

# DEPARTMENT OF INSURANCE

## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 6915 and 29 Delaware Code, Chapter 101  
(18 **Del.C.** §§311 and 6915 and 29 **Del.C.** Ch. 101)  
18 **DE Admin. Code** 302

### PROPOSED

#### 302 Captive Insurance Financial Regulation

#### PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 302 relating to the Captive Insurance Financial Regulation. The docket number for this proposed amended Regulation is 2242-2013.

The proposed amended Regulation supports Delaware's Captive Insurance Program (18 **Del.C.** Ch. 69) and allows Delaware to adopt a national model audit requirement for Risk Retention Groups, maintaining Delaware's accreditation standing. The Delaware Code authority for the proposed change is 18 **Del.C.** §311 and §6915; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended Regulation. The proposed amended Regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

[www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml](http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml)

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, September 30, 2013. Any such requests should be directed to:

Regulatory Specialist Rhonda West  
Delaware Department of Insurance  
841 Silver Lake Boulevard  
Dover, DE 19904  
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#### 302 Captive Insurance Financial Regulation

##### 1.0 Purpose and Authority.

- 1.1 The purpose of this regulation is to set forth the financial, reporting and other requirements which the Commissioner deems necessary to the regulation of captive insurance companies, as authorized by the Delaware Revised Captive Insurance Company Act, 18 **Del.C.** Ch. 69. Reference hereinunder to "company" shall mean captive insurance company or companies, unless otherwise specified.
- 1.2 The provisions of this regulation shall apply unless the Commissioner directs otherwise.
- 1.3 Risk Retention Groups shall be subject to the requirements set forth in 18 **DE Admin. Code** 301. If a Risk Retention Group is exempt from the reporting requirements of 18 **DE Admin. Code** 301 pursuant to section 2.2 of that regulation, then this regulation shall apply to such Risk Retention Group in its entirety. If such Risk Retention Group is not exempt from Regulation 301, then only sections 1.0, 2.0, and 9.0 through 14.0 of this regulation shall apply.

##### 2.0 Annual Reporting Requirements.

- 2.1 Except as provided in 18 **Del.C.** §6907(c), a company doing business in this State shall annually prior to March 1, submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers or other authorized persons. The annual report shall comply with the requirements of 18 **Del.C.** §6907 and the provisions of this regulation.
- 2.2 A company that elects to file its annual report on a fiscal year basis pursuant to 18 **Del.C.** §6907(c), shall file such report no later than 60 days following the close of such fiscal year.

- 2.3 A company that elects to file its annual report on a fiscal year basis pursuant to 18 **Del.C.** §6907(c) shall submit, concurrently with each premium tax return required in connection with premium taxes due under 18 **Del.C.** §6914, a schedule detailing the net direct written and assumed premium for the fiscal year in question.
- 2.4 In order to verify results reported in the company's annual report, each company shall cause its books and records to be audited annually by an independent certified public accounting firm approved in accordance with section 4.0 hereof.
- 2.5 In order to further verify results reported in the company's annual report, in accordance with Section 8.0 hereof each company shall cause to be prepared an opinion certifying the accuracy of the company's life, health, or annuity insurance reserves, or its loss reserves and loss expense reserves, as reported in the annual report.

