

# Administrative Appeals



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[ Administrative Appeals ]

An administrative appeal is an adjudication procedure provided through an administrative appeals commission to grant relief from an infringement of citizens' rights or interests. It may be requested by a person who has a legal interest in an illegal or unjust disposition by, or omission of, an administrative agency. Thus, the content of this section is intended to assist with requests for administrative appeals and the grant of relief by comprehensively providing information on statutes relating to administrative appeals, presenting categories of administrative appeals that are frequently requested, and introducing drafting examples of and item-by-item drafting methods for written administrative appeals for each major category.

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## 1. Overview of Administrative Appeals

### 1.1. Overview of Administrative Appeals

#### 1.1.1. Meaning and Function of Administrative Appeals

##### ▣ Meaning of Administrative Appeals

###### ▣ Meaning of Administrative Appeals

- An "administrative appeal" is a procedure requested by a citizen, whose rights or interests have been infringed by matters such as an illegal or unjust disposition by an administrative agency or other exercise or non-exercise of public power, to seek relief from an infringement of rights.
- The Constitution of the Republic of Korea provides that administrative appeals may be conducted as a procedure that precedes judicial trial and that, though the appeal procedure is determined by statutes, they shall conform to the principles of judicial proceedings. In this way, the Constitution of the Republic of Korea emphasizes that, in relation to administrative disputes, administrative appeals possess qualities that are equivalent to those of judicial trials (Article 107 (3) of the Constitution of the Republic of Korea).

##### ▣ Function of Administrative Appeals

###### ▣ Autonomous Regulation of Administration

- The purpose of administrative appeals is to ensure that there is an opportunity for administrative bodies to regulate their administrative activities in an autonomous manner. By requiring the administrative agency to review its administrative disposition and providing an opportunity to rectify it, the autonomy of administrative authority is accorded respect ([Supreme Court's Decision dated February 23, 1988, Case No. 87Nu704](#)).

###### ▣ Supplementing Judicial Function

- By enabling administrative disputes to be reviewed and adjudicated by an administrative body in accordance with a relatively simple procedure, administrative appeals utilize expertise on administration, avoid wastage of time and expenses that result from judicial procedures, and realize judicial economy. As such, administrative appeals play a role in supplementing judicial function.

###### ▣ Reducing Burden on Courts and Appellants

- If the administrative appeals system operates objectively and fairly, then by performing the function of an initial filter on administrative disputes, it can reduce the burden on the courts and avoid an unnecessary wastage of time or expenses on the part of the citizens.

##### ▣ Distinctive Characteristics of Administrative Appeals

###### ▣ Relationship to Administrative Litigation

- Under the current legislation, administrative disputes in the Republic of Korea can be categorized as administrative appeals, in which the administrative agency

is the adjudicator, and administrative litigation, in which the court is the adjudicator.

- As for the relationship between administrative appeals and administrative litigation, the former Administrative Litigation Act had adopted the principle of 'administrative appeal before litigation', under which an administrative appeal had to be filed first before an administrative lawsuit could be filed. The current Administrative Litigation Act, on the other hand, adopts the principle of 'administrative appeal at discretion' under which an administrative lawsuit may be filed, even in a case where an administrative appeal may be filed, without having to first go through an administrative appeal (Article 18 (1) of the Administrative Litigation Act).

※ Principle of 'administrative appeal before litigation'

- Exceptions to the principle of 'administrative appeal at discretion' (principle of 'administrative appeal before litigation') are recognized in individual statutes:
  - disciplinary actions against and other unfavorable dispositions in respect of public officials (Article 16 of the State Public Officials Act, Article 53 of the Educational Officials Act, and Article 20-2 of the Local Public Officials Act);
  - dispositions under various tax statutes (Article 56 (2) of the Basic Act on National Taxes and Article 120 (2) of the Customs Act); provided that local taxes are excepted; and
  - dispositions such as revocation or suspension of a driver's license (Article 142 of the Road Traffic Act).

