PRICL and English Reinsurance Contract Law

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Abstract: The idea of a harmonised reinsurance law is nearly a century old, but was resurrected a decade ago at the instigation of representatives from the reinsurance industry.[1] The Principles of Reinsurance Contract Law ("PRICL")[2] were produced by a Project Group on Principles of Reinsurance Contract Law, led by Prof Helmut Heiss (Zurich University) and Prof Manfred Wandt (Frankfurt University) in cooperation with the International Institute for the Unification of Private Law ("UNIDROIT"), and advised by experienced practitioners from leading insurance and reinsurance companies.

The aim of the PRICL is to provide reinsurance markets with a uniform, clear, simple and balanced non-binding (private') codification of commonly accepted business practices in international reinsurance.[3] Reinsurance is a global business and reinsurance contracts frequently involve parties and risks in multiple jurisdictions. Only a few jurisdictions have developed a distinct body of reinsurance law (England, New York, Bermuda) and it is the reinsurance law of these jurisdictions that frequently dominates the 'choice' of law by the parties. But even English, New York and Bermudian reinsurance law contain aspects of considerable legal uncertainty, (potentially) leading to costly disputes. Disputes also arise because either one or even both parties have chosen a governing law that they are unfamiliar with and had no clear understanding how it would be operating in specific situations. Reliance on reinsurance market practices is framed by domestic law rules on contract interpretation and implication of terms. The PRICL seek to address these issues by providing uniform default rules that use standardised reinsurance terminology, together with commentary and illustrations for each rule. The anticipated economic benefits of the PRICL are reduced transaction costs and dispute resolution costs resulting from a fragmented legal landscape in an internationally operating market.

Without going into the technical details, the substantive provisions of the PRICL cover the whole spectrum of the reinsurance life cycle from pre-contractual duties, to contractual duties of the parties remedies for breach of duty, the obligations of the parties during the claims process, loss allocation, loss aggregation, the scope the reinsurance cover, to duration and termination of the contract of reinsurance.[4] It is important to note that the PRICL only cover reinsurance-specific rules but not general issues of contract law. Any general contract law "issues not settled by the PRICL" are settled in accordance with the UNIDROIT Principles of International Commercial Contracts 2016 ("PICC").

The PRICL were launched on 3 November 2025 at Lloyd's of London with an event titled 'PRICL Launch Event: Principles of Reinsurance Contract Law – Continuity, Consistency and Constructive Change' and attended by insurance industry representatives, lawyers, regulators and academics. The following is a script of my speech.

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[1] For further details on the provenance and the conception of the PRICL, see Helmut Heiss, 'The Principles of Reinsurance Contract Law (PRICL): A fruit from the tree of the PICC' in UNIDROIT, *Thirty Years of the UNIDROIT Principles of International Commercial Contracts: Past, Present and Future Relevance* (UNIDROIT, 2025)

[2] Helmut Heiss and Manfred Wandt (eds), 'The Principles of Reinsurance Contract Law' (UNIDROIT, 2025)

[3] PRICL, Introduction, Sec.1 and Commentary C5 to Art. 1.1.4(2).

[4] PRICL, Ch.2-7.

Dear colleagues and guests,

Thank you for coming to our launch of the Principles of Reinsurance Contract Law (the PRICL), which is particularly appreciated as I know that many of you have come here today with a healthy dose of skepticism.

You may be thinking that the PRICL are a purely academic endeavor with little practical relevance, or perhaps you think the PRICL are a continental European project ill-suited to the London market, or you are concerned that the PRICL seek to challenge the dominance of English law as governing law of reinsurance contracts.

If any of these thoughts have crossed your mind, I can understand where you are coming from. As a scholar and former practitioner of English reinsurance law I want to see English reinsurance law flourish, I know it has developed in line with London market practices, and I feel protective of its special status in the global reinsurance market.

