

苏黎世中国董事、高级管理人员和公司责任险 2009 版附加企业实体雇用行为赔偿责任条款
(III)

保险责任

兹经双方理解并同意，本保险单主险条款第一条保险责任增加以下内容：

1.6 企业实体雇用行为赔偿责任

在保险期限或延长索赔报告期限（如适用）内，如果因不当行为而向被保险人首次提出雇佣行为索赔，则就该索赔产生的财务损失，保险人将代表被保险公司予以赔付。

为此，仅就与雇佣行为索赔有关的事宜，主险条款第二条定义的第 2.50.3 项变更为亦适用于雇佣行为索赔。

本保险单主险条款第三条扩展保险责任的第 3.4 项公司调查不适用于与雇佣行为索赔有关的事项。保险人对与雇佣行为索赔有关的调查费用不承担任何赔付责任。

责任限额与免赔额

被保险公司因雇佣行为索赔而遭受的财务损失应适用相应的免赔额，该免赔额为【XXXX】。

就针对被保险公司提起的所有雇佣行为索赔引起的财务损失，保险人根据本附加条款承担的总计赔偿责任限额为【XXXX】（下称“分项赔偿责任限额”）。该分项赔偿责任限额属于保险单明细表中的赔偿责任限额的一部分，而并不额外增加保险单明细表的赔偿责任限额。

责任免除

1. 对于宣称存在以下情形或由以下情形引发或导致的针对被保险公司提起的雇佣行为索赔，就与之相关的财务损失（包括抗辩费用）或调查费用，保险人不承担赔偿责任：

- (i) 在以下列明的连续承保日之前启动或在该连续承保日仍处于未决状态的任何诉讼、控诉、索赔、仲裁或调解；以及事实上或宣称与上述诉讼、控诉、索赔、仲裁或调解基于相同或基本相同的事实主张的其他诉讼、控诉、仲裁或调解；
- (ii) 在以下列明的连续承保日之前被保险人已经知道的、根据本保险单可合理预期将导致雇佣行为索赔的任何情况或不当行为。

本责任免除条款所提及的“连续承保日”是指【XXXX 年 X 月 X 日】。

2. 就针对**被保险公司**提起的**雇佣行为索赔**，**保险人**对针对**被保险公司**提起的**美国索赔**引起的**财务损失**（含**抗辩费用**）不承担赔偿责任。

3. 以下除外责任和限制条款适用于针对**被保险公司的雇佣行为索赔**：

财务损失的定义不包括以下内容：

(a) 基于合同或法规的要求在通知期间应付的金额及/或因**被保险人**未能按照劳动合同的规定给予**雇员**解雇通知而需要支付的金额或代替解雇通知而支付的金额；

(b) **员工福利**；

(c) 因遵守指令性的、临时性的或其他非货币的债务免除所发生的成本或遵守任何提供此类债务免除的协议而发生的成本；

(d) 因履行为残障人士提供更容易使用或更大活动空间的法律义务而调整或改变建筑物、房屋地基、固定设备、装置、厂房、设备或其他财产而发生的成本；

(e) **被保险公司**未能根据以下法规通知**雇员**代表或与**雇员**代表商议而被判处的金额：
《英国 1981 年的企业转让规定（雇佣保护）》以及该法案的任何修订案、替代法案或任何类似的其他联邦、州或地方法令、规则、法规或另一司法管辖权下的类似法律条款；

(f) 保护性裁决。

本附加条款的**员工福利**是指：

(a) 临时津贴、额外津贴、奖金；

(b) 激励性或递延补偿的薪酬；

(c) **基于股票的福利**；

(d) 医疗或保险福利及应支付给任何个人的与员工福利计划或退休金计划有关的款项；

(e) 除了薪金（包括奖金）和工资之外的其他任何类型的报酬或相当于报酬的项目。

在上述定义中，**基于股票的福利**是指：

任何实际的、受益的或可能发生的针对福利、激励性计划或其他薪酬补偿计划的权利，这些福利、激励性计划或其他薪酬补偿计划的价值是由**被保险公司**股票的价值衍生出来的。包括但不限于股票期权、股票赠与、限制性股票、认股权证、股票表现参与计划、股票增值权利、或虚拟股票计划或安排。

