

Considerations

- a) The terrorism risk as described in articles 1 (1), 1 (2) and 1 (3) of the Clauses Sheet Terrorism Cover by the Dutch Terrorism Risk Reinsurance Company (hereinafter referred to as the Clauses Sheet) proves to be a real threat to society, while it can (also) have serious financial consequences. In particular because of its possibly limitless character and the risk of cumulation, insurers are in principle unable to provide insurance cover for the terrorism risk any longer.
- b) In order to form a provision nevertheless, the Dutch Terrorism Risk Reinsurance Company [*Nederlandse Herverzekeringsmaatschappij voor Terrorismeschaden N.V.*] (hereinafter referred to as the NHT) has been incorporated, which has a limited cover capacity per calendar year at its disposal. The extent of said capacity made available by (re)insurers and the government (as reinsurer) may vary from year to year.
- c) Insofar as permitted by law and with due observance of the prevailing rules in this respect, the limited cover capacity of the NHT may be allocated by the participating (non-life, life, health care, and funeral in kind) insurers as a limitation of their joint liabilities to pay compensation which may arise from the manifestation of the terrorism risk.
- d) It is not known in advance to which extent the available capacity for any one calendar year will suffice in order to admit all rightful claims which may arise from the manifestation of the terrorism risk in said year, whereas the date on which this can be determined with certainty cannot be set either.
- e) When the NHT awards damages, justice needs to be done on the one hand to the interest of individual insured parties, beneficiaries and injured parties in order to gain a clear insight at the earliest possible stage into the extent of the payments due to them, whereas on the other hand the distribution of the limited cover capacity per calendar year needs to be equitable in case said capacity proves to be insufficient to pay indemnity in respect of all rightful claims.

The aforementioned considerations result in the application of the following provisions.

Notification of claim

1. For the application of this protocol claim shall be understood to mean any possible manifestation of the 'terrorism risk' as described in articles 1 (1), 1 (2), and 1 (3) of the Clauses Sheet, which may give rise to a right to claim compensation towards any of the non-life, life, health care and/or funeral in kind insurers participating in the NHT.
2. Any occurrence which may give rise to a claim, shall be reported to the insurer concerned (hereinafter referred to as the claims handling insurer) as soon as possible, in the manner stipulated by the insurer. The claims handling insurer shall be bound to take any measures which he can in all fairness be required to take in order to prevail upon the policyholder, insured parties, beneficiaries and/or injured parties to report a claim with all due speed and shall observe any instructions by the NHT aimed at a prompt notification of claims.
3. The claims handling insurer shall be charged with the settlement of the claim in question. Within this scope the claims handling insurer shall assess the probability of the claim being related to the manifestation of the terrorism risk.

4. The claims handling insurer shall notify the NHT as soon as possible of any concrete claims which in his opinion are within the scope of application of this protocol, but at the latest within three weeks after a link with the terrorism risk has been established. Said notification shall be in compliance with the manner and stating the information stipulated by the NHT and shall be accompanied by a first provisional estimate of the anticipated liability(ies) to pay compensation.
5. The claims handling insurer shall be obliged to supply the NHT with periodic statements, in the manner stipulated by the NHT, of the developments with regard to the reported claims, as well as to render all other assistance in order to enable the NHT to budget the (anticipated) aggregate amount of the liabilities to pay compensation as far as possible. The claims handling insurer shall be bound in this respect to comply with the instructions by the NHT pertaining to the valuation of the items of loss.
6. The claims which are to be notified by the participating insurers to the NHT shall include those claims for which payment of compensation has been promised or granted, either in full or in part, before a link with the terrorism risk was established. In respect of said claims the NHT shall determine its liability to pay compensation toward the participating insurers as if said insurers have not promised or granted payment of compensation, regardless of (and otherwise without prejudice to) the existing legal relation between said insurers and the policyholders, insured parties, beneficiaries and/or injured parties concerned.
7. With regard to the assessment of concrete events or circumstances as claims within the context of provision 1, the NHT shall not be bound by the opinion of the claims handling insurer, but shall judge independently if it has been sufficiently demonstrated that any events, circumstances or the consequences thereof reported to the NHT should be considered as the manifestation of the terrorism risk within the context of the Clauses Sheet. If the NHT is of the opinion that proof of the required link with the terrorism risk is unsatisfactory, the NHT shall notify the claims handling insurer(s) concerned hereof. The judgement by the NHT shall be binding upon the claims handling insurer(s), unless said judgement is challenged in writing and well-founded by the insurer(s) in question within a period of six weeks following the notification. In that case a reconsideration shall take place. If said reconsideration results in a confirmation of the judgement, such decision shall only be contestable if and on account of the reason that the NHT based on the available information could not in fairness have made its judgement that proof of a link with the terrorism risk, established by said claims handling insurer, has been found unsatisfactory.
8. The NHT shall not be answerable in respect of any judgement on the manifestation of the terrorism risk being sufficiently demonstrated or otherwise towards policyholders, insured parties, beneficiaries and injured parties.

