

J. Y. Interpretation No.73 (March 13, 1957) *

ISSUE: Is an employee serving in a state-owned enterprise pursuant to law considered as a public functionary under the Criminal Code before such enterprise is privatized?

RELEVANT LAWS:

Article 3-III of the Act Governing the Management of State-owned Enterprises (國營事業管理法第三條第三項) ; Article II (4) of the Act Governing the Conversion of State-owned Enterprises into Private Enterprises (公營事業移轉民營條例第二條第四款) .

KEYWORDS:

State-owned enterprises (國營事業) , Private Enterprises (私人企業) , Privatization (民營化 / 私有化) .**

HOLDING: When a government-owned enterprise organized under the Company Act is converted into a private enterprise, although the transfer date is announced to ensure the rights, duties and the stability of the government-owned enterprise, the transferring enterprise is not considered to be a private company

解釋文：依公司法組織之公營事業，縱於移轉民營時已確定其盈虧及一切權利義務之移轉日期，仍應俟移轉後之民股超過百分之五十以上時該事業方得視為民營。惟在尚未實行交接之前，其原有依法令服務之人員仍係刑法上之公務員。

* Translated by Lawrence L. C. Lee.

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unless the amount of shares held by the private sector is above 50% pursuant to Article II (4) of the Act Governing the Conversion of State-owned Enterprises into Private Enterprises. Therefore, an employee appointed under the original regulations is still recognized as a public functionary under the Criminal Code until the conversion of the government-owned enterprise into a private enterprise has been completed.