It is therefore not my mission to make you PRICL converts; rather I would like to persuade you that the PRICL do not seek to undermine or supplant English reinsurance law. Instead the PRICL provide **continuity:** they build on English reinsurance law and can enrich English reinsurance law and our understanding and practice of it. I would also like to show you that the PRICL are entirely **consistent** with and supportive of two fundamental concepts of English contract law and commercial law: freedom of contract, and the importance of fostering certainty and predictability in commercial dealings. The concepts of freedom of contract and certainty were only recently central to the decisions of the Supreme Court in *MUR v RTI*[5] and *The Polar*,[6] respectively. That reinsurance risk transfer is clearly defined and incontrovertible is also a UK Solvency regulatory requirement for reinsurance to count as an effective risk mitigation technique for the purposes of calculating a reinsured's solvency capital requirements.[7]

Where the PRICL do depart from English law (= **constructive change**), it is in areas where English law itself is unclear and the PRICL provisions provide consensus-based solutions that they parties can adopt to enhance transparency, predictability of decisions and legal certainty in reinsurance contracts.

Adoption of PRICL

So let me very briefly outline how the parties can adopt the PRICL for their reinsurance contract. According to Art. 1.1.1, the PRICL apply to contracts of reinsurance where the parties have agreed that their contract shall be governed by them. The Commentary[8] envisages two implementation options:

1. Option 1: The PRICL can be adopted by choosing them as an equivalent to a governing law choice of a domestic law. The PRICL (and with them the PICC) replace the domestic law that would be the applicable default law in the absence of a choice of law. This replacement would be comprehensive and extends to non-derogatory provisions from which the parties would be unable to contract out under the applicable default law, but not to the overriding mandatory rules whether of national (domestic), international or supranational origin.[9]
2. Option 2: The PRICL can be adopted by incorporating them in toto as terms of the contract of reinsurance. In this scenario, the contract of reinsurance will be governed by the law chosen by the parties, or the applicable default law where no choice has been made. In this scenario, the PRICL (and with them the PICC) take effect as contractual terms and fill the gaps left by

[5] *MUR Shipping BV v RTI Ltd* [2024] UKSC 18
[6] *Herculito Maritime Ltd and others v Gunvor International BV* [2024] UKSC 2
[7] PRA Rulebook, SII Firms, Solvency Capital Requirement - Standard Formula, 3G3
[8] PRICL, Commentary C6-C12 to Art. 1.1.1.
[9] PRICL, Art. 1.1.5, Commentary C6-C12 to Art.1.1.1.

the chosen law or applicable default law, whilst only replacing the default rules, but not the mandatory rules, of that law.

A third option – Option 3 - is the incorporation of individual PRICL provisions. Only the incorporated PRICL provisions, but not the non-incorporated PRICL provisions and the PICC, will become terms of the contract of reinsurance alongside other reinsurance contract terms and the default rules of the chosen law or the applicable default law that have not been replaced by the incorporated PRICL provisions. Although this third option is not expressly mentioned in the PRICL, it is implicit in Art.1.1.3 which provides that the parties may exclude the application of or derogate from the provisions of the PRICL.

So coming back to my question how the PRICL can enrich English reinsurance law and English law-governed reinsurance contract, I will proceed from a primary use-case where the reinsurance contract is governed by English law (Option 2), and I will then also briefly consider how the PRICL can assist us as English law practitioners where the contract has a foreign governing law, and conclude with some brief observations on Option 1.

Gaps and uncertainty

English reinsurance law is a body of law that has its sources in the Marine Insurance Act 1906 (for marine reinsurance), the Insurance Act 2015, and case law. The legislation applies to reinsurance contracts but has not been drafted with reinsurance in mind. It is therefore at best a partial codification of legal principles applicable to reinsurance contracts mutatis mutandis.

We are blessed with a rich body of case law, but we all know that case law is often fact-specific, it develops the law incrementally and in non-linear ways, and not infrequently cases can appear inconsistent unless we engage with complex reasoning for distinguishing their outcomes on the facts. specific, it develops the law incrementally and in non-linear ways. And let's be honest – case law is not the most accessible.

Given that most reinsurance disputes go to arbitration with confidential awards, there is a vast amount of legal argument that never becomes public and never hardens into law by becoming binding precedent.