Technical Committee

9. The NHT shall be entitled to call in the assistance at the assessment, budget and settlement of claims connected with the manifestation of the terrorism risk of a Technical Committee to be set up by the NHT, whose composition and assignments shall be determined on the basis of the specific nature of the established claim(s) and the NHT's need for assistance.

10. The Technical Committee shall be entitled to take due note of any documents in files which it deems to be of relevance for the performance of its duties and to investigate the circumstances and consequences of concrete claims, or have them investigated, independently. The insurer involved and the insured, beneficiary and/or injured party shall be bound to cooperate fully in order to enable the Technical Committee to obtain all required information, which includes supplying or granting authorisations required for reasons of protection of privacy.

Attribution to calendar year

11. The limitation of the cover capacity per calendar year shall apply to any consequence of the manifestation of the terrorism risk which must be attributed to the calendar year in question according to the following provisions:

a) Single attack or malevolent contamination

If the terrorism risk manifests itself in the form of an attack as referred to in article 1 (1) of the Clauses Sheet, which attack is not connected in time and intention to an earlier act, then the attribution shall be made to the year in which the act or conduct through which the attack was committed actually occurred, irrespective of the time at which the detrimental consequences thereof arose or became manifest.

If the terrorism risk manifests itself in the form of malevolent contamination as referred to in article 1 (2) of the Clauses Sheet, the attribution shall be made to the year in which the (first) spreading of the germs of the disease and/or substances in question actually occurred.

If it is not possible to attribute the consequences of the manifestation of the terrorism risk, based on the aforementioned rules, to a certain calendar year, then the attribution shall be made to the first year in which the committed attack and/or the spreading of the germs of a disease or substances had been established.

b) Attack or malevolent contamination belonging to a series

If the terrorism risk manifests itself in the form of a series of attacks or malevolent contaminations connected in time and intention, then the attribution of all said attacks or contaminations shall be made to the year in which the first attack or contamination of said series should be attributed to according to the provisions under a).

Contrary to the aforementioned provision an (independent) attack or malevolent contamination belonging to a series shall still be considered to be a single attack or malevolent contamination, or – in the event of continuation of the series in question thereafter – the first of a new series:

- if application of the aforementioned provision would result in attribution of the attack or malevolent contamination in question to an earlier year than the year preceding the one to which said attack or contamination would have been attributed on the basis of the provisions under a) (had the connection to other attacks or contaminations not existed), or
- if it is established that the actual date of perpetration of the attack or contamination in question is more than 6 months later than the actual date of perpetration of the first attack or contamination of the series.

