

Succession and the compulsory share

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The statement that insurance proceeds fall outside the estate is correct as a description of the beneficiary's direct claim against the insurer. It does not mean that the policy escapes the rules on compulsory shares. Swiss succession law provides that a claim under a life insurance policy payable on the death of the deceased, which he created in favour of a third party or transferred to a third party gratuitously during his lifetime, is added to the estate at its surrender value at the time of death for the purpose of calculating the compulsory shares. The same surrender value is subject to reduction if the compulsory shares of the heirs are infringed.¹

The rule produces a characteristic asymmetry. A pure risk policy without surrender value is not added to the estate at all, so that a policyholder can provide a large sum to a beneficiary without affecting the compulsory shares, while a unit-linked policy whose surrender value corresponds almost entirely to the invested assets is added at that value. Since the death benefit of a wrapper policy usually exceeds the surrender value only by a small margin, the wrapper offers little protection against claims for reduction under Swiss law. The reform of Swiss succession law in force since 1 January 2023 reduced the compulsory share of descendants and abolished that of the parents. It also clarified the treatment of claims from the tied pillar 3a, which are now expressly included in the calculation. Both changes enlarge the freedom of a policyholder to favour particular beneficiaries, although they leave the basic rule untouched.²

Other legal systems treat life insurance differently. French law excludes life insurance benefits from the estate and from the claims of reserved heirs, unless the premiums were manifestly excessive in relation to the policyholder's means, a standard that the French courts have developed in a long series of decisions. German law treats the benefit as a gift from the deceased to the beneficiary when the designation is gratuitous, which leads to claims for supplementation of the compulsory share. The measure of the

claim in Germany was long disputed and has been settled by the Federal Court of Justice in favour of the value that the policyholder could have realised immediately before death, which in most cases is the surrender value. Italian law protects legitimate heirs against excessive premiums through reduction of the premiums paid.³

For a family with connections to several countries, the decisive question is therefore which succession law applies and how that law characterises the policy. The European Succession Regulation and the Swiss Private International Law Act determine the applicable succession law, while the law of the insurance contract determines the beneficiary's claim against the insurer. A policy may thus escape the compulsory share under French law and be subject to it under Swiss or German law, depending on the last residence and the choice of law of the deceased. Planning with life insurance requires that both questions be answered before the policy is concluded and again whenever the family's residence changes.

1 Notes

1. Art. 476 ZGB (addition of life insurance claims to the estate at their surrender value for the calculation of the available portion) and Art. 529 ZGB (reduction of life insurance claims at their surrender value). To be verified. ↩
2. On the revision of succession law in force since 1 January 2023 (reduction of the compulsory share of descendants to one half of the intestate share, abolition of the compulsory share of parents, express inclusion of claims from tied pension provision under pillar 3a in Art. 476 and Art. 529 ZGB), see the Federal Council's message and the commentaries; Part E, chapter V of this book treats the reform in general. To be verified. ↩
3. On French law, see Art. L. 132-12 and L. 132-13 Code des assurances (exclusion from the estate, reservation of manifestly excessive premiums). On German law, see § 2325 BGB and the decision of the Bundesgerichtshof of 28 April 2010 (IV ZR 73/08) on the value relevant for the supplementation of the compulsory share. On Italian law, see Art. 1923 Codice civile. Case details to be verified. ↩

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