4. 以下除外责任和限制条款适用于针对**被保险公司的雇佣行为索赔**：

对于宣称存在以下情形或由以下情形引发或导致的针对**被保险公司**提起的**雇佣行为索赔**，就与之相关的**财务损失**（包括**抗辩费用**）或**调查费用**，**保险人**不承担赔偿责任：

(a) 事实上或被指称存在违反联邦、州或地方的规则、规定、法律法规、普通法或类似法律所规定的有关劳动报酬、雇主责任、失业保险、**员工福利**、**工资及劳动时间行为**、遣散费、社会保障、退休金、失能保险的责任、义务或职责的行为：

工资及劳动时间行为：包括但不限于打卡记录时间以外的工作、有关休息和进餐时间的规定、对雇员按照可否豁免加班而进行的分类、支付最低工资、支付加班工资、工资的及时支付、工资及劳动时间转化、最长工作时间、商业行为的公平性；

(b) **被保险人**根据口头或书面的合同或协议而承担的对第三方的赔偿责任，但此除外责任不适用于在不存在该合同或协议的情况下**被保险人**仍需要承担赔偿责任的**财务损失**；

(c) 任何事实上违反或被指称违反下述事项相关的法令或法律法规所规定的职责、义务和责任：

规制雇员参与或不参与工会或其他集体活动的权利；执行劳资双方的集体谈判协议（包括但不限于劳资协调和仲裁程序）；

(d) 由《1992 年工会和劳动关系（合并）法案》或该法案的任何修订案、替代法案或任何类似的联邦、州或地方的法令、规定、普通法或另一司法管辖权下的类似法律条款所规定的任何大规模裁员行为；

(e) 任何要求某一**雇员**复职的判决或法院命令。

其他

本附加条款与主险条款相抵触之处，以本附加条款为准，本保险单的所有其他条款、条件和限制保持不变。

EPL Entity Coverage (III)

In consideration of the premium charged, it is hereby understood and agreed that the Policy is hereby amended as follows:

1. The following additional Insuring Clause is added to this policy:

1.6 Employment Practices Entity Coverage

The **Insurer** will pay on behalf of the **Company** such **Financial Loss** as arises from or is a consequence of any **Employment Claim** first made against an **Insured** during the **Period of Insurance** or the **Extended Reporting Period** (if applicable) by reason of a **Wrongful Act**.

2. In respect of an **Employment Claim** only, Paragraph 2.50.3 is amended to include an **Employment Claim**.
3. The Deductible on the Schedule and the Deductible paragraph in the Policy is hereby amended to include the following additional Deductible:

XXX which applies to **Financial Loss** of the **Company** arising from **Employment Claims**.

4. The total aggregate limit of the **Insurer's** liability for all **Financial Loss** arising from all **Employment Claims** against the **Company** covered under this endorsement is specifically sub-limited to **XXX**. This **Sub-limit of Liability** shall be part of and not in addition to the total aggregate **Limit of Liability** specified in the Item 3 of the Schedule.
5. In respect of **Employment Claims** only, Paragraph 3.4 Company Investigations of this Policy shall not apply and the **Insurer** shall not be liable to make any payment for **Investigation Costs** in connection with any **Employment Claim**.
6. In respect of **Employment Claims** against the **Company**, the **Insurer** shall not be liable under this Policy to make any payment for **Financial Loss** (including **Defence Costs**) in connection with any **Employment Claim** made against the **Company**:
 - (i) alleging, arising out of, based upon or attributable to any litigation, suit, **Claim**, arbitration or mediation initiated prior to or pending on the **Continuity Date** indicated below; or any litigation, suit, arbitration or mediation which alleges or is derived from the same or essentially the same facts as alleged in such prior or pending litigation, suit, **Claim**, arbitration or mediation; or
 - (ii) alleging, arising out of, based upon or attributable to any circumstances or **Wrongful Act** known by any **Insured** prior to the **Continuity Date** indicated below, which could reasonably have given rise to an **Employment Claim** under this Policy.

