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Please quote our ref: PFA/FS/3228/05/SG (CN)

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 ("the Act"): JT PHUROE v CENTRAL RETIREMENT ANNUITY FUND & SANLAM LIFE INSURANCE LIMITED

Introduction

- [1] This matter concerns the payment of a retirement benefit to a member of a retirement annuity fund who has not yet reached the age of 55 years.
- [2] The complaint was received by this office on 28 September 2005, and a letter acknowledging receipt thereof sent to you on 13 October 2005. On the same date, a letter was dispatched to the respondents requesting them to submit a response by no later than 3 November 2005. The response was duly received on 3 November 2005 and a copy thereof was forwarded to you for a reply on the same date. Your reply was received on 16 March 2006.
- [3] After considering all the written submissions, I consider it unnecessary to hold a hearing in this matter. My determination and the reasons therefor are set out below.

The complaint

- [4] You are aggrieved by the refusal of the fund to pay you a retirement benefit before the age of 55 years.

The response

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), R Maharaj (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

- [5] The fund states that since you were born in 1957 and have not yet reached the age of 55 years, it cannot advance the retirement date and pay you a benefit. It relies on its rules as authority for its refusal.

Determination and reasons therefor

- [6] As a registered retirement annuity fund, the fund is governed by the provisions of the Income Tax Act and the Pension Funds Act. The relevant provision of the Income Tax Act for present purposes is the definition of "retirement annuity fund" contained in section 1(b)(v), which requires that, in order for such a fund to be approved by the Commissioner, its rules must provide that no member shall become entitled to the payment of an annuity after she or he reaches the age of 70 years or before the age of 55 years. The only exception to the requirement that no annuity shall be paid to a member who is under the age of 55 years is if the member has become totally and permanently unable to perform his/her duties as a result of physical or mental incapacity.
- [7] The rules of the fund provide that a retirement benefit shall become payable to a member when the member reaches normal retirement age, and "normal retirement age" is defined as a date on or after the member's 55th birthday, but before his 70th birthday.
- [8] As you have not yet reached the age of 55 years, you are not entitled to payment of a benefit from the fund. The fund would be acting contrary to its rules were it to pay you a benefit before that age. Furthermore, it would stand the risk of not being approved by the Commissioner for income tax purposes.
- [9] Section 13 of the Act provides that the rules of a registered fund are binding on the fund, its members, beneficiaries, shareholders and officials alike. It is also trite law that because of the binding nature of its rules, a fund may only do what it is authorized to do by its rules. If what it proposes to do, or is asked to do, is not provided for in the rules, the fund may not do it. See *Tek Corporation Provident Fund & Others v Lorentz* [2000] 3 BPLR 227 (SCA) at paragraph [28].
- [10] In the result, the complaint is dismissed.

SIGNED IN CAPE TOWN ON THIS DAY OF 2007

Yours faithfully

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**VUYANI NGALWANA
PENSION FUNDS ADJUDICATOR**