

THE INSURANCE ACT

FSC Rules made by the Financial Services Commission under section 93 of the Financial Services Act 2007 and section 130 of the Insurance Act 2005

1. Citation

These Rules may be cited as the Insurance (Structured Investment-Linked Insurance Business) Rules 2022.

2. Interpretation

In these Rules –

"Act" means the Insurance Act;

"AML/CFT" means Anti-Money Laundering and Combating the Financing of Terrorism

"asset manager" means –

- (a) an insurer, where the SILIB fund is partly or fully self-managed;
- (b) a person holding either an investment adviser licence under the Securities Act or an Assets Management Licence under the Financial Services Act, where the SILIB fund is partly or fully managed by a person other than the insurer; or
- (c) any other person established and duly licensed as an asset manager in an equivalent foreign jurisdiction;

"Commission" means the Financial Services Commission established under the Financial Services Act;

"custodian" has the same meaning as in the Act;

"external insurer" has the same meaning as in the Act;

"guidelines" has the same meaning as in the Financial Services Act;

"insurance business" has the same meaning as in the Act;

"insurer" means a long term insurer carrying out Structured Investment-Linked Insurance Business;

"long term insurance business" has the same meaning as in the Act;

“long term insurer” has the same meaning as in the Act;

"premium" has the same meaning as in the Act;

“related company” has the same meaning as in the Act;

“SILIB” means Structured Investment-Linked Insurance Business

“SILIB fund” represents the sum of the assets held by an insurer in respect of SILIB policies and is made up of the Reserve Fund and Designated Fund;

"Structured Investment-Linked Insurance Business" has the same definition as in Part I of the First Schedule to the Act.

3. Application of the Rules

- (1) These Rules shall apply to any long term insurer carrying out SILIB.
- (2) These Rules shall be read in conjunction with the relevant Acts, FSC Rules and any guidelines which the Commission may issue from time to time.

4. Approval to carry out structured investment-linked insurance business

- (1) No person shall write SILIB policies in or from within Mauritius without a long term insurance business licence issued by the Commission under the Act and an approval to carry out structured investment linked insurance business.
- (2) An application for approval to carry out SILIB shall be accompanied by –
 - (a) a copy of an actuarial certificate containing information on the SILIB products as specified in the First Schedule of these Rules;
 - (b) a copy of a product summary containing the information specified in the Second Schedule of these Rules;
 - (c) a copy of the SILIB policy, containing information on the type of benefits and guarantees, exclusion clauses, premium payment frequency, types of charges, complaints process, details of arrangement made by the insurer for the protection of policyholders and beneficiaries, tax implication and outsourcing of service providers;
 - (d) an illustration of the benefits provided under the SILIB product;
 - (e) a notification of whether the assets of the SILIB product shall be partly or fully self-managed and the arrangements made in this respect or, where the management is delegated to another person, the identity and licence held by that person; and

- (f) such other information and documents as may be required by the Commission.
- (3) Every insurer offering SILIB policies shall appoint and, at all times have, at least one custodian approved by the Commission in accordance with rule 5 of these Rules.
- (4) Where the Commission is satisfied that an approval to carry out structured investment-linked insurance business under these Rules ought to be granted, it shall grant the approval for the insurer to carry on SILIB under a long term insurance business licence.

5. Approval of custodian for SILIB products

- (1) An insurer carrying out SILIB shall seek the approval of the Commission before entering into a custodian agreement with a custodian.
- (2) The application for the approval referred to in paragraph (1) shall include –
 - (a) details of the licence held by the custodian and, in the case of a custodian established and licensed in an equivalent foreign jurisdiction, a copy of the said licence, details of the jurisdiction in which they are licensed and the name and contact details of the relevant regulator;
 - (b) the audited financial statements of the custodian as at the last balance sheet date; and
 - (c) any other information or document requested by the Commission.
- (3) An insurer may appoint more than 1 custodian at any time.

