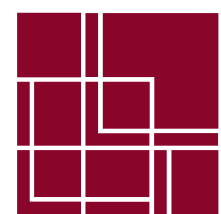


 理律盃模擬法庭辯論賽研習營  
併購交易文件與合約架構簡介

理律法律事務所 初級合夥人  
田仁杰律師

2020/09/19



# 講者簡介

## 學歷

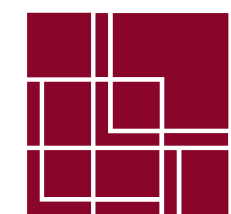
- 美國哥倫比亞大學法學碩士、美國喬治城大學法學碩士
- 臺大法律系學士、公法學組碩士

## 經歷

- 香港Herbert Smith Freehills
- 國際通商法律事務所

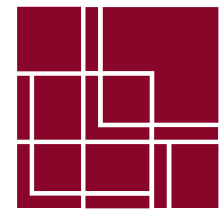
## 專業領域

- 跨境併購、新創募資、基金設立、食安醫療



# 大綱

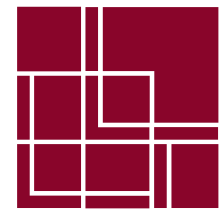
- 一、法律文件類型及實務需求
- 二、併購合約架構及條款介紹
- 三、討論與分享



# 一、法律文件類型及實務需求

 法律意見：正式度由低至高、頻率度由高至低

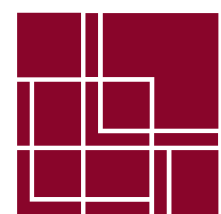
- 電子郵件 (Email)
- 備忘錄 (Memorandum)
  - 內部文件？
- 法律意見書 (Legal Opinion)
  - 簽署人？律師 or 事務所？



# 一、法律文件類型及實務需求

## 商業/交易合約：洽談先後順序

- 意向書 (Letter of Intent)
- 備忘諒解錄 (Memorandum of Understanding)
- 重要條款清單 (Term Sheet)
  - 例外事項才有拘束力：獨家交易、保密義務、費用分攤、準據法、管轄
- 合約 (Contract/Agreement)



# 一、法律文件類型及實務需求

## 公司內部文件：魔鬼藏在細節裡

- 董事會議事錄
- 股東會議事錄
- 董監事指派函
- 董監事辭職信
- 配合公司法要求如：股東會開會通知期限(始末日不算入)、董事利益衝突的報告義務、主席簽名、財報編制及承認程序、公認證與否

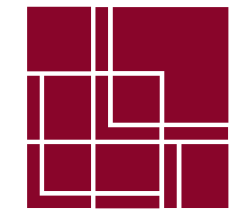


# 一、法律文件類型及實務需求

## 翻譯：非訟律師的磨練

- 向主管機關之各類申報申請文件
  - 公平會結合申報書
  - 投審會外人投資申請書
  - 交易所公開說明書
- 主管機關所發函文
- 合約、公司內部文件



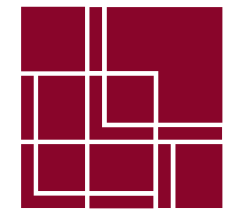


## 二、併購合約架構及條款介紹

### 併購合約 – 以股份買賣合約為例

- 架構
  - 當事人
  - 前言
  - 定義
  - 併購標的、價金計算
  - 交割 (Closing)
  - 交割前提條件 (Conditions Precedent)

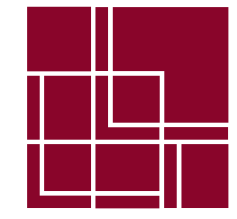




# 二、併購合約架構及條款介紹

## 併購合約

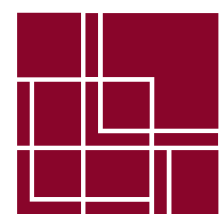
- 架構
  - 聲明與保證 (Representations & Warranties)
  - 承諾事項 (Covenants)
  - 特別協議事項 (Special Agreement)
  - 賠償條款 (Indemnification)
  - 終止 (Termination)
  - 其他 (Miscellaneous)



