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SECTION: Surplus

INDEX NO.: S900-700

TITLE: Access To Surplus In Continuing Plans Permitted  
- O. Reg. 708/87, section. 7c

APPROVED BY: Cabinet

PUBLISHED: Bulletin 1/3 (September 1990)

EFFECTIVE DATE: July 27, 1990 [No longer applicable - Feb. 2000]

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### **Amendment to the Regulation Permits Access to Surplus in a Continuing Pension Plan Where Special Conditions Are Met**

The Regulation under the *Pension Benefits Act*, 1987 (the "PBA, 1987") has been amended to allow plan sponsors and members access to surplus in ongoing pension plans in certain restricted circumstances where complete agreement between the parties has been reached. The amendment was filed on July 27, 1990.

The amendment enables plan members, retired members, persons entitled to deferred pensions and persons currently entitled to receive a benefit from the plan to negotiate a settlement with plan sponsors on the surplus issue. It provides an opportunity for parties to access and share surplus, improve benefits and provides for the indexing of benefits at the option of the member.

To access the surplus, stringent conditions and requirements must be met in addition to those requirements set out in the PBA, 1987. The legislation requires the pension fund to maintain a minimum reserve of surplus and, among other criteria, it requires obtaining the consent of the Pension Commission of Ontario.

The new regulation requires **consent of all** members, retired members, persons entitled to deferred pensions and persons currently entitled to receive benefits from the plan to the terms for surplus withdrawal. Members can negotiate to use some of the surplus to improve the terms of the pension plan or provide for higher levels of benefits. The new regulation also requires resolution of the issue of future surplus entitlement.

As a condition for payment of surplus from an ongoing plan, the new regulation requires plan sponsors to apply the 50% rule (introduced in the PBA, 1987). This condition, to be applied to all benefits whenever they were earned, requires plan sponsors to fund 50% of the cost of the pension benefit.

The Regulation was published in *The Ontario Gazette* on August 11, 1990.

**Regulation To Amend Ontario Regulation 708/87 Made Under The *Pension Benefits Act, 1987***

1. Ontario Regulation 708/87 is amended by adding the following sections:

- 7c.-(1) The criteria described in this section must be met before the Commission may consent to the payment of money that is surplus out of a continuing pension plan to the employer.
- (2) All persons who are entitled to receive benefits under the pension plan and all members must consent to the terms upon which the surplus is to be paid out of the plan.
  - (3) All persons in respect of whom the administrator has purchased a pension, deferred pension or ancillary benefit, other than those persons who requested that the administrator do so, must consent to the terms upon which the surplus is to be paid out of the pension plan.
  - (4) The pension plan must provide that a former member's contributions to the plan and the interest on the contributions shall not be used to provide more than 50 per cent of the commuted value of a pension or deferred pension in respect of contributory benefits to which the member is entitled under the plan on termination of membership or employment.
  - (5) The pension plan must provide that a former member who is entitled to a pension or deferred pension on termination of employment or membership is entitled to payment from the pension fund of a lump sum payment equal to the amount by which the former member's contributions under the plan and the interest on the contributions exceed one-half of the commuted value of the former member's pension or deferred pension in respect of the contributory benefits.
  - (6) The share, if any, of the surplus allocated to each person, other than the employer, must not be provided in the form of a cash refund.
  - (7) Despite subsection (6), a cash refund of contributions may be made in accordance with subsection 64(7) of the Act.
  - (8) If surplus is allocated to a person to increase the person's benefits, the person must be offered the choice of receiving the surplus in the form of inflation adjustments to the existing benefits.
  - (9) The inflation adjustments that are provided must be made,
    - (a) by indexing the benefits in accordance with a formula based upon increases in the annual Consumer Price Index;
    - (b) by providing an annual percentage increase in the amount of the benefits or an annual increase of a specified dollar amount; or
    - (c) by a combination of the methods described in clauses (a) and (b).
  - (10) For the purpose of subsection (9), the employer may select the method for providing the inflation adjustments.

- (11) The pension plan must state who is entitled, or must provide a mechanism for determining who is entitled, to any surplus in the plan after the payment of surplus to which the Commission is being asked to consent.
  - (12) Subsection (11) applies with respect to applications under section 79 of the Act made after the 31st day of October, 1990.
- 23a.** For the purpose of subsection 80(10) of the Act, the prescribed date is the day on which this section comes into force.

*Please refer to section 10 of Regulation 909 for current special conditions which apply to a distribution of surplus to the members and the employer from a continuing plan.*