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In-Depth: Private Equity (formerly The Private Equity Review) provides an overview of the market climate and regulatory regime for private equity transactions in key jurisdictions worldwide. With a focus on recent trends and developments, it offers practical and informed guidance from local practitioners about how to raise money and close deals.

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Summary

I Introduction

Private fund market

The Taiwan private fund market is dynamic, reflecting global trends and local economic policies. While specific figures fluctuate, the market has seen substantial growth, particularly in sectors such as technology, healthcare and renewable energy, driven by both domestic and international investor interest.

Private funds in Taiwan can be initially classified as either offshore private funds, which are those established and registered outside Taiwan, or local private funds, which are those established and registered under the laws of Taiwan and typically conducting venture capital business and private equity fund business.

Offshore funds

Historically, offshore private funds were dominant in Taiwan, both in terms of quantity and fund size. Offshore funds in Taiwan typically target a wide range of sums, from tens of millions to several hundred million US dollars, depending on the fund's strategy, the sector focus and the management team's track record. However, generally, the fund size of offshore private funds tends to be larger than local private funds. Additionally, from previous experience, due to certain regulatory restrictions governing the offshore investment of financial institutional investors, such as investment amounts and percentages, those financial institutional investors show more interest in investing in large offshore private funds, especially funds that are managed by top-tier well-known fund managers.

Local funds

Owing to recent government policies aimed at encouraging financial institutional investors, such as life insurance companies and banks, to invest in local private funds and encouraging Taiwan securities and securities investment trust enterprises (SITEs) to indirectly act as general partners and raise private equity funds, there has been a substantial increase in the number and size of local private funds. Furthermore, the fundraising targets for most local private funds are intensive, and have been in the range of NT$1 billion to NT$3 billion. These local private funds typically invest in industries relating to semiconductors, electric vehicles, biotechnology, healthcare and renewable energy. A smaller portion of private equity funds have higher fundraising targets exceeding NT$5 billion – these often focus on infrastructure and renewable energy projects.

A local private fund typically takes anywhere from six to 18 months from the commencement of fundraising to its first closing. Factors influencing the duration include the fund's target size, the reputation and network of the fund management team, market conditions and the specific investment conditions being proposed. Taiwanese government funds or financial institutional investors, such as the National Development Fund (NDF), can have lengthy due diligence processes, potentially extending the fundraising period. Conversely, if there are no government funds or financial institutional investors involved, the fundraising period may be shorter.

II Year in review

Private equity fund market in 2023

According to a data survey conducted regarding 2023 published by Deloitte, Taiwan's capital market experienced a recovery following the pandemic in 2021, and benefited from global monetary easing and low interest rate policies. Taiwan's private equity market saw significant growth, with total investments exceeding a historic US$4 billion.[2]

Taiwan's local private equity market has been consistently expanding, as evidenced by the existence of 174 limited partnerships as at the end of 2023, a record-breaking number of 42 new limited partnerships established in 2021 and 37 new limited partnerships established in 2022. Based on our experience, a significant portion of these local private equity funds, including venture capital funds, have directed their focus towards the technology, renewable energy and semiconductor sectors. This aligns with the prevailing trend in investment preferences. Several notable fundraisers in Taiwan in recent years include Cathay Sustainability Private Equity Fund Limited Partnership, which is a pioneering private equity fund established by a renowned SITE: Cathay Securities Investment Trust, Wisdom Capital Limited Partnership, a venture capital fund focusing on the semiconductor sector.

In terms of fundraising data, although investments in private equity funds are generally private, making it challenging to observe their ongoing fundraising sizes and committed investment amounts, certain material disclosures regarding investments in local private equity funds or venture capital funds are available online via Taiwan's Market Observation Post System. Such disclosures are commonly made by major Taiwanese investors (primarily insurance companies) and banks and venture capital enterprises of financial institutions (often publicly listed companies themselves or their subsidiaries). Therefore, although there is no registration or filing for each private equity fund raised in Taiwan, material disclosures provide an opportunity to observe certain fundraising trends; for example, in 2021, there were at least nine financial institutional investors (including their venture capital subsidiaries) investing in at least eight different local venture capital enterprises and private equity funds and 72 different offshore funds. In 2022, at least 14 financial institutional investors (including their venture capital subsidiaries) invested in at least 21 different venture capital enterprises and private equity funds, and at least 11 financial institutional investors invested in 60 different offshore funds. The number of investment targets grew nearly twice as much, indicating a significant increase in fundraising in Taiwan. In 2023, only six financial institutional investors (including their venture capital subsidiaries) invested in seven different venture capital enterprises and private equity funds; however, there were 16 financial institutional investors who invested in more than 65 different offshore private funds.