## 二、併購合約架構及條款介紹

### 交割(Closing)條款

- 簽署日、交割日
- 交割時間、地點
- 賣方應提出之交割文件
  - 背書轉讓股票、董監事辭職信、公司印章證照等
- 買方應提出之交割文件
  - 買賣價金、證交稅繳交收據等



## 二、併購合約架構及條款介紹

### - Seller

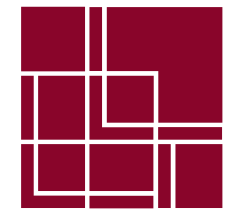
At or prior to the Closing, the Seller shall deliver or have delivered each of the following to the Purchaser in form and substance satisfactory to the Purchaser:

- a. Share Certificates** representing all the Sale Shares, duly endorsed by the Seller
- b. All permits, licenses, registrations**, and any other approvals that are required by any government authority for the Company to carry out all its business, each of which is valid and in full force and effect
- c. Original letters of resignation** issued by all the directors and supervisor of the Company, taking into effect on the Closing Date

### - Purchaser

At the Closing, the Purchaser shall:

- a. Pay the Sale Share Purchase Price **less the STT** to the Seller
- b. Pay the STT to the tax authority
- c. Provide the original receipt of the payment of the STT to the Seller

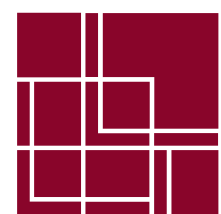


## 二、併購合約架構及條款介紹

### 交割前提條件(CP)條款

- 盡職調查完成且結果滿意
- 主管機關及必要第三人許可
- 無重大不利益變動
- 無主管機關或法院禁止交易之命令
- 聲明與保證至交割日仍屬正確
- 應改正事項均完成
- 應同時簽署之合約均已簽署





# LVMH併購Tiffany案：政府要求延後交割

聯合報 即時 要聞 娛樂 運動 全球 社會 產經 股市 房市 健康 生活 文教 評論 地方 兩岸 旅遊

分享



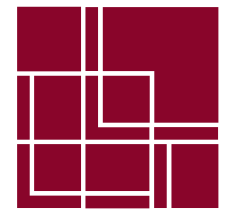
法國精品巨擘路易威登集團（LVMH）9日表示，將放棄160億美元收購美國珠寶業者Tiffany的交易案，這樁新冠肺炎疫情爆發以來最受矚目的併購交易面臨告吹局面。

在這樁併購案生變的消息傳出後，LVMH股價在巴黎股市9日盤中由紅翻黑，跌0.59%至402歐元；Tiffany股價在紐約股市早盤大跌近10%，至110美元。這項精品業史上最大的併購交易，早在疫情前就已敲定，但疫情重創精品業，並引發LVMH的收購價碼過高的質疑。

LVMH在聲明中說，董事會已接獲法國外交部的來信，以美國將對法國產品加徵關稅的威脅為由，要求該集團將這樁收購案的完成日期延至明年1月6日以後。該集團並表示，Tiffany也要求將完成收購期限由已經展延過的今年11月24日，押後至今年12月31日。

該公司表示，董事會原已決定遵守原始併購協議的條款，在今年11月24日前完成交易，但「就目前狀況而言，LVMH集團將無法完成對Tiffany的收購」。

Tiffany則發動反制，已對LVMH提起訴訟，尋求法院命令其依照去年的協議完成交易，並指控這位法國精品巨人刻意拖延收購案的完成。該公司說，LVMH違反了取得反托辣



# 日月光收購矽品案：公平會否決

自由財經

財經政策  
Strategy

影音專區  
video

國際財經  
International

證券產業  
Securities

房產資訊  
Estate

財經週報  
Weeklybiz

基金查詢  
Fund

自由時報

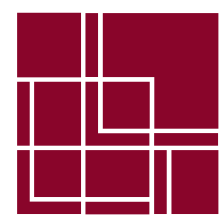
日月光昨天舉行重大訊息發布記者會，營運長吳田玉（右）與財務長董宏思（左）出席。（資料照，記者陳志曲攝）

