

## **Terrorism Insurance Pool for Non-Life Insurance**

2010.06.18

### **By-Laws of the Terrorism Insurance Pool for Non-Life Insurance**

(Including amendments adopted at the Annual General Assembly on 18 June 2010)

Terrorforsikringspool for  
skadesforsikring  
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#### **Preamble**

Pursuant to the Danish Act on a Terrorism Insurance Scheme for the Non-Life Insurance Area (hereinafter referred to as "the Act"), insurance companies covering NBCR terrorism risks must participate in a legal entity set up for the purpose of administering premium payments to the Danish government, claims payments to members and refunds to the Danish government.

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In the Executive Order, the Danish Minister for Economic and Business Affairs has laid down more detailed regulations on administration, presentation of financial statements and audit of premium payments to the government and the government insurance guarantee scheme.

Helle Sørensen

The legal entity is established for the purpose of handling the tasks assigned to it under the Act. In addition, the entity is organised as a claims distribution pool, which also arranges joint reinsurance cover for insurance falling within the scope of the Act.

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#### **1. Name, registered office and objective**

The name of the association is "Terrorism Insurance Pool for Non-Life Insurance" (hereinafter referred to as "the Pool").

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- (2) The registered office of the Pool is situated in Hellerup.
- (3) The objective for which the Pool is established is to handle the tasks assigned to the legal entity under the Act and the related Executive Order on the joint legal entity. The Pool will purchase reinsurance cover on behalf of its members and perform the pool risk settlement function among its members.
- (4) The Pool acts as a joint body for its members; however, it does not carry on insurance business.

## 2. Membership

All Danish non-life insurance companies covered by the Act are mandatory members of the Pool. Membership is binding for as long as members write insurance for risks covered by the Act.

- (2) Foreign non-life insurance companies may join the terrorism insurance scheme by applying for membership of the Pool. When the Pool has informed the foreign non-life insurance company of its approval of membership, the foreign non-life insurance company has the same rights and obligations as the other members of the Pool.
- (3) Foreign non-life insurance companies may apply for membership of the Pool each year from the beginning of the calendar year. Membership will take effect from the beginning of the following calendar year. If the foreign non-life insurance company applies for membership prior to 1 January 2011, the company will join the Pool with effect from 1 January 2012 and so forth.
- (4) Mandatory members may only resign their membership of the Pool if the member no longer writes insurance for risks covered by the Act. For all members, such resignation is subject to six months' written notice expiring on 31 December. After resignation, the member will continue to be liable for any losses occurring prior the member's resignation from the Pool.
- (5) A resigning company will remain a full member of the Pool for the entire calendar year preceding 31 December from which the resignation takes effect. Consequently, a resigning company has the same financial rights and obligations as the other members in the relevant year pursuant to the distribution scale laid down in Article 10(5) and (6). This applies irrespective of whether the transfer of any income or expenses does not take place until after 31 December in the calendar year from which the resignation takes effect.

## 3. Claims

The Pool handles claims arising as a result of NBCR terrorism and falling within the Act according to the assessment of Terrorism Insurance Council.

- (2) The Pool covers claims incurred by members, provided that these arise from damage to buildings located in Denmark or contents, including without limitation business interruption, and accidental damage to motor vehicles and railway rolling stock as well as hull damage to ships if these are located in Denmark at the time of the occurrence.

## 4. Claims

The Pool covers claims incurred by members in connection with any one occurrence falling within the Terrorism Insurance Scheme, cf. Article 3.

- (2) Any claim reported to the Pool and falling within the Terrorism Insurance Scheme must be reported by the Pool to the Terrorism Insurance Council.
- (3) In connection with claims, the Pool is obliged to receive and distribute payments from reinsurers and the government insurance guarantee scheme and to allocate claims costs among members of the Pool.

- (4) Members of the Pool are liable on a pro-rata basis for claims falling within the retention limit for the line of business and for any claims incurred exceeding the limits laid down in the government insurance guarantee scheme, cf. Article 10(7).

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## **5. Notification of claims to the Pool**

Members are obliged to report claims to the Pool as soon as possible after the loss or damage has occurred.