6. Custody of assets of SILIB

- (1) The custodian shall –
 - (a) take the assets of the SILIB policies into its custody for safe-keeping pursuant to a written agreement with the insurer in accordance with rule 8 of these Rules; and
 - (b) hold and invest the assets of the SILIB policies based on instructions from the asset manager in accordance with the provisions of these Rules and the agreement with the insurer.
- (2) Where a local custodian is appointed and some of the assets of a SILIB policy are kept outside Mauritius, the local custodian may appoint a sub-custodian in accordance with the provisions of these Rules.
- (3) The delegation of custodial authority to a sub-custodian does not relieve the custodian from any of its obligations to the insurer, the asset manager or to the Commission.

- (4) Both the custodian and the sub-custodian shall act independently from the asset manager and the insurer.

7. Sub-custodian

- (1) No sub-custodian shall be appointed in relation to an insurer unless it is a bank, a trust company which is a subsidiary of a bank or a trustee of a trust which is a subsidiary of a bank.
- (2) The appointment of a sub-custodian shall be subject to the prior approval of the Commission.
- (3) A sub-custodian shall not exercise any function or activity in relation to a SILIB policy, other than that specified under the agreement with the custodian.
- (4) The custodian shall –
 - (a) ensure that the appointed sub-custodian satisfies the requirements of these Rules; and
 - (b) not more than 3 months after the end of each financial year of the insurer, advise the insurer in writing of the names and addresses of all sub-custodians and state whether each satisfies the requirements of these Rules.
- (5) The requirements of this rule shall apply only where the appointment of a sub-custodian is made by a custodian holding a licence issued by the Commission.

8. Custody agreements

- (1) An agreement for custody and safe-keeping of the assets of the SILIB policies shall provide for –
 - (a) the custodian accepting custody of such assets;
 - (b) the custodian agreeing to observe the provisions of the policy documents of the insurer and of the custodian agreement;
 - (c) requirements with regards to the location of assets;
 - (d) the method of holding assets;
 - (e) the standard of care to be exercised by the custodian and its responsibility for loss;
 - (f) the principle that only the asset manager or the insurer may give instructions to the custodian; and
 - (g) the custodian to forthwith submit a report to the Commission, and a copy thereof to the asset manager and insurer, in relation to any failure of the asset manager or insurer to meet the requirements applicable to the sound conduct of their business activities.

- (2) No custody agreement shall provide for the creation of any encumbrance on the assets of the SILIB policies except in relation to a claim for payment of the fees and expenses of the custodian or sub-custodian for acting in that capacity.

9. Liability of custodian

- (1) Without prejudice to its other obligations and liabilities, the custodian shall be liable to the insurer and its SILIB policyholders, as the case may be, for any loss suffered which may result from-
 - (a) any unreasonable failure by it to perform its obligations; or
 - (b) any improper performance by it of its obligations.
- (2) Where a sub-custodian has been appointed, the agreement with the sub-custodian shall provide the insurer with means to enforce the rights of the policyholders against the assets held by the sub-custodian.

10. Asset management

- (1) Insurers may use their internal asset managers for self-managed SILIB fund or outsource the management of SILIB assets to independent asset managers.
- (2) SILIB policyholders may enter into an agreement with asset managers to draft their investment policy statement and follow the investment strategies agreed therein for their individual SILIB funds.

11. Advice on SILIB policies

- (1) No person, other than the following qualified intermediaries shall provide advice on SILIB policies -:
 - (a) a person holding both an Insurance Broker Licence under the Act and an Investment Adviser (Unrestricted) Licence under the Securities Act; or
 - (b) an Independent Financial Adviser duly licenced in a foreign equivalent jurisdiction.

12. Minimum Single or Regular Premium Amount

- (1) The minimum single premium amount is USD 250,000 or its equivalent in any other currency.

- (2) If the policy is underwritten through regular premiums instead of a single premium, the expected total regular premiums under the full term of the contract must be a minimum of USD 250,000 or its equivalent in any other currency at the date of inception.

