

Seller protect

Product brochure
USA

Overview

Seller protect is an innovative insurance policy designed specifically to protect sellers of small businesses from the risks they face during an M&A transaction.

The policy insures sellers for loss payable to the buyer as a result of an innocent breach of a seller representation or warranty, providing cover for up to 100% of the seller's indemnity plus defence costs.

Coverage highlights

Seller protect

As a customer of your M&A marketplace, you are automatically eligible for a specialized insurance policy called seller protect. Seller protect covers you in the event the buyer brings a claim against you for an innocent breach of the representations or warranties contained in the acquisition agreement.

Duty to defend

The insurer has a duty to defend you against a buyer's claim for a breach of the representations or warranties, giving you the benefit of sophisticated legal counsel and representation.

Streamlined underwriting

This policy had been underwritten based on the information already provided to your M&A marketplace. You don't need to provide any additional information to be eligible for the policy – all you need to do is 'opt in' and when your deal concludes, you will be sent your policy documentation.

Buyer benefits

Buyers also stand to benefit from seller protect as a loss payee. This means that if a claim is settled, proceeds will be paid directly to the buyer.

Policy details

Limit – The seller's full indemnity under the acquisition agreement

Deductible – Nil

Premium – The premium, applicable taxes and fees are funded by you, separately and in addition to the fees payable to your M&A marketplace

Policy period – 18 months

Maximum EV – USD 5,000,000

For transactions with an EV in excess of USD 5,000,000 Rubicon would be pleased to arrange a non-binding indication of terms (NBI) outside of your M&A marketplace

What's not covered

When a business is sold, the seller will make certain statements (representations) about the business being sold. If these representations are incorrect and result in the buyer suffering a financial loss, the seller is usually required to compensate (indemnify) the buyer. In making these representations, the seller will disclose any known issues with the business that could make such representations inaccurate – this has the effect of preventing the buyer from seeking compensation from the seller for those specific, disclosed issues. **This policy does not cover issues that the seller was aware of but did not disclose to the buyer when making the representations.**

Frequently asked questions

1. What is Rubicon?

Rubicon is acting as a surplus lines insurance broker in relation to your policy. A surplus lines insurance broker is needed to facilitate the placement of insurance policies with surplus lines insurance carriers. Aura Risk Management & Insurance Services, LLC (FEIN: 85-3835733; Regulatory license number: 6003436; Registered Office Address: 5595 DeSoto Avenue, Suite 250, Woodland Hills, CA 91367, USA) trading as Rubicon M&A Insurance Services, LLC ("Rubicon").

2. When do I pay premium?

If you elect to take up the seller protect insurance policy, you are liable to pay the premium when your transaction closes. In practice, your M&A marketplace will bill you for the premium, taxes & fees as part of their invoicing process for their fee payable upon closing. Alternatively, for some policyholders, a premium payment link will be sent to you by Rubicon (see question 1, above) after closing. Only the payment mechanism that is correct for you will be identified - whether you are to be billed via your M&A marketplace invoicing process, or separately via email.

3. What happens if I don't pay the premium?

If you elect to take up the seller protect insurance policy, you are liable to pay the premium within 30 days following the closing date of your transaction. If you don't pay the premium within this timeframe, for any reason, your policy will be cancelled from the applicable start date in the policy (known as inception), with no cover given.

4. What do I need to do to activate the insurance?

If you have opted in to purchase the insurance policy and paid the premium within the required timeframe (see question 3, above), you will be provided with your policy documentation automatically once your transaction closes. Your policy documentation will be sent to the email address you provided to your M&A marketplace. The start date for your insurance policy is the same as the closing date of your transaction.

5. How long am I insured for?

You will be covered for claims made within the 18 months following the closing date of your transaction, subject to the policy terms & conditions. Your policy will lapse after 18 months following the closing date. This means you will no longer be able to claim under the policy after that date unless you arrange to extend your policy via Rubicon, who will discuss with the insurer and confirm if this is possible.

6. How do I make a claim?

Instructions on how to make a claim are contained in Condition 1 within the policy wording, which will be provided to you when you receive your policy documentation. Condition 1 in the policy wording describes that first notification of a claim should be reported to the claims managers stated on the declarations page of the policy wording.

7. Do I have to buy the insurance policy?

No. If you have not opted in to purchase the insurance, you will not be liable to pay the premium and you will not receive an insurance policy.

Key exclusions

- Claims arising out of matters that the seller had actual knowledge of prior to the inception of the insurance
- Claims arising out of any fraudulent act or omission by the seller
- Claims arising out of matters that have been disclosed in relation to the acquisition agreement
- Claims arising out of any actual or alleged exposure of the target to any pollutants, including any toxic or hazardous substance or contaminant
- Claims arising out of the target's non-compliance with any laws, rules or regulations relating to loans financial assistance provided under the Paycheck Protection Program, the CARES Act or in connection with any Small Business Administration program
- Claims for amounts attributable to the wear and tear of the target's assets, properties, plant, or equipment