In 2023, there was a decline in local investment from financial institutional investors in venture capital enterprises and private equity funds; however, investment in offshore funds was increasing. In addition, according to our firm's internal case handling experience, funds are increasingly seeking capital from other types of investors, such as publicly listed companies and family offices. Despite the decreasing number of financial institutional investors, there is a trend of increasing numbers of limited partners in single funds, and the overall fund size did not undergo a significant reduction. We believe the fundraising landscape in the Taiwan market is gradually shifting.

III Legal framework for fundraising

i Private fund jurisdictions and structures

Offshore private funds: mainly utilising exempt limited partnerships in Cayman Islands

Owing to the flexibility of the legal systems, attractive returns and tax incentives associated with offshore jurisdictions, sophisticated investors such as insurance companies initially preferred investing in offshore private equity funds. Popular offshore jurisdictions include the Cayman Islands, Delaware, in the United States, and the British Virgin Islands. Among these, Cayman Islands-based funds are the most popular and represent a mainstay for Taiwanese investments in offshore private funds.

Assuming the primary portfolio companies are located outside Taiwan, investors generally prefer private funds domiciled in low-tax jurisdictions; however, if a fund's portfolio investments are in China, fund investors in Taiwan may be subject to regulatory filing obligations in accordance with the Act Governing Relations between the People of the Taiwan Area and the Mainland Area.

Local private funds: limited partnerships on the rise

If a fund will primarily invest in Taiwan, its fund managers typically choose to establish a local private fund in Taiwan over an offshore counterpart. Prior to the establishment of a limited partnership framework, local venture capital and private equity funds in Taiwan were only structured as companies limited by shares. This has led to some difficulty in localising and adopting international private fund norms in Taiwan.

In 2015, Taiwan's Limited Partnership Act was established and implemented by using as its reference Delaware fund partnership structures and frameworks. Subsequent amendments to relevant laws and regulations, including those offering tax incentives, encouraged both government and private investment in limited partnerships. This alignment of Taiwan's legal framework with those of international private funds paved the way for the gradual shift of corporate local private funds to those structured as limited partnerships.

Nonetheless, local private funds in Taiwan continue to be structured as either companies limited by shares or limited partnerships. When choosing an appropriate organisational structure, fund managers often consider the preferences of potential investors. Based on our experience, government funds (e.g., the NDF) and financial institutional investors (e.g., insurance companies) tend to favour private funds structured as limited partnerships because of the alignment with government policies and greater flexibility in investment terms. On the other hand, certain types of investors, typically those based in traditional industries, favour corporate funds due to unfamiliarity with the limited partnership structure. Overall, the popularity of the limited partnership structure has been increasing year by year, and even investors in traditional industries are now slowly venturing into investments in limited partnership funds.

ii Investment criteria and opportunities

Based on our experience, the primary investors in both offshore private funds and local private funds can be roughly categorised into the following groups: the NDF, financial institutional investors (e.g., insurance companies, banks and securities firms) and other investors (e.g., those with certain professional investment experience, family offices, industrial investors or publicly listed companies). There are specific legal and regulatory considerations for each such category, as summarised below.

National Development Fund

The NDF is a government fund in Taiwan. Its private investments are mainly governed by the Guidelines for the Review and Management of Venture Capital Investment Enterprises Invested in by the Executive Yuan's National Development Fund (the Guidelines), pursuant to which the NDF is mandated to invest in venture capital enterprises. In line with the government's efforts to promote the growth of venture capital enterprises, the NDF initiated venture capital investments in 1985. According to an NDF annual report, as at the end of June 2023, the NDF had invested in a total of 101 local and overseas venture capital businesses, with a cumulative investment amount of approximately NT$30.407 billion.

