



# **FINANCIAL SERVICES COMMISSION**

## **CONSULTATION PAPER**

### **ON**

#### **THE REGULATORY FRAMEWORK FOR**

#### **STRUCTURED INVESTMENT-LINKED**

#### **INSURANCE BUSINESS IN MAURITIUS**

*Issued on 16 August 2021*

## **1. INTRODUCTION**

- 1.1 The National Budget 2020-2021 announced that the Financial Services Commission, Mauritius (the “FSC”) will introduce a regulatory framework for Insurance Wrappers with the view to further enhance the competitiveness of the financial services sector.
- 1.2 The introduction of Insurance Wrappers is aligned with the vision of the FSC “*to be an internationally recognised Financial Supervisor committed to the sustained development of Mauritius as a sound and competitive Financial Services Centre*”. It is also in line with the objects of the FSC to promote the development of the market.
- 1.3 The FSC is proposing to introduce Insurance Wrappers within the Insurance Act as a fifth class of long term insurance business. The FSC is also proposing to use the term Structured Investment-Linked Insurance Business (“SILIB”) instead of the term Insurance Wrapper. Henceforth, the term SILIB shall be used in this Consultation Paper and in all official correspondences.
- 1.4 The FSC is confident that the introduction of SILIB will contribute to further consolidate wealth management – one of the pillars mentioned in the report entitled “*Innovation and transforming the Mauritius International Financial Centre of 2030*”.

## **2. BACKGROUND**

### **What is SILIB?**

- 2.1 SILIB is a life insurance policy “wrapped” around the policyholder’s own investments and assets portfolio which may include cash, investment funds, securities, property, listed and non-listed investments.
- 2.2 SILIB is issued by an insurance company, normally held by a custodian, managed by a fund manager, often purchased through independent financial advisors with the involvement of a bank and/or asset managers.
- 2.3 SILIB is, thus, an investment concept combining the protection of an insurance policy with wealth management and succession planning in accordance with the legal and tax rules applicable in the policyholder’s country of residence. This comprehensive wealth-planning instrument delivers tailor-made financial solutions.

## Benchmarking

- 2.4 The FSC has conducted a benchmarking exercise of the regulatory frameworks and best practices on SILIB in other jurisdictions. On that basis, the FSC has observed that SILIB is provided under the life insurance regulatory framework. Therefore, the FSC is proposing to adopt the same approach by amending the Insurance Act and existing regulatory framework to allow long term insurers to offer SILIB in Mauritius.
- 2.5 The underlying principle is to add a fifth class of long term insurance business in Part I of the First Schedule to the Insurance Act. The provisions and requirements under the Insurance Act will also apply to SILIB, unless specified otherwise. Moreover, the FSC proposes to amend the Insurance Act and the associated Rules and Regulations to render the prevailing legal framework appropriate to conduct SILIB. The FSC may also issue specific Rules and/or Guidelines on SILIB.

**Question 1:** The FSC is seeking views on the suitability of the approach in paragraph 2.5 of the Consultation Paper and whether any other alternative approaches should be considered. In a case where any other alternative approach should be considered, please provide details of such approach.

## 3. PURPOSE OF THE CONSULTATION PAPER

- 3.1 In line with its consultative approach, the FSC is inviting its stakeholders and the public to share their views on the essential amendments to be brought to the existing insurance regulatory framework in relation to SILIB.
- 3.2 This Consultation Paper sets out the proposed technical amendments to be made mainly in the:
  - Insurance Act 2005;
  - Insurance Regulations 2007;
  - Insurance (Long-Term Insurance Business Solvency) Rules 2007; and
  - Guidelines on Stress Test Requirement for Long Term Insurers.
- 3.3 This Consultation Paper will also provide some general information to demonstrate the appropriateness of our prevailing legislation for the successful introduction of SILIB. The Consultation Paper finally provides a proposed brief outline of the future Rules and/or Guidelines on SILIB that the FSC may issue.

- 3.4 Interested parties are invited to send their comments, feedback and suggestions in relation to the regulatory framework proposed in the Consultation Paper not later than 16 September 2021 on the following email address:[silib@fscmauritius.org](mailto:silib@fscmauritius.org)

Please note that all submissions received will be kept confidential.

