LEGAL EXPERT OPINION

Mauritius SILIB + Liechtenstein Law

The South African Creditor Attack Scenario

Scope of Opinion: The legal position of a South African resident policyholder of a Mauritius SILIB governed by Liechtenstein law (VersVG / Art. 78 EO), with wife and two children — all SA residents — designated as beneficiaries, when one or more creditors attempt to access the policy assets through South African insolvency proceedings, court orders, or enforcement against the Mauritius insurer.

Jurisdiction	Key Legal Framework Analysed
South Africa	Insolvency Act 24/1936 · ITA §55(1), §56(2)(b), §9(4)(a) · Estate Duty Act §3(3), §4(q) · SA PIL · Cross-Border Insolvency Act · SARB Circular 1/2021
Liechtenstein	VersVG Art. 78 & 79 · Rechtsschutzordnung Arts 65, 67, 74 · IICA Choice of Law · Gasser Partner (2007)
Mauritius	Insurance Act 2005 §2, §81(5) · SILIB Rules 2022 · Code Civil Mauricien Art. 1134 · FSC Regulatory Framework
UK Custodian	CPR Part 72 (TPDO) · Servis-Terminal v Drelle [2025] EWCA Civ 62 · Custodian segregation

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PART I

The Structure — Parties and Legal Architecture

The structure is deliberately simple. All parties are in the same jurisdiction (South Africa) except the insurer (Mauritius) and the custodian (UK). This is the cleanest scenario for testing the protection — if it holds here, it holds everywhere.

Party / Element	Detail
SA Policyholder	SA resident individual · pays premiums from authorised foreign assets (FIA R20M p.a. + SDA R2M p.a. per 2026 National Budget) · not a shareholder of the insurer
Mauritius SILIB Insurer	FSC-licensed long-term insurer · Fifth class of long-term business · Insurance Act 2005 (amended 2 August 2022) · SILIB Rules 2022
Governing Law	Liechtenstein VersVG (Insurance Contract Act) — expressly elected by the parties · Art. 78 VersVG creditor protection · Art. 79 VersVG transfer mechanics
UK Custodian	UK-regulated bank holding SILIB assets in segregated account in the SILIB insurer's name (NOT the policyholder's name) · Sub-custodian under SILIB Rules 2022 r.5(2)
External Asset Manager	Independent FSC-licensed asset manager · Policyholder has switch/shift rights only — no direct dealing in individual securities
Wife — Beneficiary	SA resident · designated as primary beneficiary
Child 1 — Beneficiary	SA resident · designated as beneficiary
Child 2 — Beneficiary	SA resident · designated as beneficiary
All Three Beneficiaries	All SA residents · spouse + two direct descendants = qualifying beneficiaries under Art. 78 VersVG · SA §56(2)(b) donations tax spouse exemption available for wife · §9(4)(a) CGT spouse rollover available

PART II

The Legal Trigger — Art. 78 VersVG Activates on SA Sequestration

The moment the South African High Court grants a provisional sequestration order against the policyholder, Art. 78 of the Liechtenstein VersVG (Versicherungsvertragsgesetz — Insurance Contract Act) activates automatically. This is the foundational legal event from which all consequences flow.

2.1 The Statutory Text — What Art. 78 VersVG Provides

> *"In the event of bankruptcy of the policy holder or enforcement proceedings instituted by his or her creditors, all rights and duties regarding the insurance contract pass to the spouse or descendants if designated as beneficiaries. The ownership of the insurance contract automatically transfers to the protected beneficiaries, and any order or instructions of the policy holder or on his or her behalf, including a court order, is ineffective."*

Source: Gasser Partner, 'Asset Protection through Liechtenstein Annuities and Life Insurance', Swiss Annuities and Life Insurance, Wiley, December 2007.

2.2 Six Legal Characteristics of the Art. 78 VersVG Protection

› Automatic — ipso jure	The transfer requires no act by the policyholder, beneficiary, or insurer. It happens by force of statute at the precise moment insolvency proceedings open. There is no registration, no court order, no notification required to trigger the transfer itself.
› Spouse and descendants both qualify	Wife (spouse) and both children (descendants) are protected simultaneously as a class. All three SA-resident beneficiaries are covered from the moment of the trigger event.
› Revocable designation is equally protected	Gasser (2007): 'It is irrelevant whether the designation is irrevocable or revocable. The insurance policy will continue to be protected from the creditors even if the designation of the beneficiaries is revocable.' This eliminates the argument that the policyholder could have changed the designation.
› Extends explicitly to foreign insolvency proceedings	Gasser (2007): 'The protection also extends to bankruptcy proceedings in foreign states and ineffective enforcement proceedings abroad.' A South African sequestration order is explicitly covered by this provision — Liechtenstein law does not require the insolvency to occur in Liechtenstein.
› Any court order against the policy is void	Art. 79 VersVG: any instruction from the policyholder or on the policyholder's behalf — including a court order — is legally ineffective after Art. 78 VersVG triggers. The insurer is legally prohibited from acting on any such instruction.
› Time-unlimited	The protection has no expiry date. It applies for the entire duration of the policy from inception, with no requirement to renew or re-register it.

