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Superintendent of  
Financial  
Services



Surintendant des  
services  
financiers

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**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “*PBA*”);

**AND IN THE MATTER** a Notice of Intended Decision of the Superintendent of Financial Services to consent under section 81 of the *PBA* to the transfer of assets from the Morcam Group Limited Pension Plan, Registration Number C13753, to the Pension Plan for the Employees of Miller Paving Limited, Registration Number 0275313.

**TO:**

Miller Paving Limited  
505 Miller Avenue  
P.O. Box 4080  
Markham, ON L3R 9R8

**ATTENTION:**

Rhonda Barry  
Manager, Human Resources

Applicant and Employer

**TO:**

Al Shaw  
R.R. Number 8  
Owen Sound, ON  
N4K 5W4

**TO:**

Harold McNally  
116 Boucher Street East  
Meaford, ON  
N4L 1B6

## NOTICE OF INTENDED DECISION

**I INTEND TO CONSENT**, under section 81 of the *PBA*, to the transfer of the remaining assets from the Morcam Group Limited Pension Plan, Registration Number C13753, (the “Morcam Plan”) to the Pension Plan for the Employees of Miller Paving Limited, Registration Number 0275313 (the “Miller Paving Plan”).

**I INTEND TO MAKE THE CONSENT** effective only after the Applicant adopts an amendment to the Morcam Plan authorizing the transfer of assets from the Morcam Plan to the Miller Paving Plan and also an amendment to the Miller Paving Plan providing for the acceptance of the transfer of assets from the Morcam Plan.

**I INTEND TO CONSENT FOR THE FOLLOWING REASONS:**

1. The Morcam Plan was a defined benefits pension plan covering employees of Morcam Group Limited (“Morcam”). The Applicant, Miller Paving Limited, purchased Morcam in 1982 and wound up the Morcam Plan as of December 31, 1982 and the benefit entitlements of the members were settled at that time.
2. The Applicant, Miller Paving Limited (“Miller”), is the employer and administrator under the Miller Plan. The Miller Plan was and is a defined contribution pension plan.
3. At the time of the wind up of the Morcam Plan, there were 14 active union members and 8 active non-union employees. The 8 non-union employees elected to convert their entitlements to individual account balances that were transferred to the Miller Plan. The union members transferred their entitlement to personal RRSPs. Annuities were purchased for the retirees and the deferred vested members. There was a remaining surplus of \$86,154.89 at the time which currently amounts to approximately \$300,000 with investment earnings.
4. The plan termination report, finalized on June 1, 1985, provided that the surplus was to be transferred into the Miller Plan. The Pension Commission of Ontario authorized the distribution of the assets in accordance with the Termination Report and specifically authorized the transfer of surplus “attributable to none other than the participants of the Morcam Plan who entered into a successor arrangement.” However, the transfer did not take place.
5. The Application for Asset Transfer dated January 2010 was filed by Miller (the “Application”). Miller proposes to transfer the surplus from the Morcam Plan to the Miller Plan. Miller has indicated that it intends to use the transferred assets to offset employer contributions to the Miller Plan. Notice of the Application was provided to former members of the Morcam Plan as at the date of the wind up. The notice included extracts from the Morcam Plan documents relating to legal entitlement to surplus.
6. Section 81(5) of the *PBA* states that “the Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the original pension plan or that does not meet the prescribed requirements and qualifications”. The Application protects the pension benefits and any other benefits of the members and former members of the Morcam Plan because benefits have been settled. Further, there are no prescribed requirements and qualifications.

7. However, the proposed asset transfer arguably amounts to a reversion of surplus to Miller because Miller intends to use the transferred assets to offset employer contributions to the Miller Plan. Miller must, therefore, establish that the terms of the Morcam Plan permit the reversion of surplus to the employer.
8. The Morcam Plan was always funded through an insurance contract and never through a trust fund. There are no references in any of the Morcam Plan texts, funding documents or in the member booklet to a requirement to hold the insurance contract in trust for the members and indeed no reference to the term “trust” or “trustee” in any form which would suggest that the Morcam Plan was ever subject to a trust.
9. The original Morcam Plan text from 1974 provided that all contributions to the Plan were for the exclusive benefit of the members, and that no part of any funds deposited by the Company could revert to the Company. However, the Morcam Plan text was validly amended by a resolution of the Board of Directors of Morcam Group Limited as of June 30, 1980 to provide that on the termination of the Morcam Plan surplus would go to the employer.
10. Accordingly, the terms of the Morcam Plan permit the payment of surplus to the employer. Section 77.11(1) of the PBA states that “the documents that create and support a pension plan and pension fund govern the entitlement of the employer and other persons to payment of surplus under the pension plan, except as otherwise provided under the PBA subject to restrictions on payments set out in section 78 and 79.” Accordingly, Miller is permitted to withdraw surplus from the Morcam Plan under the PBA and there would be no impediment to the proposed asset transfer arising from any issue of surplus entitlement.
11. The Morcam Plan text and the Miller Paving Plan text do not specifically provide for the proposed asset transfer. Miller has provided a draft amendment to provide for the acceptance of the transfer of assets from the Morcam Plan. Miller has also indicated that it is agreeable to amend the Morcam Plan and has provided a draft of such an amendment to Financial Services Commission Staff. However, Miller has not yet adopted the draft amendments. Accordingly, my consent would only be effective once Miller adopts the draft amendments.
12. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the PBA. **To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Intended Decision is served on you.**<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

Attention: The Registrar

**FOR FURTHER INFORMATION** on a Form for the written notice, please see the Tribunal website at [www.fstontario.ca](http://www.fstontario.ca) or contact the Registrar of the Tribunal by phone at 416-590-7294, toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE INTENDED DECISION AS DESCRIBED IN THIS NOTICE.**

**DATED** at Toronto, Ontario, this    day of    ,

K. David Gordon  
Deputy Superintendent, Pensions

Copy:  
Dianne L. Blasiak, Morcam Group Limited  
Priscilla H. Healy, Fogler, Rubinoff LLP

<sup>1</sup>NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

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