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Questions and Answers relating to Surplus Withdrawal On Wind Up - Section 78(2) Notice Requirements

Archived Content

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Q1: Are there changes to the information that must be included in the notice the employer is required to provide about an application for payment of surplus under subsection 78(2) of the Pension Benefits Act (PBA)?

A1: The requirements have not changed significantly where the employer's application for payment of surplus is based on the employer's entitlement to surplus. The notice the employer is required to provide where the employer applies to the Superintendent for consent to payment of surplus (subsection 78(2) notice) must continue to include the contractual authority for surplus to be paid to the employer. The notice should include a historical plan summary and analysis, including the actual wording of all the relevant provisions in the documents that create the plan and the pension fund of the plan, including the plan text and funding agreements and the authority of the employer to make amendments to the plan text and/or funding agreement(s).

However, where the employer's application for payment of surplus is based on a court order declaring that the employer is entitled to the surplus, the subsection 78(2) notice need not include a historical plan summary and analysis. Instead, the notice should include a copy of the court order that the employer is relying on in support of its application.

Similarly, if the employer's application for payment of surplus is based on a written agreement, the subsection 78(2) notice need not include a historical plan summary and analysis. However, before consenting to the employer's application, the Superintendent will need to be satisfied that the consents that the employer has obtained to the surplus sharing agreement are "informed consents". Therefore, the Superintendent will look at the information the employer provided to affected persons before their consents were obtained.

In all cases, effective July 1, 2012, the subsection 78(2) notice no longer requires information about the surplus attributable to employee and employer contributions.

Please refer to FSCO pension policies dealing with surplus withdrawals for further information. Note that the policies are being updated to reflect the changes, including notice requirements which come into force July 1, 2012. -06/12

Q2. As there is no need for the employer to include a historical plan summary and analysis in the subsection 78(2) notice, where the employer is relying on a written

agreement with affected persons, what disclosure should be made to the affected parties?

A2. Where the employer is relying on a written agreement, the Superintendent will need to be satisfied that the consents that the employer has obtained to the surplus sharing agreement are “informed consents” and will be looking at the information the employer disclosed to affected persons before their consents were obtained. FSCO’s expectation is that the employer will provide disclosure to affected persons of all provisions in the documents that create and support the pension plan and pension fund, including the plan text and any funding agreements from the plan’s inception that may be relevant to surplus entitlement, and the authority of the employer to make amendments to plan texts and/or funding agreements. It will be easier for the Superintendent to conclude that affected parties were sufficiently informed where they are represented by legal counsel. - 06/12

More Information:



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