※ Exceptions to principle of 'administrative appeal before litigation'

- Even where individual statutes adopt the principle of 'administrative appeal before litigation', an administrative lawsuit may be filed after filing an administrative appeal without first obtaining a ruling, if the following grounds exist (parts of Article 18 (2) of the Administrative Litigation Act, other than the Subparagraphs):
  - where 60 days pass from the filing date of an administrative appeal without a ruling being made;
  - where there is an urgent need to prevent a serious harm that would result from the execution of the disposition or the continuation of procedures;
  - where there are grounds which would mean the administrative appellate body under the statutory provisions is unable to make a decision or ruling; or
  - where other legitimate grounds exist.
- In addition, even in cases where the principle of 'administrative appeal before litigation' is adopted in other statutes, a lawsuit for revocation may be filed directly without going through an administrative appeal, on the following grounds (Article 18 (3) of the Administrative Litigation Act):
  - where a dismissal ruling has already been made in an administrative appeal for the case of the same kind;
  - where a ruling in an administrative appeal has already been made in respect of

either a disposition that is interrelated due to its substance or a disposition that is being phased in for the same purpose;

- where, after the closing of pleadings in fact-finding proceedings, the administrative agency modifies the disposition that is being litigated and a lawsuit is filed in respect of that modified disposition; or
- where the administrative agency that has made the disposal has provided incorrect information that there is no need to go through an administrative appeal.

**1.1.2. Categories of Administrative Appeals**

**▶ Categories of Administrative Appeals**

■ Categories of Administrative Appeals

- The Administrative Appeals Act categorizes administrative appeals into appeals for revocation, appeals for affirmation of nullity, etc., and appeals for performance of obligation (Article 5 of the Administrative Appeals Act).

**▶ Appeals for Revocation**

■ Meaning of Appeals for Revocation

- An "appeal for revocation" is an administrative appeal for the revocation or modification of the administrative agency's illegal or unjust disposition (Subparagraph 1 of Article 5 of the Administrative Appeals Act).

■ Characteristics of Appeals for Revocation

- There are time limits on filing an appeal for revocation, such as the requirement that an appeal for revocation shall be filed within 90 days of the date of becoming aware of the disposition (Article 27 of the Administrative Appeals Act).
- The principle of non-suspension of execution applies to an appeal for revocation (Article 30 (1) of the Administrative Appeals Act).
- A circumstantial ruling may be made in an appeal for revocation (Article 44 of the Administrative Appeals Act).
  - A "circumstantial ruling" is a ruling that dismisses an appeal in circumstances where it is accepted that there are proper grounds for the appeal, because to recognize it would be seriously detrimental to public welfare (Article 44 (1) of the Administrative Appeals Act).
- If an acceptance ruling is made respect of an appeal for revocation, the original disposition will be treated as if it had never existed.

**▶ Appeals for Affirmation of Nullity, etc.**

■ Meaning of Appeals for Affirmation of Nullity, etc.

- An "appeal for affirmation of nullity, etc." is an administrative appeal for the affirmation of the validity or nullity, or the existence or non-existence, of an administrative agency's disposition (Subparagraph 2 of Article 5 of the Administrative Appeals Act).
  - An administrative disposition that is void or non-existent is of no effect from

the outset, but even in such a case the disposition's external form exists. Accordingly, there is still a need for an authoritative affirmation of the validity or nullity, or the non-existence, of a disposition.

- Categories of appeals for affirmation of nullity, etc. include appeals for affirmation of validity, appeals for affirmation of nullity, appeals for affirmation of invalidation, appeals for affirmation of existence and appeals for affirmation of non-existence.

■ Characteristics of Appeals for Affirmation of Nullity, etc.

- Appeals for affirmation of nullity, etc. are not subject to time limits on filing and circumstantial rulings may not be made in respect of such appeals (Article 27 (7) and Article 44 (3) of the Administrative Appeals Act).
- In order for an appeal for affirmation of nullity, etc. to be accepted, a cause for revocation is insufficient and the disposition is deemed to be a nullity only in cases where the defect is serious and manifest ([Supreme Court's Decision dated December 11, 1990, Case No. 90Nu3560](#)).
- In an administrative appeal for the affirmation of nullity, the appellant is responsible for arguing and proving the grounds for the administrative disposition's nullity ([Supreme Court's Decision dated March 10, 1992, Case No. 91Nu6030](#)).

▶ Appeals for Performance of Obligation

■ Meaning of Appeals for Performance of Obligation

- An "appeal for performance of obligation" is an administrative appeal that requires a certain disposition from an administrative agency in a case where its disposition involved an illegal or unjust refusal, or there has been an omission, in respect of an application made by the relevant party (Subparagraph 3 of Article 5 of the Administrative Appeals Act).