2.3 The Art. 79 VersVG Notification Procedure

Art. 79 VersVG requires the beneficiaries to formalise and notify the transfer by submitting a court certification confirming the insolvency or enforcement proceedings to the SILIB insurer. This is a purely administrative step — the legal ownership has already transferred under Art. 78 VersVG. The purpose of notification is to switch the insurer's contractual counterparty from the policyholder to the beneficiaries, so the insurer knows to take instructions from the wife and children only.

The procedural speed risk: Until the insurer receives the Art. 79 VersVG certification, it may continue to act on policyholder instructions in good faith. This creates a narrow window of practical vulnerability. The solution: the SILIB policy should include a standing Art. 79 VersVG notification package — a pre-drafted letter signed by the insurer, ready for immediate use by the beneficiaries upon any insolvency event. Advisers should ensure this package is held by the policyholder's SA lawyers.

PART III

The Creditor Attack Routes — Each Defeated

A SA creditor with a judgment against the policyholder has several potential enforcement routes. This Part analyses each in sequence, demonstrating that every route ultimately fails against the three-layer legal architecture.

3.1 Route 1 — SA Sequestration: §20 Insolvency Act

Under §20 of the South African Insolvency Act 24 of 1936, upon the grant of a sequestration order, all property of the insolvent vests in the Master and then the trustee — including foreign movable property. The SA trustee will argue the SILIB policy is an asset of the insolvent estate.

The Decisive Counter-Argument — Timing

Art. 78 VersVG triggers at the same moment as §20 — the opening of insolvency proceedings. The conflict is: which law governs what the policyholder 'owned' at that moment?

The SA trustee's position: §20 vests all global movables in the trustee; the SILIB policy is a movable asset of the SA debtor.

The correct counter-argument: §20 can only vest what the policyholder legally owned at the moment of sequestration. What the policyholder 'owned' in the SILIB policy is determined by the lex contractus — Liechtenstein law. Under Liechtenstein law, the policy rights did not belong to the policyholder's creditors at any time — Art. 78 VersVG was embedded in the contract from inception as a statutory condition of the insurance relationship. The trustee cannot vest rights that were never freely available to creditors.

The Ellison Principle (Gauteng Full Bench, June 2025)

Ellison v Breytenbach NO and Another (A278/2022) [2025] ZAGPPHC 565 (5 June 2025) confirmed that SA courts exercise discretion based on comity, convenience and equity in cross-border insolvency matters. Recognition of a foreign trustee's authority over foreign assets is not automatic — it is discretionary. The policyholder's lawyers can argue that equity and comity require the SA court to give effect to the Liechtenstein lex contractus when determining what vests in the SA trustee.

Honest Assessment of Route 1

SA trustee's argument	Policyholder's response	Assessment
§20 vests all global movables including the SILIB policy	§20 can only vest what the policyholder legally owned. Ownership is determined by the governing law of the contract (Liechtenstein). Under Art. 78 VersVG, the policy rights transferred to wife and children at the moment of sequestration — leaving nothing to vest.	⚠ Strong counter-argument — but untested in SA courts. No published SA judgment specifically decides this conflict.

3.2 Route 2 — SA Court Order: 'Hand Over the Original Policy'

The creditor or trustee applies to a SA High Court for an order compelling the policyholder to physically deliver the policy document or to execute instructions directing the insurer to surrender the policy assets. This is the most direct creditor attack — targeting the policyholder personally rather than the foreign insurer.

Why This Attack Fails — Four Independent Grounds

› Ground 1: Legal impossibility	After Art. 78 VersVG triggers, the policyholder holds no policy rights. A court cannot order delivery of property the debtor does not own. This is a fundamental principle in every legal system — impossibility is a complete defence to a delivery order and to any contempt application for non-compliance.

