

An Assessment and Analysis of Taiwan's Private Equity Environment

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FOREWORD

Trends shaping the global private equity (PE) industry in the coming years bode well for those jurisdictions that adopt a friendly stance to this type of asset investment. A golden opportunity has therefore come for Taiwan to embrace foreign private equity as a partner to foster the growth of its financial markets, its economy, and - as importantly - its international relationships.

However, as one major PE investor in Asia said at a conference: *"In a world where countries are competing for people, ideas and capital, which countries in Asia are 'winning' the competition for private equity investment?"* The answer is not Taiwan, which didn't even crack the investor's top-ten list, ranking behind Vietnam and the Philippines as an Asian PE investment destination.

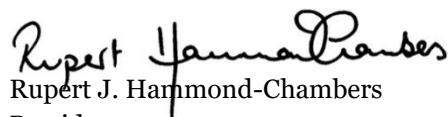
Major blue-chips in the United States, Europe, and elsewhere have had some kind of PE investors in its corporate life-cycle. Taiwan should not be the exception to this trend - especially with the abundance of private equity dry powder in Asia, along with Taiwan's own stable of small- to medium-sized firms that are ripe for taking a positive turn.

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. In addition, foreign PE funds can act as a counter to the role of Chinese capital in the Taiwan economy, while also bringing stronger corporate governance discipline to local family-controlled businesses. In this respect, the limited partnership (LP) structure that makes up a private equity investor base can be a channel for Taiwan to safely access some mainland Chinese capital, where this capital is in an LP role with no management rights. That opens up pools of investment capital for Taiwan, while also limiting the risk of political motives behind investments.

It is in Taipei's long-term economic interest to provide a clear and predictable regulatory framework and to foster domestic markets and public attitudes that would support the return of the international PE industry to Taiwan. That includes a pragmatic and granular approach to travel around the region in the wake of the COVID-19 pandemic - a challenging issue for PE firms that have their headquarters and Taiwan coverage professionals in Hong Kong, along with other industry talent in China.

Additional investments from reputable international PE funds into the Taiwan market would bring in international knowhow into the various industry sectors targeted for growth by the Taiwan government. In addition, it would help improve Taiwan's international competitiveness, as well as encourage business integration that could lead to higher efficiencies and thereby increase future profitability.

This report reviews the role that private equity has and can play in Taiwan, taking a broader economic view on the risks for Taiwan if this form of capital is inhibited from exploring the island's market.



Rupert J. Hammond-Chambers

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EXECUTIVE SUMMARY

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.

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.

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- 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.



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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，有些私募股權公私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。



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INTRODUCTION

If there was ever a time for foreign private equity to make a comeback in Taiwan, that time is now.

Uncommitted capital in the global private equity (PE) industry remains at a record high and U.S.-Taiwan relations are growing stronger. On the local level, domestic circumstances in Taiwan have also been building toward welcoming this type of alternative investments on the island.

Companies in the PE industry seek to make a profit by making purposeful investments that create additional value, rather than focusing on cost cutting or on financial engineering. Apple, Amazon, Microsoft, and Google parent Alphabet are included among the many global companies that have all welcomed and benefited from PE investments at some point in their corporate lives.

Most large international private equity firms obtain their investment capital from institutions such as insurance companies and pension funds, and such firms therefore have an obligation to return the invested capital to help meet important societal obligations. Such sources of funds typically place certain environmental, social, and governance conditions on their investments. Reputable investors are also subject to international regulations such as the U.S. *Foreign Corrupt Practices Act* and the U.K. *Bribery Act*. This means that PE firms bring with them global best practices into the markets where they invest, particularly through their network of senior advisors. Private equity firms bring the kind of transformational capital that injects new energy into companies and increase their sustainable value through better governance, business performance, and efficiency.

Taiwan has many companies with world-class technology and processes that would benefit from the capacity that international PE firms bring. That includes assisting them in scaling their businesses to compete in markets beyond North Asia. Moreover, many leading Taiwan companies are facing the prospect of their founder-leaders nearing retirement age, often with no clear successor. International PE offers a path to leadership succession that preserves value for the founding families, and ensures that these companies will continue to contribute to Taiwan's economy and prosperity.

The island is also looking for capital, and lots of it, 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 deepening global challenges also offer an additional incentive for Taiwan to diversify its sources of fundraising. Against a backdrop of trade and political tensions between the U.S. and China that introduce uncertainty about established supply chains and flows of goods, Taiwan should look to private equity as a valuable unexpected ally.

The last peak in international PE activity in Taiwan was over ten years ago, and many of the problems that stunted its development then remain valid today. This policy paper aims to take the lessons learned from Taiwan's past experience in PE deals, and to offer recommendations to encourage broadening and strengthening Taiwan's ties to international private equity markets.

DRY POWDER APLENTY: PRIVATE EQUITY TRENDS

Traditionally, private equity capital looks for established companies attractive for their value creation potential, under-valuation, and future exit upside. PE firms generally prefer acquiring a controlling interest in the target investment, though such firms are prepared to accept a minority position when the economics are compelling or where the stake comes with governance rights.

According to premier alternative asset data and intelligence firm Preqin, at the start of 2019 there were 3,750 private equity funds in the global market seeking to fundraise US\$977 billion.¹ Meanwhile, *dry powder* – stocks of uncommitted global capital reached a record high of US\$2.1 trillion in 2018. That figure surpassed the record US\$1.8 trillion recorded in 2017, and represented an increase of approximately 18% year-on-year.

Preqin estimates that of the existing global private capital dry powder, 58% is held in private equity. By fund type, 58% is held in buyout funds. In 2018, a record number of 5,106 private equity-backed buyout deals were announced, and their combined deal value of US\$456 billion was the second-highest total since the global financial crisis - albeit still below the US\$700 billion in deals recorded in 2007.² North America remains the leading locale for attracting private capital investments. Although still in third place behind Europe, Asia has begun attracting investments at an increased rate, currently accounting for almost one-fifth of global deals rather than the approximately 10% it attracted a decade ago.³

According to management consultancy Bain & Company, private equity accounted for a 17% share of the Mergers and Acquisitions (M&A) market in the Asia-Pacific in 2018, up from a previous five-year average of 11%. Within the PE market, the Asia-Pacific accounts for a quarter of the global share.⁴

Global Outlook Wobbles, But PE Investors Seek Opportunities

The U.S.-Sino trade dispute and Brexit were major events that significantly hurt world demand. Signs are piling up by the day of the likelihood of a worsening global economic slowdown, exacerbated and deepened by the COVID-19 pandemic. Against this bigger picture, funds managed by PE firm are working to deploy their capital amid stiff competition from rivals, and during a period of already high company valuations.

On the one hand, this means that when a fund acquires a target company, it is unlikely to flip it anytime soon or to concede on an exit price. Instead, PE investors will have to take a disciplined approach with the target company to ensure that valuations remain buoyant through the expected downturn in the economic cycle. This could lead to longer hold periods for PE firms.

¹ Clarke, William. *Alternatives in 2019: Capital Concentration Prevails in Private Equity Fundraising*. Preqin. January 11, 2019. <https://www.preqin.com/insights/blogs/alternatives-in-2019-capital-concentration-prevails-in-private-equity-fundraising/25095>.

² Clarke, William. *Alternatives in 2019: A Bumper Year for Private Equity Buyout Deals in 2018 – Will it Continue?* Preqin. January 24, 2019. <https://www.preqin.com/insights/blogs/alternatives-in-2019-a-bumper-year-for-private-equity-buyout-deals-in-2018-will-it-continue/25270>.

³ *Preqin Private Capital Dry Powder Factsheet*. Preqin. January 2019. <http://docs.preqin.com/reports/Private-Capital-Dry-Powder-January-2019.pdf>.

⁴ *Asia-Pacific Private Equity Report 2019*, Bain & Company, March 15, 2019, <https://www.bain.com/insights/asia-pacific-private-equity-report-2019>.

On the other hand, in 2018 the median holding period of a portfolio company by a PE investor shortened to between 4.5 and 5.3 years until exit, according to 2019 reports issued separately by management consulting firms McKinsey & Co and Bain.⁵ According to Bain, “as signs of economic weakness pile up, firms are also looking to sell anything that isn’t tied down, knowing that a recession could make it harder to sell later.”⁶

Research suggests that sponsor-to-sponsor deal-making remains an area of opportunity amid an uncertain economic outlook. It can offer one party looking to cash out an exit route, and reduces investment risk for the other party. “Previous PE ownership also generates a reliable track record and reassures buyers that any time bombs have likely been found and defused. Research consistently shows that sponsor-to-sponsor deals have performed at least as well as primary buyouts over time, often with less risk,” Bain states in its 2019 report.

Meanwhile, Preqin expects that private equity participants are actively eyeing opportunities in Asia and emerging markets in the coming years, in part for diversification and as they seek new opportunities to offset high pricing in developed markets. Based on a Preqin survey from June 2019, 47% of respondents said they would maintain their current capital commitments to private equity in the following 12 months, while 40% said they were looking to increase their capital compared to the previous 12 months.⁷

⁵ *Global Markets Come of Age: McKinsey Global Private Markets Review 2019*. McKinsey & Company. February, 2019. <https://www.mckinsey.com/~ /media/McKinsey/Industries/Private%20Equity%20and%20Principal%20Investors/Our%20Insights/Private%20markets%20come%20of%20age/Private-markets-come-of-age-McKinsey-Global-Private-Markets-Review-2019-vF.ashx> .

⁶ *Global Private Equity Report 2019*. Bain & Company. 2019. https://www.bain.com/contentassets/2792a2cbcdcf4e94acfdco77a85c5ea/bain_report_private_equity_report_2019.pdf.

⁷ *Preqin Investor Update: Alternative Assets, H2 2019*, Preqin, August, 2019, <https://docs.preqin.com/reports/Preqin-Investor-Update-Alternative-Assets-H2-2019.pdf>

THE TAIWAN LANDSCAPE: A FRESH PUSH

When Taiwan regulators approved Morgan Stanley Private Equity (MSPE)'s NT\$9.35 billion (~US\$303 million) buyout of medical equipment maker Microlife Corp in September 2018, PE participants cheered at the first successful case by a bellwether PE investor on the island in years.

But PE suitors were still holding their breath as they looked to see how KKR would fare in its US\$1.56 billion quest for specialty chemical producer LCY Chemical Corp, which became the largest PE deal for Taiwan in more than a decade. In September 2018, LCY shareholders had only just given their green light for the deal, and the plan still had to hurdle Taiwan regulatory approvals and win over critics - rehashing concerns that had stunted the last upswing of PE investments in Taiwan more than 10 years ago.

Since its heyday in 2006-2008, private equity 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. PE proponents were disappointed with the lack of progress, and effectively threw in the towel for a while. One local group took a hiatus from PE advocacy work altogether, and another group decided not to issue a PE-specific annual report for 2017 due to the dearth of new developments.⁸

The outlook would have stayed grim, but to Taiwan's credit the end of 2018 may have marked a turnaround. The KKR-LCY deal passed the island's anti-trust review in November, and received the blessing of the Ministry of Economic Affairs' Investment Commission (MOEAIC) in mid-December. Moreover, another PE firm - Europe's Permira - won regulatory approval for its 50% acquisition in Taiwanese aquatics feed producer Grobest, while South Korean PE firm MBK Partners finally concluded its long quest to exit cable television operator China Network Systems (CNS).⁹

From the Doldrums, Interest Piquing Again

Both domestic PE firms and foreign PE firms are active in Taiwan. According to the Taiwan Mergers & Acquisitions and Private Equity Council (MAPECT) and PricewaterhouseCoopers (PWC) Taiwan, indigenous PE firms can be defined under two types. First, there are the venture capital (VC) companies that have transitioned to be PE funds or are doing both concurrently, which includes the CID Group, Ltd. and CDIB Capital Group. Second are the PE funds founded by prominent veterans in the domestic financial industry, like MagiCapital Group, Ltd. and KHL Capital.¹⁰

Foreign PE firms have generally been attracted to Taiwan's powerful sectors of media, financials, and electronics, but their interest has been subject to public and partisan inquiry and regulatory scrutiny. In February 2019, a paper published by the Project 2049 Institute and authored by experts affiliated with the American Enterprise Institute

⁸ Interviews with locally-based PE-related groups based in Taipei.

⁹ 投審會新聞稿：經濟部投資審議委員會第1167次委員會議新聞稿 (Press Release of the 1167th Committee Meeting of the Investment Review Committee of the Ministry of Economic Affairs). Ministry of Economic Affairs. October 31, 2018. https://www.moeaic.gov.tw/news.view?do=data&id=1303&lang=ch&type=new_ann; Permira Funds Announces Investment in Grobest Group, One of Asia's Leading Producers of Aquatic Feed. Permira. November 12, 2018. <https://www.permira.com/news-views/news/permira-funds-announces-investment-in-grobest-group-one-of-asia-s-leading-producers-of-aquatic-feed/>.

¹⁰ New Partnership Drives Innovation Between KHL Capital and Interplan Group. Kaohsiung Exhibition Center. January 9, 2018. <http://www.kecc.com.tw/pressNewsDetail.asp?id=406>; Kuo, Gary. "My New Life as a PE Investor." Speech at UCLA. May 25, 2017. <http://www.anderson.ucla.edu/alumni/event-details?eid=4877>.