## **6. Purchase of reinsurance**

The Pool will arrange for reinsurance cover of the NBCR terrorism risks falling within the retention limits laid down from time to time, unless members exercise their preferential right to act as reinsurer, cf. Article 2. The Executive Committee must adopt security guidelines for the purchase of external reinsurance.

- (2) Members have a preferential right to act as reinsurer for the Pool with a share equal to the company's share of the Pool up to a maximum of 25% of the Pool's total risks. The Executive Committee must adopt security guidelines for such purchase of reinsurance from members of the Pool.
- (3) If a member chooses to act as reinsurer, cf. Article 2, the Executive Committee must be notified thereof not later than ten days after receipt of the reinsurance offer. Any notification by members to surrender a reinsurance policy is binding on the Pool.
- (4) Members are liable on a pro-rata basis for the Pool's premium to reinsurers in accordance with the distribution scale laid down in Article 10(5) and (6).
- (5) The primary obligations of members to their respective customers are not affected by their membership of the Pool.
- (6) The rules of procedure for the Executive Committee lay down specific provisions for obtaining quotations from reinsurers and making decisions on purchase of reinsurance in accordance with normal market practice and set the terms and conditions governing such purchase.

## **7. General Assembly**

Subject to the limitations set out in these By-Laws, the General Assembly has supreme authority in all matters relating to the Pool.

- (2) The General Assemblies of the Pool are held in Hellerup and are convened by the Executive Committee giving not less than eight days' and not more than four weeks' notice.
- (3) The Annual General Assembly is held every year by the end of June. Proposals by members for consideration by the Annual General Assembly must be notified in writing to the Executive Committee not later than one month prior to the date of the General Assembly.
- (4) An extraordinary General Assembly must be convened when the Executive Committee considers it appropriate or when requested by members repre-

senting 30% of the Pool's liability. The members must, on request, specify the business to be transacted at the General Assembly. In the latter case, the General Assembly must be called 14 days after the Executive Committee has been notified in writing of the request, giving not less than eight days' and not more than four weeks' notice.

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- (5) The agenda of the Pool's General Assemblies, resolutions proposed at the Annual General Assembly as well as the Pool's annual financial statements, the auditors' report and the annual report of the Executive Committee must be sent to members together with the notice of the General Assembly.
- (6) The annual financial statements, the auditors' report and the annual report of the Executive Committee must be presented at the Annual General Assembly. The following items must be included in the agenda of the Annual General Assembly:
  - a) The report of the Executive Committee on the Pool's activities in the past year.
  - b) Presentation and adoption of the annual financial statements, the auditors' report and the annual report of the Executive Committee as well as discharge of the Executive Committee from their obligations.
  - c) Resolutions proposed by members.
  - d) Election of members to the Executive Committee.
  - e) Election of auditor.
  - f) Any other business.
- (7) Any member of the Pool is entitled to authorise a person to act as its proxy at the General Assembly, and this person must hold a valid instrument of proxy.
- (8) Each member has a number of votes equal to the proportionate share of the member as determined in accordance with Article 10(5) and (6).
- (9) The General Assembly is presided over by a chair appointed by the Executive Committee, who decides on all matters regarding the transaction of business, voting procedure and voting results.
- (10) The resolutions for consideration by the General Assembly will be passed by a simple majority of votes, unless these By-Laws expressly provide otherwise. In the event of an equality of votes, a new vote will be held. In the event that the votes are once again equal, the outgoing chairman of the Executive Committee will have the casting vote.
- (11) However, adoption of proposals to amend the By-Laws requires the resolution to be passed by at least two thirds of the Pool's total number of votes. If the aforesaid number of votes is not present at the General Assembly in question, but the resolution is nevertheless adopted by two thirds of the votes actually present, the Executive Committee will convene an extraordinary General Assembly within 14 days. At the extraordinary General Assembly, the proposal can then be adopted by two thirds of the votes present. Notice of this extraordinary General Assembly cannot be given until the first General Assembly has been held, and the notice must specify the resolution passed at the first General Assembly.

- (12) A brief statement of business transacted at the General Assembly must be entered in the minutes approved by the Executive Committee and signed by the chair.

