

In addition, the government's model contract requires that all information and documents be kept confidential, but the period of confidentiality is not defined, thus apparently requiring contactors to keep all such information and documents confidential in perpetuity. We also suggest that procurement entities accept a certificate of insurance instead of the actual policy as proof of insurance.

2. **Lack of consistency in model contracts.** The PCC provides several different model contracts for various types of procurement projects, but the terms and conditions of these model contracts are not uniform. Over the years, some of these have been revised to adopt more internationally accepted terms and conditions, while others still reflect an outmoded approach. We urge the PCC to conduct an overall review of these model contracts with the aim of achieving consistency.

Among these model contracts, the one covering construction projects was amended last year to incorporate a ceiling on liability, exclude the liability for loss of profit, and remove the infringement of intellectual property right from the exceptions to limits on liability. We regard that as a positive step, and encourage the PCC to amend the other model contracts accordingly.

In all these model contracts, bidders have the option – but are not required – to grant the intellectual property rights to the procurement entity. Some procurement entities, however, insist that such IP rights be transferred for free. Procurement entities should respect intellectual property rights and implement fair and reasonable provisions for doing so.

3. **Lack of bilingual versions of tender documents and model contracts.** Currently, most procuring entities provide Chinese-only bidding documents, even for tenders that are supposed to be international tenders, or to be open to international bidders. Since English is the most commonly-used language in international business, Taiwan would make itself a more attractive investment destination for international construction-service companies if it were to provide bilingual versions of tender documents. We also suggest that the government provide an English version of all model contracts. In addition, care should be taken that the bidders' rights and obligations as stated in the Chinese and English versions are identical.
4. **Inadequate nuclear damage insurance.** The scope of nuclear damage insurance adopted by Taiwan has always been far lower than the current international standard. As a result, many first-class contractors in the nuclear field are reluctant to enter this market. We understand that the Atomic Energy Council has been studying this issue, and we look forward to a swift solution in the near future.

Issue 5: Improve government efficiency by reviewing and streamlining administrative procedures.

The Taiwan government's reorganization plan is slated for implementation in January 2012. The plan, which involves

merging various ministries to reduce inter-agency interface, is aimed at improving government efficiency – a goal which we very much support. Another means of enhancing government efficiency would be to conduct a comprehensive review of administrative procedures to ensure that each step is essential and to eliminate any redundancy.

One area that has been notably inefficient is the environmental impact assessment (EIA) review process of the Environmental Protection Administration (EPA). As was pointed out in previous years' *White Papers*, many major infrastructure projects have been hampered by the seemingly interminable delays caused by this review process.

The normal EIA review process, which has been in use for more than 20 years, calls for any EIA report submitted to the EPA to be reviewed by a committee selected from among the 21 EPA commissioners. The committee's recommendation is then forwarded to the EPA's general monthly meeting for a final decision. In 2009, another step was added to the process: an "expert review" during the committee review stage. The "expert group" consists of representatives from local governments, NGOs (mostly environmental groups), and the public or private organizations (project owners) who submitted the EIA report. The "expert review" is redundant, since its function is the same as that of the original review committee. The extra step lengthens the process and makes it more complex, without adding any real value.

Another example of inefficiency is the feasibility study (F/S) review process. In normal practice, when a state-owned enterprise submits its F/S for a project to the State-Owned Enterprise Commission (SOEC) of the Ministry of Economic Affairs (MOEA), the SOEC will invite experts to form a review committee. The conclusions of that committee will be reviewed by the MOEA and then passed to the Executive Yuan (EY) for final approval, after which the EY will forward the report to the Council for Economic Planning and Development (CEPD) for comment.

In a recent case, CEPD asked SOEC to hire an outside organization to do a second review of the F/S report that had already been reviewed and approved by the SOEC's review committee. We cannot see the point of ordering an additional review by an external organization at the end of the process. If any expert's opinion is considered vital, he or she could be invited to testify before the SOEC's review committee.

As these two examples demonstrate, besides Cabinet reorganization there are many simple ways in which government processes could be streamlined if agencies in the bureaucracy take up their designated responsibility instead of passing the buck to other entities.

INSURANCE

The Taiwan life insurance industry has continued to undergo significant change in the last 12 months. Low interest rates, new investment link taxes, and increased consumer protection have added to the existing negative spread and

capital adequacy concerns, and have increased the challenge of writing new business that is both good for consumers and sustainable for insurance companies. The overall regulatory and economic environments are increasing the difficulties for both incumbent domestic and foreign companies, and will continue to challenge Taiwan's aspirations to position itself as a regional financial center. Recognizing that many of these issues are rather technical, in this year's position paper we have, where possible, included specific examples of changes in regulatory wording that would be required to effect our recommendations.