› Ground 2: Art. 79 VersVG — any instruction is void	Even if a court ordered the policyholder to sign surrender instructions, Art. 79 VersVG explicitly renders any instruction from the policyholder — 'including a court order' — legally void under the governing law of the contract. The insurer is legally prohibited from acting on it.
› Ground 3: The document is not the asset	A life insurance policy document is evidence of the contractual relationship — it is not itself the asset. The assets are held by the UK custodian in the SILIB insurer's name. Physical possession of the policy paper gives the creditor no right to those assets whatsoever.
› Ground 4: SA court has no jurisdiction over the insurer	A SA court order against the SA policyholder creates no obligation on the Mauritius insurer. The insurer is a foreign company not subject to SA court jurisdiction. Even if the policyholder wanted to comply, the insurer would be legally required to refuse — under both Liechtenstein contract law and FSC regulatory obligations.

3.3 Route 3 — The Mauritius Insurance Act §81(5) Argument

Section 81(5) of the Mauritius Insurance Act 2005 provides:

> *"A judgment creditor, the trustee in bankruptcy or liquidator of a bankrupt or insolvent policyholder, who is entitled to a part of the realisable value of an insurance policy may, where he is in possession of the policy, deliver it to the insurer who is liable under the policy for the purpose of the payment to that creditor or trustee of the sum to which he is entitled."*

A SA creditor or trustee might argue that this Mauritius statutory provision gives them direct rights against the Mauritius insurer, overriding the Liechtenstein governing law election.

Why §81(5) Does Not Assist the Creditor

› 'Entitled to a part of the realisable value'	'Entitlement' is a legal concept determined by the governing law of the policy contract — Liechtenstein law. Under Art. 78 VersVG, the SA trustee is entitled to nothing. The entitlement transferred to the wife and children at the moment of sequestration. You cannot be 'entitled' to realisable value that the lex contractus has already allocated to other parties.
› 'Where he is in possession of the policy'	The SA trustee is not in possession of the policy. After Art. 78 VersVG, the wife holds the policy rights. The SA trustee cannot deliver something they do not possess. §81(5) requires actual possession as a precondition to its operation.
› Non-Mauritian policy classification	A SILIB for an SA-resident policyholder is a 'non-Mauritian policy' under §2 of the Insurance Act — the risk is situated outside Mauritius (in South Africa). The mandatory policyholder protection provisions of Part IX (ss.79–82) are designed for Mauritian consumer protection. Their application to non-Mauritian policies with foreign governing law is questionable.
› §81(5) cannot override lex contractus	Even if §81(5) applied, it operates within the framework of the policy's governing law. A Mauritius statutory provision cannot override the governing law that the parties validly chose for their contract under Mauritius PIL principles. The insurer's obligation runs to the current rights-holder — the wife — not to the SA trustee.

3.4 Route 4 — UK Third Party Debt Order Against the Custodian

A creditor holding a SA judgment might attempt to apply to a UK court for a Third Party Debt Order (TPDO) under CPR Part 72 against the UK custodian bank — seeking payment from the custodian directly.

› Wrong debtor — custodian owes nothing to the SA individual	A TPDO requires the third party to owe money to the judgment debtor. The UK custodian holds assets in the SILIB insurer's name — not in the policyholder's name. The custodian has no contractual relationship with the SA policyholder and owes no debt to them. CPR 72 requires a debt 'due or accruing due to the judgment debtor from the third party' — there is no such debt.
› Post-Art. 78 VersVG — obligations run to the wife	After Art. 78 VersVG, the insurer's obligations run to the wife and children. Even if the custodian owed a debt to the policyholder (which it does not), that debt transferred to the beneficiaries by operation of Liechtenstein law.
› SA sequestration order has no automatic UK effect	Servis-Terminal LLC v Drelle [2025] EWCA Civ 62 confirmed: an unrecognised foreign judgment cannot form the basis for UK enforcement proceedings. The SA trustee would need to separately apply to UK courts to recognise the SA sequestration order — a discretionary process — before any TPDO application could proceed.
› Even if TPDO obtained — Art. 78 VersVG defeats it	A UK court exercising its discretion on whether to make a TPDO would be required to consider the governing law of the contract (Liechtenstein). Under that law, the policy assets belong to the wife. A UK court would be making an order contrary to the lex contractus — a significant basis for refusal in comity terms.

PART IV

Why the Mauritius Insurer Cannot and Will Not Comply with a SA Court Order

This is the central legal point of the entire structure. Even if a SA court issues an order against the policyholder, and even if the SA trustee presents that order to the Mauritius SILIB insurer, the insurer is legally unable to comply. This is not discretion or commercial policy — it is legal obligation.

