

Beneficiary designation under Swiss law

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Swiss law grants the policyholder wide freedom to designate beneficiaries. Under the Insurance Contract Act, the policyholder may designate a third party as beneficiary without the consent of the insurer and may revoke the designation as long as he has not waived the right of revocation in a signed declaration in the policy and handed the policy to the beneficiary. The beneficiary acquires an own right against the insurer when the insured event occurs. The claim does not pass through the estate of the deceased policyholder, which is the legal basis of the statement that insurance proceeds fall outside the estate.¹

The law contains interpretative rules for designations that are imprecise. A designation of the "children" covers the descendants entitled to inherit. Similarly, a designation of the "surviving spouse" covers the person who is married to the policyholder at the time of his death. A designation of the "heirs" or "legal successors" directs the benefit to the persons who inherit, in the proportion of their inheritance shares, but they receive it outside the estate and even if they disclaim the inheritance. That last rule has practical significance for families in which the estate may be overindebted: the heirs may refuse the inheritance and still receive the insurance benefit.²

The designation is a unilateral declaration of the policyholder addressed to the insurer, which may also be made in a will. Where the will and the designation in the policy conflict, the rules on revocation determine which prevails. The relationship between the designation and the policyholder's will is a frequent source of disputes, in particular when a policyholder changes his family situation and forgets to adjust the designation in his policies. Advisers therefore recommend reviewing all designations after marriage, divorce, the birth of a child or a change of residence.

For cross-border policies, the question arises which law governs the designation. A policy issued by a Luxembourg or Liechtenstein insurer is usually governed by the law of the insurer's home country or by the law of

the policyholder's residence, depending on the choice of law permitted by the Rome I Regulation within the European Union and by the applicable conflict rules elsewhere. The European Succession Regulation excludes from its scope assets that pass outside succession, such as insurance claims, but the question of whether a particular claim passes outside succession may itself be governed by the law applicable to the succession. The resulting interplay between insurance law and succession law is one of the most technical areas of cross-border planning.³

1 Notes

1. Art. 76 ff. VVG, in particular Art. 76 (designation of beneficiaries), Art. 77 (revocation and irrevocable designation) and Art. 78 (own right of the beneficiary). Wording and numbering after the revision of 2020/2022 to be verified. ↩
2. See Art. 83–85 VVG on the interpretation of beneficiary designations and the right of heirs designated as beneficiaries to receive the benefit even if they disclaim the inheritance (Art. 85 VVG). Numbering to be verified. ↩
3. See Art. 7 of Regulation (EC) No 593/2008 (Rome I) on insurance contracts and Art. 1(2)(g) of Regulation (EU) No 650/2012 (Succession Regulation), which excludes "property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts, joint ownership with a right of survivorship, pension plans, insurance contracts and arrangements of a similar nature". To be verified. ↩

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