

700 Corporation Law for State Banks and Trust Companies

**706 Notice Requirements for Certain Delaware Banks and Trust Companies
Engaging In the Business of Insurance**

5 Del.C. §121(b)

Formerly Regulation No.: 5.761.0007.NC

Effective Date: November 1, 1990

The Bank and Trust Company Insurance Act of 1989 (67 Del. Laws C. 223) (the "Act") imposes certain capitalization and other requirements upon Delaware banks and trust companies engaging in the business of insurance thereunder. This regulation, promulgated pursuant to the authority of this office under 5 Del.C. §121(b), sets forth the information that must be provided to this office by a bank or trust company first acting as an insurer or transacting the business of insurance in accordance with the provisions of Title 18 pursuant to the authority conferred by the Act, in order to insure compliance with its provisions and other provisions of the Delaware Banking Code. The requirements set forth in this regulation are to be applied in conjunction with and not exclusive of all applicable regulations of the Delaware Insurance Commissioner.

1.0 Notice Requirements

1.1 Notice Required

1.1.1 Any bank or trust company intending to transact the business of insurance in Delaware under the authority of 5 Del.C. §761(a)(14), whether itself (through a division) or through a subsidiary, must notify this office in writing of its intention to do so.

1.2 Time of Notice

1.2.1 The notice required by section 1.1 of these regulations must be filed with this office by the bank or trust company prior to its transaction of any insurance activities pursuant to the authority conferred by 5 Del.C. §761(a)(14), whether through a division or subsidiary.

1.3 Form of Notice

1.3.1 The notice required by section 1.1 of these regulations shall be an identical copy of that notice required to be filed with the Delaware State Insurance Commissioner by the proposed insurance division of the bank itself or the subsidiary of the bank or trust company pursuant to regulations promulgated by the Insurance Commissioner under the Act. In addition, such notice shall be supplemented with the following additional information:

1.3.1.1 Complete information regarding the capitalization of each of the bank or trust company and its insurance division or subsidiary (to the extent not contained in the financial statements included in the notice filed with the State Insurance Commissioner), including the following:

1.3.1.1.1 the amount and sources of paid-in capital and surplus for each of the bank or trust company and its insurance division or subsidiary;

1.3.1.1.2 the allocations of capital, surplus and undivided profits made by such bank and trust company to its insurance division or subsidiary in each of the three (3) years preceding the filing of the notice required under these regulations;

1.3.1.1.3 the relationship, expressed as a percentage, between the capital, surplus and undivided profits of the bank or trust company and those of its insurance subsidiary or division; and

1.3.1.1.4 the allocations of capital, surplus and undivided profits expected to be made by such bank or trust company to its insurance division or subsidiary in the one (1) year period following the filing of the notice required under these regulations.

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- 1.3.1.2 The location of any office in Delaware to be open to the public and at which such bank and trust company proposes to engage in the business of insurance, whether itself (through a division) or through a subsidiary, and, if applicable, a copy of the lease agreement, mortgage, or deed by which such division or subsidiary occupies each such office.
- 1.3.1.3 In addition, if such bank or trust company proposes to act as insurer then there shall be filed with this office a copy of a written communication from the bank or trust company to the Federal Deposit Insurance Corporation ("FDIC"), informing the FDIC of the nature and scope of the proposed activity.
- 1.4 **Supplementary Notices**
- 1.4.1 A supplementary notice in the form set forth in section 1.3 of these regulations, subject to such timeframes as may be applicable, shall be filed with this office each time, subsequent to the filing of the notice requirement by section 1.1 of these regulations, that: (1) the insurance subsidiary or division of the filing bank or trust company proposes to engage in any insurance activity authorized by 5 **Del.C.** §761(a)(14) not previously disclosed to this office; or (2) the filing bank or trust company proposes to allocate any additional amount of its capital, surplus and undivided profits to its insurance subsidiary or division. Any such supplementary notice shall be filed prior to the commencement of any activity described herein. If, at the time such supplementary notice is to be filed with this office, a similar supplementary notice has not been filed with the State Insurance Commissioner in the form described in the regulations promulgated by the Insurance Commissioner under the Act, the supplementary notice to be filed with this office shall contain, in addition to the specific information set forth in section 1.3 above, all information required to be contained in any original application to the Insurance Commissioner by the insurance subsidiary or division of a bank or trust company to transact the business of insurance under the authority of 5 **Del.C.** §761(a)(14).
- 2.0 Response to Notice**
- 2.1 Within thirty (30) days following the filing of the notice required by section 1.3 or 1.4 of these regulations, the State Bank Commissioner shall determine whether the proposed activities 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 bank or trust company filing such notice. If disapproved in whole or in part, the Commissioner shall, pursuant to §10131(c) of Title 29 of the **Delaware Code**, give written notice to the bank or trust company of such disapproval and the reasons therefor. Such notice shall also:
- 2.1.1 inform the bank or trust company that it has a right to demand a hearing on its previously filed notice, at which hearing (a) the bank or trust company would have the right to present relevant evidence, (b) to be represented by counsel, and (c) to appear personally or by other representative; and that the Commissioner is obligated to reach his decision based upon substantial evidence of record; and
- 2.1.2 inform the bank or trust company 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.
- 2.2 Should the bank or trust company 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 such hearing date to the bank or trust company.
- 3.0 Capital**
- 3.1 The direct investment of a bank or trust company in a subsidiary or division engaged in any of the activities authorized by 5 **Del.C.** §761(a)(14) will not be counted toward the capital or surplus of the bank or trust company for the purposes of the Delaware Banking Code.