



LAW REFORM COMMISSION

Opinion Paper on “Amendment of Article 1983-63 of the Civil Code”

[LRC_R&P 199, May 2026]

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EXECUTIVE SUMMARY

Opinion Paper on “Amendment of Article 1983-63 of the Civil Code” [LRC_R&P 199, May 2026]

This Opinion Paper arises from a formal referral by the Honourable Attorney-General requesting the Law Reform Commission to examine proposals submitted by the Insurers Association of Mauritius (IAM) concerning the amendment of Article 1983-63 of the Code civil mauricien.

The current legal framework predominantly mandates liability insurance policies to operate on a “loss occurrence” basis, with limited exceptions for professional indemnity and directors’ and officers’ liability policies. The IAM proposes extending to all liability insurance contracts the possibility for parties to choose between “loss occurrence” and “claims made” coverage mechanisms, aligning Mauritian law more closely with the French model under Article L124-5 of the Code des assurances.

This document examines the legal, economic, and policy implications of the proposed reform. Having regard to the protective architecture of the existing regime, the absence of any demonstrated market dysfunction comparable to that which justified the French reform of 2003, the informational asymmetry that characterises insurance contracts, and the imperatives attached to the compensation of third-party victims, the Commission is of the view that the present case for amendment has not been made out.

The Commission accordingly recommends that Article 1983-63 of the Code civil mauricien be retained in its current form. The existing framework already accommodates the use of claims-made coverage where its use is genuinely warranted, namely in respect of the civil liability of company directors and officers and of professionals, and confers upon the Attorney-General a regulatory power to extend, by way of delegated legislation, the scope of contractual choice should circumstances so require. No statutory amendment is, in the Commission's view, necessary or desirable at this stage.

INTRODUCTION

1. The Attorney-General’s Office formally referred to the Law Reform Commission the proposals submitted by the Insurers Association of Mauritius (IAM) concerning a possible amendment to Article 1983-63 of the Code civil mauricien. The Commission has been invited to examine these proposals in depth and to formulate recommendations as to their desirability, scope, and implementation within the Mauritian legal framework.
2. At first glance, the matter may appear confined to a technical adjustment within insurance law. Yet, such an impression would be misleading. Insurance, in its essence, is one of the oldest juridical responses to uncertainty. From the maritime loans of the Mediterranean world to the mutual societies of early modern Europe, its logic has remained constant: to transform individual misfortune into collective solidarity. It is, in that sense, not merely a contract, but a quiet architecture of reassurance, woven into the fabric of everyday life. Whether one drives a vehicle, practises a profession, operates a business, or simply exists within a society where harm may occur, insurance stands as an invisible guarantor that the consequences of risk will not fall with crushing singularity upon one individual.
3. Within this broader philosophy, liability insurance occupies a particularly sensitive position. It does not merely protect the insured; it also serves, indirectly yet decisively, to protect victims by ensuring that compensation will be available when harm is caused. The legal rules governing such insurance therefore perform a dual function: they organise contractual relations between insurer and insured, while simultaneously safeguarding the interests of third parties who stand outside the contract yet depend upon it.
4. Two principal forms of liability insurance are recognised in Mauritius: policies operating on a loss occurrence basis and those operating on a claims-made basis, referred to in the Civil Code as “*garantie déclenchée par le fait dommageable*” and “*garantie déclenchée par la réclamation*”, respectively. Under a loss occurrence policy, coverage is triggered by the occurrence of the event giving rise to the damage, even where the corresponding claim is made several years after the policy period has expired.

