

Delaware Issues Regulatory Guidance, Process Improvements, for D&O Captives

Article By:

Geoffrey B. Fehling

Patrick M. McDermott

Last week, the Delaware Insurance Commissioner announced a series of process and regulatory improvements to the state's captive regime. Building upon [last year's significant amendments](#) to DGCL 145(g) expressly permitting captives to cover D&O liability, [Bulletin No. 14](#) outlines several requirements for captives to write Side A D&O policies for Delaware corporations, including several process changes intended to improve approval timelines and speed to market.

A second bulletin ([Bulletin No. 12](#)) further incentivizes captive formation by modifying capital requirements, including by permitting capital and surplus to be held in brokerage accounts under certain conditions. The Commissioner explained that the changes were meant to help companies access more affordable coverage and increase Side A D&O capacity.

Delaware is already the world's fifth largest captive domicile and the third largest in the US. These regulatory improvements—combined with Delaware's existing pedigree as a leader in corporate law and governance and a growing number of

[significant insurance coverage decisions](#) from the Delaware Supreme Court—should further bolster Delaware’s role as a leader on insurance issues.

Whether its high premiums, less favorable terms, or reduced capacity, companies continue to search for alternative risk transfer options—like captives, risk retention groups, and self-insurance—outside the traditional insurance market. Forming a captive may enable flexibility, control, and cost savings, but [it is not without risk](#) and must be formed and operated correctly to take advantage of those benefits. Retaining experienced insurance, corporate, and tax professionals can help assess the viability of alternative risk transfer and navigate those issues.

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