

Dividend left in company: shareholders' loan to company (3/22/17)

Instead of paying a dividend, the general meeting of shareholders may decide to leave it in the company. This article explores a recent Supreme Court ruling on a case concerned with a dividend left in a company, i.e. the shareholders' loan to the company.

Minority protection

On 9 March 2017, the Civil Division of the Supreme Court ruled on case No. SKC-847/2017. In this ruling the court states that section 161(7) of the Commercial Code, which provides that the shareholders' resolution to leave a dividend in the company for any length of time is void, aims to protect minority shareholders through preventing them being forced by the majority to leave dividends in the company. However, where the general meeting unanimously resolves to leave dividends in the company, section 161(7) does not apply and the shareholders' resolution is valid, because the purpose of this clause cannot be achieved with no minority to protect.

The dividend left in the company then becomes a loan the shareholders make to the company through their bilateral expression of will.

A time limit

If no time limit is set for a dividend left in the company, the dividend (loan) will be treated as left in the company indefinitely.

The Civil Code requires that a company should repay an indefinite loan (undistributed dividend) no earlier than six months after the lender (shareholder) has requested repayment of that loan (undistributed dividend).