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5. By contrast, under a claims-made policy, coverage is generally contingent upon the claim being made within the policy period, provided that the event giving rise to liability occurred after the retroactive date and before the expiry or termination of the policy. In this context, an extended reporting period, commonly referred to as “tail coverage”, may be subscribed to in order to allow claims to be notified after the policy has lapsed. Such extension does not cover new incidents occurring after the termination of the policy, but rather enables the reporting of claims arising from events that took place during the period of cover.
6. Notwithstanding this mechanism, the operation of claims-made policies remains subject to temporal limitations. In particular, coverage may be excluded where the insured becomes aware of the damage only after the expiry or cancellation of the policy, unless specific renewal or continuation conditions, as provided for under Article 1983-63 of the Civil Code, are satisfied.
7. Under the current Mauritian legal framework, liability insurance is, as a general rule, structured on a loss occurrence basis, save for limited statutory exceptions. This approach, while ensuring a high degree of certainty for the insured, may also introduce constraints from a contractual and market perspective, insofar as it restricts the availability of alternative coverage models and may be associated with higher premium levels.
8. Article 1983-63 of the Civil Code draws its inspiration from earlier French legislation. However, the corresponding French provision has since been repealed and replaced, notably by Article L124-5 of the Code des assurances in 2003. This reform introduced a dual system permitting parties to opt for either loss occurrence or claims-made liability insurance, thereby providing a more flexible regulatory framework for such contracts.
9. The current Mauritian regime, as embodied in Article 1983-63 of the Code civil mauricien, reflects a deliberate legislative choice in favour of certainty. By privileging the “loss occurrence” model as the default mechanism, the law ensures that once a damaging event occurs within the policy period, coverage is secured irrespective of when

a claim is made. This approach offers clarity and stability, particularly for insured persons who may otherwise struggle to navigate the technical intricacies of insurance contracts. At the same time, it provides an implicit guarantee to victims that the timing of a claim will not undermine the availability of compensation. However, this regime is not without its constraints. By limiting the use of “claims made” policies to specific categories such as professional indemnity and directors’ and officers’ liability, it restricts the contractual freedom of parties and may, as argued by industry stakeholders, inhibit the development of certain insurance products.

10. It is precisely this perceived rigidity that has prompted the intervention of the Insurers Association of Mauritius. In its Policy Paper and accompanying correspondence, the IAM advocates for a reform that would extend to all liability insurance policies the possibility of operating either on a “loss occurrence” or a “claims made” basis. The IAM’s position is rooted in considerations of flexibility, market competitiveness, and alignment with comparative legal systems, particularly the French model. It contends that the current framework is overly restrictive and does not adequately reflect the realities of modern insurance practice, especially in relation to risks whose manifestation may be delayed over time.
11. The question that therefore arises is not merely whether the law should evolve, but how it should do so. Should Mauritian law embrace a broader contractual freedom in insurance matters, thereby aligning itself with French law? Or should it preserve its current protective structure?
12. The analysis that follows examines this issue in a structured manner, recognising that, beyond the technical aspects of insurance law, it engages questions relating to the allocation of risk within society.

I. MAURITIAN LAW

13. In Mauritius, liability insurance is governed by the provisions of the Civil Code, within which Article 1983-63 constitutes the central and most detailed legal framework regulating the temporal operation of such insurance. This provision does not merely define the two recognised mechanisms of coverage - “*garantie déclenchée par le fait dommageable*” and “*garantie déclenchée par la réclamation*” - but also embeds them within a broader normative structure that seeks to reconcile contractual freedom with the protection of insured persons and, crucially, of third-party victims.
14. At the outset, the Code affirms a principle of significant protective value: liability insurance policies must stipulate that no forfeiture of coverage (“*déchéance*”) arising from a failure by the insured to comply with contractual obligations, where such failure occurs after the occurrence of the loss, may be invoked against injured third parties or their beneficiaries. In parallel, such policies must not contain clauses preventing the insured from bringing the insurer into proceedings or from calling upon the insurer to indemnify them in the course of settling a claim. A similar rule is expressly provided in respect of insurance against occupational accidents, where insurers are precluded from relying on forfeiture against victims or their beneficiaries. These provisions reflect a clear legislative intention to preserve the effectiveness of liability insurance as a mechanism of compensation, ensuring that the rights of third parties are not undermined by subsequent contractual defaults attributable to the insured.
15. Within this framework, Article 1983-63 proceeds to regulate the temporal triggering of liability coverage. It recognises that, in principle, two distinct models may operate. However, this recognition is accompanied by a structured limitation: only in respect of the civil liability of company directors and officers, as well as professionals, may the parties elect whether the guarantee is triggered by the occurrence of the damaging event or by the making of a claim. In contrast, where the policy covers the liability of natural persons acting outside the scope of their professional activities, the law mandates that coverage be triggered exclusively by the occurrence of the damage. This distinction reveals a legislative concern to confine more complex and potentially less protective

contractual mechanisms to categories of insured persons presumed to possess a higher degree of sophistication.