〔記者洪友芳 / 新竹報導〕封測大廠日月光二度公開收購矽品昨到期，雖因未及在公開收購期間屆滿前取得公平交易委員會結合核准，二度公開收購條件未成就而失敗，但日月光將尋求第三度公開收購，最終達100%收購目標不變，並提出設立產業控股公司新構想，反而激勵今開盤股價上漲，矽品則下跌。

日月光今以36.75元、上漲0.25元開出，早盤最高達36.9元；矽品以49.15元開出，較昨下跌0.5元。日月光與矽品美國存託憑證也反映投資市場對收購支持度，矽品美國存託憑證下跌0.19美元、跌幅2.44%，日月光美國存託憑證上漲0.06美元、漲幅約1.06%。

日月光二度公開收購矽品共有超過27.57%的矽品普通股參與應賣，比日月光規劃的24.7%股數還高，但因在昨公開收購期間屆滿無法取得公平會的結合核准，二度公開收購矽品未能成功。





# 台數科併購東森案：NCC否決

## NCC否決 台數科併東森電視 破局

04:10 2017/06/01 | 工商時報 | 林淑惠



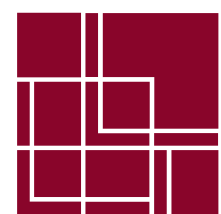
● NCC副主委兼發言人  
翁柏宗。圖／本  
報資料照片



### 東森電視出售案一覽

2013年底	大股東凱雷廣發英雄帖，擬出售東森電視持股
2015年11月	DMG執行長丹密茨出資新台幣183億元購買東森電視股權
2016年7月	丹密茨砍價，凱雷、東森國際不滿，交易案破局
2016年10月	台數科透過鑫隆買下凱雷持有東森電視65%股權，引起東森國際不滿提起訴訟





# 壹傳媒併購案：經公民抗議後破局

大紀元 台灣

[首頁](#) [台灣要聞](#) [中國](#) [國際](#) [財經](#) [產業](#) [兩岸](#) [地方](#) [科技](#) [生活](#)

[首頁](#) > [各地分網](#) > [亞洲](#) > [台灣](#) > [台灣要聞](#) > [正文](#)

## 壹傳媒併購案破局 各界再促反壟斷立法

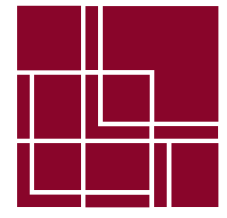


人氣: 8

【字號】大 中 小

更新: 2013-04-04 11:21 AM 標籤: [壹傳媒](#), [媒體巨獸](#), [王文淵](#), [蔡衍明](#), [辜仲諒](#)

【大紀元2013年04月04日訊】（大紀元記者鍾元台灣台北報導）在台灣公民團體、學者、學生超過20萬民眾上街抗議反財團壟斷媒體及叩頭中共後，壹傳媒併購案在買家撤案後交易案破局，公平會副主委孫立群3日表示，壹傳媒交易案因當事人2日申請撤回結合申報，公平會決議全案中止審理。



# 傲睿收購國巨案：投審會否決

自由財經 財經政策 Strategy 影音專區 video 國際財經 International 證券產業 Securities 房產資訊 Estate 財經週報 Weeklybiz 基金查詢 Fund

首頁 > 財經政策

## 傲睿收購國巨案 破局

2011/06/23 06:00

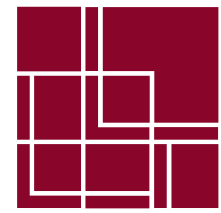
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〔記者林毅璋、王孟倫、蔡乙萱 / 台北報導〕傲睿公司公開收購國內被動元件龍頭廠商國巨公司一案，宣告出局！經濟部投審會昨召開委員會，由於主管機關金管會對傲睿併購國巨一案有資本弱化、價格透明度等疑慮，委員會十八票成員一致同意不予通過。

