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AmCham Taipei

TAIWAN WHITE PAPER

AMERICAN CHAMBER OF COMMERCE IN TAIPEI

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The annual *Taiwan White Paper* is written and published by the American Chamber of Commerce in Taipei (AmCham). It includes an overall assessment of Taiwan's business climate, a review of the status of last year's priority issues, and statements of the current priority issues identified by AmCham's industry-specific committees. An additional section offers recommendations to the U.S. government.

The primary purposes of the *Taiwan White Paper* are information and advocacy. The document outlines AmCham's suggestions to the Taiwan government and public on legislative, regulatory, and enforcement issues that have a major impact on the quality of the business environment. It is also used to inform government officials, elected representatives, and other interested parties in the United States about Taiwan's business climate.

Although the *Taiwan White Paper* represents the immediate business interests of AmCham's approximately 1,000 members, its ultimate goal is to foster the upgrading of Taiwan's economic conditions to the benefit of both local and multinational businesses. It is also in the interest of the Taiwan public at large, as it encourages the growth of a broad spectrum of high-quality of goods and services to improve the quality of life for all Taiwan residents.

The *Taiwan White Paper* can also be found online, where PDF files may be downloaded from the Advocacy section of the AmCham website at www.amcham.com.tw .

A One-Year Performance Review

SUCCESSES AND SHORTCOMINGS

- Last year's *Taiwan White Paper* urged the incoming Tsai Ing-wen administration to "focus with intensity on ways to reinvigorate the economy," including 'setting clear directions and adopting inspiring but realistic objectives."
- Thanks chiefly to the pick-up in the global economy, Taiwan's economic situation currently is better off than it was a year ago. Still, observers worry about Taiwan companies' long-term competitiveness and Taiwan's exclusion from major bilateral and multilateral trade agreements.
- For the multinational business community in Taiwan, the results of the past year have been a mixed bag – with one achievement worthy of hearty applause and other measures that are cause for disappointment. In addition, it is still too early to judge the likelihood of success of some promising initiatives.

MAJOR ADVANCE IN TRANSPARENCY

- A major breakthrough was the Executive Yuan order, effective October 1 last year, subjecting any new regulations proposed by government agencies to a 60-day public notice and comment period, up from the previous 14 days.
- Previously, those affected by proposed new rules had virtually no time to digest and analyze the contents and respond with meaningful comments. Further, the government agencies rarely provided any feedback to their suggetions or a rationale for their final decisions.
- As seen from the results of AmCham Taipei's annual Business Climate Survey, many of the regulatory problems companies faced in the past were the result of insufficient consultation with stakeholders before rules were made. The new protocol should lead to better quality regulations, as potential difficulties are identified and remedied well before rules go into force.
- The real value of the new system will only be known in the months ahead based on how it functions in practice. It is encouraging that the National Development Council will be monitoring the number of days that government agencies are allowing for notice and comment, and will provide training to government employees on how to deal with stakeholder recommendations effectively.

OPPORTUNITIES FOR INVESTMENT

- The administration's ambitious plan known as the "5+2 Major Innovative Industries" is a potentially positive development. The core "5" are most relevant to the foreign business community: 1) "Asia·Silicon Valley," focusing on the Internet of Things and cultivating startups, 2) biomedical, 3) green energy, 4) smart machinery, and 5) an indigenous defense industry. In each of these sectors, Taiwan already has a foundation of experience and expertise to build on.
- The government is counting on increased public and private investment in these areas to boost Taiwan's economy by expanding R&D to introduce new technologies, incorporating greater value-added into domestic production, creating employment opportunities, and diversifying trade to reduce dependence on any single market.
- Also encouraging are the recent shifts in government policy designed to attract more foreign professional and technical talent to Taiwan to contribute their know-how to the envisioned industrial transformation.
- Still, questions have been raised as to whether the government's approach to redirecting the economy is placing too much emphasis on the construction of physical facilities and other "hardware," rather than development of such "software" as a cultural environment that fosters innovative approaches to problem-solving.

A PROBLEMATIC LABOR LAW

- Since Taiwan will depend largely on innovation for its future economic prosperity, recent revisions in the Labor Standards Law (LSL) were a step backward, with overly rigid provisions regarding permissible working hours, overtime pay, and other working conditions.
- White-collar professionals cherish freedom and flexibility in their work environment. They wish to be treated with dignity and respect commensurate with their level of education and expertise, and evaluated based on the quality of their job performance, not on the number of hours shown on a timesheet.
- The paternalistic approach taken in the LSL will stymie the very creative impulses the government says it wishes to encourage. It will also deter the global talent that Taiwan wishes to attract.
- Hopefully the Ministry of Labor will issue interpretive rulings to inject as much flexibility as possible into the implementation rules. Longer-term, further amendment of the law will be needed.
- The solution must be based on recognition that working-condition issues cannot be treated on a "one size fits all" basis. Separate regulatory frameworks are needed for different types of workers, distinguishing between manual labor and knowledge workers, while still ensuring employees' wellbeing.

CONTINUED ENERGY UNCERTAINTY

- The government has committed to eliminating nuclear power by 2025 while drastically reducing Taiwan's greenhouse gas emissions. The only way to achieve those dual objectives is a massive increase in the use of renewable energy, both solar and wind power. Many experts remain unconvinced that these ambitious goals can be met.
- A stable energy supply is crucial to the economy. For AmCham Taipei members, the key question is not the particular type of energy source that is relied on, but whether there is absolute assurance that the energy supply will be sufficient, reliable, and cost-competitive. The issue is especially critical for the high-tech manufacturing operations that are a key pillar of the Taiwan economy.
- The business community needs the government to provide a clear roadmap for how the power supply will be managed in the coming decade. Largescale power users also request the opportunity to meet periodically with representatives of the Ministry of Economic Affairs and the Taiwan Power Co. for discussions about the energy outlook.
- Maintaining the cost-competitiveness of the energy supply will be a critical factor in ensuring the continued overall competitiveness of Taiwan-based industry.

BOLSTER TRADE TIES WITH THE U.S.

- The Trans-Pacific Partnership (TPP) was a vital opportunity for the U.S. to demonstrate economic leadership in the Asia Pacific. For Taiwan, it meant the possibility of second-round membership as a way to remedy Taiwan's exclusion from free trade agreements with major trading partners. Now Taiwan now needs to look for new channels to diversify its trade relations and avoid marginalization in the international economic arena.
- One possibility would be seeking to join a truncated TPP should it comes to pass, but the prospects appear better for a bilateral agreement with the United States.
- President Trump has made known his distaste for multilateral agreements, but he has left the door open to bilateral trade pacts as long as they do not put American interests at a disadvantage. Given the long and mutually fruitful economic relationship between Taiwan and the United States, and the support Taiwan continues to enjoy in the U.S. Congress, such a bilateral "fair trade agreement" would seem to be feasible.
- Clearly Taiwan would have to make some concessions on outstanding trade issues, with its current restrictions on the import of some American pork and beef products as the major example. But those concessions should be acceptable to a majority of the public as a recognition of international standards.
- AmCham Taipei urges both the Taiwan and U.S. governments to give serious consideration to entering into a "fair trade agreement" that would well serve the interests of both economies.

VISION AND DETERMINATION

- Overcoming obstacles to bring Taiwan to a new, innovation-based stage of economic development and prosperity will take both vision and resolution. Bold leadership will be required to carry out the reforms necessary for the economy to regain its vitality and fulfill its potential.
- The practical suggestions in this *Taiwan White Paper* for improving the investment climate are proposed by AmCham Taipei's committees based on their members' day-to-day business experience. Among them, 12 priority issues have been selected as being relatively resolvable in the short term while having a major impact in their particular sectors.
- The progress in resolving these issues over the coming months will be a clear indication of the strength of the Taiwan government's resolve in meeting its goals of economic transformation.

摘要

一年成果回顧

成效與缺失

- 去年的《2016台灣白皮書》敦促當時即將上任的蔡英文總統政府要「竭盡全力設法重振經濟」，包括訂定明確的方向，並訂出令人振奮但又切合實際的目標。
- 主要因為全球經濟景氣好轉，台灣經濟的情況比一年前有所改善。不過，許多觀察家依舊擔心，台灣被排除在重要的雙邊與多邊貿易協定之外，在長期是否還有能力競爭。
- 從在台跨國企業的角度來檢視台灣去年的政績，結論是，好壞參半。我們認為其中僅有一項有令人振奮的結果，但其他則是令人失望。當然多項新政看似有往正面發展的潛力，但時日尚早，無法評斷其成功的機率為何。

法規透明度大幅提升

- 其中一項重大突破是行政院在林全院長領導下發布的行政命令，從去年10月1日起，指示政府各部會在擬訂新的規定或修訂現行法規時，從原本的14天提升到現有的60天公眾評論期。
- 過去，受到新法規影響的各方幾乎沒有時間消化和分析新的內容，並提出有意義的評論。除此之外，政府不常會回應意見也不對此相關決定提供任何解釋。
- 從台北市美國商會的2017台灣景氣調查中，可以看出過去企業所面臨與法規有關的問題在於法規頒佈之前未與利害關係人進行適中的諮商。希望新的法規制定程序能提升法規的品質，在法規生效之前，就發掘並化解當中潛在的問題。
- 新的制度真正的價值，要看未來幾個月實施的情況才會見分曉。台北市美國商會感到鼓舞的是行政院國家發展委員會已著手追蹤政府各部門所提供的評論期天數，並對公務員提供所需的訓練，幫助他們有效處理利害關係人的議題。

投資機會

- 政府雄心勃勃提出的「五加二」產業發展計畫具有正向發展的潛力。「五加二」當中的五項核心產業對外資企業來說，具有高度關聯性：1. 亞洲・矽谷（主要在推動物聯網與扶植新創企業）；2. 生技醫療；3. 綠能科技；4. 智慧機械；5. 本土國防工業。台灣在這些領域上的發展，可據原有的經驗與技術為基礎。
- 政府希望增加與公共與民間在這些方面的投資，以助長台灣經濟。具體做法是擴大研發以引進新的科技、為國內的生產加值、創造就業機會，並藉由貿易多元化，以降低對任何單一市場的依賴。
- 另一項令人感到鼓舞的發展是政府在最近修改政策，以吸

引更多外國專業與技術人才為台灣期望的產業轉型貢獻所長。

- 但還是有人質疑，政府推動經濟轉型的做法是否太偏重打造實體的設施與其他「硬體」，而不是發展例如有助提升以創新方法解決問題文化的「軟體」。

勞動法規問題重重

- 政府已清楚表明，台灣未來的經濟繁榮要靠創意的思維與行動，但勞動基準法新修正通過的條文對於最高工時、加班費和其他工作條件訂定的嚴格規範卻是開倒車的做法。
- 白領專業人士重視工作環境的自由與彈性。他們希望獲得與他們的教育和專業知識相稱的尊嚴與尊重，也希望雇主在評估他們的績效時，看重的是他們工作的品質，而不是出席卡上所顯示的工作時數。
- 政府希望鼓勵創新和創意，而且這也是台灣未來經濟發展所需，但勞基法這種父權的做法，只會扼殺創新和創意的感動，也會嚇跑台灣極力希望爭取的國際人才。
- 我們希望在短期內，勞動部能在施行細則中盡可能提供彈性。長遠來看，則需要透過立法程序進一步修訂勞基法。
- 工作條件的相關問題不能指望同一套制度能一體適用，不同類型的員工需要不同的法規架構。我們呼籲行政與立法部門以這項體認為基礎，共同合作找出解決之道，在確保員工福祉的同時，還是要對勞力型與知識型加以區分。

能源政策的穩定性

- 政府已經明確表示到了2025年，台灣將完全停止核能發電，同時承諾大量減少台灣溫室氣體的排放量。要達到廢核與減碳的雙重目標，唯一的辦法是大幅增加再生能源，主要是太陽能與風力發電。但許多專家還是不相信這兩項遠大的目標能夠實現。
- 鑑於穩定電力對經濟極為重要。對本會整體會員企業來說，關鍵問題不在於依賴哪一種電力來源，而是在於能否百分之百確定有足夠、可靠、成本具有競爭力的電力。對已經成為台灣經濟的重要支柱的高科技製造業來說，更是如此。
- 企業界需要政府提供清楚的路線，說明政府未來十年的電力管理規劃。工業用電大戶並要求能夠定期與經濟部及台電代表會面，以討論電力的前景。
- 為保持台灣產業整體的競爭力，維持電力的成本競爭力將會是個關鍵因素。

加強對美貿易關係

- TPP曾是美國在亞太地區展現經濟領導地位的重要機會。對台灣來說，若能參與TPP第二回合談判，並成為簽署國，會是解決台灣未能與主要貿易夥伴簽署自由貿易協定的問題。現在台灣需要找尋新的渠道多元經營貿易關係，並且避免被排除在國際經濟體系之外。
- 一個可能性是，如果TPP在美國缺席的情況下繼續推動，台灣還是可以設法參與。不過台灣與美國簽署雙邊協定的可能性似乎比較高。
- 川普已經表明不喜歡多邊協定，但他不排斥雙邊貿易協定，只要美國利益能獲得確保。鑑於美台之間存在長期互利的經濟關係，而且台灣持續獲得美國國會的支持，美台簽署雙邊「公平貿易協定」似乎可行。
- 台灣顯然必須在現存的貿易問題上做出一些讓步，主要包括目前對於若干美國豬肉和牛肉產品的進口限制。但那些讓步其實是接受國際標準，台灣多數民眾應該可以接受。
- 本會促請台灣與美國政府認真考慮簽署符合兩國經濟利益的「公平貿易協定」。

遠見與決心

- 要克服障礙，把台灣帶往以創新為基礎的經濟發展新階段，並且創造繁榮，需要遠見與決心。台灣需要大膽的領導，以推動使經濟恢復活力並發揮潛力所需的改革。
- 《台灣白皮書》主要內容是改善台灣投資環境的具體建議。本會各委員會提出這些建言的根據，是他們日常營運的經驗。以下本會列出12項優先議題，化解的難度應該相對較低，但卻對相關產業具有重大影響。
- 未來幾個月在解決這些問題方面的進展將會是個清楚的指標，可以從中看出台灣政府究竟有多大決心，來達成經濟轉型的目標。

AmCham Taipei

A One-Year Performance Review

SUCCESSES AND SHORTCOMINGS

In last year's *Taiwan White Paper*, published just two weeks after the administration of President Tsai Ing-wen took office, the Overview section was entitled "New Government, New Opportunities." In that document, AmCham Taipei cited the challenging economic circumstances then confronting Taiwan, including "sagging export performance, stagnant income levels, and faint consumer and investment confidence." The Chamber urged the government to "focus with intensity on ways to reinvigorate the economy." While recognizing that "much of Taiwan's economic momentum depends on the strength of international trade flows and is mostly beyond its own control," the Overview stressed the importance of government action in setting clear directions and adopting inspiring but realistic objectives so as to raise consumer and investor confidence.

A year later, how well has the economy fared? In terms of most indicators, Taiwan is better off than it was a year ago. Thanks chiefly to the pick-up in the global economy, the long period of sluggish exports has ended, giving way to a seemingly healthy rebound in international trade. The stock market has reached peaks not seen in many years, and GDP growth forecasts for 2017 are in the comfortable range of 2-2.5%. Still, the malaise of recent years has not entirely lifted. Many observers continue to worry about Taiwan companies' long-term ability to compete in the face of such challenges as China's rapid technological development and Taiwan's exclusion from major bilateral and multilateral trade agreements.

From the vantage point of the international business community in Taiwan, the results of the past year have been a distinctly mixed bag – with at least one achievement that is worthy of hearty applause combined with other measures that have been cause for disappointment. In yet additional cases, potentially promising initiatives have been launched, but it is still too early to judge their likelihood for success.

MAJOR ADVANCE IN TRANSPARENCY

In a section called "Improving the Rules-Making Process," the 2016 *Taiwan White Paper* urged the Tsai administration to make reform of the Administrative Procedure Act (APA) a central component of its early policy agenda. The Chamber was therefore delighted when the Executive Yuan under Premier Lin Chuan issued instructions that, effective October 1 last year, any new regulations or revisions to existing regulations proposed by government ministries and agencies should be subject to a 60-day public notice and comment period, the same as in the United States and many other advanced countries. For many years in Taiwan, interested parties – from companies to individual members of the public – had only seven days (later lengthened to 14 days) to respond to pending regulatory changes.

Whether seven or 14 days, the previous period was woefully insufficient. Those affected by the proposed new rules had virtually no time to digest and analyze the contents and then respond with meaningful comments. The situation was especially unfavorable for foreign-invested companies, as the Chinese-language draft rules changes would need to be translated and then sent to headquarters or regional offices overseas for evaluation. Besides the unreasonably short notice period, the comment aspect of the procedure was usually a one-sided communication. Stakeholders would submit their observations pointing out potential unforeseen consequences and other pitfalls in the intended new regulations, but would rarely receive any feedback. In the majority of cases, the final regulation that was announced was identical to the original draft, without reflecting any of the concerns raised in stakeholder comments or providing any rationale for that decision.

The extension of the notice and comment period to 60 days – together with the government's establishment of a user-friendly website (join.gov.tw) for tracking proposed regulatory changes and submitting comments – has the potential of being a breakthrough of enormous

consequences, vastly improving the environment in Taiwan for doing business. The likely significance can be seen from the results of the annual Business Climate Survey that AmCham Taipei has conducted over the past seven years among the leaders of its member companies. Although the respondents generally describe Taiwan as a good place to do business, the main deficiencies they cite as holding Taiwan back from even greater economic success most often refer to regulatory issues. Recurring themes have been dissatisfaction over "insufficient notice before changes to regulations to laws are introduced," "differences between local and internationally accepted standards," "inadequate/outdated laws and regulations," "lack of transparency," etc. We believe that many of the past problems in the regulatory process could have been avoided given proper public consultation through the notice and comment period. Hopefully, the new protocol will lead to better quality regulations, as potential difficulties are identified and remedied well before rules go into force.

As positive as the new system appears to be, its real value will only be known in the months ahead based on how it functions in practice. Will government agencies faithfully abide by the 60-day stipulation or will they overuse loopholes such as the waiver in cases of emergency? Will civil servants review suggestions from stakeholders with an open mind and provide clear explanations for why their opinions were accepted or rejected? In this respect, AmCham Taipei is encouraged by the role being played by the Executive Yuan's National Development Council. The NDC is monitoring the number of days that government agencies are allowing for notice and comment, and will provide training to government employees on how to deal with stakeholder recommendations effectively.

OPPORTUNITIES FOR INVESTMENT

Falling in the category of a potentially positive development is the administration's ambitious plan known as the "5+2 Major Innovative Industries." For foreign-invested companies, it is mainly the core "5" that are relevant: 1) "Asia·Silicon Valley" (the dot is meant to signify Taiwan's aspiration to serve as a link between Asia and California's Silicon Valley), which focuses on promoting industrial activity related to the Internet of Things as well as creating a conducive business and legal environment for cultivating business startups, 2) biomedical, involving both biopharmaceuticals and medical devices, 3) green energy, in line with the plan to build up Taiwan's capacity in renewables, particularly solar and offshore wind power, 4) smart machinery, wedding Taiwan's strengths in IT and machine tools, and 5) an indigenous defense industry, reflecting the political constraints on Taiwan's ability to procure advanced weaponry from abroad.

The government is counting on increased public and private investment in these areas to boost Taiwan's economy by expanding R&D to introduce new technologies, incorporating greater value-added into domestic production, creating employment opportunities, and diversifying trade to reduce dependence on any single market. The industry sectors selected seem to be sound choices. In each of these sectors, Taiwan already has the advantage of a foundation of experience and expertise to build on, and it will enjoy the support of a well-established network of academic and research institutions. A number of our member companies in related industries have expressed strong interest in cooperating with the government in promoting these initiatives.

Also encouraging are the recent shifts in government policy designed to attract more foreign professional and technical talent to Taiwan to contribute their know-how to the envisioned industrial transformation. The rule about having two years of prior working experience to qualify to obtain a work permit has been made much more flexible, as have regulations on visa eligibility and even on acquiring local citizenship without relinquishing one's original nationality.

Still, questions have been raised as to whether the government's approach to redirecting the economy is placing too much emphasis on the construction of physical facilities and other "hardware," rather than development of such "software" as a cultural environment that fosters innovative approaches to problem-solving. AmCham Taipei's Business Climate Survey annually shows that employees in Taiwan consistently receive high ratings for being hard-working, trustworthy, and well-educated, but fall behind when it comes to taking initiative and demonstrating creativity – traits that will be especially in demand in the types of knowledge-based industries that Taiwan wishes to develop as the basis for its future prosperity.

A PROBLEMATIC LABOR LAW

In view of the government's expressed intention to tie Taiwan's future economic prosperity to its ability to promote innovative thinking and action, the recent

revisions in the Labor Standards Law (LSL) constituted a great leap backward. The rigid provisions it contains in terms of permissible working hours, overtime pay, and other working conditions might be suitable for a factory production line, but the traditional manufacturing sector accounts for a steadily decreasing proportion of Taiwan's GDP and its labor force. The area of growth today is in services – engineers, software programmers, financial service providers, marketers, etc., not to mention lawyers, accountants and other professionals – and the trend is for that portion of the work force to continue to increase.

White-collar professionals cherish freedom and flexibility in their work environment. They wish to be treated with dignity and respect commensurate with their level of education and expertise, and evaluated based on the quality of their job performance, not on the number of hours shown on a timesheet. For their part, the supervisors of these employees care only that the job has been completed and done well and on schedule. The situation is further complicated by the increasing need for white-collar employees in Taiwan to engage in conference calls and other communications with colleagues in different time zones all over the world, as well as to undertake extensive business travel.

The paternalistic approach taken in the LSL will have the effect of stymieing the very innovative and creative impulses which the government says it wishes to encourage – and which will be necessary to carry Taiwan forward in the next stage of its economic development. It will also deter the global talent that Taiwan wishes to attract from looking at this market as a desirable place to which to relocate.

Considering that the amended LSL has already gone into effect, causing substantial concern and confusion for both employees and employers, we hope that in the short-term the Ministry of Labor can inject as much flexibility as possible into the implementation rules. The position paper in this volume by the Human Resources Committee includes a number of suggested ways in which the Ministry of Labor could ameliorate certain deficiencies in the law by issuing interpretive rulings.

To fully resolve the problems, however, further revisions will be needed through the legislative process. We urge the executive and legislative branches to work together to devise a solution based on recognition that working-condition issues cannot be treated on a "one size fits all" basis. Separate regulatory frameworks are needed for different types of workers, distinguishing between manual labor and knowledge workers, while still ensuring employees' wellbeing.

CONTINUED ENERGY UNCERTAINTY

The government has made clear that Taiwan's nuclear power units will start to be decommissioned from next year, and that nuclear power will be entirely removed from Taiwan's energy mix by 2025. At the same time, the government has committed to reducing Taiwan's greenhouse gas emissions by 20% by 2030 and 50% by 2050 compared to 2005 levels. The only way of achieving those dual objectives will be a massive increase in the use of renewable energy, mainly solar power but also wind power largely from offshore installations. Many experts remain unconvinced that these ambitious goals can be met.

Given the crucial importance of a stable energy supply to the economy, AmCham Taipei recently established a dedicated Energy Committee consisting of both energy-producing and energy-consuming enterprises. For the Chamber's members as a whole, the key question is not the particular type of energy source that is relied on, but whether there is absolute assurance that the energy supply will be sufficient, reliable, and cost-competitive. For the high-tech manufacturing operations like semiconductors that have become a key pillar of the Taiwan economy, loss of power for even a fraction of a second could have huge negative consequences for the production process.

Above all else, the business community – whether domestic or foreign-invested – needs the government to provide a clear roadmap sharing its plans for managing the power supply in the coming decade. Largescale power users also request the opportunity to meet periodically with representatives of the Ministry of Economic Affairs and the Taiwan Power Co. for discussions about the energy outlook. As the new Energy Committee states in its position paper: "While we support the development of renewable energy sources like wind and solar, experience in other markets has shown that transitioning too quickly toward renewable energy places significant upward pressure on energy costs, which is a particular concern for large power users."

Maintaining the cost-competitiveness of the energy supply will be a critical factor in ensuring the continued overall competitiveness of Taiwan-based industry.

BOLSTER TRADE TIES WITH THE U.S.

During the past several years, AmCham Taipei was an avid supporter of the Trans-Pacific Partnership (TPP), which we regarded as a vital opportunity for the United States to demonstrate economic leadership in the Asia Pacific. Our hope was also that Taiwan would be able to become a signatory when TPP expanded membership in a second round, helping to remedy Taiwan's exclusion from free trade agreements (FTAs) with its major trading partners. Following Donald Trump's decision to withdraw from the TPP as one of his first acts as U.S. President, however, Taiwan now needs to look for new channels to diversify its trade relations and avoid marginalization in the international economic arena.

One possibility would be seeking to join a truncated TPP should it comes to pass. The 11 remaining TPP negotiating countries are considering going forward without the United States. Japan would presumably welcome eventual participation by Taiwan if TPP gets a second lease on life, but without American involvement it is less certain that political obstacles to Taiwan's membership could be overcome.

The prospects appear better for a bilateral agreement with the United States. President Trump has made known his distaste for multilateral agreements, but he has left the door open to bilateral trade pacts as long as they do not put American interests at a disadvantage. Given the long and mutually fruitful economic relationship between Taiwan and the United States, and the support Taiwan continues to enjoy in the U.S. Congress, such a bilateral "fair trade agreement" would seem to be feasible. Clearly Taiwan would have to make some concessions on outstanding trade issues, with its current restrictions on the import of some American pork and beef products as the major example. But those concessions would ease the way to a trade agreement with the United States, and should be tolerable to a majority of the public if based on international standards. Further, it now appears likely that any such trade-off could be arranged in the course of the negotiations, rather than insisted upon by Washington as a pre-condition for even starting discussions. That view was presented recently by influential U.S. Senator Charles Grassley, reversing his previous stance.

The phone conversation between President Tsai and then-President-elect Trump temporarily raised expectations for heightened U.S.-Taiwan relations, only to be dashed following the Trump-Xi summit in Florida. But neither the phone call nor the summit will necessarily have long-term implications. AmCham Taipei urges both the Taiwan and U.S. governments to give serious consideration to entering into a "fair trade agreement" that would well serve the interests of both economies.

VISION AND DETERMINATION

Overcoming obstacles to bring Taiwan to a new, innovation-based stage of economic development and prosperity will take both vision and resolution. Valuable lessons can be learned from the experience of the United States' Silicon Valley. The essence of Silicon Valley's success is disruption – constantly devising and accommodating new and better ways to do things. The needs of those displaced by new initiatives must be attended to, but should not be allowed to block progress. For Taiwan, bold leadership will be required to carry out the reforms necessary for the economy to regain its vitality and fulfill its potential.

The bulk of this document consists of practical suggestions for improving the investment climate, proposed by the members of AmCham Taipei's committees based on their day-to-day experience in doing business. While we hope that all of these recommendations will receive due consideration, we draw special attention on the following pages to 12 priority issues that should be relatively easy to resolve while having a major impact in their particular sectors. The progress in resolving these issues over the coming months will be a clear indication of the strength of the Taiwan government's resolve in meeting its goals of economic transformation.

AmCham Taipei

一年成果回顧

成效與缺失

《2016台灣白皮書》是在蔡英文總統的政府就職兩週之後發表，其中總論的標題是「新政府，新 機會」。在那份文件中，台北市美國商會列出台灣經濟環境當時面對的挑戰，包括「出口表現不振、所得停滯以及消費者與投資者都缺乏信心」，並敦促政府「竭盡全力設法重振經濟」。台北市美國商會體認「台灣的經濟動能受國際貿易流通影響甚大，其變化也很難掌握」，但也在總論中強調，政府要採取行動以訂定明確的方向，並訂出令人振奮但又切合實際的目標，以提振消費者與投資人的信心。

相隔一年，台灣經濟目前情況如何？從多數指標來看，台灣的情況比一年前有所改善。主要因為全球經濟景氣好轉，台灣長期出口不振的局面已經結束，對外貿易看來有明顯起色。台灣股市指數出現睽違多年的高點，2017年國內生產毛額（GDP）成長可期，預測的年成長率在2%到2.5%之間，不過，近年的問題並未完全化解；中國技術發展快速，而且台灣被排除在重要的雙邊與多邊貿易協定之外，許多觀察家依舊擔心，台灣企業面對這些挑戰，在長期是否還有能力競爭。

除此之外，從在台外商的角度來檢視台灣去年的政績，結論是，好壞參半。我們認為其中僅有一項有令人振奮的結果，但其他則是令人失望。當然多項新政看似有往正面發展的潛力，但時日尚早，無法評斷其成功的機率為何。

透明度大幅提升

《2016台灣白皮書》在「改善法規制訂程序」的部分敦請蔡政府，把行政程序法的改革列為早期施政的重要項目。台北市美國商會因此很高興見到行政院在林全院長領導下，從去年10月1日起，指示政府各部會在擬訂新的規定或修訂現行法規時，要有60天的公眾評論期，跟美國與許多其他先進國家的做法一致。在過去數年，利害關係人(包括公司與一般大眾)在法規更改之前只有7天(爾後延長為14天)的時間就新規定或修法來做回覆與評論。

不論是7天或14天，都非常不足；受到新法規影響的各方幾乎沒有時間消化和分析新的內容，並提出有意義的評論。這情況對外資企業尤其不利，因為以中文書寫的法規草案必須先翻譯為外文，再送到企業總部或地區辦公室評估。除了公告期短得不合理，所謂的評論往往只是單向的溝通。利害關係人會送交意見，指出新法規可能未被預見的後果與其他隱憂，但不常會獲得回應。政府最後公布的新法規內容，往往跟原本的版本一模一樣，完全沒有反映利害關係人表達的關切，政府也不對此相關決定提供任何解釋。

把公告評論期延長為60天，加上政府建立使用便利的網站（join.gov.tw），用來追蹤擬議中的法規修訂內容並提供評論，有可能成為影響深遠的突破，大大改善台灣的經商環境。台北市美國商會在過去7年，每年針對會員企業的主管進行台灣景氣調查，而從調查的結果，就可以看出上述變革可能的影響。外商企業主管一般認為台灣具有良好的經商環境，但他們也認為，台灣經濟可以有更好的發展，只是存在一些重要的缺憾，其中大多與法規有關。他們經常提到的問題包括「法規頒佈之前，沒有足夠的預告期」、「本地法規不同於國際標準做法」、「法規不合時宜或過時」與「欠缺透明度」等等。我們相信，只要透過公告評論期與各方進行適當的諮商，過去在法規訂定過程中出現的許多問題就可以避免。希望新的程序能提升法規的品質，在法規生效之前，就發掘並化解當中潛在的問題。

新的制度儘管相當正面，但它真正的價值，要看未來幾個月實施的情況才會清楚。政府部門是否嚴格遵守60天的規定？會不會濫用在緊急狀況下可以縮短評論期的條款？公務員是否以開放的態度審查利害關係人的建議，並且針對是否接受這些意見提出說明？在這方面，台北市美國商會對於行政院國家發展委員會所扮演的角色感到鼓舞。國發會在追蹤監督政府各部門所提供的評論期天數，並對公務員提供訓練，幫助他們有效處理利害關係人的建議。

投資機會

過去一年另一項具有潛在性的正向發展，是政府提出的「五加二」產業發展計畫。對外資企業來說，「五加二」當中的五項核心產業比較具有關聯性：1. 亞洲・矽谷（名稱當中的點，代表台灣希望成為亞洲與加州矽谷之間的連結），主要在

推動與物聯網有關的產業，同時為新創企業打造有利的商業與法規環境；2. 生技醫療，包括生技製藥與醫療器材；3. 綠能科技，配合台灣發展再生能源的計畫，特別是太陽能與離岸風力發電；4. 智慧機械，結合台灣在資訊科技與工具機製造方面的優勢；5. 本土國防工業，這反映了台灣因政治因素難以向外國採購先進武器的困境。

政府希望增加與民間在這些方面的投資，以助長台灣經濟，具體做法是擴大研發以引進新的科技、為國內的生產加值、製造就業機會，並且使貿易多元化，以降低對任何單一市場的依賴。政府選擇的產業似乎相當合適，因為台灣在這些領域原本就享有經驗與技術的優勢，而且有多所學術與研究機構提供支援。我們在相關產業的許多會員企業已經表達強烈興趣，願意配合政府推動「五加二」計畫。

另一項令人感到鼓舞的發展，是政府在最近修改政策，以吸引更多外國專業與技術人才，為台灣期望的產業轉型貢獻所長。台灣原本規定，要取得工作許可，必須具備兩年的工作經驗，修訂之後增加許多彈性，此外，申請簽證的規定大幅放寬，甚至要取得中華民國國籍，也不再要求必須放棄原本的國籍。

但還是有人質疑，政府推動經濟轉型的做法太偏重打造實體的設施與其他「硬體」，而不是發展「軟體」，例如有助提升以創新方法解決問題的文化。根據台北市美國商會每年進行的商業景氣調查，台灣的員工往往因努力工作、值得信賴和受過良好教育獲得高度肯定，在主動性與展現創意方面則有所不足。台灣希望發展知識經濟，做為未來繁榮的基礎，在這個過程中，特別需要主動積極與有創意的員工。

勞動法規問題重重

政府已清楚表明，台灣未來的經濟繁榮要靠創意的思維與行動，但勞動基準法最近的修訂卻是嚴重開倒車的做法。新修正通過的條文對於最高工時、加班費和其他工作條件訂定的嚴格規範，這個做法或許適合工廠的生產線，但傳統製造業在台灣國內生產毛額所占的比例以及員工人數正在逐年降低；台灣目前在成長發展的是服務業，包括工程師、程式設計師、金融服務與行銷等等，更不用提律師、會計師與其他專業人士，而且目前的趨勢是這些行業的從業人數將會持續成長。

白領專業人士重視工作環境的自由與彈性。他們希望獲得與他們的教育和專業知識相稱的尊嚴與尊重，也希望雇主在評估他們的績效時，看重的是他們工作的品質，而不是出席卡上所顯示的工作時數，而他們的上司也只期望工作成功的如期完成。除此之外，台灣白領工作階層越來越常需要跟全球不同時區的同事進行視訊與其他方式的溝通，並且經常需要出差，這又使得工時的問題更加複雜化。

政府希望鼓勵創新和創意，而且這也是台灣未來經濟發展所需，但勞基法這種父權的做法，只會扼殺創新和創意的感動，也會嚇跑台灣極力希望爭取的國際人才，讓他們不願到這裡工作和生活。

修訂後的勞基法已經生效，結果是讓雇主和勞工都感到關切和混淆，我們希望在短期內，勞動部能在施行細則中盡可能提供彈性。本會人力資源委員會在今年的白皮書當中提出的立場說明包含多項建議，讓勞動部可以藉著解釋性的裁定，緩和勞基法條文帶來的不良效應。

但要徹底解決問題，需要透過立法程序進一步修訂勞基法。我們希望行政與立法部門體認，工作條件的相關問題不能指望同一套制度能一體適用，並且呼籲行政與立法部門以這項體認為基礎，共同合作找出解決之道。不同類型的員工需要不同的法規架構，在確保員工福祉的同時，還是要對勞力型與知識型加以區分。

能源政策的穩定性

政府已經明確表示，台灣現有的核能發電機組將從明年開始除役，到了2025年，台灣將完全停止核能發電。同時，台灣承諾以2005年為基礎，到2030年把溫室氣體排放量減少20%，到2050年減少50%。要達到廢核與減碳的雙重目標，唯一的辦法是大幅增加再生能源，主要是太陽能發電，另包括以離岸設施為主的風力發電。但許多專家還是不相信這兩項遠大的目標能夠實現。

鑑於穩定電力對經濟極為重要，本會最近成立能源委員會，成員包括生產能源與使用能源的企業。對本會整體會員企業來說，關鍵問題不在於依賴哪一種電力來源，而是在於能否百分之百確定有足夠、可靠、成本具有競爭力的電力。半導體等高科技製造業已經成為台灣經濟的重要支柱，對這類產業來說，即使只是斷電0.1秒鐘，都會對生產過程造成嚴重的後果。

尤其重要的是，企業界 -- 不論是本國企業或外資 -- 需要政府提供清楚的路線，說明政府未來十年的電力管理規劃。工業用電大戶並要求能夠定期與經濟部及台電代表會面，以討論電力的前景。新成立的能源委員會在意見書中說：「我們雖然支持風力和太陽能等再生能源，但其他市場的經驗顯示，如果太快改採再生能源，將帶來調漲電費的龐大壓力，這對大量使用電力的客戶來說是特別值得關切的事。」

為保持台灣產業整體的競爭力，維持電力的成本競爭力將會是個關鍵因素。

加強對美貿易關係

在過去好幾年，本會積極支持跨太平洋夥伴協定（TPP）。我們認為TPP是美國在亞太地區展現經濟領導地位的重要機會，同時希望台灣能參與TPP第二回合談判，並成為簽署國，以因應台灣未能與主要貿易夥伴簽署自由貿易協定的問題。但川普出任美國總統不久，便決定退出TPP，因此台灣需要找尋新的渠道多元經營貿易關係，並且避免被排除在國際經濟體系之外。

一個可能性是，如果TPP在美國缺席的情況下繼續推動，台灣還是可以設法參與。共同推動TPP的另外11個國家仍在考慮繼續進行，若是這樣，日本可能會歡迎台灣最終能夠加入，但因為美國不在其中，台灣入會的政治障礙能否排除，變得比較難以掌握。

台灣與美國簽署雙邊協定的可能性似乎比較高。川普已經表明不喜歡多邊協定，但他不排斥雙邊貿易協定，只要美國利益能獲得確保。鑑於美台之間存在長期互利的經濟關係，而且台灣持續獲得美國國會的支持，美台簽署雙邊「公平貿易協定」似乎可行。台灣顯然必須在現存的貿易問題上做出一些讓步，主要包括目前對於若干美國豬肉和牛肉產品的進口限制。但那些讓步其實是接受國際標準，而且如果讓步的結果是美台簽署貿易協定，台灣多數民眾應該可以接受。此外，目前看來這樣的條件交換可以在簽署雙邊協定的談判中做安排，華府已不堅持台灣必須先開放市場，做為談判的先決條件。美國極具影響力的聯邦參議員葛拉斯利最近表達以上看法，這表示他先前的立場已經改變。

蔡總統與川普在當選總統之後通電話，一時之間拉高了外界對於美台關係升溫的期望，但在佛羅里達州的川習會之後，這個期望宣告破滅。但那通電話和川習會都未必具有長期的意義，本會促請台灣與美國政府認真考慮簽署符合兩國經濟利益的「公平貿易協定」。

遠見與決心

要克服障礙，把台灣帶往以創新為基礎的經濟發展新階段，並且創造繁榮，需要遠見與決心。美國矽谷的發展經驗，可以做為寶貴的借鏡。矽谷成功的關鍵在於破壞，也就是不斷設計和調整，以找出做事情更新、更好的辦法。有些人會因新的計畫而蒙受損失，他們的需要必須獲得照顧，但不可以讓他們阻撓進步。台灣需要大膽的領導，以推動使經濟恢復活力並發揮潛力所需的改革。

這份文件主要內容是改善台灣投資環境的具體建議。本會各委員會提出這些建言的根據，是他們日常營運的經驗。我們希望所有的建議都能獲得重視，但要特別指出，接下來幾頁所列出的12項優先議題，化解的難度應該相對較低，但卻對相關產業具有重大影響。未來幾個月在解決這些問題方面的進展將會是個清楚的指標，可以從中看出台灣政府究竟有多大決心，來達成經濟轉型的目標。

AmCham Taipei

ONLINE ACCESS

The full 2016 and 2017 *Taiwan White Papers* are available in the Advocacy section on the AmCham Taipei website (www.amcham.com.tw).

Individual Committee position papers are also posted in each Committee's section of the Chamber's website.

12 PRIORITY ISSUES FOR SPECIAL ATTENTION
12項重點優先議題

Although all of the 83 items raised in the 2017 Taiwan *White Paper* are important and deserve consideration, AmCham Taipei this year has selected 12 issues from various industry sectors that we hope will receive special attention from the Taiwan government. These issues were chosen on the basis of two criteria. They were deemed by our committees to have the potential for major impact on the investment climate, while also presenting the opportunity for resolution within a relatively short period of time. The Chamber respectfully requests that the government provide us with a status report each quarter, with the goal of adopting as many of the 12 as possible before publication of the next *White Paper* a year from now.

ASSET MANAGEMENT
- Implement a member-choice labor pension scheme as soon as possible (see p. 24WP).

BANKING
- Lift regulatory restrictions and provide an incentive framework for the onshore wealth management business (see p. 27WP).

CAPITAL MARKETS
- Relax securities investment rules to allow wider participation, fostering market growth (see p. 30WP).

COSMETICS
- Recognize other countries' Cosmetics GMP as equivalent to Taiwan's under the Cosmetics Act (see p. 34WP).

HUMAN RESOURCES
- Revise the regulations on overtime work (see p. 39WP).

INSURANCE
- Increase the convenience for consumers to obtain protection insurance (see p. 46WP).

INTELLECTUAL PROPERTY & LICENSING
- Enact needed revisions to the Copyright Act (see p. 49WP).

MEDICAL DEVICES
- Reduce the pre-market registration time (see p. 50WP).

PHARMACEUTICAL
- Shorten the regulatory and reimbursement approval timeline for new drugs and indications to provide timely patient access to innovative new drugs (see p. 54WP).

RETAIL
- Increase the number of eligible testing laboratories and ensure that test results can be provided in both Chinese and English (see p. 62WP).

TECHNOLOGY
- Adjust workforce regulations with an eye to maintaining the competitiveness of Taiwan's technology industries (see p. 68WP).

TRAVEL & TOURISM
- Apply international best practices to refund policies for hotel bookings (see p. 75WP).

雖然2017年台灣白皮書內所列舉的83個議題都很重要且值得主管機關的重視，台北市美國商會今年仍特別從各個領域中，篩選出12個希望受到政府更多關注的議題。這些議題是透過兩個準則所選出來的：商會的委員會認為對投資環境具有高度影響力，但同時也能在相對短期內就可解決的議題。在明年下一期白皮書發表前，商會在這邊誠摯地呼籲政府能竭力解決這12項議題，並且每季提供以下議題的進度報告。

資產管理委員會
- 儘速落實勞工退休金之自選方案政策 (請見白皮書第79頁)

銀行委員會
- 透過法規鬆綁及誘因措施以促進境內財富管理銀行業務 (請見白皮書第81頁)

資本市場委員會
- 檢視並放寬證券市場規定，擴大市場參與以持續支持市場成長 (請見白皮書第82頁)

化粧品委員會
- 承認其它國家化妝品優良製造規範(GMP)等同於在化粧品衛生安全管理法下的台灣化妝品法規 (請見白皮書第85頁)

人力資源委員會
- 擴大工作時間之彈性 (請見白皮書第87頁)

保險委員會
- 持續強化消費者取得保障型保險之便利性與容易性(請見白皮書第90頁)

智慧財產權與授權委員會
- 著作權法進行必要的修正(請見白皮書第93頁)

醫療器材委員會
- 縮短上市前審查時程(請見白皮書第93頁)

製藥委員會
- 加速新藥及新適應症之審查及健保給付，確保病患及早使用創新藥品(請見白皮書第96頁)

零售委員會
- 增加符合條件的檢測實驗室，以及確保測試結果能夠以中文和英文提供(請見白皮書第100頁)

科技委員會
- 以維持台灣的科技業競爭力出發來調整勞動法規(請見白皮書第104頁)

旅遊與觀光委員會
- 將國際慣例應用在本地飯店取消訂房時之政策(請見白皮書第108頁)

MESSAGES TO WASHINGTON

Suggestion 1. Deepen the economic relationship with Taiwan by negotiating a bilateral trade agreement.

President Trump's dissatisfaction with multilateral trade agreements was starkly evident throughout the 2016 election campaign, and he acted to pull the United States out of the embryonic Trans-Pacific Partnership (TPP) on his first day in office. But the President has also taken pains to emphasize that he is not against international trade, or even opposed to trade agreements as long as they are bilateral in nature and contain no provisions that would jeopardize American interests.

For that reason, the Trump administration may wish to demonstrate at an early stage that the notion of promoting trade *under the right conditions* is more than just talk. Entering into negotiations for bilateral agreements with appropriate trading partners would reassure many pro-trade political figures among both Republicans and Democrats that America's longstanding support for an active trade policy has not been abandoned. And it would provide the administration with additional tools to further its goal of decreasing America's trade deficits with other countries, whether by eliminating unfair trade barriers to U.S. products or finding ways to increase American exports.

As it looks around the globe for prospective negotiating counterparts for a bilateral trade pact, the U.S. government hopefully will conclude that Taiwan is one of the most suitable candidates. In strictly quantitative terms, Taiwan stands out as America's 10th largest trading partner, with two-way trade in goods last year of US$65.4 billion, exceeding the volume of many countries with far larger populations. In addition, through the Trade and Investment Framework Agreement (TIFA) process, Taiwan and the United States over the past two decades have developed a positive working relationship on trade matters. The U.S. government helped promote Taiwan's entry into the World Trade Organization, which took place in 2002, and in the years leading up to the WTO accession most of the sensitive market-access issues for U.S. goods and services were resolved.

Taiwan has also made great strides in the area of intellectual property rights protection, and it is considered to have strong regulations in place with regard to environmental protection and labor rights. Internationally, Taiwan has been an active and constructive member of APEC (the Asia Pacific Economonic Cooperation forum), and under the Global Cooperation & Training Framework (GCTF) has engaged in close cooperation with U.S. government agencies in areas such as healthcare, environmental protection, and women's empowerment.

In addition, the government has been actively encouraging Taiwanese companies to invest in the United States. At the SelectUSA Investment Summit in Washington each year, the Taiwan delegation is among the largest.

Currently the Department of Commerce and USTR are reviewing the trade policies of countries with which the United States regularly runs a substantial trade deficit. Taiwan is included, but it is way down on the list, with a 2016 trade imbalance of US$13.3 billion (in contrast, China's surplus with the United States came to US$347 billion and Mexico's to US$63.2 billion). And for the most part, the reasons for the trade imbalance are structural – such as the huge disparity in size between the two markets – rather than the result of protectionist measures on Taiwan's part.

At the same time, negotiation of a bilateral trade agreement with Taiwan would be an excellent forum for discussing any thorny trade issues that are still outstanding, including such delicate topics as the remaining restrictions on the import into Taiwan of certain beef and pork products. To the U.S. side, the issue is a clearcut matter of respecting scientific evidence and international standards. Although many in Taiwan share that view, others have raised questions of food safety, causing the full opening of the beef and pork market to become a hot-button political subject. Despite the hyper-sensitivity, however, the Taiwan government can be expected to muster the political will to resolve the issue through reference to standard international pratices if it is dealt with as part of a package leading to a bilateral agreement with the United States.

Taiwan would be an enthusiastic negotiating partner for such a deal. It has had to watch from the sidelines as its major trade rival, South Korea, has signed FTAs with the United States, EU, China, and ASEAN, eroding Taiwan's competitiveness. Political constraints have limited Taiwan's FTAs to those with Singapore, New Zealand, and a few Central American countries.

China would likely object to the United States seeking a bilateral agreement with Taiwan, but as an economy under APEC, Taiwan has a recognized right to negotiate with all other APEC members. As a trade agreement would be strictly economic and non-political, Beijing has no sound reason to oppose it. The lack of formal diplomatic relations between Washington and Taipei should also pose no barrier to concluding such an agreement, as U.S. law as stated in the Taiwan Relations Act expressly provides for such bilateral pacts.

Speaking at AmCham Taipei's annual banquet in March, President Tsai Ing-wen stressed that Taiwan supports not only "free trade" but also "fair trade." She said that "faced with the new U.S. administration's 'America First' policy, Taiwan is prepared to make adjustments." The Chamber urges the U.S. government to take her up on that offer.

Suggestion 2: Encourage more high-level visits in both directions.

A bill for legislation to be known as the Taiwan Travel Act was submitted in the U.S. Congress last fall by three Senators: Marco Rubio of Florida, James Inhofe of Oklahoma, and Cory Gardner of Colorado. The text notes Taiwan's momentous democratic achievements in the past several decades, and bemoans the self-imposed restrictions that the United States maintains on high-level visits with Taiwan in both directions. Since the year 2000, only one U.S. Cabinet-rank official, Environmental Protection Agency administrator Gina McCarthy, has paid a visit to Taiwan, even though such high-level visits are vitally important in broadening and deepening U.S. ties with other countries. During the 1990s, Cabinet secretaries visited Taiwan quite regularly, on the average of once every two years.

The bill states that (1) the United States Government should encourage visits between the United States and Taiwan at all levels; and (2) the United States Government must not place any restrictions on the travel of officials at any level of the United States Government to Taiwan to meet their Taiwanese counterparts or on the travel of high-level officials of Taiwan to enter the United States to meet with officials of the United States.

AmCham Taipei hopes that this legislation will receive broad bipartisan support in Congress. It has been the Chamber's experience that periodic visits by high-level officials can make a huge difference in building a strong bilateral relationship and in supporting the interests of American companies operating in Taiwan.

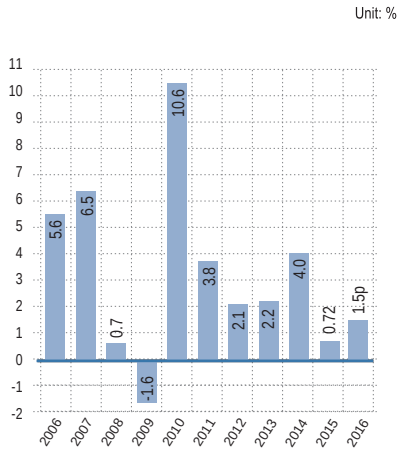
Suggestion 3: Implement tax reforms to relieve burdens on Americans overseas and help promote U.S. exports.

AmCham Taipei endorses the following proposals advocated by the Asia-Pacific Council of American Chambers of Commerce (APCAC):

- Revise the income-tax system to base tax liability on residence rather than citizenship. The United States has the dubious distinction of being one of only three countries in the world – the others are North Korea and Eritrea – that requires its citizens living abroad to pay income tax, even though they are not utilizing national services. The result is to put Americans and U.S. companies at a competitive disadvantage and deter the employment of U.S. citizens overseas, with a negative impact on the export of American products and services. We note that Vice President Mike Pence, speaking at the U.S. Chamber of Commerce's Invest in America Summit last month, said President Trump supports a change in the U.S. practice of taxing expatriates, saying "he'll end the outdated policy of worldwide taxation and enact a territorial system in its place."
- Amend the Foreign Account Tax Compliance Act (FATCA) to eliminate burdensome and unnecessary reporting requirements that cause law-abiding Americans residing overseas to bear enormous financial and legal burdens. Retail banking and securities accounts held in the country where the taxpayer is resident should be exempt from reporting requirements under FATCA and the Foreign Bank Account Report (FBAR). This "Same Country Safe Harbor" provision would treat the financial accounts of expatriate Americans in their country of residence the same way as it treats the U.S. accounts of Americans residing in the United States. It would preserve the intent of FATCA to fight tax evasion but alleviate the onerous and costly burden borne by American citizens living and doing business abroad.

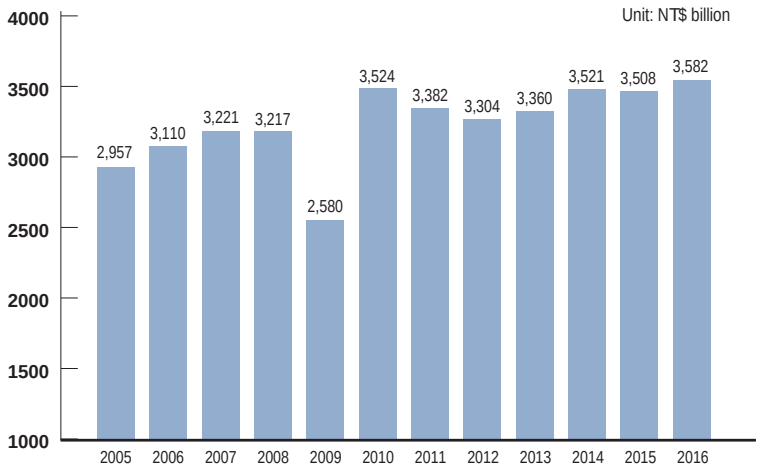
U.S. exports cannot be effectively promoted without American businesspeople on the scene in international markets. Their presence abroad should not be discouraged by taxation or other policies.

GRAPH 1: ECONOMIC GROWTH RATE



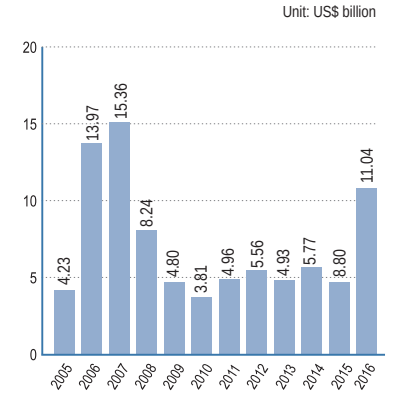
Source: Directorate General of Budget, Accounting & Statistics (DGBAS)
Note: pp preliminary

GRAPH 2: GROSS DOMESTIC INVESTMENT (including private, public and government investment)



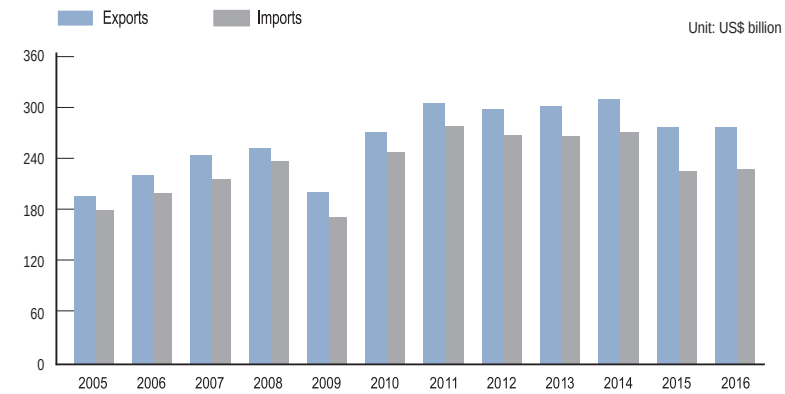
Source: National Statistics, R.O.C.

GRAPH 3: FOREIGN DIRECT INVESTMENT



Source: Ministry of Economic Affairs (MOEA)

GRAPH 4: TOTAL FOREIGN TRADE



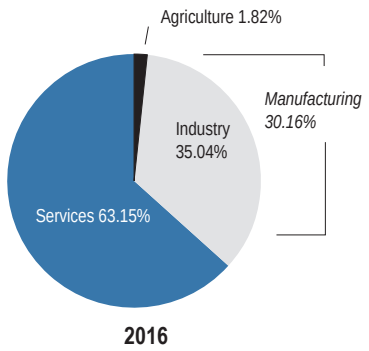
Source: Ministry of Economic Affairs (MOEA)

GRAPH 5: KEY ECONOMIC INDICATORS

	2009	2010	2011	2012	2013	2014	2015	2016
Gross Domestic Product	US$392 bn	US$446 bn	US$486 bn	US$496 bn	US $511 bn	US$530 bn	US$525 bn	US$530 bn
Per Capita GDP	US$16,988	US$19,278	US$20,939	US$21,308	US$ 21,902	US$22,635	US$22,469	US$22,530
Gross National Savings	27.62%	31.68%	29.97%	28.83%	29.12%	31.16%	30.45%	28.03%
Unemployment	5.85%	5.21%	4.39%	4.24%	4.18%	3.96%	3.78%	3.92%
Inflation (CPI)	-0.87%	0.96%	1.42%	1.93%	0.79%	1.20%	-0.31%	1.40%
Foreign Exchange Reserves	US$348 bn	US$382 bn	US$386 bn	US$403 bn	US$417 bn	US$419 bn	US$426 bn	US$434 bn

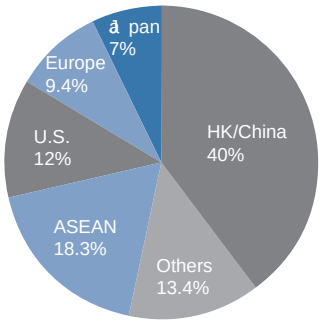
Sources: DGBAS, Central Bank

GRAPH 6: COMPONENTS OF GDP (estimate)



Source: Directorate General of Budget, Accounting & Statistics (DGBAS)

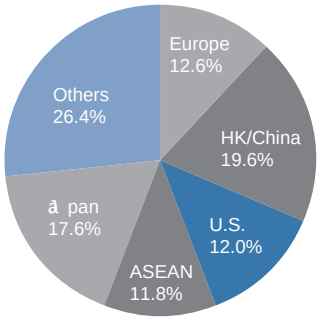
GRAPH 7: 2016 EXPORTS BY REGION



Total Exports 100%

Source: Ministry of Economic Affairs

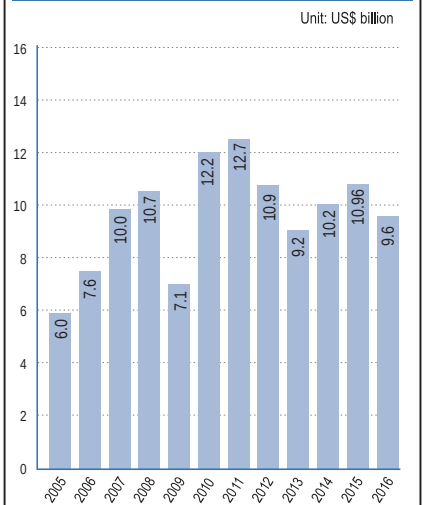
GRAPH 8: 2016 IMPORTS BY REGION



Total Imports 100%

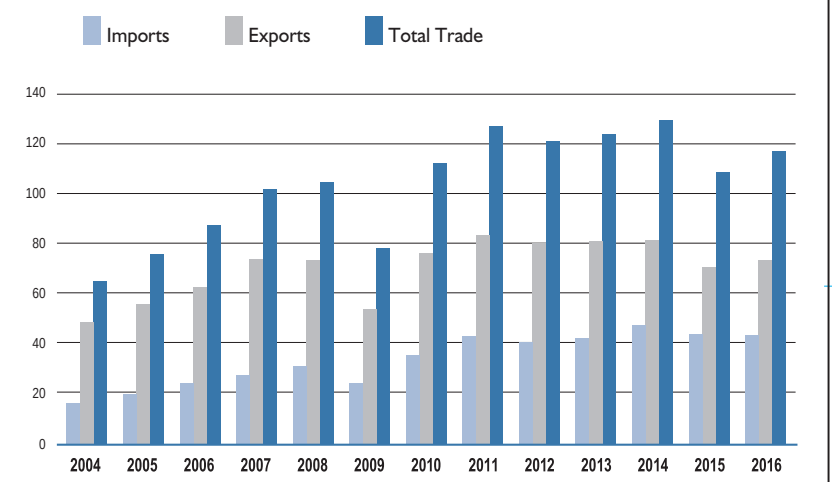
Source: Ministry of Economic Affairs

GRAPH 9: APPROVED INVESTMENT IN CHINA



Source: Ministry of Economic Affairs (MOEA)

GRAPH 10: CROSS-STRAIT TRADE



Source: Ministry of Economic Affairs (MOEA)

Unit: US$ billion

AMCHAM TAIPEI 2017 *TAIWAN WHITE PAPER*

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REVIEW OF 2016 *WHITE PAPER* ISSUES

The chart below is a status review of all priority issues in the *2016 Taiwan White Paper*. The progress of each issue is rated according to the following standards:

1—Solved: Conclusive action has been taken on the issue, with a fair and transparent record of implementation. It is no longer considered a problem.

2—In Good Progress: The issue is currently receiving satisfactory follow-up action from the government.

3—Under Observation: The government has given the issue some initial attention, but it is too early to assess the prospects for resolution.

4—Stalled: No substantial discernible progress has occurred.

5—Dropped: Although not resolved, the issue is no longer a committee priority.

Out of 80 issues raised in the 2016 *White Paper*, 0 are rated Solved, 8 In Progress, 41 Under Observation, 26 Stalled and 5 Dropped.