(AEI) stated that private equity remained a sector “in which the United States has a particular interest in seeing barriers reduced.” The experts noted that “the greater problem for PE, however, is one of clarity of regulations and transparency in the regulatory process. Assurances from the FSC [Financial Supervisory Commission] and from ministry officials that foreign PE is welcome are useful but insufficient. To successfully advance U.S.-Taiwan economic relations, Taiwan should be willing to match its commitment to openness with a commitment to reform its regulations and regulatory processes.”¹¹

In fact, 2019 was at least the fifth year in a row that the U.S. Department of State in its annual Investment Climate Statement on Taiwan explicitly noted concerns by foreign private equity participants about Taiwan’s “long-standing” lack of transparency and predictability in its investment reviews, “especially in sectors deemed sensitive but that allow foreign ownership.”¹² McKinsey, in a 2011 report, listed three types of deals that typically do not pass the regulatory review in Taiwan: taking a leading business private; funding a deal with suspect capital (i.e. capital from China); and buying a financial company.¹³

However, an urgency to make structural changes appears to be driving a re-think in Taipei on foreign capital and investment that brings in technical know-how.¹⁴ This is motivated by Taiwan’s determination to wean off nuclear energy and nurture renewables, while also constructing ecosystems to support an indigenous defense industry and to focus on future industries such as the Internet of Things (IoT) and Artificial Intelligence (AI).

Yet conversations with industry participants - along with a round-up of major buyouts proposed, completed, exited and/or un consummated by private equity firms in Taiwan - show the challenges foreign PE firms are up against. According to data from Preqin, Taiwan has only seen three years with aggregate deal sizes for PE buyout deals exceeding US\$1 billion since 2000. The year 2007 was Taiwan’s PE bumper year, with the total deal count at 10 and an aggregate deal size of US\$4.36 billion. However, it wasn’t until 2018 that this barometer topped US\$1 billion again – primarily due to the privatization buyout deal by KKR of LCY.¹⁵

¹¹ Blumenthal, Dan and Michael Mazza. *A Golden Opportunity for a U.S.-Taiwan Free Trade Agreement*. The Project2049 Institute, February 14, 2019. https://project2049.net/wp-content/uploads/2019/02/US_TW_Trade_Blumenthal_Mazza_P2049_021419.pdf

¹² *2019 Investment Climate Statements: Taiwan*. U.S. Department of State. July 2019. <https://www.state.gov/reports/2019-investment-climate-statements/taiwan>.

¹³ *Private Equity Asia-Pacific: Rebounds, glocalization, and other tales*. McKinsey & Company. March, 2011. https://www.mckinsey.com/~/media/mckinsey/dotcom/client_service/private%20equity/pdfs/780781_private_equity_asia_pacific_rebounds_glocalization_and_othe_r_tales.ashx.

¹⁴ *New Life for Private Equity*, American Chamber of Commerce in Taipei, March 13, 2019. <https://topics.amcham.com.tw/2019/03/new-life-for-private-equity>.

¹⁵ Data provided by Preqin (www.preqin.com) to the US-Taiwan Business Council

Table 1: Taiwan Buyout Deals: Number of Deals & Aggregate Deal Sizes

Year	Number of Deals	Aggregate Deal Size
2000	1	-
2001	1	-
2002	1	19.1
2003	2	13.4
2004	2	11.2
2005	1	-
2006	5	3,327
2007	10	4,359.46
2008	8	743.1
2009	5	280
2010	2	16.86
2011	1	-
2012	3	158.4
2013	1	25.53
2014	4	34.68
2015	-	-
2016	-	-
2017	2	-
2018	3	1,561.20

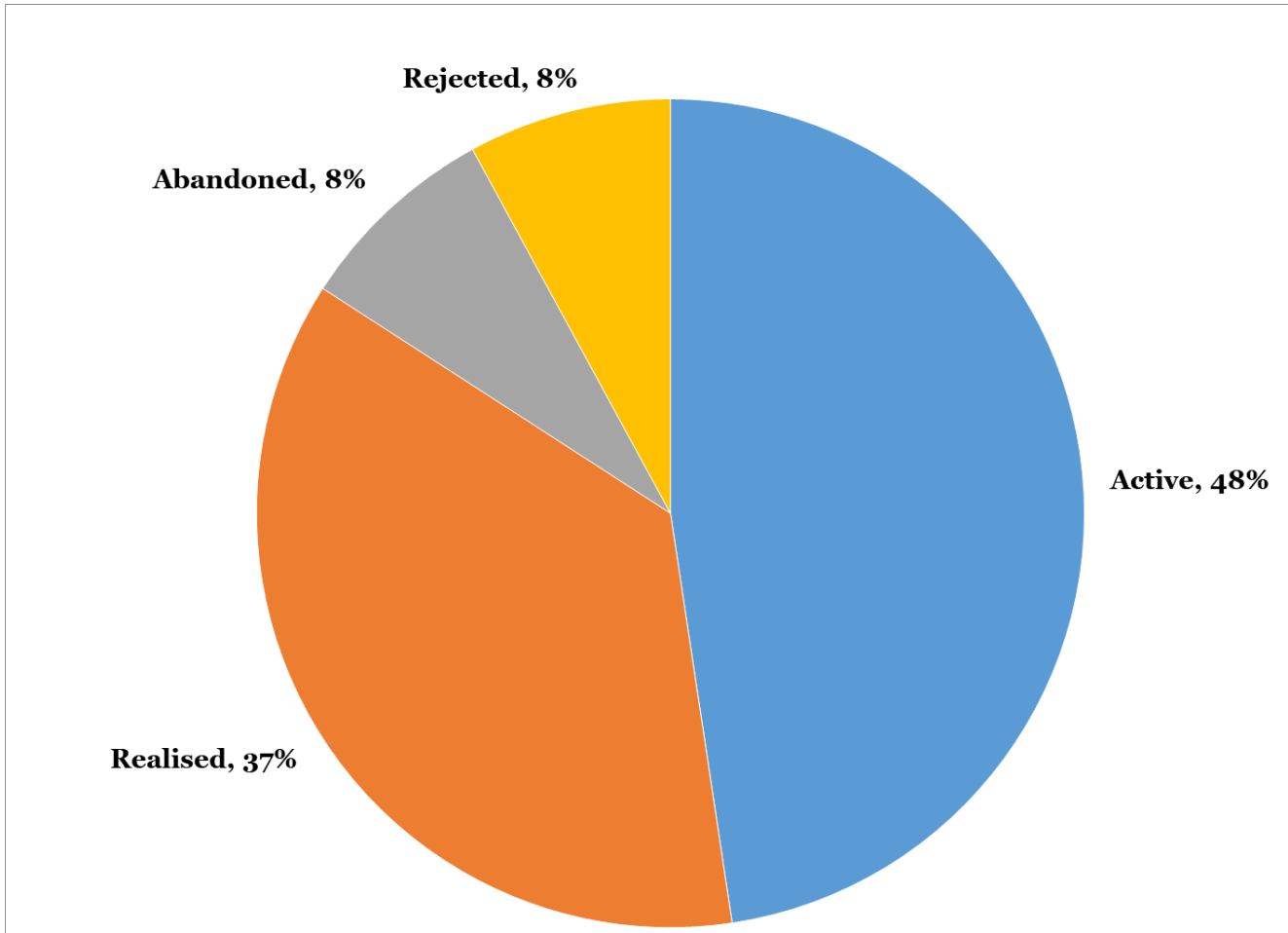
*Source: Preqin data provided to the US-Taiwan Business Council
Includes announced and completed deals from 2000 to January 2019
Figures in US\$ million*

By investment type, buyout deals have dominated PE deal-making in Taiwan. According to Preqin, 48% of buyout deals were active – defined as either announced, completed, or with the potential for exit – while 16% were abandoned and rejected in the past 18 years. Of Taiwan's PE buyout deals since 2000, 60% of active deals were potential exits.¹⁶

It remains to be seen, however, if longstanding problems that plagued past PE cases on the island will be left behind for good. "I found that Asian governments and the financial sector, they have a lot of emotional attachment when they administer their policies," said a former executive at a foreign PE firm who participated in major cases in Taiwan. "I wasn't truly convinced they were interested in PE."

¹⁶ Ibid.

Chart 1: Number of Buyout Deals by Deal Status



Source: Preqin data provided to the US-Taiwan Business Council

Includes announced and completed deals from 2000 to January 2019

Active status includes announced or completed deals, and deals with the potential for exit

Aligning Domestic PE Development with Economic Goals

Some recent developments in the PE sector are encouraging, as they indicate a possible softening toward some types of private equity capital entering Taiwan. Starting with its own domestic capital-rich financial industry, the Financial Supervisory Commission (FSC) initiated a series of loosening measures from the second half of 2017. These measures 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. The caveat is that the insurers are directed toward domestic PE funds that target investments that are aligned with the government's "5+2" long-term economic planning strategy. That is, the capital is directed toward developing an Asian Silicon Valley (i.e. IoT, AI, Augmented and Virtual Reality [AR/VR], and big data), biotechnology, defense, smart machinery, new agriculture, and a circular (sustainable and recycling-based) economy, as well as toward public infrastructure projects.¹⁷

The island's life insurers also have record amounts of capital to put to work. According to PwC Taiwan, life insurance capital reached a record NT\$22 trillion in 2017 - up from over NT\$14 trillion in 2013 - with most of it being invested. The FSC also removed the 5% share ownership limit on banks investing in venture capital - now the ownership can reach 100% - although a bank cannot in aggregate directly invest more than 3% of its net value in VC. The aim of the loosening is to allow commercial banks to deploy capital more freely and efficiently, and to have them act somewhat like industrial banks to support the government's strategic goals.¹⁸

In October 2017, Cathay SITC became the first approved local PE investor since the rules were enacted that allowed investment trusts to set up subsidiaries for PE investment. Cathay SITC is one of the main asset managers for Cathay Life Insurance, the insurance arm of Cathay SITC's parent group, Cathay Financial Holdings. Under its business plan, the first PE fund's size will be around NT\$10 billion and its investment targets are green energy technology, renewable energy, and circular economy related industries.¹⁹ In May of 2018, the FSC additionally clarified and loosened regulations to explicitly state that it was allowing securities companies to set up subsidiaries, like a limited partnership, to invest in venture capital and private equity funds. Securities firms can now invest up to 20% of the total assets of a single private equity or venture capital fund, but the sum is capped at NT\$300 million. No formal government approval is necessary at those thresholds.²⁰

Only in November 2019, the life insurance arm of Taiwan's Fubon Financial Holdings announced it would be a limited partner and invest as much as NT\$5.625 billion in stages of an LP being formed (台灣基礎設施有限合夥的有限合夥人) targeting infrastructure projects designated under the government's economic stimulus program. At the time of its announcement, it said the LP had not completed registration yet.²¹

¹⁷ 金管會與相關部會推動綠色金融行動方案成果已現 (Press Release: *The HKMA and the Relevant Ministries Will Promote the Green Finance Action Plan*). Financial Supervisory Commission, Executive Yuan. July 5, 2018.

https://www.fsc.gov.tw/ch/home.jsp?id=96&parentpath=0,2&mcustomize=news_view.jsp&dataserno=201807050006&aplistdn=ou=news,ou=multisite,ou=chinese,ou=ap_root,o=fsc,c=tw&dtable=News.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ 富邦壽響應前瞻投資基礎建設私募基金 (Fubon Life responds to forward-looking investment in infrastructure private equity funds) Central News Agency, November 13, 2019. <https://www.cna.com.tw/news/afe/201911130301.aspx>.

Among the recent regulatory amendments, an investment cap on target companies by the local PE or VC fund was removed, and securities firms now have leeway to set internal controls on investment proportions. The fresh rules also streamlined the application procedures for setting up re-investment units. In a statement issued in May 2018, the FSC said that the relaxation on securities firms investing in VC and PE was aimed “to help guide local capital to invest in the real domestic industry via venture capital and private equity funds, create a beneficial investment environment for industry development and promote the progress of the national economy.”

Putting its money where its mouth is, the government's National Development Fund, under its latest amendments made in 2017, stipulated that it would partner and invest with venture capital firms to encourage as much as NT\$100 billion in new investments – aiming for a multiplier effect. With NT\$30 billion at its disposal for the program, the National Development Fund would seek to invest up to 30% of the total funding of a venture capital investment enterprise, stimulating in aggregate an estimated NT\$70 billion more venture capital investments in Taiwan.²²

Maintaining the momentum, Taiwan Capital Management Corp set up shop in Taiwan and in Silicon Valley in August of 2017. Taiwan Capital is Taiwan's national investment arm, and it is backed by the government's resources and support.²³ The company has closed on its first two funds - one focused on a broad range of information technology fields, including Internet of Things and smart machinery, while the other is homing in on investment opportunities in biotech and healthcare.

Table 2: Taiwan Capital Management Funds

Date	Fund	Size	Targets
December 2017	Fund I	NT\$4.65 billion (\$151 million)	Enterprise software, autonomous systems, AI, IoT, robotics & drones, information security, next-gen semiconductors, sensors, and cloud infrastructure
July 2018	Fund II	NT\$5.9 billion (\$191 million)	Pharmaceutical product research and development, gene/cell therapy and medical technology

Source: www.taiwaniacapital.com

²² 行政院國家發展基金投資創業投資事業之審查及管理要點 (Guidelines for the Review and Management of Venture Capital Investment Enterprises Invested in by the Executive Yuan's National Development Fund). Taiwan Venture Capital Association. <http://www.tvca.org.tw/uploads/regulations/151840738308.pdf>.

²³ Our Mission. Taiwan Capital. 2019. <https://www.taiwaniacapital.com>

Better Legal Framework for Alternative Assets

Relatively recent changes in the basic legal framework that cover foreign investors and company structures in Taiwan also point to a Taiwan government trying to meet modern business requirements and 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. In July of 2018, the biggest overhaul to the Company Act since 2001 passed the Legislative Yuan (LY) – Taiwan's parliament. Legal experts say that the changes enacted should create better conditions for entrepreneurship and innovation by strengthening corporate governance and streamlining procedures, and that they will offer more flexibility in corporate management while improving compliance with international anti-money laundering rules.