For the exclusions listed in this section 6, the **Continuity Date** shall be [enter the date].

7. In respect of **Employment Claims** made against the **Company**, the **Insurer** shall not be liable under this Policy to make any payment for **Financial Loss** (including **Defence Costs**) in connection with any **US Claim** made against the **Company**.

8. In respect of **Employment Claims** made against the **Company**, the definition of **Financial Loss** shall, also, not include:

- (a) any amount payable in respect of contractual or statutory notice periods and/or which would not have been made but for the **Insured's** failure to give an **Employee** contractual notice of dismissal required under his or her contract of employment or payment in lieu thereof;
- (b) **Benefits**;
- (c) the costs to comply with any injunctive, interim or other non-monetary relief or any agreement to provide any such relief;
- (d) the modification of any building, premises, fixtures, fittings, plant, equipment or other property in order to comply with any legal obligation to make them some more accessible or accommodating to any disabled or physically impaired persons;
- (e) any award made in respect of the failure by the **Company** to inform or consult **Employee** representatives in accordance with the Transfer of Undertakings (Protection of Employment) Regulations of 1981, or any amendments thereto, replacements thereof, or any similar federal, state, or local statute, regulation, or common law; or any similar provisions in another jurisdiction;
- (f) a protective award.

For the purposes of this endorsement,

Benefits means:

- (a) perquisites, fringe benefits, bonus payments;
- (b) incentive or deferred compensation;
- (c) **Stock Based Benefits**;
- (d) medical or insurance benefits and payments due to any person in connection with an employee benefit plan or pension scheme; or
- (e) any other type of compensation or the equivalent value thereof other than salary (including bonus) and wages.

For the purposes of this definition,

Stock Based Benefits means the value of any actual, beneficial or contingent rights to benefits, incentives or other compensation whose value is imputed or derived in any way from the value of the securities of the **Company**, including but not limited to, stock options, stock grants, restricted stock, stock warrants, stock performance shares or units, stock appreciation rights, or phantom stock plans or arrangements.

9. With respect to **Employment Claims** made against the **Company**, the following additional exclusions shall, also, apply:

The **Insurer** shall not be liable under this Policy to make any payment for **Financial Loss** (including **Defence Costs**) in connection with any **Employment Claim** made against the **Company**, or **Investigation Costs**:

- (a) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state or local rules or regulations, statutory or common law, governing workers' compensation, employers liability, unemployment insurance, **Benefits** or compensation, **Wage and Hour Practices**, redundancy pay, social security, retirement benefits, disability benefits or similar law;

Wage and Hour Practices shall include, but is not limited to, any "off the clock" work, provisions regarding rest or meal periods, classification of **Employees** as exempt or non-exempt from overtime regulations, payment of minimum wages, payment of overtime wages, timely payment of wages, conversions, maximum working hours, fairness of business practices;

- (b) based upon, arising out of, or attributable to liability of others assumed by any **Insured** under any contract or agreement, either oral or written; provided, however, this exclusion shall not apply to the extent the **Insured** would be liable for such **Financial Loss** in the absence of such contract or agreement;
- (c) based upon, arising out of, or attributable to any actual or alleged violation of the responsibilities, obligations, or duties imposed by any statutory or common law that governs the rights of employees to engage in, or to refrain from engaging in, union or other collective activities, or the enforcement of any collective bargaining agreement, including but not limited to grievance and arbitration proceedings;
- (d) based upon, arising out of, or attributable to any collective redundancies or mass-layoffs as defined in The Trade Union and Labour Relations (Consolidation) Act 1992, or any amendment thereto, replacements thereof, or any similar federal, state or local statute, regulation, or common law; or any similar provisions of law in another jurisdiction;
- (e) based upon, arising out of, or attributable to any judgment or court order for the reinstatement of an **Employee**.

ALL OTHER TERMS, CONDITIONS AND LIMITATIONS REMAIN UNCHANGED.