

Explanatory Note to Claims Settlement Protocol



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Considerations

Given the fact that the NHT disposes over limited financial resources a procedure is necessary to arrive at the most equitable possible allocation of these limited resources among the beneficiaries. The protocol gives the details of this procedure.

Notification of claim

Provision 1

This provision provides a link with the definition of terrorism as given in the clause sheet. The provision also stipulates that 'claim' in the protocol does not only mean an occurrence which provides entitlement to benefit under the terms of a non-life insurance policy but also an occurrence that provides entitlement to payments or provisions under the terms of all life, health care and/or funeral in kind insurance.

Provisions 2 and 3

The NHT is in the first instance a reinsurance company of the insurers participating in the NHT. For persons and enterprises directly affected by the manifestation of the terrorism risk, the NHT is formally not their insurer. That remains the party's own insurer, referred to in the protocol as the 'claims handling insurer'. This is why the claims handling insurer in principle remains responsible for the settlement of the claims and this insurer maintains contact with the affected insured parties, injured parties and beneficiaries.

The NHT will operate with the fewest possible staff because it is unclear whether, and if so when, the terrorism risk will be manifest. That means that a great deal will be left to the participating companies. The basis must be the settlement of claims in good faith in the spirit of the intention of the NHT: solidarity among insurers and limiting of the risk.

Provision 4

The NHT has in fact three tasks in settling claims:

- Establishing as soon as possible the total costs for the settlement of claims and on this basis the payment percentage, should the financial resources be insufficient.
- Trying to achieve coordination and uniformity in establishing the claim.
- Acting as clearing house, in other words discounting the contributions of the participants and the claims of the claims handling insurers, avoiding inefficient money flows.

For these tasks the NHT needs information that must be obtained from the claims handling insurers. The NHT will state what information is required if this proves relevant.

Provision 5

If the NHT is to perform its tasks properly developments regarding the claims notified must be made known to the NHT as soon as possible.

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Provision 6

If an insurer has undertaken to make a payment or has made a payment prior to it being known that the occurrence was connected with terrorism, the NHT will never contribute more to the claim than that which derives from the NHT commitment. This means that if the amount paid or promised is higher than the amount the NHT intends to pay, the insurer will have to finance any higher amount itself.

Provisions 7 and 8

The NHT determines whether the claims notified are connected with the terrorism risk. This opinion is binding on all parties.

Technical Committee

Provisions 9 and 10

The Technical Committee is formed ad hoc from specialists in the insurance sector. The specialists who are needed depend on the nature of the claims. It is conceivable that in the case of bodily injury claims specialists from the health care sector will be needed and in the case of property damage specialists from the fire insurance sector. If need be the Technical Committee can seek advice from experts (for example, in the case of malevolent contamination, with regard to the effect of certain substances).

Attribution to the calendar year

Provisions 11, 12 and 13

The NHT has limited financial resources. The maximum capacity of the NHT applies each time for one calendar year. An important point is that the capacity of the NHT in year X is available for all the claims deriving from the manifestation of the terrorism risk in year X, irrespective of when the consequences have arisen. For this reason it is important to accurately determine the attribution of terrorist acts to calendar years. For a series of connected acts the main rule is that this series as a whole is attributed to the year in which the first act of the series is perpetrated.

Provision 14

The attribution of an act to a particular calendar year means that the NHT's total liability to pay compensation for the consequences of that act are limited to the financial resources that the NHT (still) has available for the relevant year of attribution. This constitutes an important foundation for the further handling of claims and is one of the factors determining the expectations of the parties with regard to their entitlements to compensation and obligations regarding payments. Once a decision has been taken on the attribution this is consequently binding on all parties and the NHT will not readily revoke it (even if it turns out later that the act was actually perpetrated in another year to the year to which the act was attributed).

Payment percentage

Provision 15

To advance the claims settlement process it is important that the terrorist act is attributed to a particular calendar year as soon as possible.

