particularly the matrimonial home in Hong Kong, subject to the caveat that the husband shall pay her a lump sum of HKD2,000,000 out of his share of the pot to achieve clean break between them. On the front of the children expenses, it must be correct to say that the husband is now paying for the majority expenses of

the children, including their education fees. I was told by the wife that after the ancillary relief trial, she would leave Hong Kong and relocate with the children to Denmark on 8 August 2021. However, as at the trial, she was still in Hong Kong. That being the case, she does not have a de facto record of her and the daughters expenses in Denmark. During the pre-trial review, she declined the invitation of the court to consider if she would first relocate with the children back to Denmark before the commencement of the trial, in order to have a clearer picture of their expenses/needs in Denmark. After all, she had not lived permanently in Denmark in the last 15-16 years. She told the court in the PTR that she was satisfied to rely merely on some internet figures to support her case on needs and expenses. As to the husband, he has obtained a new employment in Germany, which he claims will be of lower salary but subject to higher tax. I was told that he would also be leaving Hong Kong in September 2021 for the new job. He argues that the wife has exaggerated her claim for children s expenses and more importantly, she should be made to share out the children s expenses, as she is young, educated and with earning capacity. Through his counsel, Mr Sunny Chan, the husband makes the following latest open offer before oral evidence was called: the parties shall equally share the family pot, which the husband agrees, merely on the basis of an open offer, to include the full amount of his pension/MPF for the purpose of computing the size of the pot; To achieve the above, he offers the wife to keep the 2 Denmark properties (registered under her sole name), while the matrimonial home in Hong Kong is to be sold, after which he will keep all sale proceeds save that he will pay her any equalization money out of the sale proceeds; he shall pay children maintenance in the sum of DKK9,900 per month, ie DKK4,950 each daughter per month; he shall pay relocation costs to the wife in the sum of HKD150,000; (as stated in his closing submission) he shall pay the wife a sum of HKD6,500 per month for a duration of 12 months from her relocation or until she takes an employment, whichever is the earlier. In response to the husband s latest offer, the wife gives her updated open proposal in the trial as follows: there be equal sharing of the total assets of the parties, in that the matrimonial home and the Copenhagen apartment should be sold and the sale proceeds of which be shared, taking into account that she will keep the Holstebro property; the husband do pay, out of his 50% share of the pot, HKD1,500,000 to her to cover her future maintenance for next 5-6 years; the husband shall reimburse her for the KLM air tickets in the sum of HKD42,397; children s expenses shall be shared equally between them, and thus she accepts the husband s offer to pay her DKK9,900 per month for 2 daughters; the husband should pay her DKK30,000 per year per daughter (ie DKK60,000 in total each year) as cash gifts, which is tax-free in Denmark, until they reach 18, in order to cater for their future and large sum expenses, such as school trips; she accepts relocation costs offered by the husband in the sum of HKD150,000. Thus, as at the beginning of the trial, the parties have agreement as to the children maintenance (namely DKK4,950 per daughter per month) and the relocation costs to Denmark in the sum of HKD150,000. However, it is trite to say that their agreement cannot fetter the quasi-inquisitorial function and discretion of the court, especially when young children are involved. And when the court enquires if the purported agreed sum of DKK4,950 per daughter per month covers their expenses on accommodation and transport, the husband made a further and additional suggestion during his oral evidence as follows: he shall pay DKK400 per daughter per month to cover their public transport costs (which brings the total sum he is willing to pay for

each daughter to DKK5,350 per month); he shall subsidise the daughters accommodation costs for 12 months which is equal to the monthly mortgage repayment of the Holstebro property (if the court orders that the Holsterbro property be kept by the wife), as she is expected to start taking up part time job within 12 months upon relocating back to Denmark. This would be equal to DKK74,400 (DKK6,200 x 12 months). However, strangely, he will not make any rental contribution to the daughter s accommodation needs if the court orders that both the Holstebro property and Copenhagen apartment are to be sold. He comments that this would mean he is being asked to pay more. Hence, he says that DKK9,900 for 2 daughters per month is an all-inclusive offer. The issues Having considered the evidence and submission, I am of the view that the issues of this trial are: whether the Prenuptial Agreement and/or the Property Agreement should be upheld; how the assets of the parties should be shared, and if the wife should receive a lump sum payment from the husband or a larger share of the pot due to her needs; whether the husband should pay MPS to the wife and/or reimburse her the said sum of HKD42,397.83 to cover the air tickets expenses for business class on KLM on 30 April 2020; how much the husband should pay to the wife for the maintenance of the children upon relocation to Denmark. After the AR trial After the trial, the husband s solicitors wrote to the court on 11 October 2021, complaining that the wife has unilaterally sold the Copenhagen apartment, as it was listed on a certain real estate website in Denmark. They enclosed to their letter some screenshots from the said website in Danish, which they said show that the apartment was sold. The said letter from the husband s solicitors was said to have been sent to the wife by way of email. As evidence was already completed and judgment was then pending, it is not procedurally appropriate nor correct for the husband s solicitors to give further information/evidence by way of a solo letter. Besides, the attachment to the said letter is in Danish, which the court has no expertise to understand. A proper certified English translation is not provided. Thus, the court replied on 15 October 2021 and asked the husband s solicitors to take out proper application, if necessary, within the next 14 days. However, no such application is taken out up to the date of this judgment. That being the case, I can only proceed on the basis that the status quo of the Copenhagen apartment is still maintained and that it has not been sold by the wife. About a month later, the wife wrote unilaterally on 24 November 2021 to the court complaining about the cessation of spousal maintenance of HKD5,000 from the husband since September 2021. Again, the court cannot take the solo letter of the wife as evidence of the trial. Applicable Law Section 7 of the Matrimonial Proceedings and Property Ordinance (MPPO), Cap 192 sets out the matters that the court must have regard to when making orders for ancillary relief:

- (1) It shall be the duty of the court in deciding whether to exercise its powers under section 4, 6 or 6A in relation to a party to the marriage and, if so, in what manner, to have regard to the conduct of the parties and all the circumstances of the case including the following matters, that is to say- the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; the standard of living enjoyed by the family before the breakdown of the marriage; the age of each party to the marriage and the

duration of the marriage; any physical or mental disability of either of the parties to the marriage; the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

- (2) Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its powers under section 5, in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to
- (a) the financial needs of the child;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child;
 - (d) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (e) the manner in which he was being and in which the parties to the marriage expected him to be educated; and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.
- The Court of Final Appeal in its landmark judgment of *LKW v DD* [2010] 13 HKCFAR 537 has enunciated 4 guiding principles as to how the lower courts should approach section 7 of MPPO, namely (i) objective of fairness, (ii) rejection of sex or role discrimination, (iii) yardstick of equal division, and (iv) rejection of minute retrospective investigation. It has further laid down 5-step approach as follows: to ascertain the financial resources of each of the parties as at the date of the trial; to assess the financial needs of the parties; to apply the sharing principle to the parties total assets (if surplus assets would remain after the parties needs have been catered for); to consider whether there is/are good reasons for departing from the principle of equal division; to decide the outcome. The parties assets According to *LKW* (supra), the first step is to ascertain the financial assets/resources of the parties, to be calculated as at the date of the hearing. Based on their updated Form E of 2021, an agreed table of assets is prepared by the parties which was updated on the 1st day of the trial. In gist, they are able to agree on the items and value of each other s assets. There are only 2 items that need to be addressed, namely: their legal costs; and their MPF/pensions. The wife claims that she has incurred HKD29,950 for taking legal advice, whereas the husband says he has incurred counsel s fees of HKD53,000 for this trial. He disputes her liability to pay legal fees as she is not legally represented, whereas the wife argues that legal fees are not a liability to be shared in the family pot. In my view, there is nothing objectionable for the wife to incur legal costs for taking legal advice even though she is not represented on the