4.1 The Insurer's Contractual Obligation

The SILIB insurance contract is governed by Liechtenstein VersVG. Under Art. 79 VersVG, from the moment Art. 78 VersVG triggers:

› The wife becomes the insurer's sole contractual counterparty.
› The insurer takes instructions only from the wife and children.
› Any instruction from the policyholder, or from any person acting on the policyholder's behalf (including a court-appointed trustee), is void as a matter of contract law.
› Any court order directing the insurer to act contrary to Art. 78/79 VersVG is legally ineffective under the governing law of the contract.

If the SILIB insurer were to comply with a SA court order directing surrender of the policy to the SA trustee, the insurer would commit:

› Breach of insurance contract	Direct contractual liability to the wife and children for the full policy value — they are the rightful contractual counterparties and would have an immediate claim against the insurer for wrongful payment to a third party.
› Violation of FSC regulatory obligations	The SILIB Rules 2022 require the insurer to manage the policy strictly in accordance with policy terms, including the governing law clause. Compliance with a foreign court order that contradicts the governing law would breach FSC regulatory requirements and risk the insurer's FSC licence.
› Potential criminal liability	Mauritius insurance law imposes criminal sanctions for misapplication of policyholder/beneficiary funds. Paying to the SA trustee rather than the wife — the legally entitled party under the lex contractus — constitutes misapplication of those funds.

4.2 The SA Court Order Has No Extraterritorial Force

A South African High Court judgment operates within the Republic of South Africa. Against a Mauritius-incorporated, FSC-licensed insurance company, it has no direct legal force. The SA court order is a judgment in personam against the SA policyholder — not against the Mauritius insurer. It creates no obligation on the insurer unless and until it is separately recognised and enforced in Mauritius.

4.3 Enforcement of the SA Judgment in Mauritius — The Exequatur Requirement

To enforce a SA court order against the Mauritius insurer, the SA trustee must apply to the Mauritius Supreme Court for exequatur — recognition and enforcement of the foreign judgment — under Article 546 of the Code de Procédure Civile (CPC). The conditions established by the landmark Mauritius case D'Arifat v Lesueur [1949 MR 191] must all be met:

Condition for Exequatur	Position in This Case
The foreign court had proper jurisdiction	SA court has jurisdiction over the SA policyholder — satisfied
The judgment is final and conclusive	A SA sequestration/enforcement order is final — potentially satisfied
The defendant was duly summoned and had a fair trial	SA proceedings: satisfied
The judgment is not contrary to Mauritius public policy	CRITICAL FAILURE POINT — see below
The judgment does not conflict with a binding Mauritius law or right	CRITICAL FAILURE POINT — see below

Why Exequatur Will Be Refused — The Two Critical Failure Points

Failure Point 1 — Contrary to Mauritius public policy. Mauritius public policy includes the principle that validly chosen governing laws of commercial contracts are respected (Code Civil Mauricien Art. 1134 — party autonomy). A SA judgment directing the insurer to act contrary to the Liechtenstein lex contractus of its own insurance policy conflicts with this fundamental principle. The Mauritius Supreme Court confirmed in Société Epson France v Société Intervenant Technologie [2012] SCJ 114 that it will not grant exequatur where enforcement would offend international public policy.

Failure Point 2 — Conflicts with the binding rights of a third party. The wife and children have binding legal rights as beneficiaries under the Liechtenstein governing law of the contract — rights that have already vested in them

under Art. 78 VersVG at the moment of sequestration. A SA court order requiring the insurer to pay the SA trustee instead directly conflicts with the wife's and children's vested legal rights. Mauritius courts will not grant exequatur that overrides vested rights of identifiable third parties.

4.4 The Insurer's Practical Response to a SA Court Order

In practice, the SILIB insurer's legal response to any SA trustee communication would be as follows:

> We acknowledge your communication of [date] and the attached South African sequestration order against [Policyholder Name]. We advise as follows:
>
> 1. The SILIB policy referenced herein is governed by the laws of the Principality of Liechtenstein pursuant to the insurance contract. 2. Pursuant to Art. 78 of the Liechtenstein VersVG, upon the commencement of insolvency proceedings against the policyholder, all rights and duties under the policy transferred by operation of law to the designated beneficiaries — [Wife Name], [Child 1], [Child 2]. 3. Pursuant to Art. 79 VersVG, we are legally obligated to act on instructions from the beneficiaries only. Your communication, as an instruction on behalf of the policyholder, is without legal effect under the governing law of the contract. 4. The South African court order attached has no legal effect on our obligations under this policy. It has not been recognised by the Mauritius courts. Even if so recognised, it conflicts with the vested rights of the beneficiaries under Liechtenstein law and with our FSC regulatory obligations. 5. We are not in a position to surrender, transfer, or otherwise deal with this policy pursuant to your request. Any claim against this company must be brought before the Mauritius Supreme Court. We will rely on the provisions of the Mauritius Insurance Act 2005, the SILIB Rules 2022, and the Liechtenstein governing law of the contract in any such proceedings.

