



LEGAL & INDUSTRY UPDATE – OCTOBER 2026

In this publication we look at:

- GD v Minister of Home Affairs and Others 2026 ZACC 39

PENSION INTERESTS AND DIVORCE: A WIDER DOOR, NOT AN AUTOMATIC SPLIT

The Constitutional Court has removed a significant barrier to pension interest redistribution on divorce. In GD v Minister of Home Affairs and Others 2026 ZACC 39, delivered on 9 October 2026, it declared section 7(7)(c) of the Divorce Act unconstitutional and invalid with immediate effect. Pension interests can now be considered for redistribution in marriages out of community of property without accrual concluded on or after 1 November 1984.

For retirement funds and administrators, the judgement does not automatically award anyone half of their spouse's pension interest. It expands the circumstances in which a court may make an award, using the existing statutory framework.

BEFORE THE JUDGEMENT: A MISMATCH IN THE LAW

To understand what changed, it's important to separate the matrimonial property regime from the redistribution remedy.

Spouses married out of community of property without accrual generally retain separate estates. However, section 7(3) of the Divorce Act permits a court, on application and subject to statutory requirements, to order a just redistribution of assets.

Historically, that remedy was restricted to qualifying marriages concluded before 1 November 1984. In EB (born S) v ER (born B); KG v Minister of Home Affairs, decided in 2023, the Constitutional Court removed that exclusion for post-1984 marriages through interim relief.

Redistribution remains conditional. Under section 7(4), the applicant must show a direct or indirect contribution to maintaining or increasing the other spouse's estate. Section 7(5) supplies further considerations for the court's assessment. Domestic work and support that enable a spouse's wealth accumulation can therefore matter; an unequal balance sheet alone does not establish an automatic entitlement.

But the earlier judgement left a pension specific obstacle untouched.

Section 7(7)(a) deems pension interest to form part of a spouse's assets when determining patrimonial benefits on divorce. Section 7(8) provides the mechanism for a court directed pension interest allocation involving the fund. Section 7(7)(c), however, excluded marriages out of community of property without accrual concluded on or after 1 November 1984 from that deeming provision.

The result was an awkward mismatch: a spouse could seek redistribution under section 7(3), but pension interest remained excluded because of the marriage date.

WHAT THE COURT DECIDED

Mr and Mrs D married out of community of property without accrual in April 2004. Mrs D instituted divorce proceedings in October 2020. She alleged that managing the family and supporting her husband's business and personal endeavours had contributed materially to his estate, including substantial pension interest.

She challenged the pension exclusion separately from her redistribution claim. Importantly, the Constitutional Court was not being asked to determine her eventual share.

The Court found that, after KG, no legitimate purpose remained for distinguishing between pre- and post-1984 marriages when considering pension interests for redistribution.

It also recognised the discriminatory consequences for women, whose unpaid domestic work and household expenditure can enable their spouses to accumulate retirement savings while leaving them with smaller pensions of their own. The exclusion violated constitutional equality protections.

AFTER THE JUDGEMENT: WHAT CHANGES AND WHAT DOESN'T

Pension interest can now enter the asset pool considered for a redistribution order in qualifying marriages without accrual, regardless of when the marriage was concluded.

That does not convert these marriages into marriages with accrual, undo antenuptial contracts generally, or prescribe a 50:50 division. The court must still apply the redistribution requirements and determine what is just and equitable. The spouses' chosen matrimonial arrangements remain relevant to that assessment.

The declaration took effect immediately. Funds need not await legislation before recognising the removal of the exclusion. The separate suspension relating to the earlier EB/KG decision runs until 10 April 2027, with its interim relief remaining operative; it does not postpone this judgement's effect.

The order also protects earlier legal consequences. The Court expressly stated that finalised divorces and wound-up matrimonial estates would remain undisturbed.

Administrators should therefore not treat the judgement as authority to reopen completed divorce allocations.

WHAT FUNDS AND ADMINISTRATORS SHOULD DO NOW

For retirement funds, it is important to note that there are no new payment mechanisms, but more redistribution orders may now involve pension interests. The judgement records the same distinction. Existing implementation principles continue to apply.

The practical response should focus on the following:

- **Review screening guidance.** A post-1984 marriage without accrual should no longer, by itself, trigger rejection of a pension interest redistribution order.
- **Retain careful order scrutiny.** A broader opportunity to claim is not a payment instruction. Check that the order clearly and unambiguously authorises the relevant pension-interest allocation.
- **Keep responsibilities separate.** Courts determine entitlement and equitable redistribution; funds implement competent orders under the applicable framework.
- **Update communications.** Explain that pension interest may now be considered, but no automatic share arises.
- **Escalate transitional uncertainty.** Where an order involves earlier acts, settlements or disputed historical consequences, obtain legal review rather than assume the judgement applies retrospectively.

These are implementation priorities flowing from the expanded scope of redistribution, not new statutory benefits or a wholesale redesign of divorce administration.

The operational ask is therefore quite straightforward: remove the obsolete marriage date barrier without relaxing the controls around payment. Access to a judicial remedy has widened; the need for a clear, competent and implementable court order remains.