

Custodian banks in Basel, Zurich and Geneva

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

The custodian bank holds the assets of the dedicated fund in the name of the insurer. In the Luxembourg system, the custodian of the technical provisions must be approved by the Commissariat aux Assurances and party to the tripartite agreement. The circular permits, under conditions, custodians outside Luxembourg, including banks in Switzerland, provided that the custodian accepts the tripartite agreement and the supervisor's rights. Liechtenstein insurers also work with Swiss custodians. In practice, a large proportion of the assets wrapped in Luxembourg and Liechtenstein policies for continental European clients is held in custody by banks in Zurich, Geneva and Basel.¹

The Swiss custodian bank operates under Swiss banking law and is subject to the supervision of FINMA. Its contractual relationship is with the insurer, which is its client. The bank opens an account in the name of the insurer, usually designated by a reference to the policy, and holds the assets in accordance with the Swiss Intermediated Securities Act. The beneficial owner of the account for the purposes of the Swiss due diligence rules is a separate question, since the insurer is a regulated financial intermediary and the bank may rely on its identification of the policyholder within the limits of the agreement of the Swiss banks on due diligence. That agreement contains specific provisions on insurance wrappers, which require the bank to identify the policyholder and to document the structure in certain cases.²

Three features of this arrangement matter for the policyholder. First, the policy offers a custody location in Switzerland under the protection of an EEA insurance law framework, which some families value as a form of diversification of legal risk. Second, the asset manager is often the same bank or an independent asset manager in Switzerland with whom the family has worked for years, which preserves continuity in the management of the wealth. Third, the bank cannot take instructions from

the policyholder as if he were its client, which some families find difficult to accept and which advisers must explain before the policy is concluded.

The arrangement also raises questions of conflict of interest. When the custodian bank is also the asset manager and receives fees from both functions, and when the same bank introduced the client to the insurer, the policyholder pays several layers of fees to related parties. The rules on conduct in insurance distribution and on asset management require the disclosure of such fees and of the remuneration that the bank may receive from the insurer. Whether the overall cost structure remains reasonable is a question the policyholder's adviser should examine independently, since the documentation of each party discloses only its own part.³

1 Notes

1. On the admission of custodian banks outside Luxembourg to the triangle of security, see the CAA's rules on custodian banks and the model tripartite agreement. The proportion of wrapped assets held in Switzerland is not published and is an estimate based on market practice. To be verified. ↩
2. See the Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB), in its current version, and its provisions on insurance wrappers (Insurance Wrapper) and the identification of the policyholder as controlling person. To be verified. ↩
3. On the disclosure of remuneration from third parties in the distribution of insurance products (Art. 45b ISA, as revised) and in asset management (Art. 26 FinSA), and on the case law of the Federal Supreme Court on retrocessions, see the commentaries. To be verified. ↩

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