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Please quote our reference: PFA/GA/6962/2006/RM

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 of 1956 (“The Act”): P STEVENSON (“complainant”) v OLIVETTI PENSION FUND (“first respondent”); LIBERTY GROUP LIMITED (“second respondent”) AND SANLAM LIFE INSURANCE LIMITED (“third respondent”)**

1.0. Introduction

- 1.1 The complaint concerns the non-payment of a spouse’s pension following the death of a pensioner of the first respondent.
- 1.2 The complaint was received by this office on 17 January 2006. A letter acknowledging receipt of the complaint was sent on 7 February 2006. On the same date letters were dispatched to the respondents, giving them until 28 February 2006 to file responses to the complaint. A response from the second respondent, which was forwarded to the complainant, was received on 16 February 2006. A brief response from the third respondent was received on 2 March 2006. The complainant sent a reply on 23 March 2006.
- 1.3 After reviewing the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2.0 Factual Background

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M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E de la Rey (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator)

Office Manager: L Manuel, Financial Manager: F Mantsho, Accountant: R Soldaat

2.1 Mr. J.B. Stevenson was an employee of Olivetti Solutions (“the employer”). By virtue of his employment he was a member of the first respondent. Mr. Stevenson was retrenched by the employer on 31 March 1998. Consequently the first respondent became liable to pay a retirement benefit to Mr. Stevenson.

2.2 The third respondent was the administrator of the first respondent at the time. Mr. Stevenson chose to take a one-third cash lump sum of R300 082. The remaining two-thirds was used to purchase a pension annuity which commenced paying R3 213.90 from 1 April 1998. The third respondent noted in its letter to Mr. Stevenson confirming his pension benefit that the pension was payable for as long as he lives. In the event of Mr. Stevenson’s death within five years of his retirement (called the guarantee period) the pension will be paid until the end of the guarantee period. Lastly, the third respondent noted that in the event of Mr. Stevenson’s death after the expiry of the guarantee period, pension payments will cease immediately.

2.3 Mr. Stevenson married the complainant on 26 June 1998. He passed away in September 2005 and pension payments ceased thereafter.

### 3.0 Complaint

3.1 The complainant raises several issues in her complaint, but the crux of her complaint is that she is not receiving a spouse’s pension after the death of Mr. Stevenson.

### 4.0 Responses

4.1 The second respondent responded to the complaint by advising that Mr. Stevenson was placed on early retirement with effect from 1 April 1998. He was a widower at the commencement date of the pension and therefore there was no provision made for a spouse’s pension. The pension purchased was compulsory. Therefore, it could not be changed after the commencement date. Mr. Stevenson got married on 26 June 1998, after the commencement date of his pension. The pension could not be altered to include a spouse’s pension.

4.2 The third respondent merely advised that it no longer administers the first respondent. It did however attach a copy of the pension notification letter that was sent to Mr. Stevenson, the pertinent section whereof was mentioned in paragraph 2.2 *supra*.

### 5.0 Determination and reasons therefor

- 5.1 The crux issue for determination in this complaint is whether the complainant was entitled to receive a spouse's pension following the passing away of Mr. Stevenson in September 2005.
- 5.2 The first respondent is a registered fund in terms of the provisions of the Act and it is bound by its rules in the same way as its members, officials, shareholders and persons claiming under the rules (see section 13 of the Act). By virtue of the binding nature of the rules, the trustees of the first respondent, the members, the employer and any service provider such as the administrator of the first respondent may only do that what is set forth in the rules (see *Tek Corporation Provident Fund & Another v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-E).
- 5.3 The relevant section of the first respondent's rules pertaining to Mr. Stevenson's retirement is section 5.4. It reads as follows:

**“5.4 Benefit on early retirement in good health**

5.4(1) A retirement benefit becomes payable when a Member's service with the Employer is terminated either by himself/herself or by his/her Employer during the ten years before the Normal Retirement Date or due to retrenchment. Provided that the benefit in terms of Rule 5.5(1) is not granted to him/her and the Employer deems the termination of service to be early retirement.

5.4(2) A Member's retirement benefit in terms of the preceding sub-Rule is an annual pension as determined in Rule 5.3(2), but decreased by 0.25% in the case of a Senior Member and 0.125% in the case of any other Member for every complete month by which the Member's service is terminated before the Normal Retirement Date provided that if a Member is retrenched the pension will not be decreased.

This pension is payable to the Member from the date on which his/her service is terminated until his/her death.”

(emphasis added)

- 5.4 It is clear from the above-quoted rule that the pension that was payable to Mr. Stevenson was to end on his passing away.
- 5.5 With regard to the payment of benefits to beneficiaries of pensioner members who pass away after retirement the relevant section of the rules is section 6.4. The relevant sections read as follows:

**“6.4 Death after retirement**

- 6.4(1) If a Member, who receives a pension from the Fund as result of retirement from the service of the Employer dies, the following provisions apply:

### **Pension**

- 6.4(2) Payment of the pension continues to his/her Dependants and Nominees until the Term Certain expires and if this term has already expired, the pension terminates at the Member's death.

### **Spouse's pension**

- 6.4(3) After cessation of the pension in terms of Rule 6.4(2) a pension equal to 50% of what the Member's pension without commutation would be at its cessation, is paid to the Qualifying Spouse (if any) until his/her death."

- 5.6 A qualifying spouse is defined in section 6.1 as follows:

**"Qualifying Spouse** in regard to a Member means the woman/man with whom the Member at the time of his/her death was joined in Marriage, and if the Member at the time of his/her death was joined in Marriage with two or more spouses, only that one of them whom he/she first married, provided that-

- (a) the spouse is a Dependant; and
- (b) the Marriage took place before the Normal Retirement Date and before retirement."

- 5.7 Applying the facts to the rules, it is clear that the first respondent was not liable to pay any benefit to the complainant. This is the case for the following reasons:

5.7.1 It is common cause that the complainant was married to Mr. Stevenson after he went on retirement.

5.7.2 In terms of part (b) of the definition of a "qualifying spouse" the marriage took place after Mr. Stevenson had retired. Therefore, the complainant does not qualify as a "qualifying spouse."

5.7.3 Therefore, the complainant does not qualify for a spouse's pension in terms of sub-rule 6.4(3).

5.7.4 The complainant also does not qualify for the remainder of the pension payments (if any) in terms of sub-rule 6.4(2). The "term certain" is a period of five years from the date of Mr. Stevenson's retirement. He retired in 1998 and passed away in 2005.