Provision 16

All the parties involved have an interest in the scale of the claim resulting from a terrorist act being clear as soon as possible so that a definitive settlement can be made. Having to taken into account new claims at a later date is not appropriate here. Hence a limited notification period of two years has been taken into account that will run from the point in time that the NHT has announced which occurrence(s) it has designated as resulting from a terrorist act. A period of two years has been chosen because by then most of the direct claims will have been noted.

Provisions 17, 18, 19 and 20

As soon as possible after having established a terrorist act the NHT will make a provisional estimate of the total claim for a calendar year. This is done on the basis of the then known and expected claims deriving from the known terrorist act, while also bearing in mind a possible threat of other terrorist acts. The NHT will announce a payment percentage on the basis of this estimate.

Provision 21

This provision speaks for itself.

Provision 22

This provision is intended to establish on the basis of what amount the percentage that has been established by the NHT must be calculated. The underlying reasoning is the diverse nature of the insurance policies that come under the scope of the protocol. Account has been taken of the accrued value of certain policies.

Provision 23

Even though, in the event of insufficient financial resources, the endeavour is to keep to the same and definitive payment percentage for all claims, account has to be taken of the fact that practical experience forces the NHT in a different direction.

If a new budget leads to a higher payment percentage, that applies to all known claims at that point in time, and further payment will be required. If the new budget leads to a lower payment percentage then no further payment will be required and the new percentage will only apply to claims notified after the announcement of the lower percentage. The underlying reason for this is the expectations that have been raised in good faith by the announcement of a payment percentage.

Provision 24 and 25

The NHT will determine the definitive payment percentages as soon as possible. From the preceding provisions there are a number of deadlines with which the NHT will comply:

- The NHT will establish the budget as soon as possible after having established a terrorist act and attribution to a calendar year. A first payment percentage will be established on the basis of this budget.

The point of departure is that the establishing of a terrorist act and attribution to a calendar year occurs at the latest within four months of the NHT having knowledge of the occurrence.

- A subsequent budget is drawn up each time six months afterwards at the latest if need be with a new payment percentage

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- Two years at the latest after the first budget the NHT determines how the definitive payment percentage is established. This must have been done six months at the latest thereafter.

Final settlement

Provision 26

Although the intention is that the NHT has sufficient resources to make payments on the basis of the definitive payment percentage, it may happen that the resources are unfortunately insufficient. In that case the NHT will establish a new so-called settlement percentage. This percentage then applies to all payments that are subsequently made by the NHT, even though there was previously a higher (provisional or definitive) payment percentage.

Provisions 27 and 28

These provisions relate to the situation of no final settlement of all the claims having taken place two years and six months subsequent to the first budget. It is then - about three years after the terrorist attack – reasonable to dismantle the involvement of the NHT and to make it clear to all parties the scale of the overall cost of claims. Hence the NHT will work towards a definitive settling of accounts with the claims handling insurers, after which the total cost of claims arising from the terrorist act will have been established. This settling of accounts will be done on the basis of a reasonable estimate of each claim, which will also apply as the NHT's maximum liability to pay compensation for the claims in question.

Provision 29

Provision 27 describes the final settlement that takes place on the basis of reasonable assumptions regarding future claims to payment. Since this leaves scope for releases and deficits at policy level, provision 29 offers the opportunity of having stated releases being used to compensate items with a deficit after the final settlement. Obviously the claims handling insurers will first of all transfer surpluses within their own insurance portfolio to policies with a deficit. In addition a (further) discounting among insurers via the NHT may be decided on. The way in which this will be done depends on the circumstances of the case (and the scale of the releases and deficits will play an important role).

Provision 30

This provision speaks for itself.

Liability

Provision 31

This provision speaks for itself.



Recourse

Provisions 32 and 33

These provisions exclude mutual recourse among the participating insurers for amounts that have already be refunded by the NHT to avoid money circulating needlessly. At the same time recourse to third parties will be kept, and the actual work involved will be carried out by the participating insurers.

Costs

Provision 34

The costs of the NHT and its agencies will not be financed from the available capacity of the NHT but will be borne by the participating companies in proportion to their contribution to the NHT.

Special cases

Provision 35

This provision speaks for itself.

Amendment

Provision 36

This provision speaks for itself.

Disputes

Provision 37

This provision speaks for itself.