The revised Company Act include some key provisions, such as stipulating that a company owned by a single corporate shareholder is not required to set up a full board of directors and supervisors; that a shareholder with over 50% of outstanding shares who has held them for at least three months can call an interim shareholders meeting; that Directors, not just the Chairman, will be able to conditionally convene a board meeting; that dividends can be distributed once, twice, or four times a year; and that employee equity incentive arrangements can be widened to include staff at affiliated companies.

Other amendments appear more technical, such as the removal of recognition requirements for foreign companies as a foreign company; allowing for the official registration of a company name in a foreign language; allowing for video-conferencing for shareholders' meetings; and acceptance of paperless shares and proposals. However, they all push toward creating conditions in Taiwan conducive to setting up shop and for investing. The revised Act took effect from November 1, 2018.²⁴

This overhaul of the Company Act follows a key amendment enacted in 2015, which allowed for the creation of a Closely-Held Company - a company whose shares have not been issued publicly, one that has 50 shareholders or less, and which has a restriction on the transfer of shares in its Articles of Incorporation. Legal experts noted that the changes were aimed at providing start-up companies and small- and medium-sized businesses with flexibility for dealing with equity arrangements and business operations unique to their needs, while at the same time expanding investment options for investors, including those looking for alternative assets.²⁵

Amendments to the Mergers and Acquisitions Act, which took effect near the start of 2016, also bring flexibility and more certainty for involved stakeholders on both sides of an M&A transaction. Among the major changes, the revisions allow for a combination of cash and shares exchange – as opposed to shares-only swap – in deals, and therefore increase the protection of shareholders and other stakeholders by requiring a special committee and an independent expert opinion to be part of the company's review process. The amendments also stipulate that any

²⁴ *Amendment to Taiwan Company Act Cleared the Legislative Floor*. Lee & Lee Attorneys-at-Law. July 9, 2018. <http://www.leeandli.com/EN/NewslettersDetail/6079.htm>.

²⁵ *Company Act: Revised Provisions on Control of Companies in Company Act*. Chiang & Partners - Attorneys-at-Law. December 6, 2018. http://www.chianglee.com/eng/news_updates.html; *Amendment to Taiwan Company Act Establishes New Section of "Closely-Held Company Limited by Shares."* Tiplo - Attorneys-at-Law. July, 2015. https://www.tiplo.com.tw/en/tn_in.aspx?mnuid=1284&nid=45729; *Guide to Taiwan Closely-Held Company Limited by Shares*. Kaizen CPA Ltd. 2016. <http://www.bycpa.com/html/news/201511/1969.html>.

investor who buys more than 10% of a public company's total issued shares for the purposes of M&A must report the purchases to the FSC.²⁶

More recently, in view of a corporate “*on-shoring*” trend – in part a result of the protracted U.S.-China trade confrontation – rules by the Ministry of Finance were clarified and cleared parliamentary review in mid-2019, allowing repatriated money coming back to Taiwan to be used toward investment into private equity that target government designated industries.²⁷

Key Issues Unresolved

The American Chamber of Commerce in Taipei (AmCham Taipei) lamented in its 2018 Taiwan White Paper that PE investors “...for some time have felt discouraged from pursuing opportunities in the Taiwan market after their investment applications failed to win approval in a series of highly publicized cases....many observers saw the results as reflecting a more general distrust of private equity due to long-outdated perceptions of PE as ‘vulture capital’.” However, in light of the trends taking place described in the earlier section of this paper, in 2019 AmCham Taipei reactivated its PE Committee after suspending it since 2017, and devoted a specific section to private equity in its annual white paper.²⁸

All these signals, while encouraging, don't offer strong indicators on whether foreign private equity firms like Carlyle or KKR can return in a regular manner and resume the kind of headline-making deals in Taiwan that they were known for more than a decade ago.

Taiwan still maintains a “negative list” of industries that are banned or restricted from investment by foreign nationals and overseas Chinese. Commercial banks and non-military information technology are open to foreign investment. But according to the *Statute for Investment by Foreign Nationals*, financial and insurance industries, public utilities, news media, and publishing all have to undergo special approval by regulators with specific oversight of each sector during the review process.²⁹ Cable television services are considered “restricted,” but foreign ownership is allowed up to a certain threshold - foreign direct investment in cable television broadcasting services is allowed up to 20%, while foreign ownership of up to 60% is allowed through indirect investment via a Taiwan entity.

Foreign PE firms and their advocates point to consistently complicated reviews, a process that is unpredictable and lengthy – sometimes spanning years – and one that is regularly hijacked by public opinion despite business merits or previous approvals already issued (as in the case of the bid for CNS by MSPE and Far Eastone Telecommunications). Legacy regulations, un-amended for years and not reflecting current realities, and a lack of

²⁶ *Business Mergers and Acquisitions Act: Amendments to the Business Mergers and Acquisitions Act Were Promulgated on 8 July 2015, and Will Take Effect on 8 January 2016*. Chiang & Partners - Attorneys-at-Law. September 16, 2015. http://www.chianglee.com/eng/news_updates.html; *The Mergers & Acquisitions Review: Edition 13*. Ed. Mark Zerdin. Law Business Research. September, 2019. <https://thelawreviews.co.uk/edition/the-mergers-acquisitions-review-edition-11/1149035/taiwan%20data%20of%202016>.

²⁷ *Bill passed on repatriation of overseas funds*, Deloitte Taiwan, July 4, 2019. <https://www.taxathand.com/article/11959/Taiwan/2019/New-bill-passed-for-repatriation-use-and-taxation-of-overseas-funds>

²⁸ *2019 White Paper*, American Chamber of Commerce in Taipei, June 2019. <https://amcham.com.tw/wp-content/uploads/2019/05/June-2019-Taiwan-Business-TOPICS.pdf>.

²⁹ *Introduction to Taiwan Statute for Investment by Foreign Nationals*. Kaizen CPA Ltd. November 13, 2018. <http://www.bycpa.com/html/news/20131/1788.html>.

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 two significant issues surrounding taxation related to making investments in Taiwan, one involving acquisition costs, and the other involving financing costs.

Cross-border M&A transactions that involve investments with large premiums require an integration period, and the integration process likewise requires the PE investor to spend its goodwill and other intangible assets to complete the acquisition. The use of these assets during the integration period represents an actual investment cost for the PE investor. Under Taiwan's current tax regime, the documentation requirements for such costs are onerous. The Taiwan Taxation Administration also strongly scrutinizes and often challenges the goodwill amortizations claimed by the investing company. Under current taxation rules, Taiwan has a very narrow and strict scope on the types of intangible assets that are amortizable, and many identifiable intangible assets such as business rights and client relationships will be disallowed. By excluding such costs, Taiwan is not accurately reflecting the overall economic substance of the M&A transaction.

There is also a mismatch of tax exempt treatment for sellers and buyers in an M&A deal, with the PE investors penalized. Not only does this increase the investment cost, but more importantly it adds uncertainty. An uncertain tax treatment for its investment can discourage good PE investors from making such deals in Taiwan. Taiwan would benefit from revisiting how it evaluates the use of goodwill and intangible assets as part of the transaction, and how it applies taxation to such acquisition costs.

It is becoming increasingly common for international PE investors to set up a segregated portfolio company (SPC) as the preferred acquisition structure, and to fund the acquisition via bank loans. Post-acquisition, the PE investor would then undertake subsequent restructuring steps - e.g. a merger of the SPC and the target company. When the SPC undertakes restructuring to streamline its onshore operations, the Taiwan Taxation Administration tends to challenge any interest expense deductions claimed by the SPC, claiming that such interest expense is incurred in direct connection with the acquisition, rather than being relevant and necessary to the SPC's operation. Yet because such assessments on interest expense deductions are subjective judgments, this also adds uncertainty surrounding PE investments in Taiwan.

In addition, it is a common practice that investment funding is guaranteed by an offshore parent company or affiliate. The current thin-capitalization (thin-cap) rules on interest deduction limitations could lead to an increase in funding costs, thereby creating additional financing costs for the PE investment. Bank loans to fund an acquisition are in substance about acquiring the business/assets owned by the Taiwan company, which generates taxable income and should therefore be deductible. The interest expense deduction creates an unreasonable tax treatment for the PE investor, which could prove disadvantageous if the goal is to draw international capital into the Taiwan market. Taiwan would benefit from revisiting this tax issue and to improve the investment environment by factoring in the current economic substance for PE investment and to relax the thin-cap rule.

Finally, it does not help Taiwan to have a general public who see PE firms as gamblers and vultures rather than as professional managers. The *2018 Taiwan White Paper* published by the American Chamber of Commerce in Taipei noted that prominent PE funds "...for some time have felt discouraged from pursuing opportunities in the Taiwan

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*market after their investment applications failed to win approval in a series of highly publicized cases....many observers saw the results as reflecting a more general distrust of private equity due to long-outdated perceptions of PE as 'vulture capital'."*³⁰

To get a better feel for the scope of the problem, the next section takes a look at a few major PE cases from the past, and examines how the hurdles they faced - and which they could not overcome - showcases the number of unresolved problems that could still sabotage current chances for PE investors interested in Taiwan.

³⁰ 2018 White Paper. Taiwan Business TOPICS. American Chamber of Commerce in Taipei. 2018. <https://amcham.com.tw/wp-content/uploads/2018/06/June-2018-Taiwan-Business-TOPICS.pdf>.

SHAPED AND SHAFTED: CASE STUDIES

The Carlyle Group

Since Carlyle proposed its first deal in Taiwan in 1999, this U.S. PE firm has been a pioneer and a barometer for PE development on the island. The following are five case studies selected for their prominence at the time of each deal.

Taiwan Broadband Communications (TBC)

In mid-1999, Carlyle invested in Taiwan cable television provider ***Taiwan Broadband Communications (TBC)***, reportedly buying it for US\$200 million.³¹ With little fanfare and rare efficiency, it exited the investment seven years later in May 2006, when it sold the company to Australia's Macquarie Media Group and Macquarie Bank for approximately US\$900 million.³²

After Carlyle acquired Taiwan Broadband, the cable TV provider underwent significant expansion of the company's scale, coverage, and revenue, and became the first truly professionally operated cable TV multiple-systems operator in Taiwan, growing to the third largest cable TV provider on the island.

According to a 2006 report in the Chinese-language CommonWealth Magazine, Taiwan Broadband's gross profits rose 45% under Carlyle's ownership, primarily on the back of lower costs and increased revenues. At the time of Carlyle's exit, Macquarie, the new buyer, cited Taiwan Broadband's stable cash flow and growth prospects as underlying reasons for the purchase.³³ The success of the Taiwan Broadband deal helped set the stage for Carlyle's next foray into Taiwan's media sector.

Eastern Broadcasting & kbro

In 2006, Carlyle - under a corporate vehicle called PX Capital Partners B.V. of Holland - was approved by the Taiwan Investment Commission for a US\$412.84 million investment in Eastern Multimedia Co - a cable television operator later renamed ***kbro, Ltd*** (kbro). The company was also approved for another US\$102.79 million investment in ***Eastern Broadcasting Co***, another cable television operator, under another corporate vehicle called Bij Lou B.V. also of Holland.³⁴

According to online media, Carlyle acquired around a 60% stake in kbro and a 40% in Eastern Broadcasting for a deal totaling US\$1.5 billion - a record for the domestic Taiwan cable TV industry and the largest buyout in Asia at the time outside Japan.³⁵

³¹ *Macquarie Media Buys Stake in Taiwan Broadband*. Taipei Times. December 20, 2005. <http://www.taipetimes.com/News/front/archives/2005/12/20/2003285152>.

³² *Macquarie Bank Acquires Interest in Taiwan Broadband Communications*. Macquarie Bank Limited. December 19, 2005. <https://www.macquarie.com/mgl/com/news/2005/200501219a.htm>; Culpan, Tim and Patricia Kuo. *China Network Agrees to Sell Controlling Stake to MBK*. PEdaily. October 20, 2006. <http://en.pedaily.cn/Item.aspx?id=191883>.

³³ Fulco, Matthew. *Taiwan Cable-TV Deals Remain in Limbo*. Taiwan Business TOPICS. September 29, 2016. <https://topics.amcham.com.tw/2016/09/taiwan-cable-tv-deals-remain-in-limbo/>; *Macquarie Bank Acquires Interest in Taiwan Broadband Communications*. Macquarie Group. December 19, 2005. <https://www.macquarie.com/mgl/com/news/2005/200501219a.htm>.

³⁴ 投審會第1004次委員會議新聞稿 (Press Release of 1004th Commission Meeting). Investment Review Committee, Ministry of Economic Affairs. July 6, 2006. https://www.moeaic.gov.tw/news.view?do=data&id=348&lang=ch&type=new_ann.

³⁵ *Investment Commission Approves Carlyle to Buy Into Eastern Multimedia*. China Economic News Service. July 7, 2006. https://www.cens.com/cens/html/en/news/news_inner_4682.html; Mu, Yifan. *Carlyle Group to Acquire Stakes in Eastern Multimedia*.