然而，此決議卻引來在場守候的國外通訊社不滿，質疑投審會所謂「社會觀感不佳」、「影響股東權益」等具體標準何在？認為政府是「歧視外資來台投資」。

### 投審會：非不歡迎外資

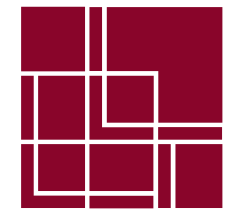
對此，投審會執行秘書范良棟說明，否決此案「絕非不歡迎國外私募基金」，增資雖是正常的，但傲睿公開收購過程透明化有疑慮，加上傲睿向台灣銀行團借款高達新台幣二八〇億元，高財務槓桿，股東貸款多、負債比過高，金管會認為，「對資本市場有重大影響」，且有「資



## 二、併購合約架構及條款介紹

The obligation of the Parties to proceed to Closing **is subject to the satisfaction of following conditions precedent on or before the Closing Date**, unless waived by both Parties in writing:

- a. As of the Closing Date, the representations and warranties made by the Seller under Article XX hereof shall have remained true and accurate without any violation by the Seller of any of them.
- b. All government approvals for the transaction contemplated herein shall have been obtained, including without limitation the foreign investment approval from the Taiwan Investment Commission and anti-trust clearance from the Taiwan Fair Trade Commission.
- c. There shall not have been any occurrence, and there shall be no facts or circumstances existing as of the Closing Date, that have, or would reasonably be expected to have, a **Material Adverse Effect**.
- d. The Company shall have entered into the Key Employee Agreements with each of the Key Employees.
- e. The Company shall have extended the term of the leased premises identified by Buyer on terms and conditions to Buyer's satisfaction.

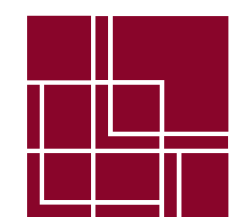


## 二、併購合約架構及條款介紹

### 聲明與保證(R&W)條款

- 期間：至簽署日及交割日
- 常見事項
  - 合法授權、股份所有權、公司資產、財務、業務、合約、智財、環保、訴訟、員工、保險、稅賦、關係人交易、應收帳款、或有負債等

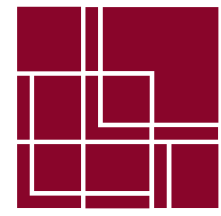




## 二、併購合約架構及條款介紹

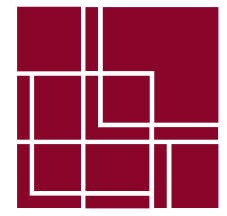
### 聲明與保證(R&W)條款

- 限縮責任方式："to the best knowledge of"、"except as would not be materially adverse to the Company"
- 揭露事項清單 (Disclosure Schedule)



## 二、併購合約架構及條款介紹

- Except as set forth in the **Disclosure Letter** attached hereto (the "Disclosure Letter"), the Seller hereby confirms that representations and warranties stated hereunder are true and correct **as of the date of execution and as of the Closing Date** (except as otherwise indicated) as to the matters set forth in this Article XX.
- **Except as otherwise set forth in Schedule XX of the Disclosure Letter**, the Company is in compliance with all currently applicable ROC laws respecting employment, employment practices and terms.
- As of the date hereof, **to Seller' best knowledge**, there is no pending or threatened charges or complaints alleging unfair labor practice, sexual harassment or other discrimination by the Company or any of its employees.
- There are no Actions pending or threatened against the Company, or its respective businesses, operations, properties, or assets, issued by any Governmental Authority or third party with respect to any environmental laws in connection with, related to or arising out of the ownership by the Company or its respective properties or assets or the operation of its respective businesses, **except as would not be material adverse to the Company**.

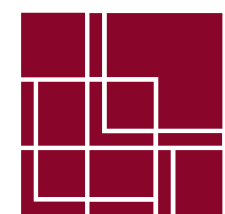


## 二、併購合約架構及條款介紹

### 承諾事項(Covenants)條款

- 交割前：可能與交割前提條件重複
  - 公司依照一般慣例方式經營
  - 資訊揭露與提供
  - 盡職調查過程所發現需改正事項
  - 重大交易禁止
  - 協助通知廠商及客戶
- 交割後





