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**Item No. 7 on the agenda: International Commercial Contracts –
Formulation of Principles of Reinsurance Contracts**

(prepared by the Secretariat)

<i>Summary</i>	<i>Final report on the project</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the finalised version of the black-letter rules and comments of the Principles of Reinsurance Contracts (PRICL) prepared by the PRICL Working Group, to commend their use of the UNIDROIT Principles on International Commercial Contracts as a model and as rules of general contract law and to authorise the Secretariat to refer to the text of the PRICL on the UNIDROIT Website once their publication is finalised.</i>
<i>Mandate</i>	<i>Work Programme 2017-2019</i>
<i>Priority</i>	<i>Low</i>
<i>Related document</i>	<i>UNIDROIT 2019 – C.D. (98) 2; C.D. (98) 14</i>

I. HISTORY OF THE PROJECT AND STATUS

1. In July 2015 the Secretariat was approached by a group of scholars and practicing lawyers led by Professors Anton K. Schnyder and Helmut Heiss (University of Zurich, as "Lead Agency"), Martin Schauer (University of Vienna) and Manfred Wandt (University of Frankfurt), who were examining the feasibility of formulating "Principles of Reinsurance Contract Law" (PRICL). This initiative was inspired by the project group "Restatement of European Insurance Contract Law", which had led to the publication of the Principles of European Insurance Contract Law (PEICL)¹. The purpose of the project was to formulate a "restatement" of existing global reinsurance law, which is largely embedded in international custom and usage, but is seldom the object of legislation.

¹ Principles of European Insurance Contract Law, Edited by Project Group "Restatement of European Insurance Contract Law", established by Fritz Reichert-Facilides, Chairman: Helmut Heiss, Sellier European Law Publishers (October 2009).

2. The project leaders expressed the view that the proposed principles presupposed the existence of adequate rules of general contract law. Rather than attempting to re-create such rules, the proposed new principles had to be drafted in such a way as to ensure consistency between the PRICL and the UNIDROIT Principles of International Commercial Contract (UPICC) and, as a result, UNIDROIT was invited to participate.

3. The Governing Council decided to recommend this topic for inclusion in the UNIDROIT Work Programme for the triennium 2017-2019 by the General Assembly, and to assign it a low level of priority. The General Assembly endorsed this recommendation of the Governing Council at its 75th session on 1 December 2016.

4. The project was financially self-sufficient since it received funding from the Swiss National Science Foundation, the German Research Foundation and the Austrian Research Promotion Fund. Beside the project managers, the research team included well-known representatives from Belgium, Brazil, China, Germany, France, Great Britain, Italy, Japan, Singapore, South Africa and the United States. In addition, two advisory groups made up of representatives of the global insurance and reinsurance markets advised the research team.

5. Since the beginning of the project, UNIDROIT has actively attended its workshops (Zürich, 27-30 January 2016; Vienna, 12-15 October 2016; Frankfurt, 8-12 March 2017; Zurich, 28 June-1 July 2017), with the main purpose of ensuring that the PRICL were in line with the UPICC both substantively and systematically and to provide interpretation and examples of the practical application of the UPICC.

6. On 16-17 January 2018, UNIDROIT participated in the 5th PRICL Workshop in Vienna, with the main focus on this occasion being to ensure consistency with and provide interpretation of the UPICC on the Rules concerning Remedies. The 6th Workshop of the Project was held in Frankfurt on 6-8 June 2018, with participation of UNIDROIT, and the Working Group has since been working towards a consolidated draft that is presented to the Governing Council at the present session (Rome, 8-10 May 2019).

7. The PRICL are presented as a non-binding set of rules that parties can either choose as the law governing their contract or incorporate in their agreement. In this respect, the PRICL draw on the example of the Preamble of the UPICC (see Art. 1.1.1). The PRICL however also contain a provision (Art. 1.1.2) dealing with external gaps, according to which "Issues not settled by the PRICL shall be settled in accordance with the UNIDROIT Principles of International Commercial Contracts 2016". In order to facilitate parties' choice of the PRICL, the drafters further inserted a Base Model Choice-of-Law Clause according to which "[T]his contract shall be governed by the Principles of Reinsurance Contract Law (2019)", and two Base Clauses with an addition for gap-filling, according to which "(a) This contract shall be governed by the Principles of Reinsurance Contract Law (2019) and, with respect to issues covered neither by such Principles nor by the UNIDROIT Principles of International Commercial Contracts (2016), by generally accepted principles of international commercial law," and "(b) This contract shall be governed by the Principles of Reinsurance Contract Law (2019) and, with respect to issues covered neither by such Principles nor by the UNIDROIT Principles of International Commercial Contracts (2016), by the law of [State X]".

8. The PRICL are composed of the following parts: Chapter I: General Part; Chapter II: Duties; Chapter III: Remedies; Chapter IV: Aggregation; Chapter V: Allocation. The relationship of the drafted Principles to the UPICC is expressly addressed and explained at the relevant points in the Comments to the Articles. Such comments refer to the rules of the UPICC that have influenced those of the PRICL. They also make reference to the rules of general contract law contained in the UPICC that are not replicated in the PRICL but will govern the contract if the PRICL are chosen as the law applicable to it. The *Introduction* to the PRICL in Annexe I of this document (pages 1 – 8) contains a more detailed explanation of the relationship between the PRICL and the UPICC.

9. The PRICL will be the subject matter of a special panel which will be held on Friday 10 May at 11:30 during the present session of the Governing Council. It will feature an *Introduction to the Principles of Reinsurance Contract Law and their Relationship with the UNIDROIT Principles on International Commercial Contracts* by Professor Helmut Heiss (University of Zurich); *"Duties" and "Remedies" in the Principles of Reinsurance Contract Law as compared with the UNIDROIT Principles on International Commercial Contracts* by Professor Diana Cerini (Milano Bicocca University); *A Direct Insurer's View* by Mr. Lari Kuitunen (If P&C Insurance); and *A Reinsurer's View* by Mr. Eberhard Witthoff (Munich Re Group). The leaflet of the panel is attached in Annexe II.

10. On 22 December 2018, the Secretariat was informed that Working Group had received funding which would support the project for another triennium (1 July 2019 – 30 June 2022), with the understanding that the Working Group would complete the PRICL adding Chapter VI: Back-to-back-cover; Chapter VII: Non-contractual liability clauses; Chapter VIII: Termination and recapture; Chapter IX: Limitation periods. Due to the connections between a number of these topics and the UPICC, and the desirability that this second part of the PRICL continued to refer to the UPICC both in the general choice-of-law clause and in the specific black-letter rules and comments, the PRICL Working Group asked UNIDROIT to continue its involvement under the same conditions as before. See the proposals for the 2020-2022 Work Programme, C.D. (98) 14 rev, 49-52.

II. ACTION TO BE TAKEN

11. *The UNIDROIT Secretariat would invite the Governing Council to (i) take note of the finalised version of the black-letter rules and comments of the Principles of Reinsurance Contracts (PRICL) – First Part, prepared by the PRICL Working Group and attached as Annexe I to this document, (ii) to commend their use of the UNIDROIT Principles on International Commercial Contracts as a model and as rules of general contract law, and (iii) to authorise the Secretariat to refer to the text of the PRICL on the UNIDROIT Website once their publication is finalised.*