As a special note, we would like to take this opportunity to recognize the positive steps the Insurance Bureau has taken to address the problem of companies in the industry that have failed to maintain the minimum 200% risk-based capital (RBC) requirements. We understand the tremendous challenge involved in coming up with a rehabilitation program that will balance policyholders' interests and the overall cost to society if governmental support is required. We recognize, as has been the experience in many countries, that all parties will bear some cost in the process, and we encourage following a balanced approach.

Issue 1: Seek solutions for the negative spread and capital adequacy problems.

As in last year's position paper, negative spread and capital adequacy issues are our top concern for the Taiwan insurance industry. Although recent headlines highlighting insurance companies' short-term profits, record sales, and strong dividends have created a public image of industry strength, low interest rates and extremely low (possibly negative margin) new business are exacerbating the long-term negative spread problem and increasing the stress on insurers' already weak capital positions. While the public seems relatively unaware of the situation, the underlying risk to the industry is becoming more evident to the Legislative Yuan. On March 22, 2010, the Financial Committee of the Legislative Yuan resolved that given concerns about the perceived reserve shortfall of over a trillion New Taiwan Dollars due to the negative spread issue, the Financial Supervisory Commission (FSC) should more rigorously supervise the insurance industry and require boards of directors to monitor the solvency status of their companies and regularly report to the FSC's Insurance Bureau on the results of their self-assessment.

The Committee therefore continues to support the government's plans to move to implement International Financial Reporting Standards (IFRS) and solvency rules (Solvency II) without delay. We urge inclusion of the following items in the IFRS Phase I implementation in 2011:

- A clear valuation of company assets and liabilities on a standard market basis for accounting and solvency purposes;
- 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.

While we understand that many companies will struggle to meet the new standards, we believe that it is critical for consumer protection to create greater transparency for consumers to evaluate the risks they are taking when choosing an insurance provider. At the very minimum, we would support implementing a requirement that all insurers publicly disclose the capital required to support their new business policy guarantees (unit linked or traditional), given a publicly published set of financial reporting and solvency standards (whether IFRS or a local standard).

Issue 2: Allow insurers an exception to the foreign investment limit for foreign-currency investments.

Foreign-currency denominated policies have continued to grow in popularity in the past year in line with the Taiwan public's increasingly international orientation. But the foreign-currency investment limits currently in place discourage new companies from entering this market because the regulations fail to distinguish between foreign-currency-denominated investments that back traditional NT\$ liabilities and assets that are purchased to match policy liabilities denominated in the same foreign currency. The Committee therefore proposes that the Insurance Act, in particular Article 146-4, be amended to provide that "the Insurance regulator has the authority to grant an exception to insurance companies in regard to the foreign-currency investment limit when such investments are appropriate and necessary to the proper asset/liability matching as well as efficient product management for new business written under traditional insurance policies denominated in the same foreign currency."

Issue 3: Allow life policyholders to pay and receive in New Taiwan Dollars for foreign-currency-denominated policies.

Life policyholders should be given the choice of paying premiums and receiving benefits in New Taiwan Dollars for foreign-currency-denominated policies. This initiative would have no impact on the foreign-exchange policies of the Central Bank of the Republic of China (CBC), nor would it change the product pricing, specifications, underwriting, investment strategy or anything in relation to the products. Rather, it simply relieves customers of the burden of maintaining a foreign-currency bank account and simplifies the foreign-exchange settlement and reporting process. Customers choosing to invest in foreign-currency-denominated policies may anticipate a future need for such foreign currency but do not necessarily have a foreign-currency account at the time of purchase. Upon the expiry or maturity of the policies, customers may wish to convert the foreign-currency payment into New Taiwan Dollars due to their actual needs. Also, in many situations it is costly to maintain a foreign-currency account.

Unfortunately, the current “Regulations Governing Foreign Exchange Business of Insurance Enterprises” and the relevant insurance regulations, including the “Regulations Governing Investment of Investment-linked Insurance” and “Criteria and Guidance Notes for Life Insurance Enterprises Engaging in Non-Investment Foreign-Currency-Denominated Life Policies,” stipulate that life policyholders of foreign-currency-denominated policies can make payments to or receive payments from insurance companies only in foreign currency. That requirement unreasonably makes it necessary for consumers to have a foreign currency bank account before they can purchase life policies denominated in foreign currency.