Committee	2016 White Paper Issues	Rating	2017 WP	Notes on 2017 Status
Agro-Chemical	1: Shorten the registration process.	3	*	changed to "Quickly complete drafting the "Guidelines for Pest Investigation in Field Trials" for major crop diseases, pests, and weeds in Taiwan"
	2: Require toxicological test data for technical and formulated grade pesticides that have been registered for 15 years or more.	3		
	3: Extend the data protection period on pesticides from 8 years to 10.	3	*	changed to "Extend the protection period for registered data and for products for minor crops."
Asset Management	1: Continue to relax the regulatory restrictions on onshore funds and DIM accounts, and align policy with global practice.	3		
	2: Promote the application of "AUM-based" methodology for calculating distributors' commissions on fund sales.	3	*	
	3. Implement a member-choice labor pension scheme as soon as possible.	3	*	
Banking	1: Further broaden opportunities for offshore product development and distribution.	3	*	
	2: Allow banks to provide financing to customers by using their financial assets under trust from the lending bank as collateral	3		
	3: Further relax client qualification for foreign bank branches.	5		
	4: Allow banking staff to take charge of "bond agency" and "derivative information and advisory" functions concurrently.	2		
Capital Markets	1: Support the growth of the Offshore Securities Unit (OSU) market.	4	*	changed to "Align OBU set-up criteria for OSUs to create a fair and consistent standard across industries"
	2: Relax securities investment rules, allowing wider participation to foster market growth.	3	*	changed to "Relax securities investment rules to allow wider participation, fostering market growth"
	3: Support the enhancement of cross-Strait capital market activities.	4		
	4: Enhance market efficiencies and competitiveness.	3	*	
Chemical Manufacturers	1: Improve the protection of Confidential Business Information (CBI) with regard to chemical substance disclosure.	3	*	
	2: Reduce the requirement for toxicity tests on animals.	3		
	3: Provide a platform to facilitate Phase II joint registration for existing chemical registration.	3	*	
	4: Withdraw the recent guidelines on border control.	3		
	5: Provide sufficient lead time for Existing Chemical Substance late pre-registration.	3		
Human Resources	1: Make the regulation of work schedules more flexible.	4	*	changed to "Revise the regulations on overtime work"
	2: Improve consistency in applying labor inspection standards.	3		
	3: Revise the proposed draft of the Protection of Dispatch Workers Act.	4		
	4: Loosen regulations on fixed-term employment contracts.	4		
	5: Create more incentives to attract foreign talent and keep domestic talent.	3	*	changed to "Revamp policies relating to non-conventional types of labor"
	6: Specify the enforcement details for post-employment non-competition covenants in the LSL Enforcement Rules.	5		
Infrastructure	1: Ensure that Taiwan's power supply continues to be sufficient, reliable, and competitively priced.	4	*	Moved to Energy Committee "Continue to ensure power-supply adequacy, reliability, and cost competitiveness"
	2: Set a realistic energy plan that considers both energy demand and carbon-emission reduction goals.	4		
	3: Adopt new Demand Side Management technologies and provide greater support for offshore wind farm development.	2		
	4: Attract more foreign companies to participate in the government procurement market.	3		
	5: Remove unreasonable provisions in the Government Procurement Law.	3		
Insurance	1: Review the regulatory policy governing insurance broking.	3		
	2: Continue to increase the convenience for consumers to obtain protection insurance.	3	*	
	3: Alleviate the undue financial pressure stemming from unintended consequences of increasing the business tax rate for insurance companies.	4		
	4: Encourage the adoption of protection and retirement insurance products in view of the aging of the society.	4		
	5: Simplify the non-life product filing process to meet commercial market needs.	3		
Intellectual Property & Licensing	1: Remove all unreasonable or discriminatory regulations imposed on Copyright Collective Management Organizations (CCMOs).	4	*	changed to "Remove unreasonable restrictions to CCMOs' rate settings"
	2: Make needed revisions to the Copyright Act.	3	*	changed to "Enact needed revisions to the Copyright Act"
	3: Adopt effective measures to deal with online copyright infringement.	4	*	
	4: Strengthen the IP Court's willingness to grant more evidence-preservation orders and award reasonable damages.	4	*	changed to "Enact needed revisions to the Copyright Act"

Medical Devices	1: Maximize participation and transparency in the regulatory process.	3		
	2: Establish a rational system for medical device reimbursement.	3		
	3: Streamline the medical device review system and make it more transparent and consistent.	4	*	changed to "Reduce the pre-market registration time"
	4: Allow information related to medical devices to be shared with the public.	5		
Others - Chiropractic	Permit foreign-licensed doctors of chiropractic to practice their profession with appropriate status.	4	*	changed to "Develop a practical plan to recognize the profession of chiropractic"
Others - Tobacco	1: Address public concerns before seeking drastic changes in tobacco tax policies.	2	*	changed to "Maintain transparency in adopting tobacco control policies"
	2: Consult widely within government and with stakeholders before adopting tobacco regulatory measures to avoid international trade disputes and other unforeseen consequences.	3		
Others - Veterinary Health	1: Remove the requirement that the initial dossier submission include field efficacy studies.	4		
	2: Allow local lab and field studies to proceed concurrently with the dossier review.	4		
	3: Allow existing study protocols to be designed and provided by the submitting firm to be used for running the local lab and field trials.	4		
Pharmaceutical	1: Continue to strengthen IPR protection for innovative products, so as to ensure that the investment environment rewards innovation.	2	*	changed to "Complete the legislative process for Patent Linkage and Data Exclusivity to strengthen IPR protection for innovative products"
	2: Expedite the regulatory and reimbursement reviews of new drugs/indications to ensure early patient access to innovative new drugs.	4	*	changed to "Shorten the regulatory and reimbursement approval timeline for new drugs and indications to provide timely patient access to innovative new drugs"
	3: Provide more funding to the healthcare system to enable it to meet future challenges.	3	*	changed to "Place the healthcare system on a sound and sustainable footing"
Public Health	1: Put increased emphasis on preventive medicine, including increasing the budget for vaccination and stabilizing the National Vaccine Fund.	3	*	changed to "Stabilize financial resources for the national vaccine fund"
	2: Increase evidence-based investment in cancer prevention and treatment to reduce the economic burden and loss of life.	4	*	
	3: Actively implement a national program for the prevention and control of viral hepatitis.	2	*	changed to "Build an effective and sustainable national program for the prevention and control of viral hepatitis"
	4: Improve the clinical alert system for better patient protection.	5		
	5: Expand the antimicrobial stewardship program to cut down the misuse of antibiotics.	5		
Real Estate	1: Equalize property taxation for domestic and foreign property owners.	4	*	
	2: Enact reforms in the treatment of real estate value appraisers.	3		
	3: Simplify the urban renewal process to ensure housing safety and quality.	2	*	
Retail	1: Ensure that the food safety rules-making process is transparent, with the regulations based on scientific and statistical evidence.	3	*	
	2: Encourage a new era of self-regulation by the private sector.	4		
	3: Drop plans to penalize food-safety violators according to their amount of capital.	2		
	4: Recast the Cosmetics Act to avoid creating technical barriers to trade as well as drive regulatory transparency.	3	*	Moved to Cosmetics Committee
	5: Harmonize the regulation of GM food material labeling with that of major trading partners.	3		
Sustainable Development	1: Scale up and accelerate development of renewable energy in general and offshore wind power in particular.	2		
	2: Encourage greater use of recycled building materials.	3	*	changed to "Require greater use of recycled building materials in public construction"
Tax	1: Revisit the current tax policy on foreign business' drop-shipment transactions in Taiwan.	4		
	2: Review Taiwan's tax policies with the aim of creating a favorable and competitive environment for attracting high-caliber professionals.	3		
Technology	1. Enhance Taiwan's Start-up eco-system as the Key to Maintaining its Technology Leadership	4	*	changed to "Enhance Taiwan's start-up ecosystem and promote innovative technologies"
	2. Assess the impact of workforce regulations on the tech sector's competitiveness and adjust regulations based on industry best practices.	4	*	changed to "Adjust workforce regulations with an eye to maintaining the competitiveness of Taiwan's technology industries"
	3. Expedite the legislative process for the "IT Foundation Law"	3	*	changed to "Expedite legislative process of the "Government Chief Information Officer Organization Act."
	4. Use public-sector data governance to facilitate transition to the Cloud.	4	*	
	5. Allow dynamic spectrum access, such as unlicensed and shared access to unused TV broadcast channels, to increase spectrum utilization and efficiency.	3		
Telecommunications & Media	1: Seek further public comment on the draft Convergent Law.	3		
Transportation & Logistics	1: Establish an effective communication platform to improve transparency and efficiency in customs clearance	3	*	changed to "Build an effective communication platform to ensure transparency and efficiency in customs clearance regulations"
	2: Encourage voluntary disclosure of export-control regime violations and make it easier for companies to check on potential importers.	4		
Travel & Tourism	1. Step up efforts to attract, train, and retain international-standard hospitality professionals.	3		
	2: Devote more effort and resources to expanding Taiwan's MICE segment.	3		
	3: Vigorously promote the development of international-branded themed entertainment to attract more international tourists.	3		

Note: * indicates the issue has been raised again in 2017 *White Paper*
By Erica Lai
Last Updated: May 19, 2017

《2016台灣白皮書》議題處理進度

以下為《2016台灣白皮書》優先議題的處理進度，各議題評估標準如下：

1—**已解決**：政府已針對議題達成結論性的決定並付諸實行，或已有公開、透明的執行績效。換言之，所提的議題已不再是問題。

2—**有具體進展**：該議題目前正由政府進行後續追蹤，其進度令人滿意。

3—**觀察中**：政府相關單位已注意到該議題，但後續發展仍待觀察。

4—**擱置中**：該議題無實質可見的進度。

5—**已刪除**：該議題雖尚未解決，但已不再是委員會優先議題。

《2016台灣白皮書》所提出80項議題，其中0項已解決，8項處理中，41項觀察中，26項擱置中，5項已刪除。

委員會	2016白皮書議題	進度	2017白皮書	2017年白皮書備註
農化	1：縮短登記時程	3	*	今年改為：對已獲核准進口殘留容許量之產品制定國內使用方法，使國內已登記之相同有效成分的相關產品亦可以使用於國內之相同作物
	2：登記15年以上農藥原體及成品均需提供毒理試驗資料	3		
	3：資料保護期專利由8年延長至10年	3	*	今年改為：登記資料保護期由8年延長至10年、以延長登記資料保護期的方式鼓勵廠商將產品登記在少量作物
資產管理	1：持續開放境內基金與投資型保單全委帳戶相關法規限制，以期與國際接軌	3		
	2：推動以「基金資產規模」(AUM-based)作為銷售機構之銷售獎金計算基礎	3	*	
	3：儘速落實勞工退休金之自選方案政策	3	*	
銀行	1：持續放寬境外商品發展與銷售的機會	3	*	
	2：准許銀行業對於客戶將其在本行之信託資產設質為擔保，提供授信服務	3		
	3：建議放寬外國銀行分行客戶條件限制	5		
	4：開放「代理買賣外國債券」及「提供境外衍生性金融商品資訊及諮詢服務」兩項業務得共用人員及場所	2		
資本市場	1：支持國際證券業務分公司(OSU)之成長	4	*	今年改為：國際證券業務分公司(OSU)與國際金融業務分行(OBU)宜採行一致的設立標準以建立跨業公平
	2：檢視並放寬證券市場規定，擴大市場參與以持續支持市場成長	3	*	今年改為：檢視並放寬證券市場規定，擴大市場參與以持續支持市場成長
	3：支持海峽兩岸資本市場之交流	4		
	4：促進市場效率及競爭力	3	*	
化學製造商	1：改善化學物質資訊揭露的商業機密保護	3	*	
	2：降低動物毒理測試要求	3		
	3：提供一個既有化學物質第二階段聯合登錄的平台	3	*	
	4：取消化學物質邊境管制機制	3		
	5：提供既有化學物質第一階段晚預登錄更充足的登錄時間	3		
人力資源	1：賦予工作時間之相關規定更多彈性	4	*	今年改為：擴大工作時間之彈性
	2：加強執行勞動檢查時稽查標準之一致性	3		
	3：修正派遣勞工保護法草案	4		
	4：放寬定期勞動契約之規定	4		
	5：創造吸引外籍人才及留住本國籍人才之誘因	3	*	今年改為：改革新型態勞動之管理
	6：於勞基法施行細則明訂離職後競業禁止條款之細部執行規範	5		
基礎建設	1：台灣能源 — 著眼於充足、穩定可靠的電力供應，並持續降低成本	4	*	移至能源委員會 "持續確保電力供應充足穩定，電價具競爭力"
	2：考量穩定的供電需求及減碳承諾目標下，制定確實可行的能源政策	4		
	3：導入創新需求端管理科技及對離岸風力發電提供更多政府資源	2		
	4：吸引外國公司參與政府採購案件	3		
	5：建議刪除政府採購法內不合理的規定	3		
保險	1：檢視現行監理保險經紀人之法規政策。	3		
	2：持續強化消費者取得保障型保險之便利性與容易性	3	*	
	3：減輕保險公司因營業稅率提高而產生非預期後果的過度財務壓力	4		
	4：因應台灣邁入高齡化社會，建議政府推廣大眾購買著重於保障及退休的保險商品以因應。	4		
	5：簡化產險保險商品送審程序，以滿足商業市場的需求。	3		
智慧財產權與授權	1：去除所有加諸在著作權集體管理團之不合理或歧視性規定	4	*	今年改為：去除對著作權集體管理團體在制定費率上不合理的限制
	2：對著作權法進行必要的修正	3	*	今年改為：著作權法進行必要的修正
	3：採取有效之措施解決網路著作權侵害之行為	4	*	
	4：加強智慧財產法院核發更多證據保全命令及裁定合理損害賠償金額之意願	4	*	今年改為：著作權法進行必要的修正

醫療器材	1：擴大　與及資訊公開	3		
	2：建立合理的醫療器材健保給付制度	3		
	3：精簡上市前審查流程並提升其透明與一致性	4	*	今年改為：縮短上市前審查時程
	4：同意讓醫療器材相關的訊息和民眾分享	5		
其他-脊骨神經醫學	允許持有外國執照的脊骨神經醫師在合適的位階下執行脊醫專業	4	*	今年改為：制定一個可落實的計劃來認可脊醫專業
其他-菸品	1：政府在提出大幅度的菸品稅捐政策變更前，應先徵詢公眾意見。	2	*	今年改為：菸害防制政策制定應具透明度
	2：採行任何菸品管制措施前，應於政府內部及向利害關係人廣泛徵詢意見以避免國際貿易爭端及其他未預見之後果。	3		
其他- 獸醫衛生	1：免付田間效力試驗的原廠書審資料	4		
	2：允許委託試驗與書面審核同步進行	4		
	3：同意使用原申請廠設計提供的試驗計畫書進行台灣當地的委託試驗	4		
製藥	1：持續建立及強化創新產品的智慧財產權保護，確保獎勵創新的投資環境	2	*	今年改為：完成專利連結與資料專屬權的立法程序，以強化對創新產品的智慧財產權保護，確保獎勵創新的投資環境
	2：加速新藥及新適應症之審查及健保給付，確保病患及早使用創新藥品	4	*	今年改為：加速新藥及新適應症之審查及健保給付，確保病患及早使用創新藥品
	3：注入更多資源於醫療照護及健保給付系統，以因應未來挑戰並永續經營	3	*	今年改為：維持一個可長可久的醫療制度
公共衛生	1：重視預防醫療，提升國家疫苗預算，擴充穩定財源	3	*	今年改為：建立國家疫苗基金穩定財源
	2：在實證醫學基礎上提高對癌症防治之投資以降低經濟損失與死亡人數	4	*	
	3：積極建立國家級肝炎防治計畫	2	*	今年改為：積極建立有效且永續的國家級肝炎防治計畫
	4：改善臨床警示系統，維護病患生命安全	5		
	5：擴大抗生素的整合管理以減少抗生素的誤用	5		
不動產	1：建議房地稅合一新制中針對國內外不動產持有人的稅制統一	4	*	
	2：推動不動產估價業改革，確保市場公正透明	3		
	3：都市更新程序簡化及加速推動，形塑城市新風貌	2	*	
零售	1：食品安全法規的制定過程應當透明，並應有科學及統計上的證據為基礎	3	*	
	2：政府應鼓勵建立民間企業自我規範的新時代	4		
	3：重新檢視以資本額大小作為裁罰食品業者的標準	2		
	4：重新修訂化粧品法以避免形成技術性貿易障礙並推動法規制定透明化	3	*	移至化粧品委員會
	5：基因改造（ＧＭ）食品原料標示法規與主要貿易夥伴調和	3		
永續發展	1：擴大並加速再生能源發展，尤其是離岸風力發電	2		
	2：鼓勵再生建材之推廣	3	*	今年改為：鼓勵公共建設使用再生建材
稅務	1：重新檢視現行針對外國營利事業委託我國境內廠商從事製造、加工、測試和組裝並交付與國內外客戶等活動之租稅制度	4		
	2：檢討台灣租稅政策，建立吸引高階專業人才的有利競爭環境	3		
科技	1：強化臺灣的新創事業生態系統，以維持臺灣在科技方面的領先地位。	4	*	今年改為：強化臺灣的新創事業生態系統，並推展創新科技
	2：檢視勞動法規對科技業競爭力的影響並從產業別適用性研議與調整	4	*	今年改為：以維持台灣的科技業競爭力出發來調整勞動法規
	3：加速”資訊基本法草案”立法審查程序	3	*	今年改為：加速立法院資訊長相關草案審核，於中央設立專職資訊長
	4：建立政府資料監管制度有效運用雲端資源	4	*	
	5：透過動態頻譜存取技術，增進無線通訊的使用量與使用效能	3		
電信及媒體	1：匯流法草案應進一步諮詢公眾意見	3		
交通運輸	1：建立通關單位單一溝通平臺，促進通關透明化，增進通關效率	3	*	今年改為：建立有效的單一溝通平台以促進海關通關法規透明與效率
	2：鼓勵自願揭露違反出口管制規則並簡化出口商查詢貿易局內部關於出口管制名單的方式	4		
旅遊與觀光	1：投入更多心力吸引、培訓與聘僱優質國際觀光旅遊業專業人才	3		
	2: 投入更多努力與資源擴展台灣MICE旅遊產業	3		
	3: 積極提供優惠措施，引進國際品牌的主題娛樂設施開發商，以吸引國際觀光客	3		

備註：*號代表該2016年議題於《2017台灣白皮書》中再度提出
研究彙整：賴欣怡
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AGRO-CHEMICAL

The Committee would like to express its appreciation to the Bureau of Animal and Plant Health Inspection and Quarantine (BAPHIQ) and the Taiwan Agricultural Chemicals and Toxic Substances Research Institute (TACTRI), both under the Executive Yuan's Council of Agriculture, and other government departments for continuing to actively investigate the market in illegal pesticides to ensure that the rights and interests of legal vendors and the health of Taiwan's residents are protected. The Committee also commends BAPHIQ and TACTRI for simplifying the crop-extension process for products with the same active ingredients but with a different formulation or content. The measure will help significantly reduce the resources required by vendors for crop extension applications, as well as provide greater convenience to farmers.

In addition, the Committee appreciates the robust measures implemented by BAPHIQ for managing highly toxic pesticides to prevent misuse, and pledges to provide the initiative with its full cooperation and support. Moreover, we would like to thank TACTRI for establishing the "Health Venue" at the 2016 Sea of Flowers Festival to promote the safe use of pesticides and to correct public misconceptions about them.

The new pesticide registration system has now been implemented for seven years. With the active assistance of BAPHIQ and TACTRI, all vendors are on course and will gradually finish the registration of new products. To fully perfect the new system, however, some additional measures are needed. Below, the Committee provides its recommendations for the government's reference on how to accomplish that goal.

Other issues raised this year concern establishing domestic measures for products with import tolerance approval, extending the protection period for registered data and for products aimed at minor crops, amending the Agro-pesticide Labeling Act, and revising the law prohibiting GM ingredients in school meals.

The Committee sincerely hopes that the competent authorities will accept our suggestions so as to promote the introduction of safer and greener new products to maximize the interests of consumers and the Taiwan agricultural sector, and to strengthen environmental protection and food safety to ensure the health of all those living in Taiwan.

Suggestion 1: Quickly complete drafting the "Guidelines for Pest Investigation in Field Trials" for major crop diseases, pests, and weeds in Taiwan.

The competent authorities have finished drafting "Guidelines for Pest Investigation in Field Trials" for some crops, but the Committee urges them to complete the guidelines for the remaining major crops as early as possible to lower the workload for both applicants and the authorities and to accelerate the review of trial protocols. The Committee requests that the competent authorities set up a definite schedule for completion of the Guidelines.

Suggestion 2: Establish domestic measures for products with import tolerance approval so that products with the same registered effective ingredients can be used in the same local crops.

Although an efficacy report is now required for import tolerance applications, necessary related measures have not yet been established. Because the documents required for the import tolerance application (including the efficacy report) are the same as the documents required for the expanded domestic registration application, we suggest that the authorities handle approval of the domestic registration and the import tolerance application at the same time. Otherwise, domestic and imported products having the same registered active ingredients cannot legally be used in the same local crops, and the confusion may inadvertently cause some farmers to break the law. The Committee looks to the competent authorities to solve this problem by amending the relevant regulations.

Suggestion 3: Extend the protection period for registered data and for products for minor crops.

3.1 Protection period for registered data. We appreciate that BAPHIQ included our suggestion for extending the protection period for registered data from eight years to 10 in the draft amendment of the "Agro-pesticide Management Act," which was submitted for approval to the Legislative Yuan on July 22, 2016. In order to spur investment in the registration of more new products with low risk and high efficacy for the benefit of Taiwanese agriculture, the Committee urges the Council of Agriculture to encourage the Legislative Yuan to complete the legislative process as soon as possible for the sake of early implementation of the protection-period extension.

3.2 Registration period for products for minor crops. Currently, registered data is protected for 10 years in the United States but another three years is provided for products for minor crops. We suggest that Taiwan encourage vendors to register products for minor crops by following the U.S. model in extending the protection period.

Suggestion 4: Amend the law to require that labels include a pesticide's mode of action number.

The Committee is concerned about the increasingly serious problem of pesticide resistance and believes that supplementary legal measures are needed, in addition to strengthened training of farmers, in order to effectively mitigate pesticide resistance. Our suggestion is to amend the Agro-pesticide Labeling Act to require that pesticides' mode of action number be listed on labels. Making it easier for farmers to recognize the mode of action will help mitigate the problem of pesticide resistance.

Suggestion 5: Allow GM ingredients to be used in school meals.

The Committee, the competent authorities, and the public all care deeply about the safety of school food. However, Article 23 of the School Health Act (SHA) as amended and implemented in 2015 – prohibiting schools from using raw or fresh foods that contain genetically modified ingredients or primary products made with them – was adopted without solid scientific evidence and eliminates GMO foods accredited by the Ministry of Health and Welfare (MOHW) from the approval list. For those reasons, and because the law is inconsistent with Taiwan's obligations as a member of the World Trade Organization (WTO), the Committee urges reconsideration of this measure.

*5.1 **Follow WTO notification procedures before implementing legislation concerning international trade.*** In accordance with Article 7 of the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures ("the SPS Agreement"), Taiwan as a WTO member is obliged to give notification of any changes in SPS regulations. Article 23 of SHA banning GM ingredients and primary processed products in school meals for food safety considerations directly impacts Taiwan's import trade. Consequently the government has an obligation to notify the WTO's SPS Committee of this change.

*5.2 **Revise SHA Article 23 to remove the ban on GM ingredients and primary processed products in school meals.*** Articles 2.2 and 5.1 of the SPS Agreement require sufficient scientific evidence and the conducting of risk assessments for all SPS measures that may affect international trade. Taiwan's ban on GM ingredients and primary processed products in school meals should not have been implemented without going through that process. Further, the health risk assessment regarding all GM ingredients to be used for food processing was conducted and approved by the MOHW. Many items allowed under that assessment are banned by Article 23 of SHA. The law should therefore be amended to remove the ban on GM ingredients and primary processed products in school meals, and adequate scientific consultations and risk assessment mechanisms should be established within the legislative process to safeguard Taiwan's reputation for adhering to a science-based approach in setting regulations.

*5.3 **Avoid legislation that imposes quantitative restrictions on imported products, discriminating between imported and domestic products.*** In banning GM ingredients and primary processed products in school meals, Article 23 of SHA discriminates against imported agricultural products as the supply of GM ingredients in Taiwan relies completely on import trade. As a result, this measure may constitute an import restriction that contravenes Articles XI:1 and III:4 of the General Agreement on Tariffs and Trade (GATT), to which Taiwan is a party.

ASSET MANAGEMENT

The Committee notes with gratitude that the Financial Supervisory Commission (FSC) set certain important goals last year aimed at building a better investment environment and achieving financial product innovation. The Committee also recognizes the FSC's efforts in promoting fintech and a mutual fund investment platform, as well as local talent development. These reforms and the new policy agenda are in line with the Committee's expectations and will ultimately benefit investors in Taiwan. We look forward to seeing more regulatory relaxation, especially the lifting of investment restrictions on onshore and offshore funds in the near future, so as to increase the Taiwan asset management industry's competitive advantages, offer more business opportunities to industry participants, and provide consumers with wider investment choices.

In addition, the Committee would like to express its appreciation to the FSC for introducing a new type of onshore fund – the multi-asset fund – and allowing an onshore fund of funds to invest in certain derivatives for investment enhancement purposes. These steps represent a positive response to the industry's advocacy last year in support of product innovation. The FSC's decision to permit discretionary investment management accounts to engage in currency hedging arrangements through investment-linked insurance products and to purchase the foreign-currency share class of NTD-denominated onshore funds also enables the asset management industry to strengthen its business relationship with insurers. Furthermore, the FSC's dedication in helping resolve the onshore fund "overdraft" issue and proxy voting delegation issue earned it a great deal of respect from industry players. All these changes demonstrate the FCS's vision and ambition to upgrade Taiwan's asset management business and bring it in line with global practice.

The Committee looks forward to cooperating with the FSC to further grow the onshore-fund business and continuously attract more local talent to work in the

industry. While revisions to the Securities Investment Trust and Consulting Act will have a significant impact on the industry, we hope that the draft amendments will contribute to building a better regulatory framework for Taiwan's asset management industry by increasing the competitiveness and operational flexibility of onshore products, assuring a level playing field between onshore and offshore funds, and relaxing investment restrictions on onshore products.

The Committee also urges the FSC to closely work with the Ministry of Labor on implementation of the Self-Choice Labor Pension Scheme, as it is critical to every worker's retirement arrangement and should partially solve the current difficulty the government is facing with the Labor Pension Fund. In sum, the Committee strongly encourages the FSC to continue to adopt changes enabling the Taiwan asset management industry to meet the constantly evolving needs of investors.

Suggestion 1: Implement a member-choice labor pension scheme as soon as possible.

Under the current labor retirement plan, all employees are subject to an identical portfolio and return model. There is no opportunity for customization based on the individual's actual needs and risk profiles so that employees may choose either to invest aggressively in hopes of gaining higher returns for their retirement income or conservatively to minimize risks. The current pension scheme fails to consider various factors that might cause individuals to select different types of investment plans – factors such as the employee's amount of contribution, retirement age, level of risk tolerance, and preferred investment management vehicle. As a result, employees lack control over their investment risks and returns, which is inconsistent with the purpose of a "defined contribution" plan.

The FSC appears to support the idea of transforming the current retirement scheme into a "member-choice defined contribution plan" similar to those implemented in such advanced economies as the United States (401K), Australia (Superannuation), Hong Kong (MPF), and Singapore (CPF). But decision-making authority on this issue rests with the Ministry of Labor (MOL). We urge the MOL's Bureau of Labor Funds to adopt a policy that would enable employees to choose a retirement plan based on their individual needs and risk appetite – either to stay in the current scheme where the pension fund is managed by the government with a minimum guaranteed earning or to select appropriate investment objects through a member choice platform according to their risk appetite. Considering the continuing low interest-rate environment, the rapid aging of Taiwan's population, and the need for employees to be able to choose from among diverse retirement plans, the Committee strongly encourages the MOL to expedite the process for implementing a member-choice labor pension scheme.

Suggestion 2: Promote the "AUM-based" methodology for calculating distributors' commissions on fund sales.

The current design of distributors' commission on fund sales creates a potential conflict of interest by giving a financial incentive to the distributor to influence clients to conduct frequent trading so that the distributor can earn higher commissions. This commission-driven design not only causes Taiwan investors to bear additional costs due to the extensive trading, but also has a negative impact on Taiwan's asset management industry. The adverse effects include large redemptions after IPOs for new funds, with an impact on long-term investors' Net Asset Value (NAV); volatility in the funds' Assets Under Management (AUM) due to the higher turnover caused by extensive trading, leading to increased difficulties in investment management; and a culture in which Taiwanese investors treat mutual funds more like stocks, looking for short-term gains while paying high front-end fees to distributors each time they trade in. For asset managers, the commission model causes financial losses as a result of large commissions to distributors, who often only hold the funds for short periods.

In various jurisdictions, including the United Kingdom, Australia, Canada, and many Asian countries, the authorities' main focus in recent years had been to seek an optimum policy governing the transparency, calculation, and payment of commissions on fund sales, as well as the protection of investors' rights and interests. The United Kingdom and Australia have prohibited financial advisors from receiving commissions, and the Netherlands imposed a similar restriction in 2013. The European Union also proposed restrictions on sales commissions in its Markets in Financial Instruments Directive II (MiFID II).

The Committee appreciates the efforts of the Securities & Futures Bureau (SFB) in trying to address this issue, including the SFB's proposed two-step policy for commission calculation reform: first set a cap on the percentage of the net additional subscription applied to the commission calculation and then move gradually toward an "AUM-based" methodology as the ultimate aim. AUM-based methodology means the fees that a fund house pays to a distributor are based on the AUM that stays with the distributor, not based on the transaction amount that a distributor can make during a specific time period. Currently, the fees are based on the transaction amount, which wrongly incentivizes the distributor to churn funds frequently.

However, the Committee believes that the proposed first step, the commission cap, does not adequately address the issue and may in fact cause hardships, particularly to managers of smaller asset funds. More importantly, the cap may not be able to sufficiently address the key issue that Taiwanese investors face, which is the churning behavior of the distributors. Our recommendation is to move as

quickly as possible to the AUM-based fee approach, as other jurisdictions have. We recognize that this may put some pressure on the banking industry in the short run, but the benefit will be immediately felt by Taiwanese investors. Only when the "AUM-based" methodology is adopted will the high turnover rate of Taiwan-domiciled funds and the high volume of redemptions after the lock-up period be reduced. This change will also reduce the undue solicitation of clients to conduct extensive trading and help investors begin to take a more long-term approach to their investments.

Suggestion 3: Remove the cap on offshore funds' investment in securities in the China market.

The securities market in China is gradually increasing access for foreign investors by introducing such mechanisms as Shanghai-Hong Kong Stock Connect and Shenzhen-Hong Kong Stock Connect. Professional investors in Taiwan can now directly participate in the Chinese securities market via sub-brokerage services. However, mutual funds remain the key investment tool for most retail investors interested in the Chinese securities market.

As the importance of the Chinese market continues to grow, the weighting of the Chinese equity market among major market indices will likely increase in the near future. In that event, offshore funds benchmarking related market indices may hit the cap imposed by current regulation. To provide retail investors with more comprehensive investment choices and avoid any adverse impact on the operations of existing offshore funds, we recommend removal of the cap on offshore funds' investment in securities in the Chinese market.

BANKING

The banking market in Taiwan has been volatile in the past year due to the risk of unexpected "black swan" incidents, the plunge in oil prices, and post-Brexit uncertainties. These factors exemplify the influence of global economic developments on Taiwan financial institutions. The retreat of some international banks from Taiwan has also contributed to making the banking market in Taiwan quite challenging, but government efforts to liberalize Taiwan's financial sector have helped to reduce the impact of uncertain global conditions. We look forward to continuous liberalization measures by the government to attract more foreign institutions to participate in the market and bring more business opportunities to Taiwan from neighboring financial hubs.

The members of the Committee commend the government for engaging in deregulation in a timely and concrete manner to improve the business environment for Taiwan's banking industry. The Committee highly appreciates the business models created by the Financial Supervisory Commission (FSC), including the "Bond Agency Platform" and the "Financial Derivative Information and Advisory Service," which have created numerous opportunities for the banking industry. As responsible members of the financial community in Taiwan, we aim to contribute to the sustainable development of the banking industry and to help make Taiwan one of Asia's financial hubs.

The Committee wishes to thank the Taiwan financial authorities for paying extra attention to last year's *White Paper* and taking satisfactory follow-up actions. In this year's paper, we have focused our attention on four main issues, all of which we believe can be resolved in the coming year. In view of the FSC's desire to expand Taiwan's financial market and increase job opportunities, the first step in that effort should be to embrace the operational and regulatory standards that have been adopted internationally. In this way, Taiwan's financial industry would not only become more competitive versus neighboring financial markets such as Hong Kong and Singapore, but talent and business opportunities could also be retained in Taiwan.

Suggestion 1: Further broaden opportunities for offshore product development and distribution.

In recent years the relevant government agencies in Taiwan have taken positive steps with regard to broadening financial product offerings, in line with the theme of promoting the Taiwan market internationally. However, industry perceives that more could be done to help foster market growth by permitting an even greater variety of financial instruments so as to satisfy differentiated risk-return demands.

The Committee presents the following recommendations for liberalizing the scope of product offerings:

1.1 Lower the rating requirement for issuers selling OSP to retail investors.

As raised in this *White Paper* for the past several years, regulatory restrictions since 2011 on issuer credit-rating requirements have significantly decreased the number of issuers who can issue offshore structured products to retail investors in Taiwan – a situation that has practically brought the OSP market in Taiwan to a standstill. Although the FSC lowered the OSP issuer rating to S&P A+ (or Fitch A+ and Moody's A1) in 2014, the change did not significantly improve the market situation. Taiwan investors still need to pursue investment opportunities from offshore markets in neighboring countries such as Hong Kong where the entry barrier for issuance is lower than in Taiwan. A crucial factor in making Taiwan a more attractive market for these investors will be the variety of products that can be offered through more active participation by the market players. To attract more market participants, the first step is to lower the issuer rating at least to A- as in Hong Kong

It is also important to recognize that the OSP issuers in

Taiwan are the leading global banks, which are subject to stringent capital requirements and supervision in their home markets. Internationally it is no longer standard practice to use the issuer rating as the sole reference in determining the financial status of the issuer. If it were to lower the issuer-rating requirement, the regulator at the same time could utilize other financial criteria that would more truly reflect the financial status of the issuers. The Committee believes that adopting this approach would assure that investors' interests continue to be protected effectively.

1.2 Allow applicants to apply for a six-month extension if the product is not offered before the original approval expiry date.

According to the Article 18 of the "Regulations Governing Review and Management of Offshore Structured Products," the applicant shall start offering the product within six months after receiving the approval letter; otherwise, the applicant needs to submit a product review request and get product approval again before offering the product, unless otherwise specified by other laws. The current product review process takes around three months from submission of the request until receipt of the approval letter, and market conditions sometimes change considerably, making it difficult for the applicant to find a suitable timing to offer the product within the allotted six months. Resubmitting the product request with the same payoffs is not efficient for the applicant, the review committee, or the distributor. Therefore, we suggest that the regulators amend the regulations to allow the application to be automatically extended for another six months if the product is not offered before the original approval expiry date, or alternatively for the applicant to send a notification letter to the regulator regarding the six-month extension.

1.3 Expand the product scope available under the "bond-agency" platform.

Despite the generally positive response from regulators to the industry's longstanding appeal for a relaxation of restrictions on financial products, the continuing restrictions on bond-agency product scope prevent Taiwanese institutional and ultra-high net worth investors ("Eligible Investors") from obtaining a full scope of services from onshore financial institutions. As a result, Eligible Investors need to engage offshore financial institutions for certain types of transactions, creating unnecessary obstacles for Eligible Investors' portfolio management and stifling further growth in the bond-agency business.

Although existing regulations have laid a foundation for onshore bond agency platforms to provide "plain vanilla" cash bond products, certain other products that are of interest to Eligible Investors and allowed to be purchased by the respective competent authorities are excluded from the scope of bond agencies' business. These include People's Republic of China (PRC)-linked bonds and overseas bonds issued by Taiwanese issuers. If the product scope is not further expanded, Eligible Investors will increasingly turn to offshore financial institutions in other markets (such as Hong Kong and Singapore) to purchase the relevant products, which would be contrary to the objectives of the FSC's "Financial Import Substitution Policy."

Furthermore, "PRC-linked bonds" as defined in the existing regulations include bonds listed on the Hong Kong and Macao exchanges if the issuing enterprises are directly or indirectly owned by the government or corporates in the PRC. These securities are excluded from the scope of legitimate investments. The criteria as defined in the regulations increase the compliance and supervisory costs involved, given the difficulty of verifying the identity of the major shareholders for each issuer. The Committee suggests abolishing the current regulatory restrictions on tradeable markets and the country of origination of issuers for the bond-agency business, thus expanding the scope of products that Eligible Investors are permitted to purchase.

1.4 Relax the net worth requirement for conducting repo/reverse repo under foreign bond proprietary licenses.

Foreign banks concurrently engaging in the foreign bond proprietary trading business have encountered an obstacle in applying the total repo/reverse repo ("RP/RS") outstanding position as stipulated in Articles 8 and 9 of the "Rules Governing the Proprietary Trading of Foreign Bonds by Securities Firms" (the "Rules") of the Taipei Exchange (TPEx). The Rules provide that:

- The respective outstanding balances of RP and RS against foreign bonds and TWD government bonds shall not exceed six times the securities firm's net worth;
- The respective outstanding balances of RP and RS against bonds other than TWD government bonds shall not exceed four times the securities firm's net worth; and
- The respective outstanding balances of RP and RS against foreign bonds shall not exceed the securities firm's net worth.

The definition of "net worth" as provided in the Rules seemingly refers to the security book's net worth for banks concurrently engaging in the foreign bond proprietary trading business. However, the setup of a foreign bank's branch in Taiwan only requires working capital of either TWD 200 million or TWD 250 million depending on the criteria. As a result, the net worth of foreign banks' branches in Taiwan is very small, as it normally includes only the working capital plus

unrepatriated retained earnings. In addition, the security book's net worth is allocated from the foreign bank branch's net worth and thus is even much smaller than that of the foreign bank branch. This obstacle hinders foreign banks in Taiwan from conducting RP and RS against foreign bonds. Consequently, foreign banks – as the main foreign currency liquidity providers in Taiwan – cannot provide the required foreign currency funding to local investors when needed. These investors (including the Central Bank) then have no choice but to obtain the liquidity from offshore banks.

The Committee therefore suggests that the FSC relax the definition of net worth under the Rules by benchmarking the net worth of a foreign bank's home office (or foreign bank subsidiaries). This change would help establish a thriving and robust bond market in Taiwan and contribute to a healthy liquidity mechanism.

1.5 Further relax regulations governing the "derivatives information and advisory" business.

A) **Broaden the definition of an entity's size to include the entire group, to better capture the corporate client's business model and allow banks to provide suitable product services.**

In its "Amendments of Banks Providing Information and Advisory Service on Offshore Financial Derivatives" issued on June 21, 2016, the FSC agreed to expand the eligibility of High Net Worth Investors (HNWI) to include the parent company and its 100%-owned overseas subsidiaries. However, under the current "Regulations Governing Internal Operating Systems and Procedures for Banks Conducting Financial Derivatives," the HNWI eligibility does not include the 100%-owned overseas subsidiaries. The banks must use the applicant's stand-alone financial statement (consolidated financial statements are not acceptable) to validate the applicant as an HNWI, but these stand-alone financial statements may not meet the HNWI requirements or may even be unavailable.

In the interest of consistency and to avoid confusion, we suggest allowing the banks to use the information on the applicant in the parent company's consolidated financial statement to verify the applicant's financial condition. Due to strategic considerations, many large local companies use their offshore subsidiaries as invoicing or manufacturing centers. Although the associated foreign-exchange risk is borne by the subsidiary, the risk is generally managed by the parent-level finance center on behalf of the subsidiaries. Broadening the definition of the entity's size to include the entire group would better capture the corporate client's business model and allow banks to provide to provide suitable product services.

B) **Permit SPIs and their 100%-owned offshore subsidiaries to engage in the "derivatives information and advisory" business for investment purposes.**

The Committee much appreciates the FSC's action in June 2016 in expanding banks' service scope to enable them to provide "derivatives information and advisory business" to Senior Professional Investors ("SPI") and their 100%-owned offshore subsidiaries that have hedging eligibility. However, the opening of the derivatives information and advisory business to SPIs is limited to offshore derivatives for hedging purposes. The same restriction does not apply to Professional Institutional Investors ("PII") such as banks, insurance companies, and securities firms.

Based on clarifications given by the FSC, the offshore derivatives for hedging purposes exclude Offshore Structured Products ("OSP") as their purpose is considered to be for investment rather than hedging. However, the super-large corporates meeting the definition of SPI and their 100%-owned offshore subsidiaries have a great demand for offshore investment products – but they have been unwilling to invest in OSPs via the distribution channel pursuant to the "Rules Governing OSP" as that channel is under the trust structure. SPIs conduct business globally and actively look for investment opportunities in different regions and sectors. Treating SPIs the same as PIIs would help them meet their investment needs, achieve better efficiency for OSP investments, and strengthen the sustainability of Taiwan's financial market development. In addition, allowing the advisory license to cover OSPs would not only increase the competitiveness of foreign banks in Taiwan against offshore banks, but also support the government's Financial Import Substitution Policy.

The Committee suggests that the "derivatives information and advisory business" be further relaxed to allow the SPIs and their 100%-owned offshore subsidiaries to acquire OSPs for investment purposes, thus strengthening the competitive position of banks in Taiwan against offshore banks.

Suggestion 2: Lift regulatory restrictions and provide an incentive framework for the onshore wealth management business.

2.1 Allow banks to provide financing to customers by using their financial assets under trust from the lending bank as collateral.

The Committee highly welcomes the recent regulatory change enabling clients to use their mutual fund assets under trust as collateral to obtain financing from a third-party bank. However, the lengthy operational process has retarded the development of this practice. We therefore urge the government to move one step further by allowing

financial assets under trust from the Trust Bank to be used as collateral for loans from that bank.

In international practice, investment-product financing is a very common wealth-management service, which banks in Hong Kong and Singapore have for years offered to high net-worth and mass-affluent client segments. We suggest that customers be able to pledge the entrusted beneficiary financial assets held with the trust bank as collateral for a loan, as credit by the same bank rather than a third party is far more operationally efficient.

The key benefits of this service include enhanced returns, diversification of borrowing, and most importantly, liquidity. Currently the investment products are mostly offered through the trust platform, where restrictions have made them unavailable to be pledged for lending. If trust assets could be unleashed from that constraint, it would greatly benefit clients' financial flexibility and efficiency, while also benefiting the overall banking market.

In comparison, both insurance companies and securities firms are allowed to offer financing services to their direct clients through assets under the firm's control. Permitting banks to provide a comparable service would significantly facilitate development of the wealth-management business.

The Committee suggests revising existing regulations to enable the banking industry to provide credit to clients who pledge their entrusted financial assets as collateral with the same lending bank.

2.2 Encourage and provide policy incentives to banks committing to business expansion and investments onshore.

According to recently released statistical data on international capital flows, Taiwan has been consistently suffering from a low level of foreign direct investment (FDI). Another sign of the harsh business environment in the domestic banking sector has been the withdrawal from the Taiwan market or downsizing of the local presence by several international financial institutions. Given that FDI is a key KPI and strategic-development goal, this Committee considers it imperative that the government overhaul the existing regulatory policies and practices to rebuild Taiwan as an FDI-friendly environment.

To achieve this goal, this Committee proposes that the financial regulatory agencies adopt a differential regulatory framework for the banking sector. A metric approach factoring in the characteristics currently targeted in regulatory policy targeting – for example, onshore business volume, employment scale, and track records of internal controls, etc. – could be adopted to complement the new regulatory framework. The application of the differentiated regulatory approach could include:

- ***New business and product offerings.*** The government should provide incentives to encourage international banks with a local presence to expand their business operations and scope of product offerings. Given the expanded business opportunities, international banks would make further investments in their onshore operations. Among the areas of business potential that could be granted to international banks with high scores in the metric system are the approval of new business to new clientele, new structured products, and innovative financial products.
- ***Express approval process.*** To facilitate new business licenses and product applications, the government should adopt a streamlined approval process to shorten the lead time for product launches.
- ***Reduce the initial minimum threshold for new business.*** Lower the headcount and initial capital requirements for new business applicants, and/or allow staff to engage in multi-tasking across businesses within functional divisions. The recognized "supervisory sandbox" concept could be applied.
- ***Reduce the intensity of surveillance.*** The frequency of onsite examination/inspection could be adjusted by means of a risk-based system that takes into account the metrics of the differential regulatory approach.

Suggestion 3: Further relax regulations on international bond business.

3.1 Cancel the "Liquidity Provider of Formosa Bond" requirement on retail Formosa Bonds.

The "Liquidity Provider of Formosa Bond" (LPFB) system was adopted in early 2016 to improve the poor secondary market liquidity of the Formosa Bond "professional board" market. But the lack of secondary market transactions was because most bonds were held by professional institutional investors, such as insurance companies or banks, who tend to buy longer tenor bonds and hold them to maturity. They have no interest in trading the bonds via the secondary market.

The best way to improve the secondary market would be to introduce different types of investors into this market by promoting a Formosa Bond "retail board," where the demand would be mainly in short-tenor bonds, and the volume of secondary market transactions would be greater since the bond-holders would consist of hundreds or thousands of retail investors.

But the LPFB system requires that if a Formosa Bond's tenor is less than seven years, the underwriter has to appoint a Liquidity Provider to quote both bid and offer prices. Since the underwriter usually quotes a bid price only and not an offer price, the underwriter needs to hold some of the bonds instead of allocating all of them. But

the funding costs for the security house are usually very high, thus discouraging underwriters to do retail bonds, which is detrimental to secondary market liquidity. To remedy this situation, we suggest canceling the LPFB requirement on retail Formosa Bonds.

3.2 Revise the filing requirements for retail Formosa bonds.

Current retail Formosa bond filing requires an audited financial report for the "previous immediate three years." But for most companies, whether corporate or banks, audited reports are available only in March or April, with the result that no retail Formosa bond can be issued in the first three months of every year. It is also difficult to issue them in December (due to the duration of listing and distribution activities).

We suggest replacing the "previous immediate three years" requirement with the submission of audited financial reports for the "last available three years plus the latest quarterly report." This change would be in line with international market practice, promote the Formosa bond market, and benefit investors by providing them with more timely buying opportunities.

Suggestion 4: Reduce the withholding tax rate to zero on foreign investors' income from Taiwan international bonds issued by local issuers.

The FSC has been actively promoting the development of the Taiwan international bond market, including Formosa bonds, since 2013. Given the recent upward trend in this market, the Committee believes that making the environment more foreign-investor friendly could further substantially boost Taiwan's international bond market.

For foreign investors to participate in the Taiwan international bond market, Euroclear and Clearstream had to set up a linkage with the Taiwan Depository & Clearance Corp. (TDCC) in 2014. With that linkage, foreign investors can invest in Taiwan international bonds without applying for a FINI (Foreign Institutional Investor) ID and appointing a local custodian. However, this deregulation did not bring significant foreign inflows due to the uncompetitive, high withholding-tax rate.

Under current tax regulations, when foreign investors hold Taiwan international bonds issued by a local issuer, the income derived is subject to a 15% withholding tax (WHT), whereas other Asia markets do not impose any WHT on foreign investors' income derived from similar instruments (such as the Hong Kong Dim Sum bond). The 15% WHT tax makes Taiwan international bonds less appealing to foreign investors.

To increase the competitiveness of Taiwan international bonds in today's business environment, the Committee recommends a reduction in the 15% WHT tax rate to 0% to attract more foreign investments and fuel more growth and liquidity in international bonds in Taiwan.

CAPITAL MARKETS

The Committee appreciates the willingness of the regulators to listen to industry's concerns on an on-going basis. Nevertheless, we wish to emphasize again that Taiwan's capital markets need to adopt practices that are in line with international standards and strengthen Taiwan's international competitiveness. In this regard, we continue to present suggestions that support the growth of Taiwan's capital markets. The Committee members stand ready to assist the Taiwan government in its endeavors to create a fair, open, and competitive financial-services environment in the interest of boosting Taiwan's financial industry development.

Suggestion 1: Enable the establishment of unsponsored ADR program representing Taiwanese listed equity securities.

As one of the laudable deregulation efforts undertaken by the Financial Supervisory Commission (FSC), since 2014, the FSC has permitted Taiwan-listed companies to issue non-capital-raising depository receipts (known as Level 1 ADRs) on over-the-counter markets in the United States. Considering the need of Taiwan-listed companies to reach a broader investor base, which would benefit the diversity and stability of the shareholder structure and permit better price discovery for fair stock-price valuations, the Committee recommends further amendment of the rules on overseas securities offerings and local securities transactions to allow the establishment of unsponsored ADRs.

Today, foreign investors that have gained Foreign Institutional Investor (FINI) qualification play an important role in the Taiwan stock market, on average accounting for about 25% of the daily trading volume. However, additional overseas investors who would like to access the Taiwan market are currently restricted from doing so due to their lack of FINI-qualification status. Included in this group are U.S. investment managers who have specific U.S. dollar mandates and can only hold and trade U.S.-registered securities. Issuing unsponsored ADRs would provide another way for Taiwan-listed issuers to enhance their global visibility and access additional capital from overseas investors who lack FINI status.

Allowing the creation of unsponsored ADRs for Taiwan securities – based on stock bought in the secondary market and kept with a local custodian bank – would help boost the momentum of the Taiwanese stock market through the deployment of capital flows from additional foreign investors. Taiwan brokers would benefit from the increased commission earnings, given the increased market liquidity and transaction volume. The Committee therefore strongly recommends amending the rules to allow the establishment of unsponsored ADRs.

Suggestion 2: Relax securities investment rules to allow wider participation, fostering market growth.

2.1 Allow brokers to provide short-term trading strategies to professional investors. Article 3 of the "Operational Regulations Governing Securities Firms Recommending Trades in Securities to Customers" stipulates that securities firms may make recommendations regarding securities only when those recommendations are based on research reports. We suggest allowing salespersons to provide short-term trading strategies to professional investors in accordance with the most updated market conditions and public market information without reference to research reports.

A research report analyzes the long-term trend of a security, and the analyst's view of the security also represents a long-term judgment. As stock market conditions fluctuate over time, it is highly possible for a conflict to arise between the long-term analysis and the short-term reality.

The institutional investor conferences held by listed companies are among the important factors influencing stock prices. Usually an obvious change in stock prices will occur right after the conference. Yet it takes time for a research report incorporating the content of the conference to be written and published, making it impossible for the research report to immediately reflect the changes in the market or promptly update the target price and trade recommendation. As a result, the stated trade recommendation for the stock may temporarily contradict the current market trend. In this situation, it would be meaningless to make a recommendation if it must still be based on the research report.

Moreover, the value of sales personnel is to serve clients. Providing timely trading strategies in light of current market conditions is a great opportunity for salespersons to offer extra value-added service to clients.

On the other hand, if salespersons are not allowed to communicate the most updated market conditions to their clients, it devalues their service and could lead to a less active stock market.

2.2 Exempt exchange-listed convertible bonds from the 30% limit of total net remitted-in capital. The Committee appreciates that in March 2017, the Taiwan Stock Exchange exempted private-placed convertible bonds from the 30% limit on fixed-income investments. To encourage FINIs to invest more in Taiwan's equity market rather than the fixed-income market and to minimize potential currency speculation on the Taiwan Dollar, FINIs are subject to a 30% limit for total net remitted-in capital for their investment in government bonds, money market instruments, premiums paid and net settlement amounts for certain derivatives, and corporate bonds and bank debentures.

The Committee understands the purpose of the policy and appreciates the regulators' continuous effort to engage in market scrutiny and monitoring. But we would also point out that convertible bonds are an important tool for listed companies to raise capital and also a common way for investors to participate in capital markets. Convertible bonds generally carry a low interest rate and can be converted into a predetermined amount of the underlying company's equity at certain times during the bond's life, usually at the discretion of the bondholder. In most markets globally, they are categorized as equity rather than fixed-income instruments. As the terms of convertible bonds are relatively more complicated than individual stocks, the investors in convertible bonds are normally institutions.

FINIs were the key investors in Taiwan convertible bonds for a long time and constituted important providers of liquidity to the market. However, including convertible bonds within the calculation of 30% fixed-income investments led to the general withdrawal of FINIs from Taiwan's convertible bond market. Besides seriously impacting the liquidity of convertible bonds in the secondary market, the FINIs' departure from convertible bond investments also created difficulties for the pricing and public offering of convertible bonds in the primary market. In view of the negative effect on Taiwan's capital market, the Committee suggests exempting exchange-listed convertible bonds from the calculation of the 30% limit on fixed-income instruments for FINIs.

2.3 Develop a suitable system for FINI participation in competitive auction IPO/SPO activity. According to a new ruling effective in 2016, investors intending to participate in a competitive auction initial or secondary public offering (IPO or SPO) must go to their designated securities firm in person to directly input their bidding orders via the online bidding platform or through an electronic certificate issued by a brokerage firm. This ruling may not cause undue inconvenience for local investors, but it constitutes a serious obstacle for FINIs, who by definition are non-resident. In addition, the online bidding platform is in Chinese language only.

To allow smooth participation by FINIs in IPOs/SPOs, the Committee urges the securities regulators to allow them to engage in direct IPO/SPO bidding by sending instructions to their designated brokers for processing on the clients' behalf – or alternatively to create an English-language platform so that FINIs may bid directly from overseas.

Suggestion 3: Align OBU set-up criteria with that of OSUs to create a fair and consistent standard across industries.

In February 2014, the FSC announced a new set of rules governing the establishment of Offshore Securities

Units (OSUs), allowing foreign investors to access offshore products and services through an OSU set-up. Although 17 local securities firms were engaged in the OSU business as of February 2017, foreign securities firms have still been kept out of the OSU sector due to the high net-worth requirement for setting up an OSU (NT$10 billion for full license services). The high threshold constitutes a market-entry barrier for foreign securities firms.

In comparison, according to Central Bank statistics from January 2017, the 24 Offshore Banking Units (OBUs) operated by foreign banks – out of the total of 62 such units – had assets of US$23.6 billion, accounting for 12% of total OBU assets. Almost every foreign bank has set up an OBU apart from its Domestic Banking Unit. The much lower net worth requirement for offshore banking has led to a booming market for OBUs. It is also noteworthy that the OBU capital requirement for local banks is mainly based on a calculation of capital adequacy, which conforms to international financial practice by considering the main risks of the product, client, and market. This model balances business growth and risk-control governance.

The Committee proposes replacing the minimum capital threshold for OSUs with a requirement similar to that applied to OBUs, basing the capital adequacy on a risk-weighted assets methodology derived from the securities firm's business activities. This change would increase the number of qualified market participants, as well as overall OSU transactions and the profits from diversified product platforms offered by foreign securities firms. It would also help to retain professional talent in Taiwan and broaden the market scope for Taiwan's financial industry. In line with the regulator's objective of promoting Financial Import Substitution, the relaxation of OSU criteria would expand job opportunities and contribute to producing a fair and open financial environment in line with the goal of boosting Taiwan's capital markets.

Suggestion 4: Enhance market efficiencies and competitiveness.

4.1 Allow brokers to outsource certain operations. In the 2016 *White Paper*, the Committee suggested that brokers be allowed to appoint Account Operators. We appreciate the feedback received from the National Development Council, recommending that this proposal be raised with the Taiwan Securities Association. No meaningful progress has been made on this issue, however, as the established global name brokers who are most supportive of the Account Operator proposal are a distinct minority with limited influence in the Association. We therefore wish to raise this initiative again this year, particularly after noting the trend in the global broker community to seek more efficient operating models worldwide. To attract and retain international broker-dealers and related professional talent, a number of Asian markets have introduced new clearing and settlement options, including Third Party Clearing (TPC) and/or Account Operators (AO). The rationale is to provide a flexible operating structure that replaces fixed costs with variable costs, enhances liquidity and funding capability by leveraging support from the Account Operator bank, and lowers the cost of market entrance. The Committee recommends relaxing current regulations to allow brokers to outsource various operations to an AO services provider, including such functions as securities and cash settlement processing, safekeeping, asset servicing, reconciliation, reporting, statement generation, etc. The benefits to the market would include the following:

- *Flexible cost structure.* Brokers will be able to reduce their fixed cost whenever declines in the revenue line cause brokers to face either smaller margins or a loss. The variable cost under the AO model will enable brokers to maintain their operating margin, as the model requires them to incur costs only when transactions occur. Broker-dealers can then free up capital and focus on their areas of expertise in research, dealing, brokerage, and execution, which in turn will attract more investors and talent to the market.
- *Enhanced liquidity/funding.* Brokers may benefit from intraday funding provided by the AO bank. Should their FINI customers fail to make cash payments to them on the settlement day, the brokers are still required to make payment to the exchange on the settlement day using their own working capital or funding from their cash bank. Given their better understanding of the overall settlement and funding process, the AO bank may have a larger credit appetite and be willing to grant more intraday or overnight credit facilities to brokers. This credit facility will allow brokers to obtain funding sources while sorting out the failed payment issues with the FINI customers. As a result, brokers' liquidity risk can be better managed and they may feel less need to check the availability of cash in the customer's account on T+1.
- *Greater market efficiency.* Brokers' trades will be supported by a few large service providers, allowing higher processing and market-settlement efficiencies. The service providers, generally large banks and brokers, have global service centers and local infrastructure to support increases in volume and long-term growth.
- *Reduced market entrance cost for newcomers.* The AO model will be an additional option for brokers to choose from in addition to the traditional market offering, giving them more flexibility in finding the

optimum business model for their business. Allowing AO services in Taiwan is expected to attract more mid- and small-size foreign name brokers to enter the Taiwan market and indirectly channel more investment into Taiwan's capital market.

4.2 ***Forgo Saturday trading to align with international practice and reduce settlement risk.*** Taiwan has been in a unique position globally in offering Saturday trading and settlement in the securities and futures markets. As the trading and settlement process implemented by institutional investors has become more and more automated, accommodating Taiwan's Saturday trading and settlement requires additional manual set-up and testing which increase the costs and operational risks for securities firms and futures brokers. Due to the increasingly high participation of foreign institutional investors, we suggest that the regulators eliminate Saturday trading and settlement in line with global practice.

4.3 ***Develop electronic tax statements on FINI income.*** The Committee appreciates the Ministry of Finance's continuous efforts to build an efficient tax-filing environment. According to a December 14, 2016 news release by the MOF, from January 1, 2017 the withholding party may e-file tax statements with the tax authority for cleared withholding tax. However, tax statements issued on FINIs' income are still paper-based, requiring excessive time and effort by the local tax guarantors and agents/custodians for reconciliation, maintenance, and audit, as well as causing delay in the ability of FINIs to repatriate earnings. In the 2016 *White Paper*, the Committee requested the development of electronic tax statements on FINIs' income, with direct access allowed by custodians and appointed tax guarantors to the FINIs' e-tax statements.

In the interest of market efficiency, the Committee suggests that the MOF instruct all withholding parties to issue e-tax statements to FINIs. The advantages would include a reduced workload for issuers and company registrars in handling tax statements, environmental benefits through decreased paper usage, and simplified and shortened processing and auditing time for local tax guarantors and agents. The change would also eventually facilitate FINIs' repatriation needs as well as enable a data pool to be built up without physical filing.

4.4 ***Implement market standard practice in trade pre-matching and affirmation between brokers and custodians.*** In 2009, the Taiwan Depository & Clearing Corp. (TDCC) led market discussion between major custodians and the Taiwan Securities Association (TSA) regarding industry-wide implementation of the TDCC's Virtual Matching Utility (VMU) system so as to achieve automation in trade pre-matching and affirmation for FINIs' trade settlement between brokers and custodians. Many brokers and custodians have completed their internal system development as well as testing with TDCC. However, the securities regulator has not yet required compulsory market implementation. Most brokers and custodians are still using emails for trade pre-matching and affirmation, which is not efficient. To upgrade market standards and efficiency in the trade settlement process for FINIs, the Committee urges the regulator to issue a ruling setting the TDCC's VMU system as the market standard for adoption by brokers and custodians.

CHEMICAL MANUFACTURERS

The Chemical Manufacturers Committee is grateful for the continued excellent inter-agency cooperation by the Environmental Protection Administration (EPA) and Ministry of Labor (MOL) to develop a harmonized and transparent approach to the Chemical Substances Nomination and Notification (CSNN) process. We also highly appreciate EPA's establishment last December of the new Toxic and Chemical Substances Bureau (TCSB) to streamline chemical management in Taiwan.

We continue to be concerned, however, regarding Confidential Business Information (CBI) issues regarding chemical substance disclosure and the ambiguity of the joint registration mechanism in the Phase II Existing Chemical Registration process. These issues could significantly impact Taiwan's leading position as a chemical innovation and R&D hub that serves the needs of the electronics and chemical industries in Taiwan and in the global marketplace.

Suggestion 1: Improve the protection of Confidential Business Information (CBI) with regard to chemical substance disclosure.

Taiwan started to implement Phase 4 of the Globally Harmonized System of Classification and Labeling of Chemicals (GHS) on January 1, 2017. Taiwan will also require chemical companies to make full disclosure of health hazards on a Safety Data Sheet (SDS). However, the level of disclosure planned for the Taiwan SDS will far exceed what is required in any other country, with potential serious negative consequences for innovation and R&D activity serving the chemical and electronic business needs in Taiwan.

The purpose of the SDS is not chemical substance disclosure but to protect labor safety, and the health and safety statements on the SDS are sufficient to indicate the degree of hazard posed by a given product. Disclosing the amount of hazard for each individual chemical substance contained in the product would misrepresent the danger posed by the product as a whole, causing misunderstandings

and possibly even anxiety among business customers and consumers.

Although it is questionable whether the disclosure of low-hazard ingredients would bring any benefit to the public, such disclosure could easily damage the rights and interests of manufacturers. Over-disclosure would undermine companies' ability to protect their CBI – a serious issue because the process in Taiwan for applying to the authorities for CBI protection is extremely difficult and burdensome. This difficulty may deter many companies from applying, and may negatively impact innovation in Taiwan and the willingness of manufacturers to offer products in this market. If industry is unable to adequately protect its trade secrets, the introduction of new technology will be discouraged, to the detriment of the long-term competitiveness of Taiwan industry. Moreover, such lack of protection could also be seen by other countries as a trade barrier, possibly leading to trade disputes. Due to CBI concerns, manufacturers have recently been taking a more conservative approach and strategy regarding development of the chemical business and engagement in R&D in Taiwan. Further investigation is underway to gain a broader understanding of the potential negative and tangible impacts.

Though the EPA's Toxic and Chemical Substances Bureau (TCSB) has established a simpler R&D reporting process under the registration rules, that process provides CBI protection only for new chemical substances under the R&D CBI application. No protection is provided for R&D work involving the confidential recipes of existing chemical substances. We recommend revising the CBI application process by referring to the practices in such other countries as the United States, Japan, Korea, and China, as well as issuing a positive list of chemical substances disclosed with generic names. These changes could be adopted in ways that bring no added risk to the public.

Suggestion 2: Provide a platform to facilitate Phase II joint registration for existing chemical registration.

If every company must individually register all the chemicals they manufacture or import, the amount of duplication in the application process for chemical substances will cause an unfortunate waste of time, effort, and money – representing a burden for the regulators as well as industry. In some other markets, the authorities have addressed this problem by permitting multiple companies to jointly register a single substance. Since only the government has data identifying the manufacturers and importers, however, it is necessary for the government to first set up a platform enabling companies to identify other makers/importers of the same chemical. In the European Union, the platform is the Substance Information Exchange Forum (SIEF).

A similar infrastructure has been established in South Korea. An opt-out mechanism is available for companies that do not want their business for a given substance to be made public, eliminating concerns about confidentiality.

For use in the upcoming Phase II registration stage, the Committee urges the TCSB to establish a platform modeled on what the EU and South Korea have done. We suggest working with Taiwan industry and consulting EU-experienced subject-matter experts to design a joint registration program that includes a workable mechanism for matching potential participants.

Suggestion 3: Redraft the proposed amendment to the Toxic Chemical Substances Control Act for greater clarity.

In the draft amendment of the Toxic Chemical Substances Control Act (TCSCA) released on April 17, the definition and tiered-approach management of the applicable chemical substances are not clearly defined. Industry stakeholders also find Articles 30 and 38 on chemical substance registration and reporting to be too vague as to how chemical substances will be designated and how the periodic reporting of designated chemical substances should be carried out. We strongly suggest that clarifications on these points be included in the next version of the draft amendment.

Other regulations in the amended TCSCA draft deal with SDS and labeling generation for the applicable chemical substances, including the classification, pictograms, content, and format of labeling used for containers, packaging, handling sites, and facilities, as well as other matters determined by the competent authority. To reduce the burden and confusion of labeling management, we recommend harmonization with the GHS labeling system which is already in place.

In addition, problems may arise as the collection of Chemical Substance Operation Fees may overlap with Air Pollution Control Fees and the Soil and Groundwater Pollution Remediation Fees. To avoid a duplication in payment obligations, we recommend that the Chemical Substance Operation Fee be defined more clearly in the draft amendment.

Another area needing clarification in the draft amendment is the responsibility for chemical notification. Currently this responsibility applies mainly to domestic industries, but if foreign vendors are unable to provide the full chemical identity or other required information for reasons of CBI protection, or even if incorrect information is provided, it could be difficult to determine the liability. We suggest that the Only Representative (OR) concept in the EU's REACH system be incorporated in the TCSCA amendment. Under REACH, a natural or legal person established outside the EU, who manufactures a substance, formulates a mixture or produces an article can appoint an OR to carry out the required registration of the imported substance.

COSMETICS

The newly established Cosmetics Committee recognizes and appreciates the efforts of the Taiwan Food and Drug Administration (TFDA) over the past year in promoting smooth communication between the government and industry. A productive win-win relationship is essential to ensure effective policy implementation and maintain a stable business environment for the cosmetics sector in Taiwan.

The Committee welcomes TFDA's initiative to modernize the Statute for Control of Cosmetics Hygiene (the Cosmetics Act for short), which was first promulgated in 1972. We urge TFDA to continue driving regulatory transparency in order to harmonize the Cosmetics Act with similar legislation enacted by Taiwan's major international trading partners. It is vital to avoid adopting unique regulatory requirements that may create technical barriers to trade and pose impediments to entering into bilateral or multilateral trade agreements. In addition, we urge TFDA to encourage areas of industry self-regulation to meet the future needs of the cosmetics market.

We offer the following recommendations:

Suggestion 1: Adopt a regulatory definition of cosmetics that covers the latest technological advances and is harmonized with that of trading partners.

Given the substantial technological advances in the more than 40 years since the Cosmetics Act was first enacted, the regulatory definition of cosmetics in the law is clearly outdated and out of sync with consumer needs. The current statute defines cosmetics as products that freshen the hair or skin, stimulate the sense of smell, cover body odor, or improve facial appearance. Under this definition, products that moisturize and nourish the skin, minimize facial lines of ageing, and protect the skin from harmful UV rays are not included. Yet all of those products are popular with consumers in Taiwan, just as they are with people in major markets around the world.

Consequently, we are pleased to see TFDA take the initiative to modernize the Cosmetics Act. At the same time, we note that the proposed definition of cosmetics in the "Draft Recast Cosmetics Act" announced in late 2016 is still not comprehensive enough, nor is it adequately aligned with the policies of the United States and other leading trade partners.

We urge the government to adopt a broad definition that encompasses all the product types and functions of cosmetics (including lotions serving as sunscreen, creams and lotions with anti-oxidation ingredients for shielding harmful environmental factors, oral care products with perfuming and protection functions, etc.). The most practical approach would be to adopt the definition used by most leading countries and territories: "A substance or mixture intended to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips, and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odors." Emphasis should be placed on the key words *protecting them, keeping them in good condition*, which reflect the function of sunscreen products and skin-nourishing cosmetics such as lip balm, etc.

Suggestion 2: Recognize other countries' Cosmetics GMP as equivalent to Taiwan's under the Cosmetic Act.

Although a Cosmetics GMP (Good Manufacturing Practice) system is mandatory in the EU and ASEAN, both jurisdictions also accept other countries' GMP standards. TFDA, however, intends to regard the Taiwan standard as the only standard, which will inevitably lead to significant technical barriers to trade. Instead, the Taiwan government should recognize the Guidelines for Cosmetics GMP issued by the U.S. Personal Care Products Council (PCPC) and other health authorities as equivalent to the Taiwan Cosmetics GMP. It should also allow companies to self-certify compliance to equivalent overseas GMP standards as a means of fulfilling the Taiwan GMP requirement.

Suggestion 3: Drive regulatory transparency and avoid creating technical barriers to trade in the recast Cosmetics Act.

The Committee urges TFDA to start disclosing its decision-making rationales instead of merely maintaining unpublished internal guidelines. We offer the following specific recommendations:

3.1 Ensure that any restrictions on ingredient use are based on scientific evidence and adopted in a transparent manner. Certain ingredients are subject to limits on the scope of use and the dose, such as active ingredients for Special Use Cosmetics, cosmetic colorants, etc. We urge the Taiwan government to ensure that the adoption of any ingredient restrictions and/or sanitation standards for cosmetics is based on sound science and objective assessments. Scientific references regarding ingredient safety and use conditions can be found from governmental regulatory bodies in major markets, industrial consultation organizations, and such expert sources as the Cosmetics Ingredient Review (CIR) in the United States and the EU's Scientific Committee on Consumer Safety (SCCS).

The ingredient restrictions and sanitation standards should also be aligned with those of major trading partners such as the United States, EU, and Japan. Furthermore, we urge Taiwan to build a regulatory

environment that fosters industry self-regulation to help spur industry advancement rather than impose burdensome constraints. Taiwan should refrain from setting unique regulatory requirements that may result in technical barriers to trade.