Getting in was the easy part, however. It took Carlyle twelve years and two major rejections before it was able to exit Eastern Broadcasting, which was then the largest privately-owned Mandarin-language TV network.³⁶ In 2018, Carlyle sold its controlling interest - just over 60% - to local investment firm Mao Te International, which is owned by a local property tycoon, reportedly for NT\$11.4 billion.³⁷

The sale came after a proposed purchase by American Hollywood producer Dan Mintz withered on the vine in 2016 due to scrutiny over Mintz's China business interests, as well as after Taiwan Optical Platform Co - Taiwan's fifth largest cable TV provider at the time - was given a thumbs-down on its purchasing attempt in 2017 over anti-competition concerns.³⁸

In contrast, Carlyle exited kbpro, Taiwan's second largest cable TV system operator at the time, in four years, but that case was also not without its challenges. Carlyle sold its kbpro stake in 2010 to the Tsai family of Taiwan's Fubon Group, but only after the buyer restructured the first negotiated deal because it ran afoul of regulation banning any government, political party, or military from directly or indirectly investing in telecom and mass media. The final approval also came with an unprecedented number of conditions set by regulators concerned about anti-trust issues.

In September 2009, Carlyle announced a US\$1 billion share swap that would exchange its holdings in kbpro for a 15.5% stake in Taiwan Mobile, a major telecom operator whose parent company is Fubon Financial Holding Co, the flagship of the group. As part of the deal, Taiwan Mobile would also assume US\$800 million in kbpro debt.³⁹ The plan was approved by the Fair Trade Commission (FTC) upon review, with some conditions, but it never made it past the National Communications Commission (NCC).

At issue for the NCC was the fact that if the deal was approved the share swap would have resulted in the Taipei City government as an indirect owner of kbpro, as the city government was an indirect investor in Fubon Financial. Taiwan Mobile let the swap plan lapse when it expired in June 2010 without a final ruling by the NCC, but said that it would find another way.⁴⁰

The Tsai family came back a month later with a new proposed structure that would skirt the zero tolerance rule against government/party/military investment. This new plan ultimately received the regulatory nod by the end of 2010. Instead of investing in kbpro via one of the Fubon Group companies, the Tsai brothers - Richard and Daniel - formed a new company called Dafu Media Co that would acquire kbpro for US\$1.31 billion, making it the largest

PEdaily. February 14, 2007. <http://en.pedaily.cn/Item.aspx?id=191949>; *Carlyle Takes Over EMC Management*. China Economic News Service. August 3, 2006. https://www.cens.com/cens/html/en/news/news_inner_4738.html.

³⁶ *Taiwan: Freedom of the Press 2016*. Freedom House. 2019. <https://freedomhouse.org/report/freedom-press/2016/Taiwan>.

³⁷ Lin, Evelyn. *KKR Targets Record Taiwan LBO*. Reuters. July 30, 2018. <https://www.reuters.com/article/kkr-targets-record-taiwan-lbo/kkr-targets-record-taiwan-lbo-idUSL4N1UQ4ZX>; *Dong Sen International Sells Stake in Dong Sen TV to Mao Te International for \$377.8 million*. CNEWS. November 3, 2017. <https://cnews.com.tw/002171103-01/>.

³⁸ NOTE: Mintz was head of DMG Entertainment, which was affiliated with DMG Yinji, a company he founded in China with two Chinese nationals - one who has family ties to the Chinese military. Freedom House in its 2016 Freedom of the Press report said that the concern was Mintz's business interests in China could negatively affect the operations of the major Taiwan broadcaster.

³⁹ *News Release: The Carlyle Group Announces the Merger of Kbpro with Taiwan Mobile via Share Swap Transaction*. The Carlyle Group. September 15, 2009. <https://www.carlyle.com/media-room/news-release-archive/carlyle-group-announces-merger-kbpro-taiwan-mobile-share-swap>.

⁴⁰ Taiwan Stock Exchange Filing by Taiwan Mobile, June 30, 2010, <http://mops.twse.com.tw/mops/web/to5st01>.

M&A deal in 2010 for Taiwan. The NT\$52.4 billion eight-year syndicated loan from seven banks as part of the deal was the largest in Taiwan for the second half of that year.⁴¹

Regulators gave their approval for the deal, but imposed at least 13 listed conditions on their final approval. The conditions effectively reduced the chance for monopolistic-like abuses - such as hiking service rates - and tightened oversight by ordering that any changes in management and shareholders be reported to the regulators. Meanwhile, they banned Dafu's leadership from holding positions at Taiwan Mobile and at other peers, as well as disallowing Dafu from acquiring more peers.⁴²

⁴¹ 2011 年度金鑫獎-大富+凱擘 (2011 Award cases: *Dafu Media Acquires kbro*). Taiwan Mergers & Acquisitions and Private Equity Council, 2010. http://www.mapect.com/media_show.php?the_no=czozOIl1NDgiOw==&mother_class_the_no=czoyOIlzNCI7&class_the_no=czoyOIlzNiI7.

⁴² *The Public Competition Enforcement Review (Edition 5)*. Law Business Research Ltd. 2013. http://www.leeandli.com/Att/Uploads/6512BD43D9CAA6E02C990BoA82652DCA/file/2013_Taiwan.pdf.

Backgrounder: Telecommunications & Media in Taiwan

- Investing in Taiwan's telecommunications and media industries are fraught with challenges because it is seen as a strategic and sensitive sector. In the mid- to late 2000s, consolidation and the convergence of internet, telecommunications, radio, and television services underpinned the view of potential upside for cable TV operators.
- Regulations setting limits on market share - along with anti-monopoly considerations and a zero tolerance rule on government/political party/military investment in this sector - have led to lost opportunities for Taiwan companies looking to sharpen their competitive edge with fresh foreign capital and know-how.
- An NCC official told AIT at the time of the kbro-Taiwan Mobile share swap announcement that "*mergers between telecom and broadcasting enterprises will become more frequent as Taiwan moves toward digital convergence--the bundling of telephone, cable and Internet service--which he thinks will eventually force the NCC to revise the laws setting these limits,*" according to a cable leaked by Wikileaks. At the same time, the official also predicted that any deal approval for kbro with Taiwan Mobile wouldn't come quick and would likely have strings attached.
- Regulations governing broadcasting – radio and television, cable and satellite – prohibit government, military and political parties from investing directly or indirectly in such media, a condition that aims to ensure media freedom, diversity, and unbiased programming. It is a holdover from when four decades of martial law were still fresh in citizen's minds in the late 1980s. The broadcasting regulations also impose limits by stating that a company may not directly control more than one third of the total cable television market, nor own more than one fourth of all television channels.
- Many of Taiwan's large- to mid-sized publicly listed companies have government-related holdings because the island's state pension and postal savings, for example, buy them in the open market as part of their equity investment portfolios. In recent years, there has been ongoing talk about easing the zero tolerance rules to allow for up to 10% holdings by government entities, but nothing by way of draft amendments have been finalized yet.
- The telecommunications industry, as defined to include cable television services, satellite television broadcasting (direct broadcast satellite TV service) and/or Type-I telecommunications enterprises, is listed among "restricted industries" for investment by overseas Chinese and foreign nationals.
- There is a 60% limit on direct foreign ownership of wireless and fixed line telecommunications firms, and a 49% limit on direct foreign investment in that sector.
- State-controlled Chunghwa Telecom, which controls 97% of the fixed line telecom market, maintains a 49% limit on direct foreign investment and a 55% limit on indirect foreign investment.
- There is a 20% limit on foreign direct investment in cable television broadcasting services, and foreign ownership of up to 60% is allowed through indirect investment via a Taiwan entity.
- There is a foreign ownership limit of 49.99% for satellite television broadcasting services.

Sources:

https://wikileaks.org/plusd/cables/09TAIPEI1125_a.html

https://www.ncc.gov.tw/english/news_detail.aspx?site_content_sn=339&is_history=0&pages=0&sn_f=1796

https://www.ncc.gov.tw/english/news.aspx?site_content_sn=349&is_history=0

<https://www.state.gov/reports/2019-investment-climate-statements/taiwan/>

Ta Chong Bank (TCB)

When Carlyle purchased ***Ta Chong Bank (TCB)*** in the second half of 2007, it was amid a heated competition for Taiwan financial services companies that had begun at the start of 2006, pushing valuations up. Carlyle acquired a 36% stake in the Taiwan lender for NT\$21.5 billion, US\$651.5 million at the time, via private placement. The acquisition included the issuance of common stocks, special stocks, and NT\$7.5 billion in bank debentures convertible into common stocks one year after the issuance. Carlyle also obtained syndicated loans from domestic banks to fund its purchase.⁴³ At NT\$17 per share, the price was just over 40% higher than the Ta Chong Bank's market share price around the time of the deal announcement. Carlyle obtained seven of thirteen Board of Directors seats at the bank, and kept in place the incumbent Chairman and President - although it appointed a new President when the incumbent stepped down in 2008.⁴⁴

In 2012, Carlyle reportedly attempted to sell Ta Chong Bank to Yuanta Financial Holdings, but the two sides could not agree on a price. By August 2015, Yuanta Financial announced a share swap for Ta Chong Bank, which became a subsidiary of Yuanta Financial, for NT\$56.6 billion (US\$1.7 billion). This gave Carlyle an exit channel from their investment, as well as some holdings in Yuanta Financial. In mid-2016, Carlyle divested its holdings in Yuanta Financial for US\$90 million.⁴⁵ From start to share swap, Carlyle spent eight years on this PE investment project.

Advanced Semiconductor Engineering

Carlyle's 2006 bid for ***Advanced Semiconductor Engineering Inc (ASE)*** was a milestone because of its daring pursuit of one of the leading firms that make up Taiwan's crown jewel high technology sector.

Carlyle's offer at NT\$39 per share was a nearly 24% premium to ASE's share price at the time, putting the deal at US\$5.6 billion. In its offer letter to ASE's board, Carlyle - with its existing portfolio of global semiconductor companies - said that its "*familiarity with the semiconductor sector and with Taiwan will allow U.S. to bring potential synergies and contribute to the further growth of [ASE] after the completion of this transaction.*" Carlyle had also secured a commitment by the ASE chairman at the time, Jason Chang, for his approximately 18% in shares, and said that they would leave the ASE management in place after the transaction.⁴⁶

ASE's management was backing the deal likely because it saw consolidation coming in the industry. It may also have been trying to get around restrictions on the Taiwan chip sector investing in China, in order to grow its business on the mainland. According to a cable written by the American Institute in Taiwan (AIT), the *de facto* U.S. embassy on the island, and published by Wikileaks "*Even though Taiwan's regime of cross-Strait restrictions is not*

⁴³ Wang, Lisa. *Carlyle Receives Additional Loan Support*. October 18, 2007. <http://www.taipeitimes.com/News/biz/archives/2007/10/18/2003383737>.

⁴⁴ *News Release: Ta Chong Bank Announces Senior Appointments*. The Carlyle Group. March 18, 2008. <https://www.carlyle.com/media-room/news-release-archive/ta-chong-bank-announces-senior-appointmentsdmond-koh-president>.

⁴⁵ *Announcement: Yuanta Financial Holdings Announces Matters Relating to TC Bank Becoming its Wholly-Owned Subsidiary by Share Swap*. Yuanta Financial Holdings. August 22, 2015. <https://www.yuanta.com/EN/News-and-Media/Announcements/Detail?id=232a7965-b831-4bf7-89fd-8f57316c9ee5>; *Carlyle Exits Taiwan's Ta Chong Bank via Trade Sale*. China Money Network. August 14, 2015. <https://www.chinamoneynetwork.com/2015/08/14/carlyle-exits-taiwans-ta-chong-bank-via-trade-sale>.

⁴⁶ Zeluck, Gregory M. to Advanced Semiconductor Engineering, Inc. Board of Directors. *Proposal Letter from MR Investment Limited to the Board of Directors*. US Securities and Exchange Commission. November 24, 2006. <https://www.sec.gov/Archives/edgar/data/1122411/000119312506241518/dex992.htm>; *Form 6-K Securities and Exchange Commission: Report of Foreign Private Issuer*. U.S. Securities and Exchange Commission. November 27, 2006. https://www.sec.gov/Archives/edgar/data/1122411/000095010306002676/dpo4100_6k.htm.

the most important factor, the deal highlights how the restrictions are ineffective at preventing investment in the Mainland and how they can help encourage firms to leave Taiwan.”⁴⁷

Skirting Taiwan restrictions on chip investments into China and de-listing its shares in Taiwan as part of the deal for the blue-chip tech firm were part of the public conversation at the time. According to ASE comments to AIT, Carlyle would “purchase 100 percent of ASE and likely de-list it from the Taiwan stock market. It will form a holding company registered elsewhere that will own ASE as a subsidiary. That holding company and any other subsidiaries that it registers outside of Taiwan will not be subject to Taiwan's restrictions (for investing in China).” Regulators at the time were wary of this deal, because if it succeeded other deals could be similarly structured, which could have a potentially seriously damaging impact on the Taiwan Stock Exchange Weighted Index (TAIEX).

Ultimately the deal fell through, just five months later, as the two sides were unable to agree on the final purchase price after the local share market rallied, boosting ASE shares well past Carlyle's proposed purchase price. While the proposed acquisition didn't take place, the debate about it at the time remains worth keeping in mind. In 2007, in the aftermath of the ASE-Carlyle case, the Council covered several issues plaguing private equity development in Taiwan in a letter to the Office of the United States Trade Representative (USTR). The Council said at the time that it was “deeply concerned that future transaction activity in Taiwan will exclude the private equity community and that a bias within the system will work against not only PE firms, but even against the very notion of taking large public companies private.” These concerns are still valid thirteen years later.⁴⁸

⁴⁷ ASE-Carlyle Deal - Money, Politics, and Taiwan's Future. WikiLeaks. December 11, 2006. https://wikileaks.org/plusd/cables/06TAIPEI4095_a.html.