- c) Precautionary measures
Loss or damage and costs in connection with taking precautionary measures as referred to in article 1 (3) of the Clauses Sheet, shall be attributed to the year to which the attack or contamination said costs relate to is attributed. If any attack or contamination was held off, then attribution shall be made to the year to which the attack or contamination would have been attributed if it had occurred. If its unknown to which year an attack or contamination would have been attributed, then attribution of the loss or damage and costs shall be made to the first year in which the attack or contamination could have been committed.
12. Wherever in this protocol the attribution of an act of terrorism is mentioned, this shall be understood to mean the attribution of a single attack or malevolent contamination, the attribution of an attack or malevolent contamination belonging to a series and/or the attribution of precautionary measures, as referred to in provision 11.
13. Attribution of an act of terrorism to a certain calendar year shall mean that the act of terrorism in question is considered to be the sole cause of all concrete claims arising from the events deemed to be the result of said act. The aforementioned shall apply regardless of the calendar year in which it became known that the act(s) was (were) committed and regardless of the calendar year in which the claims resulting therefrom arose or became manifest.
14. Any decision on the attribution of an act of terrorism to a certain calendar year shall be made to the best of one's knowledge and on the basis of the information which is known at the time. Said attribution shall be definitive and binding upon all parties, also if – whether or not on the basis of information which became known later – it appeared that an act of terrorism may be attributed to another calendar year and/or that events connected therewith may be linked to an act of terrorism which appears to have been committed in another calendar year. However, the NHT shall be entitled to reconsider any decision on attribution on the basis of weighty circumstances and with due consideration of all interests involved, but the NHT shall not be answerable to the insured parties, beneficiaries and injured parties with regard to its decisions concerning attribution, or the reconsideration thereof.

Payment percentage

15. After the NHT has become aware of (an) event(s) which may give rise to claims under the NHT, the NHT shall determine and notify the insurers participating in the NHT as soon as possible of:
- the calendar year to which the act of terrorism in question is attributed,
 - which is (are) the concrete event(s) that is (are) considered to be the result of said act of terrorism.
- If the NHT is unable to determine the aforementioned with sufficient certainty within a period of four months after the NHT became aware of the event(s), the NHT shall announce in which manner said determination will be reached after all.
16. In respect of claims which are within the scope of the determinations referred to in provision 15 and which have not been reported to the NHT within a period of two years following the announcement of said determinations, the NHT shall not be liable to pay compensation, even if the relation to the act of terrorism or the existence of the right to compensation under the policy had not been demonstrated until said period elapsed.

17. As soon as possible following the determinations referred to in provision 15 the NHT shall prepare and announce a (provisional) estimate of the aggregate amount of (anticipated) claims which will be submitted to the NHT as a result of the act of terrorism. The basic principle hereof shall be that the total liability to pay compensation on the part of the NHT in respect of any acts of terrorism attributed or designated as future attribution to a certain calendar year is limited, in all, to the applicable capacity of the NHT for said calendar year.
18. Based on the provisional estimate referred to in provision 17, the NHT shall assess the risk of the capacity of NHT not being sufficient to admit all rightful claims. If it is known that other acts of terrorism have to be attributed to the calendar year in question as well, or the circumstances of the event give serious cause for the possibility of other acts of terrorism having to be attributed to the calendar year concerned, the consequences of said other possible acts of terrorism (whether or not they have become known) shall be taken into account (as far as possible) at the risk assessment.
19. If, in the opinion of the NHT, the assessment referred to in provision 18 presents a real threat that its capacity for the calendar year concerned will prove to be insufficient to admit all rightful claims, the NHT shall notify the claims handling insurers of a percentage as soon as possible, which shall apply as the provisional share in all rightful claims related to the act of terrorism in question to be compensated by the NHT.
20. If the real threat as referred to in provision 19 does not arise, the NHT shall determine the definitive payment percentage with regard to the consequences of the act of terrorism in question at 100% and notify the claims handling insurers hereof as soon as possible.
21. The determination of a (provisional or otherwise) payment percentage by the NHT shall be binding upon all parties. The NHT shall not be accountable in respect of such a determination to the insured parties, beneficiaries and injured parties.
- 22.1 Any payment percentage determined and notified in accordance with the provisions of the protocol, shall, unless another course of action follows from the other paragraphs of this provision, be applied to the actual amount of the payment due by the claims handling insurer (inclusive of assessment costs incurred), or – in the event of payment in kind – to the countervalue of the supply, in which case the existence of the NHT and any clauses incorporated in the policy conditions based thereon shall be abandoned.
- 22.2 If, for the purpose of the payment referred to in paragraph 1 and prior to the event in connection with which the right to compensation towards the NHT arose, a certain wealth creation had been realised under the policy, the amount of the realised wealth creation shall be deducted from the payment referred to in paragraph 1, prior to the application of the payment percentage and according to actuarial principles. With regard to life insurances the amount of the realised wealth creation shall be set at the premium reserve to be adhered to pursuant to the Financial Supervision Act [Wet op het financieel toezicht] with respect to the insurance in question.
- 22.3 If the payment referred to in paragraph 1 pertains to a payment to be made periodically (such as disability benefits) or the payment of future damages and costs (such as the costs of certain medical treatments and intermittent treatments), the amount of the payment referred to in paragraph 1 to be used shall for the determination of the definitive payment percentage in accordance with provisions 25 and 26, be the present value of the periodic payments, or the claims reserve to be determined according to actuarial principles with regard to payments to be made in the future.