16. The Code then sets out, with precision, the legal contours of each model. Under a guarantee triggered by the damaging event, the insurer covers the insured against the pecuniary consequences of losses, provided that the event giving rise to liability occurs between the initial inception of the coverage and its termination or expiry, irrespective of the timing of the other elements constituting the loss. The temporal anchor of the guarantee is thus firmly located in the occurrence of the harmful event itself.
17. Conversely, under a guarantee triggered by the claim, coverage is afforded where the damaging event is prior to the expiry or termination of the policy, and where the first claim is made against the insured or notified to the insurer within the period of cover or within a subsequent period expressly provided for in the contract. The provision further introduces a series of conditions governing the operation of this mechanism. In particular, coverage for events discovered by the insured after the expiry or termination of the policy is contingent upon the absence of renewal of the guarantee, or upon its renewal on a loss occurrence basis. Moreover, the insurer is relieved from liability where it can establish that the insured had knowledge of the damaging event at the time of subscribing to the policy, thereby reaffirming the fundamental requirement that the insured risk must not be already realised or known.
18. The legislator also imposes minimum standards in relation to what is commonly referred to as the “extended reporting period”. The subsequent period during which claims may be notified under a claims-made policy may not be less than two years, and the level of coverage during that period must not be inferior to that applicable during the final year preceding the termination of the contract. The possibility of stipulating longer periods or higher levels of coverage is expressly preserved, subject to the framework established under the Insurance Act 2005. These requirements demonstrate a clear intention to mitigate the potential harshness of claims-made mechanisms by ensuring a degree of continuity in protection.

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19. Finally, the provision clarifies that its rules do not apply where specific legislation provides for different temporal conditions governing insurance coverage. It further confers upon the Attorney-General the power, by way of regulation, to extend the scope of application of the regime permitting contractual choice between the two triggering mechanisms.

20. Taken as a whole, Article 1983-63 establishes a carefully calibrated regime. While it acknowledges the coexistence of two distinct models of liability insurance, it does so within a framework that remains predominantly anchored in the loss occurrence principle, and which is supplemented by safeguards designed to protect both insured persons and third-party victims. The resulting system is thus characterised by a combination of limited contractual flexibility and strong protective underpinnings, reflecting a legislative balance between the demands of the insurance market and the imperatives of legal certainty and compensation.

II. FRENCH LAW

21. The proposal advanced by the Insurers Association of Mauritius finds its principal source of inspiration in French law, and more specifically in the regime established under Article L.124-5 of the *Code des assurances*. That provision formalised, within the French legal system, the coexistence of two distinct mechanisms governing the temporal trigger of liability insurance coverage: the *garantie déclenchée par le fait dommageable*, corresponding to the loss occurrence model, and the *garantie déclenchée par la réclamation*, corresponding to the claims-made model.
22. This dual system was not the product of abstract doctrinal refinement, but rather the outcome of a concrete and pressing crisis within the liability insurance market in France. In the years preceding the reform, **certain categories of risk - particularly those characterised by a long latency period between the occurrence of the harmful act and the manifestation of damage, such as medical liability, construction defects, or environmental harm - had become increasingly difficult, if not impossible, to insure.** The traditional occurrence-based model, firmly anchored in French jurisprudence, required that coverage be tied to the moment at which the damaging event occurred. While conceptually coherent, this approach exposed insurers to potentially indefinite liability, given that claims could arise many years after the policy period had expired.
23. The jurisprudence of the *Cour de cassation* had, prior to the legislative intervention, consistently upheld a strict interpretation of occurrence-based coverage, thereby reinforcing the principle that the insurer’s obligation was triggered solely by the date of the harmful event. This position, though protective of insured persons and victims, had the unintended effect of destabilising the insurance market. Insurers, faced with the prospect of uncertain and long-term exposure, **responded by increasing premiums significantly or withdrawing from certain sectors altogether.** In this context, the difficulty was not merely theoretical, it manifested as a genuine problem of insurability.
24. It is against this backdrop that the legislature intervened in 2003, adopting a pragmatic and economically informed approach. By introducing and regulating the claims-made

mechanism, the law enabled insurers to delimit their exposure in temporal terms, linking coverage not only to the occurrence of the event but also to the timing of the claim. **This adjustment allowed for a more predictable assessment of risk, thereby facilitating the continued availability of insurance for categories of liability that had become problematic under the previous regime.** At the same time, the reform did not abandon protective considerations, it incorporated mandatory safeguards, such as minimum subsequent reporting periods and rules governing the level of coverage, in order to mitigate the potential disadvantages for insured persons.