*3.2 **Ensure that the proposed new PIF system is workable and reasonable by addressing only critical regulatory needs.*** We appreciate TFDA's assurances that it aims to establish "reasonable" and "workable" Product Information File (PIF) guidelines, with industry given adequate lead time for PIF preparation. As the new Cosmetics Act is in the legislative process, it is time to start considering the detailed guidelines and regulations related to the Act. We urge TFDA to work closely with industry associations and other stakeholders to identify and address the real needs to be met by the regulations, so as to establish a healthy PIF system that avoids creating any technical barriers to trade.

*3.3 **Remove pre-market registration from the new statutory requirements.*** Draft amendments to the Cosmetics Act propose creation of a five-year transition period during which the current pre-market registration system would remain in effect, while at the same time industry would be required to comply with a new system of post-market control through Notification and PIF. Such a dual-control system is a unique regulatory design found in no other country. It would impose a double burden on industry, while bringing no added value in protecting consumers. The Committee urges TFDA to follow the practice of other countries' regulatory bodies, which is simply to rely on post-market surveillance – for example, through Notification and PIF – as well as to foster industry self-regulation.

*3.4 **Regard labeling of the responsible local supplier as sufficient for consumer protection and post-market surveillance.*** The purpose of labeling on cosmetic products is to provide necessary product information to consumers and relevant reference for government agencies during market surveillance. Cosmetic products are typically very small in size. In the interest of efficient and effective labeling, regulations for labeling cosmetic products should aim at ensuring that only meaningful information is required. Such product labeling norms have already been adopted by leading countries and territories.

One of the key pieces of information is the name of the local supplier who holds the product liability. The United States and other leading trade partners of Taiwan do not demand inclusion on the label of any other company in the supply chain. The local product supplier is the entity that the consumer can reach in case of any problem. In line with that logic, the Consumer Protection Act stipulates that the domestic importer or distributor rather than the manufacturer abroad is the liable party for imported products. The current Cosmetics Act requirement for the physical manufacturer or processor to be included in the labeling is meaningless in terms of trade practice and consumer protection. We urge the government to follow the practice of leading countries in requiring only that the name of the local responsible supplier appear on cosmetic product labels.

Suggestion 4: Refrain from creating a unique "Corrective Advertisement" policy.

In contrast to the international best practice of promoting advertising self-regulation, the draft Cosmetics Act authorizes health-administration personnel to determine whether an advertisement or claim is "seriously exaggerating or untrue," including advertising content that is not safety or hygiene related. Violators would be required to broadcast or publish apologies by means of a "Corrective Advertisement." The Committee was distressed to learn that this "Corrective Advertisement" provision, which was previously removed from the draft legislation in the course of a public hearing in 2013, had afterwards been restored. The measure would grant health authorities enormous power, including the ability to damage a company's reputation and brand equity, extending to areas outside their professional competence and without providing the accused with timely recourse to due process in the judicial system.

In a meeting last September discussing AmCham Taipei's major concerns about the proposed new law, TFDA told Chamber representatives that only in the "most serious situation" – involving repeat offenders who have advertised their products with exaggerated or false claims that caused a severe threat to human safety – would TFDA consider taking the extreme step of demanding that the advertisers make public corrective advertisements/statements. TFDA further responded to industry's concern by saying that the term "serious situation" would be clearly defined in the sub-law or executive orders. The statement is not wholly reassuring, however, as it will still be up to the health authorities to decide what is "serious."

The Cosmetic Committee agrees with the previous position of the Retail Committee that the Legislative Yuan should withdraw this proposal. No other country in the world has a similar provision, and there is no need for a "Taiwan-unique" regulation.

If the "Corrective Advertisement" provision becomes effective, it could even be viewed as contravening the freedom of speech guaranteed under the national Constitution. As an alternative approach, we suggest that the authorities engage in broad-based discussions to establish advertising guidelines and a system of industry self-regulation – an approach that has proven its effectiveness in many other markets.

Suggestion 5: Treat toothpaste and mouthwash separately from other products under cosmetics regulations.

Toothpaste and mouthwash will be newly added categories of cosmetics after the amended Cosmetics Act is passed. Since the relevant cosmetics regulations were developed without considering the unique characteristics of toothpaste and mouthwash (particularly the fact that they are immediately rinsed off after use), the Committee urges TFDA to adopt the following measures to assure a smooth transition and minimize the impact on both industry and consumers:

a) ***Provide a sufficiently long transition period.*** A grace period of at least five years is needed for toothpaste and mouthwash manufacturers to prepare to come under the Cosmetics Law. In the meantime, all in-market products should be exempted from the provision of the new law. Although TFDA has conducted several workshops to communicate with industry, businesses are unable to begin assessing or investing in product labeling/formula changes until the final Cosmetics Act is passed and all relevant implementation regulations are settled. This problem is especially acute for multinational companies that source products worldwide and share product labeling/formulations across countries. If the product formulation must be changed, an even longer lead time will be needed to complete the product stability testing.

b) ***Harmonize technical requirements and ingredient standards for toothpaste and mouthwash with those of major trading partners.*** Current cosmetics regulations related to restrictions on ingredients or substances (for example, the cosmetics preservative ingredient list) were established without taking toothpaste and mouthwash into consideration. The Committee urges TFDA to review and make appropriate modifications to the cosmetics preservative ingredient list by accepting the substances allowed in oral care products by any one of Taiwan's major trade partners (such as the United States, EU, or Japan) so as to harmonize with international regulations and avoid adopting unique-to-Taiwan standards or restrictions.

c) ***Distinguish toothpaste from whitening toothpaste and oral preparation in current cosmetic regulations.*** Although toothpastes are not yet classified as cosmetics, TFDA recently incorporated whitening toothpaste and oral preparations with a regulated level of hydrogen peroxide into cosmetic regulations. The Committee urges TFDA to distinguish toothpaste from cosmetic whitening toothpaste/oral preparations in future material to avoid confusion to customers/consumers of the toothpaste industry.

ENERGY

The Energy Committee was launched this year in order to better serve our members, who include industrial energy users, producers, and other related industry participants. The Committee aims to help Taiwan and our members preserve and enhance their competitiveness, as well as advance the interests of both energy consuming and producing industries.

The Committee looks forward to working with relevant government agencies to help devise a roadmap and timeline for a clear and feasible energy strategy that promotes the following objectives:

1) Ensuring that Taiwan's power supply continues to be stable, reliable, and competitively priced.
2) Facilitating the development of energy projects.

Suggestion 1: Continue to ensure power-supply adequacy, reliability, and cost competitiveness.

Sufficient and reliable power supply is of critical importance to high-tech manufacturers. Power interruptions lasting just a fraction of a second can result in severe equipment damage and enormous production losses. Affordable and predictable energy costs are also extremely important to the profitability and long-term investment decisions of industrial users. Investment decisions concerning future industrial operations and production capacity must be made years in advance, and once made, they can have an impact for decades. Consequently, industrial users focus on price and reliability not only for the near term, but over the longer term.

Taiwan has begun a process of shifting its fuel and technology mix away from nuclear- and coal-based power generation sources. With the planned phase-out of nuclear power by 2025, concern about the future power supply has increased due to uncertainties about the cost and reliability of alternative energies. Given that 16% of the country's power output currently comes from nuclear power, a shift in the fuel mix – if carried out too abruptly – could introduce significant tariff and supply-security risks. As an example, Ontario province in Canada recently made a rapid change in its fuel and technology mix, resulting in much greater than expected cost increases, which proved difficult for customers to absorb. In the end, a dramatic government intervention was needed to moderate larger-than-expected cost increases for both residential and industrial customers. Other countries have managed transitions over a longer or more flexible timeframe, or they have had the ability (unavailable for Taiwan) to tap neighboring sources of supply, which can help avoid unanticipated increases in cost or reductions in reliability.

From the perspective of the cost-competitiveness of Taiwan's industries and their contribution to employment and economic growth, the transition from existing nuclear generation to future sources of power generation needs to be

managed carefully. The reason is that the incremental cost of generation from existing nuclear power stations is low, whereas alternative sources of capacity will incur new investment costs. The transition to a post-nuclear fuel mix is important, but it also has the potential to be economically disruptive if it is implemented too rigidly or quickly without a clear replacement plan that ensures continued cost-competitiveness, affordability, and reliability of the electricity supply.

Our specific recommendations:

1. ***Set a clear transition roadmap.*** Recognizing that Taiwan is entering a period of increasing uncertainty regarding the cost and reliability of its energy supply, we believe it will benefit from having a clear roadmap for managing the transition in an orderly way. While we support the development of renewable energy sources like wind and solar, experience in other markets has shown that transitioning too quickly toward renewable energy places significant upward pressure on energy costs, which is a particular concern for large power users.
2. ***Seek and adopt international best practices in the integration of renewables.*** Significant progress has been made in reducing the cost of solar and wind power generation, but the increased reliance on those technologies is beginning to pose new and difficult reliability challenges in some markets. To avoid blackouts of the type that recently occurred in South Australia, and to efficiently manage customer electricity loads when solar or wind production is not available, Taiwan and Taipower should implement best practices when integrating renewables into the electricity system.
3. ***Increase communication with large power users.*** Among the challenges that large power users face when integrating large amounts of intermittent renewable generation capacity is greater exposure to power interruptions and voltage dips. Taiwan's isolated power system cannot rely on transmission lines from neighboring countries for economically priced power or to ensure reliability of supply. Consequently, particular care is required when extracting lessons from countries that can rely on interconnection to mitigate the impact of policy changes. Dialogue with large power users can help to ensure that all least-cost options are considered and that the risks and potential costs of power-quality degradation are fully recognized. Large power users would therefore highly value the opportunity to meet periodically with the Ministry of Economic Affairs (MOEA) and Taipower for discussions on power quality, cost-competitiveness, and environmental sustainability.
4. ***Protect strategic large power users, e.g., high-tech manufacturing.*** MOEA and Taipower should conduct a detailed survey to analyze the degree of vulnerability of large manufacturers to disruptions in the electricity supply. Given their vital contribution to Taiwan's GDP and employment, large enterprises that are subject to the heaviest impact of power disruptions should be given the highest priority for receiving non-interruptible service. In addition, MOEA and Taipower should greatly increase efforts to promote energy conservation and provide support for demand response (DR) programs, which incentivize industrial and commercial users to shift some of their energy consumption to non-peak hours. Given a supportive regulatory and policy environment, DR programs can be developed quickly to assist in maintaining a reliable power supply across Taiwan. Additional programs to consider as part of a detailed plan include economic grants, energy audits, and consultation with large customers on their energy needs.
5. ***Maintain a robust, relatively low-cost price position.*** Large industrial customers in Taiwan compete in a global marketplace, and the price of electricity has a significant impact on their competitiveness. MOEA and Taipower should strive to ensure a competitive position with respect to other Asian countries to ensure a dynamic and robust industrial sector. To that end, more clarity is needed on the methodology of making power tariff adjustments so that large industrial power users can better prepare for future tariff changes in their budgeting and planning and avoid unwelcome surprises. When tariff increases are required, customers should share the burden appropriately. Finally, we suggest that incentive mechanisms be put in place for end users to build self-owned facilities with cogeneration and fuel storage units, provided they are non-polluting and highly efficient.

Suggestion 2: Facilitate energy project development by clarifying and modifying government procedures, expediting infrastructure build-up, and fostering a domestic supply chain.

Taiwan faces several major challenges in meeting its ever-increasing demand for electrical power. With 60% of the population opposing completion of the Longmen Nuclear Power Plant, Taiwan will be unable to generate the electricity it needs from nuclear power. In addition, periodic water shortages over the past year are impacting the efficient generation of hydraulic and coal power. And given the fierce resistance consumers have demonstrated toward price hikes and power rationing, Taiwan clearly needs to diversify its energy sources as well as enhance the efficiency with which it utilizes traditional sources of energy. Taiwan should pursue aggressive policies to promote renewable energy, as well as work toward improving the existing energy infrastructure.

This situation presents an opportunity for Taiwan as it looks to develop its green energy sector, not only as a means of reducing greenhouse gases, but also as a potential source of job creation and even opportunities for technology and equipment exports. A key step toward achieving this

ambition will be to ensure that a sufficient physical and legal infrastructure is in place so that the national energy targets can be met in a timely and efficient manner.

Furthermore, if Taiwan is to become a source of energy technology and equipment for the region, it will need to focus on developing the domestic supply chain and building the R&D capabilities it needs to spur the growth of a homegrown industry. Knowledge transfer from experienced overseas partners will need to be a crucial part of this process.

Our specific recommendations:

1. ***Create a long-term predictable regulatory framework,*** and set clear aspirations and specific targets for the build-out of renewable energy supplies. Market scale will be essential to attracting investments in the supply chain by international and local players needed to create a local base for further growth.
2. ***Incorporate greater flexibility into the government procurement process in line with such methodologies as "heterogeneous purchase" and "experimental development."*** These methods should be applied to introduce emerging innovative materials and technologies. Currently, there is difficulty in utilizing "new technology and new materials" in public construction bids. First, project owners avoid setting specifications for new materials so as not to be accused of writing the specs to favor any particular suppliers. Second, existing material test guidelines fail to take new technologies and methodologies into account. Without introducing flexibility into Taiwan's procurement processes, Taiwan will be unable to take advantage of new opportunities to improve the utilization of existing energy production and transmission facilities.
3. ***Provide sufficient and reliable gas supply to gradually replace coal-fired power generation.*** MOEA and the CPC Corp. should ensure timely construction of the latest LNG receiving terminal. CPC must also ensure that its LNG purchases are prudently priced over the next several years, given the rapidly changing environment in the international gas market. CPC should provide more transparency concerning how it balances spot and term LNG purchases. Asian LNG prices have fallen considerably because of the significant amounts of LNG that have become available from Australia, the United States, and other new sources of supply. In the long-term, the expected increase in renewable power generation is likely to exert downward pressure on LNG pricing. We encourage CPC to develop a plan that leverages such near- and long-term opportunities. We also urge MOEA to consider allowing third-party access to LNG receiving, storage, and transport facilities, thus bringing a greater degree of competition into gas retailing.
4. ***Ensure sufficient grid allocation for new energy deployment.*** It is also important to avoid costly project bottlenecks stemming from insufficient power grid build-out, as well as to ensure full remuneration for losses of revenue arising from the lack of grid services.
5. ***Develop HSE standards for offshore wind development to reduce the social cost of energy build-out.*** Offshore wind presents unique Health, Safety and Environment (HSE) related challenges due to the challenging working environment. We suggest that the Taiwan government adopt international standards and best practices, establish a training center certified by the Global Wind Organisation (GWO), and amend the labor law to include provisions applicable to workers employed in this sector.
6. ***Ensure sufficient harbor infrastructure to meet offshore wind expansion requirements.*** Key harbor infrastructure needs to be developed in order to avoid bottlenecks and ensure deployment timelines. Energy projects should not be delayed due to a lack of adequate harbor facilities.

HUMAN RESOURCES

The Committee notes the Taiwan government's efforts over the past few years to make the Taiwan employment market more accessible to foreign professionals, and to make relevant laws more complete and comprehensive. The Committee recognizes the need to balance the opening up of Taiwan's employment market with the revision of relevant labor regulations in order to increase business competitiveness while at the same time protecting the local labor force.

If Taiwan wishes to bolster its status as an operations center for global companies, it will need a legislative framework for employment issues that supports such development. For globalized operations, questions relating to employee welfare must be balanced with the needs of business in terms of flexibility, efficiency, and optimum use of resources. However, the recently amended Labor Standards Law (LSL) appears to make Taiwan a less acceptable investment environment. The Committee believes that a well-balanced legislative framework that encompasses flexibility for business, reasonable protections for employees, and appropriate visa requirements for foreigners will serve to raise Taiwan's profile in the international competition to attract talent.

The Committee has been continuously proposing many issues to the Ministry of Labor (the labor authority) arising from the amended LSL. We greatly appreciate that the labor authority has been addressing some of the issues in the draft LSL Enforcement Rules.

Below, the Committee presents five issues that represent the key areas of concern of its members: the need for increased flexibility in work hours, further development of overtime regulations, reduced restrictions on annual leave, the reworking of policies relating to new types of labor, and

conducting consultation with stakeholders before laws are amended and providing a buffer period afterwards. These issues reflect the shared desire of the Committee's members to see greater flexibility and predictability in employment laws in Taiwan.

Suggestion 1: Revise the regulations on overtime work.

According to the 2014 *Report on the Manpower Utilization Survey* issued by the Directorate-General of Budget, Accounting and Statistics (DGBAS), approximately 45% of the Taiwan workforce consists of knowledge-based, white-collar professional workers. In the employment contracts of these workers, salaries are evaluated based on the quality of the work rather than simply on the quantity of working hours. Since promulgation of the Labor Standards Law (LSL) in 1984, Taiwan has developed from its traditional labor-intensive structure to become a knowledge-based, globalized, internet-based economy. Current labor laws that regulate employer-employee relations based on traditional labor-intensive methods are seriously outdated. In addition, in light of the rapid aging of the population and decreased birth rate in Taiwan, enterprises must enhance labor productivity by helping employees reach a proper work-life balance. The Committee thus strongly suggests that the LSL be amended to promote greater working-hour flexibility to boost employees' working morale and satisfaction.

1.1 Extend the "four-week flexible working hours" option to multiple industries. Article 30-1 of the LSL provides for an option of a total number of flexible working hours over a four-week period in "industries designated by the central competent authority." In practice, however, the scope of applying this principle is too narrow, as all industries require a degree of flexibility in setting working hours. Moreover, due to the obligation to protect labor rights, the "flexible working hours" must be approved by the labor union or through a labor-management meeting, as the case may be, so that working hours are negotiated between labor and management, and labor rights are not impaired.

1.2 Enlarge the scope of Article 84-1 of the LSL recognition. Article 84-1 exempts certain categories of workers, especially "supervisory, administrative, and professional workers," from provisions of the LSL, allowing them to enter into agreements with their employers regarding working hours, regular days off, national holidays, and female workers' night work. The provision should be broadened further, since entitlement to LSL protections is not necessary for individuals at or above a certain salary level. In fact, current LSL provisions excessively protect such individuals to a degree that impairs their rights and causes them inconvenience. Accordingly, a higher degree of flexibility in working hours should be permitted for persons with such salary levels. The Committee recommends that an amendment to the LSL or a letter issued by the Ministry of Labor stipulate that when an individual's salary income is greater than three times the industry average as declared by the DGBAS, the individual and his/her employer may agree on work hours, days off, official holidays, and night-time work for women without being subject to the restrictions of Articles 30, 32, 36, 37, and 49 of the LSL, provided that the requirements of Article 84-1 of the LSL are met – in other words, the agreement is submitted to the relevant local authorities for approval and the conditions are not detrimental to the health and well-being of the workers.

Suggestion 2: Further develop regulations on overtime time.

2.1 Adopt a reasonable definition of "unexpected events" for employers to cope with the need for overtime work. Under the current LSL, when a natural disaster, accident, or unexpected event occurs, making it necessary for employees to work outside of normal work hours, the employer is required to notify the labor union – or if there is no labor union, then the local competent authority – within 24 hours of the commencement of such work. Additionally, if employers interrupt workers' leaves due to a natural disaster, accident, or unexpected event, the employer must also report the details of this interruption to the local competent authority. Because the definition of "unexpected event" is unclear, however, companies are unable to effectively determine whether the competent authority would view a situation as an "unexpected event." A situation that the company considers an "unexpected event" may be rejected by the competent authority, thereby substantially increasing the company's compliance costs.

Each industry has its own specific criteria when it comes to defining an "unexpected event," and it is difficult to unify these different standards into one uniform definition. Instead, the definition of "unexpected event" should be determined by management based on the business needs of the company, and then confirmed by the labor union or labor-management meeting (as the case may be), so that both employers and workers are able to reasonably anticipate what constitutes an "unexpected event."

Therefore, we suggest that the labor authority issue an interpretative ruling to allow an employer more discretion to define an "unexpected event" in a way that is suitable to its particular operation.

2.2 Calculate overtime hours according to the actual working time.

To protect labor rights, the amendments to the LSL passed on December 21, 2016 significantly increased worker overtime entitlements, giving workers a choice

between higher overtime pay and actual rest. If an employer urgently needs manpower, that need is reflected in the employer's willingness to pay its workers the higher overtime wage. However, the amended LSL imposes a high financial burden on employers to pay overtime wages, based not on the actual number of overtime hours but on a formula set out in Paragraph 3, Article 24 of the LSL. That provision states that "in calculating the work hours and wage on Rest Days, for any work completed in under 4 hours the work time will be 4 hours, for any work completed in over 4 hours and under 8 hours the work time will be 8 hours, and for any work completed in over 8 hours and under 12 hours the work time will be 12 hours." This formula has caused the loophole where an employee may be asked to work overtime for 4 hours on a Rest Day but ask for personal leave for 3 hours and then still get overtime wages of 4 hours.

We therefore recommend that the LSL be further amended to make overtime hours reflect the actual working time.

2.3 Clearly define overtime approval and burden of proof in the work rules or employment agreement.

Employers need to anticipate personnel costs. The Committee recommends that the LSL or the enforcement rules of the LSL establish that a statement to the effect that overtime must be pre-approved by the employer must appear in the work rules or employment agreement so that employers are able to anticipate personnel costs. If an employee is able to take the initiative to work overtime, the employer is unable to determine whether the overtime is necessary. If both employers and employees agree on the overtime activity to be performed, the employee should bear the burden of proof that the overtime work has in fact been carried out.

We recommend that the labor authority issue an interpretive ruling to stipulate this reasonable management right of the employer.

Suggestion 3: Set more reasonable regulations governing annual leave.

3.1 Require the pre-arrangement of annual leave.

Employers need to pre-arrange employees' annual leave in order to set work schedules in a way that allows the business operations to proceed smoothly. Requiring that annual leaves be arranged in advance should in no way infringe on labor rights.

In certain industries, in fact, regulatory provisions require that employees pre-arrange their annual leave. In banking for example, due to the highly regulated nature of the sector, banks must institute a standard leave of absence procedure, such as requiring employees to pre-arrange a certain number of days of continuous leave in order to facilitate proper internal controls needed to detect and prevent fraud.

Therefore, the Committee recommends that the labor authority issues an interpretative ruling to stipulate that employers may require workers to pre-arrange their annual leaves, but if workers need to change the pre-arranged dates, employers shall not refuse such requests without good cause.

3.2 Ease requirements on the cash-out of annual leave.

One purpose of the LSL amendments of December 21, 2016 was to ensure that workers are able to take leaves of absence. To interpret that the amendments require workers to use up their annual leave within the same year would be contrary to the intent of the legislature and would deprive workers of their right to choose when to take leave.

Unused annual leave is debt owed to workers by the employer. In accordance with the principles of the Civil Code, the option to choose among different methods to offset the debt should fall to the debtor (the employer). The employer should be able to use new debt from unused annual leave to offset the old debt of carried-forward leave. It should not be necessary to settle this creditor-debtor matter within a single year.

The Committee recommends that the labor authority issue an interpretative ruling to provide that employers and workers have the right to agree in a creditor-debtor matter according to the principles of the Civil Code with respect to the cash-out of annual leave, as long as the agreement is fair and reasonable.

3.3 Clarify provisions regarding untaken annual leave.

We agree that employer should not let employees continuously accumulate annual leave without limit. We also agree that, if a worker has not taken his/her remaining annual leave by the end of the year and if this failure to take annual leave is attributable to circumstances arising from the business needs of the employer, then the employer must pay wages for the number of days of annual leave not taken. However, if the reason for not taking the annual leave is attributable to the employee, we recommend amending the LSL to allow the employee's untaken annual leave be carried forward to the following year to adhere to the work-life balance principle of the LSL.

Suggestion 4: Revamp policies relating to non-conventional types of labor.

4.1 Regular days off and rest days for dispatched staff should be determined by the receiving party.

The labor dispatch business exists to meet companies' temporary needs for additional headcount. Therefore the hours for the dispatched staff to work must be based on the needs of the receiving party.

Therefore, we recommend that the labor authority issue an interpretative ruling to provide that Regular Days Off

and Rest Days for dispatched staff should be determined by the receiving party.

4.2 Expand the "Guiding Principles of Working Hours of Workers Away from the Business Premises" to cover all industries.

These "Guiding Principles," issued by the labor authority in May 6, 2015, were made applicable to only a small set of specific industries, whereas workers in many other industries also work away from the business premises and face issues similar to those in the industries covered.

We recommend that the labor authority issue a ruling to extend the scope of the "Guiding Principles" to all industries.

Suggestion 5: Conduct broader consultation before laws are amended and provide a buffer period afterwards.

5.1 Present amendments at public hearings before they are passed into law.

Because revisions to the LSL and the enforcements rules of the LSL affect the entire country, it is important that public hearings be conducted in accordance with the Administrative Procedure Act before amendments are enacted into law. We recommend that the labor authority continue to hold a certain number of public hearings on further proposed revisions to the LSL at least 60 days prior to completion of the draft, so that representatives of both employers and labor could express their opinions, minimizing the disruptive effects of these amendments.

5.2 Extend the post-amendment grace period.

The amendments to the LSL that were passed on December 21, 2016 covered a wide range of issues. Affected parties who must now adjust their internal procedures and personnel affair systems should be provided with a reasonable grace period to implement these changes. Although there were several media reports that the Minister of Labor announced a grace period for enforcement, we were surprised to find that the local labor bureaus of Taipei City and New Taipei City have already imposed 198 sanction cases based on the alleged violation of the amendment of LSL.

Therefore, the Committee recommends that the grace period protecting parties against violations of the amendments to the LSL passed on December 21, 2016 be extended to one year from the date of enactment of the amendments.

INFRASTRUCTURE & ENGINEERING

The Committee would like to thank the Taiwan government for giving its members the chance to share their ideas on ways to make Taiwan's government procurement market more attractive to international companies. The government is launching plans for an ambitious set of wide-ranging infrastructure projects with overlapping and demanding delivery schedules that may exceed the capacity of the local engineering and construction contracting community. Successful delivery of the planned infrastructure program, especially the power generation projects, is critically important for the continued prosperity of the Taiwan economy. Accordingly, the Committee believes the introduction of suitable and experienced international contractors to augment local capacity is essential to ensure successful completion of these projects.

Given the government's intention – now written into law with the recent amendments to the Electricity Act – to decommission Taiwan's three nuclear plants between the end of next year and 2025, it will be vital for the government and Taiwan Power Co. to ensure that adequate power-generating capacity is in place, providing a sufficient and reliable supply of competitively priced electricity to support Taiwan's economic growth. Potential investors, whether foreign or domestic, must feel confident that the government has a robust and well-thought-out plan to deliver the replacement power generation needed to make up for the lost capacity supplied by the currently operating nuclear plants.

The Committee recommends that the government take a more assertive role in attracting international companies to execute a portion of the planned projects. Besides reducing the delivery risk caused by the tight schedule requirements, there are other benefits to having international companies participate in public projects. By introducing new and innovative ideas to the market, they help advance the capability of the local contracting community. Foreign companies also bring alternative delivery methods which often translate into shorter and more reliable and cost-efficient completion schedules. Certainty of delivery lessens the disruption period large infrastructure projects often have on the public, and helps improve the quality of life by delivering the specific project by the date planned and for the budgeted cost.

This year we have provided four suggestions aimed at reducing commercial barriers and modifying the tendering and selection process. The use of "low price" as the selection criteria, for example, discourages international companies from participating since it does not value the qualitative elements which international companies often provide, such as innovative execution approaches, leading-edge project management tools and processes, and enhanced health and safety processes.

Suggestion 1: Allow International Arbitration Rules to be applied.

The availability of an alternative dispute resolution (ADR) process that is well known internationally and

considered neutral to the contractual parties is often decisive for foreign companies when determining whether to participate in an international tender offering. One such ADR process that is acceptable to most international companies is arbitration under the Rules of Arbitration of the International Chamber of Commerce (ICC). In a meeting with the Public Construction Commission (PCC) last year, the Committee brought up the concept of allowing foreign companies to choose ICC Arbitration Rules for domestic arbitration proceedings, and obtained a positive response from PCC Minister Wu Hong-Mo. The Committee believes that modifying the Government Procurement Act (GPA) along these lines would not only be feasible, but would prove beneficial to both the Taiwan government and capable international companies.

In most tender documents in Taiwan, the government chooses to designate local courts following local arbitration rules – which are not well-known to foreign companies – as the courts of jurisdiction for arbitration. The Committee suggests that the government either: (i) permit use of third-country arbitration to provide a neutral process and location to settle disputes, or (ii) maintain Taipei as the seat of arbitration with local law as the prevailing authority, but allow ICC Rules of Arbitration to be followed.

Encouraging government contracting agencies to adopt this flexibility would minimize the concerns of international companies as to whether the settlement of disputes will be conducted in a neutral and independent manner. The Model Contract Terms & Conditions already have sufficient flexibility to allow the government contracting entity to choose the type of arbitration to be adopted for the tender formation stage. However, the natural tendency for contracting entities is to stipulate a local jurisdiction and local rules by default, rather than using a more impartial or neutral approach.

To provide support for government contracting agencies to consider an alternative approach with respect of arbitration, we propose that PCC modify relevant clauses in the GPA to include the spirit of the following text: "If requested during the tendering process, the application of third-country arbitration or ICC arbitration practice and rules in local courts or institutions may be considered by government clients."

Details of this modification could be further discussed, but adhering to this spirit of flexibility would enhance the interest of international companies in participating in Taiwan's major infrastructure projects.

Suggestion 2: Amend the Model Contract Terms & Conditions to allow contractors to submit change notifications.

Another key point for international contractors in deciding whether to participate in an international tender is the fairness of contract terms regarding bona fide changes to the project scope or schedule. In fact, fair and internationalized terms and conditions throughout the contract would create a healthy commercial structure for foreign companies to participate in the tendering of public projects in Taiwan.

Although the various model contract terms and conditions issued by the PCC provide a practical guideline for government contracting agencies to make contract terms and commercial arrangements, they are in need of improvement. In particular, the current Model Contract of Technical Service Agreement and the Model Contract of Construction Agreement include a provision only for the government contracting agency to notify contractors of a scope change; no formal provision exists for the contractor to notify the government contracting agency of a change that has occurred. Lack of a formal provision giving the contractor the express right to submit a change notice is cause for concern because it may affect the contractor's ability to obtain an equitable adjustment to time and/or cost for changes to the contract scope and schedule. The unilateral nature of the Model Contract change provisions – implicitly denying the contractor a right to claim a scope change unless it is issued by the government contracting agency – is viewed as unfair and risky by international contractors.

In the Model Contract of Technical Service Agreement, the current wording of "Article 15 – Change and Assignment of Agreement," in which Party A is the government contracting agency and Party B is the contractor, reads as follows:

"Party A may, where necessary, notify Party B to amend the contract within the scope of services specified in the contract. Party B shall submit the documents regarding the changes made to scope of performance, price, performance term, payment schedule and other contents within ten days from receiving the change notice, unless otherwise specified in separate agreements between both parties. A contract price change shall be resolved through negotiations between both parties."

The Committee strongly urges the PCC to eliminate that one-sidedness by adding a provision giving the contractor the express right to submit a change notification when it believes a change in scope or schedule has occurred.

Suggestion 3: Use "Most Advantageous Tender" rather than "Lowest Price" as a selection process for public projects.

Foreign contracting companies often will not participate in an international tender if the selection process is merely "lowest price" wins. The value proposition offered by first-tier foreign contractors competing in the international market consists of both qualitative elements along with a competitive price, but not necessarily the lowest tendered price. When a project is challenging due to schedule requirements, complexity, or where the contractor's performance is key to

realizing the desired outcome, then a weighted technical/price approach or "Most Advantageous Tender" is the appropriate tender-evaluation process to determine the best value for money. Under a lowest price selection process, certainty of delivery, project management skills, quality, safety and other crucial non-cost elements that differentiate tenders are not assessed and weighted, which discourages international participation. The "Most Advantageous Tender" selection approach is recognized internationally as the more effective way to select quality contractors that are the most suitable for the specific project requirements.

We understand that as a long-term objective, PCC is encouraging use of the Most Advantageous Tender approach, but most government agencies still adhere to the lowest priced tender approach for fear of being criticized, since low price is a more quantifiable criterion. However, awards that go to the low bidder often run into non-performance issues. In the end, over-emphasis on low price may cost the government agency more in time and money, as well as cause subsequent reputational harm from failure to meet cost, schedule, or quality requirements.

Many countries therefore employ a two-envelope tendering process, whereby the price submission is separated from the technical portion to ensure that price considerations do not affect the technical scoring and commercial evaluation. The technical and price proposals are submitted in separate sealed envelopes. A weighted technical score is developed for each bidder based on pre-established criteria, with key minimum hurdles that must be met. Concurrently, the commercial proposal is evaluated to verify compliance with the tender requirements.

Tenderers must first pass the technical and commercial stage before the price envelope is opened. The price and technical scores are then combined to arrive at a weighted price/technical score used to determine the recommended tender.

To ensure a fair and transparent process, it is critical that the evaluation process be well-thought-out and formalized in advance, and that the criteria and weighting are communicated as part of the tender documents.

The Committee strongly recommends adoption of the Most Advantageous Tender process, especially for public projects that are challenging, complex or involve specialty skills or high-end technology. This approach allows the government agency to tailor the evaluation process to match the requirements of the project and emphasize the key contractor capabilities or tender elements that are most important to the success of the project rather than simply choosing the lowest price.

As a first step, the government could select a few projects as trial projects, and monitor the performance of the contractors to gauge the effectiveness of the process.

Suggestion 4: Encourage the use of alternative methodology in public infrastructure projects.

International contractors often offer alternative proposals to enable the project owner to achieve time or cost savings, while still complying with the performance requirements. Internationally, submission of an alternative in addition to a base tender is common practice, but there is no provision for it under Taiwan's current government tendering process.

Also in last year's meeting with PCC, the Committee brought up the concept of allowing alternative methodology to be used in public infrastructure tenders in order to achieve savings in project budgets and schedules. Again the response from Minister Wu was positive. The committee therefore proposes the following minor modifications in the GPA and tendering practices that would benefit both the Taiwan government and interested capable international companies:

- Incorporate clauses in the GPA permitting acceptance of alternative solutions in addition to a compliant base proposal during the tendering stage for selected major projects.
- Establish a trial period in which the National Development Council would be designated as the decision-making body to select projects to follow this concept and to analyze tenders conducted by procuring agencies to evaluate the benefits.
- Ensure that the tender evaluation process of alternative solutions is well-thought-out and formalized in advance and communicated as part of the tender documents.
- If the basic concept is acceptable, review GPA regulations to see where minor modifications may be necessary to create a friendlier environment for comparing technologies and increase the opportunity for the firm with better technology to win the bid.

The CPC #3 LNG Receiving Terminal Project now being tendered with an estimated budget of over NT$80 billion would be a suitable candidate for this approach. Due to the rushed nature of this project, it would help if qualified international bidders are allowed to propose innovative but proven technology for possible shortening of the project schedule, which will have critical bearing on the sufficiency of the national electricity supply. Appropriate guidelines would be incorporated in the tender evaluation criteria to address alternatives such schedule shortening.

Construction of this kind of project requires a top-tier, very experienced international company, and simple changes in methodology can save large amounts of time and money. By using the new LNG terminal as a trial project, the government could send a strong signal to international engineering firms, local clients, and taxpayers that it is open to new ways of conducting infrastructure projects.

The Committee believes that adopting the concept of allowing for alternative methodologies would enhance the capabilities of local engineers, upgrading their capability to

compete in the international arena. If needed, Committee members would be pleased to further explain the concept and its benefits to the relevant authorities.

INSURANCE

This year the Insurance Committee would like to divide our position paper into two parts representing the two segments of the insurance industry: life insurance and non-life. Both segments are currently undergoing substantial change reflecting the continued worldwide development of e-commerce and FinTech in relation to insurance markets.

Also relevant to both life and non-life insurance, the main theme for the Insurance Committee this year is the need for increased insurance protection for individuals and families in Taiwan. In line with that objective, we present recommendations on how to incentivize companies to enhance the level of protection brought to the market. Other recommendations aim at promoting financial health and the ease of doing business in Taiwan's insurance industry.

We also hope to see further cooperation between industry and government on efforts to educate consumers regarding the full potential of insurance to provide protection against loss of income, loss of property or ownership, unexpected life and health events, and the risk of outliving resources for retirement.

The Committee would like to thank the government authorities for their contribution to improving the business environment for the insurance industry in Taiwan. In the months ahead, we look forward to communicating with the relevant ministries and bureaus regarding the suggestions put forth in this year's *White Paper*.

Life Insurance

In light of Taiwan's rapidly aging population, other subjects worthy of attention are how to provide sufficient health protection for senior citizens and how to enable them to continue to enjoy a sound economic status. Our recommendations on these topics are given below.

From an industry perspective, the Committee urges the government to encourage consumers to buy protection products by providing greater tax incentives, and to give insurers more flexibility in the pricing and filing of insurance products.

Suggestion 1: Adopt measures to incentivize insurers to offer protection insurance.

The Committee supports the government's focus on closing the protection gap – the difference between what individuals need to be insured for in the event of a serious issue such critical illness, accident, or passing and what they are actually insured for – and proposes that protection insurance be redefined in order to highlight protection products' benefits for consumers. As noted above, the degree of protection is currently measured by the face amount on the policy, but a more accurate indicator would be the amount by which the accumulated premiums exceed the cash surrender value, since this focuses on the protection component of the product. The Committee would be pleased to discuss the exact proposed formula with the relevant officials. For the remainder of this section, the discussion of protection products assumes that the above-mentioned definition or a similar one is adopted.

To promote protection products to consumers, the Committee proposes that the proposed personal tax exemption for Long Term Care and annuity products be extended to include protection products.

Targeting a higher level of protection introduces a level of earnings diversity that is healthier financially for the insurance industry. In other words, by diversifying profits with a larger mortality/morbidity spread, the industry can better immunize earnings and capital levels from normal market volatility and severe market events. We recommend incentivizing insurers to offer more protection by awarding an additional product quota based on achieving a pre-determined level of protection business.

Further, considering the social benefits that protection insurance products offer, we also advocate the exemption or reduction of business tax for insurers that develop and promote protection products. The Committee recognizes that amending the law and changing the whole mechanism would take time, but in the meantime other actions can be considered as short-term solutions, such as reclassifying the tax items in the "core business" and "exclusive core business" categories and applying a 2% tax rate to them. Another interim method would be to allow life insurers to deduct retained claim payments on protection products as part of the tax formula, as is already the case for non-life insurers.

In addition, we suggest allowing flexibility on the re-pricing mechanism for variable annuity products with guaranteed payments. The Insurance Bureau (IB) of the Financial Supervisory Commission (FSC) has already adopted a deregulation measure to allow insurance companies to follow a use-and-file procedure if certain criteria can be met. We believe this is a valid requirement for new product filing. However, for products that have been previously approved, if the purpose of re-pricing is to manage the product risk due to changes in economic conditions, the current requirement may restrict the insurer's ability to respond to capital market volatility.

Suggestion 2: Continue to increase the convenience for consumers to obtain protection insurance.

The Committee recognizes and appreciates the steps that have been undertaken to improve consumers' access to protection products. We continue to encourage the regulatory

authorities to take even bolder steps that would further enable citizens to obtain proper coverage in a transparent manner by leveraging innovative products and technologies.

2.1 Enhance the ease of use of digital means to obtain insurance. Taiwan continues to lag behind other jurisdictions in enabling insurance transactions via electronic means. Referencing major markets around the world, including Hong Kong, the United Kingdom, and the United States, Taiwan should significantly accelerate the adoption of international standards. Allowing easy, transparent, and convenient access to insurance products online will enable a greater portion of society to enjoy the protection coverage that is needed.

The Committee would like to express our appreciation to the FSC and IB for the amendments to the "Regulation on Insurance E-Commerce" announced in March 2016. To maintain positive momentum in facilitating insurance e-commerce, we recommend simplifying the application process, allowing more products and a larger amount of insurance to be transacted on e-commerce platforms, and permitting additional electronic payment methods.

Further, while the amended regulation allows for the applicant and the insured to be different individuals, a physical identification certificate must still be used in order to complete the transaction. Obtaining this "Citizen Certification Card" requires very specialized equipment and precludes most individuals from utilizing this approach. We encourage the relevant authorities to remove this requirement, as it clearly discourages bringing the insurance business into the digital age. In addition, the application of insurance technology to the open data platform of health statistics, or the collection and analysis of data collected from insurance-tech devices, cannot be achieved without the application of big data. However, the legality of collecting, analyzing, or using big data may be challenged under the Personal Data Protection Law. We recommend that the regulator establish special provisions for the protection of personal data in the insurance industry in order to meet the needs of insurance technology development.

2.2 Establish a more effective mechanism to replace the contract pre-review period. We also recommend that the regulator replace the pre-review period with other more consumer-friendly alternatives, such as amending the insurer's information disclosure obligation and legalizing the right of revocation during the cooling-off period to replace the contract pre-review period in the Consumer Protection Act. The contract pre-review period does not serve the purpose of protecting the consumer's right to knowledge of the important information in insurance policies. Instead, this requirement hinders consumers from getting simple and immediate insurance protection through e-commerce and telemarketing channels. As the consumer enjoys no insurance policy coverage during the pre-review period, and insurance contracts already include a generous 10-day cancellation period after receipt of the policy, the pre-review period mechanism should be replaced with other more consumer-friendly alternatives.

2.3 Remove restrictions limiting the development of FinTech. The Committee applauds the recent government efforts to promote FinTech in Taiwan. However, an FSC ruling on October 22, 2015 seems contrary to this direction, as it limits the number of insurance broker or agency companies that will be allowed to conduct digital online insurance to 10, and requires these companies to have a minimum annual revenue of NT$500 million to qualify. This requirement would clearly exclude young and innovative companies, enabling only traditional and established businesses (which are accustomed to engaging in face-to-face sales by agents) to apply. This approach is not aligned with global norms, and in fact we were unable to find any other jurisdiction with such requirements. In order to properly harness the power of FinTech, these limitations should be removed in the interest of increasing the number of participants and accelerating the growth of digital insurance in this country. In addition, insurance broker and agency companies still cannot connect to insurance companies' e-commerce systems because of electronic signature issues, which require further resolution by the regulator.

2.4 Establish a legal basis for electronic recordings in line with insurance technology development. As digital and telephonic means to acquire insurance are becoming increasingly popular with consumers, electronic recordings of clients' responses for underwriting purposes should be accepted as a legal basis to challenge or rescind a policy. Elimination of this option creates heightened risk for the insurance industry as a whole and limits product availability for consumers.

Two different regulatory approaches could be applied in this situation: the "active disclosure rule" and the "written inquiry rule." The main difference between them is the scope of the required disclosure. The written inquiry rule limits the applicant's disclosure obligation to the material inquiries specified by the insurer, and exempts the applicant from liability for misjudging the materiality. Whether the inquiries are in fact in writing is not a major concern under this rule. Therefore, conducting health inquiries in electronic format or by telephone does not violate the current "written inquiry rule" prescribed in Article 64 of the Insurance Law. We request that Article 9(4) of the "Directions for Insurance Enterprises Engaging in Telemarketing Insurance Products" be revised to permit the legal acceptance of electronic recordings for the above-mentioned purposes.

The change would bring Taiwan in line with international

practices in this regard and help to further promote digital insurance.

Suggestion 3: Permit liability hedging for Fixed Index Annuities.

In an effort to encourage innovations in the development of retirement annuities, the IB in 2016 permitted liability hedging for variable annuities with guarantees. Those "Regulations Governing Derivatives Transactions Conducted by Insurance Companies" did not specifically mention Fixed Index Annuities, an innovative form of retirement annuity common in the U.S. market. Although Taiwan life insurers and consumers have shown great interest in this product, it is currently restricted by regulations that severely limit the hedging instruments for such risks. Since Fixed Indexed Annuities are similar to variable annuities with guarantees, but even safer from the point of view of both consumers and insurers, we propose that Fixed Indexed Annuities be included in the scope of liability hedging. For Fixed Indexed Annuities, the annual growth is benchmarked to a stock market index rather than an interest rate.

Non-Life Insurance

The regulatory framework for insurance products should be reviewed to further enhance consumer protection while according greater flexibility for insurers to respond to changing market conditions, both in managing risks and enhancing their competitiveness. As the government has made good progress in relaxing the wet signature requirement over the last two years, we believe that further relaxation can be achieved in the commercial business area.

Developments in the financial market and increasing competition have encouraged greater innovation, with a wider diversity of products being made available to consumers. However, the difficult current economic conditions and concerns regarding operating costs have resulted in under-insurance in a number of cases, including the Formosa Water Park dust explosion and the tourist bus fire. We see the need for the government to increase the insurance limits and expand the scope of compulsory insurance.

Suggestion 4: Waive the wet signature requirement on non-life insurance application forms to meet commercial market needs.

Personal Insurance is normally sold to individuals, whereas Commercial Insurance is sold to legal entities at the request of corporate clients. The existing regulation requiring wet signatures on all insurance application forms does not take this distinction into account. We suggest that the wet signature requirement on Commercial Insurance application forms, in particular for the fronting business, should be waived completely for the following reasons:

a. Unlike Personal Insurance, there is no risk of moral hazard in Commercial Insurance.
b. Regarding the fronting business, given the large number of foreign-invested and multinational companies in Taiwan, most of the insurance planning and insurance coverage has been determined at the home-office level. The insurance brokers/reinsurance companies representing all these multinational companies would have clearly articulated the intent and scope of insurance coverage through emails or other forms of documentation. Emails or other forms of documentation are clear confirmation of insurance needs.

Removing the wet signature requirement for all commercial insurance – or if that is not possible, at least for multinational companies requirement – would help expedite the policy issuance for commercial clients; reduce unnecessary administrative work, time, and cost; and bring Taiwan's insurance practices more in line with international markets.

Suggestion 5: Increase the existing scope of compulsory insurance to provide the public with more insurance protection.

The Committee applauds the recent government proposals to increase the public liability insurance aggregate limit to NT$64 million (any one death/bodily injury NT$3 million, property damage NT$2 million and any one accident NT$30 million) following such disasters as the Formosa Fun Coast dust explosion, Kaohsiung pipeline explosion, etc. Since then, it appears that only Taoyuan City has increased the limit to NT$60 million while little progress has been made in the other cities and counties. We recommend that the relevant authorities:

a. Strictly enforce the public liability insurance limit in all cities and counties to ensure that the public in general is well protected towards accidental bodily injury/death.
b. Review the existing compulsory automobile third-party liability insurance limit of NT$2 million maximum for each death and NT$200,000 maximum for each bodily injury, as such limits are grossly understated compared to other countries in the region.
c. Expand the scope of compulsory insurance to include, for example:
    - Pollution Liability
    - Workmen's Compensation in addition to the existing labor insurance
    - Aviation Liability
    - Professional Indemnity for individual lawyers, legal firms, architects, accountants, insurance and reinsurance brokers
    - Pleasure craft
    - Shipowner's Liability and marine oil pollution
    - Airport Liability
    - Clinical Trials

INTELLECTUAL PROPERTY & LICENSING

Intellectual property rights (IPR) concerns have been at or near the top of the advocacy agenda of the American Chamber of Commerce in Taipei over the years. IPR protection continues to play a crucial role in maintaining Taiwan's competitive position in the global economy.

There have been some encouraging developments in Taiwan IPR protection in the last year. TIPO's e-filing service for patent and trademark applications and continued expansion of the Patent Prosecution Highway (PPH) with a number of countries are resulting in fewer complications and delays in the patent and trademark application process. The Chamber was encouraged to see a number of positive copyright law reforms proposed when Taiwan was preparing for Trans-Pacific Partnership (TPP) candidacy. However, these reforms have not been incorporated in the current Copyright Law draft amendments. In addition, the Committee commends the continued efforts to fast-track IPR cases, which have resulted in Taiwan having one of the more efficient IPR enforcement systems – except for dealing with cases involving online piracy – in the Asian region.

The Committee saw little or no improvement, however, on all issues brought up last year in the *White Paper*, which continue to be a matter of great concern. There has been no movement on reform of the Copyright Collective Management Organization (CCMO) system. Online copyright infringement continues to grow, and through inaction Taiwan is increasingly falling behind the rest of the world through ineffective enforcement of online piracy. Protection and enforcement by the Taiwan authorities is either absent or confusing.

Revision to the Copyright Act, which has been going on for years, continues to be delayed. The fourth draft, now under review, does little to address pressing and evolving copyright infringement issues that are only worsening as the years go by. Another concern is that over the past year judges have demonstrated an increasing reluctance to grant search warrants in IPR-related cases – which are necessary for the preservation of evidence – while further hampering IPR enforcement through reduced levels of sentencing and fines given to those convicted. The message sent is that enforcement is little more than a cost of doing business, rather than real punishment for IPR infringement.

In the past decade, particularly in the last five years, rapid technological progress has drastically changed the way we live. People now rely heavily on the internet, and social media has become one of the most common ways to interact and communicate. These changes have reshaped the landscape of business around the world, as transactions are no longer bound by national boundaries. E-commerce platforms have proliferated globally, but the same technology that facilitates the accessibility and efficiency of transactions also aggravates the problem of copyright infringements. Due to the borderless nature of the internet, copyright infringement now occurs on a worldwide scale.

Considering these changes, the Taiwan government cannot continue to rely on outdated means of combatting copyright infringement or be overly concerned with the protection of end users of pirated copyrighted works.

Suggestion 1: Adopt effective measures to resolve online copyright infringements.

Many online services are available in Taiwan today for providing legitimate content of music, motion pictures, television programming, games, software, and other copyrighted materials at reasonable – often inexpensive – prices. Still, many consumers in Taiwan continue to access unauthorized copyrighted content offered by infringing rogue websites overseas almost free of charge. A recent study conducted in Taiwan found that most of those surveyed recognize that online piracy is equivalent to theft, and that not enough is being done to deter such activities. The use of illicit streaming devices (set-top boxes used for piracy), apps, website linking, or OTT (over-the-top) services and "plug in" media players to facilitate online copyright infringement represent the fastest-growing challenge to effective copyright enforcement.

Over the past few years, Taiwan has attempted, without success, to find effective solutions to the proliferation of online copyright infringement. Certain websites profit from copyright infringement of others' valuable creative content, restricting the rights-holder's ability to make sales and poisoning the legitimate market for local and foreign creators and their distributors. Such pirate websites are a drain on the legitimate Taiwan digital economy, and represent a shockingly large percentage of all internet traffic – 23.8% of all internet bandwidth in North America, Europe, and the Asia-Pacific. In addition, users who are free-riding on unauthorized content are vulnerable to downloading malware or being exposed to high-risk advertising.

Taiwan's approach to combatting on-line piracy is seriously out of date. More than 40 countries or territories around the world – including the United Kingdom, France, Italy, Germany, Spain, and Australia, as well as Singapore, South Korea, Malaysia, Indonesia, and India in the Asia region – have already adopted effective administrative or judicial approaches to prevent access to copyrighted content offered by overseas unauthorized resources. In particular, the Court of Justice of the European Union has confirmed that providing website blocking injunctive relief to rights-holders is permitted under EU legislation and Article 8(3) of the EU Copyright Directive.

Given the failure of TIPO's attempt to adopt an effective administrative approach several years ago, this Committee suggests amending the IPR Case Adjudication Act to provide

a clear and swift legal basis and procedures for copyright holders to obtain injunction relief from the IP Court to block access to overseas rogue websites, irrespective of questions of jurisdiction and the absence of defendant infringers.

We suggest adopting the following three measures, each of which has been implemented in other countries where they have proved effective in reducing online piracy rates and increasing legitimate in-country online content services:

1. ***Develop an Infringing Website List (IWL) of illegal pirate sites to be vetted and held by law enforcement agencies, and obtain agreement from online advertisers not to do business with IWL sites.*** As a result of ads placed on pirate sites, often out of ignorance of the nature of the sites, major brands may inadvertently provide them with economic support, while at the same time siphoning funds away from legitimate content creators. This problem is worldwide and not unique to Taiwan.

   Some other major content markets, like the United States and United Kingdom, have adopted a "follow-the-money approach," which has proved to be an important tool in the piracy fight. This approach was led by the London Police Intellectual Property Crime Unit (PIPCU), which has worked in partnership with the UK online advertising industry and rights-holders. Officers first attempt to contact the owner of the illegal site to offer them the chance to operate legitimately. If the illegal site fails to comply, it is placed on the IWL, which is held by the police unit on an online portal, where it provides advertisers, ad agencies, and other intermediaries with a reliable reference for websites that should be avoided for advertising placement in order to protect their (or their clients') brands and to avoid inadvertently promoting copyright piracy. The consequent disruption in the revenue flow to pirate sites discourages infringers from engaging in that business model.

2. ***Amend the laws to provide a no-fault remedy for ISPs to disable access to infringing websites.***

   As a result of increasing online infringement, 42 governments worldwide have adopted narrowly tailored measures requiring internet service providers (ISPs) to take reasonable steps – known as site-blocking – to disable access to primarily infringing websites. Most countries already disable access to websites to address specific societal harms, for example halting access to child pornography, and an increasing number of countries in the Asia Pacific region, including South Korea, Australia, and Singapore, have adopted a remedy specifically designed to disable access to websites built on copyright infringement.

   While each of these countries has implemented the remedy in a slightly different manner, the goal remains the same: ensuring that the internet is open to legitimate creative businesses and that the marketplace is not flooded with websites whose business models are built on infringing the rights of creators. Since many infringing sites employ tactics such as locating the server offshore to avoid detection and enforcement, countries have deemed it necessary to adopt a "no-fault" approach whereby ISPs are instructed to disable access to an infringing site but are not themselves held liable for the site's infringement of copyright. The law of the United Kingdom is particularly instructive as to how a simple injunctive relief provision can be employed to effectively reduce online infringement.

3. ***Adopt legal provisions to prohibit the marketing and distribution of plug-and-play media devices that facilitate online copyright infringement.*** The use of "plug-in" media players to facilitate online copyright infringement represents the fastest growing challenge to effective copyright enforcement, retarding growth and innovation in the global audio-visual industry (including film, television, sports, music, and other audio visual content).

   Addressing this issue requires a comprehensive strategy that deals with each component of the problem:

   (a) the relevant apps and add-ons, as well as the entities and individuals who create, exploit and host the apps and platforms that facilitate access to the infringing content;

   (b) the applicable hardware devices, as well as the entities and individuals who import, load, advertise, market, and sell the devices; and

   (c) the entities and individuals who host and promote services from where the infringing content can be accessed.

   Where consumers currently may have to acquire physical devices and/or load up specific platforms or other software in order to access the content via television, fast-developing innovations will soon make it possible to access the content directly from a TV set or other device in a consumer's living room – as long as that TV or device is connected to the internet.

   The global nature of this phenomenon presents additional issues. For example, Taiwan consumers are accessing content such as live U.S. National Football League football broadcasts or releases of films and TV content that has not yet been legitimately released in Taiwan (or that may be pending release or still showing in Taiwan cinemas). For such unauthorized content, children and young people in Taiwan cannot be informed about and protected from age-inappropriate content or advertising.

   Effectively tackling this issue will require action in several different areas, including the enactment of relevant legislation. Currently, gaps in Taiwan's legal framework make it difficult to secure successful prosecutions against the key individuals involved in the marketing, selling, distribution and delivery of the content, the platforms

facilitating it, and the software that connects the sources of content with the individual devices. Ways must also be sought to overcome the significant challenges faced when gathering evidence and undertaking enforcement actions in this area, due to the complex technical nature of the devices and associated services, and the international nature of the networks and infrastructure that support them.

Suggestion 2: Enact needed revisions to the Copyright Act.

The Committee was encouraged that a number of positive reforms to the copyright law were proposed when Taiwan was actively preparing its candidacy for participation in the Trans-Pacific Partnership (TPP) trade agreement. However, these reforms were not incorporated in the latest draft amendments to the Copyright Act. We recommend the following steps to strengthen that bill:

1. ***Maintain the penal provisions set out under the current law, in particular the public crime status for optical disc piracy, carrying a minimum six-month prison term.*** The more advanced reproduction media and technology available today can store infringing works with much higher quantity and quality, thus posing an even greater threat to the legitimate businesses of rights-holders. For example, more than 50,000 pieces of pirated disks of Jody Chiang's live concert performances were seized in November 2014, and another 50,000-plus pieces of pirated disks recorded with unlicensed films, music, and software were seized in December 2015. Considering that the physical sales of sound recordings accounted for 50% of the Taiwanese recording industry's revenue in 2015, there is no justification for relaxing or reducing the level of penalty against optical disc piracies.
2. ***Remove the proposed exemption for retransmission of content received by use of home-use facilities.*** The proposed exemption for retransmission of content received by use of home-use facilities would unreasonably extend the permissible exceptions under the WTO's TRIPS (Trade-related Aspects of Intellectual Property Rights) agreement, to which Taiwan is a signatory. The exemption would fall afoul of the three-step test set out under TRIPS, as was confirmed by a WTO panel in a ruling on a proposed "business exemption" in the U.S. Copyright Act that is similar in effect to the provision now being proposed by the Taiwan Intellectual Property Office (TIPO).

   The problem lies in the vagueness of the term "home-use facilities" and the difficulty in distinguishing home-reception facilities from commercial facilities, which would keep the exception from being applied only to "certain special cases." The proposed amendment would not effectively limit the use of "home-use facilities" for commercial purposes or in commercial premises. Further, it does not satisfy the other conditions required under the three-step test, as it would fail to avoid "conflict with a normal exploitation of the work" and pose unreasonable prejudice to the "legitimate interests of the author."
3. ***Extend the term of protection to 70 years consistent with the global trend.*** Currently 64 countries protect sound recordings for 70 years or longer, including 18 out of the top 20 music markets), as well as 29 out of the 32 OECD member countries.

   In the United States, sound recordings are protected for a period of 95 years from publication or 120 years from their creation, whichever expires first. In September 2011, the European Union extended the term of protection to 70 years in all member states. Other countries with copyright terms of 70 years include Australia, Argentina, Brazil, Chile, Ecuador, Singapore, South Korea, and Turkey. In India the term is 60 years, in Mexico 75 years, and Honduras 77 years. Extending the term of protection in Taiwan from the current 50 to at least 70 years would not only bring Taiwan in line with the international standard, but also bring a number of important advantages to the Taiwanese economy and the creators of sound-recording content. The longer potential economic life of a sound recording would give producers a stronger incentive to invest in the local recording industry, benefitting economic growth, job creation, and tax revenue. It would also encourage producers to continue to offer recordings to local consumers in updated and restored (digital) formats, contributing to the preservation of local culture by ensuring that classic creations produced in Taiwan in the fifties and sixties continue to be protected.
4. ***Increase the minimum compensation to NT$30,000 per infringement when calculating damages so as to properly cover the copyright owner's accumulated losses.***

   The advent of the internet and e-commerce has reshaped the global business landscape, and transactions are no longer bound by national boundaries. Taking software as an example, a single key can be activated hundreds or thousands of times without sacrifice to the quality of the work. In many cases of illegal hard-disk loading, where retailers sell their computers by installing unauthorized software, the courts often assess damages based on the number of disks and USBs seized during raid, ignoring the fact that the disks or USBs may have been used multiple times for illegal duplication on many devices sold prior to the raids. Because the nature of digitalized content is that it can be duplicated so easily, especially online, it is usually hard to prove the actual loss for copyrighted work It is generally agreed that one of the most important ways to protect copyright holders is for the courts to award damages that both properly reflect the loss to the rights-

holder and are sufficient to deter further infringements. Currently, Article 88 III of the Copyright Act states that if it is difficult for the injured party to prove actual damages, statutory compensation may be requested at an amount not less than NT$10,000 and not more than NT$1 million. Instead of applying the statutory compensation clause in copyright infringement cases, courts in Taiwan have consistently held that the damage equals the market price of the software in the disks seized during raids. The courts' reluctance to apply the statutory compensation clause renders Article 88 III futile. Copyright holders' losses are not properly compensated because past lost royalty revenue is not taken into consideration.

The current fourth draft of Copyright Act amendments revises Article 88 III by removing the prerequisite of "difficult for the injured party to prove actual damages," and allows copyright owners to claim statutory damages in the range of NT$10,000 to NT$1 million. This change is an improvement in that it removes the obligation for the injured party to first prove difficulty in determining the actual damages before seeking statutory compensation. But the problem still persists of how to adequately reflect copyright owners' past lost license fees. To address this problem, we suggest raising the minimum amount allowed for statutory damages. The NT$10,000 level was set in 1992 and has never been adjusted. The maximum fine was NT$500,000 when introduced in 1992, and was raised from NT$1 million in 2003, but the maximum amount has rarely been awarded by the courts. After 25 years of rapid technological development ushering in the internet age, we believe the time has come to raise the minimum statutory compensation to NT$30,000 to properly protect copyright owners for past lost license fees.

Suggestion 3: Remove unreasonable restrictions to CCMOs' rate settings.

Amendments in 2010 to the Copyright Collective Management Organization (CCMO) Act gave greater freedom to content users to appeal to TIPO for rulings revising the copyright royalty fees set by CCMOs. Although both CCMOs and users have been dissatisfied with TIPO's intervention in rate setting, TIPO has so far continued to insist on maintaining the review system.

The Committee urges TIPO to reconsider its stance – if not by totally eliminating the copyright tariff-rate review scheme, then by setting reasonable requirements governing users' applications. Specifically, users should not be entitled to file a tariff review application under the following conditions:

1. When more than 30 days have passed after the publication of a new or revised tariff rate proposed by the CCMO;
2. When a similar tariff rate had been reviewed and set within the past three years, regardless of whether any judicial remedy was sought;
3. When a previous settlement or agreement was reached regarding the tariff rate at issue, and the applicant cannot provide a convincing reason why a new ruling is needed.

MEDICAL DEVICES

The member companies of the Medical Device Committee view our mission as making new and innovative technologies available in Taiwan, thereby improving the healthcare system's ability to offer superior patient benefits on a continuous basis.

To achieve our mission, we consider it crucial to work in close collaboration with Taiwan's government authorities to streamline the registration process so as to help Taiwan patients benefit earlier from cutting-edge technologies and products. It is also imperative to implement a transparent, more predictable and sustainable pricing and reimbursement process to encourage the faster introduction of new technologies, despite the existence of financial constraints. Following are our specific recommendations:

Suggestion 1: Reduce the pre-market registration time.

1.1 Waive the request for a "Certificate to Foreign Government." Taiwan is one of the few countries in the world that requires submission of either a "Free Sale Certificate" (FSC) or "Certificate to Foreign Government" (CFG) as part of the process for registration of medical devices. In most countries, the document is no longer required or has been replaced by alternative supporting documents. Most manufacturers today are involved in cross-national production. Many of them are engaged only in the manufacturing process, without marketing products in the country of origin. As a result, they are unable to provide a FSC/CFG certificate when applying for a new registration or to extend existing licenses.

Information about the manufacturing facility and the products as indicated in the FSC/CFG can be found from other sources, such as the product label, the instructions-for-use booklet, the original Letter of Authorization, etc. In addition, it should be noted that more than 10 years have passed since implementation of the Good Manufacturing Practice (GMP) system for medical device manufacturers. Both domestic and international manufacturers must fulfil the GMP requirements, as a result of which international quality-control standards have been comprehensively achieved in the Taiwan market.

The Committee requests gradual removal of the FSC/CFG

requirement to reflect global trends in medical device laws and regulations, and align domestic manufacturers with their international counterparts. During the first phase, proof of marketing authorization in the United States, the European Union, or one of the A10 countries could be used as an alternative to the FSC/CFG, followed at a later stage by cancellation of the requirement altogether.

1.2 ***Simplify the renewal requirements for Quality System Documentation (QSD).*** QSD is required to be renewed every three years. Currently, the requirements for the initial QSD application and for renewal are the same. In the interest of making the review process more efficient, the Committee suggests that unless major changes are being made in quality-related matters or extensions are being proposed in the product line or scope, the QSD renewal requirements could be waived for quality documents related to tier 1 and tier 2 standard operating procedures. The result would be to significantly reduce the time for QSD renewal submissions. The manufacturer would be responsible for keeping all quality-related documents in a manageable and controlled manner so that they could be made available as necessary at any future time for review or inspection as requested by the Taiwan Food & Drug Administration (TFDA).

Suggestion 2: Disclose more information on the progress of reviewing proposed additions and revisions in medical service procedures.

We are grateful to the Pharmaceutical Benefits Division of the National Health Insurance Administration (NHIA) for proactively introducing a search function for tracking the progress of application reviews for new-function medical devices. We also appreciate the Medical Affairs Division's efforts to increase the frequency of review meetings so as to accelerate decisions on the addition or revision of medical service procedures.

At the same time, there is a need for the disclosure of more information about the review process. Such disclosure would not only be in line with the spirit of the Second Generation NHI, but would also help the public to better understand NHI policy direction and participate appropriately. It would also enable medical device manufacturers to make timely market-access plans to support clinicians in developing appropriate treatment modalities.

The Committee recommends that NHIA disclose detailed information from NHI meetings concerning the reimbursement fee schedule, reference lists, and global budget; publish historical data on the usage of medical services and procedures for better evaluation of the budget impact of new medical devices and technologies; and develop a search function for tracking the progress of applications for adding or revising medical service procedures as they relate to new-function medical devices.

Suggestion 3: Simplify the review process for new balance billing items.