## 8. Executive Committee

The Executive Committee of the Pool consists of member representatives. The Executive Committee consists of not less than three and not more than seven members. The General Assembly will elect the Executive Committee from among the representatives chosen by members, provided always that no member may be represented by more than one person on the Executive Committee.

- (2) The General Assembly will also elect an alternate member for each of the elected members of the Executive Committee. The alternate member must come from the same non-life insurance company as the member of the Executive Committee represented by the alternate member. The alternate members must be elected from among the representatives chosen by members. An alternate member will join the Executive Committee if the member of the Executive Committee represented by the alternate member resigns from the Executive Committee or will be absent for a long period of time. An alternate member may furthermore be summoned to attend a committee meeting in the absence of the member of the Executive Committee represented by the alternate member. At this committee meeting, the alternate members summoned have the same rights and obligations as the other members of the Executive Committee.
- (3) The Executive Committee will elect its own chairman and deputy chairman.
- (4) Resolutions of the Executive Committee are passed by a simple majority of votes. Adoption of resolutions by the Executive Committee requires more than half of the Committee's members to vote in favour of the proposal. However, resolutions may not be passed by the Executive Committee unless all members of the Committee have had the opportunity to participate in the transaction of business, if possible.
- (5) The Executive Committee is responsible for the day-to-day management of the Pool. The Executive Committee will establish rules of procedure for the conduct of its business.
- (6) The Executive Committee will prepare recommendations to be used in connection with the Pool's seat on the Terrorism Insurance Council as regards decisions on the following issues:
- a) how will the retention limit be determined?
  - b) when can an act be characterised as terrorism?
  - c) when can an act be characterised as NBCR terrorism?
- (7) The Executive Committee will handle the following tasks in relation to and management of payments between the government, reinsurers, the Pool and members:
- (1) In relation to the government:
    - a) regular payment of risk premium to the government;

- b) notification of claims exceeding the retention limit for the line of business to the Minister for Economic and Business Affairs;
- c) receipt of payments from the government insurance guarantee scheme to members following NBCR terrorism; and
- d) receipt of amounts repaid under the government insurance guarantee scheme and charged to members on the individual policies.

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2) In relation to reinsurers:

- a) purchase of reinsurance;
- b) payment of premium to reinsurers; and
- c) receipt of indemnity payments from reinsurers.

3) In relation to members:

- a) collection of members' share of the Pool's administrative costs based on the distribution scale laid down by the Executive Committee pursuant to Article 10(5) and(6);
- b) collection of members' share of the risk premium payable to the government based on the distribution scale laid down by the Executive Committee pursuant to Article 10(5) and(6);
- c) collection of members' share of reinsurance costs based on the distribution scale laid down by the Executive Committee pursuant to Article 10(5) and(6);
- d) distribution of indemnity payments from reinsurers to members having incurred losses, subject to the retention limits for NBCR terrorism, and possible settlement within the Pool based on the distribution scale laid down by the Executive Committee pursuant to Article 10(5) and (6);
- e) provision of payments under the government insurance guarantee scheme to members having incurred losses following NBCR terrorism; and
- f) in terms of losses caused by NBCR terrorism which exceed the sum of the retention amount and the government insurance guarantee scheme, settlement is to be made within the Pool based on the distribution scale laid down by the Executive Committee pursuant to Article 10(5) and (6).

(8) The Executive Committee may engage paid assistance as it sees fit. The Executive Committee may furthermore set up expert groups from among member representatives to undertake certain tasks falling within the responsibilities of the Executive Committee.

(9) The Pool may engage an Executive Manager to assist the Executive Committee with the day-to-day management of the Pool. In that case, the Executive Committee will determine the allocation of responsibilities between the Executive Committee and the Executive Manager.

(10) Two members of the Executive Committee are authorised to sign on behalf of the Pool. If the Pool has engaged an Executive Manager, the Executive Manager is also authorised to sign on behalf of the Pool together with a member of the Executive Committee.

## 9. Duty of disclosure

Each member is obliged to provide information to the Pool. The Executive Committee will determine the scope of members' duty of disclosure.

