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Please quote our ref: **PFA/GA/36078/2009/AM**

**REGISTERED MAIL**

Dear Sir/ Madam

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – FINLOGIC ( o.b.o SUBARU PRETORIA (PTY) LTD T/A SUBARU CENTURION, SANDTON SAAB (PTY) LTD, SUZUKI BRYANSTON (PTY) LTD, CHANA SOUTH AFRICA (PTY) LTD) (“complainant”) v MOTOR INDUSTRY PROVIDENT FUND (“first respondent”); MOTOR INDUSTRY FUND ADMINISTRATORS (PTY) LTD (“second respondent”) AND MOTOR INDUSTRY BARGAINING COUNCIL (“third respondent”)**

**[1] INTRODUCTION**

- 1.1 The complaint concerns the withdrawal of the exemption to participate in the first respondent that was granted in favour of the employers by the third respondent.
- 1.2 The complaint was received by this Tribunal on 12 August 2009. On 2 June 2010 it was referred to conciliation in order to afford the parties an opportunity to settle the matter. However, the matter was not resolved and it was referred for adjudication.

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The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956. The service offered by the Pension Funds Adjudicator is free to members of the public.

Centralised Complaints Helpline for All Financial Ombud Schemes 0860 OMBUDS (086 066 2837)

- 1.3 After considering the written submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

## **[2] BACKGROUND FACTS**

- 2.1 This complaint is lodged by Finlogic (Pty) Ltd, an authorised financial service provider on behalf of the following employers, who are its clients: Subaru Pretoria (Pty) Ltd t/a Subaru Centurion, Sandton SAAB (Pty) Ltd, Suzuki Bryanston (Pty) Ltd and Chana South Africa (Pty) Ltd (“employers”).
- 2.2 The employers are participating employers in their chosen in-house retirement funds and do not participate in the first respondent. By virtue of their participation in their in-house retirement funds, an exemption certificate from participating in the first respondent was duly issued to them on 18 August 2009 by the third respondent. However, on 8 December 2009, this certificate was withdrawn by the third respondent. The reason provided by the third respondent for its withdrawal of the exemption certificate is that the in-house retirement funds, to which the employers participate, are not the funds that were initially approved by it. Subsequently, the third respondent requested the employers to participate in the first respondent.

## **[3] COMPLAINT**

- 3.1 The employers are aggrieved by the withdrawal of an exemption to participate in the first respondent that was granted to them by the third respondent on 18 August 2009. The employers dispute the reasons submitted by the third respondent for its withdrawal of the exemption. They submit that the reasons cited by the third respondent for its withdrawal of the exemption are unfounded.

3.2 Thus, the complainant requests this Tribunal's intervention in this regard.

#### [4] **RESPONSES**

##### *First respondent's response*

4.1 The second respondent submitted a response on behalf of the first respondent in its capacity as the administrator. It submits that this matter relates to an exemption issue which pertains to the Motor Industry Bargaining Agreements. The employers mentioned in the complaint are participating employers in the Motor Industry who are seeking exemption from contributing to the first respondent. It states that since this type of issue forms part of the collective bargaining agreements, it has no interest in this ongoing dispute and the matter should therefore be referred to the Council.

4.2 In a subsequent response, the second respondent confirms that an exemption from participating in the first respondent was granted in favour of the employers but was subsequently withdrawn by the third respondent due to the fact that the employers' broker, who is the complainant in this matter, created retirement annuities which were in contravention of the conditions of the exemption that was initially granted. The third respondent's decision was subsequently referred to the Labour Court for review. The third respondent opposed the review application and filed the necessary papers.

##### *Third respondent's response*

4.3 The third respondent confirms that the complainant has taken this matter to the Labour Court for review of its decision and it is currently awaiting a hearing date. It states that it is its respectful submission that this matter is

*sub judice* and as a result it is not at this time in a position to comment on it or provide a response.

## [5] **DETERMINATION AND REASONS THEREFOR**

### *Introduction*

- 5.1 The employers are aggrieved by the third respondent's withdrawal of the exemption to participate in the first respondent that it granted to them on 18 August 2009. They state that the reasons cited by the third respondent for its withdrawal of the exemption are unfounded. In response, the second respondent submitted that this matter relates to an exemption issue which pertains to the Motor Industry Bargaining Agreements. It states that since this type of issue forms part of the collective bargaining agreements, it should be referred to the Council. Further, the second respondent advises that the complainant referred this matter for a review to the Labour Court.
- 5.2 The third respondent confirms that its decision to withdraw the exemption that it initially granted to the employers was taken to the Labour Court by the complainant. Therefore, it submits, this matter is *sub judice*. Thus, this Tribunal needs to determine whether or not it has jurisdiction to consider the complaint before considering the merits.

### *Jurisdiction*

- 5.3 As stated above, the respondents have since informed this Tribunal that the third respondent's decision to withdraw the exemption it initially granted to the employers was taken on review to the Labour Court by the complainant.

5.4 Section 30H(2) of the Act precludes the Adjudicator from determining a complaint which is a subject matter in another civil court. Section 30H(2) of the Act reads as follows:

“The Adjudicator shall not investigate a complaint if, before the lodging of the complaint, proceedings have been instituted in any civil court in respect of a matter which would constitute the subject matter of the investigation”.

5.5 Thus, this Tribunal does not have jurisdiction over this matter since legal proceedings have already been instituted in the Labour Court by the complainant. It follows therefore that this Tribunal cannot determine the merits of the employers’ complaint.

**[6] ORDER**

6.1 In the result, the complaint cannot succeed and is dismissed due to lack of jurisdiction.

**DATED AT JOHANNESBURG ON THIS 3<sup>RD</sup> DAY OF AUGUST 2012**

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**MA LUKHAIMANE**  
**DEPUTY PENSION FUNDS ADJUDICATOR**

**Section 30M filing: High Court**

*Parties unrepresented*