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Please quote our ref: PFA/KZN/19520/07/CN

**RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 25 OF 1965 (“the Act”): S RAMANANDH (“the Complainant”) v ALEXANDER FORBES RETIREMENT FUND (PARTICIPATING EMPLOYER: JOHN DIVERSEY SA (PTY) LTD (“the Respondent”)**

Introduction

1. This complaint relates to the distribution of the proceeds of a death benefit, specifically the decision of the board of the fund to allocate a greater amount to the deceased’s minor son than what was allocated to the deceased’s widow, contrary to the deceased’s wishes as expressed in the nomination form.
2. The complaint was received by this office by this office on 12 November 2007, and a letter acknowledging receipt thereof sent to the complainant on 22 November 2007. On the same date a letter was dispatched to the respondent requesting it to submit its response by no later than 21 December 2007. The response was received on 20 December 2007, and was subsequently forwarded to the complainant for a reply. The complainant’s reply was received on 8 February 2008.
3. After reviewing the written submissions received, it is considered unnecessary to hold a hearing in this matter. The determination and the reasons therefor are set out below.

Factual background

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M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), Z Camroodien (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), M Qhali (Assistant Adjudicator),

Office Manager: L Manuel, Senior Accountant: F Mantsho

4. The complainant is the widow of the late Mr. Sudesh Ramanandh (“the deceased”), who, during his lifetime, was a member of the respondent. The deceased had on 31 March 2003, completed a beneficiary nomination form wherein he had indicated that the complainant should receive 75%, and the minor child 25%, of any benefit that would become payable by the respondent upon his death. He passed away in November 2003, and pursuant to his death, a death benefit lump sum in the amount of R622 894.17 became available for distribution among his dependants and nominated beneficiaries.
5. The board of trustees of the respondent identified the complainant and the deceased’s minor son as his dependants and accordingly allocated a lump sum of R194 606.32 to the complainant and an amount of R428 287.85 to the deceased’s minor son. The latter’s portion of the benefit was paid into a trust, with the complainant as the minor child’s guardian receiving a monthly amount from the trust to cover his maintenance needs.

#### The complaint

6. The complainant is aggrieved by the board of the respondent’s apparent disregard of the deceased’s wishes, and is contending that the board should reconsider its decision and pay her the remaining 50% as set out in the nomination form.
7. She further states that as the minor child has since been adopted by her current husband and is being fully supported by him, there is no longer any justification for him to be awarded such a generous portion of the death benefit.

#### The response

8. The respondent submits that this complaint having been lodged more than three years from the date of the board’s decision has become both extinguished by the provisions of the Prescription Act and time-barred by the provisions of section 30I(1) of the Pension Funds Act.
9. On the merits, it is stated that the distribution is equitable as it was effected fully in accordance with the provisions of section 37C(1) of the Act.

#### Determination and reasons therefor

10. The provisions of section 30I preclude the Adjudicator from investigating and adjudicating upon any complaint if the act or omission to which it relates occurred more than three years prior to the receipt of the written