25. It is therefore essential to appreciate that the French reform was not conceived as a purely theoretical evolution of insurance law, nor as a simple expansion of contractual freedom. Rather, it constituted a targeted response to a specific market dysfunction. The introduction of the dual system was driven by the necessity to restore equilibrium between the economic viability of insurance and its social function as a mechanism of compensation. In that sense, the French model reflects a form of legislative realism: it acknowledges that legal structures governing risk must remain adaptable, but that such adaptability is justified, above all, where it responds to demonstrable needs rather than to abstract alignment with comparative models.
26. Thus, Article L.124-5 of the French Code des assurances, introduced by Law No. 2003-706 of 1 August 2003, governs the conditions relating to the triggering and duration of coverage on a claims-made basis in liability insurance. This legal regime, as said earlier, is particularly relevant to contracts covering risks associated with professional liability.¹
27. The provision establishes that claims-made coverage is triggered by reference to two elements: the date of the damaging event and the date of the claim. These dates are assessed in relation to the period of validity of the coverage, namely between the date of inception and that of termination or expiry of the contract. The insurer provides coverage under a dual condition: first, that the damaging event occurred before the end of the

¹ The introduction of Article L.124-5 formed part of a broader reform under the French Financial Security Law of 2003, aimed at addressing difficulties in insuring long-tail professional risks and restoring market stability.

coverage period. And second, that the claim is brought within a subsequent period following the termination or expiry of the contract, as specified therein.²

28. This regime includes a subsequent reporting period, that is, a period following the termination or expiry of the contract during which the insured may still benefit from coverage for claims arising from events that occurred during the policy period. This period may not be less than five years, and may extend to ten years in respect of certain professions, in accordance with the relevant regulatory provisions. These rules are mandatory in nature and cannot be derogated from by agreement between the parties.³
29. The determination of the date of the damaging event is essential, as it serves to identify the insurance period to which the loss is attributed for accounting and coverage purposes. The mechanism thus maintains a link with the occurrence of the event, even within a system primarily structured around the making of the claim.⁴
30. The provision further specifies that the ceiling of coverage applicable during the subsequent reporting period may not be lower than that applicable during the year preceding the termination or expiry of the contract. This requirement ensures continuity in the level of protection afforded to the insured. Subsequent regulatory clarification has indicated that this ceiling applies uniformly throughout the extended period, unless more favourable contractual terms are agreed upon.⁵
31. Finally, the article provides for an exception in respect of insurance covering the liability of natural persons acting outside their professional activities. In such cases, coverage is triggered by the occurrence of the damaging event rather than by the making of a claim.

² French case law has consistently confirmed that both conditions are cumulative, thereby structuring claims-made coverage as a hybrid system combining temporal elements of both occurrence and reporting. See, for instance, Cass. 3e civ., 4 March 2021, No. 19-26.333.

³ The mandatory nature (*ordre public*) of these provisions has been reaffirmed by the Cour de cassation, which has held that contractual clauses cannot reduce the minimum duration of the subsequent reporting period. See Cass. 2e civ., 12 December 2019, No. 18-12.762.

⁴ This attachment of the claim to the date of the damaging event reflects earlier jurisprudence developed prior to the 2003 reform, thereby ensuring continuity between statutory law and judicial interpretation.

⁵ The interpretation of the ceiling of coverage has been clarified by Decree No. 2004-1284 and subsequent doctrine, which emphasise that the guarantee during the subsequent period must not be diminished in substance, unless more favourable terms are provided.

The claims-made mechanism is therefore primarily reserved for professional liability insurance.⁶

32. In conclusion, Article L.124-5 establishes a structured regime for claims-made liability insurance, under which coverage is subject to the occurrence of the damaging event before the end of the policy and the making of a claim within a subsequent period of at least five years (or ten years in certain cases). This regime is supplemented by rules relating to the level of coverage during the extended period, which may not be lower than that applicable during the final year of the contract. These provisions, which are of a mandatory nature, seek to balance the protection of the insured with the economic constraints inherent in the insurance market.⁷

⁶ This exception reflects a protective rationale, ensuring that non-professional individuals are not exposed to the technical risks inherent in claims-made coverage, which is considered more appropriate for professional or institutional actors.