PART V

Validity of the Liechtenstein Governing Law Election Under Mauritius Law

A creditor's lawyer may challenge the choice of Liechtenstein law, arguing that Mauritius insurance law must apply as the mandatory lex specialis. This Part demonstrates that the choice of Liechtenstein law is legally valid and well-founded — while acknowledging the residual risk.

5.1 The Three Legal Pillars Supporting Validity

› Pillar 1 — Code Civil Mauricien Art. 1134 (Party Autonomy)	Mauritius contract law is founded on the Code Civil Mauricien. Article 1134 provides: 'Les conventions légalement formées tiennent lieu de loi à ceux qui les ont faites' — agreements lawfully entered into are binding as law between the parties. This is the cornerstone of Mauritius contract law and directly supports the parties' choice of Liechtenstein VersVG as the governing law. The Mauritius Supreme Court has consistently upheld party autonomy in commercial contracts.

› Pillar 2 — Non-Mauritian Policy Classification	A SILIB issued to an SA-resident policyholder is a 'non-Mauritian policy' under §2 of the Insurance Act 2005 — the life/insolvency risk is situated outside Mauritius (in South Africa). The Insurance Act's mandatory consumer protection provisions (Part IX) are designed for Mauritius-resident policyholders under Mauritian policies. For non-Mauritian policies, the parties have greater contractual freedom, including freedom to choose a foreign governing law.
› Pillar 3 — The Dornoch Principle	In Dornoch Ltd & Ors v Mauritius Union Assurance Company Ltd & Anor [2006] EWCA Civ 389, the English Court of Appeal confirmed that the proper law of a contract involving a Mauritius insurer is determined by the express choice of law clause. This principle — that express governing law clauses in Mauritius insurance contracts are recognised and applied — directly supports the validity of the Liechtenstein election. Had an express Mauritius jurisdiction clause existed in Dornoch, the court would have applied it; the same logic applies in reverse.

5.2 The Honest Residual Risk

No Mauritius court has specifically upheld the choice of Liechtenstein law for a SILIB contract in contested creditor litigation. SILIB is less than four years old (effective September 2022) and no published contested creditor case exists. The legal basis is sound under PIL principles — but it rests on those principles, not an express statutory provision.

This residual risk can be substantially mitigated by: (1) an express, well-drafted governing law clause citing the PIL basis; (2) a Mauritius legal opinion confirming validity; (3) a Liechtenstein legal opinion confirming Art. 78 VersVG applies; and (4) FSC notification of the governing law election.

PART VI

The Contestation Window — What Creditors Can Challenge

Even accepting the Art. 78 VersVG protection, a creditor has one narrow avenue under Liechtenstein law — challenging the premium payments themselves as gratuitous dispositions designed to prejudice creditors. This is governed by the Rechtsschutzordnung (RSO).

Provision	Window	What is attacked	Outcome at year 1+
Art. 65 RSO	1 year before enforcement order	Gratuitous dispositions — premium payments	Eliminated after year 1 from last premium payment
Art. 67 RSO (Actio Pauliana)	Unlimited (but see Art.74)	Fraudulent intent dispositions	Requires proof of deliberate fraud at inception — very high threshold
Art. 74 RSO absolute bar	5 years max	All claims under Arts 65–67	Fully extinguished — no challenge possible after 5 years
Art. 78 VersVG transfer itself	N/A — not challengeable	Not a voluntary conveyance — statutory operation of law	Cannot be challenged as a gift or gratuitous act under RSO

The Art. 78 VersVG transfer is NOT a gratuitous conveyance. A creditor cannot challenge the Art. 78 VersVG transfer itself under Art. 65 RSO because: (a) it is a statutory operation of law — not a voluntary act by the policyholder; (b) there is no 'donor' — the policyholder did not choose to transfer anything; (c) the transfer happens to the beneficiaries without any act of disposition by the debtor. The Liechtenstein RSO requires a voluntary conveyance as the predicate — and there is none.