■ Characteristics of Appeals for Performance of Obligation

- Appeals for performance of obligation are not subject to time limits on filing, and may not be made the subject of a suspension of execution (Article 27 (7) of the Administrative Appeals Act).
- If an acceptance ruling is made in respect of an appeal for performance of obligation, the relevant administrative agency shall make a disposal in accordance with the spirit of the ruling (Article 49 (3) of the Administrative Appeals Act).
- If there is no disposition by the relevant administrative agency, then on the relevant party's request an administrative appeals commission may, by specifying a time period, make a written order for rectification and if this is not carried out within that time period, then the commission may dispose of the matter directly (Article 50 of the Administrative Appeals Act).
- A circumstantial ruling may be made in an appeal for performance of obligation (Article 44 of the Administrative Appeals Act).

### 1.1.3. Administrative Appellate Bodies

#### Administrative Appellate Bodies



■ Administrative Appellate Bodies

- An "administrative appellate body" is an administrative body with the authority to review and rule on administrative appeals.
- An administrative appellate body is a representative administrative body which, for the purpose of ensuring the objectivity and fairness of administrative appeals, is guaranteed a considerable amount of independence.
- Administrative appellate bodies include administrative appeals commissions.

■ Categories of Administrative Appeals Commissions

■ Administrative Appeals Commissions

- An administrative appeals commission is an appellate body which reviews and rules on an administrative appeal filed against an administrative agency's disposition or omission (Article 6 of the Administrative Appeals Act).

■ Categories of Administrative Appeals Commissions

- Administrative appellate bodies include administrative appeals commissions and the Central Administrative Appeals Commission (refer to Article 6 of the Administrative Appeals Act).
- Administrative appeals commissions are established under the jurisdiction of a Mayor/Do Governor, administrative body at the immediate upper level, or the relevant administrative agency.

■ Administrative Appeals Commissions under Jurisdiction of Mayor/Do Governor

- An administrative appeals commission under the jurisdiction of a Mayor/Do Governor reviews and rules on administrative appeals filed against the disposition or omission of an administrative agency which falls under any of the following (Article 6 (3) of the Administrative Appeals Act):
  - an administrative agency under the jurisdiction of a City/Do;
  - the head of a *Si/Gun*/autonomous *Gu* under the jurisdiction of a City/Do, its subordinate administrative agencies, or the Assembly of the *Si/Gun*/autonomous *Gu* (including all administrative agencies under the Assembly's jurisdiction, such as the Chairperson, the Chairperson of a committee, the Director General of Secretariat and the Head of the Secretariat Division); or
  - an administrative agency established jointly by two or more of local governments (*Si/Gun*/autonomous *Gu*) and public corporations, etc. within the jurisdiction of a City/Do.

■ Central Administrative Appeals Commission

- The Central Administrative Appeals Commission under the jurisdiction of the Anti-Corruption and Civil Rights Commission reviews and rules on administrative appeals filed against the disposition or omission of an administrative agency which falls under any of the following (Article 6 (2) of the Administrative Appeals Act):
  - the head of a state administrative body, other than the administrative agencies under Article 6 (1) of the Administrative Appeals Act), or its subordinate administrative agencies;