## 二、併購合約架構及條款介紹

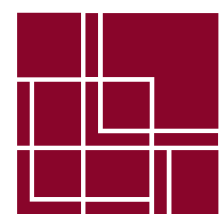
- From the date of execution hereof till the Closing Date, unless otherwise stated in this Agreement or Buyer shall otherwise agree in writing, Seller covenants and agrees that the business of Company shall be conducted only in the ordinary course of business in all material respects.
- From the date of execution hereof till the Closing Date, Seller covenants and agrees that it shall cause the Company to settle and fully discharge all outstanding pension and severance liabilities owed by the Company pursuant to the laws or any agreement between the Company and its employees, up to and including the Closing Date.
- Seller covenants and agrees that it shall cause the Company to enter into an agreement with the co-inventors of the patent applications identified by Buyer prior to the Closing on terms and conditions to Buyer's satisfaction.
- After the execution hereof, Seller shall use commercially reasonable efforts to notify the existing customers of the Company in writing with respect to the transfer of the Shares to Buyer and the estimated time for the Closing, and Seller shall, as reasonably directed by Buyer, conduct site visits, at the expense of Seller, to such customers with Buyer.



## 二、併購合約架構及條款介紹

### 特別協議事項(Special Agreement)條款

- 保密義務
- 競業禁止 (non-competition)、招攬禁止 (non-solicitation)
- 價金信託安排 (escrow)
- 公司名稱及智慧財產權使用或移轉
- 公司產品責任之分配

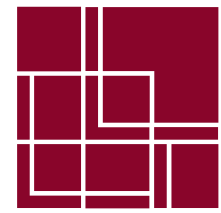


## 二、併購合約架構及條款介紹

For a period of 5 years from the Closing Date, Sellers covenant and agree with Buyer that each of them shall not and shall procure that their Affiliate shall not:

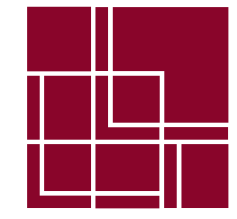
- a. be concerned in any business carrying on business in Taiwan and the PRC which is competitive or likely to be competitive with the business as carried on by the Company at the Closing Date (the "Business"), except as set forth in Schedule XX of the Disclosure Letter; or
- b. except on behalf of Buyer, canvass or solicit orders for goods or services similar to those being provided by the Company in connection with the Business from any person who is at the Closing Date or has been at any time within one year prior to the Closing Date a customer of the Business; or
- c. induce or attempt to induce, cause or do anything to cause any supplier of the Business to cease to supply, or to restrict or vary the terms of supply, to the Business; or
- d. induce or attempt to induce, cause or do anything to cause any director, officer or senior employee employed in the Business to leave the employment of the Business or any Buyer's Affiliates.





## 二、併購合約架構及條款介紹

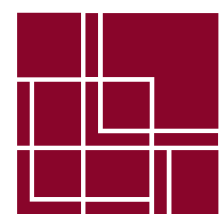
- Except as set forth on Schedule XX, the Group Companies (i.e., the Target and its subsidiaries) **own, license or otherwise have a right to use, free and clear of all Liens, the Intellectual Property Rights necessary for the conduct of the business of the Group Companies** as currently conducted (collectively, the “IP Rights”). Schedule XX sets forth a list of (a) patents or registrations of IP Rights owned by any Group Company and (b) patent applications or applications for the registration of IP Rights owned by any Group Company. Except as set forth on Schedule XX, to the Seller’s Knowledge, (x) there is not pending against any Group Company any claim by any third party contesting the use or ownership of any IP Rights owned or used by such Group Company, or alleging that any Group Company is infringing any IP Rights of a third party in any respect, and (y) there are no claims pending that have been brought by any Group Company against any third party alleging infringement of any IP Rights owned by such Group Company. Except as set forth on Schedule XX, to the Seller’s Knowledge, (A) the conduct of the business of the Group Companies as currently conducted does not infringe any IP Rights of any third party and (B) no third party is infringing any IP Rights.



