

■ Recent Court Case ■

Resolution of shareholders' meeting is necessary for interim severance payment to executives

[Case No. Supreme Court decision 2017Da17436 dated July 4, 2019]

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The Supreme Court issued a decision that the resolution of the shareholders' meeting is necessary for interim severance payment to executives.

Upon amendment of the articles of incorporation increasing the severance pay for executives to 'double the number of years served', the representative director of the company received interim severance payment based on the regulations on severance payment for executives established by the board of directors. However, the company filed a lawsuit for refund thereof on account of unjust enrichment against the former representative director, who now serves as a director, on the ground that the "interim severance pay (and bonus, etc.) which was made while he was serving as the representative director was paid not according to the articles of incorporation or without resolution of the shareholders' meeting".

Article 388 of the Commercial Act provides that if the amount of remuneration to be received by directors has not been determined by the articles of incorporation, such amount shall be determined by resolution at the general meeting of shareholders.

The Supreme Court found that the severance pay for directors is included in the remuneration under Article 388 of the Commercial Act, and the interim severance pay which is settled and paid in advance is

the same, in its nature, as the severance pay. Therefore, the court ruled that if the articles of incorporation, etc. prescribed only the amount of severance pay, and provided that the severance pay of directors shall be determined by resolution at the shareholders' meeting, a director shall not be entitled to claim for interim severance payment, unless there is evidence that a resolution on interim severance payment was adopted at the shareholders' meeting.