- a Special Metropolitan City Mayor, Metropolitan City Mayor, Special Self-Governing City Mayor, Do Governor, Special Self-Governing Province Governor (including the Superintendent of Education of a Special Metropolitan City, Metropolitan City, Special Self-Governing City, Do, or a Special Self-Governing Province) or the Assembly of a Special Metropolitan City, Metropolitan City, Special Self-Governing City, Do, or a Special Self-Governing Province (including all administrative agencies established under the Assembly's jurisdiction, such as the Chairperson, the Chairperson of a committee or the Secretary General);
  - an administrative agency established jointly by the State, local government (Si/Gun/autonomous Gu) and public corporations, etc. pursuant to related statutes, such the association of local government agencies pursuant to the Local Autonomy Act; provided that, this excludes an administrative agency established jointly by two or more of local governments (Si/Gun/autonomous Gu) and public corporations, etc. within the jurisdiction of a City/Do.
- Administrative Appeals Commissions under Jurisdiction of Administrative Body at Immediate Upper Level
- An administrative appeals commission under the jurisdiction of the administrative body at the immediate upper level reviews and rules on administrative appeals filed against the disposition or omission of the head of a special local administrative body within the Ministry of Justice and the Supreme Prosecutors' Office (excluding cases where the administrative body at the immediate upper level or the pertinent supervisory administrative body is a central administrative body) (Article 6 (4) of the Administrative Appeals Act and Article 3 of the Enforcement Decree of the Administrative Appeals Act).
- Administrative Appeals Commissions under Jurisdiction of Relevant Administrative Agency
- An administrative appeals commission under the jurisdiction of the relevant administrative agency reviews and rules on administrative appeals filed against the disposition or omission of an administrative agency that falls within any of the following, or of its subordinate administrative agencies (Article 6 (1) of the Administrative Appeals Act and Article 2 of the Enforcement Decree of the Administrative Appeals Act):
- ※ A subordinate administrative agency refers to all administrative agencies which are supervised, or which have been entrusted with certain affairs, irrespective of the hierarchy of administrative bodies. An administrative agency which has been entrusted with certain affairs is deemed to be the entrusting administrative agency's subordinate administrative agency in relation to the affairs that have been entrusted.
- the Board of Audit and Inspection of Korea, the Director of the National Intelligence Service, the President's Chief of Staff, the Director of National Security, the Head of the Presidential Security Service and the Korea Communications Commission;
  - the Secretary General of the National Assembly, the Minister of the National Court Administration, the Secretary General of the Constitutional Court, and the Secretary General of the National Election Commission; or
  - The National Human Rights Commission of Korea, and the Head of the Corruption Investigation Office For High-ranking Officials.



## 2. Requirements for Administrative Appeals

### 2.1. Requirements for Administrative Appeals

#### 2.1.1. Subject Matter of Administrative Appeals

##### ▣ Subject Matter of Administrative Appeals

###### ▣ Subject Matter of Administrative Appeals

- The Administrative Appeals Act provides that, except as specifically provided for in other statutes, administrative appeals may be requested in respect of an administrative agency's disposition or omission in accordance with that Act. In doing so, the Act specifies that the subject matter of administrative appeals is an 'administrative agency's illegal or unjust disposition or omission' (Article 3 (1) of the Administrative Appeals Act).

##### ▣ Administrative Agencies

###### ▣ Meaning of Administrative Agencies

- An "administrative agency" is an agency of the State or local government which makes and indicates administrative decisions, and any other public organization or its organ, or a private individual, which has or has been entrusted with administrative authority pursuant to statutes or municipal ordinances (Subparagraph 4 of Article 2 of the Administrative Appeals Act).
- A public corporation and a public facilities agency may, within the limits of their authority, also be an administrative agency.
  - For example, Korea Land and Housing Corporation takes on the status of an administrative agency in respect of the act of selecting persons subject to relocation measures implemented pursuant to the Act on Acquisition of and Compensation for Land, etc. for Public Works, and Korea Labor Welfare Corporation takes on the status of an administrative agency in respect of the act of imposing an industrial accident compensation insurance premium pursuant to the Industrial Accident Compensation Insurance Act.
- The courts or the National Assembly are also included as administrative agencies to the extent they take administrative measures.
  - For example, in respect of matters such as disciplinary actions taken against employees of the National Assembly or the courts, or the Chief Judge's authorization of the establishment of a joint corporation of certified judicial scriveners, the courts or the National Assembly take on the status of an administrative agency.

###### ▣ Transfer of Authority

- In principle, the administrative agency in an administrative appeal refers to the administrative agency which has made the relevant disposal or omission. However, if, after the disposition or omission, the authority relating to such disposition or omission is transferred to another administrative agency, then the administrative agency that has taken on the authority becomes the appellee

(Article 17 (1) of the Administrative Appeals Act).

## Disposition

### Meaning of Disposition

- The Administrative Appeals Act defines a disposition subject to an administrative appeal as an exercise of public power or refusal to exercise such power, and any other equivalent administrative action, which constitute the administrative agency's execution of the law in relation to a specific set of facts (Subparagraph 1 of Article 2 of the Administrative Appeals Act).

### Execution of Law in Relation to Specific Set of Facts

- "Execution of the law in relation to a specific set of facts" is an act which is directly related to the citizens' rights and obligations, such as an act which, in relation to a particular matter, establishes a right pursuant to law, imposes obligation, or which creates other legal effect. Therefore, an act which does not cause a direct legal change to the legal status of the citizens or other related persons to whom it is directed, is not a disposition subject to an administrative appeal ([refer to the Supreme Court's Decision dated October 22, 1999, Case No. 98Du18435](#)).

