

The parties and their roles

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A life insurance policy involves up to four persons whose roles must be kept apart. The policyholder concludes the contract, pays the premium and holds the rights under the contract, including the right to surrender it, to pledge it and to designate the beneficiary. The insured person is the individual whose death or survival triggers the payment of the benefit. The beneficiary is the person entitled to receive the benefit when the insured event occurs. The insurer is the counterparty that holds the assets and owes the benefit. In the simplest case, a single individual is both policyholder and insured person, with his children designated as beneficiaries.¹

The separation of these roles allows a wide range of structures. A parent may conclude a policy on the life of a child, so that the policy continues after the parent's death and can be transferred to the child at a time of the parent's choosing. A policy may insure two lives and pay on the second death, which suits couples who want to keep the assets available to the surviving spouse. A company, a foundation or a trust may be the policyholder, although the tax treatment of such policies is often less favourable and requires careful analysis. A creditor may be designated as beneficiary to secure a loan, or the policy may be pledged to a bank that finances the acquisition of other assets.²

The legal position of the policyholder is that of a creditor of the insurer. He does not own the assets allocated to his policy, since they belong to the insurer. That position is the basis of most of the legal effects examined in this chapter as well as the source of the most serious risk. If the insurer becomes insolvent, the policyholder depends on the protection that the law of the insurer's home country grants to policyholders. The design of that protection explains why certain jurisdictions have become the preferred locations of wrapper insurers.

The policyholder's legal position also differs from that of a client of a bank in a less obvious respect. The contractual relationship with the insurer is

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governed by insurance contract law, by the conduct rules for insurance distribution and by the supervisory law of the insurer's home state. The asset manager and the custodian bank, who in practice manage and hold the assets, have a contractual relationship with the insurer and in most structures none with the policyholder. The policyholder's ability to influence the management of the assets is limited to the choice of the investment strategy and, in some cases, of the asset manager. That limitation is deliberate, since the tax recognition of the policy in many countries depends on it.

1 Notes

1. On the roles of policyholder (Versicherungsnehmer), insured person (versicherte Person) and beneficiary (Begünstigter) under Swiss law, see Art. 74 ff. VVG and the commentaries. To be verified. ↩
2. On multi-life policies, policies held by legal entities and the pledge of life insurance claims, see the practitioner literature on cross-border life insurance planning. To be verified. ↩

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