This leaves us with an English reinsurance law which is one of the most sophisticated in the world; nevertheless it has gaps and many areas of uncertainty. Now you may say to me that these gaps can be anticipated and filled with express contract terms. Yes, they can, but to do so, you need to be aware of where the gaps are. You also need to give some thought to how to fill the gaps, and how this will impact the parties' contractual rights and obligations. If the parties want to contract out from the default law, it may be helpful to understand what the baseline is. Perhaps most pertinently, contracts, however detailed, are also inevitably incomplete. Gaps are notoriously difficult to fill with implied terms,[10] and contractual interpretation is concerned with ascertaining objectively the meaning of the contract terms (not their absence).[11]

The PRICL can assist with filling some of these gaps and address points of uncertainty. In his 2022 paper 'What is the point of commercial law?', Lord Leggatt noted that commercial law performs two important functions which compensate for the incompleteness of contracts:[12]

1. First, it establishes default rules that set a baseline that commercial parties would generally regard as fair and rational, and produce outcomes that are reasonably predictable.

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[10] *Marks & Spencer Plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2015] UKSC 72; *Equitas Insurance Ltd v Municipal Mutual Insurance Ltd* [2019] EWCA Civ 718

[11] *Financial Conduct Authority v Arch Insurance (UK) Ltd and others* [2021] UKSC 1

[12] Lord Leggatt 'What is the point of commercial law?' [2022] LMCLQ 242

2. Secondly, commercial law provides fair and efficient means for resolving disputes about the meaning and effect of contractual documents.[13]

So there is a sweet spot for the PRICL: they can provide a safety net of default rules where English reinsurance law does not provide clear and predictable default rules and reinsurance contracts are incomplete. Commercial law and financial law have plenty of precedents operating in this way, e.g. the UCP 600[14] and the ISDA documentation for swaps and derivatives.[15]

PRICL as gap filler and prompt for certainty for reinsurance contracts governed by English law

In that sweet spot, the PRICL offer various ways of filling gaps and encouraging more predictability. To be clear, I am talking here about the scenario where a reinsurance contract is governed by English law, so not contracts that have adopted the PRICL as their governing law.

At contract drafting / negotiation stage, PRICL can serve as:

- checklist of matters to be considered when drafting the contract
- a baseline / benchmark for contractual negotiations and contracting-out, and
- a source of model clauses for incorporation

When a dispute has arisen, PRICL can be:

- an aid to interpretation and as benchmark for implied terms, and
- a persuasive authority in a transnational context

I appreciate that these are lofty claims of what PRICL is capable of doing. So let me demonstrate on an example: the incorporation of terms from the underlying insurance contract.

Example: the incorporation of terms from the underlying insurance contract

One important source of contractual terms in proportional facultative reinsurance are terms that have been incorporated by reference from the underlying insurance contract.

Incorporation of terms is not addressed in the Marine Insurance Act 1906 and the Insurance Act 2015. There is a lot of case law but it does not address the area comprehensively and systematically. O'Neill and Arnold-Dwyer's 'The Law of Reinsurance'[16] dedicates over 40 pages to explaining it.

Incorporation of terms into reinsurance contracts is usually achieved by using express wording in the reinsurance contract to effect the incorporation by reference to the underlying insurance contract. For example: "Subject to the same terms and conditions as the original " or simply "as original". The so-called 'full reinsurance' clause combines incorporation wording and 'follow the settlements provisions': "Being a reinsurance of and warranted same gross rate, terms and conditions as and to follow the settlements of the company … and to follow the settlements".

English reinsurance law is unclear on:

1. Which terms of the underlying insurance contract travel across to the reinsurance contract?
2. What happens if the equivalent term in the underlying insurance contract is amended?

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[13] Ibid., pp 254-255
[14] Uniform Customs & Practice for Documentary Credits
[15] International Swaps and Derivatives Association definitions and catalogue of forms
[16] Terry O'Neill and Franziska Arnold-Dwyer, '*The Law of Reinsurance in England and Bermuda*' (6th ed., Sweet & Maxwell, 2024) 4-003-4-051 and 4-088-4-091

3. In what circumstances should the interpretation given to the equivalent underlying term also be applied to the incorporated term in the reinsurance contract? This is also referred to as 'back-to-back interpretation'.

Which terms are incorporated?