### Exercise of Public Power or its Refusal

- An "exercise of public power or its refusal" is an act of an administrative agency exerting its power from a superior position.

### Other Equivalent Administrative Actions

- An act of an administrative agency, even if it is not an exercise of public power or its refusal, is a disposition subject to an administrative appeal if it is an external act that has a specific effect on an individual's rights and interests.

## Omission

### Meaning of Omission

- An "omission" is an administrative agency's failure to dispose of an application made by the relevant party, despite having a legal obligation to dispose of it in a certain manner within a reasonable time period (Subparagraph 2 of Article 2 of the Administrative Appeals Act).

### Requirements to Establish Omission

- There must be an application by a person who has a right, as a matter of law or naturalis ratio, to make an application
  - In order to establish omission, there must be an application by a person who has the right, as a matter of law or naturalis ratio, to require a certain administrative disposition.
- A reasonable time period must have passed
  - In order to qualify as an omission subject to an administrative lawsuit, the administrative agency must have failed to dispose of the application even though a reasonable time period for a certain disposition has passed.
  - A "reasonable time period" is the time period which an administrative agency ordinarily requires for the disposition of an application. The processing period published pursuant to the Administrative Procedures Act may be a reference by

- which reasonable time period is judged (Article 19 of the Administrative Procedures Act).
- There must be a legal obligation on the administrative agency to dispose of the application in a certain manner
    - Omission is established where, despite having a legal obligation in respect of the disposition of an application, such as its acceptance or dismissal, the administrative agency fails to take action.
    - Legal obligation includes obligations pursuant to express provisions, as well as any obligations deemed to exist as a matter of statutory interpretation ([Supreme Court's Decision dated February 11, 1991, Case No. 90Nu5825](#)).
  - The administrative agency must have failed to take any action in disposing of the application
    - A lawsuit for affirmation of illegality of omission is permitted in cases where there is no disposition at all. Insofar as there has been a disposition, it cannot be subject to a lawsuit for affirmation of illegality of omission, even if the disposition, like an administrative disposition that is void, never took effect due to a serious and manifest defect ([Supreme Court's Decision dated December 11, 1990, Case No. 90Nu4266](#)).

**▶ Exceptions**

- Exceptions
  - Even though a disposition or omission of an administrative agency is subject to an administrative appeal, no administrative appeal may be filed against the President's disposition or omission, save where an administrative appeal is provided for in other statutes (Article 3 (2) of the Administrative Appeals Act).
  - If a ruling is made in respect of an administrative appeal, no further administrative appeal may be filed against such ruling and any dispositions or omissions that are the same (Article 51 of the Administrative Appeals Act).

**2.1.2. Parties to Administrative Appeal**

**▶ Appellant**

- Appellant
  - An "appellant" is a person who is dissatisfied with a disposition, etc. that is subject to an appeal, and who has requested an administrative appeal in respect of such disposition. This is not necessarily limited to the person subject to the disposition; a third party can be an appellant.
- Standing to Appeal
  - "Standing to appeal", in relation to a particular administrative appeal, is a qualification that makes it suitable for a person, as an appellant, to request an administrative appeal and obtain a ruling in respect of it.
  - The proper party to an administrative appeal is the person who has a legal interest in the affirmation of the illegality or injustice of a particular disposition that is subject to an administrative appeal.

■ Requirements for Standing to Appeal

- In the case of an appeal for revocation, a person who has a legal interest in seeking revocation or modification of the disposition may request an administrative appeal (Former part of Article 13 (1) of the Administrative Appeals Act).
  - However, in the case of an appeal for revocation, even if the effect of a disposition has been extinguished due to the passage of time, execution of disposition, or for any other reason, a person who has a legal interest that would be reinstated by the revocation of the disposition may request an administrative appeal (Latter part of Article 13 (1) of the Administrative Appeals Act).
- In the case of an appeal for affirmation of nullity, etc., a person who has a legal interest in seeking affirmation of the disposition's validity or nullity, or its existence or non-existence, may request an administrative appeal (Article 13 (2) of the Administrative Appeals Act).
- In the case of an appeal for performance of obligation, a person who has a legal interest in seeking a certain disposition in respect of the administrative agency's refusal or omission may request an administrative appeal (Article 13 (3) of the Administrative Appeals Act).

