

Prospectus liability and the information duties of insurers

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The information that the insurer provides about the product is of particular importance for wrapper policies, since the policyholder bears the investment risk and depends on accurate statements about costs, investment strategies and the legal effects of the policy. If the information is incorrect or incomplete, the question arises whether the insurer is liable for the loss suffered by the policyholder. The liability of life insurers for prospectuses and similar documents has developed in German and Swiss law from general principles of contract law and pre-contractual liability. The introduction of key information documents has given it a statutory basis. The question, which the author examined in his doctoral thesis, has lost none of its relevance.¹

The statements about tax advantages pose a particular problem. Insurers often describe the tax treatment of their products in different countries, while their distributors present the tax advantages as the principal reason for buying the policy. If a policy does not achieve the tax treatment described because its design does not meet the requirements of the policyholder's country of residence, the policyholder may have claims against the insurer, the distributor or the adviser. The allocation of responsibility between these parties depends on the documents and on what each party undertook to verify.

1 Notes

1. On the liability of insurers for incorrect information in prospectuses and key information documents, see Art. 11 of the PRIIPs Regulation and the literature on prospectus liability of insurers in German and Swiss law. To be verified. ↩

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