

Life insurance and the duty of disclosure

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The relationship between a life insurer and its policyholders raises legal questions that have occupied the courts and the legislators for more than a century. The insurer depends on the information that the applicant provides about his health, age, occupation and habits to assess the risk. The applicant depends on the information that the insurer provides about the product, its costs, its guarantees and its risks to decide whether to buy it. Each party has information that the other lacks and an incentive to withhold information that would be unfavourable to it.

The Insurance Contract Act of 1908 imposed on the applicant a duty to disclose the facts relevant to the assessment of the risk and allowed the insurer to terminate the contract if the applicant had concealed or misrepresented such facts. The duties of the insurer to inform the applicant were initially limited, but they were extended over time, in particular by the revision of 2020, which introduced pre-contractual information duties for insurers.¹ For insurance products with an investment component, the rules of the Financial Services Act on information and suitability apply in part, with the Insurance Supervision Act imposing additional requirements.

The question of the insurer's liability for incorrect or incomplete information in the documents that describe its products, which is the subject of the author's doctoral research, is particularly important for investment-linked life insurance, where the policyholder bears the investment risk and depends on the accuracy of the information about the underlying investments, costs and guarantees. The development of this liability in German, Swiss and European law shows how the protection of policyholders has shifted from the protection of the insurer against the policyholder's concealment to the protection of the policyholder against the insurer's misinformation.

1 Notes

1. On the duty of disclosure of the applicant (Art. 4 ff. ICA) and the pre-contractual information duties of the insurer (Art. 3 ICA, as revised), see the standard commentaries on the Insurance Contract Act. To be verified. ↩

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