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公營事業民營化之法律分析

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摘　要

本文旨在處理公營事業民營化過程中相關的法律問題。它得出如下的結論：

1.憲法第十五條所規定之「工作權」僅係國家之對己義務，並非個人之主觀權利，故公營事業員工不可據此要求在民營化過程中不被解雇或不被減薪。

2.公營事業移轉民營條例關於公營事業之定義有待擴張，以便包括各級政府內之機關事業（例如：郵政總局之郵遞業務），以及由政府或其設立之財團法人及公營事業直接或間接控制其「業務經營或人事任免」之事業。

3.本條例之民營化方式應修法加入「經營權之民營化」。

4.本條例尚有三項重大缺失：未規定民營化之立法目的及進度，欠缺積極鼓勵員工離職集體創業之規定，以及未考慮大型公營事業應先打散爲小型事業再民營化的需要。

壹、前言

我國公營事業在大陸時期並不發達，早期比較著名的公營事業有中央、中國、交通、農民四個國營銀行，以及中國石油、招商局、中紡及中華機械；嗣後抗戰軍興，因爲火柴、菸類、食糖及鹽專賣制度之實施，[1]而增加一些公

1.參見國民政府於民國三十一年頒布之鹽、食糖、菸類及火柴等四項專賣暫行條例，請參閱大陸重慶市檔案館編（1987年），抗日戰爭時期國民政府經濟法規。

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Legal Analysis of The Privatization of Government-Owned Enterprises

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ABSTRACT

This paper deals with the legal aspects of the privatization of government-owned enterprises and comes to the following conclusions:

1. The right to work according to Art. 15 of our constitution does not mean an actionable individual right. Neither does it award the employees of the government-owned enterprises with the right not to be laid off or have their salaries cut during the privatization process.

2. The meaning and scope of government-owned enterprises according to the "Privitization Act" should be enlarged in order to encompass the enterprises that are within the government agency (the postal services of the Post Office, for example), and the enterprises whose business management and personnel are in the direct or indirect control of government.

3. The "Privatization Act" should be revised so as to include the privatization of the operation of government-owned enterprises as one of the modes of privitization.

4. The "Privatization Act" also defaulted in neglecting (1) to turn the need to privatization into a statutory action program; (2) to provide employees with incentives to leave government-owned enterprises and start private business; (3) the need to break up big government-owned enterprises before privatization takes place.

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