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PRINCIPLES OF REINSURANCE CONTRACT LAW

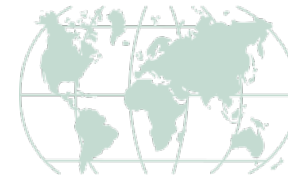
A joint project of



University of
Zurich^{UZH}



In cooperation with



UNIDROIT

International Institute for the Unification of Private Law
Institut International pour l'Unification du Droit Privé

AGENDA

- I. PRICL: Uniform Reinsurance Soft Law in Challenging Times
- II. Why?
- III. Who?
- IV. How?
- V. Content
- VI. PRICL in Practice

PRICL: UNIFORM SOFT LAW IN CHALLENGING TIMES

Reinsurance

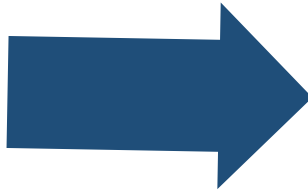
- Global gross premium income 265 billion USD in 2020
- International long-term business with focus on economic success
- Primacy of freedom of contract

Traditional “club atmosphere”

- Contract as gentleman’s agreement
- Amicable dispute resolution or arbitration to avoid state courts



Need for greater legal certainty for cross border transactions



Fit for modern challenges?

- Increased supervisory regulation after financial crises
- Impact on Solvency Capital Requirement (SCR) of primary insurers (demanding validity of reinsurance cover)
- EU: Supervisory statement on the supervision of reinsurance concluded with third-country reinsurers (EIOPA 2023)

PRICL: WHY?

Starting point: No international or supranational reinsurance contract law

Civil Law

- No specific reinsurance contract law
- General contract law
- Reference to vague reinsurance usages (if available)

Common Law

- The Insurance Act 2015 also applies for reinsurance contracts (UK)
- Reinsurance-specific case law
- However: Different solutions in different jurisdictions (e.g. follow-the-settlements clauses; aggregation clauses)



Substantial **legal uncertainty**, the industry demands an uniform instrument

PRICL as uniform soft law – restating existing global reinsurance law

PRICL: WHO?

Project Lead



Prof. Helmut Heiss
University of Zurich
(Bureau of the Group)



Prof. Manfred Wandt
Goethe University Frankfurt/Main

Principles Drafting Committee

- Leading Universities of Zurich, Frankfurt/Main & Vienna
- Representatives from Belgium, Brazil, France, Italy, Japan, Singapore, South Africa, UK, USA

Advisory Practice Groups

- Reinsurers
- Direct Insurers
- Brokers

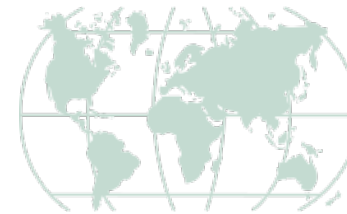
Special Advisors

- Unification of law
- Arbitration
- PIL/Mandatory Rules

Corresponding Members

PRICL: COOPERATION WITH UNIDROIT

- Independent intergovernmental organisation
- 65 Member States from the five continents
- Unification of global commercial law (conventions & soft law)
- **Principles of International Commercial Contracts (PICC)**
 - General commercial contract law



UNIDROIT

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PRICL is part of the UNIDROIT Work Programme since 2017

Article 1.1.2 PRICL: "Issues not settled by the PRICL shall be settled in accordance with the UNIDROIT Principles of International Commercial Contracts (PICC)."

PRICL + PICC



**Comprehensive package of reinsurance
contract law rules**

PRICL: HOW?

Soft law: Drafted like statutory rules accompanied by comments and illustrations

Example:

ARTICLE 2.4.3

(Follow-the-settlements and follow-the-fortunes)

To the extent a loss is covered by the contract of reinsurance, the reinsurer shall

(a) follow the settlements of the reinsured if the losses are arguably within the cover of the primary insurance contract;

(b) follow the fortunes of the reinsured.

COMMENTS

1. Basic concept

- C1. Some degree of confusion attends this area of reinsurance in that courts and even industry insiders display different understandings of the terms and concepts. Courts, particularly in the US, are often criticized as incorrectly collapsing the concepts into one and adopting a view of the concept that gives insufficient consideration to the interests of reinsurers. The follow-the-fortunes and follow-the-settlements principles are similar but distinct. For the purposes of the PRICL, the concepts of follow-the-settlements and follow-the-fortunes operate as set forth in this Article.

PRICL: HOW?

Soft law

- Applicable if parties choose **PRICL** (Article 1.1.1 PRICL) = **opt in**

Applicable Law in Arbitration

- Article 28 UNCITRAL Model Law
- PRICL as the applicable law (by choice of law or as the *lex mercatoria*)

Applicable Law in Litigation

- PRICL as the applicable law by choice of law
- PRICL only to interpret or supplement domestic law
- PRICL only incorporated into the contract