For each new balance billing item, manufacturers need to submit a fresh application for approval by the NHIA expert group and the Special Material PBRS (Pharmaceutical Benefit and Reimbursement Scheme) Joint Committee after they have evaluated the clinical efficacy and budget impact. Approved items usually have the characteristics of providing a better treatment outcome, fulfilling clinical needs, or providing patients with different options. However, the new balance billing items are subject to further review by the National Health Insurance Committee (NHIC) of the Ministry of Health and Welfare (MOHW), which takes six months to a year or more.

NHIC is the important body for supervising NHI business and regulations, and allocating global budget.

To aid in the review of new balance billing items, NHIC in 2016 established a set of checkpoints and principles. We believe that rather than reviewing items case by case, it would be sufficient for NHIC to ensure that those guidelines and principles are followed, and later regularly review balance billing reports to monitor usage. For the sake of better patient access to new medical devices, the Committee suggests that NHIC authorize the Special Material PBRS Joint Committee to decide on new balance billing items by following the same procedure as used for the review of new-function devices.

Suggestion 4: Modify the medical device Price-Volume Survey system.

Medical device reimbursement is based mainly on the product's functionality, with all devices performing the same function reimbursed at the same price. Thus, a newly launched medical device – regardless of its manufacturing site or design characteristics – will be reimbursed at the same price as that of a product in the same functional category that was listed many years before. In addition, because of the system of setting the reimbursement price by "points" rather than "fees," hospitals bargain to obtain transaction prices lower than the reimbursement prices in order to make up for losses due to the floating point value. Even though the price discount is different for newly launched medical devices and similar devices launched many years before, the new reimbursement price after the Price-Volume Survey (PVS) will be based on the volume-weighted actual transaction price among all devices in the same category, without considering the differences in manufacturing cost and transaction price among the products.

The above two situations may cause a newly launched device to lose its price competitiveness over time.

Given that the low reference base may cause low pricing for new-function medical devices, companies may be discouraged from launching new medical devices in Taiwan. Even more worrying is the prospect that currently listed

medical devices may be withdrawn from the reimbursement category or from the Taiwan market due to price constraints.

The Committee therefore suggests that the NHIA Pharmaceutical Benefits Division discuss with industry how to adjust the PVS for special materials, establishing a stop-loss and bottom-price mechanism and simplifying the PVS administrative process.

OTHERS

CHIROPRACTIC

Suggestion: Develop a practical plan to recognize the profession of chiropractic.

In each edition of the *Taiwan White Paper* since 2006, the chiropractic doctor members of the American Chamber of Commerce in Taipei have presented the same request: provide a legal basis in Taiwan for the chiropractic profession as has been done in over 90 countries in the world.

With the help of the National Development Council (NDC) and the Ministry of Health and Welfare (MOHW), a number of discussions have been held in recent years about a possible way forward, but no clear solution has yet been found. In the meantime, the Taiwan population continues to age at a rapid pace, and by 2025 Taiwan is expected to become a "super-aged" society, with those 65 years old or more accounting for 20% of the people.

One of the central policy directions of the Tsai Ing-wen administration is to provide well-established long-term care for Taiwan's elderly, helping to ensure that they can enjoy a healthy and active lifestyle for as many years as possible. But the challenge will be to provide the needed services without placing an overwhelming burden on a healthcare system that is already under financial pressure.

Part of the answer to that challenge would be to expand the availability of chiropractic services in Taiwan. As a form of treatment that uses neither surgery nor medication, chiropractic is a less costly alternative, and there is no expectation that chiropractic would be included for coverage under the National Health Insurance program. Yet chiropractic's effectiveness and safety in treating low-back pain, neck pain, headaches, and other neuromusculoskeletal ailments has been clearly proven in a number of studies, as the World Federation of Chiropractic reported to the World Health Organization in 2012. One such study – of four years' data from a large Chicago HMO – was published in 2004 in the *Journal of Manipulative and Physiological Therapeutics*, showing that the services provided by chiropractic doctors can help reduce healthcare expense by at least 50%.

Besides the aging of the population, another evident trend in Taiwan in recent years has been the increase in physical activity – whether cycling, running, hiking, or working out in the gym. Those activities, while positive in creating a fit and healthy populace, may also lead to aches and pains that chiropractors are uniquely trained to deal with.

What has accounted for the reluctance in Taiwan to legalize chiropractic? In the past, a major obstacle was the health authorities' tendency to regard chiropractic not as a profession but merely as a technique – a technique that other healthcare workers could learn and perform. Gradually, however, the understanding has grown that chiropractic doctors are highly trained professionals who have gone through a rigorous five-year course of post-graduate study after university.

Today the bigger impediment is a classic chicken-and-egg question of how to integrate chiropractic into the Taiwan healthcare system when there is no current provision for it. MOHW continues to insist that the process must start with the establishment of a chiropractic course of study in one of the local medical schools. Over the years the idea has been raised with several medical colleges, but no school would reasonably be willing to make that investment in resources without clear assurance that its students could be licensed as professionals after graduation.

The proposal would be feasible only if the government takes an active role in working with a selected college or colleges to develop a comprehensive plan. Ideally, the NDC, MOHW, and Ministry of Education would join forces to bring this idea to reality.

In addition, since it would probably take at least a decade before the first Taiwan-educated chiropractic doctors would complete their training, the interim plan should include modification of existing law to recognize the qualification of foreign-licensed chiropractic doctors to practice in Taiwan.

Given the cost-effectiveness of chiropractic and the contribution it can make to Taiwan's aging population, it would be reasonable for the still relatively new Tsai administration to wish to take a fresh look at this question – and to see whether it can achieve a breakthrough in a *White Paper* issue that is now already into its second decade.

TOBACCO

Suggestion 1: Maintain transparency in adopting tobacco control policies.

In line with the government's new practice of extending the public notice and comment period for proposed new regulations from the previous 14 days, in early 2017 stakeholders were given 60 days to comment on draft amendments to the Tobacco Hazards Prevention and Control Act (THPCA). This development was highly welcome as a potential means of enhancing transparency and accountability in the making of public policy.

At the same time, it needs to be stated that the length of the notice and comment period is not the only measure of transparency. The THPCA draft contains a number of

controversial provisions, such as the introduction of plain packaging, enlargement of the area on the packaging for warning pictorials and text, a ban on additives, and the stipulation that three repeat administrative violations will cause suspension of an enterprise's business license.

Yet the amendments were drafted without the holding of public hearings to solicit the views of various stakeholders and experts about the potential impact of the proposed legislation, including the effect on Taiwan's international trade obligations, protection of trademarks and other intellectual property rights, market stability, and the rights of lawful manufacturers. Neither was any meaningful study conducted to assess the socio-economic impact.

This questionable process raises the suspicion that the 60-day comment period may be simply a formality, without genuinely fulfilling the intended purpose of ensuring that government policies are based on objective evaluation after comprehensive analysis and broad consultation across the spectrum of opinion-holders. A more open and impartial process would only strengthen Taiwan's economic and trade environment and international competitiveness.

Suggestion 2: Integrate the tobacco product excise tax and Health Surtax.

As outlined in previous editions of this section of the *Taiwan White Paper*, government policies with regard to the tobacco product excise tax and Health Surtax (HST) should adhere to the principles of "reasonableness, gradualness, and predictability," since drastic increases in those taxes inevitably lead to increased sales of illicit and untaxed tobacco products. Recently the Legislative Yuan raised the tobacco excise tax from NT$590 to $1,590 per 1,000 sticks – nearly a threefold increase. Although this increase in the excise tax will only take effect on July 1, it is very likely to cause many consumers to turn to cheap cigarettes that have been smuggled into the market to avoid customs duties and taxes.

This anticipation effect is indeed supported by Ministry of Finance data showing that from September 2016 – when news of the planned increase was announced – through the end of last year, the volume of illicit cigarettes uncovered by the authorities rose by about 13% from the same period in 2015. Such a consumer shift to low-priced, illicit products is clearly detrimental to government finances, public health, and lawfully operating businesses.

Following implementation of the tobacco excise tax increase and in light of the above factors, it is now important for the government to monitor the illicit cigarette market and adopt reasonable and effective measures to restrict any growth in those sales. Further, after this steep increase in the excise tax, the authorities should avoid any increase in the HST, so as to avoid further burdening consumers, fueling additional growth in illicit trade, harming market stability, and diminishing government revenue.

Ideally, the government should consider integrating both the excise tax and HST into a unitary tax to help ensure that any adjustments are carried out according to the principles of "reasonableness, gradualness, and predictability." Treating increases in the excise tax and HST separately only makes it more difficult to adequately evaluate their potential impact on the lawful industry, leading to the unintended consequences of stimulating the growth of the illicit market and diminishing government revenue.

PHARMACEUTICAL

In the 2016 *Taiwan White Paper*, this Committee made three main suggestions to the Taiwan government for the betterment of Taiwan's pharmaceutical environment:

- Strengthen Intellectual Property Right (IPR) for innovative products.
- Expedite the regulatory and reimbursement reviews of new drugs/indications.
- Provide more funding to the healthcare system.

The Committee recognizes the positive progress made by government in several key areas:

1. Completion in June 2016 of the first reading in the Legislative Yuan for amendment of the Pharmaceutical Affairs Act regarding Patent Linkage and Data Exclusivity.
2. An increase in the R-zone (Reasonable-zone) price protection from 3% to 5% for Category 3A drugs from February 2016.
3. More frequent periodic engagement with the pharmaceutical industry by relevant government agencies, including the Ministry of Health & Welfare (MOHW), Taiwan Food & Drug Administration (TFDA), and National Health Insurance Administration (NHIA).

At the same time, however, the Committee believes that significant improvements are still needed regarding some key issues. IPR protection remains a major concern, as the legislative process for the Patent Linkage and Data Exclusivity amendments has not been completed. In addition, the slow regulatory review timeline for new drugs and new indications still prevents quick access by Taiwan patients to the most innovative drugs. The situation is further aggravated by the long reimbursement timeline, low reimbursement approval rate, and low reimbursement price compared to benchmark countries.

To make matters even more challenging, unexpected deep price cuts were imposed based on the Drug Expenditure Target (DET) mechanism, since the growth in the drug expenditure budget could not match the increase in drug expenditures. Hence, there is an urgent need for greater transparency, predictability, and reasonableness in the pricing

system through DET. At the hospital level, additional pressure is coming from growing demand for price discounts for drugs to be listed on the hospital formulary.

As a result, the Committee would like to propose three new suggestions for the reference of the Taiwan government as means of better serving Taiwan patients and key stakeholders:

1. Complete the legislative process for Patent Linkage and Data Exclusivity to strengthen IPR protection for innovative products.
2. Shorten the regulatory and reimbursement approval timeline for new drugs and indications to provide timely patient access to innovative new drugs.
3. Place the healthcare system on a sound and sustainable footing.

The Committee looks forward to active support from the Taiwan government to create a positive pharmaceutical-market environment. We hope that all key stakeholders – including government, hospitals, and pharmaceutical companies – can work together to ensure that the best pharmaceutical products and services are made available to Taiwanese patients, who are always at the center of our focus.

Suggestion 1: Complete the legislative process for Patent Linkage and Data Exclusivity to strengthen IPR protection for innovative products.

Creating an investment environment in Taiwan that encourages and rewards innovation will be essential for Taiwan's participation in further bilateral free trade agreements. It is also in line with the government's policy objective of encouraging Taiwanese biotech companies to develop new drugs for the international market. To achieve those goals, it is necessary to continue strengthening IPR protection. We appreciate the government's commitment in preparing legislation to implement Patent Linkage and further enhance the existing provisions for Data Exclusivity. The relevant Pharmaceutical Affairs Act amendments went through a first reading at the Legislative Yuan in 2016, but have yet to undergo second and third readings so as to be enacted into law.

The Committee urges the government to include the relevant bill in the list of priority legislation for the autumn 2017 session of the Legislative Yuan, so as to close major gaps between Taiwan's current regulatory framework and that of high-standard trade agreements. Currently, in the absence of a Patent Linkage mechanism, there is no effective way to prevent infringing drugs from entering the market while the original product is still under patent production. In addition, the existing Data Exclusivity coverage is limited, confined to new components of new drugs.

Recommendations:

1. Establish a simple, clear and workable regulatory system for Patent Linkage.
   (a) Follow U.S. practice by listing patents by number instead of by patent claims to prevent TFDA from being embroiled in potential disputes over certification.
   (b) Rigorously implement IPR protection by releasing licenses and reimbursement prices to others only after the originator's patent has expired.
2. In addition to new indications, extend Data Exclusivity coverage to new formulations and new methods of drug administration and provide 12 years of coverage to biological products.
3. Enhance IPR protection by enacting the proposed legislation this year to establish a Patent Linkage mechanism and broaden Data Exclusivity coverage.

Suggestion 2: Shorten the regulatory and reimbursement approval timeline for new drugs and indications to provide timely patient access to innovative new drugs.

Considering that innovative drugs are a key contributor to improving patients' health outcomes, they should be a priority area for government investment in healthcare spending. According to *Biopharmaceutical Competitiveness & Investment (BCI) 2016*, a global executive opinion survey and index of economies' biomedical investment-attractiveness, economies with policies supporting biopharmaceutical innovation and investment – such as robust IP protection and a supportive market-access environment – are much more likely to secure further investment, not only in biotech but in other sectors as well. An innovative biotechnology investment environment can thus be seen as a prerequisite for sound national economic development.

According to recent statistical data, the regulatory review timeline for new drugs and new indications has improved slightly, but there is still much room for improvement. The average review time for new chemical entity and biologics applications was 400 days in 2016. Only 43.3% of the applications met TFDA's review time target of 360 days. The average review time for new indications was 190 days, with only 44.7% of the applications meeting the review time target. The Committee is concerned that the delays in the new-drug and new-indication approval process will impact patients' right to access needed drugs, especially for life-threatening conditions.

The reimbursement approval timeline for new drugs and new indications has also seen significantly delays. The second-generation National Health Insurance program has now been in place for four years, but reimbursement issues regarding new drugs and indications have worsened compared to the first generation. Approval rates are lower, the review time is longer, and the prices approved continue to be much lower than the international median. On average, the reimbursement review for new drugs takes 429 days, longer than under the first generation. Worst of all is the review time of 782 days

for new cancer drugs, without any sign of improvement. The Committee strongly urges NHIA/MOHW to increase the new-drug budget, and to expedite the review process to help ensure patients' timely access to solutions to unmet medical needs.

Recommendations:

1. **Accelerate the review process for new-drug and new-indication registration.** Use effective processes and mechanisms to speed up the review process for new drugs and new indications. We expect TFDA to meet its commitment to approve new drugs within 360 days and new indications within 180 days for those cases under review or for new submissions in 2017. The Committee suggests that TFDA aim to approve 90% of applications within the allotted time, compared to the level of around 40% in 2016. We also recommend that the government actively cooperate with industry associations to establish appropriate milestones for the new-drug review process. Also needed is a transparent platform for stakeholders to monitor the progress and assist TFDA in achieving the milestones.
2. **Refer to the approved indication content from the U.S. or EU.** Often the new drug or new indication receives approval in the United States or EU while the Taiwan registration process is still underway. If there is no specific consideration related to ethnicity or geography, it should be appropriate to use the approved U.S./EU indication content. For some cases approved by TFDA but with restricted indications that are not the same as in the U.S./EU, the approval was delayed and also some patients could not use the drug because of the indication limitation. In addition, global pharmaceutical companies might hesitate to engage in clinical trial investments and submit early applications for registration in Taiwan, which may impact local patients' rights. To avoid restrictions that would delay patient access, we ask TFDA to approve new indications on the same basis as the U.S./EU.
3. **Increase the new-drug budget through a three-phase approach.**
   - ***Short-term – Allocate current NHI savings toward funding new-drug/new-indication reimbursement:***
     1)*Savings from the annual DET price cut.* The excess from the NHIA-adjusted drug prices from the 2016 DET came to NT$5.71 billion.
     2)*Claw-backs from Price-Volume Agreements (PVA).* As PVAs are signed as part of the reimbursement process for new drugs or indications, the claw-backs should be viewed as "subtractions" from NHI expenses and therefore returned to the global budget. As the claw-backs come from new drugs or new indications, they should be allocated for new-drug budget.
   - ***Medium-term – Change the policy mindset and reallocate NHI resources.*** NHI currently covers an expansive range of ailments from the common cold to severe diseases. Given budget constraints, however, NHIA should shift its priorities by providing insurance coverage only to serious diseases. Funds for the new-drug budget could be increased by delisting OTC drugs from NHI reimbursement and/or considering adoption of a copayment mechanism.
   - ***Long-term – Align new-drug budget planning with the following year's new-drug reimbursement forecast.*** In order to allocate sufficient amounts for new-drug reimbursement and to provide patients with timely access to necessary treatment, the Committee suggests that NHIA calculate the total amount of new drugs that will be available and needed in the following year, and establish a sound budgeting methodology to estimate the next year's new-drug budget. This exercise can provide a predictable new-drug reimbursement timeline so that patients' access to innovative medicine will not be delayed or blocked due to budgetary constraints.
4. **Ensure that Taiwan patients have access to innovative new drugs by adopting Managed Entry Agreements (MEA).** The growing patient demand for timely access to promising therapies in areas of unmet medical needs has led to development of a new product-reimbursement paradigm that balances financial impact and the value of new medicines to help ensure patient access to innovative medicines. An example is the use of contractual arrangements between manufacturers and payers known as Managed Entry Agreements, which permit coverage/reimbursement of a health technology subject to specified conditions. All the terms of the MEA should be confidential.

   MEAs bring such major advantages as 1) Reduced uncertainty regarding effectiveness and/or cost-effectiveness; 2) Better patient access to innovative treatments; 3) More flexibility regarding coverage decisions; 4) An ability to address different needs through different schemes; 5) Better control of budget impact; 6) Improved cost-effectiveness; and 7) Improved decision-making.

   An MEA is seen as particularly applicable for meeting unmet medical needs when conventional approaches, such as PVAs or restricted reimbursement criteria, make it difficult to grant reimbursement. For Taiwan, establishment of an effective MEA mechanism should be seen as an urgent task. The Committee urges the Taiwan government to collaborate with all stakeholders, including drug manufacturers, healthcare professionals, and patients, to draft necessary legislation to create an MEA mechanism in the interest of ensuring Taiwan patients'

access to innovative new drugs.

More broadly, we suggest that government pursue a "patient-centric" approach to these issues. In particular, breakthrough innovative new drugs should be handled by means of a fast-track review process to expedite patients' access to drugs that may be potentially life-saving, life-extending, or able to greatly improve patients' quality of life.

Suggestion 3: Place the healthcare system on a sound and sustainable footing.

In order to provide patients with a better medical-service environment, the Taiwan healthcare system needs more funding, as well as a stable and transparent mechanism for adjusting drug prices. The Committee is grateful to NHIA for maintaining an open dialogue with the pharmaceutical industry over the past year and responding to the industry's suggestions by gradually reducing gaps in the price-adjustment mechanism. We believe that continuing communication between government and industry will facilitate the search for a transparent, predictable, and more reasonable mechanism for drug-price management.

The second pilot DET phase ended in 2016, and it is now time to consider incorporating the practice into the NHIA law on a permanent basis. While DET offers potential advantages in terms of transparency, fairness, and predictability, there are also some key issues to be resolved regarding its future implementation, including revision of the R-zone for mono-source compounds, as well as deduction from the DET calculation of the PVA claw-back and the price adjustments on drugs in their first five years after going off patent.

It is also vital to initiate payment-system reform to reduce hospitals' dependency on drug discounts. Under the current system, our member companies are asked to provide increasing levels of discount when seeking to list new drugs on hospital formularies. For this reason, some new products are unable to be accessed by patients who need them, even though NHIA has given reimbursement approval. Physicians face a situation in which they can only prescribe what has been listed by their hospital, posing a challenge to their professional desire to make the most effective medicines available to their patients. The Committee urges MOHW and NHIA to reform the payment system to enable healthcare providers to reduce their dependency on drug discounts, expedite patient access to needed drugs, and sustain a more stable drug-supply system.

Recommendations:

1. Develop a patient-centered policy to accelerate the introduction of new drugs into hospitals. In addition to obtaining a license and NHI reimbursement from the government, new drugs must be listed in the drug formularies of the hospitals before physicians can prescribe the medication to patients. From the drug regulatory process to the hospital listing, it takes a total of approximately 5-6 years for patients to gain access to the new drug. At present, hospitals generally apply a "one-in, one-out" principle at the time a new drug enters their formulary. That is, a new drug may be introduced only after an existing drug is removed. This practice affects patients' right to medication. It often means, for example, that only one or two versions of a new drug that comes in several dosage forms can be introduced at a time, although the available dosages or formulations may not be what is most suitable for or most needed by a given patient. In addition, a fair and patient-centric approach must also treat imported and domestic drugs equally, particularly regarding inclusion in hospital accreditation indicators.
2. Adopt a more reasonable drug-price adjustment mechanism. As the rate of growth of drug expenditures continues to exceed that of the total healthcare budget, huge price adjustments under the DET mechanism can be expected in the coming years. As a result, the DET baseline needs to be revised from the current practice to one that benchmarks the previous year's actual expenditure, multiplied by the annual growth rate in the Global Budget. So as to avoid a double price cut, the amount of the PVA claw-back and the price adjustments on drugs in the first five years off product should be deducted from the value of drug expenditures exceeding the DET target. The Committee also suggests devising a more sophisticated R-zone mechanism based on different types of products:
   a) New products with data exclusivity or within the TFDA monitoring period should be given a 15% R-zone because there are no generics to launch. Too large a price cut will cause the product to be withdrawn from the Taiwan market, with a negative impact on patients' right to treatment.
   b) Mono-source products require a 12.5% R-zone. Although the major compound has been off-patent or never had a registered patent in Taiwan, it is the only source on this market, without any generics substitution. If there is no price protection, it may be forced to be withdrawn from Taiwan, impacting patients' rights.
   c) New products that are in the first four years after launch and are without patent may co-exist with generics. An R-zone of 10% could be applied. We suggest that the rest of category 3A medications have a 5% R-zone.
3. We recommend that the Taiwan government seize the opportunity to carry out payment-system reform by adjusting the medical-service payment standard to reflect actual clinical costs, and enabling hospitals to provide adequate compensation-and-benefit packages

for healthcare professionals to ensure sufficient physician and nursing manpower. Through such reform, hospitals would no longer have to rely on drug-price margins to sustain their operations, restoring order to the pharmaceutical market.

PUBLIC HEALTH

The Committee would like to commend the Ministry of Health and Welfare (MOHW) for its impressive efforts with regard to vaccination promotion, cancer prevention and treatment, prevention and control of viral hepatitis, patient safety, use of antibiotics, and many other important public health issues, as well as for maintaining an open dialogue with industry over the past year.

We urge MOHW to building on these past achievements by undertaking additional efforts with regard to cancer prevention and treatment, stabilization of the national vaccine fund, and control of viral hepatitis, as outlined in the suggestions below.

Suggestion 1: Increase investment in cancer prevention and treatment to reduce economic burdens and the loss of life.

According to 2015 statistics from MOHW, cancer topped the nation's 10 leading causes of death for the 33rd consecutive year. Cancer's economic impact is also greater than any other cause of death. A report from the American Cancer Society published in 2010 estimated the worldwide economic impact of premature death and disability from cancer – not including direct medical costs – at US$895 billion in 2008, a figure equal to 1.5% of the world's gross domestic product. In Taiwan, a paper published in 2015 in the *Taiwan Journal of Public Health* showed an estimated economic loss due to cancer of around NT$21.8 billion (about US$715 million) in 2012, much higher than the NT$12.3 billion caused by injuries. It was found that cancer reduces the length of a victim's life by an average of 27.5 years and working life by 7.3 years.

In recent years, the proportion of healthcare expenditures in Taiwan covered by patient self-payment has been steadily increasing, while the percentage from government funding has been declining. Compared to other OECD countries, the Taiwan government's contribution as a proportion of total healthcare expenditures and Gross Domestic Product is relatively low. The ratio of national healthcare expenditure (NHE) to GDP has remained in the range of 6.2%-6.6% since 2004. In comparison, the ratio in South Korea increased from 5.2% to 7.8% between 2004 and 2013, while the ratio in Japan rose from 8% to 10.3% during the same period. As those figures indicate, Taiwan has been under-investing in terms of the budget allocation for public health and the healthcare system. The impact is heaviest for cancer patients, who must increase the amount of self-payment in pursuit of better treatments and an improved chance of survival.

As addressed in the MOHW's 2025 *Health and Welfare White Paper*, the Ministry has aligned with World Health Organization (WHO) policy objectives to reduce the cancer mortality rate and premature death rate by 25% by 2020, and to reduce the mortality rate of those in the 30-70 age bracket by 25% by 2025.

However, the National Health Insurance Administration (NHIA) and National Health Insurance Committee (NHIC) have long been mainly focused on budget control, which has directly and indirectly impacted the introduction of innovative new drugs and new health technologies to fulfill patients' needs. At a time when the NHI program is enjoying some financial surplus, the government should take the opportunity to address some longstanding issues by improving the healthcare services point system and level of reimbursement for new drugs.

With regard to new drug reimbursement, cancer patients face an urgent need to receive innovative treatments to extend their lives and achieve a better quality of life, and thus are forced to increase the degree of self-payment. Given the widespread global trend for governments to increase investment in cancer prevention and treatment, Taiwan should provide enough budget to address this major public health issue and achieve the policy goal of significantly reducing the cancer mortality rate. Continued efforts on cancer prevention are also important, including the elimination of carcinogenic factors and the promotion of frequent cancer screening. Increased investment and sufficient reimbursement of innovative cancer treatments are needed to achieve this policy goal.

We suggest that MOHW review the current level of NHI reimbursement for cancer treatment and reallocate resources to cover new technologies and treatments so as to help patients return to normal lives.

Suggestion 2: Stabilize financial resources for the national vaccine fund.

Since the establishment of the Taiwan vaccine fund in 2010, 46% of the financing has come from government budget allocated from the treasury and up to 53% has come from the tobacco surcharge (the remaining 1% is from other sources). However, the amount of revenue generated by the tobacco surcharge is not stable and has even been gradually decreasing. In 2016, the fund reported a deficit of some NT$320 million, and in 2017 the deficit is estimated to reach up to NT$400 million. In addition, due to the trend of increasing the tobacco tax, the amount of money generated by the tobacco surcharge may decline further.

Such an unstable source of funding has been detrimental to the implementation of new vaccination policies, and is

therefore worthy of the government's attention. An example is the proposed program for vaccinating the elderly against *Streptococcus pneumoniae*. The program has been suspended for two years (2016 and 2017) due to the shortage of funds from the tobacco surcharge. Other projects, including human papillomavirus (HPV) vaccines for teenage girls and rotavirus (RV) vaccines or hepatitis A virus vaccines for children, are also still pending implementation.

In other Asia Pacific countries such as Japan, Hong Kong, Malaysia, and Australia, vaccination programs are financed completely by the government budget from the treasury. In Japan, Korea, and Australia, in addition, vaccination for the elderly against *Streptococcus pneumoniae* is fully covered by government funding, while it is partially covered in Hong Kong. Globally, 62 countries have provided public-funded HPV vaccines, while 81 countries have public-funded RV vaccines. Because of the increase in international travel, the war against emerging diseases has become more and more challenging. In response, countries around the word have expedited their schedule to establish a comprehensive vaccine protection network. Taiwan should not fall behind.

As medical technology improves, more and more vaccines have been developed to fight against illnesses. From a public health perspective, it is necessary to invest sufficient resources. Vaccines are not only an effective public health measure, but also a high-value investment in terms of driving social development and economic growth. According to the statistics from the U.S. Centers for Disease Control, on average each US$1 in investment on vaccine development brings US$10 in reduced medical and social expenses.

This Committee therefore encourages the Taiwan government to secure the finances of the vaccine fund by making it completely dependent on the government budget from the treasury. Once the vaccine fund is stabilized, the government will be able to implement the postponed vaccination programs and plan additional future projects, so as to ensure that the quality of disease containment in Taiwan is aligned with international standards.

Suggestion 3: Build an effective and sustainable national program for the prevention and control of viral hepatitis.

Taiwan has made significant headway in fighting the hepatitis V virus (HBV) and its related diseases. A milestone was the 1984 implementation of the world's first large-scale hepatitis B vaccination program, which helped slash the carrier rate in children from 10.5% to 1.7%. In addition, by broadening access to effective HBV treatment, related chronic liver diseases including hepatocellular carcinoma (HCC) or liver cancer have declined in the past few years. Starting this year, another recent achievement was to give hepatitis C virus (HCV) patients meeting certain criteria access to innovative treatment with a high success rate in curing the disease. This direct-acting antiviral (DAA) treatment is covered by NHI reimbursement. However, HCV control still faces challenges, including low diagnosis and treatment rates due to strict patient-enrollment criteria. Despite a government-sponsored screening program, only 30% of HCV patients are diagnosed and most patients need to wait until the disease worsens to be eligible for reimbursed treatment. The low diagnosis and treatment rates inevitably lead to higher risks of chronic liver disease and greater associated social and healthcare burdens.

Various researchers have confirmed that diseases related to chronic hepatitis B (CHB) and chronic hepatitis C (CHC) impose a substantial economic burden on patients, families, and society in Taiwan, including increasing healthcare costs related to disease progression and work loss.

By opening HCV patients' access to DAA treatment, Taiwan is taking a big step toward meeting the goal of the 2015 Glasgow Declaration on Hepatitis, which aims to eliminate viral hepatitis as a public health concern by 2030. The Committee therefore urges the government to assure a sustainable source of funding for HCV treatment, based on appropriations from the general government budget rather than NHI finances. We believe that a sound policy framework can prevent new infections, improve surveillance and medical care, and increase the public's disease awareness. Taiwan has a real opportunity to reduce the significant social and economic burdens of hepatitis B and C, helping toward rendering the world hepatitis-free.

REAL ESTATE

In recent years, the Taiwan government has made continuous efforts to improve the real estate market as well as the urban landscape. For instance, the revised Real Estate Transaction Declaration and amended Urban Renewal Act have both increased market transparency and fairness for investors and homebuyers. At the same time, further changes are needed in the regulatory regime if Taiwan is to reach its potential within the international investment market. Global cross-border investments in real estate amounted to US$211 billion in 2016, accounting for 32% of the total value of property transactions. Most investors prefer to allocate their investments to markets that are highly transparent and secure. In order to continue attracting foreign funds, Taiwan therefore needs to continue to make improvements.

Below, the Committee presents several suggestions further in hopes of stimulating discussions with the relevant governmental agencies in order to further improve market conditions and help promote Taiwan as a thriving real estate investment destination.

Suggestion 1: Equalize property taxation for domestic and foreign property owners.

A new property tax scheme came into effect on January 2016, combining what previously were separate land and building taxes, and readjusting the tax rate. In addition, the new scheme includes several measures aimed at reducing speculation in the form of property flipping. One clause, for example, states that for domestic property owners who re-sell properties within one year of acquisition, a tax rate of 45% will be applied. For property held for a longer period, the rate will be gradually lowered until it reaches 15%. For foreign owners, however, although the tax rate for property resold within a year is the same 45%, after one year the rate remains at 35% no matter how long the property is held. Last year this Committee suggested that the government reconsider this policy, since it is likely to discourage foreigners – whether individual or corporate – from acquiring property in Taiwan. However, the Ministry of Finance (MOF) and the National Development Council both responded that the tax rate for foreigners was mainly intended to prevent property speculation and market overheating. The MOF further suggested that as foreign individuals become permanent residents in Taiwan, they would pay the same rate as local residents. The Committee urges the government to give the unequal tax rates further consideration, as many foreign investors are business or institutional entities such as sovereign wealth funds, insurers, etc. Since most foreign investors strategically allocate large funds offshore primarily to diversify their portfolios and hedge risks, short-term speculation or flipping is less likely.

The Committee recognizes the government's efforts to prevent market overheating and maintain citizens' rights in housing, but the elevated tax rate may pose a dampening effect on the market. The control objective can be accomplished through other measures, such as mortgage control, density control, etc. Additionally, the government could request all foreign investors to submit investment applications for approval. Thus, in the interest of fairness, we recommend applying the same tax rate structure to foreign and domestic property owners.

Suggestion 2: Simplify the urban renewal process to ensure housing safety and quality.

Due to the dense nature of the urban environment in Taiwan, vacant land for building construction within major metropolitan areas is extremely scarce. Additionally, according to government statistics, the average age of residential buildings in Taiwan is 28.9 years. Approximately 3.8 million residential units in Taiwan are over 30 years old, accounting for 44.2% of the total housing stock. In the capital city, Taipei, the average age is an even longer 32.3 years. More than 58% of Taipei's 450,000 housing units are over 30 years old, and more than 130,000 are over 40 years old, including many that are gradually deteriorating.

These older structures often detract from the aesthetic attractiveness of the urban landscape, and they are also less capable of withstanding natural disasters and extreme weather conditions such as earthquakes and typhoons. On February 6, 2016, for example, a quake of magnitude 6.4 caused several commercial and residential buildings to collapse in the city of Tainan. Among them, a 21-year-old residential complex consisting of nine buildings was destroyed, killing or injuring more than a hundred people.

Moreover, older buildings are mainly low-rise, making for under-utilization of the land parcels. As a result, urban renewal has inevitably become a critical issue for improving the safety and quality of city life.

The current urban renewal process, however, is governed by a number of different laws and regulations at both the central and local government levels. The approval process, involving numerous types of applications, is extremely complex and time-consuming. As a result, a typical renewal project needs three to seven years to obtain all the permits necessary to begin construction. Among the relevant laws and regulations are the Urban Renewal Act and its enforcement rules, directives for municipality or county authorities on the acceptance of applications from urban renewal executors, regulations on rights transfers under urban renewal, regulations on density bonuses, etc. If rezoning is needed, regulations such as the Planning Act and zoning by-laws are also applicable.

Due to the complex and extensive preparation, application, and approval processes, some developers forgo involvement in the urban renewal business and instead focus on rural areas, contributing to urban sprawl.

This Committee commends the government's continual efforts to improve the process. For instance, the Taipei City government has assigned a review committee to evaluate and amend all urban renewal regulations and to speed up the implementation process. However, the Committee continues to urge all levels of government to recognize the importance and urgency of urban renewal and accelerate efforts to streamline the approval process and simplify the relevant laws and regulations. A thorough and comprehensive building inspection should also be carried out nationwide to identify severely deteriorated buildings and prioritize redevelopment applications for those structures.

When consent agreements are obtained from the vast majority of the property owners in a renewal zone, even though a few property owners continue to refuse to agree, the courts could be given the power to actively assist in finding a resolution. In the case of critically deteriorated buildings, it is recommended that the courts take forceful action even if full consent has not been achieved.

Any legal action taken by the courts must of course conform to the law and respect general morality and humanitarian principles. In cases of compulsory execution leading to property expropriation, the owner should be

compensated at market value. Equally important is for the urban renewal process to be kept fully transparent, with all relevant information and documents accessible by the residents and by the public as applicable.

Suggestion 3: Relax restrictions on overseas property investment by Taiwanese insurers.

Taiwanese insurance companies became particularly active in purchasing real estate in the years following the onset of the Global Financial Crisis in 2008. As strong demand from insurers pushed commercial asset prices to new highs, the Financial Supervisory Commission (FSC) in 2012 imposed stringent rules on insurance companies' real estate investment in Taiwan, requiring them to meet a minimum annualized yield. The following year, the FSC relaxed restrictions by allowing Taiwanese insurers to invest in overseas real estate markets. As of April 2017, in line with this deregulation, Taiwanese insurers had closed seven real estate transactions abroad worth a combined total of NT$89.9 billion.

Despite these eased restrictions, insurance companies' allocations to overseas real estate remain capped at the relatively low level of 1-3% of total capital or 10-40% of owners' equity, depending on their risk-based capital ratio. In comparison, insurance companies from China and South Korea are both allowed to invest up to 15% of their total assets. Furthermore, new rules effective from March 2016 bar Taiwanese insurers from applying for additional quota if their total overseas investment exceeds the ceiling amount.

Taiwanese insurers are also restricted from engaging in co-investment and stake acquisitions when purchasing overseas assets, although those forms of investment are the norm in many markets, especially the United States. Such rules, especially the prohibition on partnering with other institutional investors and from acquiring stakes in real estate companies in foreign markets, are likely to hinder smaller insurance companies from investing overseas, as the amount of capital they can deploy abroad is small.

Real estate investment is well suited to insurance companies with long-term investment horizons. To enable smaller-sized insurance firms to gain exposure to overseas real estate and help the large ones to achieve greater diversification of their portfolios by geography, the Committee urges the FSC to further ease restrictions on insurance companies' overseas real estate investment so as to allow them to attain higher returns.

RETAIL

The retail sector continues to be one of the major drivers of the Taiwan economy. The Retail Committee is therefore committed to work in close partnership with government agencies to develop the retail sector and address common challenges. Particularly with regard to food-safety issues, the Committee is dedicated to share best practices from the United States and collaborate with the government to advance the goals set by the authorities. We are pleased to note that cooperative efforts already undertaken with the Ministry of Health and Welfare (MOHW), Taiwan Food and Drug Administration (TFDA), and Food Safety Office of the Executive Yuan have been very well received.

However, the Committee remains concerned by the haphazard way in which some new laws and regulations have been drafted and enacted without thorough public consultation or cost-benefit analysis, and ignoring voices addressing the potential negative economic and social impact of the measures. For instance, TFDA has put a lot of effort into setting strict definitions for such categories as "chocolate" and "cheese," issues unrelated to food safety but which cause huge cost and wastage in printing revised packaging labels. Likewise, Taiwan's practice of not recognizing product test reports from overseas suppliers, instead demanding routine repeated testing of imported pre-packaged foods, is unique in the global trade. The compulsory repeated product testing acts like a levy on business without bringing any real value in terms of food safety.

Dietary supplements, which include vitamins, minerals, herbals and botanicals, amino acids, enzymes, and many other products, are one of the fastest growing product sectors in many leading countries. As dietary supplements are beneficial to the overall health of consumers, we recommend that Taiwan establish a dedicated category of dietary supplements to improve their availability to consumers and allow health-related claims to be communicated to consumers.

Greater openness, transparency, and consultation with stakeholders in the regulatory process will lead to more practical and meaningful regulations. Taiwan also needs to be constantly mindful that as a member of WTO, it is obliged to avoid creating any regulations that would constitute technical barriers to trade. We urge the Taiwan government to harmonize its food-sanitation standards and regulations with those of its major trading partners, including the United States. A consistent and stable regulatory environment is one of the key elements enabling consumer protection, business development, and economic growth.

Suggestion 1: Ensure that regulations are proportionate, practical, and supported by scientific and statistical evidence.

The quality of regulations and the regulation-making process are important factors in attracting or deterring foreign investment. A government that respects the rule of law gives investors a strong motivation to consider entering the market.

The Organization for Economic Cooperation and Development (OECD) stresses the need for "accountability and transparency" in rule making. It further states: "The

regulator has a responsibility to the regulated entities to exercise its power in a way that increases confidence in the market, rule of law and in general trust of the state."

In the past few years, the Taiwan government has made commendable progress in its rule-making procedures, such as increased engagement with relevant stakeholders and lengthening the notification and comment period to 60 days. However, there is still much room for improvement in ensuring that regulations are proportionate, practical, and supported by scientific and statistical evidence.

1.1 Carry out a cost-benefit analysis and disclose the results when proposing a new regulation. In order to be proportionate, a regulation's benefits should outweigh the costs it may cause to be incurred. The relevant costs to be considered should include the regulator's monitoring costs, the compliance cost for industry, and other social costs. In pursuing its regulatory objectives, government should then choose the method that is the least restrictive or harmful to the regulated parties.

A recent example of a disproportionate regulatory activity was the TFDA's announcement of "Regulations Governing the Product Names and Labeling of Chocolate." Although a legitimate goal existed in enabling consumers to be sure that the products they purchase meet certain specifications, there was no safety issue and the measure will lead to heavy costs – both for the government in monitoring all labels on the market and at the border, and for the food industry in having to redesign and reprint its packaging. Since foreign vendors usually prepare their packages with a two- to three-year lead time, a large amount of packaging materials will have to be disposed of.

Since going into effect, the regulation has caused considerable unnecessary costs for vendors. We hope that in the future when any new regulation is being planned, the government will first conduct a cost-benefit analysis, make the results public, and take those results into consideration when deciding whether or how to put the proposed regulation into effect.

1.2 Ensure that regulations are realistic and have a scientific basis and sufficient risk assessment. In the importation of organic agriculture products, the standard for maximum residue limits (MRLs) has always been an issue. Since neighboring contamination and background residue are usually inevitable, the authorities need to be extremely careful in setting MRLs, especially for organic products. In the United States, for example, it is permissible for organic products to contain pesticides as long as they were not applied directly to the product and the volume of the pesticide residue is lower than 5% of the MRL for regular products.

Problems have occurred because of the public misperception that organic food products must be totally pesticide-free and chemical-free, which is an impossible standard. Consumers also need to be aware that "organic" is not a matter of being pesticide-free, but of natural methods of farm production.

We urge the TFDA to use scientific evidence as the basis for a more realistic approach that recognizes the existence of neighboring/background contamination in organic products and sets reasonable MRLs accordingly. Communicating this reality to the public will pave the way for better development of organic agriculture in Taiwan.

1.3 Harmonize sanitation standards on food products with those of major trading partners. Sanitation standards are established to ensure that food products meet various types of specified criteria. The allowed level of residual pesticide in agricultural products is one such standard. For a crop grown overseas, the pesticides effective against the pests in that region could be different from those used in Taiwan. The United Nations' Codex Alimentarius Commission has set MRLs for pesticides and Extraneous MRLs for pesticide-commodity combinations. Names and definitions of commodities are found in the Codex Classification of Foods and Animal Feeds, and as of last year the Commission had adopted 4,844 MRLs for different combinations of pesticides/commodities. The U.S. Department of Agriculture has also set maximum acceptable levels of pesticides and veterinary drugs in food and agricultural products. All these Codex and U.S. MRLs are based on sound scientific evidence. When pesticide MRLs are based only on local practice, it leads to restrictions on imported products, and practically speaking may be a technical barrier to trade. We therefore suggest that the Taiwan government harmonize its sanitation standards for residual pesticides with those of the United States and Codex.

1.4 Consider the timing and manner of implementation when introducing new regulations.

TFDA recently issued a regulation requiring that food industries, including importers, conduct periodic testing on their products. Although the intention was good, the manner of implementation has raised some questions. In its website Q&A, but not in the regulation itself, TFDA stipulates that only local testing reports can be used to fulfill the testing requirement. The Q&A states that reports from the overseas corporate headquarter or suppliers are not acceptable as equivalent to local testing because those sources are "not the same entity" as the Taiwan-based enterprise.

For prepackaged foods, the product is sealed after production and the transportation is conducted under well-controlled conditions. As a result, the additional testing in Taiwan by local labs brings no value to customers and has no meaning regarding consumer safety.

Unless testing reports issued by overseas manufacturers/ suppliers are deemed to be of lower quality or fraudulent, there is no reason to deny their correctness or legitimacy. As long as the tests were conducted in accordance with TFDA's announced testing methods and standards, the testing reports should not be excluded. Repeating the testing locally is not only very costly, but could be interpreted as being a trade barrier.

Another issue is the gradual implementation of Restriction of Hazardous Substances (RoHS) regulations on import commodities by the Bureau of Standards, Metrology and Inspection (BSMI) of the Ministry of Economic Affairs. Again the intention – to protect the environment and consumer safety – is positive. But while the European Union spent more than 10 years to implement the labeling requirement and actually lowered the volume of hazardous substances, BSMI for some reason is requiring several categories of commodities to meet the labeling requirement by January 2018, which provides less than a year's time to prepare. Further, since products bearing the "CE" mark have already met the EU standard, the risk of hazardous substances in imported products is already low, yet all products are still required to have an RoHS label with the BSMI inspection mark in order to be imported. A more reasonable grace period should be provided when introducing new regulations that may present compliance difficulties.

Suggestion 2: Increase the number of eligible testing laboratories and ensure that test results can be provided in both Chinese and English.

When new or revised regulations are put into effect, it is stipulated that many of the required tests must be performed by local laboratories in Taiwan. The competent authorities usually specify the laboratories that are eligible to carry out this function. However, vendors often have difficulties due to the limited number or capacity of the eligible laboratories. Some examples:

- The Metal Industries Research & Development Centre is the only lab appointed by BSMI to conduct testing on taps. Vendors often have to wait in line to arrange for tests because of the limited testing load. An average of at least two months is needed to run a batch of tests.
- The Taiwan Children's Commodities R&D Center is the only lab accepted by BSMI for testing of imported toys.
- The Taiwan Agriculture Chemicals and Toxic Substances Research Institute is the only examining body authorized by the Council of Agriculture to tests pesticide levels in imported organic food products.
- Only the Food Industry Research and Development Institute is authorized by the Council of Agriculture to test for disallowed food additives in imported organic food products.

Vendors' difficulties in dealing with testing, border inspection, or post-market surveillance have also included the following:

1. Inability of the labs to guarantee completion of the testing before the implementation date of the relevant regulation.
2. Refusal by both the competent authority and the laboratory to provide the test report to the vendor for review of the details.
3. No provision for issuing the laboratory test reports in an English version.

These circumstances have made it hard for vendors in Taiwan and the personnel in foreign companies' headquarters abroad to understand the details of the testing methods and regulations in timely fashion, further delaying the trade flow into the Taiwan market.

Suggestion 3: Create a "dietary supplement" regulatory category and protect consumers' right to know about dietary supplements.

Dietary supplements are regulated by the TFDA under the subcategory of "food in tablet or capsule form," whereas most major markets have a distinct subcategory for dietary supplements. "Food in tablet or capsule form" imported into Taiwan must go through premarket approval, and for any ingredients considered to be "substances not traditionally used as food," additional assessment is needed before the product is deemed qualified for import. For the tablet-food licensing process, TFDA requires importers to provide the ingredient specifications, product name, manufacturer's details, etc., and a new application must be filed when any of this information changes.

In practice, however, the interpretation and enforcement of the regulations by TFDA and by municipal governments has been inconsistent. Pre-market approval of tablet food by TFDA does not guarantee that local health bureaus will agree that the label is in compliance with regulations, creating a chaotic situation for importers selling products in Taiwan. We urge Taiwan to assure consistency in regulatory interpretation and enforcement among central and municipal agencies.

Dietary supplements have been widely accepted as an important means of improving people's health, and their value has also been recognized in helping to control health expenditures. A self-regulation mechanism that avoids time-consuming premarket approval process is adopted in most markets. Suppliers are allowed to provide information to consumers on the health benefits of the supplement based on scientific evidence. At the global level, the Codex Alimentarius Commission in 2009 amended its "Guidelines for use of Nutrition and Health Claims" to assist national authorities in their evaluation of health claims to determine their acceptability for use by industry based on scientific evidence.

Compared with trading partners such as the United States, Taiwan is much more restrictive in its management of functional claims for health-related products. When overseas, Taiwanese consumers can often easily buy a product that contains clear information on its health benefits – but not in Taiwan.

Three types of product claims may be made for dietary supplements: claims about their structure/function, their contribution to general well-being, and their effect with regard to nutrient-deficiency diseases. In the United States, these three types of claims do not need pre-approval by the U.S. Food and Drug Administration. Suppliers are asked to substantiate the claim and submit a notification to USFDA no later than 30 days after marketing the dietary supplement. In Japan, the system of "Self-determined Function Claims" holds the food companies responsible for safety assessment and scientific substantiation of the function claims. Consumers can check product information including health claims and substantiation on a government-designated website. The U.S. and Japanese approaches respect the principles of industry self-regulation and consumers' right to know regarding the health benefits of dietary supplement products.

Unlike the United States and Japan, Taiwan lacks a system to enable industry to present scientifically substantiated product claims of their dietary supplement products to consumers. Health claims related to additional physiological functions, organ health, changes in physical appearance, nutrient deficiency diseases, etc. are allowed in the United States and Japan but are prohibited in Taiwan.

We urge TFDA to establish a dedicated dietary supplement classification similar to those in the United States and Japan to respect consumers' access to products and their right to know the health benefits of dietary supplements without restrictions.

Suggestion 4: Prohibit the sale of imported alcoholic beverages for which the original manufacturing lot code has been changed or removed.

In the interest of consumer protection and product traceability, Taiwan has adopted the global practice of requiring the manufacturing lot code to be printed on prepackaged foods, drugs, and many other consumer products. Alcoholic beverages have not been covered by this regulation, however, and many instances have been found in which alcoholic products are sold in Taiwan with the manufacturing lot code removed from the bottle, sometimes replaced by the importer's own series number. As a result, traceability is compromised, impacting consumer safety. The Committee proposes extending the prohibition on removing or altering the batch code to include alcoholic products, with the exception of grape wine as individual vineyards may not identify their products by lot code.

SUSTAINABLE DEVELOPMENT

The Committee urges Taiwan to keep up with global efforts to reduce illegal deforestation and the conversion of forests to non-forestry uses, protect biodiversity, and minimize greenhouse gas emissions by expanding Green Mark criteria for tissue and paper products to include fiber sourced from forests or plantations managed in a responsible and environmentally friendly manner.

At the same time, our Committee is encouraged by the efforts the Taiwan government has made in promoting a circular economy, including the provision of financial resources through the banks. We encourage the government to take such further detailed actions as 1) requiring that recycled materials make up a set minimum percentage of building materials used for public construction, and 2) expanding the green financing platform and encouraging the issuance of green bonds.

Suggestion 1: Expand the Green Mark fiber policy to allow virgin-fiber paper/tissue products that comply with certain internationally recognized sustainable forest management certifications.

The promotion of sustainable and responsible forestry management has been adopted by governments, businesses, and non-profit organizations around the world as part of global efforts to reduce greenhouse gas (GHG) emissions. In Taiwan, approximately 99% of the pulp, timber, and paper supply is imported, mostly from neighboring Southeast Asian countries where illegal deforestation and conversion of forests to non-forestry uses continue to be rampant. We therefore urge the Environmental Protection Administration (EPA) to speed up adoption of a dual-track approach in its Green Mark system to equally recognize products made with recycled fibers and those made with virgin fibers sourced from forests or plantations that have been certified by an internationally recognized, third-party verified sustainable forest management certification scheme, such as the Forest Stewardship Council™ (FSC™). The Committee has continuously raised this issue since 2010, but progress has been disappointing.

The dual-track approach has been widely adopted around the world, including by Environmental Choice New Zealand and the Singapore Environment Council's Singapore Green Label scheme. In addition, the U.S. Green Building Council (USGBC), in its latest LEED v4 standard adopted in 2013, set a more stringent bar for gaining credits, including the use of disposable janitorial paper products with FSC™ certification or a USGBC-approved equivalent.

The use of recycled material is no longer regarded as the only way to reduce the environmental impact of tissue products, and in reality a constant flow of virgin fiber into the fiber network is needed because wood fibers cannot

be recycled indefinitely. Because of the strict forest policy implemented by the government since 1990, virtually all of the fibers and wood materials used in Taiwan are imported. Yet no regulation has been put in place to check whether the materials come from sustainable certified forests.

In that regard, Taiwan is out of step with international trends, as more and more developed countries have been implementing strict regulations to block timber and fiber products from illegal and non-sustainable sources. Examples are the Lacey Act in the United States; the Forest Law Enforcement, Governance and Trade (FLEGT) in the European Union; and the Australian Illegal Logging Prohibition Act, all of which are designed to support the legal timber trade and deny access to the market for illegally produced wood products. According to studies led by Chiou Chyi-Rong, deputy director of the Taiwan Forest Research Institute and associate professor at the School of Forest and Resources Conservation of National Taiwan University, an estimated 24-31% of the fibers and wood materials imported into Taiwan come from Southeast Asian countries viewed as engaging in severe deforestation practices.

In 2015, Southeast Asian countries including Singapore, Malaysia, Indonesia, and Thailand were greatly impacted by haze caused by intense forest fires from illegal slash-and-burn farming practices on Indonesian islands including Sumatra and Kalimantan. Reportedly some 140,000 people suffered from serious respiratory ailments. In response to the serious haze impact, the Singapore Environment Council (SEC) tightened the rules governing its Singapore Green Label to exclude tissue and paper products made by manufacturers deemed to be associated with the deforestation. Effective January 1, 2017, the SEC will grant Green Label certification only to tissue and paper products that can demonstrate compliance with an FSC third-party audit.

Based on the above considerations, we urge the EPA to continuously expand the scope of its Green Mark to include all virgin-fiber tissue categories certified by globally accepted standards for responsible forest management.

Suggestion 2: Require greater use of recycled building materials in public construction.

We encourage the government to require that recycled materials constitute a minimum percentage of the total building materials used in public construction. The current government-procurement regulations, which allow recycled building materials to enjoy a price differential of up to 10% versus conventional materials after all environmental-related tests have been passed, has not been effective in increasing the usage of recycled building materials.

The promotion of a "circular economy" based on recycling materials is not limited to the United States, Japan, and European countries, but is now spreading to emerging economies such as China. In fact, China has been actively wooing Taiwanese environmental and recycling companies to set up operations across the Strait to assist in addressing their environmental issues. In Taiwan as well, the notion of a circular economy has been receiving increased attention, and has been included as one of the elements in the government's 5+2 Industrial Innovation Plan. Where mature technologies exist, requiring the utilization of more recycled building materials in Taiwan's public construction would be a good start in promoting the objective of achieving a circular economy.

Suggestion 3: Provide more financial resources for businesses related to sustainable development by expanding the green financing platform.

The Committee applauds the Taiwanese government's efforts to encourage more "Green Financing," and it is gratifying that domestic banks are responding by trying to provide more green loans. These financial resources are much needed to support initiatives in line with sustainable business development.

An active Green Bond market with the potential of reaching US$1 trillion has been formed globally over the years. Aside from the rise in public environmental awareness, the key contributors to the rapid growth of this market have been the availability of incentives to both issuers and investors. The Committee suggests that Taiwan expand its current green financing platform by taking part in this fast-growing Green Bond market. We hope to work with the government to identify the right incentives – whether in the forms of tax policy, regulatory relief, or other non-monetary measures – that may be needed to encourage more issuers and investors to participate in the Green Bond market.

TAX

Although Taiwan has long had a well-established tax law system, the dynamic nature of business inevitably means that some tax laws, regulations, and rulings always need to be amended to keep up with the changes. Taiwan has succeeded in updating many of its tax laws and regulations, but there are still others in need of review to bring them up to date and reduce the number of tax disputes between taxpayers and the tax authority. The Tax Committee offers the following proposals to the Ministry of Finance (MOF) for its consideration.

Suggestion 1: Allow intangible assets to be amortized for tax purposes, regardless of whether they are legally registered.

In line with economic development, the sale of various intangible assets and rights has become more common and more diverse. Under the provisions of the Income Tax Act

(ITA), as long as a sale generates income, the seller is required to declare the income and pay income tax accordingly, regardless of the subject of the sale. Regarding the buyer's acquisition of the subject, however, the tax authorities often refer to Article 60 of the ITA and assert that only five types of legal rights – operating rights, trademarks, copyrights, patents and special permits – may be recognized as intangible assets that may be amortized over a certain number of years for tax purposes. This assertion has not only resulted in inconsistency in the interpretation of the tax law, but has also led to numerous disputes between taxpayers and the tax authorities, sometimes causing the parties to seek judicial relief.

Article 60 of the ITA reads: "Operating rights, trademarks, copyrights, patents, franchises, and so on, are considered assets only if they are purchased from other persons. Such intangible assets as referred to above shall be valued at cost less the amount amortized for each period." A close reading of that article shows that the five types of intangible assets are mentioned for illustrative purposes only. The words "and so on" clearly signify that the list is not exhaustive, and that the provision should additionally cover any intangible rights that are similar to those explicitly enumerated.

Justification for such a view can be found in tax rulings issued by the MOF. In defining the term "royalties" in Article 7 of its Guidelines Governing the Determination of ROC-sourced Income Pursuant to Article 8 of the ITA ("the Guidelines"), the MOF clearly states that intangible assets include (1) copyrights, registered or unregistered patent rights, trademark rights, operating rights, enterprise names, brand names and other intangible assets; and (2) unregistered intangible assets such as secret methods or special technology, including secret prescriptions or processes, designs or models, plans, trade secrets, or information or special knowledge relating to industrial, commercial or scientific experience, franchise rights, marketing networks, customer data, channel agency and other rights with property value.

In defining the term "income from property transactions within the territory of the ROC," the MOF has also made clear in Article 8 of the Guidelines that intangible assets include (1) intangible assets that are registered in accordance with ROC law, such as patents, trademarks, operating rights, enterprise names, brand names, and so on, and (2) intangible assets not listed under (1) above, where the owner is an individual living in the territory of the ROC or a business entity whose head office is located within the territory of the ROC. Intangible assets registered outside of the ROC under foreign law are excluded.

In addition, Article 4 of the Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing defines the term "Intangible Assets" as: operating rights, copyrights, patents, trademarks, enterprise names, brand names, designs or models, plans, secret formulas, business operating secrets, information or special knowledge concerning industrial, commercial or scientific experience, proprietary knowledge, all franchise rights, marketing networks, customer data, and other rights that have property value.

In the regulations mentioned above, the MOF has clearly stipulated the scope of intangible assets. Regardless of whether the intangible assets are registered, as long as they are property or have economic value, all types of trade secrets, special technology, research and development, marketing networks, sales information, operating information, customer data, channel agencies, and so on are intangible assets.

It is regrettable that in practice the tax authorities often cite Article 60 of the ITA to deny recognition of the value of the intangible assets acquired by the taxpayer and disallow amortization of the amount paid, except for such intangible assets as fall into the categories of operating rights, trademarks, copyrights, patents, and franchises. For the sake of consistency in the interpretation of tax law, compliance with the principle of taxation fairness, and the avoidance of disputes between taxpayer and the tax authorities, the Committee urges the MOF to promulgate a tax ruling to clearly explain the true meaning of Article 60 of the ITA.

Suggestion 2: Review outdated or unreasonable tax regulations.

2.1 Tax assessment on the miscalculation of the tax credit ratio. The imputation system has been introduced in Taiwan to eliminate the double taxation of income, for example income generated at both the corporate and shareholder level. Under this system, shareholders receive imputed tax credits (ITC) paid by the investee companies, and the shareholders can use such credits against their tax liability to prevent double taxation. The ITCs are limited by the tax credit ratio.

However, only resident shareholders are entitled to utilize ITCs, whereas for foreign shareholders a 10% surtax is paid by the company. ITCs and the associated limitation by tax credit ratio calculation are irrelevant to foreign shareholders. Nevertheless, in order to comply with Taiwan tax regulations companies need to maintain an ITC account and engage in tax credit ratio calculation upon distribution even if they are 100% owned by foreign shareholders.

If the ratio is miscalculated, resulting in an over-reduction from the ITC account, the tax withheld on the foreign shareholders' dividends will not be affected since the foreign shareholders are unable to utilize the ITC. Although miscalculation of the tax credit ratio by a company with 100% ownership by foreign shareholders is just a mathematical mistake and does not cause any loss of tax revenue, the current law deems the amount of over-reduction of the ITC to be "tax underpaid" and requires the assessment of an additional "tax" to

correct the ITC account balance, rather than imposing an administrative penalty. The situation totally disregards the fact that no loss of tax revenue and no tax avoidance has occurred. In most countries, such mistakes are easily corrected by the tax authority's notice to the taxpayer and perhaps a small administrative penalty, while under the current Taiwan law the price paid by the taxpayer can be quite steep. We urge the MOF to consider replacing the current provision in the law with a more reasonable measure.

2.2 ***Allow downward adjustments in transfer pricing (TP).***

Cross-border transactions between related parties are becoming more and more common. To be at arm's length, each participant in the related-party transaction needs to ensure that it retains sufficient and reasonable profit based on its functions performed and risks assumed. To achieve that purpose, a TP adjustment may be required.

Currently, there is no law or public ruling governing one-time TP adjustments. Upward adjustments are generally quite straightforward, since the tax on additional taxable income will be paid after the adjustment. Downward adjustments, however, are usually rejected. Although the MOF has stated that downward adjustments are acceptable as long as the proper criteria are met, the extremely strict requirements make it very difficult in practice to receive approval for a downward adjustment. For example, the transaction parties must sign an internal transfer pricing agreement stating the criteria for determining the transfer pricing for the relevant transactions, and such TP adjustment entries should be booked prior to the end of the year. In addition, the adjustment must be due to *force majeure* such as global economic downturns or natural disasters, which means that downward adjustments are unlikely to be accepted even if the TP methodology is reasonable. In addition, downward adjustment payments to foreign affiliates may trigger the withholding-tax issue, which may lead to a double hit to the taxpayer.

We believe that if the TP methodology is reasonable, either upward or downward adjustments should be accepted. Currently, most OECD member countries – including the United States, Canada, France, and Australia – permit both one-time year-end upward and downward transfer pricing adjustments. The OECD Transfer Pricing Guidelines state that: "When transfer pricing does not reflect market forces and the arm's length principle, the tax liabilities of the associated enterprises and the tax revenues of the host countries could be distorted. Therefore, OECD member countries have agreed that for tax purposes the profits of associated enterprises may be adjusted as necessary to correct any such distortions and thereby ensure that the arm's length principle is satisfied." Transfer pricing adjustments are thus deemed acceptable if the results fall within the arm's length range. Another pertinent reference is Code Section 1.482-1(a) (3) of the U.S. Treasury Regulations, which states: "If necessary to reflect an arm's length result, a controlled taxpayer may report on a timely filed U.S. income tax return (including extensions) the results of its controlled transactions based upon prices different from those actually charged." In other words, the U.S. tax authority permits both downward and upward adjustments reflected on timely filed tax returns.

We therefore suggest that the MOF enact relevant regulations permitting one-time TP adjustments including downward adjustments. Furthermore, we urge the tax authority to treat upward and downward adjustments consistently in accordance with transfer pricing rules so as to bring Taiwan's tax system more in line with international practice.

TECHNOLOGY

The Technology Committee continues to focus on encouraging the adoption of diverse, unique and innovative technologies that build on the existing solid manufacturing base Taiwan has successfully established.

In the process of examining the main challenges and opportunities in Taiwan's technology industry, we outlined several key areas we believe are necessary to maintain Taiwan's technological leadership in the region.

These issues and suggestions are outlined as follows.

Suggestion 1: Enhance Taiwan's start-up ecosystem and promote innovative technologies.

Taiwan should continue to focus on developing and adapting diverse, innovative cutting-edge technologies to add on to its strong existing manufacturing base.

As technologies continue to shift from devices to content and software, it is necessary more than ever for Taiwan to secure its leadership position as a technology hub in the region. Taiwan should continue to focus on allocating resources to create a stimulating business environment for early-stage technology startups in order to boost the development of diverse, innovative technologies as well as to encourage local companies to adopt a less risk-averse approach.

In line with the government's growing recognition of the importance of technology start-ups, a heightened issue on the national agenda is how to plug Taiwan into the world startup ecosystem. The Committee commends the recent efforts by the National Development Council and other government agencies to promote startups, including the creation of various venture capital funds, support for several startup accelerators, and establishment of Taiwan Startup Stadium.

The committee would also like to recognize the Minister of Labor for its recent measures to relax restrictions on the hiring of foreigners by Taiwan's technology firms.

While cultivating a local startup community is essential for Taiwan's potential growth, attracting foreign entrepreneurs to establish their technology startups in Taiwan would accelerate the process, increase the pool of available technologies, and diversify the technology sectors on the island. Foreign startups would contribute to Taiwan's position as a technology leader in Asia in many ways, including developing local talent and countering brain drain, creating employment opportunities, increasing the chances of finding "the next big thing," creating bridges to overseas partnerships, and more.

Taiwan's existing technology infrastructure, engineering talent, solid intellectual property protection, and central location in Asia (including the proximity to China) are some of the reasons why foreign startups choose Taiwan. The Committee offers the following recommendations for how Taiwan could make itself even more attractive to foreign technology startups:

a. ***Relax the restriction on the types of business entities that may register to conduct business in Taiwan.*** Under current law, a non-Taiwan business entity may register a Taiwan branch only when the legal structure is similar to that of a Taiwan limited company or a Taiwan company limited by shares. This restriction excludes many business entities that specialize in investment, including general partnerships, limited partnerships, limited liability partnerships, business trusts, statutory trusts, and others. The result is to close off potential opportunities for investment.

b. ***Clarify the types of rights and restrictions that shareholders may agree on in a company's articles of incorporation.*** In the United States and other jurisdictions where technology startups are popular, it is common for shareholders to negotiate their rights among themselves in detail, with different shareholders enjoying different sets of rights depending on when they invested, the price at which they invested, and other factors. Taiwan law does not clearly state how much flexibility shareholders of a Taiwan company have to attach different rights and restrictions to different shares.

c. ***Relax the revenue requirement imposed on an entity with foreign investment for hiring foreigners as executives.*** Under the current law and regulations governing the hiring of foreigners, an entity with foreign investment that wishes to hire a foreigner as a manager or executive officer is required (i) to have paid-in capital or operating funds in Taiwan of more than NT$500,000, and (ii) to earn sales revenue of more than NT$3 million a year, have an import/export amount of more than US$500,000, or receive commission of more than US$200,000. Even more severe restrictions apply if a company wants to hire a foreigner as a technical specialist, hire more than one foreign citizen, or renew its foreign citizens' work permits when they expire. It would be unrealistic to expect a technology startup to achieve any sales revenue in its first few years, as its primary goal is to invest in R&D, which may not bring any return for some years. Yet it is critical for a technology startup to be able to employ, and rely on, foreign professionals' skills and experiences in their respective practice areas.

d. ***Relax fixed-term labor contract restrictions.*** The Labor Standards Law permits an employer and employee to enter into a fixed-term labor contract only under very limited conditions. While intended to protect employees' rights and benefits, this policy creates hurdles for a technology startup, especially in its early stage when it needs flexibility to adjust the workforce depending on the progress of its R&D development, which is very difficult to predict.

e. ***Loosen the salary and working experience requirements for foreign white-collar workers.*** The government requires that a foreigner to be hired in Taiwan should have at least two years of work experience or five years of professional training, and that the salary of the foreign worker cannot be lower than a minimum amount prescribed by the authorities. Such restrictions are unhelpful to technology startups, which require flexibility in hiring foreign talent based on their needs and the progress of R&D development.

f. ***Ease tax pressures.*** Companies often face intense scrutiny from the local tax office if they do not show a minimum profit on their tax returns, but the business plan for technology startups is frequently to reach profitability only after a lengthy period of R&D, product development, and market penetration. The absence of profit during the first few years may be completely consistent with management's long-term objectives for the company, not a sign of tax evasion.

g. ***Increase access to funding by attracting VCs to Taiwan.*** Taiwan needs to find ways to encourage foreign VCs to establish operations on the island. Whether foreign or local, VCs are an important pillar for startup operations. Korea has been much more active and successful than Taiwan in building a large corps of venture capitalists.

h. ***Attract, cultivate, and retain talent.*** Having the right talent is the key to assembling the global knowledge and local technical skills needed to build Taiwan as a regional high-tech hub. This direction can be furthered encouraged by adopting open and flexible employment policies, further relaxing immigration policies, and

strengthening higher education systems.

