

It's all in the application

I Michael W. Teichman of Parkowski, Guerke & Swayze, P.A. explains how to ensure a successful captive insurance application process in Delaware

Since its organisation as a separate division within the Delaware Department of Insurance, the Bureau of Captive and Financial Insurance Products has demonstrated its commitment to accessibility and flexibility. This is nowhere more evident than in the application and licensing process. However, as with any regulatory process, there are a number of steps and a multitude of forms and documents which must be prepared and submitted in connection with the application. The proper approach to these steps and submissions will go a long way to streamlining the process and speeding your application on its way to approval.

The Bureau has an open door policy towards potential applicants. Accordingly, unless your application is very much like other applications that the Bureau has already seen and approved, the very first step in your application process should be to schedule a feasibility teleconference or meeting with the Bureau to discuss your proposal. While this is the first step in the regulatory process, your business model should be far enough along that you can discuss your proposal with a fair degree of specificity. You should plan to send the Bureau an organisation chart prior to the meeting, and you should be prepared to discuss the following:

- Captive rationale
- Business entity organisation
- Ownership
- Capitalisation
- Business lines
- Policy and claims administration
- Reinsurance
- Anticipated premiums and losses

- Anticipated financial performance
- Anticipated consultants and service providers

The purpose of this initial meeting is to vet the proposal with the Bureau, and to identify adjustments to your business plan necessary to accommodate Bureau suggestions and requirements before the application is filed. It follows that your meeting/teleconference with the Bureau should be timed such that your business plans have matured, yet before they have become set in concrete. Depending on the level of detail you are able to provide, and the questions raised by the Bureau in this initial meeting, there may or may not be a need for follow on meetings.

Assuming that you have achieved a fair degree of success in your initial meeting, it is time to engage your experts and consultants, if you have not done so already. Whether you are applying on your own behalf, or a captive manager preparing an application on behalf of another, at a minimum, you will now need to engage Delaware counsel and an actuarial firm. If you are proposing to be self managed, you will probably need to engage an accounting firm to prepare pro forma financials and to maintain the captive's proposed books and records once it becomes operational. You will also need to identify your independent auditor although retention at this point is not necessary.

You may find it useful to retain your actuary, accountant and attorney prior to the initial meeting with the Bureau. Indeed, it is prudent to gain a sense of the actuarial methodology, assumptions and



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loss projections early on in the process, so as to avoid any unpleasant surprises when the full feasibility study is completed (by which time substantial funds have likely been expended). Other service providers, such as those providing claims and policy administration, will need to be identified but need not be retained at this stage. Whether or not your service providers are formally retained at the application stage, you will need to have an understanding of the fees they will ultimately charge and the costs they will incur, because these amounts will be required in order to complete your pro forma financials. Finally, be sure that your auditor, actuary and captive manager have all been approved by the Bureau.

Recently, the Bureau has begun to accept application packages before the entity has been formed. In these cases, the Bureau will issue a Certificate of Authority and hold it until the organisational examination has been completed, by which time you will need to have completed the usual and customary formalities appurtenant to business entity formation. Additionally, the entity's board of directors or other governing body will need to adopt resolutions ratifying all of the actions of the individuals who acted on behalf of the captive before its formation. If you choose not to form your



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entity until after the licensing process is underway, your application package will need to have final drafts of the organisational documents you propose to use. Be sure to identify a director (or member of the relevant governing body) resident or having a principal place of business in Delaware.

The application package itself contains three key elements: the actuarial feasibility study, five year pro forma financials (in appropriate cases, the Bureau will accept three year projections), and the business plan (or plan of operation). The term ‘business plan’ may mean many different things to different people, but in the context of a Delaware captive insurance application, the business plan is a written narrative covering all aspects of the captive proposal. A proper business plan will address at least the following:

- **Purpose and rationale** – Discuss the risks to be assumed by the proposed captive and the business exigencies that make these risks appropriate for the proposed captive. Describe the anticipated outcomes and objectives.
- **Company overview** – Describe the legal form of the proposed captive, its governance and management, and the service providers and consultants that the company will utilise.
- **Market analysis** – Address the insurance needs of the proposed captive’s participants and the alternatives, or lack thereof, in the traditional or E&S lines market.
- **Risks assumed** – Describe the types of coverage to be offered, or reinsured, by the proposed captive and the limits of such coverage. Also

include a description of any risk management programmes.

- **Implementation plan** – Discuss the procedures that the proposed captive will utilise to provide and service coverage to participating insureds, to handle their claims, and to otherwise develop and refine the business operations and capabilities of the captive.
- **Finance and capitalisation** – Describe the amount and source of initial capitalisation, proposed premiums, anticipated loss experience, administrative and underwriting expenses, likely tax obligations and any considerations towards shareholder or policyholder dividends or distributions.

Of course, the last item will be derived from your actuarial feasibility study and five-year pro forma financial projections, which will therefore need to be completed before your business plan can be finalised. A word about capitalisation – an applicant should not assume that the “minimum capital and surplus” amounts set forth in Delaware’s captive statute are the only capitalisation requirements. While these may ultimately be all that is necessary, these levels are only statutory minimums. The proposed captive’s level of capitalisation should be driven by the nature and amount of the insurance business it writes.

In addition to the business plan, feasibility study and pro forma financials, a complete application package will require the preparation of a number of forms, all of which are available on the Bureau’s website. These forms include:

- Application form C-1

- Irrevocable letter of credit (if applicable)
- Biographical affidavits for all proposed directors and officers (or other governing and/or management personnel as applicable)
- Designation for Receipt of Service of Process form D-1
- Designation to Receive Department of Insurance Documents form D-2

A completed application will also include as exhibits the organisational documents (for example certificate of incorporation and by laws) of the captive, and any shareholder or member agreements, particularly those that may address dividends or other withdrawal of capital. Direct writing or fronting captives will also need to attach an underwriting policy if this is not fully covered in the plan of operation. Of course, do not forget the application and processing fees – US\$3,200. Finally, the Bureau will no longer accept paper application filings. All documents should be converted to PDF or word format and filed via CD or other electronic media. The only paper that needs to be filed in connection with an application is the original executed application form C-1 and the executed biographical affidavits.

Delaware prides itself on a friendly business climate, and the Captive and Financial Insurance Products Bureau is a prime example of this attitude. While all applicants will surely be handled expeditiously and courteously by the Bureau staff, a little forethought and attention to detail by the applicant can help ensure that a Delaware captive application will experience an efficient, timely and painless review process. 🍷