#### **4. INSURANCE ACT 2005**

- 4.1 The FSC is proposing to amend Part I of the First Schedule to the Insurance Act to add the fifth class of business pertaining to SILIB.
- 4.2 The following description is being proposed for the new fifth class SILIB:

*The business of effecting and carrying out contracts of insurance under which the benefits are wholly or partly to be determined by reference to the value of, or the income from, a dedicated investment portfolio held separately for each policyholder with a custodian, and which may include the policyholder's own assets and investments, both existing at inception and accruing over the future term of the policy. A minimum subscription at inception of the policy, whether in cash and/or assets, may be prescribed.*

**Question 2:** The FSC is seeking views on the definition given in paragraph 4.2 of the Consultation Paper and the possibilities to add further details to distinguish the class of SILIB from the other four existing classes.

- 4.3 In order to protect the local market and avoid any potential misselling, the FSC is proposing that the minimum subscription amount be set at USD 250,000 or its equivalent in another currency.

**Question 3:** (i) What could be a more suitable alternative minimum amount? Please provide the rationale for the proposed alternative amount.  
(ii) What other conditions could be implemented to protect the local market and avoid any potential misselling?

4.4 The FSC is proposing to amend section 20 (2)(a) of the Insurance Act as follows:

"An insurer shall not invest in derivatives other than -

(a) derivatives designated as an asset in respect of a linked long term policy and structured investment-linked policy."

**Question 4:** Should SILIB be allowed to invest in derivatives as an asset?

4.5 The FSC is proposing to amend section 48(4) (Separation of accounts) of the Insurance Act as follows:

Where a long term insurer manages assets in linked long term insurance business and structured investment-linked insurance business, that insurer shall keep separate accounts and records for each portfolio.

**Question 5:** What other conditions could be imposed to separate the assets of SILIB completely from the assets of the other four existing classes?

4.6 The FSC is proposing to add a section 85A of the Insurance Act (under Part IX - Protection of Policy Holders) as follows, to include the requirement to appoint Custodians for SILIB:

**"85A. Custody of assets of Structured Investment-Linked Insurance Business**

- (1) No person shall hold the assets of a structured investment-linked policy for safekeeping unless the person is a custodian.
- (2) Pursuant to subsection (1), a long term insurer carrying out structured investment-linked insurance business shall enter into a custodian agreement with a custodian.
- (3) The custodian shall not exercise any function or activity in relation to a structured investment-linked policy, other than that for which it has been licensed or authorised.

- (4) Where the assets of a structured investment-linked policy are held for safekeeping by a person who is not a custodian, both that person and the long term insurer carrying out the structured investment-linked insurance business shall commit an offence.
- (5) An offence under this section shall be punishable by a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.
- (6) The Commission may specify in the FSC Rules -
  - (a) the process for appointing a custodian;
  - (b) the eligibility criteria for selecting a custodian;
  - (c) details regarding the custody agreement;
  - (d) the powers, duties and obligations of a custodian;
  - (e) the use of sub-custodians; and
  - (f) any other conditions relating to the use of a custodian."

**Question 6:** The FSC is seeking views on the custody of assets of SILIB and the possible requirements regarding custodian in the FSC Rules.

- 4.7 The FSC is proposing to amend section 2 (Interpretation) of the Insurance Act to add the following definition:

"custodian" means a person holding a Custodian services (non-CIS) licence under the Financial Services Act 2007 or, subject to the approval of the Commission, any other person established and duly licensed as a custodian in an equivalent foreign jurisdiction.

"custodian agreement" means any agreement relating to the appointment and functions of a custodian to which a structured investment-linked insurance business policyholder and/or the insurer and the custodian are parties;

**Question 7:** The FSC is seeking views as to whether custodians should be limited to *only* banks holding a Custodian services (non-CIS) licence.

- 4.8 It is proposed that SILIB be offered by both domestic and global business entities under their respective long term insurance business licence issued by the FSC.

**Question 8:** What are likely the implications and difficulties if both domestic and global business long term insurers are allowed to offer SILIB?