The Committee urges the government to target the above-mentioned obstacles and implement concrete remedies so as to transform Taiwan into a highly favorable environment for technology companies and startups.

Suggestion 2: Adjust workforce regulations with an eye to maintaining the competitiveness of Taiwan's technology industries.

The evolution of the internet, cloud computing, and mobile applications, coupled with the disruptive effect of innovative business models, has radically changed the operating model of technology companies, increasing the need for diversity and flexibility in the use of human capital. Unfortunately, current or proposed workforce regulations in Taiwan, such as the Labor Standards Act, draft of the Protection of Dispatch Workers Act, and the regulations governing fixed-term labor contracts, not only deprive business of that needed flexibility, but also create an unnecessary burden for employees. These regulations are aimed at the industrial conditions of the past and have failed to keep up to date with the operational practices of the technology and service sectors that Taiwan must depend on for its future economic vitality.

The authorities need to take into account that Taiwan's crucial technology industry is suffering from a shortage of professional talent. The recruitment of foreign talent is hindered by various regulations, while domestic talent is not motivated to seek employment within Taiwan due to the small market size, low salaries, and limited opportunity for career growth.

The special characteristics of the global technology sector – especially the need for cross-border collaboration across widespread supply chains, as well as short life cycles that place a premium on constant research and innovation – make for a very different pace and style in the working environment compared with traditional industries. For companies operating in the knowledge-based economy that inevitably will represent Taiwan's future, many of the current regulations affecting the labor force are very difficult to implement.

Recommendations:

1. ***Allow more flexible working time and eliminate attendance records for technology industries.*** The Labor Standards Act requires that "Employers shall prepare and maintain worker attendance records for five years." This requirement could be valid for workers on a manufacturing production line, but is onerous and inappropriate for knowledge workers in the technology sector. For example, many software development tools are placed in the "cloud" so that R&D activities can be conducted anytime and anywhere. Thanks to cloud technology, the office is no longer the only – or often even the main – place of work.

   Further, creative ideas can occur at any time, and meetings and discussions regarding R&D, marketing and sales, procurement, quality control, etc. frequently occur among customers, suppliers, or partners located in several different time zones. Employees can decide when and where to join the teleconference without having to sit in the office. Tech companies commonly measure performance through a results-oriented Management-by-Objective (MBO) approach, and the use of employee self-management schemes have become a trend, including flexible working time and working location.

   The Ministry of Labor has sought to provide some level of flexibility for "field workers." Its "Guidelines for the Calculation of the Working Hours for Field Workers" apply to journalists, salespersons, professional drivers, and workers in the electronics communication industries. Extending this category to workers in the technology sector is not a solution. Employees in the technology sector are not easily classified as "office workers" or "field workers," and it would be a major burden for employees to record and managers to approve the amount of time worked when the time is so irregular and subject to change.
2. ***Loosen regulations on fixed-term employment contracts.*** Suggestion 1-d above cites the difficulties that restrictions on fixed-term employment contracts pose for startups. Similar problems exist in the tech sector more generally. Due to Taiwan's limited market size and scarce technological resources, both local and multinational companies need to leverage innovative applications and emerging technologies from abroad. Because technology evolves so rapidly, making for a very short knowledge cycle, companies in search of growth momentum rely heavily on talent recruitment.

   Experts such as systems architects, data scientists, and AI algorithmists are critical to the success of a project. These experts are normally scarce resources to be recruited externally. Once the architecture or algorithm is defined, the system developers will follow up with the development work and these experts are released to other projects elsewhere. Thus fixed-term relationships are common practice in the tech industry for recruiting labor with special know-how lacking in the regular team. The length of the fixed term depends on the project needs, but for a complex project, one year – the maximum contract period under current regulations – is not sufficient.

   Although companies may apply for special approval for an extension, the application process is time-consuming

and lacks clear standards regarding the length of the extension. In order to fulfill the technology sector's needs for flexible and diversified human capital, the Committee suggests that extensions to fixed-term contracts be allowed for an additional two years beyond the regular term.

3. ***Revise the proposed draft of the Protection of Dispatch Workers Act.*** In recent years the government has sought to spur growth by encouraging innovation among technology companies and acceleration of the incubation of new start-ups. For many tech companies, the use of dispatched labor provides a quick and flexible means of adding workers as innovation increases the need for labor.

   The draft law caps the employment of dispatch labor at 3% of a company's total workforce. Micro start-ups normally cannot afford to maintain a large headcount, and so often turn to dispatched worker to handle non-core activities. The 3% cap forces employers to have core employees handle non-core activities, and at the same time eliminates job opportunities for dispatched workers in emerging start-ups. The 3% cap also limits the speed with which innovation can be implemented.

   In many countries the percentage of dispatch labor is not regulated at all. Among our neighboring countries, some have a cap of 10%. Considering that the extremely low percentage proposed in the draft would negatively impact the technology sector in term of flexibility and the speed of innovation, the Committee suggests that the government review the provisions of the draft, taking into account the nature and needs of individual industry sectors.

Suggestion 3: Expedite the legislative process for the "Government Chief Information Officer Organization Act."

Despite the importance of IT development, the government has yet to establish an agency to take charge of integrating national IT development strategies. In contrast, nearby countries in Southeast Asia have set up high-level departments to oversee the strategic direction of national IT advancement and support industry development.

Singapore: ICT development in the public sector is being handled by GovTech and The Smart Nation and Digital Government Office (SNDGO), both within the Prime Minister's Office and together known as the Smart Nation and Digital Government Group (SNDGG). The Group began operations on May 1. In the private sector, the Infocomm Media Development Authority, a statutory board under the Ministry of Communications & Information, is responsible for regulating and developing the local ICT industry.

Malaysia: Two agencies under the Ministry of Science & Technology are mainly responsible for R&D activities – MIMOS, the National R&D Centre in ICT, and Cybersecurity Malaysia, which focuses on cybersecurity developments. In addition, MdeC, the Malaysia Digital Economy Corp. Sdn. Bhd., is a government-owned enterprise responsible for promoting Malaysia's digital economy.

Thailand: The recently formed Ministry of Digital Economy and Society (previously called the Ministry of Information Communications Technology) assumes the responsibilities for the MICT's former agencies, the National Statistics Office, Software Industry Promotion Agency, Electronic Transactions Development Agency, Thai National Meteorological Department, and Thailand Post, as well as oversight of state-owned telcos TOT and CAT Telecom.

Indonesia: KEMKOMINFO, the Ministry of Communication and Information Technology, is responsible for communication and information policy and regulation in Indonesia.

Philippines: The Department of Information & Communications Technology (DICT), established in June 2016, is the primary policy, planning, coordinating, implementing, and administrative entity of the executive branch of the government. It is responsible for planning, developing, and promoting the national ICT development agenda.

Vietnam: The scope of responsibility of the Ministry of Information and Communications includes information technology.

Elsewhere in Asia, South Korea has set up a Ministry of Science, ICT and Future Planning, and China has established a Ministry of Industry and Information Technology. In Taiwan, the lack of a designated agency under the Executive Yuan to take charge of information integration makes it difficult to coordinate relevant policies and programs across different government departments.

Private-sector IT service providers are also affected by the absence of a central authority. They face such problems as unclear system requirements specified at the planning stage, unreasonable budget size, frequent requests for changes, and difficulty in communication, leading to project-management hardships and increased costs. This unhealthy environment is one reason why Taiwan's IT service industry has for years been limited in its development.

A bill to establish an office of the Government Chief Information Officer (CIO), which would perform many of the same functions as the above-mentioned departments in countries around the region, is currently before the Legislative Yuan. To remove the obstacles hindering the growth of Taiwan's IT industry and regain IT-sector competitiveness to support the government 5+2 initiative, we urge the legislative to pass the draft "Government Chief Information Officer (CIO) Organization Act" in order to establish a cabinet-level organization with dedicated and clearly defined functions

for supervising the use of IT within government. We also recommend that the government adjust the ratio of IT budget and staffing in governmental agencies with reference to the practice in major developed economies.

Suggestion 4: Use public-sector data governance to facilitate transition to the cloud.

Wider use of cloud services could help the Taiwan government achieve its digital transformation via far greater computing power, greater availability and resilience of data, and improved security, even as IT costs are reduced. Most importantly, scalable, on-demand cloud computing services can help government organizations focus on key public priorities. In addition to cost savings, the cloud contributes to job creation, democratization of computing and social inclusion, and increased agility in the delivery of government services. And through the government's open-data policy, adoption of a public cloud could help Taiwan increase its global visibility. Open data can serve to attract global talent and organizations to develop innovative new services and business opportunities to Taiwan's benefit.

Government agencies and ministries have already been working to address concerns about protecting sensitive information and national sovereignty through implementation of data-governance policies. The effort would be enhanced by adopting legislation empowering government agencies to classify data appropriately, then relying on the agencies themselves to adopt robust data classification and governance systems to regulate which government data may not be moved to the cloud and which data can be moved to the cloud with the appropriate security controls.

The data classification taxonomy shown in the accompanying chart is offered as a guideline to help government strike the right balance. The taxonomy recognizes that on-premises or other storage may be required for highly sensitive government data that raises national sovereignty concerns (Level 1), while also identifying cloud services and security controls that are appropriate for other classes of government data, even data that is typically still considered sensitive. No such taxonomy is currently in use in Taiwan to help guide the migration of data to the cloud.

Classification	Definition	Examples	Amount of Potential Data	Appropriate Technical Safeguards
Level 1	Data critical to national and economic security	Extremely sensitive data such as national defense data, actionable intelligence information, and critical economic data	Very small	Storage in government cloud where available; on-premises storage
Level 2	Data restricted by default and shared only with select individuals inside government on a strict "need to know" basis	Sensitive materials with restricted uses, including law enforcement investigations, sensitive personally identifiable information (PII), and restricted health information	Substantial	Information is suitable for government cloud, or for public cloud but only subject to robust security controls
Level 3	Data that can be shared within government by default, but is rarely shared outside of government	Day-to-day government data, such as non-sensitive PII (e.g., driver's license application), routine contracting and economic data, etc.	Large	Suitable for public cloud; some security controls may be appropriate
Level 4	Data sets without source information, viewable only	Data that has been anonymized, or otherwise de-sensitized, and provided as data sets for public analysis (e.g., anonymized public health or tax records)	Large	Suitable for public cloud; robust security controls on the underlying data but minimal controls on anonymized datasets
Level 5	Publicly available data, with no restrictions on use	Data available to the public generally, including government-published data such as bus schedules and weather data	Very large	Suitable for public cloud

By adopting a data classification and governance framework that assesses data storage from a security and technical perspective, the government will be well-positioned to take advantage of cloud technologies. Classifying data according to these needs, and with an understanding of the technical solutions that meet those needs, will help government quickly transition into new forms of data storage, including cloud services.

The emerging international consensus is that legislation should focus on establishing a requirement that government ministries or agencies develop formal policies and practices to safeguard government data, including highlighting the need for special handling of the government's most sensitive national security-related information. But rather than legislating the specific data classification and governance practices, lawmakers should defer to the expertise of the government agencies or ministries that already have established competence in safeguarding government data. Consistent with such a mandate from lawmakers, agencies and ministries should develop a clear, actionable, and holistic policy to govern their data in the cloud era, one that both leverages the benefits of the cloud while ensuring special protections are given to the most sensitive national security-related information. Not only will classifying data in this manner help government realize savings from storing data in a more efficient manner, it will also increase government's efficiency and drive economic growth, innovation, and social inclusion.

Following release of the 2016 Taiwan *White Paper*, in which the Committee made the same suggestion, the government expressed its intention to engage in data classification, but there has yet to be any solid progress. We look forward to seeing concrete headway in the coming months.

Suggestion 5: Clearly list and define the scope of critical infrastructure in the Cybersecurity Management Act.

On April 27, 2017 the Executive Yuan approved a draft of the Cybersecurity Management Act and submitted it to the Legislative Yuan for review. The bill subjects both government agencies and "non-public sector entities" to cybersecurity requirements to be defined and mandated by the executive branch. The language of the bill, however, is quite vague with regard to the types of "non-public sector entities" to which these requirements might apply. Article 2 defines "non-public sector entities" as those including critical infrastructure providers, state-owned enterprises, and legal persons established with funds donated by the government. However, according to the same article as announced by the Executive Yuan, "critical infrastructure" refers to assets, systems or networks – either physical or virtual – that, if and when their operations cease and/or if and when their performance levels are reduced, stand to impact national security, social and public interests, the lives of citizens and/or economic activities.

A sweeping definition such as this potentially grants the executive branch carte blanche in placing a very wide array of private businesses under the requirements of the Cybersecurity Management Act. Among other things, the bill also grants the government the authority to conduct on-site inspections on non-public sector entities without warrants, citing a number of legal instruments in other jurisdictions as reference, including the EU's Directive on Security of Network and Information Systems (NIS Directive) and Japan's Cybersecurity Basic Act. Crucially, the Taiwanese draft unambiguously states that non-public sector entities may not refuse entry to government officials from both the central and local levels. However, the NIS Directive clearly stipulates in its preamble that government agencies are to a take a light-touch, ex-post approach to cybersecurity regulation, and in Annex II provides a relatively clear definition of providers of "essential services" (the EU counterpart of critical infrastructure providers). For its part, Japan's Cybersecurity Basic Act does not grant the executive branch of government the authority to inspect "non-public sector entities," nor does it make mandatory requirements of "non-public sector entities." Japan's Cybersecurity Basic Act states that the promotion of cybersecurity policies are required to be carried out with due consideration to avoid wrongfully impinging upon people's rights.

The Technology Committee urges the Executive Yuan to clearly define the scope of critical infrastructure in the form of a list, in order to ensure that the rights of companies in Taiwan are not impinged upon, and to ensure an unambiguous point of reference for compliance with the prospective regulations.

TELECOMMUNICATIONS & MEDIA

The Committee appreciates the recent efforts by the National Communications Commission (NCC) and Ministry of Transportation and Communications (MOTC) to support development of the telecommunications and media sectors, from the release of 4G spectrum to the creation of an environment conducive to digital convergence and competition in Taiwan's telecommunications industry. However, in light of changes in the competitive landscape due to the growth of online media, we encourage the Taiwan government to move in the direction of rate deregulation for the telecommunications industry. As discussed below, we also suggest amending the Copyright Law to protect intellectual property rights when violators are offshore websites.

Suggestion 1: Amend the Copyright Act to enable injunctions against infringing offshore websites.

Rapid developments in digital technology have substantially impacted the ways in which copyrighted materials are reproduced and distributed. As a result, cases of online copyright infringement have become more prevalent in Taiwan over the past few years, particularly infringements by websites operated and hosted outside of Taiwan (hereinafter referred to as the "target websites").

If an infringing website is located in Taiwan, it is easy for copyright owners to seek legal remedies through criminal and/or civil procedures. For a criminal case, the prosecutor can easily identify and bring charges against the offender. The copyright owner may also pursue a remedy through civil procedure – first filing for a preliminary injunction to stop the infringement and then filing a lawsuit against the owner of the target website to seek compensation. When the website is located outside Taiwan, however, the anonymity of the internet makes it impossible for the prosecutor to identify the offender, and even more to the point, the prosecutor has no right to investigate outside the territory of Taiwan.

Pursuing a civil remedy is equally impossible, as the copyright owner also has no way to identify the owner of the target website. Therefore, the defendant's name and personal information cannot be listed in the filing brief or the defendant served with papers as required by the Civil Procedure Act.

Further, if the copyright owner wishes to seek a preliminary injunction to stop the target site's continuing infringement before a final judgment is rendered, which may take a long time, the court will usually order the copyright owner to pledge a bond for the execution of the court order. The financial burden to the copyright owner of doing so is heavy, as the amount of the bond is usually quite high, and the money will be returned to the copyright owner only if he or she wins the case or the defendant gives consent.

To resolve this issue, we propose adding an Article 84-1 to the Copyright Law stating that when a copyright owner wishes to file for a preliminary injunction against a target website but cannot identify the owner of the website, it is sufficient for the IP address and/or domain name of the website to be listed in the brief. Also, if the copyright owner pledges to the court that he/she never licensed the target website, it should be deemed that the copyright owner has fulfilled the duty of providing an explanation and shall be exempt from pledging a bond for execution of the court order. If there is an email address for the target website, the brief and related notice should be deemed duly served when emailed to that address. If there is no email address, all documents should be served by constructive notice – that is, posted in the court bulletin, according to Articles 149 to 153 of the Civil Procedure Law.

Suggestion 2: Drop the proposed tiered pricing scheme for cable TV basic pay channels as unsuitable.

On July 3, 2013, the National Communications Commission (NCC) announced plans to implement a tiered pricing scheme for cable TV services with the goal of offering more channel options to users. The Committee would like to call attention to the need for such a scheme to be both explicitly grounded in law and also determined by market forces. The reasons are as follows:

A. ***Authorization of the pricing scheme is not clearly defined by law.*** According to Article 44 of the Cable Radio and Television Act, which was promulgated on January 6, 2016 after passage by the Legislative Yuan on December 18, 2015, "Cable system operators shall report the subscription fees to special municipality or county (city) governments within a month after the 1st of August every year. The special municipality or county (city) government will examine it in accordance with the standards of service fees enacted by the central regulatory agency and then make an announcement accordingly." The article does not authorize the NCC to be involved in or take charge of tiered pricing schemes for cable TV services. The NCC should therefore avoid direct involvement in stipulating the basic channels or types of channels to be offered by cable providers, as well as the applicable rates, review procedures, and other requirements.

Despite lacking the aforementioned authorization to act as the competent authority for planning and regulating a tiered pricing scheme for cable TV services, the NCC in 2016 still proposed such a scheme, consisting of five service plans. Although some local government officials, cable system operators, and channel operators many times voiced their opinions about the scheme at NCC-organized public hearings, their views did not take into consideration the potential impact on related parties, which besides subscribers, cable system operators, and channel operators also include production houses of local programming and vendors on both ends of the supply chain.

Taking channel/content providers as an example, advertising revenue and channel distribution revenue are the two major profit sources. Any change in the existing basic price scheme will dramatically affect profitability, with a direct impact on future investment willingness or even the continuation of current local production activities.

The NCC has stated that the scheme will "enable the cable TV market to establish a brand-new operating and pricing model in preparation for the trend of four-in-one digital streaming (i.e. data, audio, video, and mobile)," as well as "allow for more operational flexibility in

the industry in hopes of better growth" and enable subscribers to "enjoy better content and more options of TV programs."

Yet experts have expressed serious concerns and doubts as to whether the NCC's expectations can in fact be met, citing the absence of a comprehensive impact assessment as the basis for the NCC's policy making. We therefore suggest that the tiered pricing mechanism be temporarily delayed until a proper legal basis is established and until the NCC has filed a comprehensive industry impact report.

B. ***The government should avoid involvement in determining pricing, as fee collection rules for all audio-visual cable systems/platforms should be determined by their operators.*** Today's developing audio-visual technologies are provided on various platforms, including the internet, IPTV, apps, and Over-the-Top (OTT) services. Among them, OTT in particular offers more viewing options and affects audience viewing habits with diverse programming and flexible fee collection models. Despite the fierce competition between the operators of such platforms and cable providers, the authority has not set forth rules on the management and control of OTT services. Instead, the government has attempted to regulate pricing, which should be determined by audio-visual content providers, according to their operating models and revenues. This issue has led to unfair competition within the audio-visual industry.

A sound market where channel operators co-exist relies on fair competition, but the authority's involvement in rate setting for cable TV services may cause the competition to be unfair. In today's digital age, the ever-evolving technologies used in cable TV systems have transformed the industry's service models and working methods. Therefore, it is neither necessary nor reasonable to regulate new service models by applying old practices intended for analog channels.

In conclusion, there is no need to establish a tiered pricing scheme for basic cable TV channels, which are among the products and services offered by operators of digital cable channels. To stay competitive against emerging platforms and media companies, operators need to plan and offer other products and services – such as channels in combination with app-based content or subscription video-on-demand (SVOD) in combination with OTT services. The cable system is just one of today's diversified audio-visual platforms, and cable system operators have been working with providers of IPTV and app-based or OTT services to co-launch a wide variety of audio-visual products. In keeping with the spirit of fair competition under the Fair Trade Act, the competent authority should transfer the right to set pricing to cable TV providers as well as the providers of IPTV, OTT, and other new services. The pricing rates need to be determined by the market itself without being regulated by the government.

Suggestion 3: Remove cable TV rate regulation.

The current rate regulations for cable TV in Taiwan were introduced in 1990 when the cable TV industry dominated the video visual service market in each area of operation. The rationale for the rate regulation was to protect consumer rights as the consumer had no choice regarding the service. Over the years the market has changed dramatically, however, and now multiple video visual services – cable TV, IPTV, OTT, etc. – are available to consumers, and cable TV service is no longer dominant. As of the end of 2016, there were about 5.2 million cable TV subscribers in Taiwan and over 1.33 million IPTV subscribers, taking more than 20% of the video visual service market, as well as an unknown number of OTT service subscribers.

In the United States, if effective competition exists among video visual service providers, there is no need for rate regulation as the consumer can choose among various types of service. Based on the same consideration, the NCC should revisit the need for rate regulation, and lift such regulation if it concludes that effective competition now exists among the video visual service providers.

Also set in 1990 was a rate cap for cable TV service of NT$600 per month per household. The price cap has never been adjusted, although the consumer price index has risen substantially since 1990. The unreasonable level of the cap has hindered the development of the cable TV industry, satellite operators, and content providers. We strongly suggest that NCC either remove the rate cap entirely or raise the level to reflect the increase in the price index over the past 27 years.

Further, the cable TV fees are charged by household rather than set-top box (STB). The price structure is unfair to lower-income households. A rich family with 10 TVs at home pays the same charge as a poor family with only one TV set, which amounts to the poor family subsidizing the rich family for cable TV service. As Taiwan will reach 100% digital TV penetration by the end of 2018, it is easy for cable TV operators to shift to charging for service per STB. In the interest of social fairness, we believe the NCC should revise the cable TV tariff regulations to allow cable TV operators to charge by STB instead of by household.

TRANSPORTATION

As the current Cabinet begins its second year in office, this Committee looks forward to seeing continuity of policy execution by the Ministry of Transportation and Communications (MOTC) and the Ministry of Finance

(MOF), the two ministries that our industries work with most closely. We are also paying close attention to the new Administrative Procedure Act (APA) practices announced by the Executive Yuan, such as the 60-day notice and comment period for new regulations and new legislation impacting international trade. AmCham Taipei is monitoring the degree to which various ministries are adhering to this policy, which we view as critically important given that most regulations have a long-term effect.

Following are recommendations for what we consider to be the most pressing issues facing our sector.

Suggestion 1: Build an effective communication platform to ensure transparency and efficiency in customs clearance regulations.

In this Committee's position paper in the 2016 *Taiwan White Paper*, we called for establishment of an effective communication platform to ensure transparency and efficiency in dealing with customs clearance issues. Our experience in recent months shows that this issue has yet to be effectively addressed, despite the welcome new measures by the Executive Yuan designed to improve the notice and comment process. Hopefully the shortcomings reflect the newness of the 60-day initiative, and improvements will occur given more time.

The recent difficulties relate to a bill which the Legislative Yuan passed in December last year to amend the Customs Clearance Law so as to tighten control over the shipment of goods considered to be frequently imported into Taiwan by a given consignee (see Suggestion 2.1 below). Before submission of the bill to the legislature, there was little opportunity for interchange between Customs/MOF and relevant business sectors regarding how the provision could be implemented without damaging trade efficiency and deviating from the spirit of fair trade as stated in the World Customs Organization (WCO) guidelines. Within the 60-day notification period, no public hearings were conducted – just a few meetings to which only selected local industry associations were invited. Following enactment of the law, compliance is likely to present a number of practical difficulties for the business sector, including likely significant cost increases.

We strongly recommend that any future changes in customs regulations and legislation follow the APA principle by collecting stakeholders' opinions and comments prior to any decisions. Considering the importance of the Customs Administration for trade facilitation and border control, the establishment and maintenance of a healthy communication channel with stakeholders is extremely crucial.

Suggestion 2: Ensure reasonable customs procedures for e-commerce goods.

2.1 E-commerce tax collection. The Legislative Yuan recently passed new measures targeting *de minimis* shipments [shipments of minimal value for which no taxes or duties are normally collected] such as are often conducted through e-commerce. These measures entailed:

- Amendment to the Customs Law canceling the Value-Added-Tax (VAT) exemption for *de minimis* shipments if the consignee is deemed a "frequent importer," defined as receiving more than six shipments within six months.
- Amendment to the Business Tax Law reducing the tax exemption threshold for imported consignments from NT$3,000 (US$95) to NT$2,000 (US$63) and imposing taxes on cross-border e-commerce platforms.

Enforcement of both laws is pending while revisions are made to relevant customs regulations, which will determine specific tax collection and clearance measures. We urge the government to adhere to the following principles in setting those implementation details:

- Equal treatment should be applied to express and postal shipments.
- While VAT will be collected on the goods, no duty should be imposed on *de minimis* shipments in accordance with WCO and WTO principles.
- Customs should maintain a simplified clearance system for low-value shipments, including both non-dutiable (*de minimis*) and dutiable shipments.

2.2 All-in-one national e-commerce platform bringing together the marketplaces, logistics, and payment services. Customs is leading the development of a separate clearance channel for e-commerce goods, which is expected to create efficiencies for both Customs and participating businesses. As it develops this channel, we urge the authorities to pay attention to the following principles:

- The system should support open standards, free competition, and simple registration for importers, exporters, and logistics providers. Currently, only companies with a presence in Taiwan can register in the system.
- The government should continue to promote trade facilitation especially for business-to-business transactions, which remain a key driver of the Taiwanese economy.

Our committee recognizes that new challenges have emerged with the growth of cross-border e-commerce. We are committed to collaborating with the border agencies to address surges in volume, share best practices for tax collection and solutions for addressing specific risks, and educate the new online trading community. At the same time, we urge the government to continue its efforts to simplify trade for our business customers, many of whom are now experiencing increased complexity of the rules.

Suggestion 3: End the requirement for separate import and export processing in air cargo and express terminals.

Taiwan regulations require air cargo and express terminals to physically separate export and import processes, a constraint that reduces productivity and prevents business operators from making optimum utilization of warehouse space.

The Committee requests that Taiwan Customs change the regulations to allow terminal operators to manage their own processing without requiring the physical separation of imports and exports. Instead, Customs can maintain necessary controls through the IT system and random auditing, while enabling operators to improve space utilization and adopt modern warehouse management methods. No other developed country is still imposing the kind of restrictions on the operation of warehouse space that Taiwan Customs continues to have in effect.

Suggestion 4: Lift the requirement for commercial automobile businesses to rent outside parking spaces.

According to the Highway Act, the "Approval Rules for Commercial Automobile Businesses" and its attachment "Parking Space Rules for Commercial Automobile Businesses," every commercial automotive business – including car-rental companies and express delivery enterprises, among others – must show proof of having contracted for parking spaces for at least one-eighth of their total fleet of vehicles. Due to the difficulty of obtaining sufficient legal parking spaces in metropolitan areas, it is allowed to arrange for such space outside the city where the business operations take place.

As a result, many companies are forced to rent and provide certification for external parking spaces that they never use. Sometimes they may not even know the exact location of the lot. This system not only fails in the intended objective of ameliorating the problem of urban parking, but also adds unnecessarily to companies' operating expenses. The practice serves the interest only of the providers and brokers for authorized parking spaces.

The Committee urges the government to revise the Highway Law and associated regulations to remove this onerous restriction. Resolving this issue will greatly improve the investment climate for such businesses as express couriers, car rental companies, and other operations involving a large fleet of vehicles.

TRAVEL AND TOURISM

The Committee would like to express our sincere appreciation to the Tourism Bureau for its willingness to engage with our members and to understand our concerns on various issues in Taiwan's travel and tourism industry. We are excited to learn that the Taiwan government has introduced "Tourism 2020 – Sustainable Tourism Development Strategies for Taiwan," leveraging Taiwan's unique local tourism resources and advantages and aiming to enhance Taiwan's international competitiveness. The Committee would like to offer our support to the Tourism Bureau in the implementation of these strategies.

This year, the Committee offers three suggestions on issues impacting the development of Taiwan's tourism industry. In addition, we believe that if the Taiwan government wishes to transform Taiwan into a major tourist destination in Asia, it is imperative for the tourism authority to be elevated to a higher level so as to expand resources available for tourism promotion. We understand that the government's restructuring plan for the Ministry of Transportation and Communications (MOTC) is still awaiting review and approval by the Legislative Yuan. We call on the Executive Yuan and Legislative Yuan to give serious consideration to upgrading the Tourism Bureau to a ministry-level agency.

The Committee looks forward to continuing discussions with the Tourism Bureau and other relevant government agencies to find ways to bring improvements to Taiwan's tourism market.

Suggestion 1: Apply international best practices to the refund policy for hotel bookings.

The Tourism Bureau recently amended the "Mandatory and Prohibitory Provisions of Standard Contracts for Tourist Hotels Enterprises and Hotel Enterprises and Home Stays' Individual Travelers' Room Booking." We understand that the goal of these amendments is to protect customers' rights when they cancel their booking within a certain number of days. However, since the operational practices of international chain hotels, local hotels, and individuals doing private business are quite different, a number of issues arise when all must follow the same rules.

In line with worldwide practice, international chain hotels do not charge a deposit and only impose a no-show charge of one night's stay when the cancellation notice is made within 24 hours of the check-in time. This practice is more favorable to customers than that of local hotels or private proprietors. Only when international hotels launch early-bird packages to promote bookings during low seasons do they generally require non-refundable pre-payment in full. If some customers demand refunds under such early-bird packages, it would be unfair to other customers who paid the full rate and would also impact the hotels' implementation of their

global pricing strategies.

When airlines provide special low-price offers, they always impose certain limitations, such as a non-refundable policy or extra fees in the case of cancellation or a change in travel dates. As long as customers are made aware of and agree to the terms and conditions when they make the booking, then those terms and conditions should apply. Pricing is always subject to demand and supply.

International hotels engage in the same practice as airlines. Several different kinds of products may be offered at the same time, and customers have the right to select which one they consider the most suitable for them in terms of the conditions and price. The products of international chain hotels are published on their websites, available for sale to customers worldwide. If hotels in Taiwan deviate from the refund policy published on the website for local customers, it will be unfair to foreign customers and discourage their travel to Taiwan.

If a hotel room is not occupied on the night for which it is booked, the business is lost. And just as air tickets are much more expensive during winter and summer vacation times, the price of hotel rooms is also subject to supply and demand. On special dates, for example New Year's Eve or the Chinese New Year period, the price is higher – and a charge equal to one night's stay is imposed if the cancellation is made within 30 days of the expected arrival. If hotels must follow current terms to refund the entire deposit if the cancellation is made within 14 days of the check-in date, then hotels will lose substantial potential revenue since it is difficult to find another customer within such a short period, as customers usually make vacation plans for such special dates six months or even a year in advance.

In addition, we would like to note that in the United States, European Union, Japan and many Southeast Asia countries, hotels follow the international standard practice whereby there is no obligation for hotels to refund the booking providing the terms and conditions of non-refundable package are clearly advertised and intentionally selected by the guests.

We ask that the Tourism Bureau consider the following suggestions to further revise the "Mandatory and Prohibitory Provisions of Standard Contracts for Tourist Hotels Enterprises and Hotel Enterprises and Home Stay's Individual Travelers' Room Booking":

1. Allow non-refundable deposits under certain scenarios, such as (1) Early Bird Promotions, and (2) special holiday packages. These are usually the lowest rates and carry certain stipulations. The customer has chosen them from among the different room packages with different terms and pricing, and so should be fully aware of the consequences of that choice. This approach is standard practice for international hotels, and we should not be asked to treat foreign and local customers differently.
2. Remove the unreasonable and impractical rule that the refund be used as a deposit for future stays. It is unfair to other guests who are paying higher rates if lower-paying guests receive the same concessions.
3. Revise the standard contract template regarding non-refundable deposits in order to promote international tourism in Taiwan by aligning with global business practice. At the very least, hotels should not be penalized for following international policy and instead should be given the flexibility to make their own arrangements with customers when special cases arise.

Suggestion 2: Re-strategize and rebrand Taiwan's tourism promotion efforts.

Taiwan has seen a sharp decrease in inbound mainland Chinese tourists since 2016, and it is likely that this trend will continue. In response, the Taiwan government has announced tourism promotional strategies to diversify target markets to areas including Japan, Korea, and Southeast and South Asia. Given these new strategies and new target markets, rebranding of Taiwan's tourism promotional effort is necessary and timely. The continuing use of "Heart of Asia" to brand Taiwan to these markets is both outdated and impractical as most Asian countries consider themselves the heart of Asia as well. More effective ways must be found to reach key markets with promotional messages that resonate with them and efficiently reflect Taiwan's core values.

Taiwan is both modern and traditional. Its uniqueness is the comfort and convenience that tourists can find in modern and efficient facilities, combined with the friendliness and ethnic traditions reflected in all aspects of life. Taiwan is a destination with unusual diversity, with a blend of Hokien, Hakka, aboriginal, mainland Chinese, and Japanese cultures. Taiwan's attractiveness lies in its beautiful mountains, seacoasts, and other natural scenery; the friendliness of its people; delicious snacks; pandas in one of Asia's finest zoos; historic railways; incredible bikeways and hiking trails; phenomenal scuba diving; amazing temples (both old and new); and the world's largest collection of Chinese antiquities. Excellent transportation options, including the Taipei MRT, high-speed railroad, special tourist trains and buses, and extensive freeway network, also make it easy and convenient to get around. Best of all, Taiwan is free of the street crime, religious tensions, and political instability that beset some other Asian tourist destinations.

Adapting Taiwan's strengths into key tourism promotional messaging and slogans is the main challenge. It is a task that needs to be assigned to branding experts who have a thorough understanding of Taiwan and its attractions, and the professional skills and experience to reach an international audience with an all-new image of Taiwan as a

desirable tourist destination.

The widespread perception of the current tourism branding is that it is old, unimaginative, and boring. We recommend taking the following into consideration when planning a new branding campaign:

1. Use a bold, positive, and forward-looking slogan to create a dynamic and inspirational message. An example might be: "Taiwan: Never felt so good."
2. Appoint internationally recognized superstars as brand ambassadors. With all due respect to famous Taiwanese stars, none of them enjoys worldwide celebrity status.
3. Use universally recognized pop music as the background song for the campaign – for example, Justim Timberlake's "Love Never Felt So Good."
4. Embark on a massive promotional campaign designed to increase the tourism sector's contribution to GDP (direct and indirect) from the current 3.5% to 7% in 2020, and from 10 million tourists in 2016 to 13 million in 2020.

Suggestion 3: Make Taiwan more welcoming for independent travelers.

Travel and tourism are critical to Taiwan's economy, but could contribute even more.

In addition to the GDP and traveler numbers cited above, the sector directly and indirectly provides 669,500 jobs – 5.9% of Taiwan's total employment. The World Travel and Tourism Council (WTTC) expects these numbers to rise by 3.8% in 2017, and by 2027 to reach 814,000 jobs – 7.4% of Taiwan's total employment. Annual expenditures by foreign visitors are expected to rise from the current NT$542 billion (US$17.8 billion) to over NT$722 billion (US$23.7 billion) by 2027. Still, Taiwan ranks below a number of neighboring countries on most measures in the WTTC report and has significant room for growth; it is in 173rd place out of 185 countries ranked in terms of the long-term growth forecast. Improvement would be directly beneficial to every part of the Taiwanese economy.

In the past, tourists to Taiwan came mainly in groups. While group travel offers some advantages (predictable demand, homogeneous travelers, regular patterns), there are also distinct shortcomings. Many parts of the country went unvisited, and only some enterprises (for example, large hotels) benefited from the business. In addition, the heavy dependence on Chinese traffic left the Taiwan tourism sector vulnerable whenever cross-Strait relations worsened.

Under this scenario, foreign independent travelers (FITs) are becoming ever more important. By making increased efforts to welcome them, Taiwan can advance against international competition. It is important to recognize, however, that addressing the needs of independent travelers is harder than meeting the needs of groups because FITs are more diverse. Some of the top issues facing FITs to Taiwan:

- Internet access. FITs are highly reliant on the internet, yet obtaining SIM cards and data packages in order to connect online can be quite difficult
- Easy access to international and innovative financial services
- Language barriers. Many independent travelers speak no Chinese, yet many of the people they interact with in Taiwan speak no other language
- Logistical difficulties in planning trips outside of Taipei
- Lack of information. FITs are difficult to reach in person as they may not come to tourism offices or attend travel fairs, yet much of the Tourism Bureau's marketing depends on in-person distribution of brochures and coupons.
- Taiwan's lack of international best practices in many areas.

We recommend the following steps to address these issues:

1. Give travelers more free choice by offering international best practices, including non-refundable room rates and short-term rentals by private hosts, and provide world-class training for tourism personnel.
2. Make internet access easier for foreigners, especially at airports, through convenient and cheap SIM cards and data packages.
3. Ensure that airports, taxis, and public transportation are all accessible with credit cards and other new, cashless payment methods.
4. Teach English more widely to help make Taiwan bilingual. Install bilingual signage in all public places and transport services, and offer free translation service by phone, as Korea does.
5. Make great destinations more accessible and FIT-friendly – especially Hualien/Taroko Gorge, Sun Moon Lake, and Kenting.
6. Move from paper to online marketing, and establish cooperation between the Tourism Bureau and online businesses, especially international online travel agencies (OTAs), to help market all accommodation types and all Taiwanese destinations to travelers, in order to bring in visitors from more countries.

Some of these steps can be done quickly; others will take longer. But if Taiwan wants to increase tourism revenues and boost international understanding, it needs to raise its game significantly. The benefits will be well worth the investment.

農化委員會

農化委員會(以下簡稱委員會)首先要感謝行政院農委會動植物防疫檢疫局(以下簡稱防檢局)、行政院農委會農業藥物毒物試驗所(以下簡稱藥毒所)及其他部會持續積極地聯合查緝非法農藥，以保障合法業者的權益並確保國人健康。委員會亦高度肯定防檢局及藥毒所簡化相同有效成分但不同劑型或含量之產品的作物延伸程序，相信此舉將大幅降低廠商申請作物延伸所需之資源並為農友提供更大的便利性。

對於防檢局強力貫徹劇毒農藥管理之措施，以避免民眾誤用，委員會深表謝意及認同並將全力配合及支持。此外，藥毒所傾全所之力在2016年新社花海節(2016 SIN SHE HUA HAI)設立「守護健康館」，宣導安全用藥並導正民眾對農藥的誤解，委員會也藉此機會向藥毒所致謝並給予高度的讚許。

新農藥登記制度已邁入第7年，在防檢局及藥毒所積極且悉心的輔導下，各廠商已逐漸上軌道且陸續有新產品完成登記。惟委員會認為有些配套措施若能加以強化，將使新制度更加完善，如儘速建立台灣各種主要作物之病、蟲、草害物的”田間藥效試驗之害物調查方法指引”以加快試驗設計書的審查進度、延長登記資料的保護期以提高新產品登記的投資意願、增加誘因使廠商願意將產品登記在更多的少量作物以解決農友於少量作物的用藥困境。

委員會也對日趨嚴重的抗藥性問題感到憂心，並認為除了加強教育農友外，也應該有法規方面的配套措施，方能有效地減緩抗藥性的發生。此外，藥效報告已列入申請進口殘留容許量之必須要件，卻因未能相對地建立國內使用方法，以致已登記之相同有效成分的相關產品無法合法使用於國內之相同作物，故委員會也期盼主管機關能修改相關法規來解決此一問題。

委員會與主管機關及社會大眾一樣非常關心學校所供應膳食之安全性，惟對於教育部於2015年修訂施行學校衛生法第23條，禁止學校供應膳食使用基因改造食材及初級加工品之規定，委員會認為此規定在缺乏完整之科學根據下排除經衛福部核准之基因改造食品，實有再重新檢討之必要。

針對前述所提之問題，委員會之詳細建議如下：

建議一：儘速建立台灣各種主要作物之病、蟲、草害物的”田間藥效試驗之害物調查方法指引”

在主管機關的努力下，部分作物之”田間藥效試驗之害物調查方法指引”已完成，但委員會仍籲請主管機關儘快建立其它主要作物之病、蟲、草害物的”田間藥效試驗之害物調查方法指引”，以減輕作業量並加快試驗設計書的審查進度，同時委員會也期望主管機關能對此設定具體的時程。

建議二：對已獲核准進口殘留容許量之產品制定國內使用方法，使國內已登記之相同有效成分的相關產品亦可以使用於國內之相同作物

由於申請進口殘留容許量須繳交之資料(包括藥效報告)均與國內擴大登記申請案相同，故建請主管機關在進口殘留容許量申請案獲准同時制定國內使用方法，使國內已登記之相同有效成分的相關產品亦可以使用於國內之相同作物，以解決以往農友因混淆而誤用觸法的情事。

建議三：登記資料保護期由8年延長至10年、以延長登記資料保護期的方式鼓勵廠商將產品登記在少量作物

3.1 登記資料保護期由8年延長至10年

感謝防檢局已將此建議案納入「農藥管理法」修正案中，並於105年7月22日送立法院審議，惟委員會仍希望農委會能協調立法院儘快完成立法的程序，並加速延長保護期之推動實施，以提高廠商投資登記的意願，讓更多低風險、高效能的新產品引進台灣，嘉惠台灣的農業。

3.2 以延長登記資料保護期的方式鼓勵廠商將產品登記在少量作物

美國現行的登記資料保護期為10年，但如果廠商登記在少量作物，產品登記資料之保護期最多可再增加3年，故建請參考美國的做法，以延長登記資料保護期的方式鼓勵廠商將產品登記在少量作物。

建議四: 修法將農藥作用機制號碼列為農藥標示之必要項目

由於抗藥性問題日趨嚴重，故建請修改「農藥標示管理辦法」，將農藥作用機制號碼列為農藥標示之必要項目，以方便農友辨別各農藥之作用機制，並進而減緩抗藥性的發生。

建議五: 學校供應膳食得選用基改食材

教育部於2015年修訂施行學校衛生法第23條，禁止學校供應膳食使用基因改造（基改）食材及初級加工品係欠缺科學根據，且牴觸衛福部對基因改造食品的核准，亦未能履行世界貿易組織（World Trade Organization, WTO）成員國義務，致與諸多WTO協議不一致的情形。

5.1 施行涉及國際貿易之法案應通知WTO

台灣身為WTO成員國有義務遵守「食品安全檢驗與動植物防疫檢疫措施 （sanitary and phytosanitary, SPS）協定」第7條規範，亦即「成員國應通報其食品安全或動植物防疫檢驗措施之變更」。學校衛生法（第23條）修訂有關學校供應膳食不得使用基改食材與初級加工品之規定係為基於食品安全考量，且國內所有基改食材來源為進口貿易，台灣政府自應踐行通報SPS委員會之義務。

5.2 刪除學校衛生法（第23條）有關學校供應膳食禁用基改食材及初級加工品之規定

依據SPS協定第2.2條及第5.1條要求，所有可能影響國際貿易之SPS措施應具有充分科學證據並進行風險評估等依據。在尚未採行上述步驟前，自不宜施行禁止學校供應膳食使用基改食材及初級加工品之規定；再者，基改食材已經由衛生福利部進行食品安全評估並給予核准，始得用於食品或食品加工用途。故學校衛生法（第23條）有關學校供應膳食禁用基改食材及初級加工品之規定應予以刪除，並於日後法令及法規制定過程建立科學諮詢與風險評估機制，以提升台灣法規制定基於科學根據之形象。

5.3 避免法案加諸過度進口限制及對國內及進口產品之差別待遇

台灣所有基改食材來源為進口貿易，學校衛生法（第23條）修訂學校供應膳食禁用基改食材及初級加工品之規定，將排除部分進口農產品於學校供應膳食之使用，該等作法可能違反「關稅暨貿易總協定（General Agreement on Tariffs and Trade, GATT)」第十一條第1項禁止進口限制，且亦有牴觸GATT第三條第4項禁止差別待遇之規定，故應予以避免。

綜括上述，委員會衷心期盼主管機關能採納前述之建議，以期在完善的登記制度下，儘快引進更安全且環保的新產品，為消費者、農友及台灣農業創造最大利益，並進一步強化環保及食品安全的維護，確保國人健康。

資產管理委員會

本委員會感激金融監督管理委員會（「金管會」）為了建立更佳的投資環境及達到金融商品創新之目的，而於去年確立若干重大目標。本委員會亦肯定金管會就推動金融科技與共同基金投資平台及培育當地人才，所投注的努力。這些改革和新的政策排程均符合本委員會的期待，且終將使台灣投資人受益。我們樂見更多的管制鬆綁，尤其盼望在不久的將來能夠解除境內和境外基金的相關投資限制，俾提高台灣資產管理產業的競爭力、為產業成員提供更多業務機會、並為消費者提供更多的投資選擇。

此外，本委員會亦感謝金管會引進新的境內基金類型（亦即多重資產型基金），並准許境內組合型基金為增進投資效率之目的，投資若干衍生性工具。這些措施，是對業界去年提倡產品創新的正面回應。金管會准許全權委託投資帳戶得透過投資型保險商品從事貨幣避險安排，並准許其購買新台幣計價境內基金的外幣股份類別，此等決策亦有助資產管理產業強化其與保險公司的業務關係。另外，金管會就協助解決境內基金「透支」及委託行使投票權問題所作出的貢獻，亦獲廣大業界的推崇。這些改變，在度顯示金管會欲升級台灣資產管理業並使之符合國際實務的遠見與抱負。

本委員會期待與金管會合作，共同發展境內基金業務並持續吸引更多本地人才投入業界。證券投資信託及顧問法之修訂，固然會為產業帶來巨大影響，但我們希望此等修正草案能夠藉由提升境內商品的競爭力與作業彈性、確保境內和境外基金處於公平競爭的環境、鬆綁境內商品的投資限制等方式，為台灣的資產管理產業打造更好的規管制度。

同時，本委員會也建議金管會與勞動部就勞退金自選方案之實施進行密切合作。蓋因此方案攸關每位勞工的退休安排，且應能夠解決部份政府目前面臨的勞退基金困境。綜言之，委員會大力支持金管會持續作出改變，俾台灣資產管理業因應投資人瞬息萬變的需求。

建議一：儘速落實勞工退休金之自選方案政策

根據目前的勞工退休計劃，所有勞工都適用相同的投資組合及收益模式。但其未有任何基於個人實際需求和風險狀況的客製化機會，使勞工可選擇積極投資以為他們的退休收入獲得更高報酬，或選擇保守投資以減少風險。目前的退休金計劃並未考慮到可能導致個人選擇不同類型投資計劃的各種因素，諸如勞工的提撥數額、退休的年齡、風險承受能力和偏好的投資管理工具。這樣一來，勞工將喪失掌控他們的投資風險和報酬的權力，而這與「確定提撥制」計劃的宗旨並不一致。

金管會目前傾向將目前的退休計劃制度調整為「確定提撥制自選方案」，類似於美國（401K）、澳大利亞（退休金）、香港（MPF）和新加坡（CPF）等已開發經濟體所實行之計畫方案，但還待主管機關勞動部的最終決定。 本委員會呼籲勞動基金運用局採行勞工可依據自己的個人需求及風險偏好選擇退休計劃，無論選擇現行由政府管理且具備最低保證收益的退休金計畫，或者選擇通過自選方案平臺依據自己的風險偏好挑選合適的投資標的。考慮到持續的低利率環境、台灣嚴重的人口老化問題和勞工對於不同退休計劃之需求，本委員會強烈建議勞動部盡快落實「確定提撥制自選方案」計畫。

建議二：推動以「基金資產規模」(AUM-based)作為銷售機構之佣金計算基礎

現行以銷售額作為計算基礎之銷售獎勵金制度造成潛藏利益衝突，即是銷售人員透過勸誘投資人從事頻繁交易之方式衝高銷售額進而賺取高額銷售獎金。此種以銷售額為計算基礎的銷售獎勵金制度，除可能使臺灣投資人因不正常之頻繁交易造成額外之交易成本外，對臺灣資產管理業亦有負面影響。所造成結果包括：(1) 投信基金公開募集期間所募得之資金於閉鎖期間結束後大幅流出，使得基金之淨值產生下跌之情形，影響長期投資人之權益；(2) 基金週轉率過高，造成基金規模變動頻繁，增加基金投資管理之困難；及(3)臺灣投資人將共同基金當作近似一般股票之投資工具，追求短期獲利，但卻於每次基金交易時支付銷售機構較高之手續費用。此外，銷售機構透過基金銷售量收取高額之銷售獎勵金，但由於其客戶僅短期持有基金，對資產管理業之業務即會產生衝擊甚至損失。

近年來有關銷售獎勵金收費之合理性、費用是否透明以及投資人權益保障等議題已引起包括英國、澳洲、加拿大、新加坡及亞洲許多國家主管機關之高度關注，其中英國及澳洲已訂立明確政策禁止財務顧問收取佣金(commission)，荷蘭在2013年亦推出類似措施，而歐盟目前在Markets in Financial Instruments Directive II（“MiFID II”）也對於銷售佣金提出限制規定。

本委員會感謝證券期貨局就本項建言所作之努力，包含目前所提出「銷售獎勵金計算方式先訂定銷售額費率上限，再逐步推展採AUM計算」之二階段政策方向。所謂以AUM作為佣金計算基礎，是指資產管理業將不再依銷售機構於特定期間之基金銷售額計算銷售獎勵金，而是改依銷售機構所持有之基金規模(AUM)作為計算基礎。現行以銷售額作為計算基礎之制度，已錯誤地誘使銷售機構頻繁從事基金交易。

然而，本委員會認為上述「銷售獎勵金計算方式先訂定銷售額費率上限」之方式並未適度地解決爭議，事實上反而有可能造成其他困難，特別是對於規模較小的資產管理業者。更重要的是，臺灣投資人所面臨銷售機構頻繁從事基金交易之行為模式，可能無法透過訂定銷售額費率上限之方式獲得解決。本委員會的建議是參照其他國家的作法，儘快採行以持有基金規模(AUM)作為計算佣金基礎之模式。本委員會了解此種變革短時間內有可能對於銀行業帶來壓力，但對臺灣投資人而言，制度改變後的效益將是立即可見。惟有採取以AUM作為計算佣金之基礎，才能有效改變目前投信基金高週轉率之現象以及臺灣資產業界長期面臨投信基金於閉鎖期間結束後遭大幅度贖回之情形；對投資人而言，亦可減少不當勸誘投資人從事頻繁基金交易之現象，進而使投資人重新思考並採取以長期持有方式來進行基金投資之正確投資模式。

建議三：考量移除境外基金投資大陸地區證券市場之比例限制

由於大陸地區證券市場於近年逐步透過滬港通、深港通等方式向海外開放，國內專業投資人已可藉由複委託等方式參與大陸地區證券市場，但對一般投資大眾而言，共同基金仍然是參與大陸地區投資機會最主要的工具。

隨大陸地區的經濟持續成長，多數國際指標機構未來可望逐步上調大陸地區比重，將影響在國內註冊之境外基金與國際脫軌並影響無特殊投資管道的一般投資大眾權益。建議主管機關移除境外基金投資大陸地區證券市場之比例限制，以與國際接軌、保障投資人之權益。

銀行業委員會

去年台灣金融市場因受到許多始料未及的「黑天鵝」事件與國際油價下跌以及英國脫歐公投等因素而引發大幅度波動。這些都證明全球經濟發展對台灣金融機構的影響。此外隨著數家國際性銀行相繼撤出台灣市場，台灣金融市場對銀行業經營而言更具挑戰性。政府針對台灣金融業自由化的所做的努力，已協助業者

減輕全球經濟不確定所帶來的衝擊。本委員會期待政府持續推動台灣金融環境之自由化，以吸引更多外國金融機構參與本地市場，並可在與其他區域金融中心的競爭中，取得更多的商機。

本委員會欣見政府鬆綁法規以改善銀行業環境。金管會制訂之「代理買賣外國債券」及「衍生性商品資訊諮詢服務」，已為台灣銀行業帶進了許多的商業發展機會。身為台灣金融業界盡責的成員，本委員會將持續致力於銀行業之永續發展，並協助打造台灣成為亞洲重要的金融市場。

本委員會感謝政府關注去年所提的建議，一些議題已取得具體進展。今年度所提出的四項議題，本委員會相信應能於2017年獲得進展。展望金管會就擴展金融市場及增加就業機會之目標，本委員會建議主管機關應可參採國際間慣用之營運標準及法規制度。此舉將有效提升台灣金融產業與鄰近金融市場(如香港，新加坡)的競爭力，且能留住人才並創造更多商機。

建議一: 持續放寬境外商品發展與銷售的機會

台灣政府近年來已採取許多正面措施，放寬金融機構得提供之金融商品範圍，以配合提升台灣市場與國際接軌。業界期待為促進市場發展，當可放寬更多類型的金融商品以滿足差異化的風險報酬需求。

1.1 **調降境外結構型商品發行人之信用評等**

自2011年後，由於法規針對發行人信用評等的限制，使能在臺灣境外結構型商品市場發行針對得銷售予一般投資人之商品的發行人相對減少，市場幾乎呈現停滯狀態。雖金管會曾於2014年調降相關發行人信用評等至S&P A+（或Fitch A+、或Moody’s A1)，然由於臨近地區之境外結構型商品發行人信用評等要求相對較臺灣為低（如香港要求僅為A-），使得臺灣投資人如有投資需求即需向國外市場尋求投資機會。為了能提升臺灣市場在亞洲地區甚至國際上的競爭力，商品種類多樣化實為其要件之一。故本委員會建議，為了能讓更多的發行人得參與臺灣境外結構型商品市場並提供更多元的商品予臺灣投資人，針對前述商品之發行人信用評等應至少比照鄰近地區(如香港)之評等調降至A-。

目前在臺發行結構型商品者，以國際性之大型銀行為主。自金融海嘯後，相關監理機構除要求國際性大型銀行提高資本以提升投資人保障外，並對該等大型銀行實施高強度之金融監理。已知的世界趨勢為發行人信用評等已不再是發行人財務狀況之唯一參考依據。故主管機關於調降境外結構型商品發行人信評時，或可同時輔以其他更能反映發行人財務狀況之監理措施，相信此方式更能符合保障投資人權益之目的。

1.2 **允許境外結構型商品審查通過後未於6個月內受託或銷售，得發函審查單位通知展延六個月**

根據境外結構型商品審查及管理規範第18 條規定，除法令另有規定外，申請人應於核准之審查通過通知書送達後六個月內開始受託或銷售，逾期須再重新申請並經審查核准通過始得受託或銷售。唯依現行商品審查流程，申請人自申請商品審查起，至收到核准之審查通過通知書，約需3個月時間。商品審查通過後，市場狀況相較於申請審查當時或已大幅改變，致使商品在審查通過後6個月內並無銷售機會，而必須重新申請審查相同架構之商品，將耗費申請人、商品審查小組及受託或銷售機構的人力及物力，故建議修改現行法規，允許商品審查通過後若未於6個月內受託或銷售，得自動展延6個月或發函審查單位通知展延6個月。

1.3 **擴增代理買賣外國債券業務可承作之商品範圍**

對於業界長久以來針對商品範圍鬆綁之訴求，主管機關已有若干正面回應，惟現行法規對於代理買賣外國債券範圍之限制，導致台灣專業機構投資人及高淨值法人(下稱「合格投資人」)仍無法透過國內金融機構取得完整之外國債券買賣服務，部分交易仍需由境外金融機構進行，上述限制對於合格投資人之資產管理造成不便，也阻礙了代理買賣債券業務之進一步發展。

目前法規容許代理買賣外國債券業務得提供陽春型外幣債券，惟合格投資人有意願投資且經其目的事業主管機關核准得投資之若干商品(例如中國大陸相關債券及本國企業於海外發行之公司債)，仍被排除於代理買賣外國債券範圍之外，如果產品範圍無法進一步擴增，則合格投資人只能轉向其他國際金融市場(如香港或新加坡)之金融業者取得服務，此將有悖金管會金融進口替代政策之推動。

此外，目前法規中所稱中國大陸相關的債券也包括了在香港或澳門掛牌，而由中國政府或企業直接或間接持有公司所發行之債券亦不得買賣。由於認定公司背後主要持股者有一定難度，該項定義也增加了業者的遵循與控制成本。

為滿足合格投資人的需求，本委員會建請主管機關廢除現行有關代理買賣債券業務得交易市場與發行人國別的法規限制，進一步擴大代理買賣債券業務下可承作之商品範圍，以買受人經目的事業主管機關或相關法令或內部投資作業核准得投資之外國債券為準，以嘉惠台灣市場，並符合國際發展趨勢。

1.4 **建議於銀行兼營證券商自行買賣外國債券業務從事債券附條件交易時，放寬「證券商自行買賣外國債券交易辦法」相關規定中以證券商淨值為限額計算之基礎**

外銀(不論子行或分行)擬兼營證券商自行買賣外國債券業務時，於如何適用財團法人中華民國證券櫃檯買賣中心「證券商自行買賣外國債券交易辦法」第八條及第九條證券商從事外國債券附條件交易者，其交易餘額應併入其營業處所為債券附條件交易餘額計算時，有窒礙難行之處，詳細規定如下列：

- 附買回及附賣回交易餘額（按即期匯率換算為新台幣之金額）各不得超過該「證券商淨值」之六倍；
- 其中以政府債券以外之債券為標的之交易餘額，合計各不得超過其淨值之四倍；及
- 外國債券之附買回及附賣回交易餘額各不得超過「證券商之淨值」。

由上述規定可知，「證券商自行買賣外國債券交易辦法」第九條所謂證券商之淨值定義似指銀行兼營證券業務之證券帳淨值。惟依現行外銀分行管理辦法第三條規定下，達不同門檻限制之外銀在台分行應專撥最低營業所用資金為新臺幣二億五千萬元或新臺幣二億元。因此，外銀在台分行之淨值通常僅包括最低營業所用資金加上尚未匯回總行之保留盈餘；而外銀兼營證券業務下之證券帳淨值通常係由外銀在台分行之淨值另行專撥營運資金，故其基數更是比在台分行之淨值要來的低。

該等附條件交易之限額計算如係以外銀之證券帳淨值為計算基礎，則外銀在台分行將因此受限而無法深耕以活絡現行自行買賣外國債券市場。且就外幣資金流動性言之，外商銀行作為台灣外幣資金流動性之主要提供者，當外銀無法透過外國債券附條件買賣交易為本國金融機構提供中、短期流動資金時，這些外國債券投資人(包括央行)只能轉向海外金融機構取得外幣資金流動性。

本委員會建議金管會於銀行兼營證券商自行買賣外國債券業務從事債券附條件交易時，得以外銀總行之淨值(或外銀子行之淨值)為限額計算之基礎以俾能蓬勃臺灣外國債券市場發展及建構台灣外幣資金良好流動性之機制。

1.5**進一步放寬「提供境外衍生性商品資訊及諮詢服務」**

A) **開放同一合併財務報表內之母公司及子公司,銀行對其財務條件之審核階可依母公司之合併報表為基準**

金管會於2016年6月21日公佈之銀行提供境外衍生性金融商品資訊及諮詢服務應注意事項之修正規定中，已將高淨值投資法人之得從事避險之主體擴及該法人持股百分之百之境外子公司。然而目前銀行辦理衍生性金融商品業務內部作業制度及程序管理辦法中，對高淨值投資法人得從事避險之主體之資格審查規定並未納入上述之境外子公司，銀行仍需根據從事避險之主體之單獨財務報表(不能使用合併財務報表)來判斷其財務狀況是否符合高淨值投資法人之條件。

上述之境外子公司倘為該高淨值法人從事避險之主體，因其單獨之財務報表多未能符合高淨值投資法人之條件或甚至無單獨之財務報表，為使法令一致避免混淆，茲建議開放同一合併財務報表內之母公司及子公司，銀行對其財務條件之審核皆可依母公司之合併報表為基準。

補充說明

目前法規對高淨值投資法人之資格審查規定，銀行需根據申請人之單獨財務報表(不能使用合併財務報表)來判斷其財務狀況是否符合高淨值投資法人之條件。茲建議開放同一合併財務報表內之母公司及子公司，銀行對其財務條件之審核皆可依母公司之合併報表為基準；此乃因國內多數電子、科技公司因集團策略考量，由集團內子公司作為接單或生產之單位，且其產生之匯兌風險亦由該子公司直接避險，然其財務專責人員皆由母公司財務中心兼任並統一權責，故其專業度應以其母公司作為衡量指標。如此，不但創造金融機構國內就業機會，將人才留在台灣，更能提升台灣資本市場於亞太地區的競爭力，且保障國內客戶的投資相關權益，在發展成亞太金融中心之營運及銷售模式下，對促進交易時效及降低交易成本等方面，皆大有裨益。

B) **進一步將「提供境外衍生性商品資訊及諮詢服務」服務範圍擴及至以投資為目的之「高淨值投資法人」及該法人持股百分之百之境外子公司**

本委員會相當感激金管會為提升銀行提供境外衍生性金融商訊及諮詢服務之廣度，業於2016年6月放寬可提供該等服務予有避險交易需求之高淨值投資法人及該法人持股百分之百之境外子公司。

據金管會表示前開有避險目的之交易係排除境外結構型商品，因其認為境外結構型商品屬為投資目的而非屬避險目的交易。然而，實際上市場上符合相關資格條件之高淨值投資法人對投資目的為主的境外衍生性金融商品有更大的需求，且我們了解高淨值法人均無意願透過現行境外結構型商品管理規則下之信託架構購買境外結構型商品。有鑑於大型高淨值投資法人業務範圍遍及全球並積極尋求全球不同區域及不同產業領域之投資機會，實有必要將高淨值法人之待遇與專業機構投資人拉齊，以便本地金融機構可以提供高淨值法人全球投資機會之解決方案，提供更有效率之境外結構型商品投資服務，同時能強化台灣金融市場之永續發展。此外，近一步將「提供境外衍生性商品資訊及諮詢服務」涵括境外結構型商品投資不只使本地金融機構有更強有力的立足點可以與國外金融機構一同競爭並能更落實金融進口替代方案之實質內涵。

本委員會建議進一步鬆綁可提供該等服務予有投資需求之高淨值投資法人，以使本地金融機構有更強有力的立足點，可以與國外金融機構一同競爭。

建議二: 透過法規鬆綁及誘因措施以促進境內財富管理業務

2.1 **准許銀行業對於客戶將期在本行之信託資產設質為擔保，提供授信服務**

本委員會高度認可法規的修訂，目前客戶得以提供其在信託資產中之投資信託共同基金為擔保，而從其他銀行獲得融資。然而，由於提供融資的銀行並非原信託資產所在之銀行，由於事涉第三方，造成業務面上的困難。

在國際實務上，投資商品融資早已是一項非常普遍的財富管理服務，多年來，在香港與新加坡的銀行業者提供給其高淨值資產或富裕客層，以活化其資產。爰建議客戶得提供其信託之受益資產為擔保予原信託銀行，並取得該銀行之貸款；亦即融資服務由該信託銀行而非第三方銀行提供。該項業務可帶來之效益包括增加收益、多元資產配置，以及最重要的提高流動性。現行大多數的投資商品係經由信託業務平台提供，因現行法令之限制而不得供設質以取得融資。倘該等信託資產得以從該項限制中釋出，將對於提高客戶財務操作的靈活與效率，以及全體銀行業務成長，提供巨大的動能。