### **3.0 Annual Audit.**

- 3.1 Each company shall have an annual audit by an Independent Certified Public Accounting Firm and shall file the annual audit with the Commissioner on or before June 30 for the year ending December 31 immediately preceding.
  - 3.1.1 A company that elects to file its annual report on a fiscal year basis pursuant to 18 **Del.C.** §6907(c), shall submit its annual audit report to the Commissioner no later than 180 days following the close of its fiscal year.
  - 3.1.2 A company shall not file an annual audit in which a partner or other person responsible for rendering such annual audit has acted in that capacity for more than seven (7) consecutive years. Each company filing an annual audit shall disqualify such person from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two (2) years. A company may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner may consider the following factors in determining if the relief should be granted:
    - 3.1.2.1 Number of partners, expertise of the partners or the number of insurance clients in the company's current independent certified public accounting firm.
    - 3.1.2.2 Premium volume of the company; or
    - 3.1.2.3 Any other factor.
- 3.2 The annual audit shall consist of the following:
  - 3.2.1 Report of independent certified public accounting firm.
  - 3.2.2 Balance sheet reporting assets (including, as applicable, admitted assets), liabilities, capital and surplus.
  - 3.2.3 Statement of operations.
  - 3.2.4 Statement of cash flows.
  - 3.2.5 Statement of changes in capital and surplus.
  - 3.2.6 Notes to financial statements. These notes shall be those required under generally accepted accounting principles, statutory accounting principles or international financial reporting standards, as applicable, and shall include:
    - 3.2.6.1 A reconciliation of differences, if any, between the audited financial statements and the annual report required hereunder with a written description of the nature of these differences.
    - 3.2.6.2 A summary of ownership and relationships of the company and all affiliated companies.
  - 3.2.7 The financial statements included in the annual audit shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual report of the company filed with the Commissioner, and the financial statement shall be comparative, presenting the amounts as of the end of the current fiscal year and the amounts as of the end of the immediately preceding fiscal year. However, in the first year in which a company is required to file an annual audit, the comparative data may be omitted.
- 3.3 Report on Significant Deficiencies and Material Weaknesses in Internal Controls
  - 3.3.1 In addition to the annual audit, each company shall furnish the Commissioner with a written report, prepared in accordance with SAS No. 112, or any successor thereto, by the independent certified public accounting firm describing significant deficiencies and material weaknesses in the company's internal control structure noted by the independent certified public accounting firm during the audit. SAS No. 112, Communication of Internal Control Related Matters Identified in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants), requires an independent certified public accounting firm to communicate significant deficiencies and material weaknesses noted during a financial statement audit to the appropriate parties within an entity.
  - 3.3.2 The company is required to provide a description of remedial actions taken or proposed to correct material weaknesses and, at the Commissioner's discretion, significant deficiencies, if such actions are not described in the independent certified public accounting firm's report.
- 3.4 Accountant's Letter

3.4.1 The independent certified public accounting firm shall furnish the company, for inclusion in the filing of the annual audit, a letter stating:

3.4.1.1 That it is independent with respect to the company and conforms to the standards of its profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants or applicable standards of the International Federation of Accountants or its member organizations.

3.4.1.2 The general background and experience of the staff engaged in the audit, and the length of time the person responsible for preparing the annual audit has served in that capacity.

3.4.1.3 That the independent certified public accounting firm understands that the audited annual report and its opinions thereon will be filed, in compliance with this regulation, with the Commissioner, and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of the company.

3.4.1.4 That the independent certified public accounting firm consents to the requirements of Section 7.0 of this regulation and that the independent certified public accounting firm consents and agrees to make available for review by the Commissioner, his designee or his appointed agent, the work papers as defined in Section 7.0.

3.4.1.5 That the partner or person in charge of the annual audit is properly licensed by an appropriate licensing authority and that he is a member in good standing in the American Institute of Certified Public Accountants or other member organization of the International Federation of Accountants.

#### **4.0 Designation of Independent Certified Public Accounting Firm.**

4.1 Each company shall provide to the Commissioner the name and address of the independent certified public accounting firm retained to conduct the annual audit required under this regulation not less than six months before the date on which the first annual audit conducted by such firm is to be filed with the Commissioner in accordance with Section 3.1 hereof.

4.2 For the purposes of conducting the annual audit required under this regulation, a company shall retain only those independent certified public accounting firms approved for such purpose by the Commissioner.

4.3 A company seeking approval to extend the Commissioner's examination cycle from three years to five years in accordance with 18 Del.C. §6908 shall retain, for its annual audit, an independent certified public accounting firm approved by the Commissioner specifically for the purpose of such extension.

#### **5.0 Consolidated or Combined Audits.**

5.1 A company may make written application to the Commissioner for approval to submit a consolidated annual audit in lieu of separate annual audits if the company is part of a group of entities that consolidates its annual audit. In such cases, a consolidating or combining worksheet shall be prepared with the annual audit as follows:

5.1.1 Amounts for each company subject to this section shall be stated separately.

5.1.2 Noninsurance operations may be shown on the worksheet on a combined or individual basis.

5.1.3 Explanations of consolidating and eliminating entries shall be included.

5.1.4 A reconciliation shall be included of any differences between the amounts shown in the individual company columns of the worksheet and comparable amounts shown on the annual reports of such companies.

#### **6.0 Notification of Adverse Financial Condition.**

6.1 A company shall require the independent certified public accounting firm to immediately notify in writing an executive officer and the governing body of the company of any determination by the independent certified public accounting firm that the company has materially misstated its financial condition in its annual report to the Commissioner. The company shall furnish such notification to the Commissioner within five working days of receipt thereof.

#### **7.0 Availability and Maintenance of Working Papers of the Independent Certified Public Accounting Firm.**

7.1 Each company shall require the independent certified public accounting firm to make available for review by the Commissioner the work papers prepared in the conduct of the annual audit of the company. The company shall require that the independent certified public accounting firm retain the audit work papers for a period of not less than seven years after the period reported upon.