⁷ The overall structure of Article L.124-5 illustrates a legislative compromise between actuarial predictability for insurers and legal security for insured persons, particularly in sectors characterised by delayed manifestation of harm.

III. PROPOSAL OF THE INSURERS ASSOCIATION OF MAURITIUS

33. The Insurers Association of Mauritius proposes that the existing legal framework be amended so as to extend to all liability insurance policies the possibility for parties to elect between a loss occurrence basis and a claims-made basis of coverage. This proposal is grounded in considerations relating to market flexibility, actuarial management of risk, and alignment with contemporary insurance practices in comparative jurisdictions.
34. From an economic and market perspective, the arguments advanced by the IAM are not without foundation. **Claims-made policies may offer greater predictability for insurers by enabling a clearer temporal delimitation of exposure.** They are also generally regarded as facilitating the underwriting of so-called “long-tail” risks, where a significant interval may exist between the occurrence of the damaging event and the manifestation or assertion of the claim. In addition, such policies may contribute to reducing initial premium levels, thereby potentially broadening access to certain categories of insurance products. These considerations reflect the operational realities of the insurance sector, where the management of uncertainty is central. They do not, however, of themselves establish a case for legislative intervention. The decisive question is whether the Mauritian market is presently confronted with structural difficulties of a nature comparable to those which justified the French reform of 2003, that is, a genuine problem of insurability affecting identifiable categories of long-tail risk, such as medical liability, construction defects, or environmental harm, which the prevailing loss occurrence regime has rendered uninsurable or commercially unsustainable. No such evidence has been placed before the Commission. The submissions of the Insurers Association of Mauritius are framed in terms of flexibility, predictability, and comparative alignment, but they do not identify any sector of the local market in which liability cover has become unavailable, nor any actuarial data demonstrating that the existing legal framework is the cause of such unavailability. In the absence of a demonstrated market dysfunction, the rationale that supported the French legislative intervention is not, on the materials before the Commission, transposable to the Mauritian context.

35. Beyond these economic considerations, the proposed reform carries significant legal and structural implications. A generalisation of claims-made mechanisms would entail a reconfiguration of the temporal basis upon which liability coverage is determined. Under such a system, **the trigger for coverage shifts from the occurrence of the damaging event to the making of the claim**, subject to specified conditions. This shift may result in situations where events occurring during the period of insurance are not covered if the corresponding claim is made outside the relevant timeframe. **In effect, the allocation of risk is modified, with a greater emphasis placed upon the conduct and vigilance of the insured in relation to the timing of claims.** This evolution introduces an element of **legal uncertainty** which, although inherent in the structure of claims-made policies, has tangible consequences for insured persons. Once generalised, the shift is not easily reversed: an insured who in good faith subscribes to a claims-made policy and who fails, through inadvertence or through the cessation of professional activity, to notify a claim within the relevant period may find himself without cover in respect of an event that arose entirely within the period of insurance. The current regime, by anchoring coverage in the occurrence of the damaging event for all but the most sophisticated insured categories, deliberately spares the ordinary insured from this risk.
36. The proposal must also be examined in light of the **inherent asymmetry that characterises insurance relationships**. Insurance contracts are typically standard-form agreements, the terms of which are determined by insurers and are not subject to meaningful negotiation by policyholders. The technical complexity of claims-made provisions, including those relating to retroactive dates, reporting obligations, and extended coverage periods, raises legitimate concerns as to the extent to which insured persons are able to fully understand and assess the implications of such mechanisms. In this context, the extension of contractual choice does not correspond to an effective exercise of autonomy. The choice, in practice, is made by the insurer in the drafting of the standard form, the insured merely accedes. The formal availability of two triggering mechanisms is, therefore, unlikely to translate into genuine market diversity from the perspective of the policyholder. It is more likely to result in the progressive substitution of claims-made coverage for loss occurrence coverage in those market segments where

insurers find the former commercially preferable, leaving the insured with neither meaningful choice nor an informed understanding of the regime by which he is bound.