⁴⁸ Hammond-Chambers, Rupert to Timothy Stratford. 2007 Private Equity Commentary. US-Taiwan Business Council. June 22, 2007. https://www.us-taiwan.org/wp-content/uploads/2019/05/2007_june22_private_equity_commentary.pdf.

Backgrounder: Foreign Shopping Spree for Taiwan Financial Services

- In January 2006, GE Consumer Finance (U.S.) acquired 10% of Cosmos Bank for NT\$2,775 million (US\$84 million) and has since participated in the bank's operation.
- In March 2006, New Bridge (U.S.) and Nomura Securities (Japan) bought 23% of Taishin Financial Holdings (TFH) for NT\$31 billion (US\$939 million). The major local shareholder (Thomas Wu) continues to control and operate TFH.
- In March 2006, Temasek Holdings (Singapore) purchased 6.3% of E. Sun Financial Holdings (ESFH) for US\$133 million. Major local shareholders continue to operate ESFH.
- In May 2006, Shinsei Bank (Japan) and Integral (a private equity fund) bought 44.5% of Jih Sun Financial Holdings (JSFH) for NT\$12 billion (US\$364 million) and since then have installed their own line managers in JSFH subsidiary Jih Sun International Bank.
- In June 2006, Dai Ichi Mutual Life (Japan) purchased 6.5% of Shin Kong Financial Holdings (SKFH) for NT\$7 billion (US\$212 million).
- In September 2006, Standard Chartered (U.K.) acquired 95.4% of Hsinchu International Bank (HIB) for NT\$38.65 billion (US\$1.17 billion) and subsequently de-listed HIB from Taiwan's stock market. Standard Chartered has since become the largest foreign bank in Taiwan.
- In March 2007, Citibank (U.S.) acquired 100% of Overseas Chinese Bank (OCB) for NT\$40 billion (US\$1.2 billion) and subsequently de-listed the bank from Taiwan's stock market.
- In June 2007, ABN AMRO Bank won a bid to take over the insolvent Taitung Business Bank (TBB), and Taiwan's Central Deposit Insurance Corporation (CDIC) will pay ABN AMRO NT\$6.9 billion (US\$209 million) as compensation. ABN AMRO will become the third-largest foreign bank in Taiwan, second to Standard Chartered and Citibank.
- In June 2007, Asia-focused investment house Longreach Group said it would invest US\$568 million to take a controlling stake in EnTie Bank (2849.TW), which was approved in October that year.

Sources: https://wikileaks.org/plusd/cables/o7TAIPEI1646_a.html

https://www.moeaic.gov.tw/news.view?do=data&id=424&lang=ch&type=new_ann

MBK Partners

MBK Partners, founded by ex-Carlyle executives in 2005, is a leading South Korean PE firm with interests throughout Asia. The protracted struggle by MBK to exit from China Network Systems (CNS) spotlights key barriers in Taiwan regulations regarding foreign investment in media companies, and the anxiety over China-sourced capital participating in mergers and acquisitions.⁴⁹

China Network Systems (CNS)

In July 2007, MBK purchased a 60% stake in **China Network Systems** (CNS) at a value of NT\$30.9 billion (US\$932 million at the time). Three years later, in October 2010, the Want Want Group - a Taiwan food and media conglomerate with business interests in China - bid NT\$76 billion (US\$2.4 billion) for CNS, at the time one of the top two cable TV operators in Taiwan. The public debate and associated mass protests over the bid grew around the issue of media monopoly, as critics of the deal saw Want Want's pro-Beijing leanings as a risk to the development of free, fair, and diverse media in Taiwan. The group already owned print and broadcast outlets of the China Times Group, one of the island's four major print media conglomerates.⁵⁰

The deal received conditional approval from the NCC, the telecommunications regulator, in 2012, but was later rejected in 2013 when Want Want didn't go far enough to comply with the NCC's conditions. Want Want refiled in late 2013, but by then MBK Partners had had enough and walked away.⁵¹

MBK reportedly considered listing CNS in Singapore in a business trust initial public offering for the second half of 2013.⁵² ⁵³ But in August 2014 it instead fielded a bid from the Wei family, of the Ting Hsin International Group - with vast noodle-making operations in Hong Kong and China, for US\$2.4 billion, including about US\$1 billion in debt. A year later, the Wei family also walked away without consummating the deal.

In a 2016 report, Freedom House stated that *"though there was no reason for authorities to block the deal on competition-related grounds, opponents of the sale argued that it was not in the public interest due to Ting Hsin's substantial investments in China and the company's alleged involvement in three major food-safety scandals in 2014. Among other concerns, some feared that Ting Hsin's control of CNS might discourage Taiwan news media from reporting on future food-safety scandals. In March 2015, Ting Hsin announced that it had ended its efforts to acquire MBK's stake in CNS due in part to its belief that the deal was unlikely to get regulatory approval."*⁵⁴

⁴⁹ *Taiwan Food Conglomerate Plans to Buy Cable Operator, Again*. Ketagalan Media. August 25, 2014.

<https://www.ketagalanmedia.com/2014/08/25/taiwan-food-conglomerate-plans-to-buy-cable-operator-again/>.

⁵⁰ Fuchs, Chris. *Blanking Out: Is mainland China slowly choking the life from Taiwanese media?* Foreign Policy. March 31, 2014.

<https://foreignpolicy.com/2014/03/31/blanking-out/>.

⁵¹ *旺中案許可處分附款中3項停止條件尚未成就-歷史資料 (Want Want-CNS Case Permit Disposal of the Attached Subsection 3 Stop Condition Not Yet Achieved -Historical Data)*. National Communications Commission, Executive Yuan. February 20, 2014.

https://www.ncc.gov.tw/chinese/news_detail.aspx?site_content_sn=8&cate=0&keyword=&is_history=1&pages=0&sn_f=27877; Fuchs, Chris. *Blanking Out: Is mainland China slowly choking the life from Taiwanese media?* Foreign Policy. March 31, 2014.

<https://foreignpolicy.com/2014/03/31/blanking-out/>; Shan, Shelley. *Ruling on Want Want Group to Stand: NCC*. Taipei Times. February 13, 2014. Taipei Times. <http://www.taipeitimes.com/News/taiwan/archives/2014/02/13/2003583405>.

⁵² NOTE: Business trusts are popular with companies because they allow them to raise cash without relinquishing control. In a business trust model, the trust sells units to investors, but control of the business is left with the trustee manager, who is usually an affiliate of the company establishing the trust.

⁵³ *Blackstone, MBK Eye Singapore IPOs for Taiwan, India Assets: Sources*. FirstPost. July 20, 2013.

<https://www.firstpost.com/fwire/blackstone-mbk-eye-singapore-ipos-for-taiwan-india-assets-sources-971601.html>.

⁵⁴ *Taiwan: Freedom of the Press 2016*. Freedom House. 2019. <https://freedomhouse.org/report/freedom-press/2016/Taiwan>.

The third time was not the charm. In July 2015, an investment consortium led by Morgan Stanley Private Equity (MSPE) which also included a 40% stake by domestic investors, announced its intention to buy CNS for US\$2.2 billion.⁵⁵ Based on the deal terms, Taiwan's Far EasTone Telecommunications would subscribe to non-convertible corporate bonds issued by MSPE's local subsidiary for NT\$17.12 billion.

The deal was structured so that Far EasTone's role was that of a financier, because it could not legally itself invest into CNS. Taiwan regulations ban government/party/military ownership in media companies, and Far EasTone shareholders include government entities in the form of state pension funds - although the holding is under 3%.

However, the deal's structure also gave leeway for Far EasTone to invest into CNS in the future, should Taiwan ease up a bit on regulations governing government ownership in media. At the time, this was a potential future development hypothetically being discussed in the public and among regulators. This leeway, though, did not sit well with the deal's critics, who were dogmatic in their interpretation of the regulations - particularly among some lawmakers in the LY who had just won in the national elections in January 2016.⁵⁶

The deal, already passed by the FTC, was greenlit by the NCC conditionally later that month. However, the NCC had to walk back its approval later the same year, when MOEAIC suspended final review and pushed the case back to the NCC for a second look.⁵⁷ By February 2017, amid the ongoing delays, all parties had had enough and they all walked away.⁵⁸

A fourth bid appeared in May 2018, from a group of investors including the chairman of Taiwan's largest domestic PE firm KHL Capital. This time MBK and the consortium suitor were able to consummate the deal for CNS, estimated at US\$1.7 billion, but not without undergoing several additional rounds of public opinion debate and regulatory hearings to address a litany of concerns, including about the source of capital of the buyers.⁵⁹

⁵⁵ *Morgan Stanley Private Equity Asia Fund to Acquire China Network Systems Far EasTone Telecommunications to Collaborate with CNS Through a Corporate Bond of up to NT\$17.12 Billion*. Far EasTone Telecommunications. July 30, 2015. <https://www.fetnet.net/cs/Satellite/eCorporate/econewsReleases?aid=3000009219453>.

⁵⁶ Ferry, Timothy. *Revisiting the Rules on Media Ownership*. Taiwan Business TOPICS. December 20, 2017. <https://topics.amcham.com.tw/2017/12/revisiting-rules-media-ownership/>; Waring, Joseph. *Taiwan Halts Review of Cable-TV Acquisition by MSPEA, Far EasTone*. Mobile World Live. <https://www.mobileworldlive.com/asia/asia-news/taiwan-halts-review-of-cable-tv-acquisition-by-mspe-far-eastone/>; Shan, Shelley. *NCC Approves North Haven's Buyout of CNS*. Opb. Taipei Times. Liberty Times Net. January 28, 2016. <http://news.ltn.com.tw/news/focus/breakingnews/1587001>.

⁵⁷ *NCC 通過荷蘭商 NHPEA Chrome Holding B.V. 申請多層次轉投資吉隆等 12 家有線電視股份有限公司案-歷史資料 (NCC by Dutch Business NHPEA Chrome Holding B.V. Application for Multi-Level Investment in Geelong and Other 12 Cable Television Co., Ltd. Case-Historical Information)*. National Communications Commission, Executive Yuan. January 27, 2016. https://www.ncc.gov.tw/chinese/news_detail.aspx?site_content_sn=8&cate=0&keyword=中嘉&is_history=1&pages=0&sn_f=34897; Chang, Emile. *Investment Commission Postpones Review of CNS-Far EasTone Deal*. Central News Agency. <http://m.focustaiwan.tw/news/aeco/201609200021.aspx>.

⁵⁸ *Regarding MBK and MSPE Asia Will Be in the Process of Withdrawing the Application of CNS Transactions to Competent Authorities, the Company's Subsequent Actions*. Far Eastern Group. February 8, 2017. <http://www.feg.com.tw/en/news/detail.aspx?id=4351>; *Far EasTone Withdraws USD2.4bn Bid for CNS*. TeleGeography. February 9, 2017. <https://www.telegeography.com/products/commsupdate/articles/2017/02/09/far-eastone-withdraws-usd2-4bn-bid-for-cns/>.

⁵⁹ *2019 M&A Report: Taiwan*. International Financial Law Review. February 28, 2019. <http://www.iflr.com/IssueArticle/3860954/Supplements/2019-M-A-Report-Taiwan.html?supplementListId=100011>; Shane, Shelley. *NCC to Examine Structure, Funding of Potential CNS Sale*. Taipei Times. July 27, 2018. <http://www.taipetimes.com/News/taiwan/archives/2018/07/27/2003697471>; Shan, Shelley. *Foundation Denies its Fund Helping in CNS Buy*. Taipei Times. August 17, 2018. <http://www.taipetimes.com/News/taiwan/archives/2018/08/17/2003698676>.

The NCC attached over 20 conditions on the consortium in its approval of the deal.⁶⁰ Just ahead of the Investment Commission's greenlight of the deal in December 2018, MAPECT proffered its view on the situation by stating that the limits against foreign PE investment on cable television and banks are not healthy in the longer term. MAPECT also said that sectors where the government interferes in business operations are not suitable investment targets for foreign PE.⁶¹

KKR

U.S. PE firm KKR arguably rivaled the ambition of Carlyle in Taiwan in the late 2000s. In 2007, KKR's convertible bond deal with **Yageo Corp** was seen as particularly innovative because it brought in a foreign PE firm as a strategic investor without giving away controlling interest in the target company. Backed by Yageo's Founder and Chairman and some of its Directors, KKR attempted to fully acquire Yageo in 2011. However, it met with resistance and ultimately failed in its bid. The following is a case study of KKR's investment in Yageo.

Yageo

In 2007, KKR announced that it would be purchasing US\$230 million in convertible bonds from Yageo, at a conversion price representing nearly a 12% premium over its share price in the market at the time. The bonds carried a maturity of seven years, and when fully converted would give KKR approximately a 16% share in the Taiwan passive electronic component maker, thereby making it the largest foreign shareholder in the company.⁶²

The convertible bond deal was KKR's first foray into Taiwan, and Yageo Founder and Chairman Pierre T.M. Chen was hailed as the creative architect for the deal, according to a profile story about him in Taiwan's Commonwealth magazine in August 2007.⁶³ Four years later, in April 2011, KKR announced that it was part of a buyout deal to fully acquire Yageo for NT\$47 billion (US\$1.6 billion), which would have been Asia's largest PE deal that year. KKR was making the purchase with Orion Investment Co Ltd, which was a newly established company jointly held by Chen and investment funds managed by KKR.⁶⁴

The public tender offer for all outstanding Yageo common shares would have kept majority control and leadership of the Taiwan-based firm with Chen. The tender price represented a 14% premium to Yageo's share price traded on the TAIEX at the time. It was also equal to its highest closing price since 2004, according to KKR's press statement at the time. If the tender offer had been completed, Orion would have held over 50% of the fully diluted shares outstanding of Yageo, up from the estimated 34.3% control already held in aggregate by Chen, his family, and funds

⁶⁰ 国家信息通报委员会新闻稿 (NCC Press Release). National Communications Commission. December 5, 2018.

https://www.ncc.gov.tw/chinese/news_detail.aspx?site_content_sn=8&cate=0&keyword=&is_history=0&pages=1&sn_f=40761

⁶¹ 創會理事長的話：中嘉 (Words from Chairman on CNS). MAPECT. December 11, 2018. http://www.mapect.com/media_show.php?the_no=czo0OixODQ5Ijs=&mother_class_the_no=czoY0iIzMCI7&class_the_no=czoY0iIIMSI7.

