

200 Licensing

**203 Establishment of Domestic Headquarters by Delaware Banks or Trust Companies
Engaging in the Business of Insurance [Formerly Regulation 66]**

1.0 Authority

- 1.1 This regulation is adopted in accordance with 5 **Del.C.** §761(a)(14) and 18 **Del.C.** §314 and promulgated after consultation with the Bank Commissioner and in accordance with 29 **Del.C.** Ch. 101.

2.0 Purpose

- 2.1 The purpose of this regulation is to provide the requirements for banks authorized under the Bank and Trust Company Insurance Act of 1989 to engage in the business of insurance in Delaware.

3.0 Corporate Domicile Requirements

- 3.1 No subsidiary of a bank or trust company intending to transact the business of insurance under the authority of 5 **Del.C.** §761(a)(14), whether within or without Delaware, may do so unless such subsidiary;
- 3.1.1 was initially incorporated and chartered under the laws of the State of Delaware and remains at all times a corporation validly existing, in good standing and duly chartered to transact the business of insurance under the laws of the State of Delaware; or
- 3.1.2 while incorporated under the laws of a state other than Delaware, has agreed to and has taken reasonable steps to transfer its domicile into the State of Delaware, and has submitted a plan to do so to the Delaware Insurance Department and to the insurance department of its state of domicile, which plan the subsidiary represents satisfies the requirements of both states; and further, while such transfer of domicile is pending, has submitted to regulatory control of the Delaware State Insurance Department which is equivalent to the regulatory control which the Commissioner would exercise if such subsidiary were presently domiciled in Delaware.
- 3.2 A subsidiary of a bank or trust company identified in section 3.1.2 may transact the business of insurance under the authority of 5 **Del.C.** §761(a)(14) for a period not to exceed 48 months, by which time such subsidiary shall have either completed the transfer of its domicile into the State of Delaware, or ceased doing business. Prior to the completion of such change in domicile, the Commissioner has the right to condition, limit or stop the activities authorized by a certificate of authority hereunder if the subsidiary's then—current state of domicile rejects such change of domicile or the Commissioner determines that the subsidiary is not proceeding in good faith to accomplish the plan consistent with this regulation.

Amended May 3, 1993, effective 30 days after Commissioner's signature.

4.0 Certificate of Authority Requirements

- 4.1 Initial operations
- 4.1.1 Except as provided in section 3.0 above, any division or subsidiary of a bank or trust company wishing to transact the business of insurance under the authority of 5 **Del.C.** §761(a)(14) must first apply for and obtain a certificate of authority or license to do so from the Delaware Insurance Department pursuant to the applicable provisions of the Delaware Insurance Code and the regulations promulgated thereunder. If such division or subsidiary has previously obtained a certificate of authority or license to transact the business of insurance in Delaware from this office, such division or subsidiary may continue to transact business consistent with the terms of such certificate of authority or license, unless further application to this office is otherwise required to so continue to transact business under the Delaware Insurance Code or the regulations promulgated

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thereunder. For purposes of these regulations, the term "certificate of authority" shall mean the original governmental or administrative authorization conferred upon any person to act as an insurer, and the term "license" shall mean the original governmental or administrative authorization conferred upon any person to act as a foreign insurer.

4.2 Changes in operations in Delaware

4.2.1 Any division or subsidiary of a bank or trust company transacting the business of insurance in Delaware pursuant to a certificate of authority or license issued by this office is prohibited from engaging in any activity not authorized by the terms of that certificate of authority or license, including but not limited to the sale or underwriting of any line or type of insurance not authorized by that certificate of authority or license, unless such division or subsidiary first applies for and obtains additional authority to engage in such activity from the Delaware Insurance Department pursuant to the applicable provisions of the Delaware Insurance Code and the regulations promulgated thereunder.

4.3 Sales activities in other states

4.3.1 Any division or subsidiary of a bank or trust company wishing to transact the business of selling insurance in any state other than Delaware under the authority of 5 **Del.C.** §761(a)(14) must comply with all licensure and other requirements of each such state in connection with the transaction of such business, and this office shall monitor the compliance of any such division or subsidiary of a bank or trust company with all such state laws. To this end, any division or subsidiary of a bank or trust company transacting the business of insurance in a state other than Delaware shall maintain, as part of its principal books and records required to be maintained in Delaware pursuant to 18 **Del.C.** §534, copies of all licenses required to be obtained in connection with the transaction of such insurance business in such state.

5.0 Notice Requirements

5.1 Notice required

5.1.1 Any division or subsidiary of a bank or trust company intending to exercise any powers under the authority of 5 **Del.C.** §761(a)(14), whether within or without the State of Delaware, must notify this office of its intention to do so, even if such division or subsidiary holds a license or certificate of authority from this office to transact the business of insurance in Delaware and the proposed activities under 5 **Del.C.** §761(a)(14) would be consistent with the terms of such license or certificate of authority.

