

苏黎世中国董事、高级管理人员和公司责任险2009版附加养老基金受托人和管理人员保险责任扩展条款

考虑到所收取的保险费，双方理解并同意本保险单**第九条除外责任**的第9.5条被完全删除,并以以下内容替换：

养老金托管人

9.5 因**被保险人**违背或违反了下列责任、义务或职责而提起的**索赔或调查**： (i) 《美国1974年雇员退休收入保障法》（或其任何修订案，第510 节除外）中所要求的责任、义务或职责； (ii) 美国或其任何领土或属地有关养老金、红利分享、员工福利或社会保障计划方面的类似法规或规章，这些法规或规章是根据联邦、州、省或当地的制定法制订的或与上述制定法有关；

双方进一步理解并同意保险合同修订如下：

1. 以下养老基金应被认为是**子公司**：

- (1) XXXXXXXXXXXXXXXX
- (2) XXXXXXXXXXXXXXXX
- (3) XXXXXXXXXXXXXXXX

以下称为**养老基金**

2. **被保险公司**的任何自然人的董事、管理人员或雇员如果是**养老基金**的受托人或管理人员，则将被认为属于**被保险个人**，但保险人仅对他们作为该养老基金的受托人和管理人员根据其职务所发生的**不当行为**承担赔偿责任。

3. 除外责任第9.6条不适用于任何针对**养老基金**（上文已定义）或其**被保险个人**的**索赔**。

4. 保险合同第3.4条不适用于本附加保险条款的保险责任。

5. 除本保险合同的第九部分的责任免除之外，**保险人**对针对任何**被保险人的**任何与以下**索赔**有关的**财务损失**（包括**抗辩费用**）或**调查费用**不承担赔偿责任。

- a) 可归因于或起因于未能遵守上述养老基金的指引、和/或认可的专家、审计人员和/或的监管机构的意见的**索赔**；
- b) 可归因于或起因于**养老基金**的资金的**投资**，如果该**索赔**是由外部因素（包括但不限于价值的波动或下跌、投资的不佳表现或该投资的投机性质）所导致的**索赔**；
- c) 无规律的支付或收取金钱；
- d) 现金赤字；
- e) 金钱、有价证券或其他贵重物品的神秘消失；
- f) 可归因于或起因于**被保险公司**或**被保险个人**的履行收费的专业服务时的表现或未能履行收费的专业服务、或与之相关的任何行为、失误或疏忽的**索赔**；
- g) 由**投保人**或其**子公司**发起或代表**投保人**或其附属公司发起的**索赔**；
- h) 违反任何法律的歧视；
- i) 未能向养老基金缴费或未能收集应付给养老基金的缴费；但本除外责任不适用于**抗辩费用**；
- j) 可归因于或起因于在**投保人**没有发起或拥有该**养老基金**、或**被保险个人**不是**被保**

险公司的董事、管理人员或雇员的任何时间发生的与该养老基金相关的不当行为的索赔；

k) 在美国或加拿大或他们的任何地区或管辖地发起。

6. 仅针对本附加保险条款，**财务损失**的释义不应当包括**福利**或与该**福利**等额的任何部分索赔处理或赔偿，除非该福利根据本保险责任范围内的**不当行为**能够收回赔偿，且属于**被保险个人**应付的赔偿责任。
7. 关于**养老基金**，**投保人**必需将**养老基金**的任何目标和目的，法律形式和/或条款或章程的变更立即书面通知保险人。
8. 本附加保险条款所指的“**福利**”是指**养老金计划**的参与者或受益人的根据**养老金计划**的任何职责义务，即缴费或缴纳财产、或给予特别权利、权利、选择权或额外补贴。
9. 本附加保险条款规定的**保险人**对所有的累积**财务损失**所承担的最高赔偿责任限额是XXXX，此**分项赔偿责任限额**是本保险合同最高**赔偿责任限额**的一部分，而不额外增加赔偿责任限额。