records. That said, however, I do not find the need to include their respective legal fees into the family pot for 2 reasons. First, the alleged legal fees are of trivial amount that would not have any meaningful effect on the ancillary relief order(s) to be made in this judgment. Second, their costs should be better dealt with at the conclusion of the judgment, to be decided by the court upon consideration of all relevant factors, such as who is the winning party of this trial. In relation to the MPF/pension, the wife has under her ledger about HKD403,186, whereas the husband has HKD650,699.29 and EUR18,616.29 (equivalent to HKD171,496.99), making a total of about HKD822,196.28. Mr Sunny Chan, counsel for the husband, submits that a 50% discount on the parties MPF/pension should be applied by reason that it would not become capital asset or an income stream until retirement age and is subject to handicap and risk (See: *SSLT v SMFC* [2019] HKFC 250 at 48; *DGB v SDGK, FCMC* 12078 of 2013, date of judgment 12 March 2014 at 54). In these cited cases, the Family Court allowed a discount to be applied to the parties pensions and/or retirement accounts because such items were not yet realizable for cash or not freely available capital asset at the time of the trial. To begin with, I think it must be right to say that each case turns on its own facts. The very distinctive facts of this case is that the major part of the parties MPF/pension are accumulated in Hong Kong. They both have, by the time of this judgment, left Hong Kong and relocated back to their respective home countries, which means that they are already entitled to capitalize their MPF amount upon leaving Hong Kong permanently. The husband's pension of EUR18,616.29 was probably accumulated by him before he came to work in Hong Kong. Two major points are taken here. First, this amount is not huge in the light of the total assets of the parties. Second, I take the view that since the wife had to prepare for child-bearing and later took care of the new-born, she was unable to continue with her full time job to build up her MPF, whereas the husband was able to do so. That explains why his MPF/pension is more than double of hers (See: [REF _Ref94976283 \r \h]). This unfairness against the wife has to be addressed. Looking at the overall picture, I conclude that no discount should be given to the MPF/pension of the parties calculated as at this trial. Mr Chan's submission is thus rejected. Due to the matters aforesaid, I conclude that the total net assets of the parties are about HKD12,032,754 with breakdown as follows (net to the last decimal): Wife (HKD) Husband (HKD) Holstebro property (net value) 1,760,585 Copenhagen apartment (free from mortgage) 2,537,466 Matrimonial home (net value) 5,110,416 Bank accounts 91,486 1,116,758 Stocks 151,000 Insurance 166,000 Personal valuables 5,000 Pensions/MPF 403,186 822,196 Monies owed 16,213 Sub-total : 5,114,723 7,065,583 LESS Credit cards payment 16,945 14,298 Debts 60,000 56,309 Net total: 5,037,778 6,994,976 Living standard during marriage Before I go into greater details in the major items of expenses that are in dispute, I shall say something on the living standard of the family before the breakdown of the marriage, a factor that is set out under section 7(1)(c) of the MPPO. I hold the overall impression from the totality of all evidence that the living standard of this family while in Hong Kong is of an average middle class standard, far from being luxurious. During their marriage, the family never lived in prestigious residential districts such as the mid-levels or the southern district. They lived at first in Yuen Long and later in Tai Po. The total area of the matrimonial home is around 900 sq feet but houses altogether 3 adults and 2

children (including their maid). According to the wife, when she liaised with the estate agent, she asked the agent to introduce something not expensive for them to buy as their matrimonial home. Also according to her, the family needed to raise loans with her friend in order to purchase it. The family does not enjoy any reputable private club membership. They do not enjoy the service of a maid until early 2016, ie almost a year after the elder daughter was born. On the wife's own case, the husband paid her merely HKD4,000 per month to cover the family's food and daily expenses at the beginning of their marriage, which was subsequently increased to HKD7,000 per month (including all household and maid's food allowances). This will form the backdrop of the court's assessment of the needs and expenses claimed by the parties. The husband's income & needs The husband, born in 1978, will turn 44 by March this year. He came to Hong Kong in around 2004 as the manager of his company. Over the years, he was promoted to the Head of Sourcing in Hong Kong. According to his updated Form E in 2021, his average monthly income, inclusive of basic salary, bonus, housing allowances and home allowance, is about HKD 130,342 per month. His taxes in Hong Kong is paid by his employer. As said, after this trial, he will return to Germany and take up a new employment as the Head of Department in Procurement Management to commence on 1 October 2021. Under the new employment in Germany, his basic salary would be EUR155,000 per year, plus bonus of EUR20,000 for 2021. He is also entitled to a company car in accordance with company guidelines (ie EUR47,500 for Head of Department). However, his income will be subject to German tax, and that he would be in the bracket of tax class 1 (ie divorced and children not residing in Germany). Based on an online tax calculator available on [HYPERLINK "http://www.nettolohn.de"](http://www.nettolohn.de) www.nettolohn.de, he works out that his net income (after tax) will come down to EUR7,273.07 per month (if without the company car) or EUR6,904.78 (if a company car is included). The wife accepts that his income would be subject to salary tax in Germany. However, she has no idea as to how such German taxes are to be computed, and that she cannot accept his bare assertions. Thus, on 2 July 2021, she took out a summons to adduce her evidence from her chosen online tax calculator ([HYPERLINK "http://www.bbx.de"](http://www.bbx.de) www.bbx.de) of the tax deductibles of his income. On the return day of her summons of 26 July 2021, her application was opposed by the husband. The necessity of engaging an expert in German tax law was thus raised and discussed. However, the wife insisted that she did not wish to affect the trial which would commence in a week's time. In the end, she withdrew her summons and confirmed that she would not seek to argue on the tax deductibles in the trial. On the part of the husband, he did not insist that a German tax expert be engaged. Yet in the trial, both parties continue to put forward their own calculation of the net income of the husband in Germany. While the husband says in his oral evidence that he will have to pay the maximum percentage of 48% of his income as tax and thus his net income comes down to what is set out at [REF _Ref94359642 \r \h] aforesaid, the wife insists that his net income should be EUR8,800. In my view, it is unfortunate that the parties did not raise the issue of German tax law before the listing judge and/or propose to the listing judge for appropriate expert directions, such that when the case was transferred to this court for the final trial on ancillary relief, it became rather late to consider engaging an expert in German