5.2 Time of notice

5.2.1 The notice required by section 5.1 of these regulations must be filed with this office by a division or subsidiary of a bank or trust company prior to its transaction of any insurance activities pursuant to the authority conferred by 5 **Del.C.** §761(a)(14).

5.3 Form of notice

5.3.1 The notice required by section 5.1 of these regulations must contain the following information:

- 5.3.1.1 The name of the division or subsidiary, and all trade names under which it proposes to transact the business of insurance;
- 5.3.1.2 The date on which such division or subsidiary was formed or organized, the manner in which it was so formed or organized, and the state in which it was so formed or organized;
- 5.3.1.3 The nature of the affiliation between the division or subsidiary and the bank or trust company with which such division or subsidiary is affiliated;
- 5.3.1.4 The most recent Annual Statement and quarterly financial statement;
- 5.3.1.5 The names and home addresses of all senior officers or directors of such division or subsidiary, and of all persons or entities beneficially owning 10% or more of any class of the capital stock or other equity securities or interest of such division or subsidiary;
- 5.3.1.6 The address of every facility owned or used by such subsidiary or facility for the transaction of business, whether within or without the State of Delaware;

- 5.3.1.7 The location within the State of Delaware at which such division or subsidiary intends to maintain its principal books and records;
- 5.3.1.8 The exact nature of all activities in which such division or subsidiary intends to engage pursuant to the authority conferred by 5 **Del.C.** §761(a)(14), including but not limited to:
 - 5.3.1.8.1 All types or lines of insurance, if any, that the division or subsidiary intends to underwrite or sell, and the extent to which the underwriting or sale of any such types or lines of insurance is authorized by an existing certificate of authority or license issued by this office; and
- 5.3.1.9 The mechanisms by and the personnel through which the division or subsidiary intends to sell insurance (if at all) to the Delaware public; and
- 5.3.1.10 If any such subsidiary is not incorporated in Delaware, a plan which the subsidiary believes satisfies the requirements of the subsidiary's then-current state of domicile in accordance with section 3.0 of these regulations, which plan shall include the procedures to be employed to accomplish the proposed redomestication of the insurance subsidiary to the State of Delaware, and the timetable therefor, and which plan shall thereafter be supplemented by quarterly and annual reports regarding the status of such redomestication plan, such status reports to be filed contemporaneously with any quarterly and annual financial statements of the insurance subsidiary.

6.0 Response to Notice

- 6.1 Within thirty (30) days following the filing of the notice required by section 5.1 of these regulations, the Insurance Commissioner shall determine whether the proposed activities described therein should be approved or disapproved in whole or in part. If approved in whole or in part, the Commissioner shall forthwith issue a certificate of authority to engage in those activities which have been approved to the insurance division or subsidiary filing such notice. If disapproved in whole or in part, the Commissioner shall, pursuant to 29 **Del.C.** §10131(c), give written notice to the insurance division or subsidiary of such disapproval and the reasons therefor. Such notice shall also:
 - 6.1.1 Inform the insurance division or subsidiary that it has a right to demand a hearing on its previously filed notice at which hearing
 - 6.1.2 the insurance division or subsidiary would have the right to present relevant evidence,
 - 6.1.3 to be represented by counsel, and
 - 6.1.4 to appear personally or by other representative; and that the Commissioner is obligated to reach his decision based upon substantial evidence of record; and
 - 6.1.5 Inform the insurance subsidiary or division of the period, not less than ten (10) days from the date of such notice, during which it may request a hearing on its previously filed notice.
- 6.2 Should the insurance division or subsidiary request a hearing under this paragraph, the Commissioner shall fix a date for such hearing and shall provide at least twenty (20) days advance notice of hearing date to the insurance division or subsidiary.

7.0 Location of Headquarters

- 7.1 Timing
 - 7.1.1 Within six months of the Commissioner's approval of any notice filed pursuant to section 5.3 of these regulations, the filing division or subsidiary shall establish a facility within the State of Delaware to serve as its headquarters of day-to-day corporate activity and management.
- 7.2 Definition
 - 7.2.1 For purposes of this regulation, the term "headquarters of day-to-day corporate activity and management", as used in 18 **Del.C.** §534, shall mean a facility of a division or subsidiary of a bank or trust company engaged in insurance activities pursuant to the authority conferred by 5 **Del.C.** §761(a)(14) which satisfies the following:
 - 7.2.1.1 Such facility is located within the State of Delaware;

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- 7.2.1.2 The principal books and records of such division or subsidiary are located at such facility unless such insurance activities are conducted through a subsidiary domiciled in another state that requires such principal books and records to be located in its state of domicile, in which event a duplicate set of the principal books and records shall be located at the Delaware facility;
- 7.2.1.3 A majority of the senior officers of such division or subsidiary, as well as all employees of such division or subsidiary whose duties can reasonably be performed in the State of Delaware, shall maintain their offices or places of employment at such Delaware facility.

8.0 Effective Date

- 8.1 This regulation shall become effective 20 days after signature by the Commissioner.