- 22.4 In all cases in which the payment referred to in paragraph 1 cannot in fairness be determined according to the instructions in this respect, the payment obligation shall be assessed based on the available data in combination with the empirical facts of the regular claim expectation, if necessary with corresponding application of the method described in the above paragraphs of this article.
23. As soon as notifications of claims or other circumstances give rise thereto, but at the latest on the first day of the seventh calendar month following the month in which the provisional payment percentage was most recently determined, the NHT shall prepare a new estimate as referred to in provision 17. Following hereon the provisions referred to under 18 through 21 shall be applied again, provided that any ensuing reduction in the payment percentage shall not apply to concrete claims which had been reported to the NHT in accordance with the provision under 4 of this protocol prior to the announcement of the most recently determined percentage. An increase in the payment percentage, on the other hand, shall result in an increase of the right to compensation in respect of all claims.
24. In any case, the definitive payment percentages shall be determined as soon as possible after sufficient empirical facts and information pertaining to the claim have been made available in order to be able to assess the aggregate amount reasonably accurately of the liabilities to pay compensation on the part of the NHT for the consequences of acts of terrorism attributed to any one calendar year.
25. If after a period of two years following the announcement of the first provisional estimate as referred to in provision 17, the definitive payment percentage has not yet been determined, the NHT shall decide on a manner in which the definitive payment percentage can still be determined at the latest six months thereafter. In order to achieve this, it shall be permitted to use reasonable assumptions with respect to aspects such as the nature and extent of future rightful claims to compensation as a basis. In this case the NHT shall not be bound by statements of the claims handling insurers concerned, but shall be entitled to assess nature and extent of future claims independently.

Final settlement

26. If after the determination and application of the definitive payment percentage according to this protocol the remaining available resources of the NHT due to exhaustion of the total applicable cover capacity, irrespective of the cause thereof, prove to be actually insufficient to continued admission of claims based on said percentage, the NHT shall notify the claims handling insurers hereof forthwith. Thereupon the remaining resources of the NHT shall be paid by application of a new settlement percentage to be determined by the NHT. The NHT shall be entitled to decide on a different distribution of the remaining resources on account of the circumstances of the event.
27. If after two years and six months following the announcement of the first provisional estimate as referred to in provision 17 there are still resources available for any rightful claims to compensation which have not yet been settled at that time, the NHT shall reach a final settlement with the claims handling insurers involved by committing itself to a final payment to said claims handling insurers, with the application of the prevailing payment percentage, based on reasonable assumptions with respect to aspects such as nature and extent of future rightful claims to compensation.