tax law without vacating the trial. This leads to the undesirable result that the court is left with merely some limited online information on the taxes and tax deductibles in Germany. The court is in no position to assess the reliability of such online information without the assistance of expert evidence. That said, on the other hand, I am not prepared to accept that the husband's net income (after tax) comes down to what he says at [REF _Ref94359642 \r \h] of this judgment, because: In the employment contract disclosed by him, it suggests that there is a separate bonus agreement for the year 2021, and a new bonus agreement for every year to come. It also suggests that there will be additional gratuity, bonus and other one-off payments not mentioned in this contract that are paid voluntarily. Yet, he has failed to disclose the separate bonus agreement and/or other contract(s)/document(s) which set out his entitlement to additional gratuity, bonus and other one-off payments not mentioned in the employment contract. He thus fails in discharging his positive duty to disclose a full picture of his employment package (See: L v L [2006] 1 HKFLR 121). The court is entitled to draw adverse inference against his paying ability; He has not included his bonus of EUR20,000 per annum for 2021 in his computation for his net income. If his bonus is taken into account, his gross monthly income should be about EUR14,583; His employment contract clearly indicates that he will have a new bonus agreement for every year to come, which means that it is more likely than not that he will receive bonus each year; He relies on the online response from the Ministry of Finance of the North Rhine-Westphalia District to show that he falls within tax class 1. In the same response, it says that it is possible to apply for child allowances after the end of the assessment year when submitting the income tax return. However, he conveniently does not provide any further information as to how such child allowances are to be calculated, and the likely amount. For the matters aforesaid, I conclude that the husband's net income in Germany is or should be well above EUR7,273.07 per month (if without the company car) or EUR6,904.78 (if a company car is included). Doing the best I can with limited evidence, I will draw the adverse inference that his average monthly income and/or financial means, after taking into account of his tax liability and child allowances that he may receive, would be of an amount which is able to satisfy the ancillary relief order that I am going to make in this judgment without impediment on his reasonable needs. On his expenses, the parties have prepared 2 joint tables on the husband's expenses, one on his current expenses in Hong Kong and the other on his expenses upon relocating to Germany. The joint table on current expenses in Hong Kong shows that his general and personal expenses amount to HKD86,679 per month, including HKD57,767 as to general expenses and HKD28,915 as to personal expenses. To note is that he has included children interim maintenance of \$8,000 per month and spousal maintenance of \$5,000 per month as his personal expenses. These general and personal expenses are not disputed by the wife. The joint table on his claimed expenses in Germany shows: Claimed expenses after relocating to Germany Mortgage repayment of the matrimonial home HKD22,618 Management fee of the matrimonial home HKD3,162 Government rent & tax HKD833 Maid HKD4,630 Food allowance to maid HKD1,123 Rental in Germany EUR985 Rental deposit in Germany EUR2,460 Utilities EUR350 Food EUR600 (10) Car parking fee EUR70 (11) Return air ticket between Denmark and Germany for access purpose HKD1,000 (12) Household

expenses EUR10,000 (13) Relocation expenses HKD25,000 TOTAL: HKD58,366 + EUR14,465 (Total in HKD: 191,620) (Total in EUR: 20,800) I agree with the wife that items (1) to (3) above should no longer be regarded as the recurring expenses of the husband if the matrimonial home is to be sold. Further, upon his own relocating to Germany, it is not reasonable and necessary for him to keep the maid in Hong Kong. He should have given her one month's notice, such that her employment should have been terminated around the time he left Hong Kong in September 2021. Hence, items (4) and (5) should not be taken as his needs any more. I also agree with the wife that items (7) and (13) are one-off expense. As to item (12), while I accept that the purchase of new furniture and household appliances are one-off items, there will logically be other household items, such as toilet papers, sanitary items that one would need in a household. Doing the best I can on limited evidence and on fairness, I shall take 1/3 of the wife's claimed household expenses as the husband's household expenses in Germany, ie $\text{HKD}868 \times \frac{1}{3} = \text{HKD}289$ (or EUR31). On the other hand, I notice that the aforesaid joint table has not made provision for the husband's other personal expenses, such as clothing/shoes, personal grooming, entertainment and holidays. In all fairness to him, I shall adopt the figures in the joint table of the Hong Kong expenses in the total sum of HKD9,000 (or EUR976). The air tickets between Denmark and Germany for the purpose of access (ie item (11) at [REF _Ref94194197 \r \h]) will be absorbed within this EUR976. In conclusion, I am of the view that the reasonable expenses of the husband after relocating to Germany will be around EUR3,012 per month. His income is surely able to cover his reasonable expenses way forward. In any event, I reiterate my findings at [REF _Ref93944805 \r \h] of this judgment. The wife's income and earning capacity The wife was born in 1979 and is now 42 years old. As said, she came to Hong Kong in 2005 and worked until 2013 in various companies at managerial level, roughly at a basic salary of over \$50,000 per month plus bonus. She resigned from her job in December 2013 to prepare for artificial intrauterine insemination, and their 1st daughter was born in March 2015. She worked part time in January 2017 with the Danish Chambers of Commerce at monthly income of HKD10,400 until May 2019, ie shortly after their younger daughter was born in March 2019. Since then, she has been a housewife taking care of the daughters. However, according to her affirmation dated 12 April 2021, she has income from the following sources: (1) Maintenance from the husband HKD5,000 Interim children maintenance HKD8,000 Rental income of the Holstebro property DKK6,500 Rental income of the Copenhagen apartment DKK7,975 Dividends from investment funds DKK612 As at the trial, the Holstebro property is occupied by her elder sister and her family, and the rental income is utilized to pay its mortgage. She further reveals for the first time in her oral evidence that as at the trial, the Copenhagen apartment is no longer rented out and she has decided on her own without telling the husband that she let her relative occupy it, free of rent. On the other hand, it seems not in dispute as at this trial, the wife is paying management fee of the Copenhagen apartment (DKK2,791), the property tax of both the Holstebro property and the Copenhagen apartment (DKK1,248), and the mortgage repayment of the Holstebro property (DKK6,200). The husband argues that the wife is young, educated and smart, and thus she should return to the labour market immediately upon relocating to Denmark to work at least part time to

support herself without any contribution from him, and to work full time in the long run so that she is able to share out half of the daughters expenses. In response, the wife says that she plans to look for part time job in the shipping and logistics field 12 months after relocation. She reckons that she would be able to earn about DKK10,000 per month. When asked how comes she would come up with this figure of DKK10,000 if she has not done any research into the income level of Denmark yet, she says that she uses the income of her part time job in Hong Kong as a reference. She further reveals that she will work full time when the younger daughter turns 6. With her experience in the shipping and logistics industry, she anticipates her income would be around DKK35,000 per month. There is no doubt in my mind that the wife has earning capacity, as she is young, smart and educated. However, I accept that after she has relocated to Denmark and the service of a maid is no longer available, she needs time to settle down with the daughters who are still at tender age of 7 and 3 respectively this year. Thus, I agree that she would be able to take up a part time job after 12 months of relocation earning about DKK10,000 per month until the younger daughter reaches 6 by March 2025, after which time she should be able to work full time. However, I am not prepared to accept that she will only earn about DKK35,000 when she takes up a full time job. While it is her case that she uses the income of her part-time job in the Hong Kong to infer her income of a part-time job in Denmark, I see no reason why the court should not use the income of her full time job in Hong Kong as the benchmark to infer that her likely full time job income in Denmark would be at least HKD50,000 per month (equivalent to about DKK40,345 per month). Inclusive of the dividends from her investment funds at [REF _Ref95574580 \r \h], I conclude that her likely and reasonable income would be around DKK10,600 (when she works part-time) and DKK41,000 (when she takes up full time job). I prefer not to include the rental income of the Holstebro property and/or the Copenhagen apartment as her likely income at this stage because it will depend on the final order(s) to be made at the end of this judgment. The needs of the wife For the purpose of this trial, the parties have prepared 2 joint tables on the wife's expenses, one on Hong Kong expenses and the other on Denmark expenses. They are summarized in the following table:

In Hong Kong	In Denmark	GENERAL (HKD)	(DKK)	(HKD)
Mortgage of Holsterbo property		7,500	6,200	7,684
Utilities		3,129	3,878	
Management fees of Copenhagen apartment		3,400		
Food		6,000	2,100	2,603
Household expenses		1,751	2,170	
Insurance premia		1,200	3,653	
Property tax		4,527	1,538	
Car expenses		4,518	5,599	
Sub-total:		20,731	22,651	28,073
PERSONAL				
Meals out		2,000		
Transport		500		
Clothing/shoes		1,000	1,239	
Personal grooming		1,200		
Entertainment/presents		1,345	1,667	
Holiday		1,667		
Donation		5,060	2,661	3,298
Grand-total:		25,791	25,312	31,371

