

Risk Retention Groups: Frequently Asked Questions

1. What publications are available to help understand RRGs and state's authority?

- a. NAIC Risk Retention and Purchasing Group Handbook is available from the NAIC publications webpage at https://www.naic.org/documents/prod_serv_legal_ris_bb.pdf.

The following key documents can be found as Appendices in the Handbook:

- Appendix A: Federal Liability Risk Retention Act (LRRRA)
 - Appendix B: NAIC Model Risk Retention Act (#705)
 - Appendix D: NAIC Uniform Risk Retention Group Registration Form
- b. Accreditation Program Manual
- Part A: Laws and Regulations – 18 accreditation standards that outline the laws required specifically for states that charter RRGs
 - Part B: Regulatory Practices and Procedures - RRG specific procedures for financial analysis and procedures when a disclaimer of affiliation is filed
 - Interlineations – Reinsurance guidelines for RRG's licensed as captive insurers

2. How does the LRRRA address regulation of RRGs?

- a. Under §3902 of the LRRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the formation and operation of an RRG, except as provided in the LRRRA. Only the domiciliary state may regulate the formation and operation of an RRG.
- b. The implementation of the LRRRA was intended to allow organizations to come together in the creation of a risk-bearing, risk-sharing entity (the RRG) to offer its members, who are the beneficiaries of the insurance provided, liability coverage in an expedient and economical manner.

3. How does RRG registration in a non-domiciliary state differ from the licensing process for a traditional insurer?

- a. There are no solvency requirements imposed by the non-domiciliary state upon an RRG seeking to register in the State. Regulation as to formation and operation, including the imposition of solvency requirements, are imposed by the domestic state.
- b. RRGs are subject to a substantially similar application and licensing process imposed by the domestic state, or state of domicile. For registration to conduct business in non-domestic states, RRGs are not subject to the standard application and licensing process (NAIC UCAA Instructions or NAIC Company Licensing Handbook).
- c. The registration process is intended to be simpler than the licensing process for other types of insurers. Registration is focused on information gathering rather than decision making. Registration is not the same as admission or company licensing; it is not intended to provide non-domiciliary states with any regulatory powers over RRGs other than that provided in the LRRRA. It is not within a state's authority to use the processing of a registration to bar RRGs seeking to lawfully operate in a state, nor can a state declare a "moratorium" on the filing of

RRG registrations. Once an RRG (that is in compliance with the definition of an RRG as stated in the LRRRA) provides the NAIC Uniform Risk Retention Group Registration Form with all required information entered and attached (i.e. a “complete form”), they may begin operating in the state. Approval from the non-domestic state is not required. However, best practice is for the non-domiciliary state to notify the RRG following their initial review of the NAIC Uniform Risk Retention Group Registration Form that either the form received was complete, or that the form was missing information. The non-domiciliary state may also reach out to the domiciliary state for more information and is encouraged to do so. (see the Best Practices—Risk Retention Groups document)

- d. The LRRRA references two documents that must be provided to the non-domestic state – a plan of operation OR a feasibility study. There is also additional information such as contact information of the RRG, chartering state information, and the lines of liability insurance business that are written by the RRG seeking to register. All this information is provided in the completed NAIC Uniform Risk Retention Group Registration Form.
- e. For an RRG that is compliant with the LRRRA and the regulation of their domestic state (including authorization to register to do business in another state), the non-domestic state cannot deny the RRG’s registration. If there is uncertainty, the domestic state should be contacted.

4. What are the steps for the non-domiciliary insurance regulator to take in the registration process for an RRG?

- a. Review the NAIC Uniform Risk Retention Group Registration Form and verify the RRG has provided a complete form.
- b. Once a complete form is received, the RRG is authorized to write in the state where it registers. The following best practices may also be considered during the registration process; however, they do not impact the registration status of the RRG:
 - a. Review the information provided with the registration form for reasonableness.
 - b. Reach out to the domestic state insurance regulator for additional information or concerns. The best practices Inquiry Template can be used and modified as appropriate.
 - c. Notify the RRG once the registration form is deemed complete. They are now registered in the state.

5. What should a non-domiciliary state do if they have concerns about a complete RRG registration form received?

- a. If the RRG provided a complete form, but there are concerns about the lines of business or financial solvency, or some other matter, the non-domiciliary state should first communicate with the domestic state. If necessary, the non-domiciliary state should consider pursuing the remedies in LRRRA §3902(a)(1) also discussed in FAQ #12.

6. When can a non-domiciliary state reject an RRG registration?

- a. A non-domestic state cannot reject the registration of an RRG that submits a complete registration form. Instead the non-domestic state should communicate concerns to the domestic state or refer to the remedies in LRRRA §3902(a)(1) also discussed in FAQ #12.

7. Can an RRG registration be delayed if a financial statement filing and/or audit is not yet available at the time of application or registration?

- a. No, an RRG can register prior to filing of an annual financial statement audit and a statement of opinion on loss and loss adjustment expense reserves with its domiciliary state.
- b. Once these initial filings are made, they are available on I-Site for review.
- c. If questions arise due to lack of this information, the non-domiciliary state should reach out to the domestic state to address its concerns.