The Guidelines impose certain restrictions on the NDF's investments, such as limiting an investment in a single venture capital enterprise to no more than 30 per cent of the enterprise's actual paid-in capital or actual fundraising size, and in any event not exceeding NT$1 billion. Although these investment limits may pose significant restrictions on funds, owing to the substantial capital resources available to the NDF, it is considered a significant investor in the Taiwanese fundraising market.

Investment focus

As the NDF is strongly influenced by government policy, its investment criteria appear to prioritise certain factors over commercial considerations. Based on our experience, the NDF seems to favour local private funds that support local start-ups. Therefore, when considering a potential fund, the NDF may focus on the fund's potential portfolio investments, including the policy aspects of the relevant portfolio investment industry, stage of development (notably, private funds in which the NDF invests may not invest more than 20 per cent of paid-in capital in mezzanine-stage enterprises) and geographical location. The NDF is also likely to consider how conflicts of interests are managed, and management reputation and track record.

Special disclosure requirements

Assuming the NDF is considering investing in a fund structured as a limited partnership, it will typically require detailed information from each limited partner, including the limited partner's identity, investment commitment and relationship with the general partner. This may pose certain difficulties for funds with limited partners that would prefer to remain unnamed. Per the Guidelines, the NDF also requires quarterly reporting from funds, which should include information about the percentage of investments in various industries, development stages and geographical regions, as well as an investment allocation breakdown. Any discrepancies between investment plans disclosed when applying for funding with the NDF and investments actually executed should be documented in the quarterly reports. Additionally, the NDF may require visits to the portfolio investment of the private funds, which is relatively uncommon in the private fund investment market.

Financial institutional investors

Financial institutional investors in Taiwan primarily consist of life insurance companies, banks, and securities and other financial institutions. Among these, life insurance companies are the most experienced and knowledgeable when it comes to investments in both offshore private funds and onshore private funds.

Investment focus

Regulatory perspective

Insurance companies in Taiwan may invest in an offshore private fund[3] whose fund management institution satisfies certain criteria as set forth in the Regulations Governing Foreign Investments by Insurance Companies. A fund management institution of such private funds must satisfy certain criteria with respect to credit rating,[4] years of management experience[5] and assets under management.[6]

With respect to insurance companies' investments in local private funds, pursuant to the Regulations Governing Use of Insurer's funds in Special Projects, Public Utilities and Social Welfare Enterprises (Regulations Governing Use of Insurer's Funds), Taiwan insurance companies may generally invest in venture capital enterprises qualified to receive guidance or assistance, or both, from the central competent authority according to regulations for guidelines for venture capital businesses or private equity funds that meet certain criteria specified by the competent authority and support projects in government policies.[7] In this context, the term 'private equity funds' under the Regulations Governing Use of Insurer's Funds has been interpreted by the Financial Supervisory Commission (FSC) to mean funds that are either formed under a Taiwan SITE using its own funds to invest in a subsidiary as general partner, a Taiwan securities firm using its own funds to invest in a subsidiary as general partner or a fund that has been approved by the National Development Commission (NDC).

Also, pursuant to rules published by the FSC, private funds are limited to investing in the following: certain public investment projects;[8] the government-approved 'five-plus-two' innovative industries (i.e., green energy technology, 'Asia Silicon Valley' industries,[9-] biotech and pharmaceuticals, national defence, smart machinery, 'new agriculture'[10-] and circular economy); and the government-approved 'six core strategic' industries (i.e., information and digital technology, cybersecurity and high-end technology, precision health, national defence and strategy, green energy and renewable energy, and livelihood and defence).

Given the above, in addition to commercial terms, key considerations for insurance companies generally also include alignment with government investment policies, fund management qualifications, past investment performance, industry prospects, stakeholder enquiries and control of conflicts of interests.