The wife says that it is her plan that the Holstebro property will be kept by her but to be occupied by her elder sister. She and the daughters will not live in Holstebro, but near Copenhagen. She will use the money received by her out of the sale proceeds of the Copenhagen apartment and the matrimonial home to buy another apartment worth about DKK3,000,000 in the suburbs of Copenhagen. She will use DKK2,000,000 to pay for the down payment and the remaining DKK1,000,000 will be covered by a mortgage which she says will cause her DKK6,200 each month for mortgage repayment. She explains that she will make use of her own reserve, to be received from her ancillary

relief in this trial, to pay for the monthly mortgage. She prefers not to rent but to buy because the rental of an apartment of about 600 sq feet place near Copenhagen may cost as much as DKK7,000-7,500 per month, which is even higher than the mortgage repayment. She will need a brand new car (VW Passat GTE) to take the daughters around for schools and extra-curricular activities. It will cost her DKK417,527 (or EUR56,000) with a monthly repayment of DKK3,877. Adding other adds-on package and government charge, the car will cost her DKK4,518 per month. Her claimed expenses of insurance (DKK1,751) cover the house, furniture, car and accidents based on the Holstebro property. She also asks the husband to cover her property tax relating to the Holstebro property (DKK600) and her income tax (DKK3,653) which she will need to pay in respect of the MPS sought by her. Besides, she plans to enroll the daughters in international schools because better manners can be learnt and more respect gained out of the education in international schools. Further, she has concern about racial bullying at public school due to her Chinese origins. In gist, the husband says that the wife's claimed expenses are excessive and unreasonable, in particular that she asks him to bear all her costs and taxes concerning the Holstebro property which is to be kept by her. He is of the view that her general expenses should be reduced to DKK4,350 (or HKD5,390) and her personal expenses to DKK916 (or HKD1,135), totalling DKK5,266 (or HKD6,526) which would be paid by him to her as her maintenance for a maximum of 12 months after her relocation or until she returns to employment, whichever is the earlier. Having considered the overall evidence and submission, as well as my finding on the living standard of the family during the marriage, I shall make the following comment/findings. First, I do not believe in the wife's alleged plan to live near Copenhagen, nor do I accept that that is a reasonable arrangement in the best interest of the daughters. I find that it is more reasonable and in their best interest to live in Holsterbo. Importantly, when asked by the court as to why she decided to return to Denmark after spending about 16 years in Hong Kong, the wife gave at least 2 reasons, namely to be close to her family and for the daughters to experience the same childhood that she had. Before moving to Hong Kong, she had spent her life only in Holstebro. Most of her family members, including her parents and her elder sister (who is closest to her and is currently a home-maker), live in Holstebro. The daughters, since birth, visited Holstebro from time to time, and thus they are familiar with it. It is very telling that at the outbreak of COVID-19 pandemic in early 2020 in Hong Kong, the wife chose to return to stay in Holstebro (but not Copenhagen) with the daughters for more than 2 months. In a word, it is indisputable that she has much stronger connection with Holstebro than with Copenhagen. She (and thus the daughters) will enjoy stronger family support in Holstebro than in Copenhagen, which in turn is in the best interest of the daughters. In other words, the court will assess their needs on the basis that they are going to live in the Holsterbo property. Second, it is indisputable that the wife had declined the suggestion of postponing the trial to after her relocation to Denmark (See [REF _Ref95925240 \r \h] above). As such, most of the Denmark expenses claimed by her are either her mere estimation, or figures from some online research. Yet, her bare estimation of expenses is unsubstantiated by any documentary proof. Further, I have difficulty in accepting such online information at their face value. Her online research

results are in Danish. Only some of such information is provided with uncertified English translation. Those in Danish but without English translations, such as insurance premia based on the Holstebro property, are incomprehensible by the court and thus unable to be considered and given any weight. Her estimation on electricity and water is based on the figures of an average family in Denmark. But from the online information that she produces as evidence in this trial, an average family means 2 adults and 2 children living in a house of 140-150 sq metres (as the case may be), which does not fit in her own family components and situation in Denmark. It is thus doubtful of how reliable and applicable of these online figures is to her case. In particular, I hold the view that her claimed utilities of DKK3,129 is unreliable and excessive. I accept the husband's suggestion of DKK1,300 per month. Third, the husband disputes the wife's income tax of DKK3,653 per month. The wife explains that he should pay her MPS in the sum of DKK14,000 per month until she receives her share of the capital assets in the family pot, and that such monthly MPS is subject to tax in Denmark. She adds that spousal lump sum payment is not subject to tax in Denmark. I do not agree that the alleged income tax of the wife is a long-term recurring expenses that should be taken into account as her needs for 3 major reasons: Even according to her own request, the MPS will end when she receives her share of the family pot; According to section 3 of the MPPO, any MPS payable to a spouse will end on the date of the decree absolute, but not on the date when a spouse receives his/her financial provision under section 4 (in respect of periodical payment or lump sum payment) or section 6 (in relation to the transfer/settlement/sale of a property) of the MPPO. It is imperative for me to point out that by virtue of section 25(1) of the MPPO, any orders under section 4 or section 6 of the MPPO shall take effect only on the grant of the decree absolute. Simply put and in so far as this case is concerned, without the grant of a decree absolute, the matrimonial home cannot be sold and/or shared between the parties, and/or any lump sum payment cannot even begin to take effect; The alleged income tax is based on her claim for DKK14,000 as her MPS, which for the reasons that will become obvious in the later part of the judgment, is not accepted by the court. Fourth, I accept the wife's argument that Hong Kong is a compact city with a very efficient and convenient public transportation system than many other cities in the world, such that while she and the daughters may not need car in Hong Kong, they do need one in Denmark for the benefit of the daughters who are still at their tender age but will study in different schools. Notably, she no longer enjoys the service of a maid who may assist in delivering the daughters between different places in Denmark which is not as compact a place as Hong Kong. However, it is not necessarily for her to buy a brand new car of her suggested choice, bearing in mind the living standard of the family that I have found earlier in this judgment, as well as the fact that the car suggested by her is of an even higher level of car enjoyed by the husband under his new employment. His new employment allows him to use a car worth of EUR47,500, which is equivalent to DKK353,224. In addition, the wife claims a sum of DKK369 per month for adding the clever unlimited electricity package and annual government charge of DKK430 per month. These are unsubstantiated by any documentary proof and thus will be rejected by me as reasonable expenses. Overall, fairness dictates that the wife and the children should, like the husband, enjoy the use of a