37. Finally, the implications of the proposed reform extend beyond the bilateral relationship between insurer and insured. Liability insurance performs an essential function in ensuring that third-party victims are compensated for harm suffered. A system which permits gaps in coverage arising from the temporal conditions of claims-made policies may, in certain circumstances, **affect the ability of victims to obtain effective compensation**. This, in turn, may lead to increased recourse to litigation and a redistribution of risk towards individuals who may be ill-equipped to bear it. The issue thus engages broader considerations of legal policy. Liability insurance, in the Mauritian legal tradition as in the French tradition from which Article 1983-63 derives, is not a purely bilateral contract. **It performs a social function: it secures, in advance, the compensation of those whom the insured may injure**. A reform that, in the name of contractual flexibility, exposes third-party victims to gaps arising from the temporal conditions of the policy (gaps over which the victim has no control whatever) cannot be regarded as a neutral technical adjustment. The current architecture of Article 1983-63, by preserving the loss occurrence model as the default and confining claims-made coverage to defined categories, gives effect to this **protective rationale**. Its modification on the terms proposed would dilute that rationale without a commensurate justification.

IV. RECOMMENDATIONS

38. The Commission has given careful consideration to the proposal advanced by the Insurers Association of Mauritius and to the considerations of flexibility, market efficiency, and comparative alignment by which it is supported. It is not of the view, however, that those considerations are of sufficient weight, in the present circumstances, to warrant the amendment of Article 1983-63 of the Code civil mauricien. The Commission accordingly recommends that the existing provision be retained in its current form.
39. This recommendation rests on four principal considerations.
40. First, no market dysfunction has been demonstrated. The French reform of 2003 was, as the comparative analysis above has shown, a response to an identifiable crisis of insurability affecting long-tail professional risks. The submissions of the Insurers Association of Mauritius do not establish, by reference to local market data, that any comparable dysfunction obtains in Mauritius. In the absence of such evidence, the principal justification for legislative intervention falls away. Law reform of a substantive provision of the Civil Code ought not to proceed on the basis of comparative alignment alone.
41. Second, the existing regime is not as rigid as the proposal suggests. Article 1983-63 already permits the use of claims-made coverage in respect of those categories of insured persons for whom such coverage is most likely to be appropriate, namely company directors and officers and professionals. These are precisely the categories which, in comparative jurisdictions, gave rise to the long-tail difficulties that motivated reform. To the extent that further categories of risk may, in future, present analogous difficulties, the final paragraph of Article 1983-63 expressly confers upon the Attorney-General the power, by way of regulation, to extend the scope of application of the regime permitting contractual choice. The flexibility sought by the Insurers Association of Mauritius is, in substance, already available within the existing legal framework. It does not require legislative amendment. It requires, where appropriate, the exercise of an existing regulatory power upon a demonstrated need.

42. Fourth, the protection of third-party victims must remain central. Liability insurance is not, in its juridical conception, a purely private arrangement; it is the principal mechanism by which the compensation of those who suffer harm at the hands of the insured is secured. The temporal architecture of the current regime, anchoring coverage, as a general rule, in the occurrence of the damaging event, gives direct effect to this protective rationale. A generalisation of claims-made mechanisms would introduce the possibility, not present under the existing regime, that an event causing harm during the period of insurance produces no compensable claim because the victim's loss manifests, or is asserted, after the policy has lapsed.⁸ Such an outcome would represent a regression from the present standard of protection.
43. The Commission wishes to record that, in expressing this view, it does not depreciate the importance of the questions raised by the Insurers Association of Mauritius. The temporal operation of liability insurance is a matter of evident practical significance for the local insurance industry, and the willingness of the Association to engage in a structured dialogue with the legislator is to be commended. The Commission's recommendation is not directed against reform in principle, it is directed against reform in the absence of the conditions which, in comparative experience, have justified it. Should those conditions emerge in due course, whether through the development of identifiable long-tail risks within the Mauritian market or through evidence of unavailability of cover in particular sectors, the matter may properly be revisited, including, in the first instance, through the regulatory mechanism already provided for in the final paragraph of Article 1983-63.

⁸ Vide construction defects. A building is completed in 2024. In 2028, structural cracks appear, revealing a latent defect in design or materials. The owner - or a subsequent purchaser - brings a claim. Under an occurrence-based regime, the triggering event lies in the faulty construction. Under a claims-made regime, the decisive moment becomes the timing of the claim. If the contractor's policy has lapsed without adequate extended coverage, or if the defect was not notified in time, the third party may be deprived of effective recourse against the insurer. One begins to see how, under a generalised claims-made regime, the burden shifts - imperceptibly, yet decisively - from the system to the individual. It is precisely this shift which the current architecture of Article 1983-63 is designed to prevent.