- 4.9 The following sections of the Insurance Act are deemed to be readily applicable for SILIB and therefore shall not require any amendment:
- (a) Section 16 makes sufficient provision for technical reserves of SILIB policies.
  - (b) Section 17 provides for separation of funds for Mauritian Policies and Non-Mauritian Policies and requires insurers to establish and maintain for each category of insurance business, such assets, reserves and designated fund.
  - (c) Section 18 makes provision for an appropriately designated fund in respect of each class of long term insurance business carried on. Therefore, the Insurance Act already provides for SILIB fund to be kept separately.
  - (d) Section 63 gives clear directives on how the assets of the insurance fund and designated fund are used and prioritised in case of winding up. This section provides sufficient protection of the assets underlying SILIB.
  - (e) Sections 84 and 85 are relevant provisions for SILIB and provide necessary protection to SILIB policyholders.

**Question 9:** The FSC is seeking views on the suitability of the sections of the Insurance Act listed in paragraph 4.9 of the Consultation Paper for SILIB and whether these sections could be further enhanced to increase protection for SILIB policyholders.

## 5. INSURANCE REGULATIONS 2007

- 5.1 For SILIB to be attractive and successful to foreign investors, it is important that there is no restriction on foreign investment. The FSC therefore proposes to amend regulation 7 (2) (pertaining to Restriction of foreign investment to 50% of technical provisions) as follows:

“Paragraph (1) shall not apply to an external insurer and to the technical provisions of structured investment-linked policies.”

**Question 10:** By waiving the 50% restriction for SILIB, what issues and distortions could be caused to the long term insurance market?

- 5.2 The FSC is of the view that it is not necessary to make any amendment to regulation 4 (the requirement to cede minimum 5% of relevant risks to the statutory reinsurer) as this section may not apply to SILIB because it is very unlikely that SILIB will be reinsured by way of treaty unless the death benefits part of the SILIB policies might be reinsured, and in which case, the 5% minimum requirement can be maintained for that part of premium only.

**Question 11:** Should the 5% minimum requirement be completely removed for SILIB?

## 6. INSURANCE (LONG-TERM INSURANCE BUSINESS SOLVENCY) RULES 2007

- 6.1 To be in line with the investment boundaries allowed for linked long term insurance business, rule 12 (10) is being amended to include SILIB in the same category.
- 6.2 The FSC is proposing to amend rule 12 (10) (pertaining to Investment Concentration Limit) as follows:

"Assets of the insurer" for the purposes of this rule shall not include assets backing linked long term business and structured investment-linked insurance business.

**Question 12:** What are likely the consequences and inconsistencies that may arise when amending rule 12 (10) for SILIB?

- 6.3 The FSC is proposing to amend rule 12 (11) (pertaining to Investment Concentration Limit) as follows:

This rule shall not apply to an investment in a collective investment scheme and investment held with a custodian in respect of structured investment-linked policies.

**Question 13:** What are likely the consequences and inconsistencies that may arise when excluding, from rule 12, investment held with a custodian in respect of structured investment-linked policies?

6.4 The FSC is proposing to add the following definitions to rule 2:

“Custodian” has the same meaning as in the Act;

“Structured investment-linked insurance business” has the same meaning assigned to it by the Act;

## 7. GUIDELINES ON STRESS TEST REQUIREMENT FOR LONG TERM INSURERS

7.1 The FSC is proposing that a component be added for Operational risk for all long term insurance classes of policies, including SILIB as well. The FSC expects Operational risk to be a significant risk for SILIB.

**Question 14:** What is likely the impact of adding Operational risk capital charge to the capital adequacy requirement of long term insurers?

7.2 The components of the Intermediate Ordinary Capital Adequacy Requirement (“IOCAR”) are currently as follows:

$$\text{IOCAR} = \sqrt{(a^2 + b^2 + c_i^2 + c_{ii}^2 + c_{iii}^2 + d^2 + e^2 + f^2 + g^2 + h^2 + i^2)} + j$$

where;  
a = lapse risk  
b = surrender risk  
c = mortality, morbidity and medical fluctuation risk  
d = annuitant mortality fluctuation risk  
e = mortality, morbidity and medical assumption risk  
f = expense fluctuation risk  
g = expense assumption risk  
h = investment risk  
i = foreign exchange risk  
j = understatement of liabilities

7.3 Then the component for Operational risk will be:

*k = operational risk*

The components of the IOCAR will then be amended as follows:

$$\text{IOCAR} = \sqrt{(a^2 + b^2 + c_i^2 + c_{ii}^2 + c_{iii}^2 + d^2 + e^2 + f^2 + g^2 + h^2 + i^2)} + j + k$$

k will be a formula based on the size of premium underwritten in the last 12 and 24 months and/or the size of the technical reserves, subject to some conditions. More details on the formula for Operational risk may be accessed at the following [link](#). The formula follows a risk-based approach for determining capital requirement components and is in line with international solvency regimes.

