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# Shariah W&I insurance

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Norton Rose Fulbright LLP

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# Overview

- Introduction
- What is W&I and how it works?
- The W&I process
- Adaptations for a Shariah compliant W&I policy

# Continued rise of W&I

- Increasingly flexible
- Less expensive (extremely competitive market)
- Increased ability to claim due to favourable terms
- Differentiation on terms offered by different insurers

## Increasing popularity

- Positive claims experiences by policyholders
- One in seven policies issued globally reported a claim
- Policyholders are seeing claims being paid out

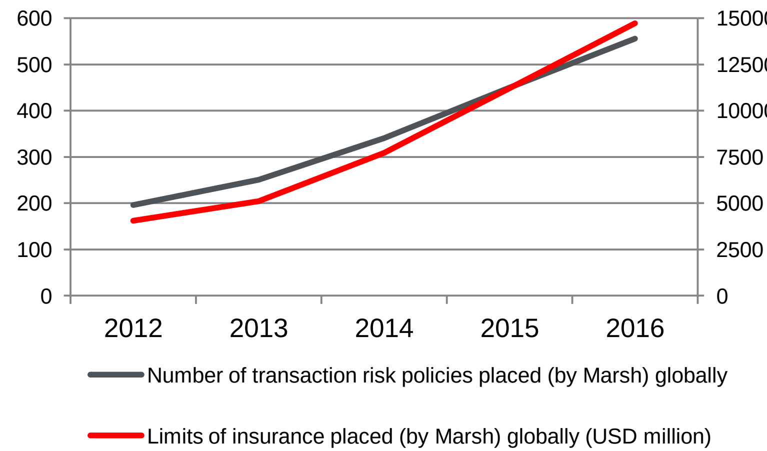
## Positive claims experiences

PREMIUM AS % OF LIMIT PURCHASED

| | |
|---|---|
| 2015 | 1.87% |
| 2016 | 1.35% |
| 2017 | 1.15% |

* UK policies, Source: JLT Report (2018)

### Use of W&I policies in global M&A continues to increase




Source: https://gettingthedealthrough.com/area/101/article/29172/private-m-a-use-w-i-insurance-private-m-a-transactions/8

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# W&I: What is it and how does it work?

- W&I Insurance provides cover for loss in relation to a breach of warranty or claim under the tax indemnity under M&A transactions.
- Can be bought as seller or buyer policy. However, 90%+ are buy-side policies. Although some policies “flip” from seller to buyer as part of an auction sale process.
- Known issues are typically excluded – can potentially be covered for an additional premium or under a separate contingent risk policy.
- Policies are typically fairly standard with specific lists of exclusions and will usually attach a coverage spreadsheet showing which warranties are covered and any variations in coverage versus the SPA.
- Typical uses:
  - PE and other sellers who require a clean exit and/or are unable or unwilling to provide warranties with sufficiently strong covenant (eg individuals) or to put proceeds in escrow
  - Purchases from management (buyers do not want to sue management)
  - Strategy to enhance bidder status in an auction
  - Buyer requires stronger warranty package for internal governance sign-off

# The process

**Day 1**

| | |
|---|---|
| Confidentiality & Hold Harmless | • Broker will be instructed and will usually negotiate / agree NDAs with Insurer(s)<br>• Hold Harmless may need to be agreed with Legal / Accountants to release DD Reports to Insurer(s) |
| Insurer's Internal Review of Documents | • Provide IM / Teaser to Insurer<br>• Provide SPA / Warranty Deed / Tax Deed<br>• Provide DD Reports (if available) / Target Accounts<br>• Insurer will review and prepare a NBI, indicating if it will offer cover, at what price and an outline of the key terms (e.g. policy limits, key exclusions) |
| Non-binding Indication (NBI) | If Insured decides to proceed:<br>• Insurer will ask Insured to sign expense agreement for legal fees for review<br>• Provide updated drafts of SPA / Tax Deed / Disclosure letter<br>• Provide further DD Reports and VDR access<br>• Insurer's legal counsel will review DD and documents and report to Insurer<br>• Insurer will prepare draft insurance policy<br>• Insurer / Insured (and advisers) may negotiate policy depending on policy complexity and deal size/dynamics<br>• Underwriting call with the Insured and its advisers to ask questions about the transaction, the process, specific terms<br>• Insurer will confirm quotation for policy |
| Insurers' Legal Review | |
| Binding Policy | • Transaction signed<br>• No Claims Declaration given by deal team<br>• Premium paid and W&I insurance policy bound |