- (2) The Pool may gather information about the sum of the total annual premiums for risks covered by the scheme.
- (3) The Executive Committee may require members to produce an audit opinion from an external state-authorized public accountant as to the correctness of the figures members are obliged to submit to the Pool.
- (4) If a foreign company has joined the Terrorism Insurance Pool and does not submit the required information to the Pool, including information about the company's gross earned premiums for the relevant lines of business, the Executive Committee of the Pool may estimate the amount after consulting the company.
- (5) The member may provide documentation that the estimated gross earned premiums are too high, and the Executive Committee will then consider whether the estimated amount should be lowered.

## 10. Financial statements and auditing

The Pool's financial year coincides with the calendar year.

- (2) The Pool's financial statements are audited by a state-authorized public accountant elected by the General Assembly for a term of one year.
- (3) The Executive Committee may issue accounting directions as to the calculation of the individual items of income and expense.
- (4) With binding effect for members, the Executive Committee will establish rules for the settlement of claims and other payments between the Pool, members, the government and other parties.
- (5) The Executive Committee will develop a distribution scale to be used for the allocation of income and expenses in the Pool. The distribution scale will be based on members' gross earned premiums for the relevant lines of business as regards risks located in Denmark for the latest available calendar year as reported to the Danish Financial Supervisory Authority for that year or notified to the Pool by the foreign companies. Members' gross earned premiums for the relevant lines of business will be included irrespective of whether the individual insurance policies provide cover for NBCR terrorism.
- (6) Members' premiums from marine hull insurance will not be included in the distribution scale. The General Assembly may decide, by a simple majority of votes, whether members' gross earned premiums from marine hull insurance should be included in the distribution scale.
- (7) Members of the Pool are liable on a pro-rata basis for the Pool's liabilities in accordance with the distribution scale laid down in Article 10(5) and (6). As

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regards members organised as mutual companies, the liability is limited to the equity amount.

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## **11. Winding up**

As the Pool has been established in pursuance of both the Act and the Executive Order, the Pool can be wound up only if the basis of authority for the Pool so provides.

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## **12. Disputes**

Any dispute relating to the validity of these By-Laws, their interpretation, members' relations to the Pool and all other matters relating to the Pool will be finally settled by arbitration.

- (2) However, cases where the Pool has to recover simple monetary claims that members are liable to pay to the Pool in accordance with the Act and these By-Laws may be settled by the ordinary courts of law in Denmark, provided that the Executive Committee believes that this will be appropriate.
- (3) The arbitration tribunal consists of three members. One member, to serve as umpire of the arbitration tribunal, will be appointed by the Danish Supreme Court from among the judges of the Supreme Court. If the Supreme Court cannot or will not make this appointment, the member will be appointed by the International Chamber of Commercies International Court of Arbitration in accordance with the rules in force from time to time on ICC's appointment of arbitrators.
- (4) Each party will appoint one member. If two or more parties submit their claims jointly, they will jointly appoint their member of the arbitration tribunal. If the parties fail to agree on the appointment of the member of the arbitration tribunal, or if claims are made by several independent parties, the member of the arbitration tribunal will be appointed by the Supreme Court from among the judges of the Supreme Court. If the Supreme Court cannot or will not make this appointment, the member will be appointed by the International Chamber of Commercies International Court of Arbitration.
- (5) If the parties agree on a procedure for appointment of their member of the arbitration tribunal other than the procedure described above, the parties are allowed to use this procedure instead of appointment through the appointing body.
- (6) Within 30 days of the notice of arbitration, the parties must specify who they will appoint as member of the arbitration tribunal. If the parties fail to provide this information within the above time limit, the members of the arbitration tribunal will be appointed by the appointing body.
- (7) The arbitration proceedings must be conducted in Danish, unless the umpire of the arbitration tribunal decides that the proceedings should be conducted in English.
- (8) The arbitration tribunal will lay down the rules applicable to the hearing of the case and determine its costs.



(9) These By-Laws and members' rights and obligations towards the Pool are construed in accordance with and governed by Danish law, and the venue for disputes to be settled by the ordinary courts of law and disputes to be settled by arbitration is Retten i Lyngby (the Lyngby district court).

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