## 二、併購合約架構及條款介紹

### 賠償(Indemnification)條款

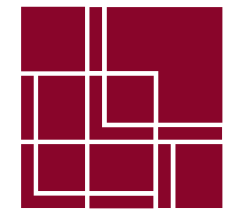
- 一般賠償：違反聲明與保證、承諾、特別協議
- 特別賠償：盡職調查發現的問題
- 賠償方、受賠償方
- 時效
- 責任限制：上限(caps)、下限(basket)
- 與分期價金或賠償準備金抵銷



## 二、併購合約架構及條款介紹

Sellers shall **jointly and severally** save, defend, indemnify and hold harmless Buyer, its Affiliates, officers and directors (collectively, the "Buyer Indemnified Parties") from and against any and all losses, damages, liabilities, deficiencies, claims, interest, awards, judgments, penalties, costs and expenses (including but not limited to reasonable attorneys' fees, costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (hereinafter collectively, "Losses") to the extent resulting from:

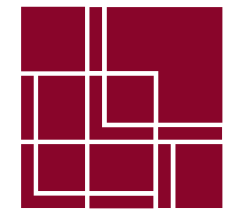
- a. any **breach of any representation or warranty** made by Sellers contained in this Agreement;
- b. any **breach of any covenant or agreement** by Sellers contained in this Agreement;
- c. any Losses caused to the Company **as a result of** the sales of the products made by the Company prior to the Closing; and
- d. any Losses caused to the Company **as a result of** the employment arrangements with OOO and OOO.



## 二、併購合約架構及條款介紹

- Sellers' indemnification obligations relating to indemnifiable Losses shall **survive only until two (2) years after the Closing Date.**
- The indemnified party shall have no right to recover for Losses **until such time as the cumulative amount of such Losses under this Agreement exceed One Million New Taiwan Dollars (NT\$1,000,000)** (the "Basket Amount"), provided that at such time as the amount to which such indemnified party is entitled to be indemnified exceeds the Basket Amount, such indemnified party shall be entitled to be indemnified for all such Losses (i.e., including the initial NT\$1,000,000).
- The **maximum aggregate amount of indemnifiable Losses** that may be recovered from Sellers by Buyer for any claim of indemnification under this Article XXX shall be USD6,400,000.

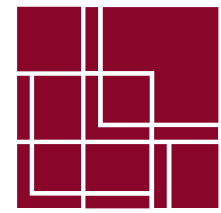




## 二、併購合約架構及條款介紹

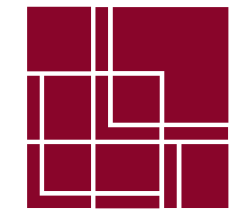
### 終止(Termination)條款

- 合意終止
- 任一方終止：他方違約、交割前提條件未成就
- 終止效力
  - 不受終止影響仍為有效條款
  - 已發生責任不受終止影響



## 二、併購合約架構及條款介紹

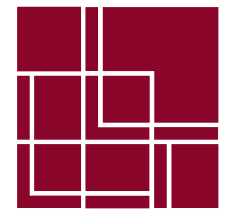
- In the event of termination of this Agreement as provided above, this Agreement shall forthwith terminate and have no further force and effect, **except that** (a) the covenants and agreements set forth in this Section XX (Effects of Termination), Section XX (Expenses and Taxes), Section XX (Confidentiality) and Article XX (Miscellaneous) **shall survive such termination indefinitely**.
- **Nothing** in Section XX or this Section XX (i.e. Termination clause) **shall be deemed to release** any party from any liability for any breach by such party of the terms and provisions of this Agreement or to impair the right of any party to compel specific performance by another party of its obligations under this Agreement.



## 二、併購合約架構及條款介紹

### 其他(Miscellaneous)條款

- 合約修改
- 合約轉讓
- 完整合約
- 通知
- 費用
- 準據法、管轄
- 合約份數、簽名



# 中信金收購RBS馬來西亞子行案： 交易時程不如預期

中信金控8日公告，終止中信銀與台灣人壽併購RBS馬來西亞子行一案。中信金高層指出，該併購案是在4月15日簽約，當時因考量要送件金管會、馬來西亞主管機關恐需六到七個月，因此合約期限訂為2016年11月15日，但因交易時程不如預期，加上RBS預計在2016年底前就要全部撤出亞洲，因此雙方協議在不影響契約各方業務營運的情形下，提前終止併購合約。