car at similar price range enjoyed by the husband, ie EUR47,500 (or DKK353,224) which should be paid off in one go, instead of by car mortgage, in the ancillary relief order. Fifth, her claim of DKK1,000 for her clothing/shoes is excessive, as similar item of expenses in Hong Kong was just HKD600. I shall accept DKK600 for this item, as suggested by the husband. In conclusion, I find that the wife's needs in Denmark should be as follows: GENERAL (DKK) Mortgage of Holsterbo property 6,200 Utilities 1,300 Food 2,100 Household expenses Insurance premia Income tax Property tax Car expenses To be considered separately Sub-total: 10,900 PERSONAL Meals out Transport Clothing/shoes Personal grooming Entertainment/presents Holiday 1,345 Donation Sub-total: 2,261 Grand-total: 13,161 (rounded up to DKK13,200) I have already found that the wife's earning capacity is DKK10,600 when she starts to work part-time 12 months upon relocation, ie since September 2022, which will be increased to DKK41,000 per month on full-time basis by March 2025 when the younger daughter turns 6. Setting off her expenses against her monthly income, this will mean that she has expenditure requirement of: From September 2021 to August 2022 (12 months), a monthly sum of DKK13,200 (totalling DKK158,400); From September 2022 to March 2025 (31 months), a monthly sum of DKK2,600 (DKK13,200-10,600) (totalling DKK80,600); When she takes up full-time job after March 2025, her notional income of DKK41,000 will be able to satisfy her needs without additional expenditure requirement. Her cumulative expenditure requirement, after taking into account her earning capacity, is thus DKK239,000 (DKK158,400 + 80,600). Inclusive of the car (DKK353,224), the total expenditure requirement is DKK592,224 (or HKD733,943). I shall round it up to HKD740,000. The needs of the daughters The parties have also prepared 2 other joint tables on the daughters expenses in Hong Kong and Denmark as follows: In Hong Kong In Denmark (HKD) (DKK) (HKD) Food 4,200 5,205 School fee (12,078) 3,333 (for elder daughter) 4,131 Nursery fees 3,287 (for younger daughter) 4,073.58 Transport to school (including school bus) (1,133) Extra-curricular activities (1,000) 2,049 2,539 Entertainment/presents 1,400 (2,000) Holidays 500 (2,000) 2,690 3,334 Clothing/shoes 1,000 (1,500) 1,500 1,859 Medical insurance Lunches/pocket money (1,000) Other transport (800) Child-minding fees (1,000) Others Tax (based on children's maintenance sought by the wife) 1,383 1,713 TOTAL: 2,900 (22,511) 19,807 24,546 ** The figures in brackets are paid directly by the husband. As said, the parties have agreed the amount of monthly children's maintenance at the beginning of this trial, namely the husband shall pay DKK9,900 for 2 daughters per month. Subject to the comment that I am going to make in the following paragraphs, I agree that this is a reasonable amount to cater for the needs of the daughters. The first comment is about the type of school that the daughters should enroll. It is noted that the elder daughter studied at International College Hong Lok Yuen while in Hong Kong, as the husband was reimbursed for all her school expenses by his employer. He is no longer entitled to such reimbursement under his new employment. The wife asks that the daughters should continue to study in international schools in Denmark, albeit that they may attend public schools in Denmark free of charge. However, I do not accept her reasons that the daughters should attend international schools. Save from her bare oral assertion that there is the risk of racial discrimination directed to the daughters, there is no concrete evidence that

students with a Chinese origins are vulnerable to discrimination in Denmark. Notably, she had lived and studied in Denmark since she was a child, but there is no suggestion from her in this trial that she was subject to racial discrimination. In fact, she deposes in her affirmation that after asking her families and friends in Denmark, she finds that the public schools are not bad as such. Overall, I find it more reasonable that the daughters should go to public schools way forward. Her claim for international school fees of the children is rejected. Following the above finding, the wife's suggested amount for the daughters extra-curricular activities, based on the arrangement that they study in international schools, is not accepted by the court. The husband's suggestion of DKK500 is a more reasonable suggestion. The second comment is about the transport arrangement of the daughters, and I shall reiterate what I have said at [REF _Ref95411223 \r \h] to [REF _Ref95411238 \r \h] above. Last but not least, the husband expressly agrees in his oral evidence that the daughters need a roof above their head. He has to accept that the agreed children's maintenance of DKK9,900 does not cover their housing needs. Yet, his stance on his offer to cater for/share out of their housing needs is not clear (See: [REF _Ref95576040 \r \h] above). This is not helpful. The best interest of the daughters dictates that they should have a stable home base in the Holsterbo property which means that its monthly mortgage repayment needs to be catered for by the husband until the wife is able to stand on her own feet by the time she takes up full-time job after March 2025. Importantly, due to the division of marital roles, the husband is able to focus on the development of his career during the marriage and thus accumulated more wealth than the wife who had to take up the child-bearing and child-caring responsibility and thus deprived of the chance to build up her wealth. The court will thus bear the above in mind when deciding on the outcome of this case. Cash gifts for the daughters Before leaving this topic, I need to address to the wife's claim of DKK40,000 each daughter per year as their cash gifts. She explains that this sum is a tax efficient way for the husband to support the rest of the daughters expenses and may create a saving for their future expenses such as university, overseas studies and driving licence etc. Since the parties agreed the amount of children's maintenance to be DKK9,900 per month at the beginning of this trial, I tried to clarify with the wife, while she was in the witness box, if the needs of the daughters exceed DKK9,900 and if she wished to withdraw her agreement to DKK9,900. Yet, she confirmed that she agreed to DKK9,900, but added that this amount covered their daily needs only. There would be other larger sum of expenses in the future, such as school trips, universities fees, that could not be covered by the sum of DKK9,900. In response, the husband confirms that he is willing to give an undertaking to pay 50% of daughters class trips, exchange programs and boarding school expenses, after being consulted and within 7 days against receipts in English is provided. I accept such undertaking of the husband. I add that in the event that the reasonable expenses of the daughter increase in the future an application may be made pursuant to section 11, the MPPO. In such circumstances, I refuse to make any order about the cash gifts. Deciding to apply the sharing principle Given the above analysis and the net value of the parties assets amounts to slightly over \$12 million, it is clear that there are surplus assets available for distribution. The law is clear that unless there are good reasons for departure, the court

should adopt the equal sharing principle as a yardstick to achieve a fair financial outcome for the parties (See: *WLK v TMC* (2010) 13 HKCFAR 618 at [82] and [84]). Any reasons for departing from equal division I gather from the overall evidence and submission that the following reasons for departing from the equal sharing principle may be engaged: The validity and effect of the Prenuptial Agreement and Property Agreement; The needs of the wife before she can take up full employment again in Denmark. The Prenuptial Agreement and the Property Agreement as a reason for departure from the equality principle The parties stance The Prenuptial Agreement, dated 24 March 2013, was prepared by the wife and signed about 4 days before their marriage under the witness of the wife s friend, Nelly. It provides that: all income, saving, earning own property and debt before and after the marriage shall not be shared in case of divorce. in case of divorce, either party cannot ask the other party to subsidy for the same standard of living as during marriage. custody of the child/children, if any, shall be granted to the wife, while the husband shall have the right to visit and spend time with the child/children. living and education costs of the child/children shall be shared equally between the parents until they reach 18. The Property Agreement was dated 26 May 2015 and was again prepared by the wife. It is said to be concerning the properties owned in Denmark. It provides that: In respect of the Holstebro property, the rental income and property expenses and taxes are to be received/paid by the wife. If it is to be sold in the future, she will take the first DKK2,000,000, with the remaining to be shared equally by the parties. In case of loss, it is the wife to take the loss; In respect of the Copenhagen apartment, the rental income and property expenses and taxes shall belong to/ be paid by the husband. In case of sale of this property, he will take the first DKK1,231,000, with the remaining to be shared equally between the parties. In case of any loss, the husband will have to absorb the loss. Each party has put forward a different version of how these 2 Agreements came about. The wife says that the idea of signing the Prenuptial Agreement was suggested by the husband. He was made to pay a lot of money to his first wife upon their divorce and he did not want to fall into the same trap again. Therefore, he suggested that they should sign a prenuptial agreement, to which the wife agreed, as she herself was working with a stable income at that time. As her English is better than that of the husband, she thus searched for some templates on the internet and came up with a draft Prenuptial Agreement. However, after the marriage, the family arrangement changed gradually with her staying at home without salary, they decided to annul it and discarded the original copy that they each held. Then on the same day when the Copenhagen apartment was purchased, the parties signed the Property Agreement. The wife explains that the purchase price was fully paid by the husband. But as a foreigner, he was not allowed to own any property in Denmark, and thus the Copenhagen apartment was (and still is) registered in her sole name. The idea behind the Property Agreement is for them to receive the amount that they each had invested in the Copenhagen apartment and the Holsterbro property and to share any future profit equally between them. The husband, on the other hand, claims that it was the wife who suggested to sign the Prenuptial Agreement. However, the original copy is no longer available as it was destroyed by the wife after an argument between them. Hence, only a photocopy (stored in his smart phone) of the Prenuptial Agreement is

provided in this trial. The husband does not elaborate on why the Property Agreement was signed. He merely says that it was drafted by the wife and was designed to set out how the parties are to share the properties. (ii) Applicable law The leading case on prenuptial or post-nuptial agreements is the Court of Final Appeals judgment in *SPH v SA (Forum and Marital Agreements)* [2014] HKLRD 497, in which the English Supreme Court's landmark decision in *Radmacher v Granatino* [2011] 1 AC 534 is cited with approval. The Court of Final Appeal, when referring to *Radmacher* propounded these,

