Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 (“the Act”): T I MBELE (“complainant”) v SOUTH AFRICAN RETIREMENT ANNUITY FUND (“first respondent”) AND OLD MUTUAL LIFE ASSURANCE COMPANY (SOUTH AFRICA) LIMITED (“second respondent”)

[1] INTRODUCTION

1.1 The complaint concerns the non-payment of a disability benefit.

1.2 The complaint was received by this office on 2 February 2008. On 12 March 2008 a letter acknowledging receipt of the complaint was forwarded to the complainant. On 11 March 2008, a copy of the complaint was forwarded to the second respondent for it to file a response on or before 14 April 2008. A response was received from
the second respondent on 2 April 2008. A copy of the response was forwarded to the complainant on 16 April 2008 for him to file his further submissions, in the event that he wished to do so. No further submissions were received.

1.3 This complaint was referred to the conciliation service for hearing on 12 December 2008 in order to afford the parties an opportunity to settle the matter. However, the parties could not reach a settlement and the matter was referred for adjudication. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The complainant was a member of the first respondent during the tenure of his employment with The South African Breweries Limited (“SAB”).

2.2 The complainant submitted that he was medically boarded on 24 December 1999 due to his illness.

2.3 The complainant submitted that he submitted a claim for a disability benefit but his application was declined.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the non-payment of his disability benefit.

3.2 The complainant is requesting this tribunal to investigate this matter.
[4] **RESPONSE**

Second respondent’s response

4.1 The second respondent submitted a response in its capacity as the first respondent’s administrator.

4.2 The second respondent submitted that the complainant is 51 years old and the Income Tax Act No. 58 of 1962 ("ITA") prohibits a Retirement Annuity Fund from paying benefits to a member before the age of 55.

4.3 The second respondent further submitted that the ITA, as well as the rules of the first respondent makes provision for retirement prior to age 55 years, due to ill health and the complainant has the option of requesting that the ill health option be exercised.

4.4 The second respondent submitted that in order to consider the ill health option, it required the following:

- A certified copy of the complainant’s official boarding letter;
- A letter of request from the client requesting that the ill health option be considered and that he acknowledges that the contract will cease on payment of the claim;
- The complainant’s tax reference number;
- Proof of his banking details; and
- Confirmation in writing from the complainant whether he was ever married and if divorced, a copy of the Final Divorce Agreement.

4.5 The second respondent further submitted that should the claim be admitted, the complainant will have the option of receiving one-third of the value in cash with a monthly income for life.
5. DETERMINATION AND REASONS THEREFOR

5.1 Section 30I of the Act imposes certain time limits with regards to lodging of complaints before the Adjudicator and states as follows:

“(1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.

(2) The provisions of the Prescription Act, 1969 (Act No. 68 of 1969), relating to a debt apply in respect of the calculation of the three year period referred to in subsection (1).”

5.2 The act or omission to which this complaint relates occurred on 12 June 1999 following the termination of his employment due to ill health. Any complaint regarding the payment of the disability benefit should have been lodged by June 2002. However, the complaint was only lodged on 2 February 2008 and was therefore received approximately six years out of time.

5.3 There is good reason for a limit to be imposed on the time during which litigation may be launched and the Constitutional Court has pronounced on this issue. In Mohlomi v Minister of Defence 1997 (1) SA 124 (CC) the Court said (at paragraph [11]):

“Rules that limit the time within which litigation may be launched are common in our legal system as well as many others. Inordinate delays in litigation damage the interests of justice. They protract the disputes over the rights and obligations sought to be enforced, prolonging the uncertainty of all concerned about their affairs. Nor in the end is it always
possible to adjudicate satisfactorily on cases that have gone stale. By then witnesses may no longer be available to testify. The memories of ones whose testimony can be obtained may have faded and become unreliable. Documentary evidence may have disappeared. Such rules prevent procrastination and those harmful consequences of it. They serve a purpose to which no exception in principle can cogently be taken."

5.4 In light of the peremptory nature of the provisions of section 30I(1), this tribunal has no authority to investigate and adjudicate upon any complaint which is time-barred. It must be borne in mind that the Adjudicator’s authority to, on good cause shown, condone the late lodging of complaints or extend the three-year time limit, has with effect from 13 September 2007 been taken away by the repealing of subsection 30I(3).

5.5 There has been an inordinate delay in lodging this complaint and on this basis alone, this complaint falls to be dismissed. The complainant was aware of the non-payment of his disability benefit when his disability benefit claim was repudiated on 29 November 1999. No reasons have been furnished for this delay. Nor did he attempt to approach the Court, the Financial Services Board or this office for relief.

5.6 In the result, the complaint cannot be investigated and adjudicated upon.

[6] ORDER
1. In the result, the complaint cannot succeed and is dismissed due to being time-barred.

DATED AT JOHANNESBURG ON THIS 16TH DAY OF MARCH 2012

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DR E.M. DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

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Section 30M filing: Magistrate’s Court
Parties unrepresented