AN INTRODUCTION FOR THE ARIAS FALL CONFERENCE

Principles of Reinsurance Contract Law

A New UNIDROIT Framework — and What It Means for U.S. Reinsurance Practice

Welcome

Principles of Reinsurance Contract Law (PRICL)

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Disclaimer

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PRICL Was Built by Practitioners as Well as Academics — Including People in This Room

Patrick and Melanie

Industry Practitioners, Advisory Group Members

Patrick also co-authored the commentary for Articles 6.3.1 and 6.3.2 on liability for costs and XPL/ECO claims

John

Special Advisor, Project Group

Served across both the 2019 and 2025 editions of the Principles

This is a conversation among three people who helped shape the text

PRICL Is a New Soft-Law Framework for Reinsurance Contracts

- Principles of Reinsurance Contract Law: published by UNIDROIT in 2025 after a ten-year drafting project
- Replaces the preliminary 2019 edition
- Seven chapters covering duties of the parties, remedies, loss allocation, loss aggregation, coverage, and duration
- Formally launched at Lloyd's Old Library in London on November 3, 2025
- This is one of the first U.S. industry conversations since that launch

2025

UNIDROIT Publication Year

Ten years in drafting — launched at Lloyd's Old Library, London, November 3rd

Reinsurance Law Is Fragmented Along National Lines — PRICL Aims to Bridge the Divide

- Reinsurance is a global business, but the governing law is entirely national and fragmented
- Common-law jurisdictions (New York, England) have developed meaningful reinsurance case law
- Most civil-law jurisdictions have almost none
- Drafters call this split the "two hemispheres" of reinsurance law
- Same treaty language can be read differently depending on where a dispute lands



Two Hemispheres of Reinsurance Law

Common Law

Civil Law

PRICL offers a common reference point that doesn't depend on jurisdiction

PRICL Is Opt-In — Not a Replacement for Existing New York or English Case Law

- No one is being asked to give up NY or English law
- Case law resolves individual disputes' facts — often years apart, sometimes inconsistent
- PRICL articles come with official Comments and worked Illustrations drafted specifically for reinsurance
- In areas like loss aggregation or back-to-back cover, that can be clearer guidance than waiting for the next case



Opt-In by Design

Comments

Illustrations

Every article is paired with worked hypotheticals showing exactly how it applies

There Are Four Practical Ways to Use PRICL — Short of Naming It as Governing Law

Adoption is a spectrum, not an all-or-nothing choice:

1

Full Choice of Law

Works cleanly in arbitration under the UNCITRAL Model Law; less certain in state courts

2

Incorporate by Reference

Pull PRICL into the treaty so it operates as contract terms

3

Adopt Select Articles

E.g., just the Article 5.2 definition of an occurrence

4

Persuasive Authority

Cited in at least two COVID-era arbitral awards under Norwegian law

Article 2.1.2 Codifies Utmost Good Faith Using Standards U.S. Courts Already Recognize

- Adopts the *uberrima fides* standard
- References New York decisions this room knows — including *Unigard* and *Travelers v. Scor*
- PRICL is not inventing a duty; it states one U.S. reinsurance practice already recognizes
- Written so a civil-law tribunal can apply it without first mastering American case law

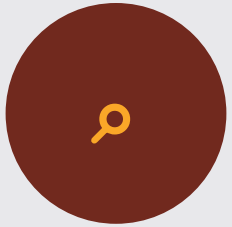


Utmost Good Faith

Art. 2.1.2

Article 2.2.1 Sets a Single, Objective Standard for Pre-Contractual Disclosure

- Tests materiality against the "reasonable and prudent reinsurer"
- Illustrations accompanying it are drawn heavily from U.S. fact patterns
- Provides a stated, uniform standard rather than one that varies by jurisdiction
- Valuable when cedent, reinsurer, and retrocessionaire sit in three different legal systems