⁶² *Yageo US\$230 Million ECB Offering Approved*. Kohlberg Kravis Roberts. June 5, 2007. <https://media.kkr.com/news-releases/news-release-details/yageo-us230-million-ecb-offering-approved?releaseid=333019>.

⁶³ Hung, Faith. *KKR Seeks More Taiwan Investments After Yageo Deal*. Reuters. June 7, 2007. <https://www.reuters.com/article/us-kkr-yaego-idUSTP13727020070607>; Chen, Pierre. *Rewriting the Game Rules for Private Equity Funds*. Common Wealth Magazine Group. August 15, 2007. <https://english.cw.com.tw/article/article.action?id=1476>.

⁶⁴ *Mr. Pierre T. M. Chen, Founder and Chairman of Yageo Corporation, in Partnership with KKR Launch Tender Offer on Yageo*. Kohlberg Kravis Roberts. April 6, 2011. <https://media.kkr.com/news-releases/news-release-details/mr-pierre-t-m-chen-founder-and-chairman-yageo-corporation?releaseid=569121>.

managed by KKR - due to the conversion of KKR's convertible bonds and exercise of all vested employee stock options. Orion would have effected a merger with Yageo and de-listed the Taiwan firm.⁶⁵

Chen told the TAIEX in April 2011 that Taiwan's technology industry was facing bottlenecks, and that companies like Yageo were unable to focus on long-term planning and innovation because of the pressure to make short-term performance metrics, raise margins, and buoy share price. He explained to the securities exchange that the proposal to de-list Yageo as part of the acquisition was aimed to improve Yageo's shareholding structure and focus its operations for the longer-term.⁶⁶ The capital to fund the acquisition would come into Taiwan via a Netherlands holding company jointly set up by KKR and Chen called Alphard Investment Netherlands Cooperatief UA. The holding company applied to bring in a NT\$20.2 billion investment into Taiwan, and within the amount a NT\$4.6 billion tranche secured through a loan. Orion would use the NT\$20.2 billion sum plus a loan of NT\$28 billion from domestic banks to carry out the acquisition of Yageo.

When MOEAIC rejected the deal two months later, it listed at least six government entities that provided a view on the transaction terms and their respective assessments – the Central Bank, the Ministry of Finance, the Financial Supervisory Commission, the Ministry of Labor, the long-term economic planning agency [now the National Development Council], and the Industrial Development Bureau (IDB) under MOEA.⁶⁷ The regulators concluded that the amount of capital for the acquisition would have a major effect on Taiwan's capital markets, and would leave the merged company in a weaker financial state. They added that the buyers had not clarified and sufficiently explained the rationale for the acquisition. Some third-party analysis at the time saw the regulatory and public resistance to the deal as resistance to a management buyout and a leveraged buyout, the former potentially impinging on minority shareholder rights and the latter burdening Yageo with massive debt.⁶⁸

New Deals Incoming? The Case of LCY Chemical

In 2018, KKR completed a 100% buyout of the specialty chemical producer LCY Chemical, which it then de-listed from the main Taiwan bourse at the end of January 2019. The US\$1.56 billion deal, supported by LCY family founders, pushed 2018 into the third-biggest year for Taiwan in terms of PE deal values, and it was the first time in 11 years where such deals topped the US\$1 billion mark. KKR's successful foray back into Taiwan after a seven-year absence has set a positive tone, and highlights the potential for headline-making deals by other international PE firms.

As former LCY Chairman Bowei Lee, whose father established LCY Chemical in 1965, explained in an open letter to shareholders, he remained concerned about the future of LCY Chemical. Lee invited KKR to acquire the specialty chemical maker via a share swap after the idea was suggested to him. KKR expects to increase LCY's efficiency, expand its product range, and enter new markets in order to then ultimately re-list the firm. With its new investor – and by leveraging capital and management support from KKR - the Taiwan company will have a fresh new start,

⁶⁵ Taiwan Stock Exchange Filing by Yageo, April 8, 2011, <http://mops.twse.com.tw/mops/web/to5st01>.

⁶⁶ Ibid.

⁶⁷ 國內上市公司國巨股份有限公司公開收購案件新聞稿 (Press Release: Public Acquisition of Listed Company Yageo). Investment Commission, Ministry of Economic Affairs. June 6, 2011. https://www.moeaic.gov.tw/news.view?do=data&id=640&lang=ch&type=new_ann.

⁶⁸ In Yageo's Public Tender Offer Case, SFIPC Urges Yageo to Form an Independent Review Committee to Evaluate the Price and Reasonableness of the Purchase. Securities and Futures Investors Protection Center. December 4, 2015. <https://www.sfipc.org.tw/MainWeb/FriendPrint.aspx?L=2&SNO=+tUXGewRoh6p849Sy5nywg==; Marthur, Tarun. Highly Leveraged Takeover Deal Backed by KKR to Acquire Yageo Rejected by Investment Commission, Taiwan. Transactional Lawyer Blog. June 25, 2011. http://ktarunmathur.blogspot.com/2011/06/highly-leveraged-takeover-deal-backed.html>.

escaping the shadow of its underground propylene pipeline burst in Kaohsiung in 2014. Taiwan Ratings, a local partner of S&P Global Ratings, has estimated about NT\$1.13 billion in litigation exposure for the 2014 gas explosion, consisting of one-third the maximum compensation paid to victims of the industrial accident, and which will be proportionally shared among LCY, its logistics partner, and the local city government.⁶⁹

LCY is one of the largest producers of thermoplastic elastomers, used in infrastructure, healthcare, households, automotive, textile, electronics, and more. Taiwan Ratings has a 'stable' outlook on LCY's credit ratings. The company's 'twBBB' long-term and 'twA-2' short-term corporate credit ratings were downgraded in January 2019, reflecting "LCY's heightened post acquisition financial risk including high debt to fund the transaction, and material risk of further leveraging in the next few years by Kohlberg Kravis Roberts & Co. L.P. (KKR) to maximize its return on the acquisition," according to the rating agency.⁷⁰ About half of the total value of the acquisition is funded by a syndicated loan.

The KKR-LCY deal was announced in July 2018, and was then approved six months later in December 2018. Issues that came up during the regulatory review included minority shareholder rights, debt leverage, and de-listing. Anticipating these challenges, LCY management and KKR responded by providing additional details on the deal structure, in a bid to offer greater transparency for all stakeholders. The FSC, one of the reviewing regulators, noted these issues in a statement put out the day after the buyout announcement, but refuted local media reports fretting over listed companies leaving Taiwan's bourses.⁷¹

The deal's approval from Taiwan regulators came with one caveat; a pledge by KKR and LCY not to re-list the company on bourses in China or in Hong Kong.⁷² LCY chairman TH Hung told shareholders at an extraordinary meeting that KKR aims to re-list the chemical maker in about five years' time, preferably in Taiwan. At the time, he also ruled out any plans to re-list in China.⁷³

⁶⁹ Ibid.

⁷⁰ *LCY Chemical Corp.* Taiwan Ratings. 2018. <https://www.taiwanratings.com/portal/member/viewMemberProfile/3233>

⁷¹ 有關李長榮化學工業股份有限公司擬被國際私募股權基金收購下市案之說明 (*Explanation Regarding the Acquisition of LCY Chemical Corp by an International Private Equity Fund and Its De-listing*). Financial Supervisory Commission, Executive Yuan. July 23, 2018. https://www.fsc.gov.tw/ch/home.jsp?id=96&parentpath=0,2&mcustomize=news_view.jsp&dataserno=201807230002&aplistdn=ou=news,ou=multisite,ou=chinese,ou=ap_root,o=fsc,c=tw&dttable=News.

⁷² *KKR Promises Not to List LCY Chemical in China, Hong Kong.* Central News Agency. December 19, 2018. <http://focustaiwan.tw/news/aeco/201812190016.aspx>.

⁷³ *LCY Chemical shareholders approve acquisition offer by American firm.* Central News Agency. September 10, 2018. <https://focustaiwan.tw/business/201809100011>.

Backgrounder: A Summary of the KKR & LCY Deal

Buyers:

- Taiwan subsidiary of Carlton (Luxembourg) Holdings Sarl (“Carlton”)
- Carlton was formed by KKR and a group of LCY designated shareholders
- KKR has invested through its Asian Fund III

Rationale:

- To invest in LCY operations and to expand its production
- Allow LCY to move into new business areas, international markets, and vertical markets
- Bringing in more international investment, cooperation, and M&A opportunities
- Speed along LCY's development opportunities

Price and financing:

- Per share purchase price NT\$56 - adjusted for 2017 per share cash dividend of NT\$2.90, the per share price is NT\$53.1
- Outstanding total shares of 854,403,368
- Deal value at NT\$47.846 billion, or US\$1.56 billion
- Debt and equity (based on ex-dividend deal value of US\$1.51 billion) to comprise US\$870 million in loans and US\$650 million in cash

Deal Timeline:

- July 22, 2018 LCY and KKR announce proposed deal
- September 11, 2018 LCY shareholders approve the deal
- November 9, 2018 Fair Trade Commission approves deal
- December 18, 2018 Investment Commission of the Ministry of Economic Affairs (MOEAIC) approves the deal
- January 11, 2019 The Financial Supervisory Commission (FSC) approves delisting date for LCY
- January 29, 2019 LCY and KKR announce deal completion
- January 30, 2019 LCY shares are delisted from the TAIEX

Sources:

<https://www.lcygroup.com/lcygroup/en/news-info.php?dtid=0&cid=1&nid=153&Page=0>

<https://media.kkr.com/news-releases/news-release-details/proposed-acquisition-lcy-chemical-corp-kr-consortium>

<http://mops.twse.com.tw> (LCY's filings with the Taiwan Stock Exchange)

<https://www.ftc.gov.tw/internet/main/doc/docDetail.aspx?uid=126&docid=15682>

https://www.moeaic.gov.tw/news.view?do=data&id=1315&lang=ch&type=new_ann

<https://newtalk.tw/news/view/2018-12-18/182474>

<https://tw.stock.yahoo.com/news/榮化-金管會核准公司股票自1-30起停止公開發行-011926855.html>

<https://www.businesswire.com/news/home/20190129005982/en/>

Case Studies: Lessons Learned

Taiwan has certainly seen its share of successful PE deals - albeit 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 above case studies highlight where things can go wrong in the deal-review process.

Taiwan's regulatory climate has been fickle, susceptible to partisan moods in Taiwan's polarized political environment. As explained above, one set of suitors for China Network Systems (CNS) failed in its deal attempt as a result of pressure from newly-elected lawmakers during a changeover of power in the national government. Regulators, having given an initial green light for CNS to be purchased by Morgan Stanley Private Equity and Far EastTone, effectively rescinded their decision when MOEAIC suspended its review of the deal and kicked it back to the NCC for a second look.

Not only partisan factors but also public opinion – rather than business merits – have set the tone of the debate over PE deals. Concerns about de-listing from the local bourse and opening a backdoor to China for investments, particularly in sensitive industries like high technology, hurt Carlyle's plan to acquire Advanced Semiconductor Engineering (ASE). The deal was thwarted due to a market rally that priced ASE shares over the bidder's offer. But given that public opinion was driving the narrative at the time, if the deal had actually been submitted for regulatory review it likely would have faced both delays and possible rejection.

With the benefit of hindsight, it is worth noting that ASE's prediction regarding chip industry consolidation was prescient. The chip industry has seen a huge wave of mergers and acquisitions activities in recent years. ASE itself has had to fend off rivals that included Foxconn and Tsinghua Unigroup when it began in 2015 to court Siliconware Precision Industries (SPIL), a local rival. ASE's multi-year effort to acquire SPIL was completed in 2018.

The biggest hurdle for any investor looking at Taiwan investment targets has been overcoming the paranoia over Chinese capital, and how it may potentially gain control over Taiwan companies. These case studies clearly show that any hint of Chinese influence or money when bidding for an asset in Taiwan will lead to limbo and delays. This anti-China sentiment could potentially complicate any PE deal-making ahead.

FOREIGN PRIVATE EQUITY: AN UNEXPECTED ALLY FOR TAIWAN

As outlined in this paper, the outlook for PE in Taiwan really started to change in the second half of 2018, when a small US\$303 million buyout for a Taiwanese medical equipment maker was approved, followed by back-to-back nods for the NT\$11.8 billion purchase for half of an aquatics feed producer on the island and then – the largest deal in years – the US\$1.56 billion takeover of a specialty chemical producer.

PE investment brings a host of tangible benefits to a target company and the host economy that have nothing to do with politics. However, for the Taiwan market the issue of China capital has been a key concern for the government and the domestic public. Anti-China sentiment in Taiwan has had a significant impact on private equity deals to the extent that some PE investors, who had found buyers to hand off their holdings to, had their deals scuttled as a result.

Nevertheless, Taiwan investors continue to work with mainland counterparts to expand their businesses, although the structure of such cooperation has shifted over the last several years. In 2012, Chinese capital targeted non-sensitive sectors in Taiwan, and then evolved in 2016 into Chinese capital seeking inroads into sensitive sectors of Taiwan's economy like semiconductors. Now, Taiwan investors cooperate with Chinese investors abroad to form joint ventures or equity alliances, including for investments inside China.