33. In particular, an agreement would carry full weight only if each party had entered into it of his or her own free will, without undue inference or pressure, having all the information material to his or her decision to enter into the agreement and intending that it should be effective to govern the financial consequences of the marriage coming to an end; and the court should give effect to an agreement which was freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to the agreement. Enforcement of the agreement could be rendered unfair by the occurrence of contingencies unforeseen at the time of the agreement or where, in the circumstances prevailing at the time of separation, one partner would be left in a predicament of real need while the other enjoyed a sufficiency.
34. The particular matters which were stressed by the Supreme Court were these. The court when considering the grant of ancillary relief was not obliged to give effect to an agreement between the parties, that would determine the appropriate ancillary relief when a marriage came to an end, for that principle was embodied in the legislation
35. The Supreme Court said: 68 If an ante-nuptial agreement, or indeed a post-nuptial agreement, is to carry full weight, both the husband and wife must enter into it of their own free will, without undue inference or pressure, and informed of its implications. 69 the Court of Appeal was correct in principle to ask whether there was any material lack of disclosure, information or advice. Sound legal advice is obviously desirable, for this will ensure that a party understands the implications of the agreement, and full disclosure of any assets owned by the other party may be necessary to ensure this. But if it is clear that a party is fully aware of the implications of an ante-nuptial agreement and indifferent to detailed particulars of the other party's assets, there is no need to accord the agreement reduced weight because he or she is unaware of those particulars. What is important is that each party should have all the information that is material to his or her decision, and that each party should intend that the agreement should govern the financial consequences of the marriage coming to an end. 71 The first question will be whether any of the standard vitiating factors: duress, fraud or misrepresentation, is present. Even if the agreement does not have contractual force, those factors will negate any effect the agreement might otherwise have. But unconscionable conduct such as undue pressure (falling short of duress) will also be likely to eliminate the weight to be attached to the agreement, and other unworthy conduct, such as exploitation of a dominant position to secure an unfair advantage, would reduce or eliminate it. 72 The court may take into account a party's

emotional state, and what pressures he or she was under to agree. But that again cannot be considered in isolation from what would have happened had he or she not been under those pressures. The circumstances of the parties at the time of the agreement will be relevant. Those will include such matters as their age and maturity, whether either or both had been married or been in long-term relationships before. For such couples their experience of previous relationships may explain the terms of the agreement, and may also show what they foresaw when they entered into the agreement. What may not be easily foreseeable for less mature couples may well be in contemplation of more mature couples. Another important factor may be whether the marriage would have gone ahead without an agreement, or without the terms which had been agreed. This may cut either way. 73 If the terms of the agreement are unfair from the start, this will reduce its weight, although this question will be subsumed in practice in the question of whether the agreement operates unfairly having regard to the circumstances prevailing at the time of the breakdown of the marriage. (my emphasis added) Put in simple terms, the court should give effect to a nuptial agreement which is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement. The overriding consideration remains that of fairness. In her judgment in *V, RHM v V*, ES also known as B, ES, FCMC 10499/2018, [2019] HKFC 279, HHJ Melloy referred to a checklist of questions that was set out in *K v K* (Ancillary Relief: Prenuptial Agreement) (2003) 1 FLR 120, which in my view, may be a helpful aide-de-memoir when considering cases of this nature. The checklist states as follows: Did she [the wife] understand the agreement? Was she properly advised as to its terms? Did the husband put her under any pressure to sign it? Was there full disclosure? Was the wife under any other pressure? Did she willingly sign the agreement? Did the husband exploit a dominant position, either financially or otherwise? Was the agreement entered into in the knowledge that there would be a child? Has any unforeseen circumstance arisen since the agreement was made that would make it unjust to hold the parties to it? What does the agreement mean? Does the agreement preclude an order for periodical payments for the wife? Are there any grounds for concluding that an injustice would be done by holding the parties to the terms of the agreement? Is the agreement one of the circumstances of the case to be considered under s 25? Does the entry into the agreement constitute conduct which it would be inequitable to disregard under s 25(2)(g)? Would I [the judge] be breaking new ground by holding the wife to the capital terms of the agreement? Would it be unjust to hold the parties to the maintenance terms of the agreement? Discussion Mr Chan, counsel for the husband, submits that both the Prenuptial Agreement and the Property Agreement were prepared and drafted by the wife, and that they both agreed to these agreements at the material times. He further distinguishes the Prenuptial Agreement from the Property Agreement, in that the former expressly says that it is to cater for the situation in case of divorce, whereas the latter does not say so. Thus, it is wrong, Mr Chan submits, for the wife to proffer that the Prenuptial Agreement was replaced by the Property Agreement. Both Agreements should stand on their own and should each be upheld by the court, with the end result that the husband should be entitled to keep the Copenhagen apartment (pursuant to the Property

Agreement), and the matrimonial home as well as his other assets such as his pension and cash at his bank accounts (pursuant to the Prenuptial Agreement). In response, the wife explains that at the time when the Property Agreement was prepared and signed, the Prenuptial Agreement was already discarded and thus not in existent. Therefore, it did not occur to her at that time that she needed to mention about the Prenuptial Agreement in the Property Agreement. I hold the following views in respect of these 2 Agreements. First, I am fully alive to the husband's argument that the 2 Agreements were drafted by the wife and the whole arrangement instigated by her. However, putting his case to the highest, neither the Prenuptial Agreement nor the Property Agreement fulfills the requirements set out by the aforesaid case law. It is very clear that they are homemade documents. There is no mentioning of disclosure of material information. There is no suggestion that either party had taken any legal advice of it. Importantly, the wife says in her oral evidence that she herself had not taken any legal advice in respect of both Agreements, and that she is not aware that the husband had taken his. This piece of her oral evidence is not challenged by the husband. It is thus very doubtful if there was a full appreciation of the implications of these Agreements at the time of their signing. Second, at the time when the Prenuptial Agreement was signed, both parties were working with a stable income. However, over the years, their family circumstances have evolved, which is very different from their situation as at the time of the Prenuptial Agreement and/or Property Agreement. Their elder daughter was born in March 2015 by use of the artificial intrauterine insemination. I accept that the wife had to quit her job in December 2013 in order to receive the relevant treatment and later to take care of the elder daughter, during which time the family had not engaged the service of a maid. Their younger daughter, naturally conceived, was born in May 2019. Although she had set up a company in 2014 for trading of baby care products, it was closed down in early 2018 with a loss. She had also worked part time with the Danish Chambers of Commerce between January 2017 and March 2019, but has stopped working since the birth of the younger daughter. It is therefore indisputable that the husband has been the main breadwinner of the family since 2014. It is equally indisputable that there is a clear division of marital roles, with the wife as the main carer of their daughters and home-maker, whereas the husband focusing on developing his career and accumulating his wealth. In such circumstances, it would not be fair to hold the parties, in particularly the wife, to the Prenuptial Agreement and/or Property Agreement. In *Radmacher (supra)*, the English Supreme Court held that,

80. Where the ante-nuptial agreement attempts to address the contingencies, unknown and often unforeseen, of the couple's future relationship there is more scope for what happens to them over the years to make it unfair to hold them to their agreement. The circumstances of the parties often change over time in ways or to an extent which either cannot be or simply was not envisaged. The longer the marriage has lasted, the more likely it is that this will be the case. Once again we quote from the judgment of Rix LJ, at para 73: I have in mind that a pre-nuptial agreement is intended to look forward over the whole period of a marriage to the possibility of its ultimate failure and divorce: and thus it is potentially a longer lasting

agreement than almost any other . Over the potential many decades of a marriage it is impossible to cater for the myriad different circumstances which may await its parties. Thorpe LJ has mentioned the very relevant case of a second marriage between mature adults perhaps each with children of their own by their first marriages. However, equally or more typical will be the marriage of young persons, perhaps not yet adults, for whom the future is an entirely open book. If in such a case a pre-nuptial agreement should provide for no recovery by each spouse from the other in the event of divorce, and the marriage should see the formation of a fortune which each spouse had played an equal role in their different ways in creating, but the fortune was in the hands for the most part of one spouse rather than the other, would it be right to give the same weight to their early agreement as in another perhaps very different example? The answer to this question is, in the individual case, likely to be .

