

State of Delaware



DONNA LEE H. WILLIAMS
INSURANCE COMMISSIONER

841 SILVER LAKE BLVD.
DOVER, DELAWARE 19904-2465
(302) 739 - 4251
FACSIMILE (302) 739 - 5280

Department of Insurance SURPLUS LINES BULLETIN NO. 3

ELIGIBLE SURPLUS LINES INSURERS QUALIFICATIONS UNDER DELAWARE SURPLUS LINES LAW

Original No. 69-4
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No foreign or alien insurer shall be declared eligible as a surplus lines insurer in Delaware unless a completed application is received and approved by the Commissioner. The application shall consist of the following materials:

1. Copy of Insurer's Charter or similar document and all amendment(s), addition(s), change(s), and deletion(s) hereto originally certified by the Director of Insurance, Superintendent of Insurance, Insurance Commissioner, jurisdiction of Insurance's or similar proper official of the amendment(s), addition(s), change(s), and deletion(s) thereto.

2. Copy of the Insurer's Certificate of Authority or similar document indicating and setting forth its authority or power to issue policies and insure risks in the jurisdiction in which they are incorporated, formed or organized and that in its place of incorporation, formation or organization it has actually issued such policies and insured such risks.

3. A certified or authenticated copy of the latest Annual Financial Report or Statement as submitted, filed and signed by the proper officers of the Insurer to the insurance regulatory authority or other governmental authority requiring such Financial Report or Statement of the jurisdiction where incorporated, formed or organized. Such certification or authentication of the aforesaid Financial Report or State shall be made by the proper official of the insurance regulatory authority or similar governmental authority requiring such. If the insurer's financial statement is expressed in a language other than English, both the English and the non-English copy shall be provided. The aforesaid latest Annual Financial Report or Statement shall be furnished at least annually to the Insurance Commissioner of the State of Delaware.

4. A copy of the latest official Report of Examination (as distinguished from the latest Annual Financial Report or Statement mentioned in No. 3 hereof) of the Insurer conducted by the insurance regulatory authority or similar governmental authority requiring such examination and certified by the proper official of such authority.

5. The Insurer shall in writing designate the proper individual in its employ who is directly and actively in charge of and responsible for handling any and all insurance claims whatsoever and to whom all correspondence regarding such claims may be directed. Any personnel changes affecting such previously designated individual shall be reported to the said Insurance Commissioner and indicate the present designated individual responsible for and in charge of handling such insurance claims.

6. The Insurer shall in writing designate the particular individual in its employ or otherwise to whom all lawful process served upon the said Insurance Commissioner in accordance with Section 1919 may be forwarded. Any personnel or business relation change affecting to whom the aforesaid lawful process shall be forwarded, shall be immediately reported to the said Insurance Commissioner and the new individual to whom said lawful process shall be forwarded shall be designated. The aforesaid designated individual, partnership, association, corporation or similar entity or designated representative to whom process shall be forwarded must maintain his or its legal residence, domicile or offices in the United States.

7. A certified statement and declaration from the licensed surplus lines broker setting forth the proposed kinds or types of insurance coverage and kind of types of risk that the Insurer intends to write and insure.

8. Minimum financial requirements for an Insurer are based upon the classes or types of insurance which the Insurer is fully chartered to transact. (Such requirements for stock insurance companies are determined in accordance with the provisions of Chapter 5). The insurer must have surplus as to policyholders of not less than the amount required of a like foreign insurer licensed in Delaware.

9. The premium rate at which insurance is placed in an unlicensed insurer is not lower than the lowest published rate which has been approved by the said Insurance Commissioner for use by any licensed insurer.

10. In the event that during the term of any insurance policy of contract there shall be any change in the unlicensed insurer or in the distribution of the risk among two or more insurers with or without the consent of the insured, the said Insurance Commissioner must be immediately notified by the surplus lines broker to that effect.

