

臺灣港務公司執行商港法經營管理行為 之法律性質及方式分析

The analysis upon the legal nature and the measures adopted by the TIPC while undertaking administrative affairs provided by Commercial Port Law

張志清、張秀真、劉韋辰、鍾英鳳

Chang, Chih-Ching, Chang, Hsiue-Chen, Liou, Wei-Chen, Chung, Ying-Feng

摘 要

我國在2012年基於政企分離之航港體制改革，國際商港由主管機關（交通部）設國營事業機構（亦即臺灣港務股份有限公司，以下稱港務公司）經營及管理，而管理事項涉及公權力者，由航港局辦理。對港務公司而言，由原本具有公權力之行政機關（港務局）改制為依公司法設立登記之私法人。此一公司化之變革，致使港務公司轉為須以締結私法法律關係之方式，執行商港法所賦予之國際商港經營管理事務。因商港區域之作業多元化，進出之船舶、人員、車輛、貨物的安全、保全、環保、許可等事項往往涉及公權力之執行，但又與港埠經營之效率與效能有關。本文探討港務公司執行商港法所規定之經營管理行為，在行政法上之法律性質，以及港務公司與航港局之權責劃分與分工方式。本文亦探討港務公司如何利用私法法律行為，維持港區之作業安全、效率與效能，並對未符合港區作業規則之人員、業者處以罰則。港務公司可採行之方式包括：以契約規定；以港區作業規則要求業者或船舶、人員遵守；或經由航港局行政委託執行部分公權力事項。本文之分析內容及建議事項，可供港務公司執行商港經營管理業務之參考。

關鍵詞：

港務公司、航港局、商港法、公權力、政企分離、航港體制改革

The analysis upon the legal nature and the measures adopted by the TIPC while undertaking administrative affairs provided by Commercial Port Law

*Chang, Chih-Ching, Chang, Hsiue-Chen,
Liou, Wei-Chen, Chung, Ying-Feng*

Abstract

Taiwan's ports implemented port administrative system reform by means of the separation of administration and corporation in 2012, based on the revisions of Commercial Port Law. Taiwan's international ports are run by Taiwan International Ports Corporation (TIPC), and those matters concerning public power are administrated by Maritime and Port Bureau (MPB). TIPC is then transformed from Harbour Bureau to a corporation without public power. It needs to run port operations based on private law. However, those operations in port areas are diversified because there are so many kinds of ships, personnel, vehicles and cargoes moving through the port areas. Those operations are not only closely related with public power upon the requirement of safety, security, environmental protection and entrance permit, but also concerning the efficiency and efficacy of port operations. This article explores the legal nature of those duties performed by the TIPC; the division of power and responsibility between TIPC and MPB, including administrative authorization. It also discusses how TIPC can maintain the safe, efficient and effective operations, as well as to impose penalty upon those entities which do not comply with port operation regulations. It suggests TIPC adopt measures by means of contract and/or by port operation regulations to ask those entities complying with port operation regulations, or obtain administrative authorization from MPB. The contents and suggestions of this article aim to provide reference to TIPC while running and undertaking those affairs provided by Commercial Port Law.

Keywords :

TIPC, MPB, Commercial Port Law, Public Power, separation of administration and corporation, port administrative system reform