28. In case of a final settlement as described in provision 27 the claim handling insurers concerned shall continue to pay compensation to the insured parties, beneficiaries and/or injured parties, in accordance with the applicable rules and regulations, and policy conditions, but by application of the prevailing payment percentage. In this case in respect of any one rightful claim to compensation the final payment promised by the NHT shall apply as a limit of indemnity.
29. The NHT shall be entitled to stipulate, under conditions to be laid down by the NHT and in compliance with instructions to be given by the NHT, that a claims handling insurer with whom, after settlement in accordance with provision 28 of all rightful claims under this protocol, any amount of a final payment made by the NHT still remains, e.g. in connection with the partial release of a payment determined on the basis of provision 22 (3) or 22 (4), has to refund such balance to the NHT. Any thus recovered amount shall in a manner to be specified by the NHT and in proportion to deficits be credited by the NHT to claims whose extent of the right to compensation (by applying the prevailing payment percentage) appears to exceed the final payment promised by the NHT in this respect, e.g. because a payment determined on the basis of provision 22 (3) or 22 (4) falls short of a prospective payment percentage. Any balance remaining thereafter shall be credited to the general funds of the NHT. The NHT shall be entitled to demand the claims handling insurer to prove the facts which are of importance to the application of this article by means of an audit certificate.
30. On no account shall the NHT be bound to make payments insofar as these would exceed the applicable cover capacity. Any notices and communications by the NHT about provisional or definitive payment percentages shall be deemed to imply a limitation up to the applicable capacity.

Liability

31. The NHT shall not be liable for any conduct whatsoever by participating insurers related to claims submitted under the scope of this protocol. The settlement of claims of the insured parties, beneficiaries and/or injured parties shall be entirely for the responsibility of the claims handling insurers in question, irrespective of any contribution and assistance thereto by the NHT and/or the Technical Committee. In respect of loss and expenses which relate to any default on the part of the claims handling insurer, such as interest and collection charges, the NHT shall not pay compensation, regardless of whether or not said default is connected to the manner in which the provisions of the protocol haven been put into effect.

Recourse

32. The claims handling insurers shall at NHT's first request cooperate in the transfer of any rights of recourse, regardless of the principles thereof, up to the amount of the payments made (and still to be made) by the NHT to the NHT, and shall furthermore refrain from any conduct which may infringe the possibility of the NHT to exercise said rights of recourse (following transfer).
33. The claims handling insurers shall (following the aforementioned transfer of rights) take care of the actual performance of the recourse activities for the benefit and on behalf of the NHT, in which respect the extrajudicial expenses shall be borne by said insurers.

Costs

34. The overhead expenses related to the organisation and the performance of the NHT shall be for the account of the insurers participating in the NHT, in proportion to their respective financial contributions to the capacity of the NHT for the calendar year in which said expenses are incurred. Costs pertaining to the assessment and settlement of claims, such as the costs of the performance of the Technical Committee shall be borne by the insurers in proportion to their respective financial contributions to the capacity of the NHT for the calendar year in which the act of terrorism in question is attributed.

Special cases

35. If a situation occurs which is not provided for by this protocol, the NHT shall be authorised to pursue a policy in accordance with the intention of the protocol and with due observance of the reason for incorporation of the NHT and to act accordingly. If the circumstances of a case compel the NHT to act contrary to the provisions contained in this protocol, the NHT shall be entitled thereto.

Amendment

36. The NHT shall be entitled to supplement and amend the provisions contained in this protocol if compelled by changing circumstances and/or if it is a change for the better as regards the applicability or clarity of the protocol.

Disputes

37. Any disputes arising from the implementation of this protocol shall be settled with binding force by means of arbitration, in accordance with the arbitration rules of the Netherlands Arbitration Institute.

Appendix: Clauses Sheet Terrorism Cover by the Dutch Terrorism Risk Reinsurance Company.