**Day 10-14**



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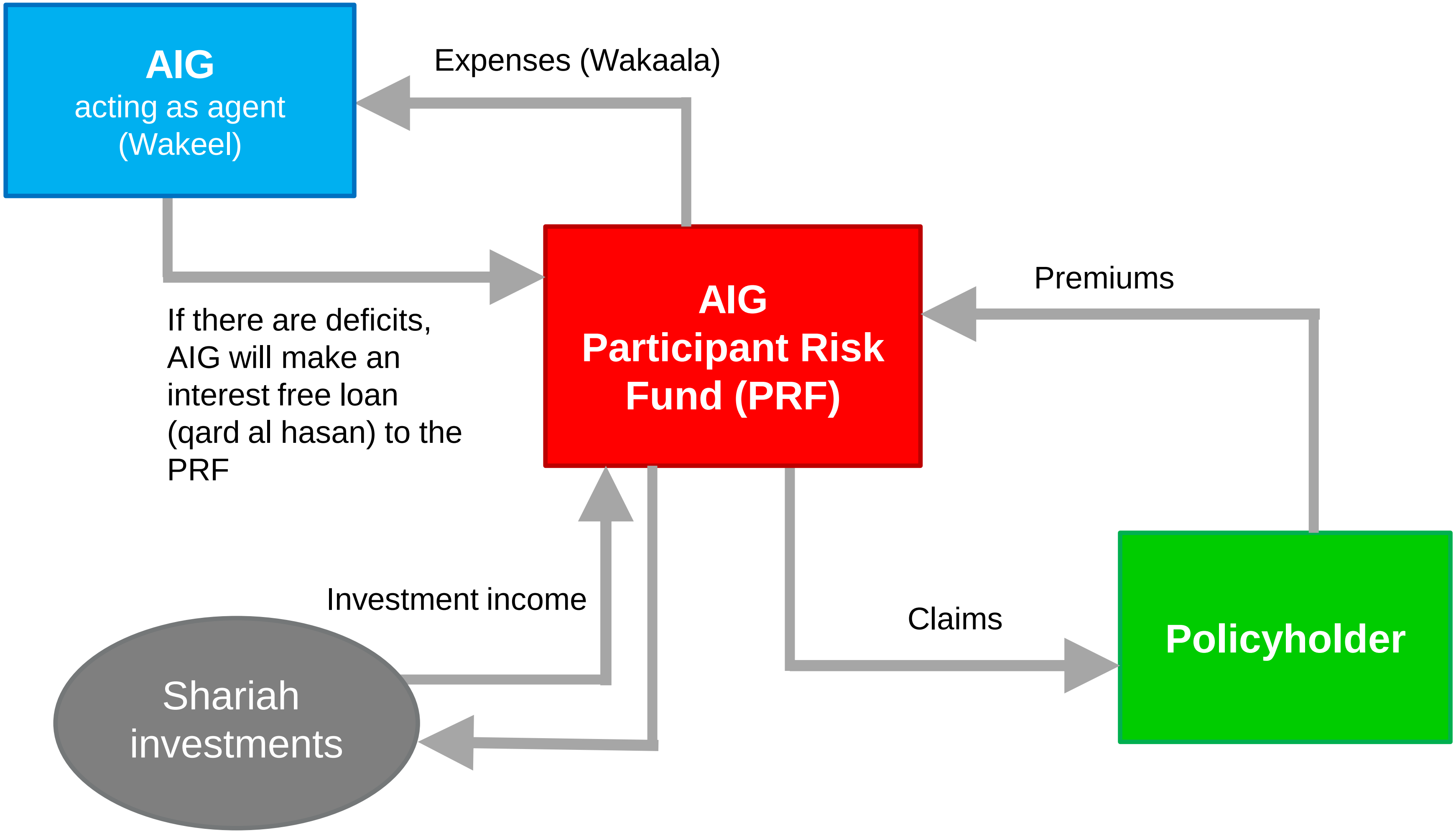
# Takaful W&I



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