The Committee recommends to both the CBC and the FSC that insurance companies be allowed to handle the foreign-exchange settlement and reporting procedures on behalf of their customers, who would then be able to pay premiums to and receive benefits from the insurance companies for foreign-currency-denominated policies in New Taiwan Dollars. Such an initiative would simplify the process and reduce the cost for consumers by allowing transactions at institutional rates, subject to CBC reporting requirements. Each individual policyholder would still be subject to the existing US\$5 million annual foreign currency transaction quota (i.e. US\$5 million for purchases and US\$5 million for sales).

This suggested approach is similar to the practice by which employment service agencies handle foreign-exchange settlement and reporting requirements on behalf of foreign laborers as per release no. 0980028398 issued by the CBC’s Foreign Exchange Bureau on May 25, 2009.

The Committee will separately provide the CBC and FSC with proposed wording for amendments to the relevant regulations to carry out the changes being suggested.

Issue 4: Maintain the previous taxation practice on unit link products.

The Committee reiterates its request for the Ministry of Finance (MOF) to rescind its proposed tax on investment-linked insurance policies (ILP). As the MOF has chosen to by-pass the legislative process as should be required to make this change, we believe that this administrative decision will be subject to constitutional and legal review, and if implemented as announced will raise concerns both domestically and internationally. We respectfully request the MOF to review this decision, taking into consideration the recommendation by the FSC and its Insurance Bureau to exclude from taxation policies that clearly qualify as insurance under their regulatory guidance.

Section 7, Paragraph 1, Article 4 of the Income Tax Act clearly states that life insurance proceeds are free of income tax. Further, Section 2, Paragraph 1, Article 12 of the Income Basic Tax Act provides that proceeds from life insurance and annuity policies are subject to income basic tax only when the proposers and beneficiaries are not the same person – and in the case of death benefits, when the total payment received within the same tax-reporting household

exceeds NT\$30 million.

The laws do not make a distinction as to whether the policy is unit-linked or for traditional products. But to our regret, the MOF on November 6, 2009 issued an official ruling imposing tax on income from ILP, effective January 1, 2010. The MOF’s promulgation of this ruling without amending the said legislative articles has clearly violated the statutes referred to above and raised significant constitutional concerns.

For the past several decades, the provision of tax incentives has effectively motivated people in Taiwan to invest in life insurance policies for long-term savings and financial protection, thus strengthening the social-security net. Investment-linked insurance products serve exactly the same purposes as traditional life products in providing both protection and savings. As a result, ILP has for years been an insurance product welcomed by Taiwan consumers and become an important option enabling people to meet the growing needs of retirement planning. The newly enacted taxation of ILP will severely limit the choice of Taiwanese citizens in funding their insurance needs.

As to the question of the constitutionality of changing existing laws without going through the legislative process, the MOF has cited Judicial Interpretation No. 420 as well as Article 12-1 of the Tax Collection Act, which are based on the doctrine of “substance-over-form.” But the Committee considers that this neglects the fundamental constitutional principle of “taxation by statute,” which serves as the basis for Interpretation No. 420 and for all tax laws. In the past decades, numerous interpretations by the Council of Grand Justices have viewed Article 19 of the ROC Constitution, which stipulates “the people shall have the duty of paying taxes in accordance with law,” as meaning that taxation must be based on requirements set forth by law. There has never been an interpretation deviating from the principle of taxation by statute.

Ignoring the fact that ILP is authorized under the Insurance Act as an insurance product, the MOF asserts that the linkage of ILP policies to selected investment tools means it should be considered an investment instrument and should be taxed the same as other financial investment products. In so doing, the MOF adopts a view contrary to that of the FSC and deviates from the Insurance Act that for decades has treated ILP as insurance.

We respect the MOF’s efforts to strive for fairness in the taxation system. But we strongly object to the use of an administrative ruling to in effect revise the law without following the legislative process and in direct contradiction to guidance provided by insurance regulations.

The MOF argues that the impact will be nominal because 1) under the current tax system, only stock dividends, bank deposit interest (above a NT\$270,000 threshold), and offshore income (subject to thresholds of NT\$1 million per household and NT\$6 million of total basic income per year) are computed into the gross income of policyholders for their annual tax returns, and 2) 94.6% of existing ILP contracts

would generate only NT\$50,000 to \$60,000 in profits, assuming investment returns of 5% to 6% per annum. The MOF estimates that only 5% of ILP contracts will contribute to tax revenue, yet is demanding that the entire industry invest significant resources to modify its IT infrastructure, amend systems, and redesign operations to ensure that every ILP policyholder receives all applicable tax certificates for proper tax reporting, so as to enable the tax offices to appraise the nominal tax amount. The life insurance industry is deeply concerned by the MOF's intention to collect an extremely modest amount of additional tax at the price of imposing immense difficulties and complexities on the life insurance industry.