7.2 The Commissioner's review, and all working papers obtained during the course of such review, shall be confidential pursuant to 18 Del.C. §6920. The company shall require that the independent certified public accounting firm provide copies of any of the working papers which the Commissioner requests. Such working papers may be retained by the Commissioner.

7.3 "Working Papers" shall mean the records kept by the independent certified public accounting firm of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to its audit of the financial statements of a company. Working papers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accounting firm in the course of the audit of the financial statements of a company and which support its opinion.

#### **8.0 Certification of Life, Health and Annuity Insurance Reserves, Loss Reserves and Loss Expense Reserves.**

8.1 The annual report shall include an opinion certifying as to the adequacy of the company's life, health, or annuity insurance reserves, or its loss reserves and loss expense reserves.

8.2 The individual who certifies as to the adequacy of reserves shall be approved by the Commissioner and shall be a Fellow of the Casualty Actuarial Society, a Fellow of the Society of Actuaries, a member in good standing of the American Academy of Actuaries, a member of any other member organization of the International Actuarial Association, or an individual who has demonstrated to the Commissioner his competence in loss reserve evaluation.

8.3 Certification shall be in such form as the Commissioner deems appropriate.

#### **9.0 Organizational Review.**

9.1 In connection with the issuance of a certificate of authority to a company, the Commissioner shall conduct an organizational review of such company. This review shall consist of a review of such factors as the Commissioner deems necessary. Such factors may include a general survey of the company's organizational documents and records, verification of capital and surplus, and a verification of the company's principal place of business.

#### **10.0 Reinsurance.**

10.1 Any company may take credit for reinsurance ceded subject to the following limitations:

10.1.1 No credit for reinsurance shall be allowed where the reinsurance contract does not result in an actual transfer of risk or liability to the reinsurer.

10.1.2 No credit for reinsurance shall be allowed unless the assuming insurer is obligated as to such reinsurance without diminution because of the insolvency of the ceding insurer.

10.1.3 No credit for reinsurance shall be allowed unless the reinsurance complies with the requirements of 18 Del.C. §§911 through 914, or the reinsurer and amount of reinsurance has otherwise been approved by the Commissioner.

10.1.4 Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

10.1.5 The Commissioner in his discretion may require that complete copies of all reinsurance treaties and contracts be filed with and/or approved by him.

#### **11.0 Members of Governing Body and Executive Management.**

11.1 Every company shall report to the Commissioner within thirty days after any change in its executive officers, directors, trustees, members, partners, executive managers, or other persons comprising the governing body of the company (hereinafter "Executive Persons"), including in its report a statement of the business and professional affiliations of any new Executive Person.

11.2 Except as otherwise permitted under the company's plan of operation, no Executive Person, officer or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company.

11.3 Any amounts received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

#### **12.0 Conflict of Interest.**

12.1 Each company shall adopt a conflict of interest policy for its Executive Persons and key employees. Such policy shall require that each Executive Person and key employee disclose to the company's governing body, at least annually, any outside commitments that have the potential to create a conflict of interest with respect to the duty of such person to further the interests of the company.

#### **13.0 Suspension or revocation of Certificate of Authority.**

- 13.1 Subject to the provisions of this section, the Commissioner may suspend or revoke the certificate of authority issued to a company in the following circumstances:
- 13.1.1 if the company has not commenced business within two years of receiving a certificate of authority, unless specifically provided for in the company's plan of operation;
  - 13.1.2 if the company ceases to carry on insurance business, unless specifically provided for in its plan of operation;
  - 13.1.3 at the request of the company; or
  - 13.1.4 for any reason provided in 18 **Del.C.** §6909.
- 13.2 Suspension or revocation of a certificate of authority shall be subject to relevant provisions of the Administrative Procedures Act, 29 **Del.C.** §10101, et seq.

**14.0 Acquisition of Control of or Merger with a Company.**

- 14.1 No person shall make a tender offer for, or enter into any agreement to exchange securities for, or seek to acquire, or acquire in the open market or otherwise, any interest in a company if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company as defined under 18 **Del.C.** §5001(3), and no person shall enter into an agreement to merge with or otherwise to acquire control of a company, without the prior written approval of the Commissioner. In considering any application for acquisition of control or merger with a company, the Commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company set out in Chapter 69 of Title 18.

**15.0 Variable Contracts**

- 15.1 Any company that issues variable life or annuity contracts shall establish separate accounts subject to the requirements of 18 **Del.C.** §2932.

**11 DE Reg. 1658 (06/01/08)**

**16.0 Effective Date**

This Regulation shall become effective 10 days after being published as a final regulation.

**17 DE Reg. 293 (09/01/13) (Prop.)**