What is not immediately apparent from these general words of incorporation is that "**all** terms as original" **does not mean all terms** of the underlying contract are incorporated. The case law on when a term travels across is somewhat vague and inconsistent. It depends on the term and is ascertained as a matter of construction of the reinsurance contracts and the surrounding circumstances.[17] In *HIH v New Hampshire*[18] Rix LJ refers to a number of well-known criteria for whether clauses should be transported into the reinsurance contract if it is "subject to all terms, clauses and conditions as original", which criteria are listed by Steel J in the first instance judgment. The term is likely to travel if:

1. it is germane to the reinsurance (not merely collateral, adds Rix LJ);
2. it makes sense subject to permissible "manipulation" in the context of the reinsurance;
3. it is consistent with the express terms of the reinsurance; and
4. it is apposite for inclusion in the reinsurance.

They are cumulative tests. A term is 'germane' if it is central to the risk or material to the nature or scope of the coverage.[19] This test (No. 1) seems clear enough but then what does test No. 4 add? Could a term be germane but not apposite for inclusion?

The cases are not speaking with one voice on just how much manipulation in language is permissible when a term is transplanted from the underlying insurance contract (No. 2). In *CNA International Reinsurance Ltd v Tranquilidade SA*, the court said "the Assured" in the claims co-operation clause should be read as "the Reinsured" in the reinsurance contract.[20] In contrast, in *HIH v New Hampshire*, Lord Justice Rix said that the a waiver clause could not be read across into the reinsurance contract because reading "the reinsurer" for the "insurer" did not make any sense in the context of the clause which operated to waive the insurer's remedy of avoidance for non-disclosure and misrepresentation vis-à-vis the insured.[21]

The PRICL, in Article 6.1.1(2) create greater certainty than the *HIH* criteria by describing those terms that are allowed to travel into the reinsurance contract pursuant to Article 6.1.1(a) – so-called 'incorporated matching terms' - as terms that are "material to the scope and the extent of cover", and by providing a non-exhaustive list of examples of such terms in Article 6.1.1(2): terms that are concerned with the scope of cover – such as terms relating to the insured perils and risks, exclusions, terms rendering certain losses ineligible to be indemnified, geographical and temporal scope of the cover - as well as terms concerned with the extent or quantum of cover – such as limits, deductibles, and aggregation provisions. Article 6.1.1.(3) provides that the parties may agree to exclude particular elements of the set of incorporated terms. In case of conflict between an incorporated matching term and an express term in the contract of reinsurance the latter prevails.

I am not claiming that this definition with the non-exhaustive list of examples will solve all problems about which terms do travel, but Article 6.1.1. (in three short provisions):

- warns the parties that not all terms will travel even if the incorporating clause says 'all terms as original' and

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[17] *Wasa International Insurance v Lexington Insurance* [2009] UKHL 40
[18] *HIH v New Hampshire* [2001] EWCA Civ 735 at para [162]
[19] Ibid. at para [165]
[20] *CNA International Reinsurance Ltd v Tranquilidade SA* [1999] Lloyd's Re IR 288
[21] *HIH v New Hampshire* [2001] EWCA Civ 735 at para [171]

- indicates to the parties which types of terms would generally travel, signalling to the parties where they should be considering express wording to override the default regime where they wish to have different arrangements

What happens if the underlying term is amended?

Are policy terms in the underlying insurance contract that are varied after the reinsurance contract has been formed automatically incorporated into the reinsurance contract further to the "as original" wording. The answer is no, but the English law position is less clear what will happen to the reinsurance contract if the terms of the underlying insurance contract are changed. Does the reinsurance contract terminate, is the reinsurer discharged from liability, or does the reinsurer remain bound but on the old terms? Is the reinsurer's consent required? If the terms were to change when would the amendment take effect (back-dated to inception, the date of the variation of the underlying terms, or the date of the consent)?

The position at common law prior to the UK Insurance Act 2015 was that a variation of the underlying insurance contract terminated, or discharged a reinsurer's liability under, a reinsurance contract that provides cover on terms warranted 'as original'.[22] This outcome would now need to be reassessed in light of ss. 10 and 11 of the IA 2015. By analogy to the House of Lords decision in *Wasa International Insurance v Lexington Insurance* [2009] UKHL 40,[23] it would also be arguable that terms that are varied after the conclusion of the contract cannot be incorporated if those terms would not have been known and identifiable at the time of the contract. In *HIH v New Hampshire*, a reinsurance contract with incorporated terms also contained a warranty that the reinsured would not make any material amendments to the underlying policy without the reinsurer's consent.[24] The wording of the warranty suggests that that non-material amendments would have travelled across into the reinsurance contract without the reinsurer's consent.