中信金是在今年4月宣布該併購案，併購案分兩部分，第一部分是以前來西亞幣7.399億元（約1.897億美元、新台幣61.038億元）取得RBS馬來西亞子行（The Royal Bank of Scotland Berhad，簡稱RBS馬來西亞子行）100%股權。

原本中信金是規劃中國信託銀行與台灣人壽將分別持有該行51%和49%的股權。

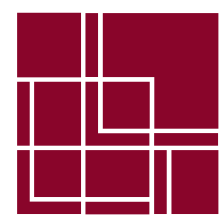
至於併購案的第二部分，則以RBS在馬來西亞地區另有納閩離岸金融中心，屬OBU既有資產，由中信銀以9.35折的價格購買，總收購金額為1.239億美元，約為新台幣39.872億元。

但昨天中信金臨時公告，指因作業不及，該併購案已在雙方合意下取消。對「送件來不及」的說法，金管會低調指出，中信金控打亞洲盃可能得「緩一緩」。

金管會透露，這次收購蘇格蘭皇家銀行馬來西亞子行案，馬國政府有關切中信金被檢調搜索的相關情況，金融業在海外布局及投資時，對方政府都會關心大股東適格性，因此在檢調釐清案情前，恐怕中信金海外布局都會受到若干影響。

資料來源：  
工商時報，〈RBS馬國子行 中信  
不買了〉，2016年8月9日。





# 高通收購恩智浦案：20億美元破局費

自由財經

財經政策  
Strategy

影音專區  
video

國際財經  
International

證券產業  
Securities

房產資訊  
Estate

財經週報  
Weeklybiz

基金查詢  
Fund

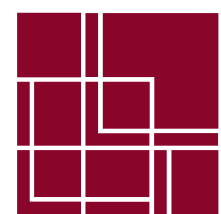
〔財經頻道 / 綜合報導〕高通 (Qualcomm) 收購恩智浦 (NXP) 案延宕近2年後破局，恩智浦已獲高通的20億美元分手費，但中國領導人習近平於日前G20「川習會」上稱，願意重新批准此案。媒體《CNBC》指出，要此案起死回生「不可能」，高通也表示，交易的截止日期已過，高通公司認為此收購案已結束。

《路透》今(3)報導，對於美國在日前G20「川習會」後透露，「若高通再次提出收購恩智浦案，中國將願意批准放行」，高通表示，「雖然很高興得知，川普總統和習近平主席關於高通提議收購恩智浦的評論，但該交易的截止日期已經到期，終止了預期的交易...高通認為此案已經結束」。

中國監管機構未對此發表評論。

《CNBC》則對此指出，高通和恩智浦已分別進行300億美元、50億美元的股票回購，高通也已支付恩智浦20億美元分手費，因此要讓已破局的高通-恩智浦併購案起死回生，幾乎「不可能」。

恩智浦執行長克萊默 (Rick Clemmer) 9月表示，公司將持續專注於發展車用晶片，而收購案破局獲得的20億美元分手費，一部份將用於發放現金股息。



## 二、併購合約架構及條款介紹

- This Agreement may be amended or modified only by a **written agreement** executed and delivered by duly authorized officers of Buyer, the Seller and the Guarantor. This Agreement may not be modified or amended except as provided in the immediately preceding sentence and any purported amendment by any Party or Parties effected in a manner which does not comply with this Section XX shall be void.
- This Agreement (a) constitutes, together with the Confidentiality Undertaking, the entire agreement among the Parties with respect to the subject matter hereof and **supersedes all other prior agreements and understandings**, both written and oral, among the Parties with respect to the subject matter hereof, and (b) **shall not be assigned by any Party** (whether by operation of law or otherwise), **without the prior written consent of Buyer and the Seller**. Any attempted assignment of this Agreement not in accordance with the terms of this Section XX shall be void.
- This Agreement shall **be construed, interpreted and governed by the laws of the ROC**, and the Parties hereby consent to the exclusive jurisdiction of the Taipei District Court for the first instance in any dispute arising hereunder.

# 三、問題與分享





田仁杰律師

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