Non-Mandatory Rules

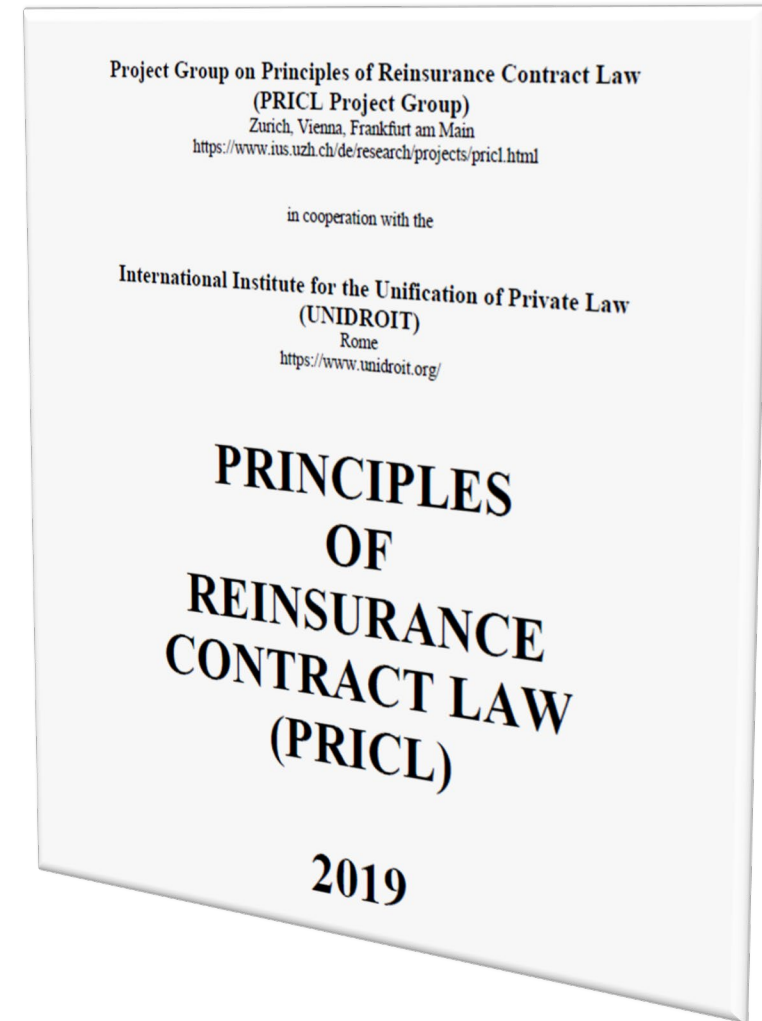
- Parties may derogate from or alter them by agreement

CONTENT

PRICL 1.0: General Rules

Ch. 1: General Provisions

- Substantive scope of application
- External gaps
- Exclusion or modification of the PRICL
- Usages and practices
- Overriding mandatory rules
- Interpretation and internal gaps
- Definitions of reinsurance terms



CONTENT

PRICL 1.0: Specific Rules

Ch. 2: The parties' duties

- Utmost good faith
- Pre-contractual disclosure duty
- Premium payment
- Payment of reinsurance claim
- Notice of changed circumstances / increased risk
- Right of inspection
- Notice of claims
- Claims handling duty
- Cooperation in claims handling duty
- Follow-the-settlements | Follow-the-fortunes

Ch. 3: Remedies

- Breach of contract
- Breach of pre-contractual disclosure duty

Ch. 4: Loss Allocation

- Losses-occurring during
- Risk-attaching during
- Multiple contracts of reinsurance

Ch. 5: Loss Aggregation

- Event-based aggregation
- Cause-based aggregation

CONTENT

Final Version: PRICL 2.0



The PRICL-project will be **finished by the end of 2024** with an **open access publication of PRICL 2.0**

Ch. 6: Coverage

- Back-to-back cover
- Retention
- XPL and ECO cover

Ch. 7: Duration

- Reinsurance Period
- Consequences of early termination

PRICL 1.0 IN PRACTICE

Industry Practice

- Reinsurers have taken several articles into their books of model clauses
- Various articles of the PRICL are currently used as contract clauses in international reinsurance agreements

Arbitration Practice

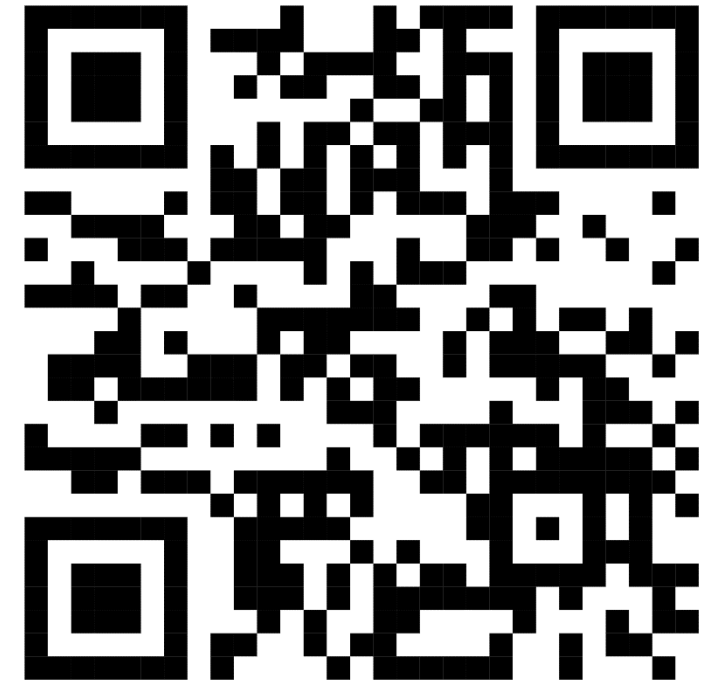
- **Two awards** in Norwegian reinsurance arbitration in 2022 **made references to "PRICL", even though application of such was not specifically agreed upon in the reinsurance treaties**
(Source: <https://www.thommessen.no/en/news/aggregation-of-covid-related-claims-in-reinsurance>)



Global Network of reinsurance law scholars and practitioners

PRINCIPLES OF REINSURANCE CONTRACT LAW

Thank you for your attention



Open access PRICL 1.0:

<https://www.ius.uzh.ch/en/research/pricl.html>