From the perspectives of constitutionality, social security, and economic benefit, we respectfully request that the MOF reconsider its administrative announcement. If the MOF strongly believes that its objective is appropriate, it should follow proper legal procedures to amend the relevant laws and regulations. Relying merely on an administrative ruling has raised constitutional issues that will be subject to legal challenge. If legislation can be easily overridden without due process, it would also have an adverse impact on public confidence in the Taiwanese legal system.

Issue 5: Reconsider amendments to the Labor Pension Act.

The Committee appreciates the patience and efforts of the Council of Labor Affairs (CLA) in reviewing and discussing our concerns over undue requirements in the Labor Pension Act that restrict life insurers from offering suitable annuity products to Taiwan's workforce. Unfortunately, to date, serious regulatory barriers remain in place, preventing life insurance companies from participating in the labor pension market. They are 1) a threshold company size of 200 employees, 2) the stipulation that at least 50% of employees give their consent and participate in the annuity insurance program, and 3) the requirement for a guaranteed minimum return set at the two-year time-deposit rate.

The thresholds of company size of 200 employees and at least 50% of employees' consent and participation have unreasonably removed the pension scheme option for workers at most Taiwanese companies. The requirement of guaranteed minimum return has ignored the nature of a "defined contribution" pension scheme, as well as the actuarial principle of the life insurance business.

We ask the CLA to reconsider its labor pension policy so as to give Taiwanese workers the option of investing their pensions (both voluntary and non-voluntary contributions) in asset classes that would be expected to provide greater returns over a longer-term investment horizon. Or at an initial stage, at least the "voluntary" portion of their contributions should be exempted from the above regulatory restrictions.

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 somewhat riskier assets that promise returns far above traditional bank-

deposit rates. Many Asian countries adopted the approach of encouraging such investments long ago. Despite the current economic situation, after recovery markets around the world can be expected to once again provide opportunities for superior returns.

The committee urges the CLA to remove the above-mentioned barriers, and in so doing allow Taiwan's workforce to benefit from the advantages that annuity products can bring.

Issue 6: Reserve credit for long-term life reinsurance

Reinsurance is a key component of the insurance marketplace, serving to reduce volatility and improve insurers' financial performance and stability. An insurance company's "capacity" is the maximum amount of risk it can undertake in line with the company's surplus. Reinsurance provides a tool allowing an insurer to assume more risk and receive premium income, while transferring a portion of the risk to the assuming insurer. Taiwan's current regulatory regime, however, does not allow a life insurer to take financial-statement credit for the reinsurance protection it purchases for long-term life insurance. As a result, a ceding life insurer cannot reduce its loss reserve by the amount ceded, even though the risk has been transferred. The life insurer is therefore compelled either to reduce the amount of risks assumed and policies written, or to forego the opportunity to engage in a variety of types of risk classes and business. Inevitably this situation will unfavorably affect the development of the life insurance marketplace.

The Committee therefore recommends that the Insurance Bureau allow "Reserve Credit for Long-term Life Reinsurance" to permit a ceding life insurer to take credit on its financial statement for risk ceded to a reinsurer. We propose that reserve credit should be granted when a reinsurance arrangement meets the following requirements:

1. The reinsurance is ceded to an assuming insurer that meets the requirements of "eligible reinsurer" stipulated in Article 7 of "Regulations Governing Insurance Enterprises Engaging in Operating Reinsurance and Other Risk Spreading Mechanisms."
2. The reinsurance contract meets one of the criteria stipulated in Article 5 of "Regulations Governing Insurance Enterprises Engaging in Operating Reinsurance and Other Risk Spreading Mechanisms."
3. Eligible reinsurers post collateral in order to fund their obligations in accordance with reinsurance contracts. The amount should be equal to the credit for the statutory reserves, and collateral could be in the form of a letter of credit (L/C), asset in a trust, or any other form of security acceptable to the FSC. L/Cs and trusts would need to be issued and managed by qualified financial institutions unrelated to the reinsurer for the benefit of the ceding life insurer. In the event of a default by the reinsurer, the L/C amount and trust assets would be unaffected, and the ceding life insurer could access these funds to pay future

