

increased the limit of nuclear-liability insurance to meet the current international standard – a current minimum of 300 million SDRs and a possible future limit of \$1.5 billion. In addition, cross-border damage is not covered. We suggest that Taiwan (1) increase the limit of nuclear-liability insurance; (2) improve the coverage of cross-border damage to cover damage wherever it occurs; and (3) have a self-executing provision that raises the limit to the 600 million SDRs once the amendment adopted at the Paris and Brussels Convention takes effect. Such improvement would not only make Taiwan a responsible citizen in the global society, but by minimizing their risk would also encourage global contractors with first-class technology to participate in Taiwan's nuclear projects.

B. Amend the terms and conditions in relevant model contracts.

A new public construction technical-service model contract published by the Public Construction Commission (PCC) in 2008 specifies a ceiling on vendors' liability. But vendors are still liable for indirect damages and consequential damages, as well as a broad range of damage items without a ceiling (such as the damages specified by laws and regulations, indemnification on intellectual property infringement, damages from third-party claims, etc). The model contract also contains a penalty term with regard to service quality defects and an unreasonable confidentiality term that requires vendors to bear a perpetual confidentiality obligation. It is almost impossible for vendors to evaluate the risks involved in these terms, thus deterring vendors from joining these government procurement bids.

Furthermore, in a misuse of the standard contract template, government agencies in some cases request that vendors transfer and assign all of their relevant intellectual property rights and trade secrets to the government agency, regardless of the nature of the project. We request further clarification and guidelines from the related government agencies to the officers in charge of the procurement cases, so as to minimize such misunderstanding.

Once again we urge a comprehensive review of these long-standing issues, followed by revision of the relevant procedures, so as to create a platform that encourages multinational companies to play a role in providing Taiwan with world-class infrastructure.

Issue 7: Increase the government focus on IT infrastructure.

Information Technology is at the heart of soft power and has become one of the core measures for evaluating national competitiveness. But in Taiwan it still attracts insufficient government interest and investment. In 2008, the Economist Intelligence Unit's *IT Industry Competitiveness Report* ranked Taiwan 28th in Support to IT Industry Development and 20th in IT Infrastructure, significantly lagging behind Singapore (which ranked 3rd and 11th) and Hong Kong (10th and 16th). Furthermore, even though it is a major PC manufacturing

and exporting center, Taiwan still has 6.7 million people – excluding the very young and elderly – who do not access the Internet.

The true value of IT comes from combining people with high-value-added applications and services under a correct organizational structure. IT hardware investment alone does not generate value and will not improve Taiwan's competitiveness. Recently several alarming signals have come to our attention indicating the low level of priority the government is attaching to IT deployment: (1) In the IT-related plans included in the economic stimulus packages, the majority of the investment is focused on hardware, without sufficient allocation for IT applications and high value-added services. (2) The government has no Chief Information Officer (CIO) under the current organizational structure, and even in the newly proposed government reorganization plan, the CIO function is only part of one official's portfolio. Having a dedicated CIO position is critical, and is now common internationally in both the private and public sectors.

We call on the authorities to include a dedicated CIO position in the new government reorganization plan and to prioritize investment in IT applications in all i-Taiwan infrastructure programs. Further, we urge the government to set a clear target to bring the remaining 6.7 million members of the population across the digital divide, to increase IT spending to appropriate levels, and to review the spending ratio among hardware, applications, software, and services. National competitiveness depends on how wisely a nation uses Information Technology, the most critical infrastructure for bringing economic and social opportunities to Taiwan's people.

INSURANCE

The long-term viability of the Taiwan insurance industry is being tested as never before. As discussed in Issue 1 below, it will require coordinated and courageous action to protect Taiwanese consumers and address the insurance industry's financial sustainability.

In addition, the Committee believes it is critical in 2009 to continue the progress made in 2008 on key issues. Among the significant advances last year were passage of legislation providing for 10-year tax-loss carry forward, an increase in the foreign currencies in which policies can be denominated to include the Euro and Australian dollar, a decision to allow independent sales agents to deduct expenses in line with other professionals, and full liberalization of premium rates for commercial property and auto insurance. The Committee expresses its sincerest appreciation to the government authorities for making these important and positive changes.