PART VII

South African Tax Analysis — All Beneficiaries SA-Resident

7.1 SA Donations Tax — Is the Art. 78 VersVG Transfer a Donation?

Section 55(1) of the Income Tax Act 58 of 1962 defines a donation as any gratuitous disposal of property — including any waiver or renunciation of a right — made without compensation.

The Art. 78 VersVG transfer is not a donation for two independent reasons:

Reason	Legal Basis	Conclusion
Transfer by operation of law — not a voluntary act	JJR Inc Attorneys (2024): donations tax applies 'where a property is transferred in the absence of a sale agreement or any other operation of law.' The Art. 78 VersVG transfer occurs by operation of Liechtenstein statute. The policyholder made no voluntary act. §55(1) requires a disposal — an act of the donor. Here there is no donor and no act.	No donations tax — 'operation of law' carve-out applies
Spouse exemption — independent protection for wife	Even if SARS argued the transfer is a donation (which it should not), §56(2)(b) of the ITA provides a full exemption for donations between spouses. The transfer to the wife is fully exempt regardless of characterisation.	No donations tax on wife's share — absolute exemption
Children — R100,000 annual exemption	For any portion characterised as a donation to the children, the R100,000 annual per-donor exemption under §56(2)(a) applies. For significant policy values, the donation characterisation of the Art. 78 VersVG transfer is legally untenable.	Partial exemption — donation characterisation is wrong in any event

7.2 SA CGT — Transfer to Wife

Section 9(4)(a) of the ITA provides that a disposal of an asset from a person to their spouse does not constitute a disposal for CGT purposes. The wife is deemed to have acquired the policy at the same time and for the same cost as the policyholder (i.e. total premiums paid).

The Art. 78 VersVG transfer to the wife is therefore a non-event for SA CGT. No CGT is triggered. The wife takes the policy at the policyholder's base cost.

7.3 SA Estate Duty — Death Benefit Treatment

Provision	Applies?	Analysis
§3(3)(a) — domestic policy deemed property	NO	Section 3(3)(a) applies only to 'domestic policies' — policies issued by SA long-term insurers under the Long-term Insurance Act. The Mauritius SILIB is a foreign policy. §3(3)(a) has no application. The death benefit is not deemed property of the deceased's estate.
§3(3)(d) — 'competent to dispose' (trust risk)	NO	Section 3(3)(d) applies where the deceased retained power to revoke or vary a trust deed. The SILIB is a bilateral insurance contract — not a trust. The policyholder holds no power to 'revoke or vary a trust deed.' §3(3)(d) is not applicable. NOTE: there is no '5-year rule' in the Estate Duty Act — this is a widely repeated misconception.
§4(e) — foreign property exemption	NO	Section 4(e) deals with property acquired before becoming SA-resident or by foreign inheritance. It has no application to life insurance proceeds. This exemption is commonly — and incorrectly — cited as applying to SILIB death benefits.
§4(q) — surviving spouse deduction	YES	Any amount from the death benefit that is treated as property of the deceased estate accruing to the surviving wife qualifies for the full §4(q) deduction. No estate duty on the wife's share.
Death benefit paid to wife and children	OUTSIDE ESTATE	As a foreign policy, SILIB death benefit proceeds paid directly to named beneficiaries pass outside the SA deceased estate by contract. No SA estate duty. The §4(q) deduction is a belt-and-suspenders safeguard.

7.4 SA Tax — Beneficiaries After Receiving the Policy (All SA-Resident)

Tax Question	Wife (SA)	Children (SA)
Holding the policy	No SA income tax while the policy is held. No annual attribution (no §7(8) — no trust; no §9D CFC — wife does not hold equity in the insurer). Tax-deferred growth.	Same as wife. No annual income tax. Tax-deferred growth inside SILIB.
On surrender or maturity	Profit element (proceeds minus base cost = policyholder's premiums paid under §9(4)(a) rollover) subject to SA CGT at wife's marginal rate. Effective maximum 18% CGT.	Profit element (proceeds minus market value of policy at date received) subject to SA CGT. Effective maximum 18% CGT.
On death — receiving death benefit	Foreign policy — §3(3)(a) not applicable. Benefit passes outside estate by contract. §4(q) deduction available.	Foreign policy — §3(3)(a) not applicable. Benefit passes outside estate by contract to children as named beneficiaries.
CRS Reporting	Wife's interest as new policy rights-holder reported by Mauritius insurer via CRS to MRA → automatic exchange to SARS. Full transparency.	Children's interests similarly reported via CRS → SARS. Full transparency — but no tax on the holding.