13. Requirement to hold minimum liquid assets

- (1) An insurer carrying out SILIB shall at all times hold at least 5% of the total assets under each SILIB policy or USD 20,000, whichever is lower, in cash or cash equivalents.

14. Customer Due Diligence and AML/CFT

- (1) Insurers carrying out SILIB shall ensure strict adherence to any relevant Acts, Regulations, Codes and Guidelines governing AML/CFT in Mauritius.
- (2) Insurers and their custodians shall conduct independent customer due diligence at their respective level before accepting any business.

15. Reserve Fund

- (1) For each SILIB policy underwritten, in which there is a sum or interest guaranteed, the insurer shall maintain a Reserve Fund.
- (2) The Reserve Fund shall be used to pay for any shortfall in guarantee when the SILIB policy has reached maturity, or on the occurrence of a contingent event.
- (3) Unallocated premiums, fees and charges, if any, as disclosed in the SILIB policy or product summary, may be paid partly or wholly into the Reserve Fund.
- (4) The Reserve Fund shall meet the solvency requirements provided under the Act.
- (5) The Reserve Fund shall be part of the total assets of the SILIB.

16. Payments from the SILIB Designated Fund

- (1) An insurer shall not pay, cause or permit to be paid, out of the assets of the SILIB Designated Fund in which the SILIB policy investments are held, other than the Reserve Fund –
 - (a) any fees or commission that have not been provided for in the product summary and SILIB policy; and
 - (b) any payment which is unfair to or materially prejudicial to the interests of any policyholder or prospective policyholder.

17. Transactions of the SILIB funds

- (1) The insurer shall not invest the assets of the SILIB policies in the securities of any related company of the insurer or asset manager.
- (2) The insurer shall not lend monies belonging to the SILIB policies to related companies of the insurer or asset manager.
- (3) The insurer shall conduct all transactions with or for a SILIB policy at arm's length.
- (4) The insurer shall acquire investments and enter into transactions which are consistent with the investment objectives and approach of the SILIB policies.

18. Guiding principles and disclosure to policyholders

- (1) An insurer carrying out SILIB shall not provide any information about the SILIB policies that is false or misleading.
- (2) Any marketing materials or brochures concerning a SILIB product issued by an insurer shall contain updated information.
- (3) The insurer shall prepare or cause to be prepared for each SILIB policy a statement to policyholders containing all policy information including any guaranteed benefits, market value of assets under management, surrender value, penalty fees, expenses and fees incurred, commission and date of maturity.
- (4) The statement shall be communicated to all SILIB policyholders within 30 days from the date of each SILIB policy anniversary or any other date specified in the product summary.
- (5) A communication referred to in paragraph (4) may be sent to policyholders by electronic means.

19. Performance fees

- (1) Where performance fees are payable by the SILIB Designated Funds, the product summary shall disclose –
 - (a) that a performance fee is payable and to whom it is payable;
 - (b) if applicable, that a performance fee may be levied even if the return of the SILIB designated funds is negative; and
 - (c) the maximum amount or percentage of the net assets of the SILIB designated funds that the performance fee might represent in an annual accounting period.

- (2) Performance fees payable by the insurer to the asset manager of the SILIB funds shall meet the following requirements –
- (a) the performance fees shall be calculated and paid after consideration of all other payments;
 - (b) the period over which the performance fee accrues and the frequency with which it crystallises shall be appropriate; and
 - (c) crystallisation of performance fees shall not be more frequent than once a year.

20. Commencement

These Rules shall come into operation on XXX.