■ Appointment of Agent

- The appellant may appoint an agent to act on his/her behalf in relation to the relevant appeal.
- The appellant may appoint as his/her agent a person who falls under one of the following paragraphs (Article 18 (1) of the Administrative Appeals Act):
  - a legal representative;
  - the appellant's spouse, or a relative of the appellant or his or her spouse who is no more distant than a first cousin;
  - if the appellant is a corporation, or an unincorporated association or foundation with standing to appeal, then its officers and employees;
  - an attorney at law;
  - a person who may, pursuant to other statutes, act as an agent in the appeal; or
  - other persons who have obtained permission from the administrative appeals commission.
- An agent may carry out all acts for the appellant in connection with the relevant case. However, the appellant's consent is needed to withdraw an appeal, and in such a case the fact that consent has been obtained shall be explained in writing (Article 18 (3) and Article 15 (3) of the Administrative Appeals Act).
- The appellant may, if he/she deems it necessary, discharge or substitute his/her agent (Article 18 (3) and Article 15 (5) of the Administrative Appeals Act).
- If the appellant is unable to appoint an agent due to his/her financial means, then as a person who falls under one of the following paragraphs the appellant may apply to the commission for the appointment of a state-appointed agent (Article 18-2 (1) of the Administrative Appeals Act, Article 16-2 (1) and (2) of the Enforcement Decree of the Administrative Appeals Act):

- a recipient pursuant to Subparagraph 2 of Article 2 of the National Basic Living Security Act;
  - a person eligible for support under Article 5 and Article 5-2 of the Single-Parent Family Support Act;
  - a recipient of a basic pension pursuant to Subparagraph 3 of Article 2 of the Basic Pension Act;
  - a recipient pursuant to Subparagraph 4 of Article 2 of the Act on Pensions for Persons with Disabilities;
  - a person to be protected pursuant to Subparagraph 2 of Article 2 of the North Korean Refugees Protection and Settlement Support Act; or
  - other person deemed by the chairperson as being unable to appoint a representative due to his/her financial means.
- The commission shall, in relation to the above application, make a decision on the appointment of a state-appointed agent and notify the appellant of the outcome without delay (Former part of Article 18-2 (2) of the Administrative Appeals Act).

#### ▶ Appellee

##### ■ Eligibility to Stand as Appellee

- The request for an administrative appeal shall be made by designating the administrative agency that has made the disposal (in the case of an appeal for performance of obligation, the administrative agency that has received the appellant's application) as the appellee (The main body of Article 17 (1) of the Administrative Appeals Act).
- However, if the authority relating to the subject matter of the appeal has been transferred to another administrative agency, then the administrative agency which has taken on such authority shall be designated as the appellee (Proviso to Article 17 (1) of the Administrative Appeals Act).

##### ■ Correction of Designation of Appellee

- If the appellant has incorrectly designated the appellee, the administrative appeals commission may, *ex officio* or at the application of the relevant party, correct the designation of the appellee (Article 17 (2) of the Administrative Appeals Act).
- In the event that the administrative appeals commission decides to correct the designation of the appellee pursuant to the above, an authenticated copy of the decision shall be sent to the relevant parties (including the former appellee and the newly designated appellee) (Article 17 (3) of the Administrative Appeals Act).
- If there is a decision to correct the designation of the appellee, the appeal against the former appellee is deemed to be withdrawn, and an administrative appeal is deemed to have been filed against the newly designated appellee at the time when the administrative appeal was made against the former appellee (Article 17 (4) of the Administrative Appeals Act).
- If, after the administrative appeal has been filed, another administrative agency succeeds to the position of the appellee, then the administrative appeals commission, either *ex officio* or at the application of the relevant party,

corrects the designation of the appellee (Article 17 (5) of the Administrative Appeals Act).

■ Appointment of Agent

- The appellee in an administrative appeal may appoint an agent to act on its behalf in relation to the relevant appeal.
- The appellee may appoint as its agent a person who falls under one of the following paragraphs (Article 18 (2) of the Administrative Appeals Act):
  - an attorney at law;
  - a person who may, pursuant to other statutes, act as an agent in the appeal; or
  - other persons who have obtained permission from the administrative appeals commission.
- An agent may carry out all acts for the appellee in connection with the relevant case. However, the appellant's consent is needed to withdraw an appeal, and in such a case the fact that consent has been obtained shall be explained in writing (Article 18 (3) and Article 15 (3) of the Administrative Appeals Act).
- The party who has appointed an agent may, if it deems it necessary, discharge or substitute the appointed agent (Article 18 (3) and Article 15 (5) of the Administrative Appeals Act).