PART VIII

Master Summary — The Creditor Attack at Every Level

Creditor Attack Route	Liechtenstein Law	SA Law / Mauritius Law	Final Outcome
SA sequestration (§20 Insolvency Act) claims policy	Art. 78 VersVG — policy rights already with wife + children	§20 only vests what the policyholder owned. Ownership determined by lex contractus. Conflict of laws untested in SA courts.	⚠ Strong counter-argument. Untested. Multiple further barriers apply.
SA court orders policyholder to hand over policy	Art. 79 VersVG — any instruction including court order is void	Impossibility defence — policyholder holds no rights after Art. 78 VersVG triggers	✓ Fails — policyholder has nothing to deliver. Insurer cannot comply.
SA court order sent to Mauritius insurer	Art. 79 VersVG — order is legally ineffective under lex contractus	No extraterritorial force. Insurer in Mauritius — not subject to SA court jurisdiction	✓ Insurer cannot and will not comply — breach of contract + FSC violation
SA trustee applies for Mauritius exequatur	Policy rights vest with wife/children under LI law — nothing to enforce	Exequatur requires: no conflict with MU public policy; no conflict with third-party rights. Both conditions fail.	✓ Exequatur refused — conflicts with lex contractus and vested beneficiary rights
§81(5) MU Insurance Act — trustee claims entitlement	Entitlement determined by lex contractus (LI law) — trustee entitled to nothing	'Possession' requirement not met. Non-Mauritian policy classification reduces §81(5) scope.	✓ §81(5) does not assist — no entitlement under governing law
UK TPDO against custodian	Art. 78 VersVG — custodian obligations run to wife, not debtor	Custodian holds assets in insurer's name. SA order has no automatic UK effect (Servis-Terminal v Drelle [2025]).	✓ Fails — wrong debtor; separate UK recognition required; Art. 78 defeats it
Art. 65 RSO — challenge Art. 78 transfer as gratuitous conveyance	Art. 78 transfer is NOT a voluntary conveyance — statutory operation of law. No 'donor'. No 'gift'.	N/A	✓ Cannot challenge the transfer itself. Only premium payments in year 1 are attackable.
Art. 65 RSO — challenge premium payments in year 1	1-year window applies to premiums paid within 1 year before insolvency order	N/A	⚠ Real risk in year 1. Eliminated after year 1 from last premium payment.
Art. 67 RSO — fraudulent intent on premium payments	Unlimited but: requires proof of deliberate fraud at inception. Art. 74: absolute 5-year bar.	N/A	⚠ Difficult to prove — insolvency not foreseeable at inception. Extinguished after 5 years.
SA donations tax on Art. 78 VersVG transfer	N/A	§55(1) — 'operation of law' carve-out. §56(2)(b) — spouse exemption for wife.	✓ No donations tax on any element. Two independent reasons.
SA CGT on Art. 78 VersVG transfer to wife	N/A	§9(4)(a) spouse rollover — non-event for CGT. Wife takes at policyholder's base cost.	✓ No CGT. Spouse rollover applies.

Creditor Attack Route	Liechtenstein Law	SA Law / Mauritius Law	Final Outcome
SA estate duty on death benefit	N/A	§3(3)(a) — foreign policy, not domestic. §3(3)(d) — no trust, no 'competent to dispose'. §4(q) available.	✓ Death benefit outside SA estate. No estate duty. §4(q) available for wife.

PART IX

Practical Recommendations

R1	Express governing law clause	The SILIB policy must contain an express Liechtenstein governing law clause reciting the PIL basis: 'This policy is governed by the laws of the Principality of Liechtenstein, elected pursuant to the principle of party autonomy recognised under Mauritius private international law and Article 1134 of the Code Civil Mauricien.'
R2	Dual legal opinions	Obtain before implementation: (a) a Mauritius legal opinion confirming validity of the Liechtenstein law election under Mauritius PIL; (b) a Liechtenstein legal opinion confirming Art. 78 VersVG applies and names wife and children as qualifying beneficiaries.
R3	Art. 79 VersVG pre-notification package	Prepare a pre-drafted Art. 79 VersVG notification letter, pre-signed by the insurer, confirming Art. 78 VersVG protection status — ready for immediate delivery to the insurer the moment any insolvency or enforcement proceedings open. This is the most important operational measure. Hold with the policyholder's SA lawyers.
R4	Standing insurer letter for SA courts	The SILIB insurer should issue a standing letter for use in any SA court proceedings confirming: (a) Liechtenstein VersVG governs the policy; (b) Art. 78 VersVG designates wife and children as protected beneficiaries; (c) the insurer cannot act on any instruction contrary to Art. 79 VersVG after a trigger event. This letter should be immediately available to the policyholder's SA lawyers.
R5	Premium payment timing	Premiums should be established and paid well in advance of any foreseeable financial difficulty. The Art. 65 RSO 1-year contestation window runs from the date of each premium payment. After 1 year from the last premium, the contestation risk on premium payments is eliminated.
R6	Switch/shift limitation	Maintain the policyholder's investment rights strictly limited to switch/shift between pre-approved broad categories. Full direct dealing in individual securities would strengthen any SARS 'transparent wrapper' argument and should be avoided throughout the policy term.
R7	SARB reporting	Ensure the SILIB policy is reported to FinSurv as an authorised foreign investment under SA exchange control framework. Annual progress reports must be filed via the Authorised Dealer (FIA R20M p.a. + SDA R2M p.a. per 2026 National Budget).

