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**Our ref: PFA/WE/5407/05/VIA**

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”) – PIETER HUGO v CENTRAL RETIREMENT ANNUITY FUND (“the fund”) & SANLAM LIFE INSURANCE LIMITED (“Sanlam”)**

1. This matter concerns the payment of your pension in a single lump sum. The complaint was received by this office on 27 September 2005. On 30 September 2005 letters were dispatched to the respondents giving them until 24 October 2005 to file their respective responses to the complaint. A response was received from Sanlam, in its capacity as the administrator of the fund, on 28 October 2005. Sanlam did not submit a response in its capacity as the underwriting insurer of the fund. On 31 October 2005 a copy of the response was sent to you for a reply by 14 November 2005. A reply was not received from you.
2. In December 2005 an announcement was made of a Statement of Intent between the Minister of Finance, on the one hand, and the Life Offices Association and five large life assurers on the other, in terms of which the life assurers would commit themselves to certain minimum standards in respect of retirement annuity funds and endowment policies. Although the statement is not binding on this office, we nevertheless referred all retirement annuity fund complaints (including this one) back to the management boards and life assurers administering these funds with a view to facilitating an amicable resolution of the complaint between the parties without the intervention of this office. This matter was referred for settlement to the fund and administrator on 23 January 2006. The parties were given 30 ordinary days to settle the matter failing which this office would determine the complaint in the ordinary course. I understand that your complaint was not settled.

The facts

3. On 1 November 1985, at the age of 38, you became a member of the fund.

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V Ngalwana (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrosbree (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mballo (Assistant Adjudicator), R Maharaj (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator)

Office Manager: L Manuel

The fund is administered by Sanlam (“the insurer”) which is also the investor of its funds. Your monthly recurring contributions were invested in a Sanlam policy (“the policy”) with policy number 9050926x2.

4. When you turned 55, in 2002, you retired from the fund and became entitled to the payment of a retirement benefit of R41 800.98. You elected to take R13 933.66 (which constitutes one-third of your benefit) in cash and to use the balance of R27 867.32 to purchase a pension from Sanlam.
5. You commenced receiving a quarterly pension of R828.50 with effect from 1 June 2002.

#### The complaint

6. Your complaint is that you would like your pension to be capitalized and paid as a lump sum.

#### The response

7. Mr Christo Bester of Sanlam states that the policy made it clear that you would be entitled to commute only one third of the proceeds on retirement and that the balance had to be used to purchase an annuity. Mr Bester refers to the following section in the policy document:

“Voordele

- 1 R21655 plus bonusse is beskikbaar op 1 November 2012 mits die versekerde nog lewe, en moet aangewend word vir lyfrente op die lewe van die versekerde.

Hoogstens een derde van die lyfrente mag tot ‘n enkelbedrag gekommuteer word mits die versekerde dit voor of op die uitkeerdatum skriftelik versoek.”

#### Determination and reasons therefor

8. The fund or board of trustees can only do that which is set forth in the rules (see section 13 of the Act and *Tek Corporation Provident Fund and Others v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-F and *Mostert NO v Old Mutual Life Assurance Company (SA) Ltd* [2001] 8 BPLR 2307 (SCA) at paragraph [30]).
9. Pursuant to the requirements of the Income Tax Act, part 8.3.1 of the fund’s rules reads:

**“Commutation**

3.1 At most one-third of the pension intended in the preceding paragraph 1.1, can be commuted to a lump sum, but if the pension before commutation does not exceed R1 800 per year or any other amount determined from time to time by the Minister of Finance in the Government Gazette, the full pension can be commuted."

10. In terms of the above, a maximum of one-third of the pension may be commuted to a lump sum except where the annual amount of the annuities does not exceed R1 800.

11. Mr Sammy Gallant of Sanlam states that the annual amount of your annuities is R3 314.00. Therefore in terms of part 8.3.1 and the Income Tax Act, you are not entitled to commute your entire pension to a lump sum.

12. In the result your complaint cannot succeed.

DATED AT CAPE TOWN ON THIS THE            DAY OF            2007.

Yours faithfully,

Vuyani Ngalwana  
**Pension Funds Adjudicator**