11. The unlicensed insurer must be currently a licensed insurer in the state of its domicile as to the kind or kinds of insurance which it proposed to provide. In addition, it must have been (i) such insurer for not less than three full years preceding, or (ii) must be a subsidiary of an already eligible surplus lines insurer which has been so eligible for a period of not less than one full year preceding, or (iii) must be a subsidiary of an insurer licensed in Delaware which has been so licensed for a period of not less than one full year preceding.

12. Every policy, cover note, or other instrument of insurance delivered to the insured, and placed with an unlicensed insurer in accordance with the aforesaid Code shall contain a Service of Suit Clause in the form prescribed below:

SERVICE OF SUIT CLAUSE

"It is agreed that in the event of the failure of the Insurer(s)/or Underwriters hereon to pay any amount claimed to be due hereunder, the Insurer(s)/or Underwriters hereon, at the request of the Insured (or reinsured), will submit to the jurisdiction of any Court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

It is further agreed that service of process in such suit may be made upon the Insurance Commissioner of the State of Delaware and that in any suit instituted under this contract Insurer(s) and/or Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named is authorized and directed to accept service of process on behalf of the Insurer(s)/or Underwriters in any such suit and/or upon the request of the Insured (or reinsured) to give a written undertaking to the Insured (or reinsured) that it or they will enter a general appearance upon the Insured(s)/or Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America, which makes provision therefore, the Insurer(s)/or Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or reinsured) of any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

13. Submit biographical sketches of Insurer's individual officers, directors, persons in managerial control and like individuals indicating length of affiliation with present Insurer, previous affiliations with other insurance companies, associations, exchanges or like entities; any affiliation with any insurance company, association, exchange or like entity which is now defunct, had been or is now being liquidated, dissolved or declared bankrupt; and any pending criminal indictment or conviction.

FOR ALIEN INSURERS ONLY:

14. Copy of the Trust Fund Agreement concerning the Trust Fund which the Insurer must have and maintain in a bank or trust company which is a member of the United States Federal Reserve System. The terms of the aforesaid Trust Fund Agreement shall be reasonably adequate for the protection of all of the Insurer's policyholders in the United States. The aforesaid trust fund must be in an amount of not less than four hundred thousand dollars (\$400,000). In the case of a group of individual unincorporated insurers, such trust fund shall be not less than fifty million dollars (\$50,000,000). The Insurance Commissioner of the State of Delaware may require larger trust funds than those set forth above if in the judgment the volume of business being transacted or proposed to be transacted warrants such larger amounts. To the extent of the minimum amounts as provided for above, such trust funds shall consist of United States currency, public obligations of the United States or a political subdivision thereof or other

investments of the same general character and quality as are required for like funds of the same class of Insurers licensed in Delaware.

15. Prepare and submit immediately duly certified and authenticated copies of any and all proposed amendment(s), change(s), addition(s), and deletion(s) whatsoever to the Trust Fund Agreement to the Insurance Commissioner of the State of Delaware. Any such amendment(s), change(s), addition(s), and deletion(s) to the Trust Fund Agreement must have the written consent and approval of the said Insurance Commissioner prior to becoming effective.

16. The Trustee of the aforesaid Trust Fund shall give written verification of the amount initially deposited and presently on deposit by the Insurer in the Trust Fund. The Trustee shall likewise immediately give written notification to the said Insurance Commissioner when at any time whatsoever the Trust Fund Deposit is less than the aforesaid minimum requirements of four hundred thousand dollars (\$400,000) or fifty million dollars (\$50,000,000) as the case may be. The Trustee shall likewise immediately give written notification of any proposed amendment(s), change(s), addition(s), and deletion(s) to the Trust Fund Agreement to the said Insurance Commissioner and the Trustee shall not agree to or approve any such amendment(s), change(s), addition(s), or deletion(s) to the Trust Fund Agreement without the prior written consent and approval of the said Insurance Commissioner.