



SECTION:	Surplus
INDEX NO.:	S900-505
TITLE:	Levels of Consent Required Pursuant to Section 10.1 of Regulation 909 - PBA s. 79 - Regulation 909 ss. 8(1)(b)(ii), 8(1)(b)(iii), 10(2) and 10.1
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	March 1998
EFFECTIVE DATE:	When Published [references updated – December 2008]

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.

*Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at www.fSCO.gov.on.ca. All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

Q. Where an employer applies under section 79 of the PBA for the payment of surplus from a continuing pension plan, does section 10.1 of the Regulation have the effect of reducing the level of consent required from the pensioners under section 10 of the Regulation from 100% to 90%?

A. No. Under section 10(2) of the Regulation, 100% of the pensioners must consent (i.e. former members in receipt of a pension payable from the pension fund). However, pursuant to sections 10.1(1) and 10.1(3), if the Superintendent of Financial Services (Superintendent) is satisfied that the employer has obtained the consent of 90% of the pensioners to the terms of the surplus payment, then the court appointed representative may consent on behalf of those pensioners who have neither consented to nor objected to the terms of the surplus payment.

In addition, section 10(2) requires the consent of :

- (i) 100% of the plan members, and
- (ii) 100% of all the other persons entitled to receive benefits under the plan, such as former members who are not pensioners (see definition of "former member") or other persons who may be beneficiaries under the plan (such as spouses in certain circumstances).

Section 10.1 only allows the court appointed representative to consent on behalf of the pensioners. It does not allow the court appointed representative to consent on behalf of the "plan members" or other persons.

- Q. Where an employer applies under section 79 of the PBA for the payment of surplus from a wound-up plan, does section 10.1 of the Regulation increase the level of consent required from plan members under section 8(1)(b)(ii) of the Regulation from 2/3rds to 90%?**
- A. No. Section 10.1 does not alter the level of consent required under section 8(1)(b)(ii). Nor does it give the court appointed representative the authority to consent on behalf of plan members. Therefore, the consent required from plan members under section 8(1)(b)(ii) is still 2/3rds.
- Q. Where an employer applies under section 79 of the PBA for the payment of surplus from a wound-up plan, does section 10.1 of the Regulation alter the level of consent currently required from “former members and other persons” (excluding pensioners) under section 8(1)(b)(iii), i.e., does it increase the level of consent to 90%?**
- A. No. Section 10.1 does not alter the level of consent required from former members, including pensioners, or “other” persons under section 8(1)(b)(iii). The level of consent required from former members (including pensioners) and other persons entitled to payments under the pension plan on the date of wind-up is “such number as the Superintendent considers appropriate in the circumstances”. Under section 8(1)(b)(iii), the Superintendent determines the number who must consent on a case-by-case basis. This is solely within the Superintendent’s discretion.