

臺灣商港親水遊憩區經營管理法律責任之分析

An analysis of the legal liabilities arising from administrating waterfront leisure regions in Taiwan commercial port areas

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中文摘要

臺灣港務公司經營管理臺灣七個國際商港，並受航港局委託管理二個國內商港。近年來，各商港已逐步開放港區給民眾使用，作親水遊憩與觀光休閒功能，包括休憩、戲水及釣魚等活動為主。港務公司在商港親水遊憩區域之經營與管理時，可能扮演多種角色，而有不同的法律責任，包括侵權行為責任及受任人責任。航港局經管商港國有土地，亦可能因公共設施之管理不當而有國家賠償責任。本文探討各商港親水遊憩區域類型及管理措施，分析親水遊憩區域應盡之法律義務及責任，包括侵權行為責任(民法第 184 條)、特殊侵權行為責任(民法第 191 條第 1 項規定，土地上之建築物或其他工作物所致他人權利之損害)及國家賠償責任，並蒐集相關法院案例及法院實務見解。本文提出港務公司在親水遊憩區域之管理應注意之義務建議，包括：以契約約定降低或移轉風險、檢視及修正內部規章、訂定委任契約範本、對義務及責任明確規範。

關鍵字：商港親水遊憩區、侵權行為責任、國家賠償責任、臺灣港務公司

Abstract

Taiwan International Ports Corporation (TIPC) runs seven international commercial ports, as well as two domestic commercial ports based on the contract of mandate between Maritime and Port Bureau (MPB) and TIPC. In recent years, Taiwan's commercial ports have gradually opened their port areas to the public for leisure and sightseeing functions, including waterfront leisure activities and fishing. While administrating those waterfront leisure regions in commercial port areas, TIPC may play various roles and undertake different legal obligations and potential liabilities, including tortious liabilities, liabilities under a contract of mandate. MPB, which is the institute responsible for governing certain port land areas, could be sued for compensation based on State Compensation Law. This Article explores the types and relevant measures relating to administrating commercial port waterfront leisure regions. It analyzes related legal obligations and liabilities, including tortious liabilities based on Article 184 of Civil Law, special tortious liabilities based on Article 191 of Civil Law, as well as state compensation liabilities. This Article also reviews judicial judgements in order to discern the legal practices and opinions in different scenarios. It provides suggestions relating to duties of care by which should be undertaken by TIPC, including entering in certain contracts for managing or transferring its risks, reviewing and modifying its internal regulations and practices, drafting model contracts of mandate, and providing clear obligation and liability contexts.

Keywords: commercial port waterfront leisure region, tortious liabilities, state compensation liabilities, TIPC