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 has constructed a technology powerhouse through partnership alliances with Hewlett Packard, Apple, Dell, and almost all of the world's leading technology companies – it now needs to recognize that global private equity companies can play a role as important partners as well.

One American PE investor based in Taipei stated that Taiwan should not underestimate the kind of investors PE can bring on board, and it is these kinds of foreign ties that will keep Taiwan relevant for the international community. This investor was speaking at a conference organized by AIT and Taiwan's Ministry of Economic Affairs (MOEA). Clear rules and a predictable review process – based on legal business and economic merits, and which will withstand domestic pressure and posturing – will be more effective and accountable at guarding and strengthening Taiwan's sovereignty than ad hoc decisions done under political whims.

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. Its global equities have seldom been higher than they are right now. This is an excellent moment 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.

CONCLUSIONS & RECOMMENDATIONS

Improving the PE investment environment in Taiwan will likely require patient dialogue that encourages all stakeholders to better and more broadly understand how PE can add value to the Taiwan economy.

Those stakeholders include not only PE firms, representatives of local industry, and Taiwan government regulators, but it also includes local shareholders and domestic civil society. Such a dialogue would 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.

Clear Rules and Procedures

Given Taiwan's open and democratic rule of government, accountability is critical in the public debate on foreign private equity buyouts of domestic firms. In general, markets that have thrived with private equity capital have been in jurisdictions where government regulations have been very clear about what is and isn't allowed.

Providing clearly defined regulations for private equity - along with detailing exactly how the 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

Capital markets that are not particularly familiar with the sophisticated toolbox of PE investments often have market participants - such as existing shareholders, the general public, regulators, and politicians - who consider PE investors to be corporate raiders rather than disciplined professionals who bring a very strict and vigorous process to a company's corporate governance and business operations. While PE cases in Taiwan have usually had the blessing of the acquired company's senior management, it has often proven to not be enough.

In the bid for LCY Chemical Corp, KKR worked to provide as much information as possible in the name of transparency.⁷⁴ Moreover, KKR was a participant, alongside other peers like MSPE, at a September 2018 conference in Taipei elaborating on the advantages private equity can bring to economies that embrace them. In attendance at the conference were government officials that included the executive secretary of MOEAIC, along with the Vice Chairman of the regulatory FSC. These are the kinds of educational activities that can help smooth the way for additional deals in the future.

Build a PE Community

One private equity veteran in Taiwan observed that when MBK Partners bid for China Network Systems (CNS) in the mid-2000s, "*we were so busy there was not enough lawyers, bankers, and accountants in Taiwan to handle that deal.*" While it may no longer be as much of an issue as it was at the time, local companies, bankers, lawyers,

⁷⁴ Personal conversations with executives at LCY Chemical and KKR in September of 2018

shareholders, and regulators do not yet have the experience of seeing various forms of private equity deals through from entry to exit.

Without more and successful private equity transactions, it is difficult to build a community of good talent that can help shepherd through future deals. But 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. This would allow them to boost investment returns to meet the retirement needs of workers, with reduced pressure to increase contributions or cut benefits. Taiwan is after all grappling with very high public pension obligations, with the National Audit Office projecting total contingent liabilities stemming from public pension payments of around NT\$18 trillion (US\$600 billion) over the next 30 years.

Relax Zero-Tolerance Rule for Media Firms

Existing laws in Taiwan prohibit government ownership of media firms. Taiwan government funds, including pensions and postal savings, are generally invested in publicly listed domestic companies. The government funds therefore have minority shareholding in many of Taiwan's leading companies, accrued from buying shares in the open market. That government ownership, however slight, thereby places restrictions on Taiwan companies who might otherwise be interested in acquiring a media property.

Carlyle and MBK - with kbros and CNS, respectively – have both seen cases where their investment exit opportunity failed to materialize due to the zero-tolerance rule on government ownership of media. Taiwan Mobile, which had originally bid for kbros, had some local city government ownership via its parent company. Meanwhile, Far EasTone - part of the bid for CNS - has less than 3% of its shares owned by government entities.⁷⁵

To encourage M&A deals, the Taiwan government should implement an easing of the zero-tolerance rule to allow up to a certain proportion of government ownership in media companies. Any thresholds set should, of course, be low enough so as not to trigger any concerns for government interference in free, fair, and diverse media programming.

Deeper Capital Markets Would Facilitate Exits

In order to tolerate multi-billion dollar entries and exits for major PE deals, Taiwan ultimately needs to develop its financial and capital markets so that they are deeper and multi-layered. Currently, Taiwan is seen as a market for smaller, local plays where exits are limited. If a PE sponsor picked up a major technology firm and was looking to exit right when the internet bubble burst, it might not be able to float its investment on Taiwan's technology board (as an alternative to Nasdaq) due to concerns that the domestic listing could suck up a big portion of the market's capital. When de-listing from the local bourse is part of a proposal by a PE investor, more efficient capital markets could also allay public concern about market performance and prestige.

⁷⁵ *Investment Commission Postpones Review of CNS-Far EasTone Deal*. Central News Agency. September 20, 2016. <https://focustaiwan.tw/business/201609200021>.

“What the government should do is foster a system of governance at home, add value to companies at home and promote ‘buying’ elsewhere,” says one investment banker familiar with Taiwan. “The end game is to have an efficient market, for things not to be cheap relative to other markets, so companies can trade at a price that is better than other countries.”

Clearly Marked Separate Track Review for Chinese Capital

Drafts for revising the “*Statute on Investment by Foreign Nationals*,” last amended in 1997, were making the rounds in late 2017 in government and industry, and the Taiwan Cabinet approved revisions and sent them to the LY in early 2019.⁷⁶ The draft changes are intended to improve transparency and make the reviews of foreign investments more predictable.

It will be important to make clear the two different tracks of review that is used when looking at foreign investors versus Chinese investors. The rules governing foreign investors were created years before separate rules were made governing investment between Taiwan and China [i.e. “*The Act Governing Relations between the People of the Taiwan Area and the Mainland Area*.”] In the past, this meant that Chinese companies domiciled in a third country would apply for investment in Taiwan under the island’s foreign investor statute. Today, however, this early practice has brought uncertainty and delays when the same investor applies for new projects and must contend with a second-track review. This has been especially true as China’s outbound mergers and acquisitions have multiplied, potentially resulting in a foreign company that first applied for business in Taiwan as a foreign investor, but will now be reviewed under Chinese capital rules because it is or became an affiliate or subsidiary of a Chinese company.

Regulations that apply to Chinese capital seeking to invest in Taiwan should not be applied to foreign nationals making investments in Taiwan. As long as the ultimate source of funding is from China, such investment will be required to be reviewed on a separate track.⁷⁷

The China question has and will be asked of foreign PE investors. On the one side, understanding and transparency by PE funds regarding their deals will help shape positive outcomes. On the other side, vetting all limited partners (“LPs”) in the general partnership (“GPs”) that is the PE fund will be necessary and expected by Taiwan regulators. PE industry participants familiar with the sensitivities of the Taiwan market say that it is possible to request LPs with Chinese capital to stay out of a GP that is created to specifically target Taiwan assets.

⁷⁶ Cabinet approves relaxed foreign investment rules. Taipei Times. January 4, 2019. <https://www.taipetimes.com/News/taiwan/archives/2019/01/04/2003707315>.

⁷⁷ 經濟部投審會預告修訂修正草案 (Ministry of Economic Affairs (MOEA) Announces Amendments to the Draft). WeTrust Co., Ltd. December 8, 2017. http://www.obu.com.tw/news_04_20171208.php.

APPENDIX

Abbreviations & Acronyms

AI	Artificial Intelligence
AIT	American Institute in Taiwan
AR	Augmented Reality
ASE	Advanced Semiconductor Engineering, Inc.
CNS	China Network Systems
FSC	Financial Supervisory Commission
FTC	Fair Trade Commission
IoT	Internet of Things
KHL	KHL Capital Company, Lt.
KKR	KKR & Co. Inc. (formerly Kohlberg Kravis Roberts & Co.)
LCY	LCY Chemical Corp
LP	Limited Partnership
M&A	Mergers and Acquisitions
MAPECT	Taiwan Mergers & Acquisitions and Private Equity Council
MBK	MBK Partners
MOEA	Ministry of Economic Affairs
MOEAIC	Ministry of Economic Affairs, Investment Commission
MSPE	Morgan Stanley Private Equity
NCC	National Communications Commission
NT	New Taiwan Dollar
PE	Private Equity
PWC	PricewaterhouseCoopers
SPC	Segregated Portfolio Company
TAIEX	Taiwan Stock Exchange Weighted Index
TBC	Taiwan Broadband Communications
TCB	Ta Chong Bank, Ltd.
VC	Venture Capital
VR	Virtual Reality
LY	Legislative Yuan

Glossary

5+2 Innovative Industries

The term “5+2” is shorthand for a Taiwan government plan, under the administration of current President Tsai Ing-wen, intended to serve as the central driver for Taiwan’s future industrial growth. The plan covers seven industries and projects: intelligent machinery, Asia Silicon Valley, green energy, biomedicine, national defense and aerospace, new agriculture, and the circular economy.

Advanced Semiconductor Engineering Inc. (ASE)

ASE is a semiconductor manufacturing company, specializing in front-end engineering tests, wafer probing, and final testing of semiconductors. (www.aseglobal.com)

American Chamber of Commerce in Taipei (AmCham Taipei)

AmCham Taipei, founded in 1951, is a non-profit, non-partisan business organization dedicated to promoting the interests of international business in Taiwan. It has 1,000 members from more than 500 companies in the global business community. (www.amcham.com.tw)

American Institute in Taiwan (AIT)

AIT is the non-profit, private corporation established by the Taiwan Relations Act to continue commercial, cultural and other relations between the U.S. and Taiwan after the U.S. switch in official diplomatic relations to the PRC in 1979. The Department of State, through a contract with the Institute, provides a large part of AIT's funding and guidance in its operations. Congress, in passing the Taiwan Relations Act, also assumed an oversight role with respect to the Institute's operations. (www.ait.org.tw)

Bain & Company

Bain is one of the “Big Three” management consultant companies in the world. From its headquarters in Boston, Massachusetts, it provides advice on strategy, marketing, organization, operations, IT, and M&A to public, private and non-profit organizations. (www.bain.com)

Buyout

Purchase of controlling share in a company; sometimes used synonymously with acquisition. A buyout-backed deal indicates that the deal is structured to take controlling share in a company.

Cathay Securities Investment Trust Co (SITC)

Cathay SITC (國泰證券投資信託股份有限公司) is a Taiwan asset management company, with assets from DIM and mutual funds totaling \$22.40 billion. The Company offers fund services, investment solutions, investment consulting, and other services to customers worldwide. A subsidiary of Cathay Financial Holdings, it has access to the considerable resources of its fellow subsidiaries, such as Conning, Octagon, Global Evolution, and CBDS Cathay Asset Management. (www.cathaysite.com.tw/en/)

CDIB Capital Group

The private equity and venture capital arm of China Development Financial (中華開發), CDIB was formerly China Development Corporation and China Development Industrial Bank. It was the first private development-oriented financial institution in Taiwan, and it invests in compelling growth-oriented companies seeking to capitalize on

cross market opportunities in the Asia-Pacific region. It is currently attempting to also become a full-fledged manager of third party assets. (www.cdibcapitalgroup.com/en)

Central Bank

The Central Bank was originally formed in 1924 as part of the Republic of China government under Sun Yat Sen, relocating to Taipei in 1949. On hiatus until 1961, the current Central Bank, an organization administered under the Executive Yuan, is governed by The Central Bank of the Republic of China (Taiwan) Act, first enacted in 1979 and last amended in 2014. Under the Act, the Central Bank promotes financial stability, guides sound banking operations, maintains the stability of the internal and external value of the ROC currency, and fosters economic development. (www.cbc.gov.tw/en/)

China Network Systems (CNS)

CNS is a multi-system cable operator in Taiwan. Based in Taipei, it provides cable broadband and family entertainment services to over 1 million customers in North and South Taiwan. (www.cns.net.tw)

Chunghwa Telecom

Chunghwa Telecom is the largest telecommunications company in Taiwan and the incumbent local exchange carrier of PSTN, mobile, and broadband services. Established in 1996, the company also provides information and communication technology services to enterprise customers with big data, information security, cloud computing and IDC capabilities, and is expanding businesses into innovative technology services such as IoT, AI, etc. (www.cht.com.tw/en/)

CID Group, Ltd.

CID Group (華威國際) is a private equity and venture capital firm founded in 1998. It specializes in early- and late-stage venture investments in the semiconductor, wireless communication, display, and storage sectors. (www.cidgroup.com)

Closely- Held Company

A closely held company is a company where more than 50% of the value of its outstanding stock is owned (directly or indirectly) by a small group of controlling shareholders. Its stock is exchanged only infrequently, and there are restrictions on the transfer of shares.

Convertible Bond

A convertible bond is a corporate debt that yields interest payments, but can also be converted into a predetermined number of common stock or equity shares. The conversion from bond to stock can be done at certain prescribed times during the bond's life, and is usually at the discretion of the bondholder.

Debenture

A debenture is a bond with no collateral attached. Those who offer debenture agreements are generally those companies which are reliable and are unlikely to default on bonds. A convertible debenture can be changed into equity shares after a set period.

Dry Powder

A term for the liquid, uncommitted capital that private equity funds keep on hand to cover unforeseen costs, to invest in new opportunities, and to increase the pace of growth in existing investments.