▶ **Intervention in Appeals**

■ Intervenor (Interested Party)

- An act of intervention in the case by a third party or administrative agency who has an interest in the outcome of the appeal, is called "intervention in appeals". The person or agency who intervenes is called the "intervenor".
- The system for intervention in appeals, by enabling interested parties to participate in the appeal procedure, not only promotes an appropriate and fair review, but also has as its purpose the protection of the rights and interests of interested parties.
- ※ Interested parties include not only a person who has an interest in the relevant disposition itself, but also any person who would suffer a detriment depending on the terms of the ruling.

■ Intervention by Permission

- Meaning

- A third party or administrative agency who has an interest in the outcome of an administrative appeal may intervene in the appeal until the administrative appeals commission decides on the relevant administrative appeal (Article 20 (1) of the Administrative Appeals Act).

- Application

- A person who wishes to intervene shall submit to the administrative appeals commission a written application setting out the purpose of and reason for the intervention. In such a case the applicant shall also submit as many copies of the application as there are parties (Article 20 (2) of the Administrative Appeals Act).
- Upon receiving a written application for intervention, the administrative

appeals commission sends copies of the application to the parties, and may set a time period for the other parties and any other intervenor to submit their opinion on the third party's application for intervention. If the parties and other intervenors do not submit their opinion within this time period, they are deemed not to have an opinion on the matter (Article 20 (3) and (4) of the Administrative Appeals Act).

- Permission

- Upon receiving an application for intervention, the administrative appeals commission shall make a decision on whether to permit it and, without delay, send an authenticated copy of the decision to the applicant and a certified copy to each of the parties and other intervenors (Article 20 (5) of the Administrative Appeals Act).

- Objections

- The applicant may, within seven days of the date of receiving service of an authenticated copy of the decision on permission, raise an objection with the administrative appeals commission (Article 20 (6) of the Administrative Appeals Act).

■ Intervention on Request

- The administrative appeals commission may, if it deems it necessary, request a third party or administrative agency who has an interest in the outcome of the administrative appeal, to intervene in the appeal of the relevant case (Article 21 (1) of the Administrative Appeals Act).
- The third party or administrative agency which has received the administrative appeals commission's request, shall notify the commission without delay as to whether it intends to intervene in the appeal of the relevant case (Article 21 (2) of the Administrative Appeals Act).

■ Status of Intervenor

- An intervenor may carry out the procedural acts which may be carried out by a party in the course of an administrative appeal (Article 22 (1) of the Administrative Appeals Act).
- When any of the parties submits documentation to the administrative appeals commission, it shall submit as many copies as there are intervenors. When the administrative appeals commission sends notification or documentation to the parties, it shall also send it to the intervenors (Article 22 (2) of the Administrative Appeals Act).

▶ **Parties' Rights**

■ Right to Apply to Challenge Commission Member or Employee

- A party to the appeal may, if it is difficult to expect a fair review and decision from a member of the administrative appeals commission, apply to challenge the member (Article 10 (2) of the Administrative Appeals Act).
- Upon receiving an application for challenge, the chairperson of the administrative appeals commission shall make a decision as to the challenge and, without delay, send an authenticated copy of the decision to the applicant (Article 10 (6) of the Administrative Appeals Act).

- Right to Submit Supplementary Documentation
  - A party to the appeal may, if it is necessary to supplement the facts argued in the written appeal, written correction, written answer or the written application for intervention, or to rebut other parties' arguments, submit supplementary documentation to the administrative appeals commission (Article 33 (1) of the Administrative Appeals Act).
  - If the administrative appeals commission has set a time limit on the submission of supplementary documentation, submission shall be made within that time limit (Article 33 (2) of the Administrative Appeals Act).
- Right to Request Oral Review
  - A party to the appeal may make a request to the administrative appeals commission for an oral review (Proviso to Article 40 (1) of the Administrative Appeals Act).
- Right to Submit Evidence
  - A party to the appeal may submit documentary evidence or articles of evidence to the administrative appeals commission to support its arguments (Article 34 (1) of the Administrative Appeals Act).
- Right to Request Examination of Evidence
  - A party to the appeal may, if it is necessary to support its claims, request the administrative appeals commission to conduct an examination of evidence, including a questioning of a party or related persons, or a request for submission, appraisal, investigation or verification of evidence (Article 36 (1) of the Administrative Appeals Act).