Investment perspective

Life insurance companies are particularly concerned with the performance and investment conditions of private funds. Unless they perceive any significant terms in the transaction documents (e.g., partnership and subscription agreements), life insurance companies are less likely to request substantial modifications to those terms. Instead, experienced insurance companies have a tendency to seek additional rights through side letters, such as most-favoured-nations provisions, co-investment opportunities and information rights. On the other hand, financial institutional investors with less experience may request certain less customary provisions, such as buy-back options or redemption rights for a close-ended fund, which can be difficult to negotiate, especially when these rights must be disclosed to other investors with most-favoured-nations provisions.

Special disclosure requirements

Owing to regulatory limitations, life insurance companies must assess whether there are any conflicts of interests between themselves and other investors; therefore, they may request certain disclosures from or relating to investors. In addition, life insurance companies may also request special information rights, especially since recent regulatory amendments require them to conduct the following post-investment reviews of local private funds in which they have invested:

1. whether the local private funds have participated in any hostile takeovers;
2. whether the investment scope of the target complies with relevant regulations (to be reviewed periodically); and
3. a review of the local private funds' financial reports, updates on fund investment account details and tracking of investment performance.

Other investors

There is a diverse array of other investors, including those with professional investment experience, high net worth investors, family offices, industry investors and publicly listed companies. These investors typically prioritise fund performance and focus on targeting industries relevant to their interests. They may seek collaborative benefits through direct investment in private funds or co-investments. For instance, Phi Capital, a private equity fund, in collaboration with ASE Technology Holding's subsidiary, Universal Scientific Industrial, announced the acquisition of the automotive wireless business of TE Connectivity.

iii Private placement

Offshore private fund

According to the Regulations Governing Offshore Funds (RGOF), an offshore fund with the nature of a securities investment trust fund may only conduct private placement with qualified investors, which include (1) qualified institutional investors such as banks, bills finance enterprises, trust enterprises, insurance companies, securities enterprises, financial holding companies and other juristic persons or institutions approved by the FSC, and (2) accredited persons, such as natural persons and juristic persons or funds meeting the qualifications set by the FSC. In addition, the total number of offerees of a private placement must not exceed 99 persons. An offshore fund may, but is not required to, engage a bank, trust enterprise, securities broker, SITE or securities investment consulting enterprise (SICE) to conduct its private placement to qualified institutional investors; however, such engagement is mandatory for any private placement to accredited persons.

According to the guidebook published by the FSC, the term 'nature of a securities investment trust fund' primarily refers to offshore funds that chiefly invest in securities and are not allowed to invest in gold, commodities, real estate and related derivative products. Additionally, FSC staff have verbally indicated that a hedge fund and a private equity fund may not have 'the nature of a securities investment trust fund'. Given this view, there is currently a consensus that the RGOF currently does not apply to private equity funds. However, it is possible that fund interests may be deemed securities, rendering offerings of private equity fund interests subject to the Taiwan Securities and Exchange Act (SEA).

The SEA also has certain requirements regarding private placements. Under the SEA, a private placement can be made only to certain qualified investors, such as banks, bills finance enterprises, trust enterprises, insurance enterprises, securities enterprises and natural persons with net assets of more than NT$10 million (or, if jointly with a spouse, more than NT$15 million) or yearly average incomes for each of the past two years exceeding NT$1.5 million (or, if jointly with a spouse, more than NT$2 million), and juristic persons or funds with total assets exceeding NT$50 million based on their most recent audited financial report. Under the SEA, private placement must not involve advertising or public solicitation, lest it be deemed a public offering and, therefore, subject to approval by the FSC.