**Question 15:** The FSC is seeking views on the proposed formula and comments on the parameters used.

## 8. CODE CIVIL MAURICIEN AND TAX TREATMENT

- 8.1 The FSC is of the view that there is no specific need to make any amendment to the Code Civil Mauricien for the purpose of introducing SILIB in Mauritius. All the existing contractual obligations pertaining to insurance contracts are also valid for SILIB. The existing provisions for tax treatment and succession law that applies to insurance contracts are also appropriate for SILIB policies.
- 8.2 From the policyholders' perspective, the tax treatment for proceeds of SILIB policies shall be the same as for any other long term insurance business class of policies. Under the Code Civil Mauricien, the benefits from insurance policies do not form part of the estate of the deceased policyholder or insured for the purpose of succession. This shall apply to SILIB policies as well.
- 8.3 The FSC does not propose any amendment to the tax regime.

**Question 16:** What are the incentives that may be implemented for the successful introduction and operation of SILIB in Mauritius?

## 9. INTERMEDIARIES FOR SILIB

- 9.1 Given the complex nature of the product, SILIB policies are normally purchased through qualified and experienced intermediaries. The FSC is considering the following options for SILIB intermediaries licensed in Mauritius:

Option 1. Intermediaries holding dual licences of Investment Adviser (Unrestricted) and Insurance Broker in Mauritius will be allowed to advise and help clients to place SILIB contracts.

Option 2. The introduction of a new type of intermediary namely Independent Financial Advisers (“IFA”) under the Financial Services Act with rules and regulations drafted for this specific financial services intermediary activity.

- 9.2 IFA regulated in foreign jurisdictions where the policyholders originate shall also be allowed to act as intermediary for SILIB policyholders.

<b>Question 17(i)</b>	The FSC is strongly encouraging stakeholders to provide their feedback on the two options proposed at paragraph 9.1 of the Consultation Paper, including any comments on the scope of activities covered by IFA that might have an impact on existing licensed intermediaries, their competency standards requirements and any other factors.
(ii)	Should foreign intermediaries be allowed to advise clients on SILIB being offered in Mauritius?

## 10. INSURANCE (RETURNS) RULES 2007

- 10.1 The FSC proposes to amend the Second Schedule to the Rules, in particular Forms 4, 4A, 4B and 6 to include an additional column for SILIB.

## 11. ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

- 11.1 Long term insurers fall under the definition of “financial institution” under the Financial Intelligence and Anti-Money Laundering Act and as such, are required to ensure strict adherence to any relevant Regulations, Codes and Guidelines governing Anti-Money Laundering/Combating the Financing of Terrorism (“AML/CFT”) in Mauritius.

- 11.2 Long term insurers offering SILIB will be required to adopt a robust AML/CFT framework.

- 11.3 Appointed custodians will also be required to carry independent due diligence at their level thereby adding an additional level of security in terms of AML/CFT controls.

**Question 18:** What additional level of security and measures could be required to further counter money laundering and financing of terrorism risks that may be associated with SILIB?

## 12. RULES AND/OR GUIDELINES ON SILIB

12.1 The FSC may also issue Rules and/or Guidelines on SILIB business (in line with section 130 of the Insurance Act) to cover, *inter alia*:

- Expertise required by long term insurers offering SILIB;
- Authorisation process;
- Appointment of custodian (s);
- Other stakeholders involved and their requirements;
- Any conditions that may apply to long term insurers offering SILIB policies only;
- Separation of SILIB Funds;
- AML/CFT procedures; and
- Any other restrictions, limitations, and conditions.

The prospective Rules and/or Guidelines on SILIB business will be subject to consultation with the industry again.

**Question 19:** The FSC is seeking views on the requirements, provisions, conditions, obligations, sanctions, and other contents of the prospective Rules and/or Guidelines on SILIB.