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Please quote our ref: PFA/FS/6646/2005/NS

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) TR MOROLLANA v SOUTH AFRICAN LOCAL AUTHORITIES PROVIDENT FUND (“the fund”) / OLD MUTUAL ASSURANCE COMPANY (SA) LIMITED (“Old Mutual” or “the administrator”) and SETSOTO MUNICIPALITY (“the employer”)**

### **Introduction**

- [1] Your complaint concerns the rate at which your monthly contributions to the fund by yourself and the employer are calculated. The complaint was received by this office on 30 November 2005 and a letter acknowledging receipt thereof was sent to you on 8 December 2005. On 8 December 2005 letters were dispatched to the respondents requesting them to submit a response to the complaint by no later than 29 December 2005. On 8 February 2006 a response was filed by Old Mutual on behalf of the fund. A copy of the response was sent to you on 9 May 2006 for a reply by no later than 31 May 2006. A reply was received from you on 5 June 2006.
- [2] After considering all the written submissions, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

### **Complaint**

- [3] You commenced service with the employer in 2000, and you became a

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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), 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)

Office Manager: L Manuel

member of the fund on 1 June 2002 by virtue of your employment. You are aggrieved by the rate at which your monthly contributions to the fund by yourself and the employer are calculated. You state that you have discovered that your employer is deducting 10% of your monthly salary in respect of contributions that are made to the fund and your employer has also been contributing at the same rate. You state that according to the law you are expected to contribute at a rate of 13.75% while your employer is expected to contribute at a monthly rate of 15%. You state that you have suffered financial loss as a result of your employer's failure to conform with the law as you understand it.

### **Response**

- [4] Old Mutual states that the fund is a defined contribution arrangement and members have the option to contribute at different rates. It states that from the commencement of your membership you have been contributing at a rate of 10% of your monthly salary and your employer has also been contributing at the same rate. Old Mutual advises that a risk premium is included in the 10% contribution that is made by the employer on your behalf.
- [5] Old Mutual states that you have discovered that other councillors and their respective employers are contributing to the fund at a higher contribution rate of about 15%. It states further that the fund does not have authority to compel employers to contribute at a specific rate on behalf of its members. In its opinion the matter ought to be resolved between yourself and the employer. It says that should you be successful in such negotiations the additional contribution will be allocated to your fund credit.

### **Determination and reasons therefor**

- [6] Section 13 of the Act, states that the rules of a registered fund are binding on the fund's members, shareholders and officers thereof, and any person claiming under the rules, or whose claim is derived from a person so claiming. Furthermore, the trustee's powers are circumscribed by the rules of the fund (see *Tek Corporation Provident Fund and Others v Lorentz* [2002] 3 BPLR 227 (SCA) at 239 D-H).
- [7] Rule 3.1.2 of the fund rules regulates the rate of contributions to the fund by a member in the following terms:

“Rate of Contributions

A MEMBER'S current contribution for each month shall be equal to a minimum of 5 per centum of 1/12<sup>th</sup> of his salary ANNUAL SALARY.”



# PENSION FUNDS ADJUDICATOR