Pre-Contractual Disclosure

Art. 2.2.1

Article 2.4.3 Separates Follow-the-Settlements from Follow-the-Fortunes

- The two doctrines are treated separately rather than conflated
- Drafters point to that conflation as a real source of uncertainty in national laws today
- Follow-the-settlements requires the claim to be arguably covered and the settlement objectively businesslike
- Follow-the-fortunes is addressed as its own, separate test
- The goal: clarity up front, rather than litigating what "follow the fortunes" even means in a given jurisdiction



Settlements vs. Fortunes

Art. 2.4.3

Articles 6.1.1–6.1.3 Set Enumerated Rules Instead of a Presumption for Back-to-Back Cover

- Sidesteps the split between the English line (*AXA v Field and Wasa v Lexington*) and the U.S. "follow-the-form" presumption cases
- Includes the Second Circuit's 2023 *Equitas* decision among the cases it moves past
- Enumerates categories for what counts as an incorporated matching term
- Parties look at the enumerated categories and know where they stand — no presumption required



Back-to-Back Cover

Art. 6.1.1–6.1.3

Article 6.3.2 Directly Addresses XPL and ECO — Doctrines the Commentary Calls "Largely Confined to the U.S."

- Covers Excess of Policy Limits and Extra-Contractual Obligations
- References BRMA clause wordings directly in Annex F
- A project drafted primarily by European professors did not have to address XPL/ECO at all
- That it does — by reference to American market wordings — shows real engagement with U.S. practice



XPL & ECO — A U.S. Doctrine

Art. 6.3.2

Annex F

Articles 5.2 and 5.3 Replace Competing National Tests with a Shared Aggregation Standard

- Steps away from both the English "unities test" and the U.S. "unfortunate event" / proximate cause tests
- Comments describe those tests as capable of producing result-oriented outcomes
- Uses direct-consequence and reasonable-foreseeability standards instead
- Won't eliminate argument at the margins, but gives parties a shared vocabulary



PRICL Is Already Being Cited, Taught, and Integrated — Not Just a Paper Exercise

Early traction across four fronts:

1

Arbitral Citation

Persuasive authority in Norwegian COVID-era arbitrations

2

Treaty Integration

Informal reports of insurers folding sections into their treaties

3

Academic Adoption

Cited in an English reinsurance textbook, a Chinese text, and theses in Turkey and Colombia

4

Regulatory Relevance

Presented as a reference point for Solvency II's "scheme of operations" requirement

Start Small: Read, Incorporate Selectively, and Raise PRICL as Persuasive Authority

A practical path for a curious cedent or reinsurer this year:

1

Read

The Comments and Illustrations for the two or three articles closest to your own treaty friction — often loss aggregation or back-to-back cover

→

2

Incorporate

Consider adopting just those provisions by reference at your next renewal, rather than a wholesale choice-of-law change

→

3

Raise as Authority

In arbitration-heavy business, cite PRICL as persuasive authority when a dispute turns on an issue it was written to clarify

Success Looks Like PRICL Becoming the Reinsurance Industry's Own UNIDROIT Principles of Contract Law

- A widely consulted reference point — for parties who adopt it outright and tribunals who consult it even when it wasn't chosen
- Modeled on how the general UNIDROIT Principles of International Commercial Contracts became a standard reference
- Getting there depends on rooms like this one deciding it's worth trying on a few provisions at a time

5–10

Year Horizon

The timeframe the drafters see for PRICL to become a widely consulted market reference

“The PRICL is worth reading before you need it.”

- Treaty drafters: there is likely a section that clarifies something your wordings currently leave ambiguous
- Arbitrators and litigators: PRICL is already being cited in awards where no party selected it
- Skeptics of a “European project”: the XPL/ECO provisions and New York case law in the commentary should change that view

The ask is modest: read it, test one provision, and tell the drafters what does not work — the Advisory Group exists so this market’s experience shapes the next edition.

Resources & Next Steps

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UNIDROIT

International Institute for the Unification of Private Law — unidroit.org

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PRICL 2025 (Full Text)

Principles, Comments, and Illustrations — PRICL 2025.pdf

Thank you.

Presented by Melanie Rouvray-Kampe, Hannover Re Group Legal Services, Patrick Carty, MetLife Compliance Risk Management, and John Pruitt, Partner, Eversheds Sutherland (US) LLP