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Concerned market: All



10 questions about life insurance as a credit instrument

The rights arising under a life insurance policy or capitalisation contract may be pledged by the policyholder. This is an agreement, made by amendment signed by the policyholder, the creditor and the insurer, by which the policyholder pledges his life insurance policy or capitalisation contract as security to a creditor (for example, his banker) usually in exchange for a loan.

1. Can you pledge your life insurance policy or capitalisation contract?

Yes, provided that the insurance company with which the policy or contract was entered into accepts this arrangement and that the law under which the policy or contract was entered into provides for it.

2. What law governs pledges in Luxembourg?

In Luxembourg, the rights relating to the pledging of a policy or contract are set out in Articles 116 and 117 of the Law on Insurance Contracts (1997).

In the Luxembourg Civil Code, the relevant article is Article 1275: *“The assignment by which a debtor provides the creditor with another debtor who takes over the obligation to the creditor, does not operate as a novation unless the creditor expressly declares that he intends to discharge his debtor who made the assignment.”*

3. What terms and conditions apply to the pledge of a life insurance policy or capitalisation contract?

The insurer, the subscriber and the creditor must enter into a tripartite agreement (an amendment), which follows the rules of the general law of contracts in accordance with the statutory articles referred to above.

4. What are the different types of pledge?

There are various alternatives for pledging a policy or contract in Luxembourg, the most frequently used being:

- The assignment of rights
- The nomination of a beneficiary
- The pledge
- The assignment of debt

5. What is the assignment of rights?

The assignment of rights is an arrangement by which the policyholder transfers his rights in the policy or contract to a third party.

There are three types of assignment of rights:

- Assignment of all the rights under the contract and transfer of the insurance policy. The banking institution then becomes the policyholder of the contract;
- Assignment of all the rights arising under the contract without transferring it;
- Assignment of part of the rights arising under the contract, without transferring it (e.g. for a sum sufficient to cover a bank loan). The policyholder transfers a part of his rights under the contract. As a result, the bank becomes the second policyholder.

The mechanism for an assignment of rights is governed by Luxembourg law under Articles 118 and 119 of the Insurance Policies Law, and similarly by French law under Article 1216 of the Civil Code and by Belgian law under Articles 183 and 184 of the insurance law.

However, the assignment of rights is prohibited by the French law on life insurance policies but assignment is possible for capitalisation contracts.

In cases where the beneficiary (the accepting beneficiary) accepts the benefit of the contract, the latter must sign the deed of assignment, in addition to the policyholder and the insurer.

6. What is the nomination of a beneficiary as a guarantee?

The nomination of a beneficiary as a guarantee is a mechanism whereby the policyholder of the life insurance policy or the subscriber of the capitalisation contract nominates the bank which grants him a loan as first-ranking beneficiary for the sums due. The financial institution then accepts the benefit from the policy or contract in order to be considered as the accepting beneficiary and thus secure the nomination.



7. What is a pledge?

A pledge is a mechanism whereby the policyholder of the contract pledges his policy in favour of a creditor, for example the bank granting the loan. The insurer is not a party to the agreement. He is simply informed about the pledge but has no obligations under the terms of the agreement.

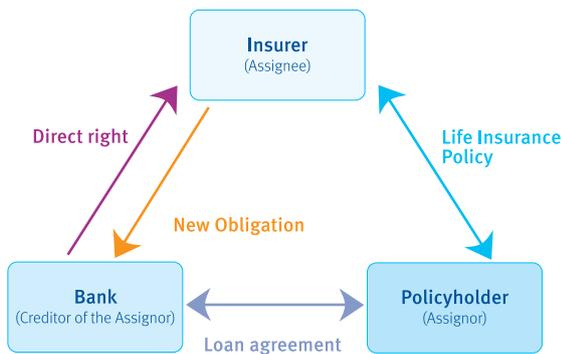
The deed of pledge is registered by the bank and recorded in the policy or contract with the insurer.

If there is an accepting beneficiary all movements relating to the policy or contract are subject to the latter's acceptance.

8. What is the assignment of debt?

The assignment of debt is a mechanism whereby the insurer undertakes to reimburse the policyholder's creditor if he defaults. It is therefore a guarantee of payment which the creditor holds over the policyholder's life insurance policy or the debtor's capitalisation contract.

The tripartite agreement is an amendment to the policy or contract signed by the policyholder, the creditor and the insurer. Consequently, the insurer is a party to the policy or contract and undertakes personally to repay the debt while respecting the limit of the value of the policy or contract on the day when the guarantee is signed.



If the benefit of the policy is accepted by a beneficiary (the accepting beneficiary), the agreement will also be subject to acceptance by the latter, who renounces the benefits of the contract.

9. What are the consequences of a pledge of a life insurance policy or capitalisation contract?

When a contract has been pledged, the policyholder can no longer freely manage his investments by switching or surrendering them. He must first request authorisation from the creditor (the bank).

If the policyholder does not honour his debt, the creditor has the right to request surrender of the life insurance or capitalisation contract, up to the amount of the debt, and up to the limit of the value of the policy on the day he makes his request.

10. How is a guarantee terminated?

The pledge of a life insurance policy or capitalisation contract is terminated when the policyholder has completely repaid his debt to his creditor and the credit institution has informed the insurer by a document known as a "release".

In the case of an assignment of rights however, a "reverse assignment" is required in order to terminate the guarantee.



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