



## **Office of the Registrar of Insurance and Retirement Funds**

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**CIRCULAR NO: 1 of 2009**

**DATE: 5 August 2009**

### **ADDRESSED TO:**

All retirement funds, employers, trustees, principal officers, fund administrators and retirement funds members.

### **SUBJECT: COMMUTATION FROM PENSION FUNDS**

1. It has come to the attention of the office of the Registrar of Insurance and Retirement Funds that there is an ongoing undesirable trend where fund members are allowed to commute their full pension as opposed to commuting the allowable one third pension payout as envisaged by the Income Tax Order, 1975 (as amended). The Registrar's office notes with concern that the practice of allowing members to commute full pension will set a dangerous precedent and it will impact on the administration, functioning and solvency of pension funds.

2. The relevant section of the Income Tax Order upon which this circular hinges is section 2 thereof which, in defining a pension fund, states that ".....the Commissioner shall not approve a fund unless, in respect of the year of assessment in question, he is satisfied that .....the rules of the fund provide that not more than one-third of the total value of the annuity to which an employee becomes entitled may be commuted for a single payment, except where the annual amount of such annuity does not exceed thousand five hundred Emalangeni."

3. The rationale of the one-third commutation relates to the tax exemption status of pension funds and it is a condition for approval of pension funds by the Commissioner of Taxes. The objective of the Income Tax Order is aimed at protecting retiring members by allowing them to commute one third of their pension and this in turn allows the members to purchase an annuity or other form of investment which will guarantee the member an income for a specified period of time. This income will and should ensure the financial well-being of the retired members. The Order is of social importance and overrides retiring member's right to a full pension payout by restricting retiring members to a one-third pension payout.

4. Trustees are also reminded to have regard to the primary intention of the establishment of retirement funds under the Retirement Funds Act, 2005 and their statutory fiduciary duty to act in the best interest of funds and members.

5. It should be noted further that the Registrar's office will soon be carrying out an exercise to identify abuse pension funds and where it is found that pension funds have been treated as savings clubs, the necessary administrative penalties in terms of the law shall be applied.



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**SANDILE DLAMINI**  
**REGISTRAR OF INSURANCE AND RETIREMENT FUNDS**