The PRICL, in Article 6.1.2.(1), introduce a clear default rule that the contract of reinsurance continues to be on the original incorporated matching terms if the underlying contract of insurance is varied after the formation of the contract of reinsurance. This is in line with the general principle of English contract law that contracts imposing liabilities on third parties are not enforceable. Article 6.1.2.(1) removes any arguments that the reinsurance contract is automatically discharged or amended to be on the new terms. Here we can see the PRICL operating a s clear default rule that can serve as a model clause or a baseline for negotiating a different solution.

Article 6.1.2.(2) then goes on two provide for two consent scenarios:

- up-front consent: the contract of reinsurance provides that variations to a term in the underlying contract of insurance that has become an incorporated matching term shall be automatically incorporated into the reinsurance contract; or
- retrospective consent: the reinsurer consents to the incorporation of the varied term into the contract of reinsurance after the variation of the underlying contract of insurance.

Article 6.1.2 is a good example where the PRICL depart from the English not for the sake of change but in order to improve predictability in an area of significant commercial relevance. Article 6.1.2.(2) gives a clear rule and also prompts the parties to give further consideration to the situations if they wish to provide for express or implied consent.

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[22] *Norwich Union Fire Insurance Society v Colonial Mutual Fire Insurance Co Ltd* [1922] 2 KB 461; *The Lower Rhine and Württemberg Insurance Association v Sedgwick* [1899] 1 Q.B. 179.
[23] *Wasa International Insurance v Lexington Insurance* [2009] UKHL 40
[24] *HIH v New Hampshire* [2001] EWCA Civ 735

Article 6.1.2.(3) clarifies the timing point: if the reinsurer consent to a variation as envisaged by Article 6.1.2(2), this variation becomes effective at the same time as the variation of the underlying insurance contract. As a default rule, this timing makes sense because it reflects that the intention behind using incorporated terms is to create matching cover. As a default provision in the PRICL it has a signal / checklist effect – something the parties should think about, and can serve as negotiation starting point. The PRICL operates here as what behavioural economists call a "nudge", to assist parties to achieve optimal results by providing a good default option.[25] Article 6.1.2 makes a good baseline because it was drafted after extensive discussions and consensus building with insurance and reinsurance industry representatives.

Back-to-back interpretation?

If the parties intended back-to-back coverage, an incorporated term in the reinsurance contract must generally speaking be interpreted consistently with its counterpart in the underlying insurance contract, even if different applicable laws confer different meanings on the same words. In English reinsurance law, there is some uncertainty as to whether there is a presumption or rule of construction that incorporated matching terms must be interpreted consistently with their equivalent terms in the underlying contract of insurance if the reinsurance contract contains an 'as original' incorporation clause or the full reinsurance clause. In *Vesta v Butcher*,[26] the House of Lords said that in proportional reinsurance on the same terms as the underlying insurance contracts, there is a presumption that the parties intended the reinsurance to be back-to-back. Therefore, the terms of an English law-governed reinsurance contract must be construed consistently with the foreign law interpretation they received in the direct policy. In contrast, in *Wasa International Insurance Co Ltd v Lexington Insurance Co and AGF Insurance Ltd* [2009] UKHL 40,[27] the House of Lords reject that there is a back-to-back presumption holding that a reinsurance contract is an independent contract which must be construed on its own terms and conditions. Where at the time the contracts were formed, there was no identifiable system of law applicable to the underlying contract of insurance which could have provided a basis for construing the contract of reinsurance in a manner different from its ordinary meaning, the contract of reinsurance is construed on its own terms without reference to the meaning given to term in judicial or arbitration proceedings in relation to the underlying insurance contract.

The House of Lords also said (in *AXA Reinsurance (UK) Ltd v Field*) that the back-to-back presumption is inapplicable in non-proportional reinsurance even if the terms of the underlying insurance contract have been incorporated.[28] Yet, in *Tokio Marine Europe Insurance Ltd v Novae Corporate Underwriting Ltd*, a first instance court applied a back-to-back construction approach to an aggregation clause in a non-proportional retrocession agreement.[29] In the US, the presumption is that a follow the form clause (which has the effect of incorporating the terms of the underlying contract of insurance) in a reinsurance contract is to be construed as meaning that reinsurance coverage is intended to be back-to-back with that in the underlying contract of insurance.