In the face of the on-going global financial crisis, even more substantial change will be required in 2009. We therefore endorse recent proposals by the Insurance Bureau (IB) to require specific action from companies that breach solvency margin requirements and to enhance public-disclosure and transparency requirements in identifying

top-quality insurers in line with tightening international standards. Although other issues exist, in this position paper we are focusing on four items that we consider absolutely vital to the future health of the insurance industry in Taiwan and to achieve the stated objective of the Financial Supervisory Commission (FSC) for Taiwan to develop into a competitive regional financial center.

Issue 1: Find a solution to the problem of toxic liabilities and assure that new business is written in line with international reporting and solvency standards.

The current financial crisis and continuing low-interest-rate environment have heightened the urgency of addressing the negative spread issue. The recent exodus of two leading foreign life insurers representing 6% of the total market and 24% of the new-business market share for foreign companies highlights the seriousness of the situation; these foreign companies, which must report to their parent companies under stringent reporting standards such as International Financial Reporting Standards (IFRS) and Solvency II accounting standards, have now unloaded their liabilities on domestic companies that are under relatively lower local regulatory capital standards.

The introduction of IFRS Phase I involves:

- Valuating assets at market value. Although this already happens in Taiwan, it does not extend to solvency requirements;
- Drawing a distinction between insurance contracts and investment contracts. Investment products would be subject to the accounting standards for financial rather than insurance contracts;
- Increased disclosure in the notes to company accounts;
- Acceptance of the existing liability valuation basis if the basis can pass a best-estimate adequacy test.

Addressing the solvency and capital issues is critical not only for the companies already operating here, but also for potential new foreign entrants to the market, enabling them to have confidence that they can compete based on recognized international standards of risk management. There are no shortcuts in addressing the negative spread issue. The Committee believes that industry and the government must work closely together toward introducing capital, risk, and regulatory requirements along the lines of IFRS and International Association of Insurance Supervisors (IAIS) standards by 2011.

The result of this shift may be recognition that not all insurers are capable of meeting the required standards within a reasonable period of time. In that case, the authorities – in coordination with the industry – will need to introduce programs that ensure fair treatment of those insurers' customers while providing a smooth transition to a more stable long-term platform for the industry. We therefore urge the authorities to consider options (for example, an old company/new company structure supported by a government reinsurance scheme) that would provide some relief to the old

block of business and allow new business to be priced within international standards.

Issue 2: Exclude foreign-currency investments supporting traditional insurance policies denominated in that currency from the 45% foreign-investment limit.

The foreign-investment portfolios used by insurers to back up their foreign currency-denominated insurance products in the same foreign currency should not be included within the 45% foreign investment limit for the following reasons: a) there is no currency risk because both assets and liabilities are in the same currency, b) companies' ability to diversify their investment will be hampered if both local and foreign-currency policy investments share the same foreign-investment limit, c) it unfairly restricts insurers that have reached the foreign-investment limit from developing their foreign-currency policy business, d) foreign-currency policies would not trigger any incremental currency speculation because the foreign-currency premium to be paid by each policyholder will still be subject to the existing US\$5 million annual foreign currency transaction limit for individuals (i.e. US\$5 million for purchases and US\$5 million for sales), and e) such limitation will present a significant barrier to new insurance companies entering this segment of the market. Excluding these investments from the calculation would provide consumers with a wider choice of insurance products, while also reducing insurance companies' hedging costs and the risk of currency mismatches.

The Committee also recommends to the Central Bank of the Republic of China that life policyholders be allowed to pay premiums and receive benefits for foreign-currency-denominated policies in New Taiwan Dollars. This change would simplify the process and reduce the cost for consumers by allowing transactions to be conducted at institutional rates, subject to Central Bank reporting requirements.

Issue 3: Maintain the current taxation practice on investment-linked products.

At its meeting of February 17, 2009, the Tax Reform Committee (TRC) of the Executive Yuan proposed to impose a separate withholding income tax of up to 10% on investment gains from investment-linked insurance products upon expiration or termination of the insurance contract. The TRC discussed the issue again on May 1, 2009, and reportedly both the Ministry of Finance and the FSC have agreed with its conclusions. According to press reports, this consensus entails (1) imposing income tax by asset class on investment proceeds accrued in the investment account, (2) levying gift tax on the maturity payment when the policyholder and the beneficiary are not the same person, and (3) imposing estate tax on death benefits for non-qualified policies.