目前保險公司與證券公司均可對其客戶在各該業者的資產提供融資服務，相較之下， 銀行業若亦能提供相類的服務，定能對財富管理之發展產生顯著的正面效益。

2.2 **鼓勵銀行業者對於在台業務的拓展和擴增投資，並提供政策性獎勵措施**

根據近期發布的國際資金流向統計資料顯示，台灣的外商直接投資金額嚴重的縮減，且呈現持續消退之趨勢。此種艱困的商業環境也反映在銀行業，從數家國際金融機構自台灣裁撤或縮減規模即可見其端倪。鑒於外商直接投資為產業界與政府重要的績效衡量指標與共同追求的策略發展方向，本委員會相信政府勢必須採取行動，以擬具新規範政策與制度方案，方能重塑台灣成為外國對台直接營運投資(FDI)友善的環境。為達成此目標，本委員會建議各金融業相關主管機關對銀行業在台營運投資擬具獎勵制度。在此制度架構中，可以根據主管機關的政策目標屬性為導引，建立指標評量表，例如境內業務量、員工人數規模與內部控制成效的過往紀錄等。對於評量指標合格的誘因可以適用但不囿於下列幾方面：

- 新業務與商品提供之核可：政府應提供誘因以鼓勵在台灣設有據點的跨國銀行，擴大其在台之營運規模與產品範圍。著眼於具吸引力的業務機會，跨國銀行在台灣境內進一步的投資與獲利產生正向循環足可預見。可能的潛在政策獎勵措施，諸如對於評量項目表中取得高分的跨國銀行，准許其新種業務計畫或業務範圍得擴增及新客戶類別、新結構型商品與創新金融商品等。
- 簡速核批程序：為加速及簡化新種業務執照與產品許可之申請，政府得對評量項目表中取得高分的銀行採取快速且精簡化的核批程序，以減少商品上市的前置作業時間。
- 降低新種業務初始營運之人員配置要求及資本投入門檻，並允許相同職能部門人員得跨業務種類兼任執行。現行為主管機關認可之監理沙盒概念應可同理適用。
- 降低監管密度：例行性金融檢查之頻率，可依照此獎勵制度之評量指標，調整為以風險為導向之檢查模式。

建議三: 進一步放寬國際債相關規範

3.1 **取消外幣計價國際債券發行有關指定流動量提供者之規定**

為了提升外幣計價國際債券(以下稱「國際債」)次級市場之流動性，以吸引異質投資人參與，我國主管機關於2016年訂定有關國際債之發行需指定流動量提供者之規定。然而，國際債缺乏次級市場之主因係因其投資人主要為專業機構投資

人，而該等投資人偏好投資長天期(七年以上)之國際債並持有至到期日，而較少有在次級市場進行國際債買賣之需要所致。然而，由於前述流動量提供者之規定，造成辦理國際債發行之承銷商為了符合前述流動量提供者需提供次級市場買賣雙向報價之法規要求，導致其於國際債發行同時，需先行認購部分債券以提供其未來擔任次級市場流動量提供者時所需。此規定增加了承銷商的作業成本，反而影響承銷商辦理一般版國際債(七年以下天期)之發行意願而無法達到活絡國際債次級市場之目的。

本委員會建議取消國際債發行之指定流動量提供者之規定。為提升國際債次級市場之流動性之最佳方法，應為減少一般版國際債(多為短天期債券)之發行條件限制(如發行機構可買回債券)，以提升該市場商品種類之多樣性，進而能吸引更多的投資者進入市場交易。

3.2 **允許每年度一至三月份申報發行一般版國際債券時得檢附最近三年度以發行經會計師查核之財務報告及最近一期之季報**

有關申報發行一般版國際債券時所需檢附之「最近三年度經會計師查核之財務報告及查核報告書」，依主管機關要求係指申報當日最近三年度之財務報告，而非申報當日或文件編制之時最近三年已發行之財務報告。然實務上，因會計師查核作業時間的關係，多數公司(包括金融機構)之經會計師查核之財務報告之公開日多落於三月底或四月份。由於前述情形，導致每一年度之一至三月份(及十二月份)一般版國際債券發行人皆無法提供符合規定之財務報告以辦理債券發行。

本委員會建議主管機關發函說明如發行人於每年度之一至三月申報發行者，得於製作「外國發行人於國內發行普通公司債總括申報追補書」、及依「外國發行人募集與發行有價證券處理準則」準用「發行人募集與發行有價證券處理準則」第20條編製公開說明書時，檢附申報當日或文件編制之時「最近三年已發行經會計師查核之財務報告及查核報告書」及前一年度之最近一期之季報，以解決每一年度一至三月(及十二月)因無法檢附最近一年度之財務報告而導致無法發行國際債之窘境。

建議四: 外國投資人因投資國內發行人發行之國際板債券而產生之利息收益得免課徵所得稅

自2013年起，因金融監督管理委員會積極推廣台灣國際板債市，國際板債市近期呈上升趨勢;本委員會相信營造外資友善的投資環境能進一步推升台灣國際板債市成長。

為協助外國投資人參與台灣國際板債市，國際清算機構(Euroclear/Clearstream）已於2014年與台灣集中保管機構開立帳戶，外國投資人可透過此途徑參與台灣國際板債市並豁免申請外資身分及指派國內保管機構等要求。 然而，因不具競爭性之扣繳稅率，此法規開放並未如預期吸引大量外國投資人投入。

依據目前國內稅制，外國投資人投資國內發行人發行之台灣國際板債市所產生之利息收益需扣繳15%。然而,其他亞洲國家針對類似投資標的(如:香港點心債)並未實施稅賦扣繳，因此，台灣國際板債券對於外國投資人較不具吸引力。

在現行投資環境下，若欲增進台灣國際板債券之國際競爭力，本委員會建議降低15%扣繳率為0%以爭取更多外國投資，進一步增進台灣國際板債市之流動性與成長動能。

資本市場委員會

資本市場委員會感謝主管機關願意持續聆聽我們所關切的議題。然而，我們希望再次強調，臺灣的資本市場需要持續與國際接軌並強化其國際競爭力。因此，我們持續就有助於臺灣市場發展的議題提出建議。本委員會成員並願意隨時協助臺灣政府致力於建立透明、公平且具競爭力的金融服務環境以促進金融業之發展。

建議一: 開放表彰台灣上市櫃公司股票之非參與型美國存託憑證

金管會持續進行多項金融法規鬆綁的努力，值得讚揚，其中包含2014年開放台灣上市（櫃）公司於美國櫃買市場發行非籌資存託憑證（即一級美國存託憑證）。慮及協助台灣上市（櫃）公司增加投資人來源之需求，使台灣上市（櫃）公司獲得更多樣化和穩定的股東結構，以及更好的公司公平價格發現機制，本委員會建議進一步修改外國有價證券發行及本國有價證券交易相關規則，開放非參與型存託憑證機制。

現今，取得FINI資格之外資在台灣股票市場中扮演重要的角色，平均FINI交易量佔大盤日交易量的25% ；然而，未取得FINI資格之外資，因投資身分的限制，目前仍無法投資台灣市場，其中包括許多美國投資管理機構受委任操作美元計價之資產，其投資標的僅限美國註冊之證券。發行非參與型存託憑證可提供台灣發行人自無FINI資格之海外投資者處獲取額外資金並增加全球能見度的另一種方式。

允許發行非參與型存託憑證（即於次級市場購入並存放於台灣保管銀行之證券)，將能引進增額之外國資金並推動台灣股市成長動能。台灣股市流動性與交易量的增加將能使台灣經紀商從中獲益。綜上，本委員會強力建議主管機關修改相關法規，開放非參與型存託憑證之設立及使用。

建議二: 檢視並放寬證券市場規定，擴大市場參與以持續支持市場成長

2.1 開放券商提供短期交易策略予專業投資人

依照「臺灣證券交易所股份有限公司證券商推介客戶買賣有價證券管理辦法」第三條之規定，證券商向客戶推介買賣有價證券時，必須依據研究報告辦理推介。我們建議允許營業員能依照市場狀況及公開之市場信息提供短期交易策略予專業投資人,而無須一定要依據研究報告。

研究報告分析股票的長期趨勢，分析師的看法也代表其對股票長期的判斷。然股票市場瞬息萬變，極可能有短期波動與長期觀點不一致之情形發生。

上市櫃公司所舉辦之法說會，為影響股票價格走勢之重要因素，往往於法說會後股票價格立即會有明顯變動。但研究報告須於其後始能就法說會之內容進行撰寫並發佈，無法立即反映市場變化並更新研究報告內容、 目標價格及買賣建議，故可能造成研究報告之買賣建議與市場走勢間暫時性的矛盾。若於上述情形如仍要求證券商須依研究報告向客戶進行推介，則喪失推介有價證券之意義。

再者，受託買賣營業員之價值在於服務客戶之精神。依據最新市場狀況提供即時之建議予客戶係營業員可提供加值服務給客戶之良好機會。

另方面，倘營業員無法提供最新市場資訊給客戶，結果可能導致營業員功能不彰，甚至降低市場活絡程度，應非投資人所樂見。

2.2 建議將已上市（櫃）公司之可轉換公司債排除於投資總額度上限不得超過外資法人投資匯入資金之百分之三十之規定

本委員會感謝台灣證券交易所自2017年3月起放寬規定，投

資私募可轉換債券可不計入外國投資人(FINIs) 30%固定收益投資上限。為鼓勵FINIs投資側重台灣股票市場而非固定收益市場並避免有新台幣投機之情事發生，依現行規定，FINIs投資於政府債券、貨幣市場工具、特定衍生工具之淨交割金額及權利金、公司債券及無擔保銀行債券之資金，不得超過其淨匯入資本之30%。

本委員會了解以上政策之目的並感謝主管機構在金融市場監管上所持續付出的努力。但我們也想指出，可轉換債券為上市公司之重要籌資工具，也是投資人常見參與資本市場方式。因其票面利率較低，且具有可隨時於存續期間依投資人決定申請轉換成標的公司的股票之特性，可轉換債券在全球大部分市場一般都被歸類為權益投資而非固定收益投資。可轉換債券的條件比股票複雜，其投資者為機構投資人而非個人。

FINI一直以來都是台灣可轉換債券的主要投資者及重要的流動性提供者；將可轉換債券計入30%固定收益投資的限制可能導致FINI減少其可轉換債券的投資，並影響可轉換債券於次級市場的流動性; 除此之外，影響層面可能波及可轉換債券於初級市場上的定價和首次公開發行的價格。鑒於上述對台灣資本市場帶來之負面影響，本委員會建議將可轉換債券不計入FINIs 30%固定收益投資上限。

2.3 **發展適合外資的首次公開發行/現金增資競價拍賣系統**

根據2016年生效之有價證券競價拍賣新制作業，投資人欲參與首次公開發行及現金增資競價拍賣，需親自至開戶證券商營業處所進行線上競拍輸入或使用證券商之電子憑證進行。因為外資並非本國居民且線上競拍系統僅為中文版，此新制可能不會造成本國投資人之不便，但卻成為外資參與競拍之障礙。

為使外資能順利的參與首次公開發行及現金增資競價拍賣，本委員會懇請主管機關能開放外資透過指定證券商代為投標，或建置英文版的競價拍賣平台讓外資從海外直接投標。

建議三: 國際證券業務分公司(OSU)與國際金融業務分行(OBU)宜採行一致的設立標準以建立跨業公平

金融監督管理委員會於103年2月開放國際證券業務分公司(OSU)設立，外國投資人可以透過OSU平台購買境外金融商品及服務。截至106年2月，已有17家證券商提供OSU業務，然而未有外國證券商涉入此業務，主要係因經營全照式OSU業務淨值需達新台幣一百億元，其高門檻資本限制構成外國證券商進入此市場之主要障礙。

參考銀行業國際金融業務(OBU)經濟規模，中央銀行於106年1月發布新聞稿所示，已營運之OBU共有62家，其中24家為外商銀行，佔全體OBU資產總額比例達12%且OBU資產總額高達236億美元，幾乎所有外商銀行除國內業務分行外亦設有OBU分行。由於OBU淨值門檻較低，國際金融業務得以蓬勃發展。進一步分析，銀行OBU資本要求與國際財務慣例相符，係採資本適足率計算方式，考量產品、客戶及市場等風險計提資本，因而銀行資本計提模式能在業務成長下同步有效率管控風險。

本委員建議鬆綁OSU最低資本法令規定，適用銀行OBU風險資本計提模式，依其經營業務所產生之風險計算加權風險性資產，對應法定之資本適足率下提足應有之資本。OSU資本鬆綁將允許更多合格證券商參與，外國證券公司並得以引進多元化產品進而增加整體OSU之交易量並及提升獲利水準，同時吸引更多國際金融人才加入並擴大台灣金融產業規模。此鬆綁呼應主管機關金融進口替代亦有助於國內就業機會之增加，不但可創造公平及開放之金融環境亦有效擴大資本市場之規模。

建議四: 促進市場效率及競爭力

4.1 **開放證券商得將部分作業委外處理**

本委員會於2016年白皮書建議開放證券商得將部分作業委外處理，我們感謝國家發展委員會建議本委員會將此帳戶代理人(Account Operator)服務提案向證券商公會提出商研。然而，因帳戶代理人的需求一般來自於全球證券商，而全球證券商係屬證券商公會之少數且對證券商公會之影響力有限，是以該提案迄今尚未有具意義的進展。鑒於國際趨勢上，全球證券商皆在尋求更有效率的環球營運模式，我們今年再度提出此建議。為吸引和留住國際證券商及相關專業人才，許多亞洲市場已引入了新的結算與交割方案，其中包括第三方結算服務（TPC）和/或帳戶代理人服務（AO）; 其主要原因是該服務增加了證券商營運結構之彈性、以變動成本取代固定成本，並透過帳戶代理人銀行的額度支援提高流動性和融資能力，降低其市場進入成本。本委員會建議放寬相關法令，開放證券商將後台相關業務(包括證券和現金交割流程、保管、資產服務、對帳、報表製作等)外包給AO帳戶代理服務提供商。以下為對市場帶來之助益：

- **提供證券商更有彈性的成本結構**。當業績及收入減少使得毛利降低或甚至遭受損失時，證券商能藉由帳戶代理人模式減少固定成本並降低損失。帳戶代理人依交易筆數收費，意即客戶有交易時始需付費，因此證券商能維持一定的營業毛利。另外，券商能夠將資源集中在提升證券商本身的優勢及特殊的專業領域，如提供研究報告、自營、經紀與交易下單，這些專業領域的精進將吸引更多投資者及人才進入臺灣市場。
- **提升資金流動性及調度**。證券商可利用其AO代理銀行提供之日中墊款額度先完成與交易所之交割。現行制度下，如證券商之外資法人客戶無法於交割日期限內付款，證券商需動用其自有或向銀行調度之資金於交割當日與交易所交割。AO帳戶代理銀行因能更佳掌握整體交割流程，其內部較易核可大額的日中墊款或隔夜借款額度給證券商，此信用額度能讓證券商有更充裕的時間調度資金並與外資客戶解決相關之交割事項。如此一來，證券商能優化其流動性風險管理且可能不再需要外資客戶於交易日隔天(T+1) 就將交割款準備好。
- **提升整體市場效率**。證券商若將後勤作業集中於AO帳戶代理人服務機構處理，將可促進作業及市場交割之效率。AO代理機構一般均為大型銀行或證券商，透過其全球作業平台支援並由本地分支機構提供服務，可支援交易量之增加及長期成長。
- **降低新進證券商的進入成本**。在現行傳統服務架構外，AO模式可提供證券商另一經營模式之選擇，證券商可有彈性地依其商業需要尋求最佳化經營模式。在台開放AO帳戶代理人服務可期吸引更多中小型券商參與台灣市場，間接地為台灣資本市場引入更多活水。

4.2 **與國際市場接軌，取消星期六證券期貨市場交易以減低交割風險**

台灣證券及期貨交易於星期六開盤交易、交割實為全球獨有，在機構投資者高度仰賴系統自動化作業流程之今日，為使交易及相關系統得在星期六正常運作均需有額外設定、測試，增加證券商與期貨商之成本亦增加相關作業風險，有鑒於台灣資本市場外國機構投資者之比例已日漸提高，建議主管機關取消星期六補行交易交割以符合國際慣例。

4.3 **推動外資在台扣繳憑單電子化**

本委員會感謝主管機關持續努力建制電子稅務申報的環境。根據財政部2016年12月14日公告，自2017年1月1日起，扣

繳義務人給付應扣繳所得且已繳清扣繳稅款者，得利用網路辦理各類所得扣繳憑單申報。然目前外資在台之扣繳憑單仍以紙本發放，且外資之稅務代理人及保管銀行需投注大量時間及精力於紙本憑單之核對、保管及查核，此亦影響外資盈餘匯出之作業時程。本委員會於2016年白皮書提議推動外資在台股利收入之扣繳憑單電子化，並開放外資指派之保管銀行及稅務代理人得採網路線上查詢其稅務資料。

為增加市場效率，本委員會建議主管機關指示所有扣繳單位發行電子式扣繳憑單予外資。其益處為減少發行公司及股務代理機構處理扣繳憑單之工作量、降低大量紙張使用而達成環保之責、並簡化稅務代理人查核時間，進而協助外資匯出之需求並建立無紙化之資料庫。

4.4 **推動證券商與保管銀行間交易對帳及成交回報作業之標準化**

為推動證券商與保管銀行間外資法人交易交割對帳作業之自動化，集保結算所於2009年曾引領主要保管銀行及台灣證券商業公會成員進行討論實施集保結算所之法人對帳系統。為此，許多券商及保管銀行皆提升內部作業系統並與集保結算所進行測試。然而證券主管機關並未強制規範；大部分券商及保管銀行仍採電子郵件進行對帳及交易確認，其效率有待提升。為提升外資法人之交易交割對帳流程之效率，本委員會提議主管機關頒發函令規範券商及保管銀行共同採用集保結算所之法人對帳系統。

化學品製造商委員會

化學品製造商樂見並感謝環保署及勞動部跨部會的合作，來發展出一套調和及透明的化學品申報及登錄流程。我們更樂見環保署在去年十二月成立毒物及化學物質局，統籌全國化學物質的管理。

但我們持續對於化學物質商業機密保護的揭露及共同登錄機制的不確定性，表達我們的疑慮。因為這些因素，均不利於台灣在化學產業及電子特用化學品的研究及業務發展工作。我們也希望環保署廣納產業界針對毒性化學物質管理辦法修正草案之意見。

建議一: 改善化學物質資訊揭露的商業機密保護

GHS化學品全球調和制度第四階段，已於2017年1月1日全面實施，有關在物質安全資料表上面的成份，若屬於健康危害部份，須全面揭露，而此揭露要求已遠超過其他國家的要求，並很有可能造成台灣在化學及電子產業特用化學品的研發及新產品的發展上，造成非常不利的影響。

物質安全資料為保護勞工安全，而非揭露成分。物質總體健康危害訊息，已完整在健康危害單元詳細描述，揭露配方中單一成份的危害，不代表物質總體可能形成危害或易造成使用接觸者無謂恐懼和誤解。

揭露低程度危害之產品成分是否能有益於大眾利益尚是未知數，但卻可能造成競爭對手不當使用，損害公司權益及惡性競爭之可能性。加上申請商業機密保護的程序繁雜及檢附文件難以達成，業界申請意願低，間接造成新科技研究及開發困難。對台灣長期發展而言，可能造成損害。再者，若無適當方式保護商業機密，可能會造成台灣科學研發和市場競爭的負面影響，同時形成貿易壁壘。因應商業機密的疑慮，我們已經逐漸看到化學品製造業者，已經對於其在台灣的研發，採取更為保守的策略及作法，我們正在進一步及更為全面的評估它對化學及電子產業負面的衝擊。

雖然毒物及化學物質局已在登錄辦法中，提供了較為簡易的商業機密保護申請，但它僅限於保護研發所使用的新化學物質。至於運用既有化學物質調配比例的研發工作，則並無提供保護。我們建議在不增加公眾的風險下，參照日本、中國、韓國和美國GHS及危害通識之相關規定，讓業者能在全面實施GHS的條件下有效保護CBI。另可考慮正面表列一定要揭露的化學物質，至於其他物質可使用類名替代。

建議二: 提供一個既有化學物質第二階段聯合登錄的平台

在化學品登錄的程序中，若每家公司必須各自登錄他們所進口或生產的化學品，這種重複性的工作非常浪費時間和金錢，同時也對政府及產業造成極大的行政負擔。在其他市場，政府容許不同公司針對同一化學物質共同登錄，但因為只有政府才有能力掌握所有進口者和生產者的訊息，所以真的需要政府先建立一個讓所有製造或生產同一化學物質的廠商的平台，在歐盟就是所謂的物質訊息交換平台(SIEF)，目前南韓也已經建立類似的機制。同時亦可針對廠商對於商業機密資訊對大眾公開有疑慮的部分，建立了一個退場機制。

在即將上路的第二階段登錄，本委員會建議環保署毒物及化學物質局建立適當的平台，除了學習韓國和歐盟的經驗外，也進一步與台灣產業及歐盟有經驗的專家共同討論，並制訂一個實際可行的聯合登錄機制準則草案，提供給即將參與登錄的利害關係人參考。

建議三: 廣納產業界針對毒性化學物質管理辦法修正草案之意見

在今年4月17日公告的毒性化學物質管理法修正草案中的第三十及及三十八條，有關於關注化學物質之定義及分級管理方式不甚明確。此外，化學物質登錄及申報專章中，經指定公告應登錄化學物質之定期申報方式及指定方式亦不明確，建議兩者應在下次修法時作明確表述。

本次預告之修正草案新增關注化學物質之規定，其容器、包裝、運作場所、設施之標示與安全資料表之製作、分類、圖示、內容、格式、設置及其他應遵行事項之辦法，由中央主管機關定之。為減少標示管理之負擔及誤解，建議關注化學物質回歸GHS標示，而非另外新增標示規定。

化學物質管理基金之徵收項目中，徵收化學物質運作費恐造成空污費、土污費等規費重覆收費及法律之競合之問題。建議化學物質運作費應明確定義，避免重複收費。

現行化學物質登錄責任在於國內廠商，然若國外廠商基於商業機密保護原則，不願揭露真實成分信息或提供不實資訊予國內廠商，恐難釐清登錄不實之法律責任。建議藉由本次母法之修法在即，登錄制度應朝向REACH唯一代理人(OR)修正。在REACH法規下，在歐盟外成立的自然人或法人，其所製造的物質、混合物或成品，可以委任唯一代理人(OR），進行進口物質所需的註冊登記

化粧品委員會

本商會新成立的化粧品委員會認同並讚賞台灣食品藥物管理署（TFDA）過去一年在促進政府和化粧品業之間順利溝通方面的努力。有成效的雙贏關係對於確保有效的政策實施和穩定台灣化粧品行業的營商環境至關重要。

本委員會對於TFDA積極倡導於1972年首次公佈後均未更新的化粧品衛生管理條例（簡稱化粧品法）的現代化、升級化甚感認同。我們敦促TFDA繼續推動監管透明化，讓該化粧品法案與台灣主要國際貿易夥伴的化粧品法規協同化。最重要的是，應避免採取獨特的監管模式或規範，這可能會對貿易造成技術性壁壘，並構成妨礙締結雙邊或多邊貿易協定的障礙。此外，我們也

敦促TFDA鼓勵業界發展產業自律，以滿足未來化粧品市場的需求。

本會提出建議如下:

建議一：採納涵蓋最新科技演進並可與貿易夥伴相調和的化粧品法律定義

有鑒於過去40多年的科技進步，早年施行的化粧品衛生管理條例中，有關化粧品的法律定義已明顯過時，且無法與消費者的需求同步。現行條例將化粧品定義為「潤澤髮膚、刺激嗅覺、掩飾體臭或修飾容貌之物品」。在此定義之下，保濕與滋潤肌膚、淡化臉部老化皺紋、以及保護皮膚免於紫外線傷害之產品即被排除在外。然而，此類產品在世界主要市場廣泛流通，也早已廣為台灣消費者所接受。

基此，本委員會樂見台灣食品藥物管理署啟動化粧品衛生管理條例的現代化程序。惟本委員會同時發現，於2016年下半年公告，化粧品衛生管理條例修正草案中草擬的化粧品定義仍難謂廣泛，亦未適當地與美國及其他主要貿易夥伴取得一致性。

本委員會呼籲，政府應採納足以包含所有產品態樣與功能的廣泛化粧品定義（包括防曬乳、含抵禦環境因子傷害成份的抗氧化乳霜或乳液、具有改善口氣與保護功能的口腔護理產品等等）。最為實際的立法模式即是採用主要國家或地區的定義方式：「指施於人體外部（表皮、毛髮、指甲、嘴唇與生殖器）或牙齒、口腔黏膜，專門或主要用以清潔、芳香、修飾容貌、保護或使之維持良好情況、或改善體味之物質或混合物。」依此，將可以涵蓋防曬功能產品與滋潤皮膚的化粧品，例如護脣膏等等。

建議二：承認其它國家化妝品優良製造規範(GMP)等同於在化粧品衛生安全管理法下的台灣化妝品法規

目前化妝品優良製造規範(GMP)在歐盟(EU)及東協(ASEAN)雖然是強制性要求。但是，這兩個區域的衛生主管機關均接受其他國家GMP的標準。但是，台灣食品藥物管理署(TFDA)將國內化妝品GMP定位為唯一標準。這無疑將會造成貿易上重大的技術障礙。因此，本會建議台灣食品藥物處理署必須要認可美國個人保養品產品協會(PCPC)及其他國家之衛生主管機關所頒行之化妝品GMP。另外，也應同意化妝品公司得自主宣稱其所使用之GMP標準，符合台灣化妝品GMP規範。

建議三：重新修訂化粧品法以避免形成技術性貿易障礙並推動法規制定透明化

本委員會望敦促台灣食品藥物管理署開始揭露其法規的決策理由，而不是使用未公開的內規。本會提供以下具體建議：

3.1 **確保化粧品成分的限制皆基於科學證據**，並以公開透明方式引進相關規定。部份化粧品成份受到使用範圍與劑量的限制，例如特定用途化粧品中的活性成分、化粧品的中色素等等。本委員會呼籲台灣政府應確保任何化粧品的成份限制及／或衛生標準，應係植基於完善的科學及客觀的評估；關於成份安全性及使用條件所參考的科學依據，應來自於主要市場的政府管制組織、產業諮詢機構、以及專業的組織如美國的化粧品成份安全委員會（CIR）、歐盟的消費者安全科學委員會(SCCS)等專家資源。

化粧品成份限制與衛生標準應與主要貿易夥伴，例如與美國、歐盟與日本的相關規定一致。再者，本委員會呼籲台灣應建立得以促進產業自律的法規環境，以有助於鼓勵產業的進步，而非增加限制，形成障礙。臺灣應避訂定獨有法規要求，因而構成技術性貿易障礙。

3.2 **研擬中的產品資訊檔案制度應確保其可行性與合理性**，並應只針對關鍵性法規需求。本委員會感謝食品藥物管理署的保證，將建立合理與可行的產品資訊檔案指引，並給予足夠的產品資訊檔案準備時間。新化粧品衛生管理條例既然正進行立法程序，此時應著手訂定詳細的指引及其他相關子法。本委員會呼籲，食品藥物管理署可以與產業公會及其他利害關係人密切合作，以識別並提出真正符合法規所需的必要資訊，如此方得以建立適切的產品資訊檔案系統，避免形成技術性的貿易障礙。

3.3 **刪除新法關於上市前的產品查驗登記要求**。化粧品衛生管理條例修正草案提出，在5年過渡期間內，現行的上市前產品查驗登記制度仍然有效，同時化粧品業者又被要求遵守新的上市後產品登錄與建立產品資訊檔案。這樣的雙軌管理制度實屬台灣獨有而未見於其他國家，其將造成業者的雙重負擔且未見保護消費者附加價值。本委員會呼籲食品藥物管理署應仿效其他國家管制機構的作法，單純著重在上市後的監督，例如透過產品登錄與產品資訊檔案制度，以及產業自律制度。

3.4 **標示當地負責廠商已足以保護消費者及因應產品上市後的監督**。化粧品的標示目的係為提供消費者必要的產品資訊，以及供作政府機關進行市場監督時的參考。化粧品產品的尺寸通常很小，基於便利及有效標示的考量，化粧品標示的規定應聚焦在確保具有實用意義的資訊披露，此種產品標示要求的人規管方式已經廣為主要國家或地區所採納。

其中一項重要的資訊即是承擔產品責任的當地負責廠商之名稱。美國及其他臺灣的主要貿易夥伴並未要求須標示出供應鏈中的其他公司。當地負責廠商方為消費者主張有關產品疑問的對象。依此邏輯，消費者保護法即規定，當地之進口業者、經銷商而非國外的生產者，為負擔進口產品責任的一方。現行化粧品衛生管理條例要求標示出實際生產或加工的廠商，此舉對於貿易促進及消費者保護並無實益。本委員會呼籲政府，應參考主要先進國家的規管方法，僅要求標示出當地負責廠商的資訊於化粧品標籤上。

建議四: 避免創設獨特的「更正廣告」政策

相較於推動廣告自律的國際最佳實踐，化粧品衛生管理法草案授權給主管衛生的公務員，來判定該廣告或宣稱是否為「嚴重誇大或不實」，甚至包括了那些不涉及安全或衛生的廣告內容。違規者必須以「更正廣告」之名，刊播或刊載道歉啟事。本委員會得知，在2013年衛福部主辦的公聽會中，已從原草案移除的「更正廣告」條款又在目前草案中恢復，本委員對此深感憂慮。這項措施將授與衛生主管機關極大的權力，包含毀損一家公司商譽及品牌價值的能力，該權力擴及至其專業權限以外的區域，而未提供被指控者在正當程序中的及時司法救濟。

去年九月在一場與台北美國商會討論化粧品新法主要議題的會議中，食品藥物管理署告知商會代表，僅構成「情節重大」（包括廣告內容中連續出現嚴重危及人體健康的誇大不實宣稱）時，食藥署才會考慮採取嚴厲手段而要求廣告主公開作出更正廣告或聲明。食藥署進一步回應商會，「情節重大」將在子法或行政命令中清楚定義。惟食藥署的說明並未全然消除商會疑慮，因為決定何謂「重大」的權力仍屬於衛生主管機關。

化粧品委員會贊成先前零售委員會的立場，認為立法院應撤回此部分之草案。世界上其他國家並無類似規範，實不需要訂定台灣獨有的條文。

如果「更正廣告」條款生效，它甚至可以被認為違反國家憲法所保障的言論自由。在替代作法方面，我們建議主管機關可與業者進行廣泛討論，以制定廣告指導原則及產業自律的制度，這種作法在其他許多市場已證明是有效的廣告管理模式。

建議五：在新的化粧品法規架構下，牙膏及漱口水應與其他化粧品區隔考量。

在化粧品衛生管理條例修正草案立法通過後，牙膏及漱口水將成為新增之化粧品種類，但相關之化粧品法規於制定時，並未將牙膏及漱口水獨特之產品特色納入考量（特別是事實上牙膏及漱口水為用後立即漱口吐出之產品）。委員會敦請食藥署採取下列措施以確保過渡期之平順並降低對業者及消費者之衝擊：

1)**提供充分及夠長之過渡期間－應給予牙膏及漱口水業者至少五年之緩衝期準備並融入化粧品法規。**同時，市面上之商品應全部予以免責。雖然食藥署已與業者召開數次之溝通協調會議，但在化粧品衛生管理條例修正草案正式通過且相關配套之法規予以公告施行之前，業者並無法開始進行評估或投資產品標示或配方之更改。此問題對於自全球各地採購商品，且多個國家共用產品標籤及配方的跨國企業影響更為劇烈。尤其是若產品配方必須變更時，需要更長的前置作業時間來完成產品安定性測試。

2)**調和牙膏及漱口水之技術規範及成分標準，以與主要貿易夥伴之規範一致**－目前有關化粧品中禁用成分或物質之相關法規（例如：化粧品防腐劑成分使用基準表）在制定時，並未將牙膏及漱口水納入考量。委員會敦請食藥署檢視這些規定，接受已被台灣主要貿易夥伴國家之一（例如：美國、歐盟或日本）准用之物質，加以修訂「化粧品防腐劑成分使用基準表」，以與國際慣例一致並避免採用台灣獨特之標準或限制。

3)區別一般牙膏與現行化粧品法規所規範之牙齒美白牙膏及口腔製劑－雖然目前一般牙膏尚未變更歸類為化粧品，但食藥署最近已將含一定濃度過氧化氫之美白牙膏及口腔製劑納入化粧品法規管理。委員會敦請食藥署在未來之化粧品法規公告，能將一般牙膏與現為化粧品之牙齒美白牙膏/口腔製劑予以分辨區隔，以避免造成一般牙膏產業之客戶/消費者之混淆。

能源委員會

今年成立的能源委員會旨在提供商會會員更好的服務，這些會員包括工業能源使用方、生產方以及其他產業參與方。本委員會致力於維護並增進台灣與美國商會會員的競爭力，促進能源消耗產業和能源生產產業雙方的利益。

本委員會盼與相關政府單位合作，制定出一套明確可行的能源策略路徑與時間表，期以促成以下目的：

1）確保台灣的供電持續穩定可靠，電價具競爭力。
2）促進能源建設發展。

建議一：持續確保電力供應充足穩定，電價具競爭力。

充足可靠的電力供應對高科技製造業者而言至為關鍵，即便是不到一秒的供電中斷也會造成嚴重的設備損壞以及重大產量損失。提供可負擔且可預測的能源價格，對於工業用戶的盈虧獲利與長期投資決策亦至關重要，工業用戶必須制定未來數年的生產營運與產能投資規劃，一旦做出決定，便會持續數十年之久；因此，他們不只看重眼前也會放眼於未來更長期的能源價格與穩定電力供應情況。

台灣已啟動從原有的核能與燃煤發電轉型成其他燃料與發電技術組合。核能發電預計在2025年將停止運轉，而大家對於替代能源的成本以及能否穩定供電仍抱持不確定的態度，也因此對於未來的電力供應產生不少疑慮。台灣有16%的電力來自核能，若是發電燃料組合轉變的速度太快，在電價與穩定供電方面便會造成龐大的風險。以加拿大安大略省為例，日前因為快速變更其發電燃料與技術組合，使得成本上升的幅度超出預期，讓用電戶難以接受，政府只得大動作介入，緩和大幅超出家庭及工業用電客戶預期的成本漲勢。為避免預期之外的電價上漲或供電穩定度下降，其他國家則是採以較長久或較具彈性的時程推動能源轉型，或者是從鄰國取得電力供應（後者不適用於台灣）。

著眼於台灣產業的成本競爭力及其對就業和經濟發展的貢獻，目前的核能發電要過渡到未來的發電來源，其間的轉型必須審慎管理，畢竟既有核能電廠的新增發電成本低，而替代電力來源勢必會產生新的投資成本。儘管轉型到後核能時代的燃料組合十分重要，但若實施方式過於僵化或過於倉促，缺乏明確的替代計劃確保供電成本的競爭力、可負擔性及可靠性，將可能會損及台灣的經濟發展。

我們提出的具體建議如下：

1. ***制定明確的轉型路徑。***台灣即將進入對於未來能源供應成本和穩定性高度不確定性的過渡時期，我們認為透過發展一套明確的能源發展路徑，按部就班渡過這段轉換期，對台灣應該較為有利。我們支持發展風力、太陽能等再生能源，不過以全球其他國家的經驗來看，轉換腳步過於迅速，將會招致能源成本上漲的龐大壓力，這對大型用電客戶而言尤其是一大擔憂。
2. ***研究並採用國際上整合再生能源的最佳實務作法。***太陽能及風力發電的成本已較過去低廉許多，不過，大量採用這些發電技術在某些國家產生無法穩定供電這項新的難題。當台灣將再生能源納入供電系統之際，政府與台電應落實最佳實務作法，以避免發生如同日前澳洲南部的停電情況，而且當太陽能或風力發電系統無法順利供電時，必須能有效因應客戶的用電需求。
3. ***增進與大型用電客戶的溝通。***在整合大量再生能源的間歇性發電上，大型用電客戶面臨了諸多困難，其中一項挑戰就是供電中斷和電壓驟降的風險升高。台灣的供電系統孤立，無法藉助鄰國輸電獲取經濟實惠或穩定可靠的電力供應，因此，當我們從他國取經，期以減緩政策變更產生的衝擊時，必須特別謹慎套用那些可仰賴鄰國輸電的國家案例。與大型用電客戶對話，將有助於確保已全盤考量過所有成本最低的方案，同時電力品質惡化的風險與潛在成本也都獲得充分正視。因此，大型用電客戶極為重視能有機會定期與經濟部和台電會面，就電力品質、成本競爭力與環境永續性進行討論。
4. ***保障高科技製造業等策略性用電大戶。***經濟部與台電應進行詳細調查，分析大型製造業者對供電中斷的脆弱程度，並應最優先給予受斷電衝擊最大的大型企業不中斷的供電服務，因為這些業者對台灣的GDP成長及就業市場的貢獻甚大。再者，經濟部與台電也應更努力推動需量電價反應（DR）的節能措施，鼓勵工業與商業用戶將部分能源使用移到非尖峰時段。若能塑造一個法令與政策都能支持的環境，便可快速發展需量電價反應，以協助維持全台穩定供電。詳細規劃中也可考量經濟補貼誘因、節能設備審核及與用電大戶進行能源需求商討等額外方案。
5. ***維持成本相對低廉的穩健價格定位。***台灣工業用電大戶必須在全球市場競爭，電價成本對於其競爭力有著舉足輕重的影響力。經濟部與台電應致力於維持台灣能源成本在亞洲國家的競爭力，以確保產業發展穩健強大。為此，電價調整的方法需要更明確，讓工業用電大戶在預算編列和規劃上能對未來電價變動預先做好準備，避免有任何意想不到的情況發生。電價有需要調漲時，客戶應適當分攤成本。最後，我們

建議應針對終端用戶建立獎勵機制，鼓勵建造自有的汽電共生和燃料儲存設備，前提是生產不具污染性的高效能源。

建議二：透過釐清調整政府流程，加快基礎設施建設，扶植國內供應鏈，促進能源建設發展

要滿足不斷攀升的電力需求，台灣面臨了幾個重大難題。首先，在全國六成民眾反對龍門核電廠興建完工的情況下，台灣將無法從核能產生足夠所需的電力；其次，去年出現的週期性缺水也影響了水力和火力發電效率。眼見消費者每逢電價調漲和限電措施必強烈反彈，台灣確實需要將能源來源多元化，同時強化傳統能源來源的使用效率。台灣一方面應採取積極政策，推行再生能源，另一方面也應努力提升既有的能源基礎設施。

台灣目前正希望發展綠能產業，這個處境其實也帶來了契機，不失為減少溫室氣體的途徑，同時也可能創造就業機會，甚至為技術和設備外銷帶來商機。為實現此一願景，很重要的是有充分的實體和法令基礎設施到位，以利及時有效實現全國能源目標。

此外，台灣若要成為本區能源技術和設備的供應來源，則必須著重國內供應鏈發展，建立所需的研發能力，以刺激本土產業成長；在這過程中，從海外合作夥伴轉移知識將會是很重要的一環。

我們提出的具體建議如下：

1. ***建立長久可預期的法規架構，訂定擴建再生能源供應的明確願景和具體目標。***要吸引國內外業者投資供應鏈，以建立後續成長的本地基礎，必須具備一定的市場規模。
2. ***採取類似「異質採購」和「實驗性開發」的方法，增進政府採購流程靈活性。***這些方法是用來引進新興材料和創新技術，然而目前公共工程標案卻難以運用「新技術」和「新材料」。首先，工程負責單位為避免圖利特定廠商之嫌，往往不明確公告新材料規格。其次，現行材料檢驗標準未能將新技術和新方法納入考量。台灣若不增進其採購流程的靈活性，勢必將無法運用新技術來改善既有能源生產與輸送設備的使用。
3. ***提供充足可靠的天然氣供應，逐步替代燃煤發電。***經濟部與中油應確保適時興建新的液化天然氣接收站。國際天然氣市場環境變動快速，中油也必須謹慎訂定未來幾年液化天然氣的採購價格，中油應對在採購液化天然氣時如何平衡現貨價格及長期供應合約的作法，提供更透明的資訊。由於現已可從澳洲、美國及其他新的來源取得大量液化天然氣，因此亞洲的液化天然氣價格已大幅滑落。長期來看，預計擴大發展再生能源發電可能會繼續壓低液化天然氣的價格。我們鼓勵中油訂定良好計劃，善用這些近期和長期的機會。我們亦竭力請求經濟部考慮同意第三方使用液化石油天然氣接收、儲存與運輸設施，以促進液化天然氣零售的良性競爭。
4. ***新能源佈建應配置充足的電網。***應避免因電網建設不足而造成工程瓶頸成本高昂，並應確保因電網服務欠缺而導致的損失能獲得全額補償。
5. ***針對離岸風電開發制定健康、安全與環境管理標準，降低能源興建的社會成本。***由於工作環境惡劣，離岸風電在健康、安全與環境管理（HSE）上獨具挑戰。我們建議台灣政府採用國際標準與最佳實務作法，建立「全球風能組織」（GWO）認證的培訓中心，修訂勞動法規，納入適用於本產業勞工雇用的條款。
6. ***興建充分的港口基礎設施，滿足離岸風電擴建的需要。***為避免瓶頸產生，符合佈建時程規劃，必須開發主要港口基礎設施，不應由於適當的港口設施未能到位，而使能源工程延宕。

人力資源委員會

本委員會特此感謝台灣政府過去數年致力於使外籍專業人士更容易進入台灣勞動市場，並建立更為完整與詳盡之法令制度。本委員會認同藉由修正勞動法令，平衡台灣勞動市場開放之需求，以增加商業競爭力，同時保障當地勞動力。

若台灣期許強化其作為跨國公司營運中心之地位，有必要建立支持該發展之勞動法律制度。對於全球化經營而言，在彈性、效率、資源充分利用等方面，勞工福利問題必須與商業需求相互平衡。然近期修訂的勞動基準法造成台灣的投資環境不合時宜。本委員會相信，均衡的法律制度，涵蓋商業彈性、合理保障勞工、適當的外籍人士簽證規定，將提升台灣國際競爭地位以吸引人才。

今年度，本委員會提出五項議題，闡述委員們所關注的關鍵領域，包含：擴大工作時間之彈性、增進加班規定之合理性、放寬特別休假之管制、改革新型態勞動之管理、精進修法之前置及緩衝措施。這些議題反映本委員會成員企盼台灣勞動法規能夠更具彈性及可預測性之共同願望。

建議一：擴大工作時間之彈性

依行政院主計總處民國（下同）103年人力運用調查統計結果綜合分析指出，我國有將近百分之四十五的知識型白領工作者，其與雇主間合意勞動契約已非單純以勞力付出時間長短為其工資高低評價之依歸。自勞動基準法（下稱「勞基法」）73年立法施行以來台灣已從傳統勞力密集經濟，走向知識、跨國及網路數位經濟。現行勞動法規以傳統勞力密集經濟模式規範勞雇關係，已不合時宜。台灣已進入高齡及少子化社會，企業欲提高勞動生產力，以員工兼顧家庭照顧與工作平衡為出發點，本委員會強烈建議修改勞基法、擴大工時制度彈性，以提升員工士氣及工作滿意度。

1.1 **將四週彈性工時開放至各行業**

勞基法第30條之1（四週彈性工時）所稱「中央主管機關指定之行業」，應採取原則允許，例外限制之作法。現行適用該條之行業過於狹隘，實務上各行各業均有彈性調整工時需求。再者，彈性工時須經工會或勞資會議同意，在勞工權利受保障之前提下，給予勞雇雙方彈性安排工時之空間，亦不損及勞工權利。

1.2 **擴大勞基法84條之1適用人員範圍**

薪資水準在一定程度以上者，應已非需藉由勞基法強制規定保護之弱勢，現行規定過度限制其工作時間，反而損害其權利並造成不便。因此，應就高所得者之工作時間給予彈性安排空間。本委員會建議勞基法新增規定或由中央主管機關發布新函釋：薪資所得逾行政院主計總處公布各業平均薪資之三倍並符合勞基法第84條之1各款情形任一者，得由勞雇雙方另行約定工作時間、例假、休假、女性夜間工作，並報請當地主管機關核備，不受第30條、第32條、第36條、第37條、第49條規定之限制。

建議二：增進加班規定之合理性

2.1 **「突發事件」之合理定義**

勞基法現行規定下，雇主因天災、事變或突發事件有使勞工在正常工作時間以外工作之必要時，應於延長開始後24小時內通知工會；無工會組織者，應報當地主管機關備查。雇主因天災、事變或突發事件停止勞工假期，應於事後24小時內詳述理由報請當地主管機關核備。惟上述「突發事件」欠缺明確定義，使企業無法合理預見主管機關判斷標準，企業認定之「突發事件」亦有可能事後被主管機關駁回，大幅增加

其法遵成本。

各行業分別有其行業特殊性，「突發事件」亦難以統一標準定之，應由最清楚公司經營需要之管理階層決定之，並賦予工會或勞資會議同意權利，保障勞工權利，使勞雇雙方就「突發事件」均享有合理可預見性。

2.2 加班時數上限（46小時）應依照實際工作時數計算

105年12月21日勞基法修正大幅提高加班費標準，使勞工可就高額加班費及實際休息間進行選擇，用以保障勞工權益。若企業願支付高額加班費使其勞工工作，可見確實有迫切人力需求。再者，勞基法24條修法意旨本在於提高加班費增加勞工福祉，亦不應限制勞工選擇取得高額加班費權利。故就勞工及雇主雙方之權益及實際需要考量，加班時數上限宜就勞工實際加班時數計算之，不受勞基法24條第3項「休息日之工作時間及工資之計算，四小時以內者，以四小時計；逾四小時至八小時以內者，以八小時計；逾八小時至十二小時以內者，以十二小時計」規定之影響。

2.3 明定得於工作規則或勞資契約內約定：加班之事先核准及舉證責任分配

雇主有掌握人事成本支出數額之必要性。因此，本委員會建議勞基法或其施行細則明定：得於工作規則或勞資契約內約定員工加班應事先經雇主核准，使雇主得預見其人事成本支出；員工自行加班時，雇主無法得知員工是否確實進行工作必要事務，亦無法得知公司是否確實需要員工加班，故若經勞雇雙方同意，應由員工舉證加班之事實。

建議三：放寬特別休假之管制

3.1 放寬預排特別休假規定

實務上事業單位有預排特別休假（下稱「特休」）之需要，以便預見人力需求及合理安排各勞工工作時間，勞工亦得事先合理安排其特休時段，故於不損及勞工權益之前提下，應准許員工有預排特休之彈性。

再者，部分行業因相關規範要求，須要求員工預排特休。舉例而言，銀行業因業務性質，受主管機關高度監理。相關規範即要求銀行訂定休假制度或要求員工應安排一定天數之連續休假，以達到內部控制上偵測及防範內部舞弊之目的。

因此，本委員會建議勞基法明定：雇主得要求勞工預排特休假，但如勞工有必要情形須變更預定，雇主無正當理由不得拒絕。

3.2 放寬遞延特休規定

105年12月21日勞基法修正意旨即在於保障勞工休息權利，自不應剝奪勞工欲選擇實際休息之權利，現行規定強制未休之特休一律折現，實有違立法意旨。

未休之特休屬於雇主對勞工所負債務。依民法規定，有數種給付方式之債務，原則上應由債務人選擇以何種方式給付；雇主亦得以「遞延特休」之新債抵償「未休特休」之舊債；況就債權時效觀之，未休之特休債權應有時效保障，亦無必須在當年結清之理。

本委員會建議，在對勞工無不利之情形下，法令應賦予勞雇雙方協商選擇遞延特休權利。

3.3 放寬未休之特休折現規定

為避免員工累積特休假換取薪資，變相曲解特休之美意，本委員會建議應依循過往之行政及司法實務見解，即：勞工未於年度終結時休完特休，如係因事業單位生產之需要，致使勞工無法休完特休時，則屬可歸責於雇主之原因，雇主應發給未休日數之工資；至於特休未休完之日數，如係勞工個人之原因而自行未休時，本委員會建議進一步修改勞動基準法，賦予雇主權力得以讓勞工未修完之特休遞延至來年，以符合勞動基準法所提倡的工作生活平衡原則。

建議四：改革新型態勞動之管理

4.1 派遣員工之例假日及休息日等由要派方規定

人力派遣事業本即在於補足臨時人力需求，但其派遣員工之工作時間等，必須依要派方（業主）之需求，故法律須規定派遣員工之例假日及休息日等由要派方規定，以符實務需求。

4.2 「勞工在事業場所外工作時間指導原則」適用行業範圍應擴及所有行業

勞動部104年5月6日勞動條三字第1040130706號函發布之「勞工在事業場所外工作時間指導原則」，僅針對少數特定行業，然勞工在事業場所外從事工作之情形，並不僅限於該等少數特定行業，實應將「勞工在事業場所外工作時間指導原則」適用行業範圍擴及所有行業，減少勞雇雙方間工作時數爭議之發生。

建議五：精進修法之前置及緩衝措施

5.1 勞基法修正前舉行公聽會

勞基法及其施行細則之修正影響遍及全國，事關重大，宜採取行政程序法之聽證程序。退步言之，亦應於中央主管機關擬具勞基法或其施行細則修正草案60日前，視其影響程度，由中央主管機關決定舉辦一定次數之公聽會，使勞雇雙方得於勞基法修正前公開表達意見並進行討論，減少修法之衝擊。

5.2 修法執行緩衝期

105年12月21日勞基法修正所涉事項繁多，事業單位須配合調整行政作業程序、人事系統等，應給予合理緩衝期。本委員會建議勞基法新增規定：違反105年12月21日修正之條文規定之行為，發生於各該條文施行後1年內者，不予處罰。

基礎建設與工程設計委員會

本委員會在此感謝台灣政府，就國內政府採購市場如何更吸引外國企業參與投標，提供會員表達意見的機會。台灣政府目前正推動一系列浩大的前瞻基礎建設計畫，其中，部份基礎建設計畫的工程期間重疊，且施工進度緊湊，因而可能超出國內工程設計公司及營造商的業務負荷。如何順利完成國家基礎建設計畫，尤其是發電廠相關計畫，對於國內經濟持續繁榮極為重要。因此，本委員會相信，引進合適且經驗豐富的國外承包商，以提高國內市場的施工負荷量，對於確保順利完成該等建設計畫是必要的。

有鑑於政府的目標是(目前已列於新修正的「電業法」中)在2015年至明年底的期間內將國內三座核能發電廠除役，因此，對於政府和台灣電力公司來說，確保提供充分、穩定且平價的電力以促進台灣經濟發展，是極為重要的。無論是國外或國內的潛在投資者都必須相信，政府有一個健全且深思熟慮的替代發電計劃，以彌補目前營運中的核電廠的供電量。

本委員會建議，政府應更積極地吸引外國公司執行一部份的基礎建設計畫。除了可降低因施工期間緊湊而進度落後的風險外，讓外國公司參與執行公共工程還有許多益處。外國公司把創新的理念引進市場，將有助於提升國內承包商的能力。同時，外國公司也會帶來其他施工方法，這些工法通常能更縮短施工期間、更可靠、且更具成本效益。正確的施工可縮短大型基礎建設施工時對公眾的干擾期，且因為在工程預算範圍內、且於預計完工日前完成，也能增進公眾的生活品質。

今年我們提供4項建議，目標是減少業務障礙及修改招標評選流程。舉例來說，若選擇「低投標金額」作為評選指標，可能會降低外國公司投標意願，因為該評選流程不重視外國公司通常能提供的品質要素，如創新的執行方式、先進的專案管理方法和流程、及提升施工過程的健康與安全。

建議一: 允許採用國際仲裁法規

外商在考慮參與投標時的決定性因素之一，是非訴訟爭議解決機制是否中立公平。大多數外商都能夠接受的機制是遵照國際商會(ICC)所頒布的仲裁規則。去年在美國商會與公共工程委員會(PCC)座談時，本委員會成員曾建議在公共工程合約中允許外商選用在本地採用ICC仲裁規則，此一建議當場得到吳宏謀主委的正面回應。本會認為按照此一原則修改政府採購法，不僅可行性很高，而且對台灣政府及一流外商均為有益。

在台灣大多數的業主都選擇在本地法院採用外商不熟悉的本地仲裁規則解決爭議。本委員會建議政府業主選擇採用 (i) 在第三地進行，以提供完全中立的環境解決爭議 或 (ii) 按台灣法律在台灣的地點，採用ICC仲裁規則進行仲裁。

鼓勵公營機關採用比較有彈性的做法，可以大大消除外商對爭議處理公正性的疑慮。雖然在公共工程委員會的標準合約條款中已經有此選項，但是除非有上級機關指示，大多業主都傾向選擇本地法院或本地仲裁條款， 並不願意主動選用更為獨立公開的仲裁規則。

為了更好的支持政府業主考慮採用第三地仲裁，我們建議公共工程委員會在標準合約中加入以下文字，傳達此一精神：“在標案進行期間，如遇廠商提出要求，業主得同意於國內仲裁地點採用ICC規則進行仲裁”

修訂標準合約的細節還可以討論，如能接受此一原則，本會認為一定可以吸引更多國際一流的公司參與台灣的重大公共建設。

建議二: 修訂公共工程契約範本，使承包商得通知業主變更契約

另一個使國外承包商考慮是否參加國際招標的重點是，當工作範圍或工程進度改變時，雙方變更契約條款的權利是否公平。事實上，公平且國際化的契約條款可為外國公司參與台灣公共工程招標提供健全的商業環境。

許多公共工程委員會發佈的契約條款可作為政府機關制定契約及業務安排時的實踐準則，然而，該等條款仍待修正。尤其，現行的技術服務契約範本及工程契約範本中，其規定僅政府機關得通知承包商契約變更，卻無承包商通知政府機關契約變更的條款。缺乏承包商有權通知契約變更的正式規定令人感到擔憂，因為可能影響承包商基於工作範圍及工作進度的變化，調整時間及/或成本支出的同等權利。契約範本僅規定單方的權利 - 即隱約意味著，除非政府機關發送變更通知外，否則不承認承包商主張契約變更的權利 - 對國外承包商來說，是不公平且高風險的契約。

公共工程技術服務契約範本第15條「契約變更與轉讓」，甲方是政府機關，乙方則是承包商，條文如下:

甲方於必要時得於契約所約定之範圍內通知乙方變更契約，乙方於接獲通知後，除雙方另有協議外，應於10日內向甲方提出契約標的、價金、履約期限、付款期程或其他契約內容須變更之相關文件。契約價金之變更，由雙方協議訂定之。

本委員會強烈呼籲公共工程委員會增訂契約條款，當承包商認為工作範圍或工程進度改變時，其有權通知變更契約。如此才能去除契約條款的片面性。

建議三: 公共工程招標應以「最有利標」而非「最低標」作為評選流程

外國公司通常不會參與以最低金額者得標的國際招標。國際市場上競爭的一線國外承包商，其所提供的報價考慮到高品質的服務及具競爭力的價格，但不一定是最低投標金額。當專案進度緊湊、內容複雜、或需要承包商的高執行力時，技術/投標金額加權計分方法或「最有利標」是決定何者最具價值的評選方法。「最低標」的評選方式中，工作成果、專案管理能力、工作品質、工地安全、及其他與金錢支出無關、但卻能區分競標者的因素，並未被評估及加權計分，這樣的評選方式令國外承包商卻步。目前，「最有利標」是國際上公認挑選最符合個別專案需求的優秀承包商的評選方式。

我們知道公共工程委員會持續推動「最有利標」的評選流程，並以此為遠程目標。儘管如此，大部分的政府機關因害怕遭受批評，仍堅守「最低標」的評選方式，因為最低投標金額是一個較能量化的指標。然而，由最低價得標者執行的專案，工作成果通常是差強人意。最後，過度重視低報價可能使政府機關花費更多時間及金錢，也導致無法符合工程預算、工作進度、及施工品質，因而聲譽受損。

許多國家因而採用雙信封招標流程，即區分投標金額與工程技術兩部份，以確保投標金額不會影響工程技術及業務計畫的評分。工程技術與投標金額分別密封於信封後遞交。招標機關依據預先設定的指標，且能克服一般障礙的前提下，為個別投標者的工程技術部分加權計分，同時也評量業務計畫，確認投標者符合標案的要求。

投標者通過工程技術及業務計畫的審查階段後，才能拆開其投標金額的信封。接著，投標金額與技術評分合併成為投標金額/技術加權分數，作為決定得標者的依據。為了確保招標過程公平且透明，招標前應審慎考慮並確定評選流程，且應於投標文件說明評分指標及加權計分。

本委員會強烈建議採用「最有利標」評選流程，尤其是針對挑戰性高、工作複雜、需要特殊工法或高科技的公共工程。此評選方式使政府機關能依專案需求調整評量程序，並且強調能使專案成功的承包商的關鍵能力或招標條件，而非僅選擇最低投標金額。

首先第一步，政府機關可選擇一些工程專案作為試辦專案，爾後審查承包商的執行成果，以衡量招標流程的成效。

建議四: 在選定的重大工程上，允許在投標時由廠商提出替代方案

一流的國際廠商多具有在投標時提出替代方案的能力，在保證不損害功能情形下，還能替業主節省建造費用和工期。在國際工程界，廠商除提報按照原始設計估算的建議書外允許另外提報替代方案的情形所在多有，我們認為台灣工程界已經成熟到可以採用這種辦法的時候了。

也是在去年與公共工程委員會座談時， 本委員會曾提出在重大工程投標階段，採用此構想，以達到節省工期與預算的目的。當時此一提議也得到吳主委的正面回應。因此本會建議在政府採購法及施行細則中做以下修改

- 在上級機關選定的重大工程招標時，明定允許在按原設計估算的建議書外，另投替代方案建議書
- 在試行期間，由跨部會的機關，如國發會負責選擇試行標案，並由國發會全程參與、評估執行成效。
- 執行期間要確保在評標階段即對替代方案有全盤仔細評估，確保其可行性
- 如果此一概念可以被接受，政府採購法中若干細節可能需要做修改，以便將台灣公共工程的環境改善，鼓勵以技術

取勝，促成廠商投入技術升級，造成良性循環。

作為一個可能應用的樣品工程，目前在進行中造價達800億的中油第三天然氣接收站就會是最適合試用開放替代方案的對象。此一工程期程極為緊急，國內供電缺口極待依靠天然氣發電緩解，如有國際一流廠商運用其豐富經驗提出可縮短工期之替代方案，對於整體社會之效益實在無可估計，而整套評估替代方案之規章亦可藉以建立。

此類工程之完成有賴國際一流廠商，以其豐富經驗衡量工地條件，也許提出一個微小的工法改變即可節約極大的工期與成本。政府也可以向國際、國內工程界、業主、納稅人展示以新觀念新作風執行重大建設的決心。

本委員會深切相信如果能成功的採用替代方案競爭，可以大大的提高本地顧問與工程公司的技術實力，促使他們跟上世界最新發展，提高他們的國際競爭力。如果有關單位對以上建議有所垂詢，本會可以提供進一步的說明。

保險委員會

本保險委員會將今年白皮書內容分為二部分來說明保險業之二種業務：人身保險業及產物保險業，由於電子商務及金融科技在全球保險市場的持續發展帶來影響，這二種保險業務正在經歷重大變化。

本保險委員會今年論述主題是提升台灣民眾個人及家庭對於保險保障之需求，此主議題與人身保險業及產物保險業息息相關。基於這個目標，一方面我們建議如何鼓勵保險公司致力於提高保險保障，另一方面，則建議促進台灣保險業之財務健全及業務開放。

我們也希望保險業者與政府進一步合作，努力教育消費者有關保險能提供保障以預防收入的損失、財產或所有權之損失、生命身體意外事故及退休後的長壽風險的功能。

本保險委員會謹此感謝政府單位為改善台灣保險業的市場環境所做出的貢獻，在未來幾個月，我們非常期待與相關部會及局處針對今年白皮書的建議進行溝通。

人身保險業

有鑒於台灣快速人口老化，應被高度關注之議題包含如何提供足夠健康照顧保障予老年人及維持老年人之經濟狀況，本委員會提供建議如下。

從保險業者之立場，本保險委員會建請主管機關以稅負優惠鼓勵消費者購買保障型保險商品及給予保險業者更多保險商品設計及定價之彈性。

建議一: 採取措施獎勵保險公司提供保障型保險商品

本委員會支持政府對填補保障型缺口抱持重視態度，缺口指的是個人面臨嚴重問題，如重大疾病、意外或過世等事件所需要的保險保障與實際上保險額度的落差，本委員會也提議重新定義保障型商品，加強客戶對保障型商品益處的認識。目前我們是以保單額度來衡量保障多寡，但是累積保費超過解約金的額度會是更加精確的指標，因為這才是產品保障設計的重心。本委員會樂於與相關主管機關負責人討論確實的計算方法，本文接下來假設上述定義（或相似定義）已被採用，討論保障型保險商品。

為向消費者推廣保障型商品，本委員會建議擴大長照險與年金保險的個人所得稅上的稅賦優惠至保障型保險商品。以提升保障為目標將可帶來多樣化的好處，將有益於保險業的財務健康，換句話說，保險業可以有更強健的收益與資本，而不受到一般市場震盪與重大市場事件的影響。我們建議主管機關可以訂定保障型業務的標準，當業者達到此標準時，得獎勵達標業者可以有額外的商品送審數量，以作為鼓勵。

再者，有鑑於保障型保險商品所發揮的社會貢獻，我們也建議開發與推廣保險商品的業者，應享有賦稅減免優惠。我們理解修法與調整機制需要時間，但同時依然可以考慮短期配套方案，例如重新分類「本業」與「專屬本業」之稅目，並建議將保障型商品歸類為適用2%的稅率。另外也可在稅收計算時，讓壽險業者得扣除保障型商品的自留賠款額，也是另外一種過渡期措施，產險業者已採用這種做法。

此外，本委員會也建議，保證給付變額年金產品的重新計價機制可以享有更多彈性。金管會保險局已採取鬆綁措施，讓保險業者在符合特定標準時，可適用備查制程序。本委員會相信以新商品送審來說，這樣的要求係屬合理。然而，就已獲得核准的商品而言，如果重新計價的目的在於控制經濟環境轉變下的商品風險，目前的要求反而會箝制業者對於資本市場動盪的反應能力。

建議二: 持續強化消費者取得保障型保險之便利性與容易性

本委員會對主管機關改善消費者取得保障型商品的管道表示認同及感謝，我們持續期待主管機關作出更積極的開放，讓民眾得以透過創新的商品和科技，且在資訊透明的狀態下取得適當的保障。

2.1 持續強化簡易使用數位化的方式取得保險保障

在推動保險的電子商務交易方面，台灣仍持續落後於其他國際地區。包括香港、 英國、美國等國際間其他類似的市場，台灣應加速採用國際標準，藉由開放以簡單、透明、方便的網路投保方式來購買保險商品，讓更多的社會群眾可以享受他們所需要的保障。

本委員會謹此對金管會及保險局於2016年3月新修正「保險業辦理電子商務應注意事項」表達感謝。為更進一步強化修正的方向，建議簡化投保流程、擴大得於網路進行投保的商品種類及增加投保額度、增加電子支付方式。

再者，此次修訂開放了要保人、被保險人不同人時亦能於網路進行投保，但仍然必須要使用實體憑證才能完成投保程序。這種「自然人憑證」需要使用到特殊的讀卡機設備，這將阻礙了大多數想要利用網路進行投保的消費者。我們建議相關主管機關重新審視並刪除此項限制，因為這將阻礙將保險帶入數位化的年代。此外，保險科技運用於健康統計數據之開放資料平台，或透過保險科技設備蒐集及分析數據，均須有大數據之運用才得以實現。然而，在個人資料保護法之規範下，如何合法的蒐集、分析或利用大數據將是很大的挑戰。我們建議主管機關在符合保險科技發展之需求下，為保險業之個人資料保護制定特別規定。

2.2 建立更有效的機制以取代保險契約審閱期規範

我們也建議主管機關以更利於消費者的替代方案取代現行審閱期之規定，例如修改保險公司之資訊揭露義務，以及將十日契約撤銷權法治化，作為取代消費者保護法中有關契約審閱期之規定。

保險契約審閱期無法達到對於消費者權益保障之保險契約重要資訊知的權利之目的；反之，此項規定阻礙著消費者透過簡單又迅速的電子商務及電話行銷通路獲得保險保障。消費者於審閱期間內，無法享有保險契約之保障，且而保險契約已提供自保險單送達翌日起算之十日契約撤銷期，所以是以，保險契約三日審閱期機制應由更利於消費者的其他方式所取代。

2.3 刪除對於金融科技之發展限制

本委員會支持並認同政府近期推廣和鼓勵台灣的金融科技所做的努力。

但金管會於2015年10月公告的函釋似乎和這個方向背道而馳，這項函釋只開放10家保險經紀人或保險代理人試辦網路投保業務，並且加上年度營收最低新台幣5億元的限制，這樣的限制很明顯地排除了新設立及創新的公司，而僅允許傳統的和已長期存續的公司(通常以經營傳統業務員通路為主)進行申請。這並不符合全球性的準則，且事實上亦無其他地區有相同的限制。為了適切利用金融科技的力量，我們建議刪除這項額外的限制，並增加可申請的數量，來鼓勵及加速台灣保險產業數位化的發展。此外，由於電子簽署之限制，保險經紀人及保險代理人仍然無法與保險公司的電子商務系統連接，這需要政府進一步解決此問題。