R8	SA tax return disclosure	The SA policyholder must disclose the SILIB policy as a foreign asset on their SA tax return annually. Failure to disclose creates SARS compliance risk independent of the structural protection. After the Art. 78 VersVG transfer, each beneficiary must independently disclose their policy interest.

PART X

Disclaimer and Primary Sources

IMPORTANT DISCLAIMER

This legal opinion is prepared for educational and informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship. The analysis represents a thorough review of applicable law as of April 2026. Law changes frequently. Individual circumstances vary materially. Independent legal advice from qualified practitioners is mandatory in each relevant jurisdiction before any implementation: a SARS-registered tax practitioner and insolvency attorney (South Africa); an insurance law specialist (Mauritius); and a VersVG specialist (Liechtenstein). Sanctions regimes are absolute and override any structural protection described in this opinion.

Primary Sources

LI VersVG Art. 78 & 79	Liechtenstein Versicherungsvertragsgesetz — creditor protection and ownership transfer
LI RSO Arts 65, 67, 74	Liechtenstein Rechtsschutzordnung — contestation framework (1-year and 5-year limits)
Gasser Partner (2007)	Johannes Gasser, 'Asset Protection through Liechtenstein Annuities and Life Insurance', Swiss Annuities and Life Insurance, Wiley, December 2007
SA Insolvency Act 24/1936	§20 (vesting of insolvent estate), §26 (fraudulent dispositions)
SA ITA 58/1962	§55(1) donations definition, §56(2)(b) spouse exemption, §9(4)(a) CGT spouse rollover, §56(2)(a) R100K exemption
SA Estate Duty Act 45/1955	§3(3)(a) domestic policy, §3(3)(d) competent to dispose, §4(q) spouse deduction
SARB Circular 1/2021	SA exchange control — loop structure relaxation for SA individuals; SA trusts remain prohibited
SA 2026 National Budget	FIA R20M p.a. + SDA R2M p.a. (effective 25 February 2026)
MU Insurance Act 2005	§2 non-Mauritian policy definition, §81(5) trustee rights over policy
SILIB Rules 2022	Insurance (SILIB) Rules (GN 237 of 2022, 3 September 2022) — custodian segregation, FSC regulation
Code Civil Mauricien Art.1134	Party autonomy — lawfully formed agreements binding as law between the parties
Dornoch v MUA [2006]	Dornoch Ltd & Ors v Mauritius Union Assurance Company Ltd & Anor [2006] EWCA Civ 389 — governing law of Mauritius insurance contracts
Ellison v Breytenbach [2025]	[2025] ZAGPPHC 565 — SA courts exercise discretion based on comity, convenience and equity in cross-border insolvency
D'Arifat v Lesueur [1949]	[1949 MR 191] — Mauritius exequatur conditions under Art. 546 Code de Procédure Civile
Société Epson France [2012]	[2012 SCJ 114] — Mauritius Supreme Court will not grant exequatur contrary to international public policy

Servis-Terminal v Drelle [2025]	[2025] EWCA Civ 62 — unrecognised foreign judgment cannot form basis for UK enforcement proceedings
OUP PIL (2021)	Oxford University Press, 'Party Autonomy in Private International Law', Chapter 15: Mauritius Perspectives on the Hague Principles
JJR Inc Attorneys (2024)	'Donations Tax in South Africa' — operation of law carve-out from §55(1) ITA

Full online analysis: silib-mauritius.mu/liechtenstein-protection.html | Why SILIB + Liechtenstein | SA Loop vs. SILIB