

***Executive Summary:  
An Assessment and Analysis of Taiwan's Private Equity Environment***

***US-Taiwan Business Council Report  
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Signs are piling up by the day of a worsening global economic slowdown, exacerbated and deepened by the COVID-19 pandemic, the U.S.-China trade confrontation, and complications from Brexit. Yet private equity companies are still eyeing opportunities in Asia and emerging markets in the coming years, in part for diversification and in part as they seek new opportunities to offset high pricing in developed markets.

Taiwan is not currently a number one target – or even a top ten target - for international private equity investments in Asia. The last peak in international private equity activity in Taiwan was over a decade ago. Since its heyday in 2006-2008, PE activity in Taiwan has been inconsistent. Funding commitment died off as sponsors ran up against political headwinds and irregular execution of the island's regulatory review process, particularly when trying to exit deals.

However, the opportune time has now come for Taiwan to embrace foreign private equity as a partner to foster growth in its financial markets, its economy, and - as importantly - its international relationships. Competencies that international PE investment firms can bring to Taiwan include access to additional capital, management expertise, better understanding of international best practices, as well as regional and global connections that could help Taiwan companies and industries grow and expand.

Taiwan has many companies with world-class technology and processes that would benefit from the capacity that international PE firms bring. Taiwan is also looking for capital to support its plans to build a connected, green, sustainable, and self-sufficient economy. From offshore wind technology to indigenously developed defense articles, from artificial intelligence to biotechnology and medical equipment, the list of sectors in Taiwan ready to welcome private equity capital and expertise is ever expanding.

Heightened cross-Strait tensions and global challenges also offer an additional incentive for Taiwan to diversify its sources of fundraising. Against a backdrop of political, economic, and trade tensions that introduce uncertainty about established supply chains and flows of goods, Taiwan should look to private equity as a valuable and unexpected ally.

Nevertheless, many of the problems that stunted the Taiwan PE industry in the last decade remain valid today, such as Taiwan's long-standing lack of transparency and predictability in its investment reviews. Taiwan still maintains a "negative list" of industries that are banned or restricted from investment by foreign nationals and overseas Chinese. Foreign PE firms and their advocates point to consistently complicated reviews, a process that is unpredictable and lengthy, and that is regularly hijacked by public opinion despite their business merits or any approvals already issued

Legacy regulations not reflecting current realities - and a lack of multi-layered, deep capital markets to cover the modern business needs of alternative asset investors - all have made Taiwan the road less traveled for PE heavyweights. Foreign PE investors have also identified significant issues surrounding taxation related to making investments in Taiwan, one involving acquisition costs and amortization, and the other involving financing costs and thin-cap rules.

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Recent developments in the PE sector are encouraging, however. The Taiwan government is trying to meet modern business requirements and is attempting to bring more certainty and clarity to the investment application and review processes for all corporate stakeholders, including to alternative asset investors in the PE space.

Amendments to the Mergers and Acquisitions Act, which took effect near the start of 2016, bring flexibility and more certainty for involved stakeholders on both sides of an M&A transaction. In addition, a series of loosening measures initiated by the Financial Supervisory Commission (FSC) in 2017 would allow Taiwan's insurance firms, commercial banks, securities companies, and investment trusts to set up and/or invest in onshore local private equity funds. The rules allow insurance companies to invest in national-level investment companies, as well as in subsidiaries of investment trusts set up for PE investments.

In November 2018, Taiwan also made a substantial overhaul to the Company Act, which legal experts say should create better conditions for entrepreneurship and innovation by providing increased flexibility in equity fundraising and in shareholder arrangements, improve regulations for foreign companies, and increase transparency.

Taiwan has certainly seen its share of successful PE deals even in the last decade - in less headline-making industries, with smaller funding sizes, and with more local participants. But if Taiwan wants to compete as a market against its regional peers, attracting top-tier capital and gaining first-class international know-how, it is the deals that have fallen apart that provide insights for future progress. The full policy paper provides a survey of Taiwan's past experience in PE deals, highlights where things can go wrong in the deal-review process, explores the lessons learned, and offers recommendations to encourage a broadening and strengthening of Taiwan's ties to international private equity markets.

The biggest hurdle for any investor looking at Taiwan investment targets appears to be overcoming the paranoia over Chinese capital, and how it may potentially gain control over Taiwan companies. The case studies clearly show that any hint of Chinese influence or money when bidding for an asset in Taiwan may lead to limbo and delays. This anti-China sentiment could potentially complicate any PE deal-making ahead, and yet re-building ties with foreign PE firms can strengthen Taiwan's links with global capital and know-how, and can act as one counter to the influence of Chinese capital.