2.4 開放電子錄音具法律效力，以符合保險科技之發展

因數位化方式和電話已成為越來越多消費者購買保險的管道，以電子錄音方式保存客戶對於核保詢問的告知，需要在爭議處理及解除契約時具有法律上的效力。沒有法律效力將對保險業整體產生高度的風險，同時也限制了保險業能提供給消費者選擇的保險商品。

我國保險法第64條採取「書面詢問原則」，書面詢問原則係指要保人之告知義務範圍，以保險公司特定詢問事項者為限，至於實務上詢問是否應以紙本書面方式為之，則非本原則關切之重點。因此，透過電子文件或電話方式執行健康告知事項詢問，並無違反現行保險法第64條之「書面詢問原則」。我們建議修正「保險業辦理電話行銷業務應注意事項」第9點第4項的規定，讓電子錄音得以產生法律效力以符合前述目的。這個改變將使台灣符合國際實務，並持續促進保險數位化發展。

建議三: 於負債避險相關法規中納入「指數連結年金」

為鼓勵退休型年金商品的創新，保險局於2016年間開放附保證投資型商品之負債避險，即在保險業從事衍生性金融商品交易管理辦法中開放以「特定負債部位」為被避險項目。然而，此辦法並未將美國市場中一種創新的熱銷商品納入，此商品即為指數連結年金（Fixed Indexed Annuity）。因此，雖然台灣的壽險業者與消費者均對此類型商品展現濃厚的興趣，然此類型商品的發展卻苦於依法仍不能對此類商品進行避險而嚴重受限。由於指數連結年金商品在風險的本質上與附保證投資型商品相似、甚至從保險業者與消費者的觀點而言，都同樣為安全保守，我們建議在負債避險的相關法規中一併納入指數連結年金。

<u>產物保險</u>

建議重新檢視保險商品之法令架構，以提升消費者保護，同時賦予保險公司更大彈性，以因應不斷變化的市場需求，強化風險管理及提升競爭力。鑒於主管機關已於過去兩年放寬保戶親簽之要求，相信未來在商業險領域亦可逐步鬆綁。

金融市場之發展及日趨激烈之競爭促使商品不斷創新，提供消費者多元化之商品，然因目前艱困的經濟條件，加上各行各業營運成本之考量，在許多事件中發生保險保障不足的情形，包括八仙樂園粉塵爆炸及觀光遊覽車火災等事件。我們認為政府需要加強提高保險金額上限並擴大強制保險範圍。

建議四: 產物保險商業險之要保書毋須要保人親簽，以符合商業保險之市場需求。

個人保險通常是銷售給自然人，商業保險則是依企業客戶之要求而銷售給法人。現行法令要求所有保險商品之要保書均須親簽，並未考量商業保險之前揭特性。基於下列理由，我們認為商業保險之要保書，尤其是前衛業務，均毋須要保人親簽：

a. 與個人保險不同，商業保險並無道德風險。
b. 關於前衛業務，在台灣有許多外商投資之跨國企業，該等公司之保險規劃及保障範圍多由總公司決定，透過委任之保險經紀人或再保公司以電子郵件或其他形式文件與保險公司溝通說明投保之目的及保險保障範圍。這些電子郵件或其他形式文件已足以清楚確認其保險需求及投保意願。

取消所有商業保險皆須親簽之規定，若無法全面實施，則可先考慮從跨國商業保險開始，此項改變將能加速商業保險保單之簽發，減少不必要之行政工作、時間及費用，並使台灣保險實務與國際市場之作法一致。

建議五: 擴大現行強制保險範圍，以提供大眾更多保險保障。

在經歷諸如八仙樂園粉塵爆炸及高雄瓦斯管線爆炸等災變後，政府最近提議提高公共責任險總金額上限至新台幣(下同)6,400萬元(每一人身體傷亡600萬元，每一事故財產損失200萬元及每一事故身體傷亡3,000萬元)，本委員會支持並認同政府前開提議。惟迄今僅有桃園市將保險金額上限提高至6,000萬元，至於其他縣市則無太大進展。我們建議相關主管機關：

a. 嚴格要求全台灣所有縣市提高公共責任險保險金額上限，對大眾因意外事故所致之體傷及死亡提供更大的保障。
b. 檢視強制汽車責任險之保險金額上限(每一體傷20萬元，每一死亡200萬元)，因前揭上限遠低於亞太地區其他國家。
c. 擴大強制保險範圍，以涵蓋諸如下列保險：
   - 汙染責任
   - 現行勞工保險以外之勞工補償
   - 航空責任
   - 律師、法律事務所、建築師、會計師、保險及再保險經紀人之專業責任險
   - 遊艇責任
   - 船舶所有人責任及海洋石油汙染
   - 機場責任
   - 臨床試驗責任

智慧財產權與授權委員會

智慧財產權之保護多年來一直是台北市美國商會倡議議程內最重要的項目之一。 而智慧財產權保護對於維持全球經濟下台灣的競爭地位中也一直扮演關鍵性的角色。

去年在台灣的智慧財產權保護有一些令人振奮的發展。台灣智慧財產局就專利及商標聲請的電子化服務，以及和一些國家間專利審查高速公路計畫(PPH) 的繼續擴張，簡化了專利及商標聲請複雜程序，也減少了專利及商標聲請的延遲。本商會也樂見台灣為了成為跨太平洋夥伴關係協定(TPP) 的候選會員國而進行的一些改革著作權法的正面措施準備；但是，這些改革措施並沒有併入目前著作權法的修正草案內。此外，本委員會也讚揚台灣對於快速追蹤智慧財產權案件所做出的持續努力，相較於亞洲各國，台灣已擁有較高效率的智財權執法系統，但網路盜版侵權案件並不包括在其中 。

然而，就去年白皮書所提出的所有議題，本委員會在過去一年中幾乎看不到任何的進展。因此，這些議題仍然持續是本委員會關切的重大事項。一直以來在著作權集體管理團體制度的改革方面幾乎沒有任何的進展。就網路著作權侵權情況仍持續增長，但是台灣一直未有行動的因應，且以效率低的執法方式

處理網路上的侵權行為，以致遠遠落後世界上的其他地區。本委員會認為台灣政府所進行的保護及執行方式，不是缺席就是令人費解。

著作權法的修正已經進行多年了，但仍持續不前。第四版目前仍在審閱中，但此修正卻對於迫切且日益嚴重的著作權侵害問題少有作為。過去幾年來另一項令人擔心的則是，就智財權相關案件需要保存證據方面，法官除對那些已被定罪者減少刑度處罰，又降低罰金的作為外，又表現的是其不情願出具搜索票的傾向。此無疑又進一步阻礙了智慧財產權的執法。此等情況無疑就智慧財產權侵害傳遞了一項 - 被查獲者僅需付出比作生意多一點的成本，而不會受到真正的處罰的訊息。

在過去十年中，尤其是過去五年，快速的科技進步已巨大改變了我們生活的方式。人們現在已大量仰賴網路，而且社交媒體已成為人們最為普遍使用的互動以及連絡方式之一。 這些改變已重新塑造全世界的商業樣貌，交易行為不再是受限於國界，電子商務平台在全球激增；但此種科技在增進交易的高可得性與高效率的同時，也更加劇了著作權侵權行為的惡化。由於網路的無國界性質，著作權侵權的發生現已是遍及全球的規模。

考量到這些變遷，台灣政府不能再持續仰賴過時的方法來打擊著作權侵權，或者過於關注在侵權作品使用者的保護問題。

建議一: 採取有效措施解決網路著作權侵權

現今台灣已有許多線上服務以合理且經常是低價地提供合法音樂、電影、電視節目、遊戲、軟體及其他享有著作權的商品。然許多台灣消費者仍繼續透過設在海外、明顯侵權的網站利用未經授權的作品，而且幾乎都是免費的。最近台灣一份研究發現，幾乎所有的受訪者都認為網路盜版是一種竊取行為，而且在防治措施上做得不夠。非法串流裝置（使用機上盒取得盜版內容）、應用程式、網路鏈結或OTT服務以及可即插即用媒體播放器等之使用助長網路著作權侵權，已迅速成為著作權有效執法的挑戰。

台灣在過去幾年曾經就氾濫的網路著作權侵權行為嘗試尋找有效之解決方案，惜未能成功。有些網站藉由侵害他人有價值的創作而獲利，因而限制了著作權利人的銷售能力，並荼毒合法市場的創作者以及經銷者。這些盜版網站造成台灣的合法數位經濟巨大損失，在北美洲、歐洲及亞太地區更佔據了驚人的23.8%之網路頻寬。此外，占便宜使用未經授權內容之人容易下載到惡意軟體或暴露在高風險的廣告中。

台灣對於打擊網路盜版的作法已嚴重過時。全世界已有包括英國、法國、義大利、德國、西班牙和澳大利亞，以及亞洲地區的新加坡、南韓、馬來西亞、印尼及印度等40個以上國家及地區已採取有效的行政或司法之網路邊境管制措施來防止接觸境外未經授權的著作內容。歐盟法院特別在2014年確認提供著作權利人封鎖網站禁制令的救濟符合歐盟著作權指令第8條第三項規定。

有鑑於智慧財產局幾年前打算採用行政措施的方式以失敗告終，本會建議修正智慧財產案件審理法，提供著作權利人一個清楚即時的法律依據及程序，向智慧財產法院申請禁制令阻斷接觸境外明顯侵權的網站，不論司法管轄權有無疑義以及侵權被告是否到庭。

我們建議以下三種方法，這些方法已經在其他國家施行，並且可以證明其降低網路盜版之比率之成效，同時可增進國內合法線上內容服務業者的收入。

1. *研擬設立「盜版網站名單」；該名單上之所列之盜版網站均由執法單位認定及掌握。線上廣告業者並同意，不與列於該名單上之網站從事任何生意往來。*各大品牌廠商時常在並不了解網站性質的狀況下，將其廣告投放在盜版網站上。其在不經意間，把原本應挹注予合法內容創作者的經費，轉移給了盜版業者。這個情況並不只是在台灣發生，世界各地都有類似情況發生。

   在其他某些重要的內容產業國家，如英國、美國，已採取了「追蹤金流」的方法。此方法已被證明，是對抗盜版的重要工具。其最先是由英國倫敦警察局智慧財產權犯罪防治中心(PIPCU)所領導，並與英國線上廣告業者與權利人共同合作。警方會先試圖與非法網站之負責人聯繫，給予其改邪歸正合法經營之機會。如果非法網站不予理會，其將會被列入「盜版網站名單」之中，該名單會公告於警方之網站。該名單將提供與廣告商、廣告代理商或其仲介者重要參考依據，避免投放廣告至各該網站，以保護其品牌廠商或其他客戶在不經意間支持了盜版業者。其結果，將使盜版網站之收入來源中斷，並促使盜版業者放棄此種生意模式。
2. *修改相關法律，提供一種以無過失為基礎的救濟方式，使網際網路服務提供商(ISP)得阻止消費者接觸盜版網站*

   由於網路侵權的日益嚴重，全世界已有四十二個國家採用了精心設計的方式，即要求網際網路服務提供商(ISP)以合理之方法(亦即封鎖網站)，使以侵權為主的網站不能被接觸使用。世界上大多數的國家，為維護社會法益，都採取措施禁止某些特定的網站被接觸使用，譬如兒童色情網站。在越來越多的亞太區國家，如韓國、澳洲、新加坡等，都已採取適當的救濟方式，使侵權的盜版網站不能被接觸使用。

   雖然各國對此種救濟方式的實施方式略有不同，但其目標卻是一致；要使網路開放為合法創意之市場而非使侵害創意者權益之種種行為充斥其中。為逃避查緝，許多侵權網站均以技術手段，將其伺服器置於海外。因此很多國家都採取「無過失」之救濟方式，亦即網際網路服務提供商(ISP) 雖然並不對各該盜版網站之侵權負責，但仍可被要求阻止侵權盜版網站被接觸使用。英國的法律尤其能顯現，一種簡易的禁制令聲請程序，如何能夠有效地降低網路盜版。
3. *採取適當之法規，禁止內建線上侵權方法之插入式媒體裝置之推廣及銷售* - 內建線上侵權方法之插入式媒體裝置之發展使得著作權保護的態勢日益嚴峻，並阻礙了全球影音產業(包括電影、電視、體育、音樂及其他影音內容業者)之發展。

處理此問題，需要有完整的策略，以應對其每個環節，包括：

(a) 含有可連結至侵權內容的App應用程式及其附加裝置和創作、經營及利用此App應用程式及平台的組織和個人。

(b) 可用的硬體裝置及輸入、推廣及銷售此裝置之組職和個人。

(c) 經營及推廣使用盜版內容服務之組織及個人。

目前，消費者仍然需要透過實體的裝置並下載特定的平台或其他軟體才能經由電視機看到節目內容。但是，由於科技的日新月異，很快的消費者即可在自家的客廳直接由電視機或其他裝置連接上網，收看到相關的內容了。

此現象，在全球產生了另外一個問題。譬如，在台灣的觀眾可以直接收看美國國家橄欖球聯盟的賽事轉播，或是尚未在台合法上映的電影和電視節目(也許仍未上映或正在戲院上映中)。這些未經授權的節目內容，將使得台灣的兒童及青少年無法得知其是否為不合乎年齡規範的內容和廣告。

為有效處理此問題，必須在各個不同的領域採取行動，包括制定相關的法令規範。目前，台灣在法律層面仍有缺憾，對於推銷、販售、經營內建包含節目內容或其來源的平台或軟體之裝置的業者，很難將其定罪。由於此種裝置及其相關軟體的複

雜技術及跨國性的網絡及設施的支持，相應的解決方案務必考慮到克服蒐證及執法時的困難。

建議二：著作權法進行必要的修正

本委員會對於台灣為準備加入跨太平洋夥伴協定所提出積極的著作權法修正草案條文感到鼓舞，惜其中有些修正條文並未納入最近的著作權法修正草案。我們提出以下建議以便強化修正草案內容：

1. *維持現行法的刑事罰則，特別是對於光碟盜版最低6個月有期徒刑的罰則*。現今已有更先進的複製技術與載體能夠儲存更高品質及更多數量的侵權作品，因而對於著作權利人的合法業務造成更大威脅。例如，2014年11月查獲超過50,000片江蕙現場演唱會的盜版光碟，以及2015年12月也查獲超過50,000片載有未經授權電影、音樂及軟體的盜版光碟。由於2015年實體錄音著作的銷售仍占台灣唱片產業銷售金額接近50%，尚無沒有理由鬆懈或降低對於盜版光碟的刑事罰則。
2. *刪除通常家用接收設備再公開傳達合理使用之規定*。智慧財產局著作權法修正草案擬議之以「通常家用接收設備」再公開傳達的合理使用規定不合理地擴張WTO世界貿易組織的TRIPS協定（與貿易有關之智慧財產權協定）中所允許的例外規定。台灣是TRIPS的簽約國。此新增合理使用規定與TRIPS所揭示的三步測試原則相牴觸，WTO的仲裁庭前已就美國著作權法中有與智慧財產局現所提草案規定類似效果的「商業豁免」規定確認上述立場。

   問題出在家用與商用接收設備界線模糊，對於在許多商業場所所使用的接收設備究為家用或非家用，有界定之困難，以致無法限制此例外僅適用於「少數特殊情況」的使用。因此，此草案規定將無法有效限制家用接收設備不被用做商業目的或在商業場所使用。此外，本草案規定無法避免「正常利用著作的衝突」以及不合理地損及「作者合法利益」二個TRIPS所規範的條件。
3. *延長著作保護期間為七十年以順應國際趨勢*。目前全世界有64個國家賦予錄音著作70年或更長的保護期間，包括全球20個主要音樂市場的18個國家以及32個經濟合作暨發展組織OECD成員國中的29個國家。

   在美國，錄音著作的保護期間為發行後95年或創作完成後120年，以先屆期者為準。2011年9月歐盟國家延長著作保護期間為70年。其他如澳大利亞、阿根廷、巴西、智利、厄瓜多、新加坡。南韓及土耳其等國的著作保護期間均為70年。在印度，保護期間為60年，在墨西哥為75年，宏都拉斯是77年。將臺灣的保護期限從目前的50延長到至少70年，不僅會使臺灣符合國際標準，而且給臺灣經濟和錄音內容的創造者帶來一些重要的優勢。錄音著作的潛在經濟壽命越長，生產者就會有更強的動機來投資本地唱片業，有利於經濟增長、創造就業機會和稅收。它還將鼓勵生產者繼續向當地消費者提供更新和恢復（數位）格式的錄音，透過確保五零及六零年代在臺灣生產的經典作品繼續得到保護，從而有助於保存當地文化。
4. *計算損害時每件侵害行為之最低賠償金額增加至NT$30,000，以適當地補償著作權權利人所受的累積損害*。網路及電子商務的到來已改造了全球的風貌，且交易行為也不再受限於各國的邊界。以電腦軟體為例，單純的按鍵即可觸動數百或數千次而不影響著作的品質。在許多硬碟非法重製的案件內，其是以安裝未經授權的軟體作為銷售電腦的手段，法院經常在評估損害時僅基於警方搜索時所查扣硬碟及隨身碟的數量，而忽視該硬碟及隨身碟有可能已於警方搜索前，已多次非法重製於之前已銷售不同裝置的事實。由於數位內容易於重製的性質，尤其是在網路上，就享有著作權的作品來說，證明實際的損失事實上是非常困難的。

   一般均認為，法院判決損害賠償時，對著作權人的保護其一最重要者，應該能反應權利人的損失，並且要足以阻礙進一步的侵害發生。目前，著作權法第八十八條第三項規定，如被害人不易證明其實際損害額，得請求法院在新台幣一萬元以上一百萬元以下酌定賠償額。 在著作權侵害案件如不適用此項法定賠償額前，台灣法院已一貫地認為損害額應相當於警方搜索查扣硬碟內軟體的市價，卻不情願適用前述的法定賠償額規定，以致著作權法第88條第三項失其應有的效果。此外，因為過去於權利金收益的損失並未被納入考量，著作權人的損失也未能獲得適當的補償。

   目前著作權法修正草案第四稿修改了第八十八條第三項規定，移除了 “如被害人不易證明其實際損害額” 的先決條件，而允許著作權人得於新台幣一萬元到一百萬元間請求法定賠償額。這項改變是項進步，刪除了受害人在尋求法定賠償額前，須先證明其實際損害的義務負擔；但是，如何適當地反應著作權人所損失的授權金，此項問題仍然存在。為處理這項問題，我們建議提高法定賠償額的最低限度。新台幣一萬元的規定是於1992年所訂定，且至今從未作過調整。最高的賠償額於1992年原訂定新台幣五十萬元，但於2003時調高到現今的新台幣一百萬元；但是此最高賠償金額幾乎從來沒被法院於判決中採用過。經過二十五年快速的科技發展引領進入網路時代，為反應著作權人就其授權金的損失，我們相信應該是時候將最低賠償額提高至新台幣三萬元。

建議三：去除對著作權集體管理團體在制定費率上不合理的限制

2010年修正的著作權體管理條例令利用人可恣意地向智慧財產局就著作權集體管團體所提出的著作使用報酬費率申請異議並變更費率。縱使著作權集體管理團體與利用人都不滿意智慧局介入設定使用報酬，智慧局至今仍堅持維持現行審議制度。

本會呼籲智慧財產局重新考慮，若不同意揚棄現行審議制度，則應對於利用人的審議申請設定合理的條件，特別是利用人如有以下情況之一則應不許提出申請：

1. 於集管團體公告變更或新增授權費率30天後始提出之申請；
2. 對於過去三年內曾經審議決定之相類似授權費率審議提出之申請，無論是否曾經尋求任何司法救濟；
3. 申請人對於之前曾經達成和解或協議的授權費率提出審議申請，卻無法提供令人信服的理由，說明為何需要一個新的裁決。

醫療器材委員會

醫療器材委員會成員公司的使命，是讓台灣保有創新的醫療技術可近性，從而改善醫療環境並持續提供病患更好的照護。

為了達到我們的使命，我們相信透過與台灣政府密切的合作，精簡查產品驗登記流程，可以有效幫助台灣患者盡早享受到尖端醫療技術和產品的效益。即使在有限的健保財務下，透過更可預測和持續性的核價和健保給付流程，可鼓勵更快速的引進新技術。以下是我們的具體建議：

建議一：縮短上市前審查時程

1.1 免除「產製國製售證明」之要求。

綜觀目前國際醫療器材查驗登記規定，台灣為少數視 “產製國製售證明 (Free Sale Certificate, Certificate to Foreign Government)” 為必要文件的國家之一，大部分國家已取消

此文件要求亦或提供其他替代證明文件以供審查。現今製造廠多行跨國生產行為，許多製造廠僅有製造但未在原產國上市，以導致無法提供製售證明而無法申請國內查驗登記或致原有許可證無法展延。

產製國製售證明所載明之製造廠、產品等資訊，可參考其他文件如產品標籤、使用說明書、原廠授權書等。而在製造廠管理方面，我國全面實施醫療器材製造廠優良製造規範迄今已十餘年，國內外製造廠皆符合相關規定，品質管控已受監督。

本會懇請食藥署考量國際醫療法規發展趨勢，並加速國內醫療器材管理法規與國際調和，逐步取消「產製國製售證明」之規定，以期提供國內醫療器材產品與全球同步。

本會建議第一階段先以「美國、歐盟或十大先進國其一之上市證明」作為「產製國製售證明」之替代方案，試行後可進一步考量取消「產製國製售證明」之規定。

1.2 **建請考量經“醫療器材優良製造規範標準模式”審查並經核准之輸入製造廠，可簡化後續申請流程。**

“醫療器材優良製造規範標準模式”後續申請案之文件要求實與初次案一致。然品質系統文件在無產線擴增或重大變更下，僅有版面及文字之微幅調整;又標準模式所需審查的文件繁多，其審查時程冗長。建請食管署風管組考量經標準模式審查並核准之輸入製造廠，以「*更新之二階品質程序書清單與上市後管理相關程序書」，取代所有二階品質程序書*以簡化後續審查流程，加速核准時程。製造廠之相關品質系統文件仍留廠備查，以符合食藥署必要時之審查。

建議二: 提高新增或修改健保診療項目審核之預期性

感謝中央健康保險署藥材組積極導入「新功能醫療器材」申請案流程進度查詢系統。也感謝醫管組的努力提高會議頻率以加速新增或修改健保診療項目之審查。充分的資訊揭露不僅符合二代健保規劃的精神，同時有助於大眾了解健保政策規劃方向並適度參與。醫療器材廠商亦得以適時規劃新醫療器材市場准入時程，協助臨床醫師制定合宜的治療計畫。

本會建議健保署充分揭露有關於健保給付項目及支付標準共同擬訂會議及總額相關會議資料，公開各項醫療服務給付項目及處置之歷年使用量，以利新增特材或技術之預算影響評估。對於新增或修改「診療項目」案件，建議比照「新功能醫療器材」規劃流程進度查詢機制。

建議三: 簡化新增差額負擔品項審查流程

新增自付差額特材須由廠商提出申請後，經健保特材專家小組及特殊材料給付項目及支付標準共同擬訂會議，評估臨床療效及預算等因素。納入自付差額的品項通常具有較佳的療效、符合臨床需求，或可提供病患不同選擇等特性。然而新增的差額負擔品項皆經由衛生福利部全民健康保險會(健保會)逐案審查，約增加六個月至一年以上的審查期。

健保會為監理健保業務、研究諮詢健保法規、以及分配訂定總額預算的重要單位。

為了審議新增自付差額特材，健保會已於2016年建立檢核項目及原則。

故建議健保會可提高新增差額負擔品項審查效率，以討論評估原則取代逐一案件審查，再輔以定期檢討報告監督自付差額特材使用情形。對於新增自付差額特材，授權由特殊材料給付項目及支付標準共同擬訂會議審議通過後，比照新功能特殊材料流程生效，以提高病患對新醫療器材之可近性。

建議四: 修改特殊材料價量調查機制

特殊材料的健保給付採同功能同價格原則，新上市的醫療器材無論製造產地或設計上的差異，其健保核價與已上市多年的同功能特材相同。此外，特殊材料給付採用支付”點數”而非支付”費用”計算，造成醫療院以低於健保點數的價格向醫材供應商議價，以減少其浮動點值的減損。儘管新上市的醫材與已上市多年的類似醫材實際交易價格不同，但新的健保價係參考相同核價類別產品的市場實際加權平均價格，不考量個別產品的製造成本與實際販交易價格的差異。

在以上兩種情況下，容易造成新上市的醫材隨著時間喪失它的價格競爭力。

偏低的參考基準可能影響新功能特材核價偏低，形同不鼓勵廠商引進新醫療器材。更令人擔憂的是，已收載的醫療器材也可能因為價格考量退出健保或台灣市場。

建議健保署醫材組邀請業界共同檢討特殊材料價量調查辦法，建立停損點和下限價格機制，並簡化價量調查行政作業。

其他

脊骨神經醫學

建議: 制定一個可落實的計劃來認可脊醫專業

自從2006年以來，每年美國商會的脊骨神經醫師會員在台灣白皮書內容都一直提出同樣的訴求: 提供脊骨神經醫學法源基礎，如同世界其他九十餘國所為一般。

在國家發展委員會與衛福部的協助下，過去幾年來有數次的討論，並期待有所進展，然而卻仍未有明確的解決方案。同時，台灣人口持續朝快速老化的速度發展，估計在2025年台灣將成為65歲以上人口佔總人口20%的超老化社會。

蔡英文政府團隊的一個重要中心施政方向就是提供年老者良好的長照政策，來協助確保老年人能過著健康、有活力的生活型態，且儘可能越多年越好。然而對政府來說，期望在提供這項服務的同時又不過度加重目前財務吃緊的健康照護系統，實在是一項挑戰。

這項挑戰的一部份解答，即是在台灣提供脊骨神經醫學照護的普及性。脊骨神經醫學以不吃藥、不手術的治療原則，是一項更為省錢的替代療法。我們並不特別要求脊骨神經醫學一定要納入全民健保。然而已經有許多篇研究，如世界脊醫聯盟在2012年世界衛生組織的研究提報，明確地證明了脊骨神經醫學在治療下背痛、頸椎痛、頭痛、與其他肌肉骨骼系統相關問題的成效與安全性。其中一篇刊登於2004年徒手與生理治療期刊(JMPT)中，以四年的芝加哥健康保險公司(HMO)的大型研究數據顯示：脊骨神經醫學提供的醫療至少可以減少50%的醫療支出。

除了人口老化的問題之外，近年來台灣在騎自行車、跑步、健行、或是上健身房健身的風氣都越來越盛。運動一方面能增進健康與更好的體適能，另一方面也常伴隨著疼痛與傷害的發生，這些也都是脊骨神經醫學特別善於處裡的項目。

台灣政府一直不願意將脊骨神經醫學合法化的原因是甚麼？在過去，主要的阻力就是主管機關一直將脊骨神經醫學視為一種“技術” 而非 “專業”。認為其他醫療專業一樣可以學習與實施相同的治療技術。然而最近才逐漸了解，原來脊骨神經醫學醫師是受過五年學士後醫嚴格高等教育的專業醫師。

現今最大的阻礙就如同典型的 “雞與蛋”的問題-在完全無法源基礎下如何將脊骨神經醫學融入台灣的醫療系統中。衛福部持續堅持一定要透過台灣當地醫學院提供脊骨神經醫學課程開始。在過去數年來已經與多個醫學院討論接洽，但是沒有一個學校願

意投資一個還不確定學生畢業之後是否能有執照的專業人士的科系。

這項提案唯有政府主動地與選定的大專院校制訂一個完整的計畫才會可行。理想上，國發會、衛福部、教育部應共同參與並彙整力量來讓這個理想成真。

此外，在順利的情況下，可能至少要十年才會有第一批台灣本土教育/訓練的脊骨神經醫師。而在此過渡時期，應該同時檢視現有法令，給予領有國外脊醫執照的脊醫合法執行業務的空間。

鑒於脊骨神經醫學的成本效益與對老年族群的貢獻，我們合理地期待仍相對新的蔡政府願意以新的角度來審視這個問題，看看是否對於這已經十多年的同一個白皮書議題有所突破。

菸品

建議一: 菸害防制政策制定應具透明度

政府實施新法規公告評論期之新規定，延長原有之14日公告評論期，於2017年初給予菸害防制法修法草案之利害關係人60日評論期，本會樂見政府採取此種作法以加強公共政策制定之透明度。

同時，本會仍必須強調，公告評論期之長度並非政策透明化之唯一手段，此次菸害防制法修法草案包含了一些具有爭議性的條文，例如素面包裝、擴大警示圖文、禁止香味料及累計三次行政裁罰即勒令停業等規定。

而這些修法草案未曾舉辦公聽會以徵詢各方利害關係人與專家有關於此立法潛在衝擊之意見，包含影響臺灣之國際貿易義務、商標權與其它智慧財產權利之保護、市場穩定以及合法業者之權益，亦無進行過實證研究，就法規對社會經濟可能產生之衝擊進行評估。

政府的政策過程應該奠基於廣泛的徵詢各領域之意見以及完整的分析後所做的政策目的評估，欠缺保障這樣的預期目的的真意，如此可議之過程將引起60日評論期是否淪為形式之疑慮；一個更加開放且公正之程序，才能夠強化臺灣經濟、貿易環境及國際競爭力。

建議二: 應整合菸稅及菸品健康福利捐

過去本會之臺灣白皮書中屢次提及關於菸品稅捐之政府政策應以「合理、漸進、可預期」為原則，以避免劇烈的菸品稅捐調漲所帶來不可避免之非法菸品及未稅菸品銷售量增加，近期立院通過菸稅由每千支徵收新台幣590元調升至每千支徵收新台幣1590元，漲幅近三倍，雖然菸稅調漲將至7月1日始生效，但如此之巨幅增加已完全可預見其將促使消費者轉而消費走私進口且未繳稅之低價菸品。

而此預測已由財政部公布之資料證明，自2016年9月起至年底，當時菸稅調漲消息一出，私菸查獲量較2015年同期成長約13%，消費者轉而消費低價非法菸品將對政府稅收、公共衛生、合法業者造成損害。

菸稅實施調漲後，綜合以上因素，政府應觀測私菸市場增長狀況，就走私菸品建立合理有效管控措施；且此次大幅調漲菸稅後亦不應再有調漲菸品健康福利捐之規畫，以避免加重消費者負擔、刺激非法交易的增長；甚而影響市場穩定、削減政府預估之稅收。

理想上，政府應考量將菸品健康福利捐與菸稅整合為單一稅制，如此才能使稅捐調整更能夠符合「合理、漸進、可預期」之要求；捐、稅各別的調漲僅只會造成對合法產業的潛在衝擊更加難以完整評估，並且將導向刺激非法菸品市場的成長以及減損政府稅收等非預期效果。

製藥委員會

在2016去年的白皮書中，為了持續改善台灣製藥業整體的環境，製藥委員會向台灣政府誠心地提出了三項建議如下：

1. 持續建立及強化創新產品的智慧財產權保護，確保獎勵創新的投資環境。
2. 加速新藥及新適應症之審查及健保給付，確保病患及早使用創新藥品。
3. 注入更多資源於醫療照護及健保給付系統，以因應未來挑戰並永續經營。

本委員會肯定政府相關部門在過去一年當中，成功地達成一系列正面的改革：

1. 藥事法專利連結與資料專屬權相關法規修法條文，已在2016年6月經立法院一讀通過。
2. 針對3A類四年內之新藥R-zone，2016年2月從3% 提高到5%措施，鼓勵新藥盡快引進台灣。
3. 政府相關單位定期與產業界代表溝通，包括衛福部、食藥署與健保署等，有助於意見交換與政策的推行。

但同一時間，製藥委員會認為整體產業依然有許多改善空間。舉例來說，很遺憾政府尚未建立完整的專利機制，因為專利連結與資料專屬權法規並沒有完成後續之法律程序。而新藥或新適應症之審查時程，與食藥署制定目標有顯著之延宕，使著急需新藥的病患無法及時獲得治療。新藥及新適應症需要的給付審查時程也偏長、核准率偏低、與持續的給付價格偏低等都是主要問題。除此之外，根據目前實施的藥費支出目標制，實際藥費支出明顯大幅高出預算，造成藥價的劇烈調整，所以業界需要更透明、可預期、且更合理的藥價管理機制，以免嚴重影響病患用藥的權益。本製藥委員會會員公司在將新藥列入醫院的處方集時，更面臨到利潤導向造成日益增加的折讓。以上所述之種種阻礙，一直使得政府致力讓病患能夠盡早接受到創新藥品治療的美意大打折扣。

因此，製藥委員會於2017年的白皮書中，再次提出三項重要建議如下，懇切期望政府相關單位能夠一起合作並向前推動改革計劃：

1. 完成專利連結與資料專屬權的立法程序，以強化對創新產品的智慧財產權保護，確保獎勵創新的投資環境。
2. 加速新藥及新適應症之審查及健保給付，確保病患及早使用創新藥品。
3. 維持一個可長可久的醫療制度。

最後，製藥委員會期待獲得政府正面回應，一起創造更良好的產業環境。希望所有的關鍵利害關係人，包括政府、醫界與藥界，能夠同心齊力為了病患的福祉而努力。我們提出下列建議以確保台灣民眾能夠得到創新藥品，以擁有更健康的生活。

建議一: 完成專利連結與資料專屬權的立法程序，以強化對創新產品的智慧財產權保護，確保獎勵創新的投資環境

營造台灣成為一個鼓勵並獎勵創新的投資環境，對於台灣進一步參與雙邊自由貿易協定(FTA)至關重要，同時也符合政府鼓勵台灣本土生物科技公司研發新藥並展望國際市場的政策目標。為達到此項目標，有賴持續強化智慧財產權的相關保護法規及制度。製藥委員會感謝政府對達成專利連結與強化資料專屬權所提出的承諾。藥事法修法條文已在2016年經立法院一讀通過，但至今仍未有機會進入二讀，遑論共需經過三讀才能完成立法程序。本委員會籲請衛生福利部將此列為最近會期之優先法案，以縮小目前台灣現有法規與重要貿易協定間的主要差距:

(1)尚未建立完整的專利連結機制；以及

(2)資料專屬權之保護尚未擴及新成分新藥以外的範圍。

製藥委員會肯定食品藥物管理署於過去兩年在準備專利連結與資料專屬權法規制定的跨部會整合及進展，期許在2017年能完成後續之法律程序、建立完整的配套機制。

建議方案:

1. 建立簡易、明確、永續的專利連結施行細則
   (A) 參考美國作法，登錄專利號碼而非請求項，以避免食品藥物管理署面臨認定與審核之紛爭。
   (B) 落實專利保護，原開發廠專利到期後才核發學名藥許可證與核准給付價格。
2. 擴大資料專屬權適用範圍，除了新適應症，也包含新劑型與新使用途徑；對生物製劑給予12年的資料專屬權保護。
3. 透過行政院與立法院的積極溝通協調，在2017年完成專利連結與資　料專屬權的立法程序，以強化對創新產品的智慧財產權保護。

建議二：加速新藥及新適應症之審查及健保給付，確保病患及早使用創新藥品

創新藥品的引進及使用乃是促進民眾健康的最重要因素之一，同時也是政府部門最值得投資的醫療支出項目。從一項跨國生物製藥投資環境的報告中發現（BCI, Biopharmaceutical Competitiveness & Investment ），製藥投資環境優良的國家(從智財保護到創新藥物可近性)，其在其他政策領域的經濟發展及競爭性也較優越。可見製藥產業的投資環境之良窳可做為國家整體經濟發展的指標。

然而根據近期統計，新藥或新適應症之審查時程相較於過去三年雖有些微改善，但仍有進步的空間。根據資料顯示，2016年食品藥物管理署處理新成分及生物製劑新藥查驗登記之天數達400天，且達成目標值360天的核准比例僅有43.3%。而處理新適應症查驗登記所需天數190天，然核准比例僅為44.7%。儘管相較於過去三年其審查天數有些微加速，但仍有相當大的空間可以同時加快審查時間以及提高核准的比例。製藥委員會擔心此新藥及新適應症核准時間的延宕若無持續改善將嚴重影響病患用藥的權益，特別是危及生命的藥品。

此外，新藥或新適應症之健保給付審查時程有顯著之延宕。二代健保上路後，新的給付審查系統施行四年來，呈現新藥及新適應症核准率偏低、無預警的審查進度延遲、持續的給付價格偏低等問題。目前新藥給付審查時程平均429天，明顯較一代健保時程更長，尤其癌症新藥審查耗時更久，平均長達782天，不但沒有改善的跡象，而且每況愈下。製藥委員會強烈盼望衛福部/健保署增加新藥預算金額，如此一來加速新藥引進台灣，以幫助病患臨床上未被滿足的需求。

建議方案:

1. **改善並加速新藥和新適應症藥品查驗登記的時程：**無論是新藥或新適應症，都能夠以更有效率的流程和執行方式來加速審查。期待2017年能夠達成食品藥物管理署所訂下的審查目標，360天內完成新藥、180天內完成新適應症的審查。同時製藥委員會也建議將核准比例由現行約40%提高到90%。另外，委員會建議政府跟製藥業界應積極合作建立新藥審查流程每個環節步驟的合理時程，除了能夠協助雙方達到各個階段的時間管控點的目標，也提供所有利益相關人一個透明監督的平台。我們呼籲食品藥物管理署與醫藥產業業者討論可能的改善方案並且能夠在雙方的共識下設定審核過程的主要里程碑，一起達到審查期程。
2. **期許核定之適應症內容能與歐美一致：**多數新藥或新適應症查驗登記案在食品藥物管理署審查中，歐美會相繼核准，若非特殊亞洲地域性疾病或人種差異考量，直接沿用歐美已核定之適應症內容應無不妥之處。對於一些食品藥物管理署核定之適應症被限制縮小範圍，而與歐美核定內容不同的案子，除了適應症之核准延遲或導致有些病患無法使用，亦可能對其他亞洲市場產生負面影響。限縮適應症可能使原廠對於投資臺灣參與臨床試驗及提早於台灣呈送查驗登記的意願大幅降低，且使病患用藥權益受損。若非特殊人種差異考量，我們期待食品藥物管理署核定之適應症能與歐美一致。
3. **增加新藥預算:期程建議可以分為三個時期**

(短期) 運用現有結餘款項投注新藥/新適應症納入健保給付的預算：製藥委員會建議健保署多項節流措施所節餘的經費，可使用在創新新藥的給付。此部分可增加新藥預算之可能財源如下:

1) 每年根據藥費支出目標(DET)所進行之藥價調整結餘款應優先用於新藥/新適應症擴增給付。如2016年根據藥費支出目標所調降之藥價金額達57.1億元，應確實挹注在新藥/新適應症納入健保給付。
2) 價量協議之廠商回饋金額應用於新藥/新適應症給付。因新藥或新適應症進入健保給付系統而簽訂之價量協商，其還款之本質本應屬政府健保藥品支出費用「減項」，因此，其還款總額應每年定期結算後回歸新藥預算使用。例如，每年藥品支出平均約新台幣1600億，2016年價量協議還款總計15億，則政府於2016年藥品淨支出應為1585億元，而非原聲稱之1600億。此結餘款項來自新藥或新適應症，因此，理應挹注原新藥預算之支應。

(中期) 改變政策思維進行資源重分配：目前的健保從感冒到重症治療皆在其涵蓋的服務範圍內，然而資源有限，主管機關應改變思維使其成為保大不保小的保險制度。如指示用藥退出健保不予給付，或思考推動部分負擔，都可增加新藥預算之財源。

(長期) 量出為入，新藥預算編列應與次年的新藥給付規劃連動：為使新藥預算編列充足讓所需之病人皆能及時獲得治療，建議健保署應量出為入，精算隔年可能納入健保之新藥給付金額，讓新藥預算編列與實際被給付之新藥具實質收支連動，即不會有因顧慮健保財務衝擊而延遲或拒絕給付之困境。

4. **通過應用「給付管理合約」，確保台灣患者能夠加速獲得創新的新藥**

新藥給付時希望物有所值，衍生必須因應的挑戰是如何適切地評估新藥所帶來的臨床益處，並同時考量國家整體的負擔能力。這些挑戰有賴產業界與政府共同合作以找到方法來管理新藥的引入，以降低對價格、負擔能力、及臨床不確定性的擔憂。解決這個問題的一個有效的方法是應用「給付管理合約」。這是付費者在面對新藥給付時，考量本身負擔能力及新藥臨床益處後，仍無法順利決定，因此必需就新藥的特性與新藥供應商做協調，在彼此的協議下所簽訂的給付合約。因為是本於彼此互信的基礎上所達成的雙邊合約，給付管理合約是一種保密協定，協議的條款基本上都不應該公開討論或報告。

對許多臨床需求尚未被滿足，疾病治療上有迫切性的病患而言，他們接受療效更佳的創新藥物治療實有其迫切性，而政府懸而不決的決策模式會導致病患無法及時接受新藥治療，因此新藥給付應該要有更多元的模式，以平衡財務衝擊與新藥臨床價值，並以確保病人能及時接受創新藥物的治療為首要目標。而「給付管理合約」的應用確實可以解決這樣的困境，其主要的好處包括以下幾點：1) 能夠降低給付新藥的不

確定性、確認新藥的有效性和成本效益；2）讓病患接受創新療法的治療；3）增加決定新藥給付的靈活性；4）不同的方案可以解決不同的需求；5）更好地控制預算；6）提高成本效益；7）改善決策所面臨的困境。

「給付管理合約」特別適用於在一般給付模式下，例如價量協議或限制嚴格的給付規範後，仍無法順利納入給付，但又有高度臨床需求的疾病。台灣政府就解決創新藥物給付的困境而言，應建立屬於台灣的「給付管理合約」機制。這是一項緊迫的任務，製藥委員會建議台灣政府應盡速與所有相關團體合作（新藥供應商，醫療服務提供者，病人）建立屬於台灣的「給付管理合約」機制並完成相關法令的修訂，以確保台灣病人可以及早接受創新藥物的治療。

醫療科技日新月異且其對人類最大的貢獻在於健康促進，我們建議主管機關應以病人為中心思考如何制定跟上科技發展腳步的解決對策。尤其是突破性的創新藥品，能夠為久候且高治療需求的病人創造出更好的治療效果，應該建立優先審核程序，以便加速審查流程及及早納入健保給付。

建議三：維持一個可長可久的醫療制度

台灣的醫療體系除了需要更多的資源投入，另外也需要一個穩定透明的藥價管理機制，以期提供病患更完整的醫療服務。製藥委員會感謝健保署在過去一年當中與製藥產業保持開放的對話，並回應產業界的建議，在價格調整機制上逐步縮小雙方期待的差距。我們呼籲台灣政府與業界繼續保持溝通，以開放的心胸尋求透明、可預期、且更合理的藥價管理機制。以藥費支出目標制為例，第二階段藥費支出目標試辦計畫已於2016年完成，應將其正式列入實施細則以達更透明、更公平以及更符合預期性的目標。就有關基期值之重新訂定、無專利單源性藥物之R-Zone設定以及過專利期1~5年內調整金額和價量協議所繳回金額是否從超出目標值扣除，均有待公平合理的解決方法。

改革健保支付制度，降低醫療院所對藥價差利潤的依賴。在目前的制度下，我們的會員公司在將新藥列入醫院的藥品處方集(formulary listing)時，都面臨到被要求給予日益增加的折讓。此舉使的有些病人無法使用到需求的新藥，即使該藥已經納入健保給付。因為醫師只能從醫院的處方集中選擇藥品給病人，所以對許多醫師而言，如何維護專業自主以選擇對病人最適當的藥品已經成為一項挑戰。製藥委員會期待衛生福利部與健保署改革現行給付制度，使得醫療院所逐步降低對藥價差利潤長期以來的依賴。這將有助於病人取得需要的藥品，也可以維持更穩定的藥品供應制度。

建議方案：

1. **以病人照護為中心，加速新藥引進醫院。**新藥引進台灣的流程，除了向政府申請藥證及健保給付之外，尚須將新藥列入各醫療院所的藥品處方集，醫師才能開立處方給病患。從申請藥證到病人可以使用到新藥，往往已經超過五到六年的時間。目前醫院進藥時普遍採取品項”一進一出”的潛規則，意即必須剔除一個現有藥品才能新增一個藥品。這項做法影響病患用藥的權益，有時候具數種劑量的新藥只能進一至兩個品項，病人不一定能取得最適合需要的劑量或劑型。製藥委員會呼籲台灣政府應從法規面介入，引導醫院採取具彈性的藥品管理政策，提升藥品的可近性並保障病人用藥權益，建立一個讓醫院管理者、醫師、藥師的用藥考量都以病人為中心的環境。同時呼籲台灣政府平等對待進口與國產藥品，同時將兩者納入醫院評鑑之指標。
2. **更合理藥價調整機制。**目前藥費支出目標訂定是依據2012年實際藥費支出作為基期值再乘上總額成長率，此舉未來將造成藥費支出目標不敷需求而形成大幅藥價調整，建議修正為以前一年度實際藥費支出作為基期值再乘上總額成長率作為當年度藥費支出目標訂定依據。此外，每年藥物調整時，過專利期1~5年之藥品其調整金額和價量協議所繳回金額應從超出藥費支出目標值扣除，以避免藥品支付價遭重複調整。本委員會建議基於對智慧財產權的尊重以及病人權益的提升，應針對不同屬性藥品給予不同R-Zone保護。
   1)資料專屬權或在藥物監視期內的產品：因此期間內不會有學名藥，如果因為可能顯著的藥價調整導致該品項無法在台灣上市，將犧牲病人接受新藥治療的可近性，所以在此期間內之藥物應比照新藥給予15%的R-Zone 保護。
   2)單源性藥品：雖然其主成分已過專利期因未於台灣登記專利，但是因為市場上僅有其單一來源且沒有學名藥可以替代。如果這類藥品因為顯著的藥價調整而離開台灣市場，將會衝擊病人使用該藥品的可近性。製藥委員會建議應給予12.5%的R-Zone保護。
   3)新藥上市4年內無專利藥品但已有學名藥上市者：因病人需求引進者應給予10%的R-Zone保護以增進廠商引進意願並確保病人治療品質。其餘依目前定義之3A品項建議給予5%的R-Zone保護。
3. **醫療體制的改革。**我們建議政府積極進行支付制度的改革，合理調整醫療服務支付標準，反映實際臨床醫療成本，給予醫療診察足夠的專業報酬，輔以配套，使醫院有誘因建立適當的醫護人力，同時讓醫院不需要再透過藥價差的利潤來維持營運，讓藥品市場更加健全。

公共衛生委員會

本委員會感謝衛福部過去一年來的努力，在疫苗接種、癌症預防及治療、病毒性肝炎、病人安全、抗生素使用、以及其他重大公衛議題上面的努力，我們也感謝衛福部與產業界間維持開放的溝通與對話。

奠基於衛福部過去的成就，我們建議 貴部投注更多努力於下列幾項建議：包括癌症預防及治療、建立穩定的疫苗基金財源、以及病毒性肝炎的預防及控制。

建議一：在實證醫學基礎上提高對癌症防治之投資以降低經濟損失與死亡人數

根據衛生福利部2015年發布之最新統計，癌症連續33年蟬聯國人10大死亡排行之首。事實上，癌症所造成的經濟衝擊也遠大於其他死因。根據美國癌症協會2010所發表的一份報告估計，全球因癌症導致的過早死亡與失能所造成的經濟衝擊，包括直接醫療成本一在2008年時就已高達8950億美元，相當於1.5%的全球各國的國內生產毛額。在台灣，2015年一項發表在《公共衛生雜誌》的最新研究顯示，2012年癌症所造成之經濟損失估計高達218億元新台幣，遠高於意外事故之123億元新台幣。此外，該研究也發現，癌症會導致患者平均減少27.5年壽命，並損失7.3年工作年數。

這幾年來，在整體醫療保健支出當中，家庭自付費用的比率逐漸在上升，但是政府支出的比重卻不斷下降，台灣公部門預算在醫療保健的支出上，不論是占整體國內生產毛額的比值或是占整體醫療保健的支出比例，相對於其他OECD國家而言，都比較低。從OECD的證據顯示，台灣在2004-2013年間，其整體醫療費用支出佔國民生產毛額的比值均維持在6.2%-6.6%的範圍，這個比值在2006年以前台灣一直比韓國還高，但在2007年後被韓國超越，韓國在2013年整體醫療費用支出佔國民生產毛額的比值已達到7.8%，鄰近的日本其比值在2004-2013年間亦已從8.0%

提升自10.3%。這就表示，台灣政府沒有在健康照護及醫療資源方面配置足夠的公務預算。從癌症病人的角度來看，台灣在公衛領域的投入不足，直接造成家庭需提高自付費用以尋求更好的照護。

根據《2025衛生福利政策白皮書》，衛福部與世界衛生組織政策目標一致並計畫在2020年前將癌症死亡率與過早死亡率降低25%，並使30到70歲間世代之癌症死亡率在2025年前降低25%。

然而，台灣長年來只顧及支出面的控制，而不太重視醫療需求面的問題，資源的投入不足已經直接及間接地導致創新的癌症治療新藥與新醫療科技被延緩納入健保給付；在健保有盈餘時，台灣政府更應思考並提出改善整體醫療給付的相關措施。

而癌症病人有其治療的急迫性，無法等待，因此為了使用到創新藥物的治療。病患往往必需自費健保尚未給付的新藥。有鑑於各國政府在癌症照護越加重視並投入相對應的資源已是全球趨勢，建議台灣政府應提高對於癌症醫療照護之預算，並重新配置現有之醫療資源以解決這項重大的公共衛生議題，以達成降低癌症死亡率之政策目標。在癌症預防策略上仍應持續投入努力，包括移除致癌因子、增加癌症篩檢等。

我們建議衛生福利部應重新檢視目前全民健康保險之癌症給付內容，並透過資源之重新配置以涵蓋更多新藥與新醫療科技，幫助病人重拾生活品質、恢復其工作與社會功能，以重新回歸正常生活。

建議二: 建立國家疫苗基金穩定財源

台灣疫苗基金自2010年成立以來，財源約46%來自公務預算，來自菸捐的收入比重高達53%(註: 尚有1%來自其他財源)，然而菸捐並非穩定的財源且正逐年下降中。2016年基金的需求和收入有3.2億的缺口，2017年基金缺口估計亦達4億元；隨著菸稅可能提高，菸捐整體收入未來還會進一步下降，此一不穩定的財務結構，相當不利於新政策的導入與推行，值得政府高層注意。

菸捐對疫苗基金的衝擊使新疫苗政策無法推動。以65歲長者接種肺炎鏈球菌疫苗的新政策為例，由於菸捐預算大幅減少，2016、2017已連續兩年暫緩實施，十分可惜。根據衛福部「充實國家疫苗基金及促進國民免疫力計畫」以及衛生福利部傳染病防治諮詢會預防接種組委員會(ACIP)決議，尚待導入的疫苗還包括青少女子宮頸癌疫苗、幼兒輪狀病毒疫苗、幼兒A肝疫苗等等。

亞洲其他地區如日本、香港、馬來西亞、澳洲等國家疫苗計畫經費均由公務預算支應。日本、韓國和澳洲皆已推動長者公費接種肺炎鏈球菌疫苗(香港採部分負擔模式)，全球已有62個國家導入子宮頸癌公費疫苗，81個國家導入輪狀病毒公費疫苗；隨著國際往來日益頻繁，新興疾病對公共衛生的挑戰日鉅，世界各國都在加快腳步建立完善的疫苗保護網，台灣不能落後。

醫學科技不斷進步，有愈來愈多新興疫苗問世以對抗疾病，我們需要持續投入資源，捍衛國人健康。疫苗不但是有效的公共衛生措施，也是高報酬的社會投資，不但可以提升健康、省下醫療費用，更是社會發展及經濟成長的動力。根據美國CDC的評估，花費1美元於疫苗，平均可以節省10美元的醫療及社會成本。本委員會建議台灣政府，將疫苗基金財源全數回歸公務預算，使基金財源充足並穩定成長，疫苗政策有足夠預算依計畫時程執行，並及早規劃防疫及採購策略，以穩定疫苗長期供應，提升我國防疫水準與國際防疫趨勢接軌。

建議三: 積極建立有效且永續的國家級肝炎防治計畫

台灣在B型肝炎及其相關疾病的防治上獲致了長足的進步，最顯著的里程碑是自1984年起，台灣開始推行全球首創的B型肝炎疫苗接種計畫，並成功地將幼兒的Ｂ型肝炎帶原率由原來的10.5%降低至1.7%。同時，透過擴大讓病患獲得有效的B型肝炎治療，與B型肝炎相關的慢性肝臟疾病，包括肝癌的患病率也在過去幾年有降低的趨勢。此外，從今年開始，另一個顯著的進展是政府提供具有高度治癒率的創新C肝治療藥物給符合特定治療規範的病人。這類創新的C肝口服新藥目前健保已經提供給付。然而，C肝防治仍然面臨嚴峻的挑戰，包括低診斷率以及無法獲得新型藥物的低治療率。從政府所補助的篩檢中，只有大約30%病人被診斷出為C型肝炎患者，且大部分的病人仍需要等到疾病惡化之後才能符合健保給付的治療。過低的診斷率及治療率必然提高造成慢性肝炎疾病的風險，相關社會及醫療負擔也隨之提高

許多研究已經證實慢性Ｃ型和Ｂ型肝炎等相關疾病，對台灣社會、家庭、以及患者帶來了沈重的經濟負擔，包括因疾病惡化所增加的相關醫療開支與因不同病程而導致失業等情況。

藉由給付C肝病人可接受最新型口服藥物的治療，台灣已經朝向落實格拉斯哥宣言的目標踏出一大步，也就是希望在2030年之前能消除病毒性肝炎這個重要的公共衛生議題。因此委員會呼籲政府應該確保HCV治療的永續穩定預算來源，建議由政府的公務預算撥付而不是來自健保財源。我們相信有效的政策架構，不僅能預防疾病的傳染，更能加強監控疾病傳染和醫療照護，並提高民眾對疾病認知。如此行之，台灣就真能有機會顯著降低因B肝與C肝所帶來的社會和經濟負擔，並且一同邁向全面消除病毒性肝炎為目標。

不動產委員會

台灣政府於近年對於國內不動產市場的政策及實質居住環境的改善不斷作出實際努力及具體作為；如修正不動產交易實價登錄及都市更新條例等來提高不動產價格透明度、財產稅制、維持市場公平等。在此同時，台北美國商會不動產委員會(以下簡稱本會)意識到台灣如要在國際投資市場中發揮潛力，在法規政策上仍有改善的空間。2016年全球跨境不動產投資額達約2,110億美元；佔全球不動產投資總額的32%。全球許多投資者仍選擇保值度相對高的直接不動產投資來鞏固資金價值，並因為了避險而進行跨境投資，選擇穩定收益標的物及透明度高的市場。

因此，為了提升台灣在國際不動產市場的競爭力，本會於此提出數項政策及法規修正建議，並期望與相關單位進行商討，確保台灣不動產市場的健全及優勢。

建議一: 建議房地稅合一新制中針對國內外不動產持有人的稅制統一

2016年1月1日起中華民國政府正式施行房地合一課徵所得稅制度，目的在遏止炒房，其影響範圍由為105年1月1日以後交易之房屋、土地，如在103年1月2日以後取得且持有期間在2年以內或係105年1月1日以後取得者，也應依新制規定計算房屋、土地交易所得或損失，並於交易之房屋、土地完成所有權移轉登記日之次日起算30日內向稽徵機關辦理申報。其中課稅稅率對境內所有人持有房產一年內出售者，其房地交易所得稅稅課稅稅率為45%持有一至二年，稅率則為35%、持有2年至10年稅率為20%、十年以上則為15%。但對於境外所有人，若持有房產於一年內出售，房地交易所得稅稅課稅稅率則為45%，持有一年或以上則一律課徵35%。與本國人出售房產所得稅率相比，外資被課徵的稅負相對重許多。

因此為防範該政策降低外資對台灣不動產投資意願，本委員會於去(2016)年提出政策修正建議，財政部及國發會回覆其主要

目的為防範市場價格的不當炒作。財政部並提示當外國投資方取得中華民國國籍並得適用國內所有人的稅率。惟本會認為許多國外投資人為法人，於取得台灣國籍方面恐有困難之虞。再者，多數法人投資者投資境外資產主要為避險目的，短期投機的機率較小。

因此，美國商會於今年再度建議政府對國內外投資人稅率應為一致；若有擔心房地產炒作的疑慮，建議政府可依循貸款、總量管制等其他方式規範，以確保市場公平性、自由度及流通性。

建議二：都市更新程序簡化及加速推動，形塑城市新風貌

台灣地狹人稠，主要都會區可建築用地相當稀少。且依最新官方數字顯示台北市目前平均屋齡約為32.3年，約有45萬戶住宅超越30年，其中逾13萬戶屋齡更超過40年或以上。全台灣屋齡平均屋齡為28.9年，其中逾30年的房屋更超越380萬戶，其將近占總住宅存量約四成五。

老舊房屋對抵抗地震、颱風等天然災害的強度減弱及都市景觀產生影響外，很多都會區土地並未達到其最大使用效益。許多老舊房屋依舊制的建築技術規範建成，且在經過921及去年的206地震後，抗/耐震強度恐有不足之虞。去年二月台南大地震時更造成屋齡21年的維冠金龍大樓倒塌，上百位居民喪生。故都市更新將逐漸成為迫切與不可避免的都市居住環境改善、改造或再生的途徑之一。

但在台灣目前的法規環境，中央及地方政府針對都市更新皆有法源規範或約束；相關法規如：都市更新條例、都市更新條例施行細則、都市更新權利變換實施辦法、都市更新建築容積獎勵辦法等。此外若都更牽涉都市計畫分區變更，更有都市計畫或土地使用分區等相關法條約束。

因此，都市更新申請案件常在範圍劃定、權利變換、事業計畫等的審議階段過程冗長；一般而言，都更申請案若由整合、劃定、權利變換、事業計畫審核至請照開工，通常需費時約6至7年或以上。部分建商因時程及預算考量下，因而避開都更而轉向主要都會區外其他地區發展推案，進而造成城市水泥化的不斷蔓延。

本委員會於去年提出都更政策修正建議後，各級政府對於都市更新持續的努力，如台北市政府於今(2017)年初成立專案小組就現行都市更新執行困境提出相關改革對策，在都市更新計畫、審議效能提升、權變估價合理化及透明化、安置、政府職能執行代拆等面向均提出具體行動方案。但因房屋老化為全台灣各縣市共有及持續的課題，本會強烈建議各級政府進行全面性老舊建物的建物健檢，對有安全之虞的建物優先並加速進行都市更新。

此外，並加速進行都市更新審查流程的簡化及縮短審查時程。建議可考量賦予司法機關強制執行的權力，倘若一處更新地區已取得多數的同意書，但仍有少數居民持反對意見，政府可考量賦予法庭或法官在考量該地區居民的居住安全、生活品質及權利等前提下，進行強制執行。

但執行的前提必須考量憲法保障人民的基本權利，以公平、公開及人道為原則，並於都更相關賠償或徵收時以市價全額計算。此外，都市更新流程應全程透明化，將相關資訊即時並全面性的提供予居民甚至全體大眾。

建議三：鬆綁保險業投資海外不動產限制

有鑑於金融海嘯後保險業資金湧入國內不動產市場，持續推升不動產價格，金融監督管理委員會（金管會）於2012年發布修正條文，明定保險業進行國內不動產投資時應達到最低收益率標準。在限縮保險業國內不動產投資後，金管會遂於2013年放寬保險業投資海外不動產門檻。至2017年4月止，台灣保險業者已完成七筆海外不動產交易，累計總投資金額為新台幣898億元。

儘管金管會陸續鬆綁相關規定，現行法令對於保險公司投資海外不動產仍有諸多限制。首先，2016年3月「保險業辦理國外投資管理辦法」修正後，刪除保險業者得另案申請投資額度的規定，意即各家保險公司除依自身的保險適足率適用不同投資限額外，不得再申請增加投資總額。若比較中韓台三地保險業投資海外不動產上限之規定，中國及南韓保險公司投資上限為總資產的15%，而台灣保險業則按最近一期資本適足率適用不同投資上限，限額級距為保險業資金的1%~3%或業主權益的10%~40%，顯示台灣保險業者可投資總額較中韓業者來得少。

此外，依現行規定，台灣保險公司不得與其他投資人合資，亦不得購買海外不動產公司部分股權。然而在美國等成熟市場中，位於主要城市的不動產投資金額通常較高，且基於稅務效率的考量，國際投資人常採取合資或參股等方式取得不動產產權。在目前的法令規範下，台灣中小型保險公司能投入海外不動產的金額十分有限，再加上無法與其他投資人合夥，等同排除其進行海外投資的可能性。

由於不動產投資具備長期穩定收益的特性，符合保險業者長期投資穩定獲利的需求，為擴大保險業之資金運用管道、提升投資效益，本委員會建議主管機關應進一步鬆綁保險業投資境外不動產的規範，以利台灣保險公司在國際間尋找適合的不動產投資機會，建立更多元的投資組合。

零售委員會

鑒於零售事業持續作為台灣經濟的主要驅動引擎之一，因此，零售委員會承諾將與政府部門密切合作，深化零售事業的發展與面對共同的挑戰。特別是食品安全議題，本委員會將儘力分享美國的法制典範，並與政府合作，以促進管制目標的實現。我們樂於見到與衛生福利部、食品藥物管理署及行政院食品安全辦公室的相關合作已經展開，並得到認同。

惟本委員仍擔憂，部分新訂法令在制定過程未經充分諮詢或效益分析，並且忽視相關措施造成之經濟與社會上潛在的負面影響。例如，食品藥物管理署積極制定「巧克力」與「奶油」的嚴格定義，不僅與食品安全無涉，且造成標籤改版的大量成本及浪費。與此相類的是，臺灣政府不接受國外廠商的產品檢驗報告，卻僵化地強制要求對進口包裝食品進行重複檢驗。此等作法在國際貿易上實屬罕見。強制性的重複檢驗要求不僅是對於產業的過度要求，對於食品安全更未增加任何實際的價值。

涉及維他命、礦物質、植物與草本成份、胺基酸、酶及其他成份的膳食補充品，在許多先進國家是高速成長的產業之一，因膳食補充品有益於消費者的整體健康，本委員會建議台灣應建立膳食補充品的專屬食品分類，以增進消費者的可取得性，並准許對消費者進行相關的產品健康宣稱。

在法規訂定程序中，更大的開放性、透明度、以及充分諮詢利害關係人的作法，將有助於形成更切合實際、更具規制實益的法規。臺灣須同時留意，作為WTO的成員，有義務避免任何形成技術性貿易障礙的法規。本委員會呼籲台灣政府，須與主要的貿易夥伴，調合各項食品衛生標準與法規。一個持續且穩定的法規環境乃是確保消費者保護、產業發展及經濟成長的關鍵要素。

建議一：確保法規有科學及統計證據基礎，並且是符合比例原則及可行的

法規及法規制定程序的品質對於能吸引外國投資或是令外國投資止步都是重要因素之一。尊重法律的政府往往更能增強提供投資者進入市場的意願。

經濟合作暨發展組織(OECD)就曾強調在法規制定上，「可靠及透明」是必需的。其更指出:「管制者行使權力時，負有責任使被規範者提升對於市場及法規的信心以及對國家的普遍信任」。

在過去的數年裡，台灣的政府在法規的制定上，已有了許多令人稱許的進步。例如增加了利害關係人在法規制定中的參與，以及將對法規草案的意見發表期延長到了60天。然而，在「確保法規有科學及統計證據基礎，並且是符合比例原則及可行的」的事上，仍有一些進步的空間。

1.1 實施成本效益評估，並在草擬新法規時，一併揭露其評估成果

為符合比例原則，一個法規的效益必須大於其可能產生的成本。其間所需考慮的成本包括政府的監管成本、業者的法規遵循成本以及其他社會成本。在追求達到規範目的同時，政府應該選擇對於被規範對象限制最少及傷害最少的方法。

最近的一個例子是食品藥物管理署所公告的「巧克力之品名及標示規定」。雖然此一法規在使消費者能確認其所食用的巧克力能符合特定標準的目的上有其正當性，但其因此所產生的包括政府在市場及邊境的監管成本，以及業者在重新設計及印製包裝的成本均十分重大。由於外國供應商一般在包裝上往往有二至三年的庫存，大量的包裝材料將會因此而作廢。自此一法規生效之後，已經造成了供應商許多不必要的成本。

我們希望政府在未來在計畫任何新的法令時，能夠先進行成本-效益分析，並將結果公布，並在決定是否要實施該法規時，將前述分析結果納入考量。

1.2 確保法規符合現實並有科學依據及足夠的風險分析

進口有機農產品的農藥殘留的容許值在台灣一直是個問題。由於農藥鄰接汙染以及背景值對於有機農產品來說通常難以避免，主管機關在設定有機農產品的農藥殘留容許值尤其需要注意。以美國為例，只要不是直接施用，有機農產品含有一般農產品農藥殘留容許值的5%殘留量是可以被容許的。

問題的產生主要來自大眾對於有機食品產品必須是零農藥及零化學殘留的錯誤觀念。消費者需要了解所謂的「有機」並不是零農藥殘留，而是自然的農業方法。

我們呼籲食品藥物管理署及農委會能使用科學證據為基礎採取更符合現實地觀點承認有機產品含有一定鄰接汙染以及背景值，進而設定更合理的農藥殘留容許值。向社會大眾溝通此一現實將會為台灣的有機農業的更好的發展進行鋪路。