Owing to the lack of FSC guidance, it is unclear whether a private placement by an offshore fund without the nature of a securities investment trust fund is subject to the SEA; however, under the SEA, a public offering of securities to unspecified persons is prohibited without the requisite registration. This indicates private offerings to specified persons, conducted without general advertising or public solicitation, may be exempt from registration. General advertising or public solicitation is the utilisation of the following media, means or methods to deliver, distribute, publicise, solicit, attract or promote business or relevant affairs:

1. newspapers, magazines, periodicals or other publications;
2. leaflets, posters, advertising notes, press releases, letters, presentations, investment brochures, insurance proposals, prospectuses, stickers, calendars, phone books or any other printed materials;
3. use of mass communication media such as television broadcasting, films, telephones, computers, fax, text messages, radio or others forms of broadcasting, slideshow presentations and news tickers;

4. billboards, banners, signs, memorial arches, advertisements on buses or other vehicles, or any other equipment or facilities (whether mobile or stationary);
5. public internet, electronic billboards, emails, e-videos, e-voice messages or other electronic means of communication to the public;
6. the hosting of live workshops, symposiums, seminars, exhibitions and other public activities; and
7. any other form of advertising, solicitation and sales promotional activities.

As such, the general practice is to conduct private offerings via reverse solicitation.

Local private funds

As for limited partnerships in Taiwan, there are currently no specific fundraising restrictions, and there is no requirement to appoint a placement agent. However, fundraising should be conducted through private placement, lest public offering restrictions be triggered.

IV Regulation

i Registration and regulation for fundraising

As of the end of 2023, Taiwan lacks specific legislation for private equity funds. Private equity funds in Taiwan may nonetheless be subject to a variety of laws and regulations, depending on factors such as their organisational structure, jurisdiction and fund management. These include the SEA, the Securities Investment Trust and Consulting Act, the Limited Partnership Act and the Company Act.

In terms of organisational structure, limited partnerships fall within the jurisdiction of the Ministry of Economic Affairs, and any general partner or limited partnership must obtain establishment registration approval from the Ministry of Economic Affairs. In 2023, the Ministry of Economic Affairs added 'private equity investment business' as a category of business, defined as an industry that 'raises funds in a non-public manner from specific individuals, provides capital, business operations, and management services to target companies, and accelerates their growth, mergers and acquisitions, and industrial reorganization'. Although both corporations and limited partnerships can be registered as conducting private equity investment business, it is important to note that such business is not licensed or regulated. Thus, there are no regulatory or reporting prerequisites for registering as conducting private equity investment business; conversely, such registration does not exempt the conduct of such business from any legal or regulatory requirement or restriction otherwise applicable. For instance, a licence may be required if the business scope of a general partner or a fund manager involves 'securities investment consulting business', which includes the direct or indirect receipt of compensation from appointees or third parties; activities related to securities, securities-related products or other items approved by the competent authority; or providing analytical opinions or recommendations.

ii Fundraising channels expand for offshore private funds

Under the RGOF, offshore funds that raise funds through private placement channels are still required to meet the criteria of having the 'nature of a securities investment trust fund'. As mentioned above, if domestic investors intend to engage with or invest in offshore hedge funds or private equity funds, these funds, owing to their nature, have traditionally been considered by the regulatory authorities as not meeting the definition of 'offshore funds' as defined by the RGOF. As a result, the relevant provisions under the Securities Investment Trust and Consulting Act and the RGOF may not apply to private placement conducted by such offshore hedge funds or private equity funds. Therefore, the distribution channels for alternative investment funds that do not have the nature of securities investment trust funds are small and narrow. In recent years, the FSC has taken steps to expand fundraising channels for offshore hedge funds or private equity funds. In 2021, the FSC permitted SITEs and SICEs to provide distribution and advisory services for 'offshore funds that do not have the nature of securities investment trust funds' to high net worth investors. In the same year, the FSC issued rules allowing securities firms to distribute the offshore fund by means of acting as a sub-brokerage. In 2022, the FSC also permitted banks conducting high net worth client wealth management services to serve as trustees for investments in such funds. Overall, these measures expand the fundraising channels for offshore private funds.

iii Taxation

A Taiwan limited partnership is not a pass-through entity for income tax purposes unless it is a qualified venture capital limited partnership approved by the Taiwan Taxation Administration. According to the Act for Industrial Innovation, venture capital enterprises in the form of limited partnerships meeting certain criteria are exempt from profit-seeking enterprise income tax during the applicable period, which is initially 10 years (subject to a possible extension not to exceed five years).