81. Of the three strands identified in *White v White* [2001] 1 AC 596 and *McFarlane v McFarlane* [2006] 2 AC 618, it is the first two, needs and compensation, which can most readily render it unfair to hold the parties to an ante-nuptial agreement. The parties are unlikely to have intended that their ante-nuptial agreement should result, in the event of the marriage breaking up, in one partner being left in a predicament of real need, while the other enjoys a sufficiency or more, and such a result is likely to render it unfair to hold the parties to their agreement. Equally if the devotion of one partner to looking after the family and the home has left the other free to accumulate wealth, it is likely to be unfair to hold the parties to an agreement that entitles the latter to retain all that he or she has earned. 82. Where, however, these considerations do not apply and each party is in a position to meet his or her needs, fairness may well not require a departure from their agreement as to the regulation of their financial affairs in the circumstances that have come to pass. Thus it is in relation to the third strand, sharing, that the court will be most likely to make an order in the terms of the nuptial agreement in place of the order that it would otherwise have made. (my emphasis added) Third, it is indisputable that the major asset accumulated by the husband during the marriage is the matrimonial home, which accounts for almost 43% of their total net assets. Importantly, it is settled law that the matrimonial home had a special position in a marriage, such that in principle, the entitlement of each party to a share of the matrimonial home is the same. In *WHWV v WECH* [2020] 5 HKLRD 408, the wife there sought to vacate the *lis pendens* registered against the matrimonial home (held in her sole name) by the husband at the land registry, the deputy judge of the Family Court allowed the wife's application. The husband there sought an appeal which was allowed by the Court of Appeal. Yuen JA had these to say,
30. What is important however, particularly in the present case, is that the matrimonial home has a special position. Thus, exclusion from matrimonial assets is not generally applicable to the matrimonial home . Ribeiro PJ quoted Lord Nicholls's judgment in *Miller v Miller and McFarlane v McFarlane* that: The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose ... in principle the

entitlement of each party to a share of the matrimonial home is the same however long or short the marriage may have been. Fourthly, the wife paid HKD100,000 with her credit card on 2 January 2017 and another payment by cheque to the estate agency in \$117,770 on 4 January 2017 to facilitate the purchase of the matrimonial home, though the husband says that he had later paid her back the money. She also arranged for a loan of HKD600,000 from her friend, Nelly, on 17 February 2017 in order to pay for part of the purchase price of the matrimonial home. On 29 October 2018, she raised a 2nd loan with Nelly for HKD300,000 in order to reduce the mortgage sum of the matrimonial home. It is hence very clear to me that she had made tangible contribution to the acquisition and/or funding arrangement of the matrimonial home. Upon due consideration, I conclude that it is not fair to hold the parties to the Prenuptial Agreement or the Property Agreement. I reject to uphold and/or give any weight to the 2 Agreements. Needs of the wife and the daughters as a reason for departure from the equality principle The wife states in opening submission that she needs about 5-6 years to build up herself again and return to the labour market in Denmark. She thus seeks that the husband should pay her a lump sum of HKD2,000,000 to cater for her needs during these 5-6 years. I do not accept that it will take her 5-6 years to take up a full-time job in Denmark. This is in direct contradiction to her own evidence that she plans to work part-time 12 months after relocation and full-time when the younger daughter turns 6. My findings on her earning capacity inter-played with her needs are already set out at [REF _Ref95577186 \r \h] to [REF _Ref95577202 \r \h] of this judgment, and I shall not repeat here. I shall reiterate what I have said about the housing needs of the daughters at [REF _Ref95577320 \r \h] above. I conclude that their needs in the rounded up figure of HKD740,000 should be catered for. I shall award the wife roughly 6% more out of the family pot. The KLM air tickets on business class By way of background, schools in Hong Kong were closed due to the Covid-19 pandemic after the Chinese New Year in late January 2020. The wife took the children back to Holstebro on 4 February 2020 with SAS airlines, as she claims that she wanted to take the children away from Covid-19 pandemic. She booked her return flight for 4 March 2020. They stayed in the Holsterbro property. The husband reimbursed her for \$25,228. The HKSAR government later announced on 28 February 2020 that schools would continue to be closed until 20 April 2020. The wife thus changed the date of the return flight to 4 April 2020, without the consent of the husband. However, on 5 March 2020, SAS informed her that all its airlines to Hong Kong was suspended and thus her return flight was cancelled. She then on her own motion purchased air tickets with KLM as follows: on business class from Denmark to Hong Kong on 30 April 2020; On economy from Hong Kong to Denmark on 13 April 2021. The total costs were DKK36,760 (or HKD\$42,397.83) which was settled by her credit card. The wife says that she chose to fly back to Hong Kong on business class with the daughters because of the wider distances between the seats, reducing the risk of transmission of virus during the COVID-19 pandemic. She says that under the husband's Hong Kong employment contract, he was entitled to Home Leave Allowances covering his spouse and his children, to be calculated by reference to 2 business class tickets for each family member. For the calendar year of 2018, he received a total of \$179,620. Hence, she should receive her half share of the Home Leave Allowances, but the

husband refused to pay her. The husband objects to reimburse the wife for various reasons, such as: there was in fact no need to go to Denmark, as their Covid-19 situation was even worse than that of Hong Kong at the material time (Denmark got 390 cases on 7 April 2020, whereas Hong Kong had only 82 cases on 29 March 2020); The wife and the children could have travelled on premium economy rather than business class; He had in fact offered the wife and the children to fly on business class of Turkish Airline with sufficient spaces between seats and a stop-over in Istanbul, but this was rejected by the wife. In my view, although there were occasions that the family flew on business class, I do not accept this was a usual travelling norm of the family during their marriage. Importantly, the wife and the children flew on premium economy when they left Hong Kong for Denmark in February 2021 when the COVID-19 pandemic has already struck the city and the rest of the world. Also, it is very telling that she purchased only premium economy for her and the children to leave Hong Kong for Denmark for relocation (it is just later she decided to upgrade the tickets to business class). Against such backdrop, I am of the view that flying on business class is not commensurate with the average middle class living standard of this family. Furthermore, it is logical to say that the Home Leave allowances must have been taken into account in the husband's bank balance. There is no allegation that he received the allowances and parked it with somebody else or somewhere. Hence, it would be prone to double counting if the court is to award the wife a separate sum of the business class tickets. In conclusion, her claim for reimbursement of the air tickets is rejected. The wife's MPS By her MPS Summons, the wife seeks a sum of HKD5,000 as her MPS to support [her] expenses and the maintenance of the matrimonial home. This amount is increased to DKK14,000 as at the trial. By his affidavit dated 14 August 2020 in response to the MPS Summons, the husband expressly agreed to pay MPS of HKD5,000 to the wife. The wife does not object in the trial that he had been paying her HKD5,000 per month as at the trial. The wife returned to Denmark in August 2021. Her needs from September 2021 onwards upon relocation to Denmark is already analysed by me in the above. I repeat my findings at [REF _Ref95577186 \r \h] to [REF _Ref95577202 \r \h]. There is thus no more need to make a separate and/or additional order for MPS. Deciding on the result For all the matters aforesaid, I find that the total net assets of the parties are worth about HKD12,032,754. To cater for the needs of the wife and the daughters before she can resume full-time work after March 2025 (ie when the younger daughter turns 6), they need an expenditure requirement of DKK592,244 (rounded up to HKD740,000). This forms a good reason for departure from the equal sharing principles. The wife shall share 56% of the total assets whereas the remaining 44% shall be given to the husband. Put in figures, the wife should receive roughly HKD6,738,342 out of the total assets of HKD12,032,754, whereas the husband would have about HKD5,294,411. According to the asset table at [REF _Ref95578155 \r \h], the wife has HKD5,114,723 under her ledger. She needs an equalisation money of HKD1,700,564. I shall let the wife keep the Holstebro property, as I have ruled that it will be the home base of her and the daughters. I shall also let her keep the Copenhagen apartment at her disposal. She may sell it or keep it for renting out. In case she chooses to rent it out, I believe the net rental income (after deducting the management fee/property tax etc), together with her full-time job's income