Made by the Financial Services Commission on XXX

DRAFT

FIRST SCHEDULE

(Rule 4(2)(a))

INFORMATION TO BE DISCLOSED IN THE ACTUARIAL CERTIFICATE

1. The following information is to be provided to the Commission –
 - (a) the formula used by the actuary to calculate the premium rate or a brief description of the methodology used to arrive at the premium rate;
 - (b) the mortality table and rates;
 - (c) the rate of interest or discount rate;
 - (d) the provision made for contingencies;
 - (e) frequency of premium payments;
 - (f) the basis on which the actuarial reserve of the SILIB policy would be made;
 - (g) the foreign currency exchange rates used and the impact of currency translation;
 - (h) taxation impact; and
 - (i) a certificate signed by a qualified actuary certifying that the rates are suitable and in accordance with sound actuarial principles.
2. The description of each provision for expenses shall be made in a form which is readily understandable by a person with reasonable knowledge of long term insurance business and shall include details of the rates of all commissions, fees and charges which shall be paid (including overriding commission) and the conditions for payment.
3. The certificate of the actuary shall be accompanied by a statement setting out the relationship between the assumptions made by the actuary as to mortality, interest rates and expenses and the actual experience of the company in respect of each of these components of the premium for this type of SILIB policy or similar types of insurance policies which are linked to other investment.
4. The actuary shall also certify that the design, administration and management of the SILIB policy complies with all requirements under the Act and its regulations, rules and guidelines.

SECOND SCHEDULE

(Rule 4(2)(b))

INFORMATION TO BE DISCLOSED IN THE PRODUCT SUMMARY

The insurer shall –

1. Provide, in the product summary for the SILIB, a general description, in non-technical terms, of the principal features of the SILIB including a description of the manner in which the benefits, including any guarantees, shall reflect the investment performance of the underlying assets and the factors affecting the policy benefits.
2. When providing information in the product summary, comply with the disclosure requirements set out in the Insurance Act 2005 and its rules and regulations.
3. List the name of the asset managers available for SILIB and provide details on the arrangement for other external asset managers and the options available to policyholders to appoint the asset manager of their choice.
4. Where the insurer is left to choose the asset managers, state the track record of the asset manager, including the number of years the asset manager has managed similar long term insurance funds whether in Mauritius or elsewhere.
5. Where the assets are self-managed by the insurer, state the name of the person (if any) who advises the insurer in his management of the SILIB funds.
6. State the name of the auditor of the insurer.
7. State the name of the appointed actuary of the insurer.
8. State the name of the custodian(s) of the insurer.
9. State the investment objectives and focus of the SILIB funds, including the types of investment, the countries or markets in which the SILIB fund invests and the target industry or sector, where applicable.
10. Provide a summary of the risk assessment made and give explanation on the general risks involved in investing in a SILIB policy.
11. Provide an explanation on currency risks involved for cross-border transactions and the mitigation measures used such as hedging policies.
12. Where the total return on the SILIB fund is presented for a period exceeding one year, state the average annual compounded return on the SILIB fund over the same period.

13. Include an appropriate disclaimer that any past performance of the SILIB fund is not necessarily indicative of the future performance of the same SILIB fund.
14. The insurer shall not include in the product summary or in any of the documents provided to the policyholders any information on past performance based on the simulated results of a hypothetical fund.
15. The insurer may include in the product summary a prediction, projection or forecast on the economy, stock market, bond market or the economic trends of the markets which are targeted by the SILIB fund but the insurer shall juxtapose such prediction, projection or forecast with a prominent statement to the effect that the prediction, projection or forecast is not necessarily indicative of the future or likely performance of that SILIB fund.
16. Describe any conflict of interest which exists or may arise in relation to the SILIB fund and its management, state whether these conflicts of interest shall be resolved or mitigated, and if so, how they shall be resolved or mitigated.
17. State all other material information which prospective policyholders and their professional advisers would reasonably require and expect to find in the product summary for the purpose of making an informed decision on the merits and risks of the SILIB.
18. Where there is a provision for a maximum fee or charge payable, highlight that fact and state the maximum amount and set out the fees and charges listed below (where applicable) for the SILIB policy:
 - (a) initial charge;
 - (b) charges for insurance coverage and guarantees/options;
 - (c) surrender charges (if and when applicable);
 - (d) any other fee or charge payable by policyholders, including policy fee and regulator fee;
 - (e) management fee for management of assets; and
 - (f) performance fee (if applicable) .