

「校際傑出學術論文授權暨發表會」

論文摘要表

研究生(中文姓名)	李儀嬋
研究生(英文姓名)	Yi-Chan Lee
論文名稱	論美國商業判斷法則適用於我國 法制之可行性
英文論文名稱	The Business Judgment Rule in Taiwan
指導教授	張自強 副教授
指導教授(英文姓名)	Zi-Qiang Chang
學位類別	碩士
校院名稱	南台科技大學商管學院
系所名稱	財經法律研究所
學年度	99 學年度
語文別	中文
中文關鍵詞	董事、商業判斷法則、受託義務、注意義務、忠實義務、公司法 第 23 條第 1 項。

外文關鍵詞

Directors, Business Judgment Rule, Fiduciary Duty, Duty of Care, Duty of Loyalty, the Article 1 No. 23 of Corporate Law.

中文摘要

美國法院不願事後審究公司董事之經營策略是否有瑕疵，遂發展出「商業判斷法則」。其主要鼓勵董事之適格人選應勇於承擔董事一職，不因個人恐懼董事之重大責任而拒絕承擔。因商業決策常伴隨著不確定性的風險，故鼓勵董事就算所做之決策伴隨著風險，也要從事具有潛在重大利益之決策。而公司決策者則被允許果斷地完成決策以及免於法院的事後審究，此即為商業判斷法則之目的。惟商業判斷法則須以同時遵守受託義務之注意義務與忠實義務為前提。

我國於 2001 年修正公司法第 23 條第 1 項時，僅引進注意義務與忠實義務之概念，卻無將其概念詳加以規範說明之。同時亦無引進商業判斷法則，致我國實務界於使用該條法律時，與法之源頭有所差異，甚致誤解其內涵。故本文將對此問題詳加以說明、分析，並提出心得與建議，期望能供日後與此相關研究之學者作為參考。

英文摘要

U.S. courts are reluctant to second guess directors' business judgment and strategy successful or not, then develop the "Business Judgment Rule" which is to encourage directors to be brave enough to assume the post of director. Don't to fear the directors' responsibility to reject be the directors of the company. Because the business decision usually with uncertainty of risk, it encourages the directors made the decision even if accompanied by risks, have the potential of major interests in decision-making. The company's decision makers are allowed to complete decisive manner the decision-making and the court does not second guess them. This is a purpose of the Business Judgment Rule. But the Business Judgment Rule shall also comply with the duty of care and duty of loyalty as a precondition.

However, the Article 1 No. 23 of Corporate Law, amended on 2001, introduction the Duty of Care and Duty of loyalty in the Corporate Law that only the introduction of the concept but did not introduce its detailed specification of the concept. It did not introduce the Business Judgment Rule at the same time. So the practitioners to use the article in laws, and the source of law is different, even cause misunderstanding of its.

The authors would like provide recommendations on these topics and for future research.