Taiwan's recent successes at reshoring manufacturing during the U.S.-China trade confrontation, along with its exemplary response to the challenges posed by the COVID-19 outbreak, have well positioned Taiwan to grow as an investment destination. An unprecedented opportunity has arrived for Taiwan to build ties with private equity firms, to re-invigorate the island's economy, and to raise its international standing as the go-to investment partner.

Improving the PE investment environment in Taiwan will likely require patient dialogue that could help counteract the vocal minority in Taiwan that argues against PE investments because of a perception that it encourages the foreign takeover of a local company. It could also help sway skeptics unfamiliar with the savvy use of debt as leverage to re-grow a company, and help assuage opponents wanting their say in the name of democracy and fairness.

The US-Taiwan Business Council offers the following policy recommendations to address the gaps that have kept private equity from thriving in Taiwan.

- Provide clearly defined regulations for private equity. Doing so - along with detailing exactly how the investment review process will be conducted and how long it might take - will reduce the opportunity cost for stakeholders, and would help formulate appropriate responses in an emotional public debate on the merits of PE cases.

- Educate stakeholders - not only PE firms, local industry representatives, and Taiwan government regulators, but also local shareholders and domestic civil society – in a manner that would allow them to more broadly understand how PE can add value to the Taiwan economy.
- Build a broad private equity community consisting of local companies, bankers, lawyers, shareholders, and regulators with the experience of seeing various forms of private equity deals through from entry to exit. Continuing to make good investments beget good human talent, and good human talent begets good investments in a virtuous cycle. A more robust PE ecosystem in Taiwan would also open greater opportunities for investment into PE funds by Taiwan's public pension funds.
- Relax the zero-tolerance rule for media firms. Incidental minority shareholding by Taiwan government funds has placed restrictions on media properties, and some PE companies have had investment exit opportunities failing to materialize because of it. The Taiwan government should implement an easing of the zero-tolerance rule to add more flexibility to the process.
- Build and develop Taiwan's financial and capital markets so that they are deeper and multi-layered rather than a smaller, local market where exits are limited. More efficient capital markets could also allay public concern about market performance and prestige when the deal entails de-listing from the local bourse.
- Improve transparency and make reviews of foreign investments more predictable, including developing a clearly marked separate track review for Chinese capital. Regulations that apply to Chinese capital seeking to invest in Taiwan should not be applied to foreign nationals making investments in Taiwan. Yet as long as the ultimate source of funding is from China, such investment will be required to be reviewed on a separate track. Understanding and transparency by PE funds regarding their deals, and avoiding Chinese funds for deals specifically targeting Taiwan assets, will help shape positive outcomes.

## 執行摘要

新冠肺炎（COVID-19）大流行、美中貿易對抗以及英國脫歐帶來的複雜情勢加劇也加深了全球經濟放緩惡化的局面，相關跡象日益增多。雖然如此，私募股權（private equity，PE）公司仍然密切注意亞洲和新興市場未來幾年的商機，有些是為了多角化經營，有些旨在尋求抵銷成熟市場價格高漲的新契機。

台灣目前並非亞洲國際私募股權投資的首要目標，甚至未入前十大目標。台灣國際私募股權業務最後一次高峰在十多年前。2006 - 2008年全盛期後，台灣的私募股權業務始終時好時壞。贊助方遭遇政治阻力，島內監管審查流程的執行又無規律可循，尤其是在試圖退出交易時，供資承諾因此相繼消散。

雖然如此，如今台灣已經迎來黃金機遇，可以歡迎外國私募股權作為合作夥伴，進而提升其金融市場、經濟及其同等重要的國際關係。國際私募股權投資公司可為台灣帶來諸多影響，包括取得額外資本、管理專業知識、清楚瞭解國際最佳實踐，以及有助於台灣企業和產業成長與擴張的區域和全球連結。

台灣諸多擁有世界級技術及流程的公司將可得益於國際私募股權公司帶來的產能。此外，為了支援國家建立一個互聯、環保、永續且自給自足的經濟計畫，台灣也正在尋求資本。從海上風電技術乃至本土開發的國防產品，從人工智慧乃至生物技術和醫療設備，已做好準備歡迎私募股權資本和專業知識的台灣產業名單正不斷擴大中。

兩岸緊張局勢的升高和全球性挑戰也為台灣提供了籌資來源多樣化的額外誘因。在政治、經濟和貿易緊張導致現有供應鏈和商品流動出現不確定性的背景下，台灣應將私募股權視為一個意想不到的寶貴盟友。

然而，過去十年來，阻礙台灣私募股權產業的許多問題至今依然存在，例如，台灣長期以來在投資審查中缺乏透明度及可預測性。台灣仍然留有「黑名單」，禁止或限制外國人和海外華人投資。外國私募股權公司及其擁護者指出向來複雜的審查工作，過程難以預測且冗長，而且即使具有商業價值或已獲批准，卻還是經常遭到公眾輿論綁架。