Eastern Broadcasting Co., Ltd.

Eastern Broadcasting (東森電視事業股份有限公司) is a Mandarin-language TV network that provides television broadcasting services and cable network programming services. Based in Taipei, the company has an international presence on four continents. (www.ebc.net.tw)

Fair Trade Commission (FTC)

FTC is the watchdog and regulator on competition and anti-trust concerns in Taiwan. In charge of implementing the Fair-Trade Act of 2015, the commission oversees the drafting of laws and regulations regarding fair trade. It also has the authority to investigate businesses potentially impeding competition. (www.ftc.gov.tw)

Far EasTone Telecommunications (FET)

Far EasTone is a telecom operator that provides telecommunications and digital application services. Established in 1997, FET is headquartered in Taipei and is the third largest Taiwan telecom company behind Chunghwa Telecom and Taiwan Mobile. (www.fetnet.net/corporate/en/)

Financial Supervisory Commission (FSC)

The Financial Supervisory Commission is a subordinate entity of the Executive Yuan that oversees the regulation and supervision of financial markets and service enterprises. (www.fsc.gov.tw/en)

Freedom House

Established in 1941, Freedom House is a U.S.-based, U.S. government-funded non-profit NGO that conducts research and advocacy on democracy, political freedom, and human rights. It publishes an annual "Freedom in the World" survey, measuring the degree of civil liberties and political rights around the world. (www.freedomhouse.org)

Fubon Financial Holding Co.

Fubon Financial is a financial holdings company headquartered in Taipei. It is Taiwan's second biggest holding company and ranks as Taiwan's most profitable. Its four main subsidiary companies are Fubon Asset Management, Fubon Securities, Fubon Insurance Co., Ltd., Taipei Fubon Bank, and Fubon Life and Fubon Bank (Hong Kong). (www.fubon.com)

General Partnership

A general partnership is a business arrangement by which two or more individuals agree to share in all assets, profits, and financial and legal liabilities of a jointly-owned business. Partners agree to unlimited liability, meaning liabilities are not capped and can be paid through the seizure of an owner's assets. Furthermore, any partner may be sued for the business' debts.

Industrial Development Bureau (IDB)

IDB is an administrative agency within the Taiwan Ministry of Economic Affairs. Its main mission is to lay a firm foundation for long-term national development by improving and developing the Taiwan investment environment

for new and existing industries, and to provide businesses with assistance to overcome investment obstacles. (www.moeaidb.gov.tw)

Internet of Things (IoT)

The network of everyday devices, like vehicles, physical devices, and other everyday appliances, connected over the internet through embedded computers, sensors, and software.

Investment Commission, Ministry of Economic Affairs (MOEAIC)

The MOEAIC is an entity within the Ministry of Economic Affairs that oversees the screening and approval of foreign investment into Taiwan, as well as overseeing outward investment from Taiwan. (www.moeaic.gov.tw)

Kbro, Ltd.

Originally named Eastern Multimedia Co (東森媒體科技股份有限公司), Kbro is one of Taiwan's largest cable television companies. Among its services are video-on-demand programming, interactive TV, digital cable, cable phone, broadband Internet, and analog cable TV. (www.kbro.com.tw)

KHL Capital Company, Ltd.

KHL (達勝資本) is a Taiwan private equity firm focused on investing in companies with stable growth in Asia. The company's portfolio is diversified across a wide spectrum of industries, while focusing on technology, media & communications, Internet, healthcare, and financial services.

KKR & Co., Inc. (KKR)

KKR & Co. Inc. (formerly known as Kohlberg Kravis Roberts & Co.) is global investment firm headquartered in New York. The firm manages multiple alternative asset classes that include private equity, energy, infrastructure, real estate and credit, and (through its strategic partners) hedge funds. (www.kkr.com)

LCY Chemical Corp.

LCY is a public petrochemical company based in Taipei. LCY deals with various petrochemicals, including methanol, rubber, plastics, and electronic grade chemicals. (www.lcygroup.com/lcy/en)

Legislative Yuan

The Legislative Yuan is the unicameral legislature of Taiwan. It exercises legislative power on behalf of the people. In terms of its competence, power, and function, the Legislative Yuan is equivalent to a parliament in other democracies. (www.ly.gov.tw)

Leveraged buyout

The acquisition of another company using a significant amount of borrowed funds to meet the cost of acquisition. The assets of the company being acquired are often used as collateral for the loans, along with the assets of the acquiring company.

Limited Partnership

A limited partnership is a partnership made up of two or more partners. The general partner oversees and runs the business, while limited partners do not partake in managing the business. However, the general partner has unlimited liability for the debt, and any limited partners have limited liability up to the amount of their investment.

Macquarie Bank, Ltd

Macquarie Bank is an Australian multinational investment bank and financial services company. The company performs advisory and capital markets services, as well as trading and hedging, funds management, asset finance, financing, research, and retail financial services. Part of Macquarie Group Limited. (www.macquarie.com.au)

Macquarie Media Group

Macquarie Media Group, now Southern Cross Media Group, is one of Australia's major media companies. It is a commercial radio operator that also provides digital broadcasts and associated media. (www.southerncrossaudio.com.au)

MagiCapital Group, Ltd.

MagiCapital (東博資本) is a private equity firm with a focus on growth capital investments in the Greater China region. Based in Taiwan and China, it has been formulating innovative private equity investment strategies by bringing together in-depth local knowledge, relationships, and resources. (www.magi-capital.com)

Management buyout

A management buyout is a transaction where a company's management team purchases the assets and operations of the business they manage. It is appealing to professional managers because of the greater potential rewards and control from being owners of the business rather than employees.

MBK Partners HK, Ltd.

MBK Partners is a private equity firm headquarters in Seoul. Since its founding in 2005, the firm has specialized in management buyouts, taking public companies private, purchasing of subsidiaries via divestitures, and merging of companies within the same industry. Its main area of operations is in North Asia, specifically Korea, Japan, China, and Taiwan. (www.mbkpartnerslp.com)

Mergers and Acquisitions (M&A)

M&A refers to the consolidation of different companies or assets through financial transactions.

Microlife Corp.

Microlife is one of the world market leaders in developing and producing medical diagnostic equipment for use at home and in health facilities. Core products include blood pressure monitors, digital thermometers, asthma measuring devices, and flexible heat pads. (www.microlife.com)

Morgan Stanley Private Equity (MSPE)

MSPE is the private equity arm of Morgan Stanley Investment Management. They specialize in middle-market companies in North America, as well as PE investments in the Asia-Pacific. (www.morganstanley.com)

National Communications Commission (NCC)

Formed in 2006 through a consolidation of the Directorate General of Telecommunications and the Department of Broadcasting Affairs, the NCC is an independent commission responsible for regulation and monitoring the state of telecommunications, broadcasting, and information networks in Taiwan. (www.ncc.gov.tw)

National Development Council (NDC)

The NDC is a policy-planning agency within the Executive Yuan, formed in 2014 to conduct planning, coordination, review, and resource allocation for national development. NDC was formed by merging the Council for Economic Planning and Development (CEPD), the Research, Development and Evaluation Commission (RDEC), part of the Public Construction Commission (PCC) and part of the Directorate General of Budget, Accounting and Statistics (DGBAS). (www.ndc.gov.tw/en/)

Non-Convertible Bond

Corporations use non-convertible bonds as a tool to raise funds through public issue of debt. It is a corporate debenture that yields interest payments over the life of the bond. They traditionally have a higher rate of return when compared to convertible bonds.

Preqin

Preqin, founded in 2003, is a leading source of data and research in the alternative assets industry. The company's data supports investors, fund managers, placement agents, service providers, advisors, and other industry professionals in activities such as fundraising, investor relations, asset allocation, portfolio management, fund manager selection, and business development. (www.preqin.com)

PricewaterhouseCoopers Taiwan (PWC Taiwan)

PWC Taiwan is a subsidiary of PricewaterhouseCoopers Ltd., the second largest professional services firm in the world. Originally founded in Taiwan in 1970 under the name Chen & Chu, PWC Taiwan is a prominent Certified Public Accountant firms in Taiwan. (www.pwc.tw)

Private Equity (PE)

Private equity refers to the funds and investors who invest directly into private companies or who buy out public companies to delist them from public trade. PE companies buy and restructure companies, usually looking for short to medium term investments with a high turnaround value

Ta Chong Bank, Ltd. (TCB)

Ta Chong Bank, Ltd. provided banking products and services like deposits, loans, credit card management, and wealth management, mainly in Taiwan. Ta Chong's banking license was merged into Yuanta Financial Holdings on January 1, 2018. (www.yuantabank.com.tw/en/)

Taiwan Broadband Communications (TBC)

TBC (台灣寬頻電視) is one of the largest multi-system cable operators in Taiwan, offering cable television, broadband internet access, and internet telephony services. Established in 1999, it now has franchises throughout Taiwan, and serves 750,000 people. (www.tbc.net.tw)

Taiwan M&A and Private Equity Council (MAPECT)

MAPECT is a non-profit organization dedicated to the promotion of M&A and private equity in Taiwan. It was formed in 2007 by 90 members of the Taiwanese M&A and private equity community to engage in policy-making, facilitate industry development, build cross-region industry communication and exchange platforms, and improve the environment for the industry in Taiwan. (www.mapect.com).

Taiwan Mobile Co., Ltd.

Taiwan Mobile was founded in 1997, and is a leading Taiwan telecom operator providing mobile, fixed-line, cable TV, and broadband services. It is a subsidiary of the Fubon Group. (english.taiwanmobile.com)

Taiwan Ratings Corp. (TRC)

Taiwan Ratings Corp. is a provider of financial market intelligence in Taiwan. Through its association with S&P Global Ratings, TRC facilitates the dissemination of first-rate financial news coverage and analysis across the global market. (www.taiwanratings.com)

Taiwan Stock Exchange (TWSE) Weighted Index (TAIEX)

TAIEX is a weighted stock market index comprised of companies traded on the Taiwan Stock Exchange (TWSE). Each stock is given a weight based on its market capitalization. Preferred shares, "full delivery" shares, and shares listed for less than a month are excluded from the index. (www.twse.com.tw/en/)

Taiwan Taxation Administration

The Taiwan Taxation Administration, established in 1981, is an administrative authority directly subordinate to the Ministry of Finance. Major responsibilities include overseeing all matters relating to tax administration and tax regulations, the levy and collection of local and national taxes, directing anti-corruption efforts, auditing tax evasion cases, supervising audit performance, and promoting tax-related education. (www.dot.gov.tw/en/)

Taiwania Capital Management Corporation

Taiwania Capital Management Corp. is a venture capital company founded in August 2017 by the National Development Fund and backed by the Taiwan government. The company makes investments in sectors such as Information and Communications Technology (ICT), biotechnology, materials, energy, and new agriculture (www.taiwaniacapital.com)

Term Sheet

A term sheet is a non-binding agreement outlining the basic terms and conditions of an investment into a company, so that both sides can agree on the deal outline. It serves as a template for future legal documents.

The Carlyle Group

The Carlyle Group is an international alternative asset manager, specializing mostly in private equity investment. From their headquarters in Washington D.C., they oversee \$210 billion of assets across 335 investment vehicles. (www.carlyle.com)

The National Development Fund

The National Development Fund is a NT\$100 billion fund under the auspices of the Executive Yuan, with the goal of reinvigorating the Taiwan private sector through encouraging inbound foreign investment.

The Want Want Group

Founded in Taiwan in 1962, the Want Want Group manufactures and trades snack foods and beverages. Its Chinese subsidiary is China's largest maker of rice cakes and flavored milk, and is listed on the Hong Kong Stock Exchange. (www.want-want.com)

Thin-Capitalization Rules (Thin-Cap)

When calculating taxable profit, thin-cap rules limit the amount of debt that can give rise to deductible interest expenses. In Taiwan, interest expense from related party debt exceeding a 3:1 debt-to-equity ratio is currently not deductible for tax purposes.

Ting Hsin International Group

Ting Hsin International is a major Taiwan food and beverage manufacturer, producing cakes, drinks, cereals, oils, and other products. Its brands include instant noodle maker Master Kong. Ting Hsin also operates food industry investment, chain restaurant management, and other businesses. (www.tinghsin.com/en/)

Tsinghua Unigroup

Tsinghua Unigroup is an in-house subsidiary group of China's Tsinghua University, which manages all other subsidiary companies of the university itself. It manufactures computer products, including both software and hardware. It also produces electronic components, chemicals, and other products. (www.unigroup.com.cn)

Venture Capital (VC)

A type of private equity funding that invests into nascent companies that are attempting to commercialize their innovations or products. VC firms primarily fund startups, early-stage, and emerging companies with high long-term growth potential.

Wikileaks

WikiLeaks is a controversial international non-profit organization, founded in 2006, that publishes news leaks and classified media provided by anonymous sources. In 2015, WikiLeaks claimed to have released 10 million online documents in its first decade of existence. (www.wikileaks.org)

Yageo Corp.

Founded in 1977, Yageo Corp. is a multinational provider of passive components, with production and sales facilities in Asia, Europe, and America. It is a substantial provider of chip resistors and multi-layer ceramic capacitors (MLCC). (www.yageo.com)

Yuanta Financial Holdings Co, Ltd.

Yuanta Financial Holdings - formed from the 2007 merger of Fuhwa Financial Holdings and Yuanta Core Pacific Securities - is Taiwan's only securities-dominant financial group. Companies under Yuanta include Yuanta Securities Finance, Yuanta Securities, Yuanta Commercial Bank, Yuanta Futures, and other smaller subsidiaries. (www.yuanta.com/EN)