The PRICL have addressed these various points of uncertainty in Article 6.1.3. There is no back-to-back presumption. Instead there are two clear interpretation rules which do not apply to the reinsurance contract as a whole but only to incorporated terms in the reinsurance contract that have an equivalent term in the underlying insurance contract:

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[25] Richard H. Thaler and Cass R. Sunstein, '*Nudge: Improving Decisions About Health, Wealth and Happiness*' (Penguin 2012)
[26] *Vesta v Butcher* [1989] AC 852
[27] *Wasa International Insurance Co Ltd v Lexington Insurance Co and AGF Insurance Ltd* [2009] UKHL 40
[28] *AXA Reinsurance (UK) Ltd v Field* [1996] 2 Lloyd's Rep 233
[29] *Tokio Marine Europe Insurance Ltd v Novae Corporate Underwriting Ltd* [2013] EWHC 3362 (Comm)

1. Where the reinsured has settled a claim by its insured in a manner which is binding on the reinsurer, the reinsurer may not raise any defence based upon the interpretation of any incorporated matching terms in the reinsurance contract; and
2. The interpretation of a term in the underlying insurance contract as determined in judicial or arbitration proceedings in relation to that contract is deemed to be the interpretation to be applied to the incorporated matching term in the reinsurance contract.

This is, once more, an example of how the PRICL can serve as a prompt for contract drafting. We also envisage that this provision could serve as an aid to interpretation where back-to-back construction issues arise post formation. If Article 6.1.3 itself has been incorporated into the reinsurance contract it serves as an instruction to how the interpretation of incorporated terms is to be approached. Even as an extrinsic document, Article 6.1.3 could be potentially part of the contextual information to be taken into account when a court or arbitrator is faced with interpreting the meaning of a brief and relatively cryptic 'as original' or full reinsurance clause.[30] Article 6.1.3 does not distinguish between proportional and non-proportional reinsurance but is a default rule with signal / checklist effect prompting the parties to think about how they wish to address the point in their contract.

PRICL as gap filler for contracts governed by a foreign law

So far, I have been talking about the role the PRICL can play in relation to reinsurance contracts governed by English law. Whilst many of us here would regard English law as governing law as the ideal, this may not always be possible: for example, because one of the parties – possibly the reinsured - insists on a different governing law (the domestic law of their seat) as a legal requirement in their jurisdiction or because it is more convenient to them.

Many foreign laws do not have a developed and distinct body of reinsurance law and the contents of reinsurance law in those jurisdictions can therefore by opaque and difficult to ascertain. Here the PRICL can be incorporated as terms of the contract and can act as a double safety net: filling in the gaps both in relation to the governing law and the terms of thereinsurance contract. Where the governing law is thin on reinsurance law default rules, the PRICL can fill this vacuum and give context to how individual express terms operate in the contract as whole. The parties' freedom of contract is maintained because they can exclude or modify the application of individual PRICL articles with their express contractual terms to suit the risk, deal structure and other circumstances.

For the party who would have preferred, but was unable to negotiate for, English law as governing law, incorporating the PRICL as contractual terms could be a second best option. Why? Because the PRICL owe a great debt to English law: they have been developed from and shaped by English reinsurance law with the input from insurer and reinsurer advisory groups that are familiar with the London market and English reinsurance law academics such as Professor Robert Merkin, Professor John Birds, the late Professor Malcolm Clarke and myself. When you have a chance to read through the PRICL, you will see that the PRICL are not a revolution but an evolution from English reinsurance law. This is the continuity referenced in the title of today's event. By incorporating the PRICL as terms of the reinsurance contract, some of the spirit of English reinsurance law can be recaptured even if the governing law is a foreign law. For us as English lawyers, it means that we have perhaps a little bit of a head start over lawyers from other jurisdictions when it comes to understanding and advising on the PRICL because so many of its provisions will already be familiar to you.