傳統法規並未反映出當前的實際情況（缺乏多層次、深度資本市場來滿足另類資產投資者的現代商業需求），凡此總統無不導致私募股權重量級公司較少取道台灣這條路。此外，外國私募股權投資者也找出了攸關在台投資的課稅重要問題，其一涉及收購成本和攤銷，其二涉及融資成本和「資本弱化」（thin-cap）的規定。

雖然如此，私募股權產業近來的發展令人振奮。台灣政府正努力滿足現代商業的需求，並嘗試讓所有企業利益相關者（包括私募股權領域的另類資產投資者）的投資申請和審查流程變得更有把握且更明確。

2016年初，《企業併購法》修正案生效，為參與併購交易的雙方利益相關者提供靈活性和確定性。此外，金融監督管理委員會（簡稱金管會，FSC）在2017年發起一系列寬鬆措施，允許台灣的保險公司、商業銀行、證券公司和投資信託公司設立和（或）投資境內本地私募股權基金。該項規定允許保險公司投資國家級投資公司，以及為私募股權投資設立的投資信託子公司。

2018年11月，台灣對《公司法》做出了重大翻修，對此法律專家表示，增加股權融資和股東協議的靈活性、改善外國公司的監管及提高透明度，應可為創業和創新開創更好的條件。

即便在過去十年間，台灣也確實在成功的私募股權交易中佔據一席之地（頭條新聞較少出現、資金規模較小、較多本地參與者的產業）。但若台灣希望作為市場與區域同行競爭、吸引頂級資本、取得一流國際技能，那麼，正是這些已然破局的交易可為未來的進展提供深度解析。該政策全文對台灣過去在私募股權交易方面的經驗提供了概括論述，彰顯出交易審查過程中可能出錯之處，也探討了從中吸取的教訓，並提出了建議，鼓勵擴大和加強台灣與國際私募股權市場的連結。

對於任何關注台灣投資標的投資者而言，最大的障礙似乎是克服對大陸資本的偏執，及其如何獲得對台灣企業的控制權。案例研究清楚顯示，在台競購資產時，如有任何中國影響力或金錢的蛛絲馬跡，均可能導致被打入“冷宮”和遭到拖延的情況。這種反中情緒可能使得未來任何私募股權交易變得複雜，但與外國私募股權公司重新建立關係可以加強台灣與全球資本和科技的連結，並起到對抗中資影響力的作用。

近來在美中貿易對抗期間，台灣在製造業回流方面取得了成功，也對新冠肺炎疫情對台灣帶來的挑戰作出了堪稱典範的因應，使台灣成為相當適合投資的目的地。台灣迎來一個大好的機會與私募股權公司建立關係、重振台灣經濟、提升其作為投資夥伴的國際地位。

改善台灣的私募股權投資環境可能需要耐心的對話，才可能協助消弭台灣反對私募股權投資的少數聲音，因為他們認為這項投資鼓勵外資收購本地公司。此舉亦可協助說服不熟悉利用債務槓桿重振公司而持懷疑態度者，並有助於安撫那些以民主和公平之名希望擁有發言權的反對者。

為了化解致使台灣私募股權無法蓬勃發展的落差，美台商業協會提出以下政策建議。

- 為私募股權提供定義明確的法規。如此一來（以及詳細說明投資審查流程將如何進行、可能需要多長時間），將可減少利益相關者的機會成本，也有助於在激烈的公開辯論關於私募股權案例的優劣時，制定適當的對策。
- 教育利益相關者（不僅是私募股權公司、本地業界代表和台灣政府監管機構，還有本地股東和國內公民團體），此舉可讓這些人士對私募股權如何為台灣經濟增加價值有更廣泛瞭解。
- 建立一個由本地公司、銀行家、律師、股東和監管者組成的龐大私募股權社群，參與者具有進出各種私募股權交易的見識經驗。繼續進行優良的投資、培養優秀的人才，優異人才將在良性循環中造就優良投資。
- 放寬媒體公司的「零容忍」規則。台灣政府基金持有的零星少數股權限制了媒體屬性，有些私募股權公因無法達成目的而有了退出投資的機遇。台灣政府應該放寬「零容忍」的規定，提高此一流程的靈活性。



- 建立並拓展台灣金融及資本市場，使其更深入、具有更多層次，而非出口有限的小型本地市場。當一場交易涉及從本地股市交易所除牌下市時，較為精明能幹的資本市場也可減輕大眾對市場表現和聲望的擔憂。
- 提高透明度，提高外國投資審查的可預測性，包括制定一個標識明確的中資分開追蹤審查機制。適用於中資來台投資的條例，並不適用於在台投資的外國公民。只要最終資金來源是中國，此類投資將須另行追蹤審查。私募股權基金應了解自己的交易並保持透明度，避開中國基金專門針對台灣資產的交易，這將有助於正面成果的形成。