8. What items does the LRRRA require an RRG provide to the non-domiciliary state in conjunction with the registration?

- a. It is recommended that states adopt the NAIC Uniform Risk Retention Group Registration Form, which has been developed by the NAIC in order to facilitate uniformity. Such forms are included in the Risk Retention and Purchasing Group Handbook.
- b. Consistent with LRRRA, each RRG shall submit a copy of the plan of operation OR a feasibility study before it may offer insurance in the state.

Note: If the RRG is newly formed, the feasibility study provides relevant information on rates and expected losses. If the RRG is expanding the states in which it operates and has been writing business for an extended period, the feasibility study becomes less relevant and a current business plan, along with documents a non-domiciliary state can easily obtain from the NAIC's I-Site (Annual Statement(s), RBC Report(s), MD&A(s), Audited Financial Statement(s), Actuarial Certification(s)) provide pertinent information.

- c. If the plan of operation or feasibility study does not appear to be updated, a non-domiciliary state should contact the domiciliary state regulator to obtain more information, including the IPS, and may request revised documents from the RRG if original submission is found to be inaccurate or unclear.

9. What should be included in a plan of operation?

- a. The LRRRA states that an RRG's plan of operation or feasibility study includes information on liability insurance coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.
- b. In addition, the Best Practices – Risk Retention Groups document offers a list of other suggested items for inclusion in a plan of operations or feasibility study.

10. Where can the non-domiciliary state get information about an RRG's directors and officers?

- a. Directors and officers are listed in the annual and quarterly financial statements available from the NAIC's I-Site. All changes in Directors and Officers, with accompanying biographical affidavit(s), are submitted to and reviewed by the domiciliary state. In order to eliminate the need for redundant regulatory functions and unnecessary transfer of sensitive personal identifiable information, a non-domiciliary state should rely on the domiciliary state's review,

which includes background checks on directors, officers and key management personnel of an RRG to ensure the competency, character and integrity of the insurer's management.

11. What does the LRRRA say about renewals for RRGs in non-domiciliary states?

- a. The LRRRA is silent; therefore, initial registration is sufficient unless the operation of an RRG is affected by runoff, rehabilitation or liquidation processes. RRGs file changes in business plans, financial filings, etc. on an ongoing basis with non-domiciliary states; therefore, non-domiciliary states should consider developing a process for communicating with the domiciliary state (such as the example in the Best Practices—Risk Retention Groups document) and consider an annual request for Certificate of Good Standing/Compliance from the domiciliary state.
- b. Section 3902(d)(3) of the LRRRA requires that an RRG submit to the insurance commissioner of each state in which it is doing business a copy of the annual financial statement that it files with the RRG's domiciliary state. Non-domiciliary states should be aware that in many states where RRGs are licensed/chartered as captive insurers in conformity with NAIC accreditation standards, RRGs are permitted to use Generally Accepted Accounting Principles rather than Statutory Accounting Principles to report on their financial conditions, with required disclosure and reconciliation in footnote one. (see also Section II, page 3 of the Risk Retention and Purchasing Group Handbook)
- c. The filing is an ongoing requirement that must be complied with on an annual basis and is generally due to non-domiciliary states upon filing with the domiciliary state. The annual filing requirements for RRGs include an unaudited filing using the official Annual Statement Blank (property/casualty), an audited financial statement certified by an independent public accountant and a statement of opinion on loss and loss adjustment expense reserves made by an actuary or loss reserve specialist who is qualified in accordance with the criteria established by the NAIC in the annual statement instructions. See the above-mentioned NAIC Accreditation Program Manual, Part A: Laws and Regulations for annual filing requirements for RRGs.

12. What does the LRRRA say about taxes and fees charged by a non-domiciliary RRG?

- a. LRRRA S3902(a)(1)(B) says any state may require an RRG to:
 - a. Pay on a nondiscriminatory basis, applicable premium and other taxes, which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the state.
- b. Fees are not directly addressed in the LRRRA and as such, there has been disagreement about the legality of both initial and renewal registration fees and compliance with LRRRA. The authority on this topic is therefore federal case law. For example, there is one case (*Nat'l Risk Retention Assoc. v. Brown*, 927 F. Supp. 195 (M.D. La. 1996)) in which the court ruled that certain state requirements, including the payment of an annual renewal registration fee, were preempted by the LRRRA. See the Risk Retention and Purchasing Group Handbook for additional detail on relevant cases and other fee considerations.

13. What remedies are available to a non-domiciliary state if violations of applicable State laws occur?

- a. Secure clarification from the RRG's state of domicile;
- b. Call for an examination of the RRG by the state of domicile [15 U.S.C. §3902(a)(1)(E)];
- c. Pursue legal action through a court of competent jurisdiction [15 U.S.C. §3902(a)(1)(H)].

14. Is there a list of domestic and non-domestic state contact persons in state insurance regulator offices who are knowledgeable about RRGs?

- a. Yes. Appendix C of the NAIC Risk Retention and Purchasing Group Handbook includes a list of state insurance department contact persons. The most recent list is maintained as a separate document on the NAIC's publication webpage alongside a complete copy of the Risk Retention and Purchasing Group Handbook. (Link to Handbook: https://www.naic.org/documents/prod_serv_legal_ris_bb.pdf)