- claims if the reinsurer fails to do so.
4. Qualified financial institutions issuing the L/Cs or holding assets in trust on behalf of a ceding life insurer would need to meet the following criteria: a) Credit rating above a certain level stipulated in Article 8 of “Regulations Governing Insurance Enterprises Engaging in Operating Reinsurance and Other Risk Spreading Mechanisms,” b) Demonstration of sound business performance and financial soundness in the last three years, and c) Absence of any record of penalty against it for material regulatory violation in the last three years.
 5. While credit is granted, a minimum statutory RBC ratio is still required.
 6. For accounting treatment in GAAP practice, reserve credit for reinsurance is treated as a reduction to the insurer’s liability or recognized as a reinsurance asset. The current Taiwan accounting treatment of reserve credit for one-year insurance is recognized as a reinsurance asset upon reinsurance agreement. Without change to the local accounting treatment, it is suggested that the reserve credit for long-term life reinsurance be recognized as a reinsurance asset.

INTELLECTUAL PROPERTY & LICENSING

The Committee is pleased to observe that the protection of intellectual property rights continues to be a high priority with the Taiwan government. Over the past year, the authorities have undertaken reviews, often resulting in amendments, of the Trademark, Patent, Copyright, and Copyright Collective Management Organization Acts. The Intellectual Property Court, established in July 2008, has become an important institution through its professional review of appeals made by both defendants and plaintiffs. The Intellectual Property Task Forces and the National Police Administration have continued to independently investigate and prosecute intellectual property infringers, while the Taiwan Intellectual Property Office (TIPO) under the Ministry of Economic Affairs should be recognized for its unceasing efforts to improve the overall IPR environment.

Although we are gratified by the progress mentioned above, certain areas – as outlined in the Issues below – deserve further attention from the government in order to bring Taiwan’s IPR regime to an even higher level. In addition, we would like to voice our support to the Pharmaceutical Committee’s call for the adoption of Patent Linkage and Data Exclusivity protection for pharmaceuticals in Taiwan, steps that would strengthen Taiwan’s IPR protection while also encouraging investment and innovation in the pharmaceutical industry.

Issue 1: Institute more effective controls over the import of counterfeit and smuggled goods.

The Committee urges the Taiwan government, as its number-one priority in the coming year regarding

IPR enforcement, to implement measures to control the importation of counterfeit and contraband goods. China is the primary source of counterfeit and smuggled goods entering Taiwan. With the steady expansion of cross-Strait travel, transportation, and trade, it is necessary to place more emphasis on intercepting counterfeit and contraband import goods originating in China and bringing those responsible to justice.

As has been well documented, smuggled and counterfeit goods carry substantial health, safety, and environmental risks. In addition, this illegal business finances organized crime, adversely affecting social stability in Taiwan. This trade also results in billions of dollars in lost tax revenue for the government, and similar losses to Taiwan-based businesses due to unfair competition, with a consequent negative impact on employment in Taiwan.

The Committee suggests the following ways to better combat the import of counterfeit and smuggled goods:

- Develop a more systematic, speedy, and transparent mechanism for Customs to take action against those found to be importing counterfeit or smuggled goods. This system should allow action on seizures to be carried out within weeks, rather than months as at present. Better channels of cooperation and coordination between Customs and other Taiwan law enforcement agencies also need to be established. This should include more disclosure of information related to Customs seizures to such other government units as TIPO, the Judicial Yuan, Ministry of Justice, Ministry of Interior, and Ministry of Finance (the regulatory body for tobacco and spirits). One means of effective disclosure would be establishment of a regularly updated database, shared by Customs and the other relevant government bodies, listing the names of convicted or fined importers of counterfeit and smuggled goods.
- Take action against the substantial amount of trade in counterfeit and smuggled goods, particularly for luxury goods, being conducted through the postal system, especially the Express Mail Service (EMS). Distributors and individual customers in Taiwan who order counterfeit goods through the Internet often receive the goods by EMS. Customs therefore needs to increase the rate of inspections it conducts on incoming regular mail and EMS parcels. In addition, courier companies who appear to be used the most by websites offering counterfeit and smuggled goods should be checked more frequently by Customs, and if necessary receive formal warnings or even be placed on a blacklist.
- Build better cooperation between Customs and rights-holders, for example providing rights-holders with information on importers and exporters implicated in instances where seizures have resulted in criminal complaints. We encourage Customs to work closely with both companies and other law enforcement bodies to conduct prevention campaigns targeting specific product