本附加条款与主险条款相抵触之处，以本附加条款为准，本保险合同的所有其他条款、条件和限制维持不变。

#### **Pension Funds Trustees and Officers Extensions**

In consideration of the premium charged, it is hereby understood and agreed that 9.5 of **Section 9 Exclusion** of this Policy is deleted in its entirety and replaced as follows:

#### **Pension Trustee**

- 9.5 for the infringement of or violation of any responsibilities, obligations or duties imposed by: (i) the US Employee Retirement Income Security Act of 1974 (or any amendment thereof), (optional: except for Section 510); or (ii) any similar regulations or provisions in the United States or any territories or possessions thereof concerning pension, profit sharing or employee benefit programmes or social compensation plans arising under Federal, State, Provincial or local statutory laws or which relate in any way thereto;

It is further understood and agreed that, notwithstanding anything contained herein to the contrary, it is hereby understood and agreed that the Policy is hereby amended as follows:

1. The following pension funds shall be deemed to be **Subsidiary Companies**:

- (1)
- (2)
- (3)

hereinafter **Pension Funds**.

2. Any natural person director, officer or **Employee** of the **Company** who is a trustee or officer of a **Pension Fund** shall be deemed to be an **Insured Person**, but only for **Wrongful Acts** in their respective capacities as trustees and officers of such **Pension Funds**.
3. Exclusions 9.6 shall not apply to any **Claim** brought against a **Pension Fund** (as defined above) or an **Insured Person** thereof.
4. Paragraph 3.4 of the Policy shall not apply to the coverage being provided under this endorsement.

5. In addition to the exclusions of Section 9 of this Policy, the **Insurer** shall not be liable under this Policy to make any payment for **Financial Loss** (including **Defence Costs**) in connection with any **Claim** made against any **Insured**, or **Investigation Costs**:
- a) alleging, arising out of, based upon or attributable to the failure to comply with directions, and/or opinions of recognised experts, auditors and/or the supervisory authorities of the above-mentioned pension funds;
  - b) alleging, arising out of, based upon or attributable to the investment of the **Pension Funds'** capital if such **Claims** are resulting from external factors including but not limited to fluctuations or a drop in the value, poor performance or the speculative nature of such investments;
  - c) for irregularities in paying out or receiving money;
  - d) for cash deficits;
  - e) for mysterious disappearance of money, securities or other valuables;
  - f) alleging, arising out of, based upon or attributable to the **Company's** or an **Insured Person's** performance of or failure to perform professional services for others for a fee or any act, error or omission relating thereto;
  - g) brought by or on behalf of the **Policyholder** or any of its **Subsidiary Companies**;
  - h) for discrimination in violation of any law;
  - i) for failure to fund a pension fund or the failure to collect contributions owed to the pension fund, except that this exclusion shall not apply to **Defence Costs**;
  - j) alleging, arising out of, based upon or attributable to any **Wrongful Act** as respects the **Pension Fund** taking place at any time when the **Policyholder** did not sponsor or own such **Pension Fund** or when the **Insured Person** was not a director, officer or employee of the **Company**;
  - k) brought in the United States of America or Canada or any territories or possessions thereof.
6. Solely for the purposes of this endorsement, the definition of **Financial Loss** shall also not include **Benefits**, or that portion of any settlement or award in an amount equal to such **Benefits**, unless and to the extent that recovery of such **Benefits** is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Insured Person**.
7. With regard to a **Pension Funds** the **Policyholder** has to notify to the **Insurer** without delay, in writing, of any changes of the **Pension Funds'** objects and aims, of legal form and/or articles or by-laws.
8. For the purposes of this endorsement the term "**Benefits**" shall mean any obligation under any **Pension Plan** to a participant or beneficiary under a **Pension Plan** which is a payment of money or property, or the grant of a privilege, right, option or perquisite.
9. The maximum limit of the **Insurer's** liability for all **Financial Loss**, in the aggregate, under this endorsement shall be **xxxxx**. This **Sub-Limit of Liability** shall be part of and not in addition to the **Limit of Liability** of this Policy.

All other terms, conditions and limitations remain unchanged.