There are certain exemptions for venture capital limited partnerships. To qualify for these exemptions, the venture capital limited partnership must meet the following criteria:

1. It is required to be set up between 1 January 2017 and 31 December 2029.
2. It must invest more than 50 per cent of its funds in local start-ups or offshore companies with actual operation in Taiwan, which must be incorporated for no more than five years, which is in line with government policy.
3. It must have a capital contribution for each year of at least the threshold amount set by the competent authority.
4. It must file an application to apply for pass-through taxation by the end of February of the second year after it is set up.

Under this exemption, a venture capital limited partnership may be taxed as a pass-through entity and, accordingly, its partners would be subject to income tax or exempted from income tax under the Income Tax Act. However, if a fund invests a significant portion of its assets in larger, more mature companies that do not meet the criteria for tax incentives that are relevant to start-ups or young enterprises, it may not be eligible for these tax benefits. This could potentially affect the investment preference of investors in such a fund.

V Outlook and conclusions

Private equity funds in Taiwan are emerging as significant investment institutions. Despite some negative perceptions arising because of a few local private funds being embroiled in corporate equity disputes and control, the overarching regulatory approach remains open to both domestic and foreign private equity funds.

In recent years, the FSC has been gradually opening up channels for private fundraising. According to the current RGOF, offshore funds that may raise funds through private placement channels should meet the definition of 'having the nature of a securities investment trust'. Currently, the FSC considers offshore private equity funds to be offshore funds that 'do not have the nature of a securities investment trust', which makes it impossible to apply the RGOF in terms of interpretation, and this further leads to difficulties in establishing an offshore private equity fund in Taiwan and limits the channels of fundraising. At the end of 2023, the FSC published a new rule opening up opportunities for private securities investment trust funds to invest in various types of offshore private funds, including funds of funds, venture capital, private equity, private debt, corporate finance (e.g., buyout fund out), those specialising in tangible assets such as infrastructure and real estate, and those specialising in fixed-income instruments such as mezzanine financing, first and second priority bonds, and royalty streams. Although it remains to be seen how this rule will be implemented in practice, it is expected to broaden the fundraising channels available to offshore private funds in Taiwan.

The new rule explicitly opens up the possibility for offshore private equity funds to expand the fundraising channels; however, only offshore private equity funds, not local private equity funds, have been opened up for private securities investment trust funds' investment, which is a slight shortcoming. This may be because of the legislative framework, the risk of asset allocation and the rate of return of offshore assets. It is worth continuing to pay attention to this issue, as there might be opportunities for gradual opening up in the future.

Endnotes

1 Denise Jen and Stephanie Peng are partners and Yu Hsin is counsel at LCS & Partners. ^ Back to section

2 Deloitte, 2023 Taiwan Private Fund White Paper: Taiwan Private Fund Market Response Development (https://www2.deloitte.com/content/dam/Deloitte/tw/Documents/finance/ 2023-private-equity-whitepaper.pdf). ^ Back to section

3 Under the Regulations Governing Foreign Investments by Insurance Companies, offshore private equity funds only include private equity funds, private debt funds and real estate funds. ^ Back to section

4 This requires being duly incorporated or registered with the competent authorities of a country or region that has a sovereign credit rating of at least A+ or an equivalent grade assigned by foreign credit rating agencies and is a signatory to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information of the International Organization of Securities Commissions.- ^ Back to section

5 This requires having five years or more of experience in managing private funds. ^ Back to section

6 There must be no less than US$500 million (or equivalent) of assets under management. ^ Back to section

7 This is as stipulated in the Regulations Governing Use of Insurer's funds in Special Projects, Public Utilities and Social Welfare Enterprises. ^ Back to section

8 This is as stipulated in the Regulations Governing Use of Insurer's funds in Special Projects, Public Utilities and Social Welfare Enterprises. ^ Back to section

9 This refers to certain industries relevant to the Asia Silicon Valley Development Plan promulgated by the National Development Commission (including the internet of things). ^ Back to section

10 This refers to certain industries relevant to the New Agricultural Innovation Promotion Programme promulgated by the Council of Agriculture, Executive Yuan (including organic and environmentally friendly farming). ^ Back to section

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