CONCLUSION

44. The present Opinion Paper has examined the proposed reform of Article 1983-63 of the Civil Code against the background of its current formulation, the evolution of comparative law, and the submissions of the Insurers Association of Mauritius. As it presently stands, Mauritian law adopts a structured and predominantly protective approach to liability insurance. It recognises both the loss occurrence and claims-made mechanisms, but confines the latter to specific categories, notably professionals and corporate officers, while preserving the primacy of the loss occurrence model for non-professional individuals. This framework is further reinforced by provisions designed to safeguard third-party victims, ensuring that their right to compensation is not undermined by contractual limitations or post-loss defaults of the insured.
45. By contrast, French law, following the reform introduced by Article L.124-5 of the Code des assurances, has embraced a dual system in which both triggering mechanisms coexist more broadly within a regulated framework. That reform, however, was not merely an exercise in legislative modernisation but a response to concrete market pressures, particularly in relation to long-tail risks. It is accompanied by mandatory safeguards, including minimum subsequent reporting periods and rules governing the level of coverage, thereby illustrating that flexibility in this domain is not conceived in isolation from protection.
46. The proposals advanced by the Insurers Association of Mauritius are clearly inspired by this comparative development and seek to extend the freedom to choose between the two mechanisms across liability insurance policies. Their rationale is grounded in considerations of market efficiency, actuarial predictability, and the diversification of insurance products. These objectives are legitimate and reflect the evolving needs of the insurance sector. The analysis undertaken in this Opinion Paper has shown, however, that the conditions which justified the French reform are not presently demonstrated within the Mauritian market, and that the generalisation of claims-made coverage would alter, to the detriment of insured persons and third-party victims, the balance currently achieved by Article 1983-63.

47. It is for this reason that the Commission does not recommend amendments to Article 1983-63. The existing provision, in its current form, reflects a deliberate and coherent legislative policy: it confines the more technically complex claims-made mechanism to those categories of insured persons for whom it is most apt, preserves the loss occurrence model as the default for all others, and safeguards the position of third-party victims through provisions whose protective character is not contingent on the prudence or solvency of the individual insured. These features are not artefacts of legislative conservatism, they are the expression, in positive law, of the dual function which liability insurance is required to perform.
48. The flexibility sought by the Insurers Association of Mauritius is not, on closer examination, denied by the present law. Article 1983-63 itself contemplates the extension of contractual choice through regulation by the Attorney-General, in respect of categories of risk where such an extension may, in due course, be justified. That regulatory pathway is precisely calibrated for the kind of incremental, evidence-based adjustment which the management of an evolving insurance market may require. It does not entail the amendment of a substantive provision of the Civil Code. It does not displace the protective default. And it leaves intact the safeguards relating to third-party compensation. It is, in the Commission’s respectful view, the appropriate mechanism through which the considerations raised by the Insurers Association of Mauritius may be addressed, should and when local conditions so require.
49. Liability insurance occupies a singular position at the intersection of contract and social protection. It is at once an instrument of private risk management and a mechanism through which society ensures that harm does not remain uncompensated.⁹ Any modification of its legal regime must therefore rest on a clear demonstration that the

⁹ An illustration may be found in environmental damage. A company discharges pollutants over a period of time. The contamination is only discovered years later, when ecological harm or health consequences become evident. Environmental harm is, by its nature, diffuse and delayed. Under a claims-made regime, the victims - often numerous and indistinct - may face significant obstacles if the relevant claims fall outside the reporting period of the policy in force at the time of the acts. The result is not merely a technical denial of coverage, but a fragmentation of responsibility - a fragmentation which the existing law, by anchoring coverage in the damaging event for all but defined categories of sophisticated insured persons, is structured to avoid.

Law Reform Commission of Mauritius [LRC]

Opinion Paper on “Amendment of Article 1983-63 of the Civil Code”

[LRC_R&P 199, May 2026]

existing balance has been disturbed and that the proposed adjustment will restore, rather than further disturb, that balance. On the materials presently before it, the Commission is not satisfied that such a demonstration has been made. It accordingly concludes that the present provision should stand, and that the dialogue between the legislator and the insurance industry should continue through the regulatory channel which the Civil Code already provides.