after March 2025, would equip her sufficiently to share the expenses of the daughters equally with the husband, as well as to pay the mortgage of the Holstebro property on her own without further contribution by the husband, as this would not be fair to order the husband to continue to contribute to her mortgage (which will result in a capital gain on her part). The matrimonial home will have to be sold, with the net sale proceeds to be shared by the parties as to roughly 33.2% to the wife and the remaining of 66.8% to the husband. I am aware that by awarding the wife 33.2% of the sale proceeds of the matrimonial home, she may receive about HKD6,734,436 at the end of the day, upon the sale of the matrimonial home, which is about HKD3,906 less than the said 56% set out at [REF _Ref95998269 \r \h]. However, I have to stress that the court is entitled to take a broad brush approach and reject to adopt a too technical and mathematical calculations down to minute details. I am of the view that the aforesaid arrangement and sharing is fair in all the circumstances of the case. There should then be a clean break between the parties upon the sale and sharing of sale proceeds of the matrimonial home. The parties should be allowed to retain his/her other assets under their respective names. Costs Neither open proposal is accepted by the court. Their respective case on the Prenuptial Agreement and/or Property Agreement is not accepted by the court, either. It is clear that neither party is the overall winner of this case. Hence, I conclude that there should be no order as to costs of the ancillary relief matters, including this trial and the MPS Summons and all costs reserved. Conduct of sale In case the matrimonial home is ordered to be sold, the wife insists that she shall have the conduct of the sale. She says that if the husband shall have conduct of sale, he will simply delegate all the work to his lawyers who will charge a lot of legal costs. She says that she will fly back to Hong Kong with the daughters to deal with the intended sale. The husband, on the other hand, says that he shall appoint his solicitors or can arrange his ex-colleague and friend (Mr Yip) to liaise with the estate agents. He is agreeable to let the solicitors stakehold the sale proceeds until completion or pay the sale proceeds into court. I do not think it is advisable for the wife to fly back to Hong Kong with the daughters to be in charge of the sale of the matrimonial home, because in order to do so, she confesses that the daughters would have to skip schools for an unknown period of time. This is not in their interest. Further, with travel restrictions in place in Hong Kong and the fluctuation in the development of the COVID-19 pandemic, it is not moonshine to say that both parties may face difficulties in flying back to Hong Kong from time to time to handle the logistics concerning the sale of the matrimonial home. Hence, the husband's suggestion is more feasible. He shall have the conduct of sale. But to address to the wife's concern, I shall put a cap to the legal costs to be incurred in respect of the sale of the matrimonial home. A broad brush approach will be taken and the legal costs shall be capped at \$50,000. Any amount above \$50,000 shall be absorbed by the husband himself. I shall also hold him to an undertaking that (i) he shall provide to the wife a copy of preliminary sale and purchase agreement within 48 hours upon signing the same, and a copy of formal sale and purchase agreement and assignment within 7 days upon signing the same, by way of an email; and (ii) he shall arrange that all deposits and money received from the purchaser(s) of the matrimonial home be stakeheld by his conveyancing solicitors until completion, at which time the said solicitors shall pay the sale

proceeds to the parties according to the apportionment set out in this judgment. Order Due to the matters set out aforesaid, I will make the following order: The husband shall pay the wife for the maintenance of the daughters in the sum of DKK9,900 per month (ie DKK4,950 each daughter per month) commencing from 1 March 2022 and thereafter on 1st day of each succeeding month until the daughters each reaches 18 years of age or completes her full time education, whichever is the latter. Such payment shall be made into the wife's designated bank account (details to be provided in the draft order); The matrimonial home shall be sold at no less than HKD11,380,000 or at market price agreed by both parties within 6 months upon the grant of decree absolute; The husband shall have the conduct of sale, provided that the legal costs to be incurred shall be capped at \$50,000; Upon deducting all necessary expenses (including but not limited to the estate agency fee and legal fee), the net sale proceeds shall be apportioned in the following manner: 33.2% of the net sale proceeds be apportioned to the wife; 66.8% of the net sale proceeds be apportioned to the husband. Subject to the above clauses (2) to (4), each party shall keep the assets now under their respective names, in particular the wife shall retain the Holstebro property and the Copenhagen apartment; Within 14 days from the date of decree absolute, the husband shall pay the wife a lump sum of HKD150,000 to cover the relocation costs of her and the daughters; Upon compliance of the above clauses (2) to (4), all other ancillary relief claims between the parties do stand dismissed; No further order be made in respect of the wife's MPS Summons; there be a nisi order that no order as to costs of the ancillary relief matters, including the wife's MPS Summons, this trial and all previous costs reserved order. Such nisi order shall be made absolute within 14 days of this judgment; There be liberty to apply in respect of the implementation of this order. The above order is made upon the husband's following undertakings: he shall provide to the wife a copy of preliminary sale and purchase agreement within 48 hours upon signing the same, and a copy of formal sale and purchase agreement and assignment within 7 days upon signing the same, by way of emails; he shall arrange that all deposits and money received from the purchaser(s) of the matrimonial home be stakeheld by his conveyancing solicitors until completion, at which time the said solicitors shall pay the sale proceeds to the parties according to the apportionment set out at [REF _Ref95579652 \r \h] above; he shall pay 50% of daughters class trips, exchange programs and boarding school expenses, after being consulted and within 7 days against receipts in English is provided. A penal notice is endorsed with this court order, and personal service of this court order shall be dispensed with. Lastly, I grant the declaration under section 18 of the MPPO that I am satisfied with the arrangement of the daughters. This court order shall be drawn up by the husband's solicitors for approval forthwith. Grace Chan District Judge The petitioner (wife) present and acting in person Mr Sunny Chan instructed by Messrs Ravenscroft & Schmierer for the respondent (husband) The parties reported to the court on 1st day of trial that the agreed net value of the Holsterbo property was DKK1,420,629. Using the agreed exchange rate (DKK1 = HKD1.2393), the correct equivalent should be HKD1,760,585, but not HKD1,747,374. EUR1 = HKD9.2122. Narrative affirmation of the wife [A/56-57/ 100-103]. [B2/241]. Husband's 4th affirmation and [B2/239]. Clause 3 of the employment contract [B2/233]. [B2/253]. EUR1 = HKD9.2122. [A/44/ 37]. See

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Prepared on 26 October 2026 · Esheria