This Committee strongly disagrees with that recommendation. The income-tax exemption for personal insurance payments was enacted in December 1972 to encourage long-term savings and strengthen the social-

security system. It has performed an important social-policy function for the past 36 years. Investment-linked insurance products serve the same purposes as the traditional life products and have become an increasingly important component of Taiwanese retirement planning due to such products' ability to offer insurance coverage while allowing policyholders to determine their own investment portfolios. At a time when it is in the interest of society to encourage more citizens to engage in long-term saving for their old age, the TRC's proposal would have the contrary result of discouraging people from including investment-linked products in their retirement plans.

Most investment-linked products are linked to mutual funds. Since the capital gain from mutual funds and listed shares are currently not subject to income tax, there is no reason to give different treatment to investment-linked insurance products. Indeed, all life and annuity products, including investment-linked products, are already subject to Alternative Minimum Tax and should not be further subject to an extra income tax. Particularly when the market has been suffering from extreme volatility, it is unclear why the Executive Yuan would wish to support short-term mutual-fund trading over long-term mutual-fund investing.

In most international markets, in addition, unit-linked contracts that meet certain defined criteria are usually taxed as life insurance. The FSC has already required that investment-linked products provide at least a minimum level of insurance coverage; therefore such products are not purely for investment purposes and should be treated as life insurance.

Investment proceeds accrued in the investment account serve the purpose of funding the insurance protection and are an integral part of the life insurance payment. According to the current Income Tax Act, Estate and Gift Tax Act, and Insurance Act, insurance payments are exempted from income tax and estate tax. Imposing income tax on the investment account of investment-linked insurance products or estate tax on the death benefits thereof would therefore be contrary to existing law. Should the government decide to take a different approach towards insurance product taxation, it would need to go through the legislative process to revise the laws.

Finally, from a customer perspective, it is important that policyholders have the option of a separate account for investment-link products as it provides an added layer of financial security; otherwise customers could lose their savings to other general creditors if an insurer were to fail. Removing this option would deprive consumers of an important element of protection.

For all these reasons, we strongly encourage the TRC to reconsider its position and to support tax policy that will better meet the growing retirement needs of this aging society.

Issue 4: Amend the Labor Pension Act allow more market-appropriate options for employees.

The Committee appreciates the IB's coordination with

the Council of Labor Affairs (CLA) to seek removal of requirements in the Labor Pension Act that restrict life insurers from offering attractive annuity products to Taiwan's workforce. These requirements are: a) a threshold company size of 200 employees, b) the stipulation that at least 50% of employees give their consent, and c) a guaranteed minimum return set at the two-year time-deposit rate.

We commend the CLA for considering granting employees the option of investing some or all of the "voluntary" portion of their contributions in asset classes that would be expected to provide greater returns over the long run – and hope that this privilege could be extended to regular (non-voluntary contributions) for those with a longer-term investment horizon. It is well-accepted, sound advice that individuals with at least 10 years to go until retirement should consider investing in equities, fixed-income instruments, and other riskier assets that promise returns far above traditional bank-deposit rates. Other Asian countries adopted such an approach long ago. Despite the current economic situation, when markets around the world recover, they can be expected to once again provide opportunities for superior returns.

The committee urges the IB to continue to coordinate with the CLA to remove the above-mentioned barriers so as to allow Taiwan's workforce to benefit from annuity products.

INTELLECTUAL PROPERTY & LICENSING

Intellectual property rights concerns have often been at or near the top of the advocacy agenda of AmCham Taipei. We have been sufficiently impressed with the progress over the past few years, and with the good will shown by the key agencies involved, that the Chamber endorsed Taiwan's removal from the Special 301 Watch List when USTR prepared its 2008 report. We expressed this strong support during both the annual review and the subsequent out-of-cycle review that finally resulted in Taiwan being removed from the Watch List earlier this year.

We have noted over the past year that Taiwan has continued to strengthen its IPR protection. In particular, establishment of the Intellectual Property Court in July 2008 marked a major milestone for Taiwan's IPR protection. Internet piracy was dealt a serious blow through the passage of the ISP (Internet Service Provider) bill by the Legislative Yuan in April, and the speedy promulgation of that bill by the President in May. We have also seen beneficial reviews of the Trademark, Copyright, Fair Trade, and Patent Laws, and of regulations pertaining to compulsory licensing, which will result in revisions of these laws and regulations.

The Intellectual Property Task Forces and the National Police Administration have maintained a high level of action to investigate and bring to justice those involved in the counterfeiting and piracy of goods. Previously AmCham had raised concerns about the growing use of the Internet