1.3 與主要貿易夥伴的食品衛生標準進行調和

食品衛生標準的建立在於確保食品產品能符合各種特定標準，在食品中的農藥殘留允許值即是其中一種。對於在國外種植的作物來說，農藥對於病蟲害的效力與在台灣所用的不同。目前聯合國的國際食品法典委員會已經針對農藥的殘留最大容許值以及外來容許值設定了標準。至去年為止，在CODEX食品及動物飼料分類中，針對可以找到名稱及定義的品類，CODEX已經採用了4,844個農藥殘留最大容許值標準。而美國農業部亦針對其食品或農產品中可接受的農藥及動物用藥設定了標準。所有CODEX及美國的最大殘留容許值均係依合理的科學證據所制定。當有關最大殘留容許值完全以本地狀況做為基礎時，將導致對進口產品的限制，實際地說，就是一種技術貿易障礙。我們因此建議台灣政府在農藥殘留的衛生標準上，應與美國及CODEX的規範進行調和。

1.4 在制訂新法規時，應考慮實施的時機及方法

食品藥物管理署近期公布了要求食品業者，包括進口業者，對其產品實施週期性檢驗的相關規定。雖然其立意良善，但是其實施方法卻產生了一些疑慮。在其網站的問答集中，而非法規的本身，食品藥物管理署規定只有台灣本地的檢驗單位所產生實驗報告才能符合前述的檢驗要求。至於跨國公司總部或供應商所提供的檢驗報告，在其問答集中則認為不符合自主檢驗的要求，其理由為這些提出報告的單位與該台灣食品業者並非「同一實體」。

對於包裝食品來說，其產品是在生產後完成封裝，其運送亦是在良好的控制環境下進行。因此，在台灣本地實驗室另進行額外的檢驗對於消費者來說並不具價值，對於消費者安全來說更沒有意義。除非跨國製造者/供應商的測試報告被判定為低品質或是有詐欺的情形之外，並沒有任何理由拒絕其正確性及正當性。只要此一報告是依據食品藥物管理署的檢驗方法及標準完成，其結果就不應該被排除。法規要求在台灣本地重複檢驗不僅非常耗費成本，也有可能被解讀為貿易障礙。

另外一個議題則是與經濟部標準檢驗局對進口商品逐步實施的限制有害物質(RoHS)規定有關。再一次說明，環境保護及消費者安全是正面的，但與歐洲聯盟以超過10年的時間從規範實施要求標示到要求實際降低有害化學物質相較，標準檢驗局卻在今年通過法規要求廠商就大多數特定品類商品，以不到一年的時間（也就是必須在2018年1月1日前)全面符合有害物質標示的要求。進一步言，目前進口商品上有「CE」標誌的商品均已符合歐盟標準，進口商品含有有害化學物質的風險本來就已經很低，但商品仍需在原本檢驗標誌上有RoHS字樣始能進口。政府在引進新法規時，對於在法規遵循上有困難者，應當提供一個較合理的寬限期。

建議二: 增加符合條件的檢測實驗室，並確保測試結果能夠以中文和英文提供

當新的或修訂的規定生效時，許多必要的測試必須由台灣本地的實驗室進行。主管機關通常會指定合格的實驗室執行測試。然而，由於合格實驗室的數量或其實驗載量有限，往往為供應商帶來一些困難。 一些例子：

- 金屬工業研究開發中心是經濟部標準檢驗局唯一指定測試水龍頭的實驗室。因其測試載量有限，每批測試時間至少需要兩個月以上，因而許多廠商排隊等待安排測試的時間。
- 台灣兒童商品研發中心是經濟部標準檢驗局接受進口玩具檢測的唯一實驗室。
- 台灣農業化學品有毒物質研究所是經由農業委員會授權，檢測進口有機食品農藥含量的唯一檢驗機構。
- 食品工業研究開發研究所是農業委員會的唯一授權，對進口有機食品中是否含有不被允許的食品添加劑進行檢測。

供應商在面對測試，邊境檢查或後市場監督所遇到的困難包括：

1. 由於實驗滿載，實驗室並不保證能在規定實施日期之前完成測試。
2. 主管機關和實驗室拒絕向供應商提供測試報告，使其查看詳細資料。
3. 儘管外商公司因需要和總部報告測試方法和結果，所以一再要求要有英文版測試報告，但實驗室仍只提供中文版測試報告。

這些過往經驗確實給供應商及其國外總部同仁帶來困難，因為無法及時好好理解測試方法或是規定等細節，因此，甚至進一步拖延與台灣市場的貿易交流。

建議三: 建立膳食補充品專項法規，保障消費者知的權益

台灣不像大部分的國家有特定的”膳食營養補充品”法規項目，而是衛生福利部食品藥物管理署在一般食品的領域，用「膠

囊錠狀食品」的方式管理。「輸入膠囊錠狀食品」甚至需要預先審查，確認為一般食品，方能進口台灣。如果某些成分屬於非傳統性原料，則需要額外的審查，才能進口。審查程序中，食品藥物管理署需要進口人提供成分規格表，產品名稱和製造商資料，等，如果前項資訊有任何改變，則進口人必須重新申請。

然而，地方衛生單位在察看「膠囊錠狀食品」的時候，即使輸入時已經通過中央的食品藥物管理署查驗， 也不能保證符合地方市政府的標準，顯見中央與地方在此項產品標示的規定存在某些歧見，尤其對「輸入膠囊錠狀食品」產生不必要的困擾。我們敦請中央政府和地方市政府能有共同的法規解釋和執行標準，對於產品輸入時已經獲得批准的所有資料內容，應當獲得雙方的尊重。

膳食補充品對改善公眾健康和控制健保支出的貢獻早已普遍獲得認可。世界各國多正面看待膳食補充品並設立一套自主管理的機制，避免曠日廢時的預先審核管理系統。供應商應而能夠依據科學證據，提供消費者正確的產品健康功能訊息。世界衛生組織的國際食品法典委員會在2013年修訂「營養和保健宣稱使用準則」，支持全球各國之食品衛生單位參考產業界的需求，制定以科學為依歸的營養和保健宣稱準則供產業界使用。

相對於台灣重要的貿易夥伴－美國，台灣更加嚴格管理健康相關產品的功能性宣稱。這造成一種奇特的現象，台灣消費者能輕易地在海外買到標示清楚、提供充分功能宣稱的膳食補充品，但在台灣卻不能。

在美國，膳食營養補充品能有三種類型的宣稱，包括影響人體生理結構和機能為訴求的宣稱，促進人體身心健康為訴求的宣稱，以及改善營養缺乏疾病為訴求的宣稱。這三種宣稱均不需要美國聯邦食品藥品監督管理局的上市前審核，但要求產品供應商負起舉證的責任，並應於上市後30天內報備主管機關。在日本的機能保健食品中，有一自主管理的系統管理「Self-determined Function Claims」，要求食品公司需依據科學，驗證功能宣稱的真實性和安全性。消費者能在政府的網站上檢視產品宣稱相關的訊息。美國和日本都重視業界自主管理的成效，並尊重消費者對膳食補充品知的權益，尤其開放健康效能資訊方面。

很可惜台灣不像美國和日本，產業界能透過政府的系統向消費者展示膳食補充品產品宣稱的科學證據。在台灣，某些宣稱涉及特定生理功能、五官臟器健康、改變身體外觀或改善營養不良相關疾病者等，並不能像在美日等國一樣被主管機關接受。

本委員會呼籲衛生福利部建立一套專門管理膳食補充品的項目，師法美國或日本，尊重消費者知的權益，消費者能充分得到膳食補充品的健康功能相關訊息。

建議四：禁止於市面販售原始產製批號被修改或移除的進口酒類飲料商品

為保障消費者權益及維護商品之可溯源性，政府對食品，藥品及一般消費性商品均依循國際規範明訂必須在商品包裝上加印原始產製批號。但酒類飲料產品並不包含在此管制範圍，更有甚者在市場上經常發現酒類產品之原始批號被移除而由進口商之自行編碼取而代之；因此商品之可溯性已無法確認而消費者的食品安全權益亦受損。本委員會在此建議酒類飲料產品應與其他消費性商品相同對待，原始產製批號應被保護，凡原始產製批號被移除或遭塗改之商品皆禁止於市面販售，但葡萄酒因個別產區的年分不同因此並無產製批號則不在此限。

永續發展委員會

本委員會呼籲，台灣環保署應盡速認可紙漿或木材原料經國際永續環保、負責任森林管理機制驗證的家庭用紙產品，將其納入現行家庭用紙類別環保標章範疇，以迎頭趕上國際森林管理最新環保趨勢—透過嚴謹負責任的驗證制度，致力減少熱帶雨林非法濫伐或不肖組織因商業利益將原始森林轉化為非森林用途的做法；以有效保護森林生物多樣性、並降低溫室氣體排放。

於此同時，台灣政府為促進”循環經濟”所作之努力，包括通過銀行提供財務資源，令我們委員會感到鼓舞。我們鼓勵政府採取進一步的詳細行動，如

1) 要求公共建設需採用最低比例的建築材料需採用”回收材料” 。

2) 擴大綠色融資平台，鼓勵發行綠色債券。

建議一：擴增修訂現行家庭用紙環保標章，將紙漿原料規範全面延伸至獲得國際具公信力永續森林管理機制驗證之原生紙漿家庭用紙/紙類產品。

在全球致力降低溫室氣體排放的種種努力中，從森林源頭推動永續、負責任的管理驗證機制已廣泛獲得全球各國政府、企業、與非營利組織的支持與響應。以台灣而言，約99%的紙漿、木材原料全由進口而來，其中大多數來自以非法濫伐聞名或多數森林被不當轉化為非森林用途的東南亞國家。有鑒於此，本委員會疾呼，環保署應加速修正現行家庭用紙類別環保標章規範，改採雙軌制，以公平的角度看待再生紙類產品、與經由第三方驗證機構依據國際具公信力永續森林管理機制，如FSC森林管理委員會，所認證的原生紙漿產品的環保價值。本委員會自2010年起即已持續提出此一倡議，但迄今進展頗令人失望。

針對永續森林管理議題，目前國際上許多國家的紙類用品環保規範都採納雙軌制，亦即同步認可從源頭把關、通過永續負責任國際森林管理機制認證之原生紙漿產品，與經由回收原料再生製成的產品，例如紐西蘭與新加坡的環保標章。除此之外，美國綠建築委員會(USGBC) 於2013年亦針對其綠建築評分認證系統第四版(LEED V4)進行重大修正，進一步提高綠建築物的得分標準，包括限定在建築物內所使用的拋棄式衛生用紙產品必須是FSC驗證產品或經其他綠建築委員會核可的國際標準驗證。

故無論就永續發展或經濟成長面向來看，天然資源的可再生性都變得益發重要，使用可回收物質已非降低家用紙品環境影響的唯一途徑。事實上，由於木漿纖維無法毫無止盡地回收再利用，因此持續讓通過國際永續森林管理認證的原生紙漿加入生產製造流程中是絕對必要的。再者，台灣自1990年起即採行森林禁伐規範，國內幾乎全數的紙漿與木材原料都是進口而來，但我國針對進口紙漿纖維是否來自永續認證與負責任管理的森林卻毫無規範。

台灣現行做法顯然與國際永續林木環保潮流背道而馳，因為愈來愈多已開發國家/地區均實施嚴格法令，以杜絕所有非法林木與紙漿纖維產品進入國土，例如美國雷斯法案、歐盟木材法規(Forest Law Enforcement, Governance and Trade)、以及澳洲非法伐木禁制法案等，這些法案皆在支持合法木材貿易，並杜絕以非法木材紙漿原料製成的產品進入市場。但根據台灣林業試驗所副所長、暨台灣大學森林環境暨資源學系副教授邱祈榮的長期研究估計，24%-31%台灣進口的原木與製材有可能來自於未經永續森林管理體系認證、且非法伐木情況頻傳的東南亞地區。

2015年，包括新加坡、馬來西亞、印尼與泰國等東南亞國家飽受霾害之苦，這些霾害肇因於印尼蘇門答臘與加里曼丹等島嶼盛行不環保的刀耕火種(焚林)式農作法，根據報導，東南亞地區有14萬人因受霾害影響造成呼吸道不適疾病。針對霾害的鉅大影響，新加坡環保委員會(Singapore Environment Council)進一步

加嚴其環保標章規範，全面排除疑涉非法濫伐森林製造商所生產製造的產品。最近新加坡環保委員會更公布新修訂的環保標章紙類產品規範，宣布自2017年1月1日起紙類產品環保標章將只限定核發予符合FSC森林管理委員會驗證規範的產品。

有鑒於以上諸項考量，本委員會敦請環保署持續修定現行家庭用紙類別產品環保標章，將其延伸擴及至獲得國際公信力永續森林管理系統驗證的原生紙漿家庭用紙產品。

建議二: 鼓勵公共建設使用再生建材

我們希冀政府加強要求使用再生建材。對於公共性政策，政府可要求再生建材占到一定比例，因現行政府對於傳統材料與環保材料或效能相同或相似之產品，僅得允許百分之十以下之價差，儘管相關環保產品通過基本安全與環境測試，但就推廣效益方面效率似仍待檢討，至少於公共性建築，可設置最低再生建材使用百分比。

「再生材料」與「循環經濟」之議題並不僅限於美國、歐洲及日本等先進國家，現已成為全球議題而擴展至中國與新興國家，事實上，中國近來對於自身之環境問題解決，亦積極與台灣建立兩岸相關業務。再者，循環經濟已被政府列為專案培養的「五加二」創新產業。台灣在循環經濟之發展並不雅於人後，積極推廣及在公共建設中充分使用再生材料，培養相關技術研發之成熟，將是台灣躍進的一大契機。

建議三: 通過擴大綠色融資平台，為企業提供更多財務資源來支持其永續發展

我們委員會讚賞台灣政府在鼓勵更多“綠色融資”所作的努力，而可喜的是，國內銀行亦群起響應，並試圖提供更多的綠色貸款。這些財務資源對於支持符合永續發展企業所作各種倡議是備受需要的。

多年來，全球綠色債券市場已形成了具有潛力達到1兆美元的發行量。除了公眾環保意識的提高，這個市場快速成長的主要因素是受到發行人和投資者的激勵。我們希望與台灣政府合作，以確定可能鼓勵更多發行人和投資者參與綠色債券市場的措施 - 無論是以稅收政策，監管救濟或其他非貨幣政策的形式當作獎勵。

稅務委員會

雖然台灣完善的稅務法律制度已行之多年，但各個產業的多變性質也無可避免地意味著相關稅務法規、條例以及裁定必須與時俱進適時地修改。台灣曾對於稅務法規進行多次翻修，然而還是有許多其它需要審查、更新的法令，便減少納稅人以及稅務機關間的稅務糾紛。稅務委員會向財政部提出以下建議，供財政部參考。

建議一: 稅上得攤提費用之無形資產應不拘限於法律上得登記之資產或權利

隨著經濟活動的活絡，買賣各種無形資產及權利已日趨多元。依照所得稅法的規定，不論買賣的標的是什麼，賣方只要有所得，就要申報繳納所得稅：然而相對就買方公司而言，雖然都是出價取得，但是在稽徵實務上稅務機關援引所得稅法第60條，只承認法律上得登記之五種類型，即營業權、商標權、著作權、專利權及特許權得於稅上認列為無形資產，可以分年攤提費用。此一稽徵實務作法除產生稅法條文解釋之不一致，更引發納稅人與稽徵機關間之許多爭議，必須尋求司法救濟。

查所得稅法第60條規定「營業權、商標權、著作權、專利權及各種特許權等，均限以出價取得者為資產。前項無形資產之估價，以自其成本中按期扣除攤折額後之價額為準。」，細譯條文所明示之五種無形資產，應僅是例示規定。蓋條文「等」字，即清楚證明並未列示完全，而是尚應包括與條文例舉資產相類似之其他無形資產及權利。此一見解亦可由財政部所發布之其他所得稅法相關解釋得證，如下說明。

在財政部所發布之“所得稅法第8條規定中華民國來源所得認定原則”，其中第7條定義何謂權利金時，財政部業已明確說明，無形資產包括（1）著作權或已登記或註冊之專利權、商標權、營業權、事業名稱、品牌名稱等無形資產。(2) 未經登記或註冊之秘密方法或專門技術等無形資產：包括秘密處方或製程、設計或模型、計畫、營業秘密，或有關工業、商業或科學經驗之資訊或專門知識、各種特許權利、行銷網路、客戶資料、頻道代理及其他具有財產價值之權利。所稱秘密方法，包括各項方法、技術、製程、配方、程式、設計及其他可用於生產、銷售或經營之資訊，且非一般涉及該類資訊之人所知，並具有實際或潛在經濟價值者。

另在該認定原則第8條定義 「在中華民國境內財產交易之增益」時，財政部亦清楚闡明，無形資產包括 (1) 依中華民國法律登記或註冊之專利權、商標權、營業權、事業名稱、品牌名稱等無形資產；和 (2) 除 (1) 以外之無形資產，其所有權人為中華民國境內居住之個人或總機構在中華民國境內之營利事業。但依外國法律規定在中華民國境外登記或註冊者，不在此限。

另營利事業所得稅不合常規移轉訂價查核準則第4條定義無形資產為「營業權、著作權、專利權、商標權、事業名稱、品牌名稱、設計或模型、計畫、秘密方法、營業秘密，或有關工業、商業或科學經驗之資訊或專門知識、各種特許權利、行銷網路、客戶資料及其他具有財產價值之權利。」

財政部雖已於前揭法規,明確規範無形資產之範疇，不論是否經登記或註冊之無形資產，只要具有財產或經濟價值，舉凡各種商業秘密、專門技術、研究發展、行銷網路、銷售資訊、經營資訊、客戶資料、頻道代理均屬之，然令人遺憾的是，在稽徵實務上，如本文第一段所述，稅捐稽徵機關多直接引述所得稅法第60條之文字內容，除營業權、商標權、著作權、專利權及特許權外，對於納稅義務人出價取得之其他各類無形資產及權利，一概否准於稅上認列為無形資產，不得分年攤提費用。

為使稅法解釋一致並符合租稅公平原則，以及避免納稅人與稽徵機關間之爭議，徒增稅務爭訟案件，耗費稽徵機關行政資源及納稅義務人人力物力，本商會爰建請財政部發布函釋清楚說明所得稅法第60條之真義。

建議二: 檢討過時或不合理之稅務法規

2.1 稅額扣抵比率錯誤計算之核定宜訂定較合理的處理方式

台灣目前透過實施兩稅合一制以消弭同一筆所得在公司及個人股東階段所得稅雙重課稅之問題。在此制度之下，股東可藉由獲配自被投資公司之可扣抵稅額抵繳相關稅負，以避免重複課稅。透過計算稅額扣抵比率，可扣抵稅額有其扣抵上限。

然而，僅稅務居民之股東能夠使用上述之可扣抵稅額；外國股東僅得以獲配之股利或盈餘被加徵之百分之十之所得稅抵繳應扣繳稅款。可扣抵稅額及稅額扣抵比率上限之計算均與外國股東無關；然即便為百分之百由外國股東持有之公司仍須遵循台灣稅法之規範，設置及維持股東可扣抵稅額帳戶並計算稅額扣抵比率。

若稅額扣抵比率因計算錯誤而導致超額分配股東可扣抵稅額，分派股利予外國股東之扣繳稅額並不會受其影響，因該外國股東不得使用該可扣抵稅額。雖百分之百由外國股東持有之公司誤植稅額扣抵比率僅為數字計算上之錯誤且未造成

任何稅收上的損失，現行法規仍視此舉為短漏所得稅，並要求補繳稅額以更正股東可扣抵稅額帳戶之餘額，而非處以相關行政罰；此情形完全忽略公司並無造成相關稅收損失及避稅行為之事實。於多數國家，此類計算錯誤往往透過稅務機關更正核定解決，或僅需支付少量行政罰鍰；然在台灣現行法規下，納稅義務人付出之代價相當高昂。我們強烈建議財政部訂定較為合理之處理辦法以取代目前法規。

2.2 允許移轉訂價向下調整

近年來關係企業間之跨境交易日益增加，為使該等交易符合常規交易原則，各關係人需確保其已根據自身相關執行之功能及承擔之風險來保留足夠且合理之利潤；為達成上述目標，企業必須進行移轉訂價之調整。

台灣目前並無任何有關一次性移轉訂價調整之法令或公開函釋。向上調整通常較能被稅務機關所接受，因其調整後可帶來額外之稅收；然而向下調整則通常易遭到否准。雖財政部曾表示准許符合條件之移轉訂價向下調整，然實務上，嚴格的達成條件使其相當難以獲准。舉例而言，交易各方必須簽訂內部移轉訂價合約以敘明相關訂價之依據，且其需於當年度結束前進行入帳調整。另，向下調整必須導因於如全球經濟衰退或天災等不可抗力之因素；換言之，即便移轉訂價之方法實屬合理，一次性向下調整仍因條件嚴苛難被核准。此外，支付予外國關係企業之移轉訂價款項可能導致相關扣繳稅款，此舉將對納稅人造成雙重打擊。

我們認為移轉訂價方法如屬合理，不論向上或向下之調整皆應予以核准。目前多數OECD會員國，包含美國、加拿大、法國及澳洲等國皆已准許年度一次性向上及向下之移轉訂價調整。OECD移轉訂價準則中提到「當移轉訂價未反映市場機制或不符常規交易原則時，參與受控交易關係之企業其稅負及關係企業所在國家之稅收可能被扭曲。因此OECD會員國同意根據稅務觀點，參與受控交易關係企業之利潤於必要時得進行調整以修正此扭曲，並確保符合常規交易原則」，由此可知，移轉訂價如符合常規交易原則，則應予以接受相關調整。此外，美國財政部法規第1.482-1(a)(3)條中亦指出「受控交易之納稅義務人得於如期申報之美國公司稅申報書中進行移轉訂價調整，以反映受控交易之常規交易結果」；換言之，美國稅務機關允許納稅義務人於所得稅申報書中進行向上或向下之移轉訂價調整。

綜上所述，我們建議財政部訂定相關法規以核准包含向下之一次性移轉訂價調整。除此之外，我們主張稅務機關應於移轉訂價法規規範下，對向上及向下調整一視同仁，以使台灣稅制更能夠與國際接軌。

科技委員會

科技委員會持續著重鼓勵臺灣在已成功建立的既有強大製造基礎上，調適接納多元、獨特與創新的技術。

本委員會檢視臺灣科技業所面臨的主要挑戰和機會，針對我們深信是臺灣在區域內維持科技領先地位所不可或缺的數個關鍵領域，提出概要說明。

這些議題與建議簡述如下：

建議一：強化臺灣的新創事業生態系統，並推展創新科技。

臺灣應在既有的強大製造基礎上，持續著重發展並擁抱多元且創新的尖端技術。

當科技主體持續由硬體轉變為內容與軟體時，臺灣如何維持其區域性科技中心的領先地位，成為一個比過往更加重要的議題。臺灣應持續專注分配有限資源，為處於創業初期的科技新創事業創造更能刺激發展的商業環境，以促進開發多元且創新的技術，同時鼓勵本地企業勇於採取承擔較大風險的策略。

基於臺灣政府日漸重視科技新創事業的重要性，臺灣如何與全球新創事業生態系統連結是一個相當重要的全國政策議題。本委員會對國發會等政府機關近來致力於促進新創事業發展深表讚許，包括創立多支創投基金、支持數家創業加速器，以及設立「臺灣新創事業競技場」等。

此外，勞動部最近放寬臺灣科技企業聘雇外國人的限制，科技委員會也予以肯定。

扶植本土新創事業對臺灣未來發展至關重要，但吸引外國創業家前來臺灣設立科技新創事業亦可加速新創事業生態體系的健全發展、提高技術實力，並使臺灣科技產業更加多元化。外國新創事業對於讓臺灣成為亞洲科技領袖可作出許多貢獻，包括培育本地人才和阻止人才外流、創造就業機會、協助發現下一個明星產業，以及和外國事業建立合作橋樑等。

臺灣現有的科技基礎設施、工程人才、對智慧財產權的具體保護，以及地處亞洲地理中心（包括鄰近中國）等優勢，都是外國新創事業選擇來臺投資的原因。針對臺灣如何提高其對外國科技新創事業的吸引力，本委員會提出以下建議：

a. **放寬新創事業在臺登記型態的限制。**依據現行法令，外國事業只能以有限公司、股份有限公司等臺灣認可的事業型態在臺設立分公司。此限制排除許多外國常見的投資型態，如一般合夥、有限合夥、有限責任合夥、商業信託、法定信託等，導致臺灣錯失許多投資機會。
b. **釐清公司章程中對於股東權利與限制之條件。**在科技新創事業相當普遍的美國與其他國家，股東們通常可自行協商股東權益條件，不同的股東會因其投資時間、投資價格及其他因素而享有不同的權利。臺灣法律並未明確規定臺灣公司的股東對於不同股份得享有何種不同的權利或受到何種不同的限制。
c. **放寬外資事業聘用外國人擔任主管之限制。**臺灣現行聘僱外籍人士相關法規規定，外資事業若要聘用外國人出任經理或主管，須符合以下條件：(1)實收資本額或在臺營運資金達新臺幣五十萬元以上；(2)年營業額達三百萬臺幣以上、進出口實績總額達五十萬美元以上或代理佣金達二十萬美元以上。外資事業若要聘請外國人從事專門性或技術性工作、僱用一位以上的外國人或展延工作許可，所受限制更加嚴格。期待科技新創事業在設立初期數年即可創造營業額，並不切實際，因為科技新創事業的初期目標在於投資研發，通常難以在數年內有所回收。然而外國專業人士在其專門領域的技能與經驗正是科技新創事業所須借重與仰賴的。
d. **放寬定期勞動契約的限制。**勞動基準法只允許雇主與勞工在明訂的例外情形下簽訂定期勞動契約。此政策的原始用意是為了保護勞工權益，卻對科技新創事業構成阻礙，因為科技新創事業在設立初期尤其需要依據研發進程調整聘僱人力，而研發進度與發展非常難以預測。
e. **放寬外國白領員工的薪資及工作經驗限制。**如前言，政府已於去年就外籍白領人才來台就職於臺灣公司的工作資歷與最低薪資的門檻上有所放寬，但這些初步的放寬並非根據實質需求，如依研發進度彈性來僱用人才，進而無法滿足科技新創事業的需求。我們再次呼籲政府就延攬外籍科技白領的門檻上予以進一步檢討並放寬。
f. **降低稅賦壓力。**公司營收若未達到稅收的最低標準，常會受到稅務機關強大的稽核壓力。然而科技新創事業通常必須經過相當長的時間，在研究發展、產品開發和市場滲透

率達到一定規模後才能獲利。在設立初期數年沒有獲利可能完全符合管理階層對公司的長期規劃，並非意圖逃避稅捐。

g. **吸引創投事業來臺投資，以增加籌資管道。**臺灣需採取措施鼓勵外國創投事業在臺投資。無論是外國或本地的創投事業，都是新創事業發展的重要支柱。南韓就比臺灣更積極且成功促成許多深具規模的創投事業在韓國投資。

h. **吸引、培育和留住人才。**要將臺灣打造為區域高科技中心，須同步借重國際研究成果與本土科技技術，而關鍵就在於延攬適當人才。臺灣若能採取開放且具有彈性的聘僱政策，進一步鬆綁移民限制，並強化高等教育體系，將有助於招納更多合適人才。

本委員會呼籲政府應針對上述障礙，採取具體改善措施移除障礙，將臺灣轉化成為對科技企業和新創事業更友善的環境。

建議二：以維持台灣的科技業競爭力出發來調整勞動法規

台灣科技產業在全球市場競逐，向來以彈性和速度為主要競爭優勢來源，近年來網際網路、雲端運算、行動應用等技術演進快速，加上隨著科技進化而衍生的破壞式商業模式創新，大幅顛覆科技公司的營運模式，多元而彈性的人才需求十分殷切。反觀台灣勞動法規，包含已頒布修訂的勞基法、勞動派遣法草案、和實施有年的定期勞動契約規定等，不僅降低科技業所需的人力需求彈性，對科技人才也造成無所適從的負擔，未能根據科技人才工作情境制定合宜的規範，可謂雙輸的局面。

相關法規不僅過時，並且未能與科技和科技相關服務業日新月異的技術和商業模式與時俱進，對亟需轉型的台灣科技產業雪上加霜，有礙未來經濟成長。

此外，台灣在此一波技術進化浪潮中，國內外專業科技人才缺口大，礙於法規國外人才引進困難；加上台灣市場規模小，薪資、升遷誘因低等因素，本土優質人才外流嚴重。

當今全球科技產業的特性和其他產業有著十分不同的產業節奏和運作模式，尤其是綿密的全球分工與跨境供應鏈體系，加諸極短的產品生命週期亟需持續研發與創新，以維繫企業競爭力於不墜。作為台灣經濟發展主力的科技公司在知識經濟時代中，面對當前的勞動法規遭遇諸多窒礙難行的困境。

本委員會提出下列構想以期改善現狀：

a. **賦予科技業工作時間更多彈性並取消出勤紀錄。**根據目前勞基法規定「雇主應置備勞工出勤紀錄，並保存五年」，此項規定對於傳統勞動型態之員工，例如製造業生產線作業員，或可適用，但對科技業從業人員而言，執行上困難重重。以研發人員為例，開發工具多已雲端化，工作不再侷限在辦公室，可以是任何地點。

並且，創意的產生，也可能在靈光乍現的任何時間;再以綿密的跨國合作為例，會議聯繫隨著通訊技術的發達可利用電話會議、視訊會議頻繁的與在不同時區的客戶、供應商或同事人員間進行。以成果導向為績效評量的方式已在先進國家普遍採行。企業提供員工工作自主權，包括彈性工作時間和地點已成趨勢。在提倡創意及專業工作倫理的前提下，企業願意由員工決定工作的時間、地點跟工時長短，只要工作能圓滿達成。

在台灣勞動部所發布的指導原則，彈性工時僅針對於”非以辦公室為主要工作場所勞工”，包括新聞媒體工作者、電傳勞動工作者、外勤業務員及汽車駕駛等勞工。儘管所指稱之”非以辦公室為主要工作場所勞工”不適用於科技產業，該指導原則業已顯示此僵化的規定無法適用於科技產業之產業運作特性。

b. **放寬定期勞動契約之規定。**如前述建議 1-d 指出之定期勞動契約相關限制對新創企業造成的困難，在科技產業更產生普遍性問題。科技業知識半衰期短、技術更迭快速，企業在不斷尋求創新動能時，外部特定專業人才的延聘至關重要，同時包含國內和國外人才的延聘。台灣由於市場規模小，技術資源有限，諸多創新應用或新興科技需由國外引進，由於技術發展如此之快，使知識週期短暫，尋求成長動能的公司在很大程度上依賴人才招聘。

諸如系統架構師、數據科學家和人工智慧演算學家等專家對於項目的成功至關重要。這類的專家不多所以通常是從外部招聘。一旦定義了系統架構及演算法，系統開發人員才跟進開發工作。這些專家就會被公司釋出，到其他地方進行其他項目。因此，定期勞動契約是技術行業在常規團隊缺乏專門知識的情況下招聘勞動力的常見做法。契約時間長短取決於項目的需要，但目前定期勞動契約一年的限制對複雜的項目而言是不夠的。

而目前勞基法規定定期勞動契約工作時間不超過一年為標準，超過一年需要主管機關批准，不僅曠日廢時，且判定彈性低。本委員會建議一旦認定合乎定期勞動契約聘用，應放寬定期勞動契約工作時間最長至三年，以提供科技業所需的多元人才需求彈性。

c. **修正派遣勞工保護法草案。**近年來政府投入大量資源鼓勵科技業創新、加速孕育微型新創企業，期能為台灣帶來新的成長動能。許多科技公司雇用派遣人員提供企業快速且彈性的人力需求，亦助於將來新創事業之發展需求。

目前草案中限制派遣勞工為「勞動力百分之三」，新創微型企業往往不能負擔大量勞動員額。儘管派遣人力能執行非核心業務，總員工數少導致微型企業不能雇用足夠的派遣人員。限縮了新創事業中派遣人員的就業機會，也導致可致力於核心業務的員工必須分心處理非核心業務。

反觀其他國家，多數並無派遣人力比的上限，或是部分台灣鄰近國家採10%為上限。過低的比例限制將對科技業創新所需彈性與速度產生極不利的影響，因此本委員會建議應從產業別屬性研議，而非一體適用。

建議三：加速立法院資訊長相關草案審核，於中央設立專職資訊長

資訊應用已為各國政府重視議題，然台灣政府卻未設置足夠層級組織整合國家以及跨部會之資訊應用發展策略。反觀鄰近東南亞國家幾均設立中央層級專職單位統合該國資訊應用發展策略：

新加坡：於2017年五月1日在總理辦公室設立智慧國家與數位政府辦公室(The Smart Nation and Digital Government Office) 以及政府科技機關(GovTech)來負責政府在資通訊應用與發展。同時，也設立資通媒體發展局(Infocomm Media Development Authority)，負責國類資通訊與多媒體之產業發展。

馬來西亞：在科技部下設立國家資通訊研發中心(MIMOS, the National R&D Centre in ICT) 以及馬來西亞資安處(Cybersecurity Malaysia)負責資通訊與資安相關之研發，同時也設立馬來西亞數位經濟公司(Malaysia Digital Economy Corp. Sdn. Bhd.)以國營企業方式，來發展法來西亞之數位經濟。

泰國：新近成立數位經濟社會部(Ministry of Digital Economy and Society)來整合泰國國家統計局、軟體發展局、電子交易發展局、國家都發局、郵局以及國營電信公司。

印尼：設立資通訊部負責印尼資通訊政策與法規。

菲律賓：於2016年6月於中央設立資通訊技術處，負責菲律賓中央資通訊相關政策、計畫、協調與實施。

越南：設有資通訊部負責越南之資通訊相關政策與科技發

展。

東北亞的南韓，則設有資通訊科技與未來部，而中國則有工業信息部。台灣則因在行政院層級缺乏專職單位，以至於很難統整跨部會資訊相關政策與措施。

由於中央沒有專職機構來規劃政府資訊應用方向、標準，或編列合理資訊應用預算，造成民間承攬政府資訊服務之產業往往面臨預算不足、需求經常變更而無所適是。由於政府是國家資訊服務產業最大客戶，因此上述現象也是造成我國資訊服務產業難以振興之主要因素。

我們認為在立法院審議中的資訊長相關草案，將可協助台灣政府建立與上述鄰國類似之政府資訊專職組織。因此建議台灣政府能盡快通過該法案之審議，設立中央層級之專職資訊長，發揮中央跨部會影響力，充分運用資通訊科技來協助政府加速實現5+2政策，帶動我國資訊服務產業能量。同時，我們也建議政府能參照已開發先進國家，重視資訊科技，導引各部會編列足夠之資訊人力與預算，加速台灣政府本身之數位轉型。

建議四：建立政府資料監管制度有效運用雲端資源

廣泛使用雲端運算對台灣政府可以實現更大的計算能力， 更高的可用性和資料恢復備援能力，以及可透過較低的成本，達到更高安全性。最重要的是可以透過雲端服務之可擴張(scalable)、與隨選(on-demand) 特性，幫助政府組織聚焦在關鍵優先公共事務。除了節約成本之外，雲端服務將創造就業機會，實現公民社會運用資訊之普遍性，並且增加政府服務的靈活與敏捷性。目前推動之”政府公開資料”政策，更可以透過公有雲來吸引國際開發人員利用台灣政府公開資料，研發新服務與商業模式。

在導入雲端運算過程中，政府機敏資料與國家主權等議題都經常被提出討論與關注。我們發現唯有透過充分落實資料分級與資料監督管理政策，訂定哪些政府資料適合或不適合使用雲端服務，並導入安全機制與相關科技，方能確保政府資料安全。

資料分級框架建議定義了五種不同等級的政府資料，其中每一個等級都賦與具體的技術保障和存取方案建議 。如同下列框架，政府可考慮將「等級一」的高機敏性資料放置於本地機房；但是也指出其他等級之政府資料，在適度安全控管與雲端技術設定下，將適合放置公有雲端空間，享受雲端服務所帶來的各種好處。

分級建議	定義	舉例	資訊量	適合的技術保障
等級一	攸關國家和經濟安全的重要資訊	諸如國防資訊、智慧財產或重要的經濟數據	非常少數	儲存在政府雲，或本地機房
等級二	需管制的資訊，且嚴格限制少數特定政府內部人員存取	被限制存取之敏感資料， 如執法調查資訊、敏感個人認證資訊 (PII) 和被限制的健康資訊	大量的	
	儲存在政府雲，或具強大安全管控機制的公有雲			
等級三	允許政府單位內部分享的資訊(原則不對外公開或分享)	政府日常資訊，諸如較不敏感的個資。如駕照申請、例常的政府承包資訊或經濟資料等	巨量的	適合存放在具適當安全管控機制的公有雲
等級四	無資料原始來源資訊且只被允許檢視的資訊	匿名或去敏感化並可做為公眾分析之政府公開資料。例如去識別化的大眾健康或稅務資料。	巨量的	適合存放公有雲；對原始資料來源需要有強大的安全管控機制，而不含個資或匿名的資料只需基本安全管控
等級五	沒有限制且可公開取得或使用的資訊	適合供大眾使用的資訊，如政府發行的公車時刻表或天氣資訊等	非常巨量	適合存放公有雲

透過採用資料分級和管理框架，並從安全和技術角度評估資料儲存策略，將能夠得到雲端運算之最大效益。根據需求或特性進行資料分級，並充分了解滿足這些需求或特性的技術解決方案，將有助於政府迅速過渡到雲端服務之全新資料儲存形式。

當前國際趨勢建議政府應根據政府部門或機關需求，制定合適的政策和做法：包括強調對政府最敏感的國家安全相關的訊息進行特殊處理，或不具洩漏或竊取風險之公開資訊。更建議立法者應參照政府機關或部門早已建立之政府資料維護專業知識能力，訂定資料分級與制定相對應管理辦法。使所制定的法規，能配合實務，形成明確、可行、全面的雲端政策，在確保最敏感的國家安全相關的訊息特殊保護的同時，有效管理政府資料，充分利用雲端計算的好處，協助節省支出、增加政府效率，加速帶動經濟成長，推動創新與社會融合。

雖然我們已於2016年提出呼籲建立政府資料監管制度有效運用雲端資源建議，但並未看到台灣政府具體回應。有鑑於各國政府全力投入蓬勃發展雲端科技之際，商會於今年再度提出，期望台灣政府能盡速建立政府資料分級監管制度，在確保資訊安全的同時，加速導入雲端科技，創造政府與產業雙贏。

建議五：明確界定並表列「資通安全管理法」關鍵基礎設施之範圍

行政院於2017年4月27日通過「資通安全管理法」草案，並送交立法院審查。該法案同時要求公務機構及「非公務機關」遵照行政機關所訂定及強制執行的資通安全規範。然而，該法案對於何種類型「非公務機關」適用這些要求在定義上極為不明。草案第二條將「非公務機關」定義為關鍵基礎設施提供者、公營事業及政府捐助之 財團法人。然而，根據上開條文，「關鍵基礎設施」是指實體或虛擬資產、系統或網路，其功能一旦停止運作或效能降低，對國家安全、社會公共利益、國民生活或經濟活動有重大影響之虞，並經行政院公告者。

如此廣泛的定義有可能完全授權行政部門逕自將各種私人企業置於其認為符合「資通安全管理法」草案的要求範圍之中。草案中援引其他司法管轄區的法律文書為依據，其中包括歐盟「網路與資訊系統安全指令」（下簡稱NIS指令）及日本「網路安全基本法」，除其他事項外，台灣法案進而授權政府的行政單位在不具搜索票的情況下對非公務機關進行現場行政檢查。其中，至關重要的是，該法案明確指出非公務機關不得拒絕中央及地方政府官員進入非公務機關內檢查。然而，其援引之前揭NIS指令在序言中明確指出，政府對於資訊安全之管理應採取輕度及事後監理模式，並在附件二針對「必要服務提供者」（註：關鍵基礎設施提供者在歐盟的正式名稱）做出了相對明確的定義; 同時，日本「網路安全基本法」並未授權政府的行政單位得針對非公務機關進行行政檢查，也並未針對「非公務機關」做出實質上的強制要求。日本「網路安全基本法」規定政府必須在促進網路安全政策的同時，充分考量如何避免不當侵犯人民權利。

商會科技委員會在此呼籲，行政院需以清單形式明確界定並

列出關鍵基礎設施的範圍，確保外商在台權益不因此遭到侵害，減低業界對「資通安全管理法」草案的疑慮，確保新法之法規遵循能有明確的遵循原則。

電信及媒體委員會

本委員會感謝國家通訊傳播委員會(NCC)與交通部對台灣電信及媒體產產業發展對於4G頻寬的釋出並建構數位匯流的產業環境之支持。但是因應網路成長而所相對改變的媒體環境，我們鼓勵台灣政府能夠解除對於電信與媒體產業費率的管制而帶來產業的競爭與進步。此外，如下列議題所述，針對網路侵權，我們同時建議能夠修改著作權法進而有效地保護智慧財產權。

建議一: 修改著作權法，採行境外侵權網站封鎖措施

數位科技的快速發展對受智慧財產權保護的著作的重製與傳輸方式產生重大衝擊，結果導致過去幾年間，台灣網際網路的版權侵權案件日益普遍，尤其是台灣境外經營與主機代管網站的侵權行為(以下稱之為目標網站」)。

如果侵權網站位於台灣境內，著作權人較容易透過刑事及/或民事程序尋求法律救濟。以刑事案件為例，檢察機關可以輕易識別侵權者，同時對其提起公訴，權利人也可以透過民事程序尋求救濟，首先提起保全處分，停止侵權行為，然後向目標網站的負責人提起訴訟並要求賠償。然而，當目標網站設置於境外時，網際網路的匿名特性不但使得檢察官無法識別侵權者，更重要的是，檢察官根本無權於台灣境外進行調查。

由於權利人同樣也無法識別境外目標網站的負責人，因此民事救濟途徑也不可行，爰此，權利人無法依據民事訴訟法規定，於向法院提出起訴狀時載明被告姓名、被告個人資料、以及向被告送達文件。

此外，由於終局判決前的訴訟程序耗時冗長，假如權利人意圖藉由提起保全處分，於終局判決前阻止目標網站繼續侵權行為，法院通常命權利人進行提存，作為法院強制執行之擔保，由於提存的金額通常很高，且權利人必須勝訴或經被告同意方得領回，造成權利人很高的財政負擔，

為解決前述情況，我們建議著作權法新增第84-1條，規定如權利人無法辨識目標網站的負責人而欲提出保全處分時，僅須於申請書中載明侵權網站的IP地址及/或網域名稱即足。除此之外，假如權利人向法院保證從未授權該網站使用其著作，應視為權利人業已履行釋明之義務，而應免除供法院強制執行擔保之義務。如果目標網站有電子郵件地址，則相關通知及書狀郵寄至該電子郵件地址應視為已經合法送達目標網站。但如目標網站沒有電子郵件地址，所有文件應按照「民事訴訟法」第149條至第153條進行公示送達，即刊登於法院公報。

建議二: 有線電視之基本頻道不宜進行分組付費

國家通訊傳播委員會(NCC) 為增加消費者視訊多元選擇權，而於102年7月3日宣布擬實施有線電視基本頻道分組付費政策，惟分組付費的費率規劃，除應有明確法令基礎外，並應由市場運作機制予以決定，爰說明如下：

一、有線電視分組付費的規劃權限，目前仍無明確法律授權：

(一)104年12月18日立法院三讀通過；105年1月6日公布之有線廣播電視法第44條規定：「系統經營者應於每年8月1日起1個月內向直轄市、縣(市)政府申報收視費用，由直轄市、縣(市)政府依中央主管機關所訂收費標準，核准後公告之。直轄市、縣(市)政府未設費率委員會，應由中央主管機關行使之。」該條文並未授與國家通訊傳播委員會對於有線電視分組付費的規劃有介入與管制之權限，是以，在法律未明確授權之前，國家通訊傳播委員會對於有線電視系統經營者之基本頻道及其類型、收費項目、費率、審查程序及其他應遵行事項，不宜逕予介入相關規劃作業。

(二)誠如前項所述，在欠缺法律明確授權的前提下，主管機關本不應進行相關管制規劃措置，惟國家通訊傳播委員會仍於2016年國家通訊傳播委員會仍提出「有線電視分組付費辦法規劃」之五項分組付費方案，國家通訊傳播委員雖舉辦多次公聽會並邀集地方政府、有線電視系統業者及頻道業者等提供意見，然因業者據以提供意見之基礎（即分組付費方案內容）並未就各方案可能造成收視戶及相關產業(包括有線電視系統業者、頻道業者及本土節目製作產業及其上下游相關影視工作業者)的衝擊及影響進行評估與分析，以頻道業者為例，其主要收入來源為頻道授權收入及廣告收入，對現行基本頻道費率結構的改變，將嚴重影響營業收入，總公司將重新考量其於當地的投資策略並停止本土節目製作投資。基於此項考量，國家通訊傳播委員會對於分組付費方案進行決策前，應先做成相關產業的衝擊及影響評估與分析報告。

(三)國家通訊傳播委員會期盼藉由分組付費方案之執行以達到「…讓有線電視市場建立起嶄新的營運與訂價模式，以因應數位匯流四合一(數據、語音、視訊及行動)的發展趨勢，讓產業運作更有彈性與前景，也讓消費者享有更高品質的內容和更多元的選擇…」方向發展，然因未進行產業的衝擊及影響評估與分析報告，相關產業無法評估及了解施行後可能造成的衝擊及效果，能否實現前揭目標，仍存在相當大的疑慮與擔憂。

(四)爰此建議，在法制作業尚未完備及行政機關為尚未提出完整的產業衝擊分析評估報告之前，關於有線電視分組付費的規劃，均應暫緩。

二、政府不宜介入費率決定，所有影音系統/平台的費率規劃，應由經營者依其營收自行決定：

(一)隨著新興影音服務提供者的出現與發展(如Internet, IPTV, APP, Over-the-Top service 等)，其中OTT服務(Over-the-Top service) 更提供了多元的收視選擇與收視習慣(其中包括收費的多樣性與彈性)，已與有線電視業者形成高度競爭的狀態，然主管機關並未將OTT納入相關規範與管制，卻針對本應由企業依其營運規劃及營收予以決定之費率課題，擬由政府予以規範，已造成影音服務市場的不公平競爭。

(二)要達到多平台共生共榮的健全市場機制，必須架構在公平競爭的基礎上，主管機關單就有線電視系統費率規劃的介入，即可能破壞了公平競爭的基礎，再者，隨著有線電視系統的數位化進程及科技的運用，有線電視系統的服務模式業已晉升至不同服務模組及服務方式，若單純著眼於類比訊號頻道服務的思維，而擬以法規規範未來新型態的收視模式，則不見其規範的必要性與合理性。

(三)有線電視基本頻道的分組規範是不必要的，基本頻道為有線電視數位化下的一項產品及服務項目，有線電視系統業者為了與其它新平台、新媒體競爭，必定規劃與提供其他產品及服務項目(如特定頻道+APP、或SVOD + OTT)，而有線電視系統亦僅為目前多媒體影音服務的平台樣態之一，現已與IPTV、APP及OTT業者共

同提供消費者多元的收視服務，爰此在符合公平交易法令的前提下，主管機關應將費率決定權交由有線電視系統業者、OTT業者、IPTV業者及其它新型態平台業者，由市場機制決定其應有合理費率價格，不應予以規範。

建議三: 解除有線電視費率管制

台灣現行有線電視費率係1990年時，有線電視於各經營區主導視訊服務市場時所引進。費率管制的合理性在於消費者對於視訊服務沒有其他選擇性，因此有必要對消費者權益加以保護。然而多年來，市場業已產生巨大變化，出現多種視訊服務如有線電視、IPTV、OTT等，提供消費者多重選擇，且有線電視服務也已不再是市場主導者。屆至2016年底，台灣視訊服務市場共有超過133萬IPTV訂戶，約佔520萬有線電視訂戶20%，以及數量未知的OTT訂戶。於美國，如果視訊服務提供者之間存在有效的競爭，由於消費者可以在各種類型的服務中進行選擇，即無須進行費率管制。基於相同的考量，NCC應重新考慮費率管制的必要性，如果台灣視訊服務提供者之間存在有效競爭，則應解除費率管制規定。

1990年將有線電視費率訂為每戶收費上限新台幣600元，即便自1990年以來消費物價指數持續上漲，但有線電視費率上限卻從未進行調整，此一不合理的費率上限嚴重阻礙有線電視、衛星頻道供應者和內容提供商的發展。爰此，我們強烈建議，NCC應完全免除或提高費率上限，以反映過去27年來物價指數的上漲。

此外，現行有線電視之收費，係以戶計費，而非以數位機上盒計費，此種收費結構對收入較低的家戶極為不公平，蓋一個擁有10台電視的富裕家庭，與一個只有一台電視機的貧困家庭收取相同的費用，形成貧困家庭補貼富有家庭有線電視費用的不公平現象。2018年底台灣有線電視普及率即將達到100%，有線電視經營者商可輕易將收費方式由以戶計費改為以機計費。為了社會公平，我們相信NCC應該修改有線電視費率規定，許可有線電視經營者以機計費，取代以往以戶計費的收費方式。

交通運輸委員會

隨著執政內閣進入第二年，本委員會期待與本會產業最密切的交通部與財政部，其政策可以持續進行。同時，我們也密切關注由行政院公告的新版行政程序法，特別是針對國際貿易產生衝擊的新法規和立法的60天預告期。由於大部分法案都具有長遠影響，本會將積極審視各不同部會遵守此政策的程度，並視其為當前最重要的工作之一。

以下是我們所關切的議題與建議事項：

建議一: 建立有效的單一溝通平台以促進海關通關法規透明與效率。

在2016年本委員會的白皮書中，我們要求建立通關單位單一溝通平台，用以促進通關透明化，增進通關效率。雖然行政院為了增進人民對於法規草案的公告與意見表達而設計了新的預告制度，然而根據我們這幾個月的經驗顯示，此建議在去年中並未被明確有效的正視。這同時也反應了60天預告制度的必要性，更顯示了增加預告期間將使此缺點獲得改善。

除此之外，在去年立法院通過的關稅法修正案中規定，將更嚴格控管次數頻繁的進口人(請見如下建議2.1)，但在修正案送入立法院前僅有相當短的機會能讓相關商業團體得以就如何在不損及貿易便捷與世界海關組織所倡議的自由貿易精神下實行與關務署進行意見交換。 而60天預告期內也沒有任何公聽會舉行，僅有與少數被選擇的公協會受邀參加會議。但事實是一旦法案執行後，各公司行號將為了遵守此規定而產生諸多困難，其中更包含了顯著的成本增加。

我們強烈要求海關在未來進行法令與法規修正時，都應於送交部會前遵守行政程序法的規定，收集利益相關者的意見與建議。正因為關務署對於貿易便捷與邊境管理的重要性，建立並維護與利益相關者的良性溝通更是至關重要。

建議二: 確保電子商務貨物合理的海關通關程序。

2.1 電子商務的稅收: 立法院最近通過了對於低價免稅貨物的相關法令，如對電子商務的經常交易。

- 修正的關稅法中，取消對於被認定為經常性進口人之低價免稅貨物的免稅額，經常性進口人的定義為六個月內進口六次。
- 修改營業稅法中，降低進口貨物的免稅額，由新台幣三千元降至新台幣二千元，並由電子商務平台收取稅金。

兩項法令的執行尚待相關海關規定修正，這些規定正是決定收稅與通關的具體措施。我們強烈要求相關單位在執行上述修正時遵守下列原則

- 確保快遞與郵包享有相同待遇。
- 針對低價免稅貨物被課徵營業稅時，必須符合世界海關組織與世界貿易組織的原則免收關稅。
- 海關應該維持低價貨物的簡易清關系統，此低價貨物指的是低價免稅與低價應稅貨物。

2.2 整體化的國家電商平台應同時兼顧市場、物流與支付服務。

海關正帶領發展一個不同的電子商務貨物清關體系，預期可以對海關與相關業者帶來便利。這個清關體系發展的同時，我們督促主管機關遵守下列原則:

- 系統應需支援公開性標準與自由競爭，並支援提供進出口人和物流供應業者使用之簡易登記功能。目前僅限在台登記有案之公司行號才能使用相關系統。
- 政府應持續提倡貿易便捷，特別是企業對企業間的交易，這正是台灣經濟的主要推手。

我們的委員會了解到隨著跨境電子商務的發展而需面臨的挑戰已浮現。我們致力於與相關單位合作，面對與日俱增的發展情況，提出並分享可解決稅收困難的最佳做法和相關風險的解決方案，並協助教育這些新興的電子商務業者。與此同時，我們敦促政府繼續努力，為目前正受到複雜的程序而困擾的企業客戶簡化相關作業。

建議三: 取消空運與快遞貨棧進出口區隔規定。

台灣法規規定空運與快遞貨棧需要實體區隔來區分進出口通關作業，這項限制降低了業者的效率與倉庫空間的最佳化運用。

本委員會要求修改此一規定，允許倉棧業者得以在沒有明顯區隔進出口作業的規定下自行管理作業。相對的，海關得透過資訊系統與抽查等方式進行必要的管理，使得倉棧業者得以增加空間的利用，符合現代倉棧的管理模式。目前沒有其他已開發國家對倉棧實行像台灣海關現行的類似限制。

建議四: 取消汽車運輸業停車場設置規定。

根據公路法，汽車運輸業審核細則及其附件汽車運輸業停車場設置規定，任何汽車運輸業，包含租車業與快遞業等等，需檢附車輛總數八分之一的停車位租用證明。正因為在市區難以取得足夠合法的停車空間，因此准許汽車運輸業在營運地市區外租用場地。

在此政策之下，許多公司被迫租用與提供從未使用的外地停車場證明，部份甚至不清楚其所在地點。這個制度不但沒有達到改善城市停車問題的目標，而且造成經營者不需要的費用支出。此作法僅對被授權停車場的提供者與中間商有利。

本委員會敦促政府修改公路法與相關法規去除此一繁重的限制，解決這個問題將能有效的改善快遞業，租車公司和其他擁有大型車隊經營者的投資環境。

旅遊與觀光委員會

觀光局持續與本委員會會員保持密切聯繫，對於我們關心的議題及我們對台灣觀光旅遊產業提出的建議也高度關注，我們謹此對觀光局表示誠摯謝意。我們很高興得知台灣政府近日提出「Tourism 2020 — 台灣永續觀光發展策略」，藉由台灣獨有的在地觀光資源，進一步提升台灣觀光產業的國際競爭力。本委員會願意與觀光局緊密合作，就此觀光政策的落實提供協助。

本委員會今年提出下列的三項建議，皆與台灣觀光產業的發展息息相關。此外，我們認為，如果政府希望積極打造台灣成為亞洲的重要觀光勝地，絕對有必要提高觀光產業主管機關的位階，並大幅增加推廣觀光旅遊產業的行政資源。我們了解，行政院組織改造計畫中的「交通及建設部」組織法草案，目前仍在立法院審議中，我們建請行政院及立法院認真思考提高觀光局位階為中央二級機關的可行性。

本委員會期待與台灣觀光局及其他相關政府單位持續保持密切聯繫，共同為提升台灣觀光產業而努力。

建議一: 將國際慣例應用在本地飯店取消訂房時之政策

觀光局近期針對「觀光旅館業與旅館業及民宿個別旅客直接訂房定型化契約應記載及不得記載事項」修正了部分條文，其目的係為了保障旅客在取消訂房時之權益。然而因國際飯店、本地飯店及民宿的經營型態不同，若皆遵循相同條例時會衍生許多契約適用上的問題。

依循全球慣例，國際飯店一般不收取訂金，若逾預定入住前24小時後取消訂房才會收取一晚房價，其相較於本地飯店和民宿，國際飯店之取消訂房措施對顧客較有利。惟國際飯店在淡季推行早鳥或促銷方案時，因價格較低才會要求旅客預付全額訂金且不得退款。若客人購買早鳥優惠方案後取消且要求退款，則會對支付一般全額價格之客人不公平，同時讓跨國飯店無法順利執行他們的全球訂價策略。

航空公司在推行特價機票時會附加某些限制，例如:不得退票、改期或取消須收取額外費用，只要消費者在訂購機票時明白此條款，在退票或改期時即須遵守。產品價格之訂立係依循市場供需機制。

國際飯店的銷售慣例亦同航空公司。國際飯店在推行特價之商品時也同時推行一般價格(沒有特殊限制)之商品，消費者在面對不同商品時有權利依據商品之價格和條件選擇其最合適的產品。國際連鎖飯店之商品透過網路銷售於全球市場，若僅台灣飯店為了本地客人而不依循網站上所訂立之取消政策，將對國外客人造成差異對待，並阻礙國外客人來台旅遊的意願。

客人若未依預定時間入住，基於飯店房間不可遞延性，飯店將因無法在當天再出售而發生預期收入之損失。如同機票在寒暑假之價格遠高於其餘時間，飯店房間亦依供需情形而有不同之訂價，例如：飯店在特殊時間(跨年夜或農曆新年)的房價高出平時，若逾入住前30天後才通知取消訂房，即需收取一晚房價。若依照現行定型化契約於14日以內取消方得沒收訂金，則飯店將產生預期收入之減少，因為在此特殊節日之訂房，消費者在半年或一年前即開始預訂，在特殊節日之14日前才通知取消訂房，飯店業者已不易找到客人遞補。

在歐美、日本和東南亞國家的飯店皆依循國際慣例，對於不可退款之商品，若其銷售條款已被明白表示且顧客也願意購買商品，客人取消訂房後飯店業者沒有義務退回客人已支付的訂金款項。

我們請求觀光局能考慮以下建言並進一步修正「觀光旅館業與旅館業及民宿個別旅客直接訂房定型化契約應記載及不得記載事項」部分條文

建議

1 允許在特殊條件下訂金應不得退還之方案，例如:(1)早鳥方案(2)特殊假日與節日促銷專案，早鳥方案比一般商品訂價為低但也附加某些規定。消費者在飯店業者提出的不同商品間做出選擇時，也應該了解此一商品之限制條件係伴隨者價格而來，這是國際型飯店的操作模式，我們不應對外國客人及本地客人採行差別待遇。

2. 取消將訂金供未來使用之不合理的規定。因為對選擇購買較低房價之客人讓步即產生對其他付較高房價的客人不公平。

3. 我們希望政府重新檢視定型化契約條款，制訂出合乎國際標準的方案來促進台灣觀光業的發展。政府應給予飯店業者更多與旅客自行議訂合約的彈性，讓契約條款回歸買賣雙方自由議定之原則，而非處罰與國際同步的業者。

建議二：為台灣觀光推廣進行策略再造與品牌重塑

訪台大陸觀光客自2016年起大幅降低，而且可能持續減少。為此，政府推出觀光推廣策略，將目標市場轉至日本、韓國、東南亞及南亞等地區。在考量新策略推動和目標市場，重塑台灣觀光推廣的品牌有其必要性且恰逢其時。若持續以（Heart of Asia）作為台灣的品牌標語不但過時且不切實際，因為多數的亞洲國家也同樣將自身視為亞洲的樞紐，因此必須找到更有效的方法，創造能產生共鳴且有效反映出台灣核心價值的觀光推廣訊息，傳遞至新目標市場。

台灣集現代與傳統於一身，台灣的獨特之處在於現代高效設施為觀光客帶來的舒適與便利，以及在生活各層面展現的友善態度與文化傳統。台灣是具有獨特多樣性的觀光勝地，蘊含閩南、客家、原住民、中國及日本等文化。台灣的魅力在於美麗的山巒、海岸及其他自然景色，還有親切友善的居民、美味小吃、在亞洲數一數二動物園內飼養的貓熊、具歷史意義的鐵路、絕佳的自行車道與登山步道、令人驚豔的潛水環境、雄偉的新舊廟宇，以及全球最豐富的中國古物收藏。台北捷運、高鐵、獨特的觀光列車和巴士及大規模的高速公路網都是絕佳的交通選擇，也讓觀光變得輕鬆又方便。最棒的是，台灣沒有一些其他亞洲觀光勝地所面臨的街頭犯罪、宗教關係緊張及政局不穩定等問題。

如何將台灣的強項與特色轉化為重要的觀光推廣訊息與標語是項挑戰。此項任務需交付給徹底了解台灣與其魅力的品牌專家，藉由他們的專業能力與經驗，向全球展現台灣作為令人嚮往之觀光勝地的全新品牌形象。

民眾普遍認為目前的觀光品牌了無新意、缺乏想像力又很無趣，因此，我們建議在規劃新的品牌宣傳活動時，可將以下幾點納入考量：

1. 使用大膽、正向且具前瞻性的標語來傳達充滿活力又振奮人心的訊息。像是--台灣：感受前所未有的美好。

2. 邀請國際級巨星為品牌大使。儘管我們對知名的台灣明星充滿敬意，但我們需要擁有國際級的影響力與地位的大使進行國際形象的推動。

3. 運用享譽全球的流行音樂作為宣傳活動的背景歌曲。例如：Justin Timberlake的【愛情從未如此美好】(Love Never Felt So Good)。
4. 進行大型宣傳活動，以在2020年將觀光產業對國內生產毛額(GDP)的直接與間接貢獻從目前的3.5%提升至7%，並將觀光人數從2016年的1000萬人提升至2020年的1300萬人。

建議三：讓台灣敞開大門歡迎自由行旅客

旅遊與觀光對於台灣經濟的重要性無庸置疑，但事實上還能貢獻更多。除了之前所提及的國內生產總值與旅客人數外，光是觀光旅遊這一部分，就直接及間接提供了66.95萬個工作機會，相當於台灣總就業人口的5.9%。世界觀光旅遊委員會（WTTC）預估在2017年，這數字還會再上升3.8%，並在2027年時達到81.4萬個工作機會，也就是台灣總就業人口的7.4%。此外WTTC也預估，到2027年時，來台外國遊客的年度消費支出總額，將從目前的新台幣5420億（約美金178億），提高到超過新台幣7220億（約美金237億）。然而，台灣在WTTC各項報告中，排名遠低於鄰近其他國家，例如在全球185個國家地區的未來長期成長預測中，台灣只排名第173位，顯示仍有相當大的成長空間。因此，改善並加強旅遊觀光，將對台灣經濟各方面皆有所幫助。

過去來台觀光的旅客以團客為主。當然，團客操作有其優勢（包括可預測的需求、旅客素質平均化、規律的模式等），但也明顯存在一些缺點。例如說，國內還有太多地方景點是團客不會造訪的，因此，變成只有極少部分的企業（例如大型飯店等）可以真正從中獲益。另外就是目標旅客過度單一化，當國內旅遊太過依賴中國團客時，若遇到海峽兩岸關係惡化，台灣的觀光旅遊業就會受到嚴重影響與傷害。

在這種情況下，外國自由行散客就顯得更加重要。台灣若能在這方面加強努力，讓更多外國自由行散客造訪，就能進一步與國際旅遊市場競爭。然而，最重要的，還是要體認到，滿足自由行客人的需求，遠比滿足團客困難得多，因為自由行散客無論是條件型態、目的與需要，都更加多樣化。

對於吸引來台自由行散客，有些重要議題應加注意：

- **網際網路**：自由行散客比團客更高度依賴網路，然而在台灣，要買張SIM卡及手機上網流量包，以便能夠走到哪連到哪，可能沒那麼容易。
- **須能夠輕鬆使用國際與新型態金融服務。**
- **語言障礙**：許多外國自由行散客並不懂中文，但在台灣，他們會接觸到的當地人也不會講其他語言，在溝通上有其困難。
- **離開台北市區後，交通及行程規劃上，難度就提高許多。**
- 缺乏足夠資訊：觀光當局往往依靠在旅展或是觀光局、旅遊中心發放觀光手冊及優惠券來行銷，但是大部分的自由行散客，並不見得會特地去參加旅展等活動。
- **在許多方面及領域，台灣仍欠缺國際典範實務經驗。**

因此，我們建議以下幾個步驟來解決這些問題：

1. 依照國際上典範實務經驗，提供包括不可退款的優惠房價、私人房宅的短租、培訓世界一流專業旅遊人員服務等，讓旅客可以依照本身需求，擁有更多自由選擇。
2. 提供方便且便宜的SIM卡與上網流量包，尤其是在機場，讓外國旅客可以容易購買使用行動上網。
3. 確保機場、計程車及其他大眾交通工具均可使用信用卡及其他新型態無現金付款方式。
4. 更廣泛推廣英語教學，讓更多台灣人可以使用雙語溝通。此外，公共場所及交通運輸服務，都應清楚設置中英文指示，並且可仿照韓國做法，提供電話免費翻譯服務。
5. 讓自由行旅客能更方便地前往台灣的美麗景點，尤其像是花蓮/太魯閣、日月潭、墾丁等知名觀光景點。
6. 讓傳統的平面行銷重心逐漸轉移到網路行銷上，觀光當局更應與網路業者，尤其是國際網路旅行社等，建立起良好的合作關係，以協助將台灣各地與各式住宿讓更多旅客認識與選擇，從而吸引更多來自不同國家的旅客造訪。

這當中有一些步驟是可以快速達成的，其他部分則需要更多時間。但是，台灣若想提高觀光收入，增加國際能見度，就應該要把整個格局做大，而所帶來的利益，絕對值得認真投資的。