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[30] For current approaches to literal v contextual interpretation see: *Arnold v Britton* [2015] UKSC 3; *Wood v Capita Insurance Services Ltd* [2017] UKSC 24; and *Financial Conduct Authority v Arch Insurance (UK) Ltd and others* [2021] UKSC 1

Choice of PRICL as governing law[31]

Finally, where the parties cannot agree on a governing law – each insisting on their own domestic law – the PRICL could be adopted as a non-national governing law as a neutral solution to this kind of deadlock. The traditional approach of private international law and domestic courts has been that the governing law of a contract must be a state law,[32] whilst purely private sources of rules have not been recognised as a valid choice of applicable law. Thus, a choice of the PRICL as a governing law would not be recognised by the English courts.[33]

However, it is likely to be given effect in arbitration.[34] The rationale for accepting the parties' choice is that the arbitral tribunal's authority is itself contractual, and therefore it is bound by the parties' choice of substantive law. It is generally accepted, borne out by arbitral practice, that for the same reason, an arbitral tribunal would give effect to the parties' choice of a non-state law as the law governing the merits of the dispute.[35] The ARIAS Rules, a frequently chosen set of arbitration rules for reinsurance disputes, follows the Arbitration Act 1996 and require the arbitral tribunal to decide disputes in accordance with the law chosen by the parties as applicable to the substance of the dispute and such other considerations as agreed between the parties.[36] Even if the PRICL as a non-state set of rules are not regarded as law, they would fall within "other considerations". There is therefore no obstacle to ARIAS arbitrators respecting the parties' choice of the PRICL as substantive law. Therefore, adopting the PRICL as the governing law of the reinsurance contract is a third option but limited to reinsurance contracts with an arbitration clause. Again, as English lawyers we can play to our strength advising on which specific areas the parties should contract-out from the PRICL.

Conclusion

Coming back to my earlier themes of freedom of contract and contract certainty and predictability, I hope I have been able to persuade you that PRICL do not undermine the parties' choice of English law but, at the parties' choosing, they can fill in gaps and clarify points of uncertainty in English law. Where insurance contracts are not governed by English law but a foreign law, the PRICL serve as a safety net of default rules that are not unfamiliar to English lawyers. In all of these use cases the PRICL increase transparency and, if used as a checklist, can flag issues and undetected disagreements upfront. Ultimately - if used wisely – they can reduce transaction and dispute resolution costs.

And this brings me to my final point: the PRICL are not just a set of Articles (= default rules) but also contain Commentary and Illustrations which are a fantastic repository of comparative reinsurance law, including explaining English and US reinsurance law principles and how they differ from each other, and where they are aligned to or differ from the PRICL. The PRICL are therefore also a wonderful

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[31] See further Franziska Arnold-Dwyer, 'PRICL and the long shadows of domestic aw and linked contracts; is soft law effective?' in Helmut Heiss and Marta Ostrowska (eds), *Unpacking Soft Insurance Law: Critical Reflections, Emerging Questions, and the Future of Regulation* (Springer 2026, forthcoming)

[32] 'State law' means the law of a country or territorial legal order.

[33] *Shamil Bank of Bahrain EC v Beximco Pharmaceuticals Ltd* [2004] EWCA Civ 19 (Shari'a law); *Halpern v Halpern* [2007] EWCA Civ 291(Jewish Halakha); *Djanogly v Djanogly* [2025] EWHC 61 (Ch) (Jewish law)

[34] Under the Arbitration Act 1996 s.46(1), it is the reference to "other considerations" that allows for a choice of non-state law.

[35] Nigel Blackaby, Constantine Partasides and Alan Redfern, *Redfern and Hunter on International Arbitration* (7th edn, OUP, 2022), [3.212]-[3.215]; *Musawi v R E International (UK) Ltd* [2007] EWHC 2981 (valid choice of Shari'a law valid as substantive law in arbitration); *Halpern v Halpern* [2007] EWCA Civ 291 (choice of Jewish Halakha would have been valid in arbitration); and see Alex Mills, *Party Autonomy in Private International Law* (Cambridge University Press, 2019),Ch.10 fn.74 for literature.

[36] A.I.D.A Reinsurance and Insurance Arbitration Society of the UK, 'ARIAS Arbitration Rules' (3rd ed., 2014), Art.17.1.1 and 17.1.3 respectively (https://arias.org.uk/arbitration-rules-and-clauses/ accessed on 1 November 2025).

resource for reflecting on the operation of English reinsurance law and enriching our understanding of it.

Thank you for your time and attention.