

## Creditors rights over the life insurance of debtors

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A person's debts do not come to an end just because he or she has died. After the debtor has passed away, the creditor is entitled to seek repayment of the debt from the debtor's estate. Some debtors have life insurance under which the insurer will pay compensation to the beneficiaries stated in the policy, the debtor's heirs where no beneficiaries are specified in the policy and, in certain cases, the debtor's creditors.

Under the Civil and Commercial Code of Thailand, creditors are entitled to be repaid from insurance benefits in three specific circumstances, as detailed below.

**Unspecified beneficiary:** In the first circumstance, the debtor's life insurance policy states only that the insurance compensation shall be paid to the debtor's heirs, but the debtor as the assured does not specify the beneficiary's name. This life insurance policy is valid.

When the debtor dies, the insurer is obliged to pay the compensation to the heirs. Section 897 of the Civil and Commercial Code states that the insurance compensation is then considered part of the estate assets of the assured, and the creditor of the assured is therefore entitled to enforce the repayment from the insurance compensation.

**Specified beneficiary:** Under the second circumstance, the debtor's life insurance policy specifies the name of one or more beneficiaries, who may or may not be the debtor's heirs. When the debtor dies, the beneficiary or beneficiaries will receive the insurance compensation as stated in the policy.

However, the second paragraph of Section 897 stipulates that if the insurance has been made in favour of a particular person, only the amount of the premiums paid by the assured shall be part of the assets of the estate available for the creditors. As a result, the creditor may enforce repayment of a debt only for that part of the benefits corresponding to the total premiums paid by the assured during his or her lifetime and cannot claim against any additional compensation paid to the beneficiary.

For example, Mr Somchai purchases a life insurance policy with an insured amount of 500,000 baht and specifies in the policy that Ms Onjira is to be his sole beneficiary. Mr Somchai pays the first premium in the amount of 20,000 baht and then passes away. The insurer will then pay the total benefits of 500,000 baht to Ms Onjira. Ms Onjira will then have to transfer 20,000 baht, equal to Mr Somchai's insurance premium, to Mr Somchai's estate. Mr Somchai's creditors cannot claim for the insurance compensation at a total of 500,000 baht, but they can claim against the 20,000-baht insurance premium, which becomes part of Mr Somchai's estate assets.

**Debtor as beneficiary:** In the third scenario, a creditor may ask the debtor (while still alive) to specify the creditor as the beneficiary in the debtor's life insurance policy. This is another solution allowing the creditor to secure repayment of a debt. Under this scenario, there are related legal provisions under the Civil and Commercial Code.

According to Section 1742 of the code, the creditor, as the beneficiary under the debtor's life insurance policy, can claim for the total insurance benefits. Unlike other beneficiaries, the creditor is not required to return the insurance compensation equal to the total amount of paid insurance premium to the estate of the debtor.

In some cases, however, a debtor may have several creditors, and the other creditors may wish to demand that the creditor named as the beneficiary return the paid premium to the debtor's estate. In making such a demand, the other creditors are required to prove two facts:

- First, they must show that when specifying a creditor as the beneficiary, the debtor was aware such action would disadvantage the other creditors. Per Section 237 of the code, other creditors may request that the court revoke this juristic act.

- Second, the creditors must prove the premiums paid were out of proportion to the income or station in life of the deceased or the debtor. For example, if the assured earned 20,000 baht per month but paid an insurance premium of 13,000 baht per month, this would be considered out of proportion to the income. This has to be considered on a case-by-case basis by assessing the living and economic conditions of the assured.

If the other creditors can prove both facts, the creditor named as beneficiary is required to return a proportion of the insurance benefits equal to the paid insurance premium to the debtor's estate. If the two facts cannot be proved, the creditor as the beneficiary is not required to return any insurance compensation to the estate and remains entitled to full amount.

In any of these situations, a creditor who wishes to enforce repayment of a debt from a debtor's estate must pursue the claim within one year from the date the creditor knew or ought to have known of the debtor's death.