### 2.1.3. Time Period for Filing Administrative Appeal

#### ▶ Time Period for Filing Administrative Appeal

- Time Period for Filing Administrative Appeal
  - In order to swiftly stabilize legal relationships in administration, the Administrative Appeals Act sets a time limit on filing administrative appeals.
  - The time period for filing administrative appeals applies only to an appeal for revocation and an appeal for performance of obligation made in respect of a disposition involving refusal. Given its nature, it does not apply to an appeal for affirmation of nullity, etc. or to an appeal for performance of obligation made in respect of an omission (Article 27 (7) of the Administrative Appeals Act).

#### ▶ Time Period for Filing Administrative Appeal in Principle

- Time Period for Filing Administrative Appeal in Principle
  - An administrative appeal shall be filed within 90 days of the date of becoming aware of the disposition, or within 180 days of the date of the disposition (Article 27 (1) and (3) of the Administrative Appeals Act).
  - If any one of the above time periods is exceeded, the relevant appeal is dismissed without prejudice as an illegal appeal (Article 43 (1) of the Administrative Appeals Act).

■ What is Date of Becoming Aware of Disposition?

- The "date on which the appellant becomes aware of the disposition" is the date on which the relevant party, through notification, public announcement or otherwise, becomes practically and specifically aware of the relevant disposition ([Supreme Court's Decision dated April 28, 2006, Case No. 2005Du14851](#)).
- In the case of a written notification, this is the date on which the document reaches the other party.
- In the case of service by public notice, this is the date on which the document is deemed to reach the other party.
- In the case of a factual act, this is the date on which the party becomes aware of the act and that it is infringing on his/her rights and interests.
- However, where as a matter of common sense the relevant party is in a position to be capable of finding out about the disposition, for example, because documentation setting out the disposition has been served on the party's address, then, save where there is contrary evidence, the party is presumed to have become aware of the disposition ([Supreme Court's Decision dated December 28, 1995, Case No. 99Du9742](#)).

■ What is Date of Disposition?

- The "date of disposition" is the date on which a disposition is manifested externally via a notification and takes effect ([Supreme Court's Decision dated November 22, 1977, Case No. 77Nu195](#)).
- A disposition takes effect when it is served and reaches the other party (Article 15 (1) of the Administrative Procedures Act).
- A disposition takes effect when it is served and reaches the other party (Article 15 (1) of the Administrative Procedures Act).· If matters such as the recipient's address cannot be confirmed through ordinary means or service is not possible, then, so that the recipient may easily find out, the disposition is publicly announced in one or more of the Official Gazette, official communications, notice boards and daily newspapers, and also on the Internet (Article 14 (4) of the Administrative Procedures Act).
- In the case of an administrative disposition via a public notification or public announcement, the time period for filing shall be counted on the assumption that the party became aware of the relevant administrative disposition on the date of the public notification or public announcement. Generally, when the administrative disposition is made through public notification or public announcement, the period for filing shall be counted on the assumption that the party became aware of the relevant administrative disposition 5 days after the date of the public notification or announcement ([Supreme Court's Decision dated September 8, 2000, Case No. 99Du11257](#)).
- Here, the "date of the public notification or public announcement" is the date on which the public notification or public announcement took effect, and the disposition takes effect on the day falling 14 days after the date of the public announcement (Article 15(3) of the Administrative Procedures Act).

▶ Exceptional Time Periods

■ Exception to 90-Day Period

- If, due to a natural disaster, geographical upheaval, war, emergency or other force majeure events, the appellant was unable to file the appeal within the time period for filing, then the administrative appeal may be filed within 14 days of the date of cessation of the relevant event; provided that, if the administrative appeal is being filed from overseas, then it may be filed within 30 days (Article 27 (2) of the Administrative Appeals Act).

■ Exception to 180-Day Period

- If there are legitimate grounds, an administrative appeal may be filed even after 180 days have passed from the date of the disposition (Article 27 (3) of the Administrative Appeals Act).

■ Incorrect Notification or Non-Notification of Time Period for Filing Appeal

- In the event of a disposition, the administrative agency shall notify the party subject to the disposition as to whether it would be possible to request an administrative appeal in respect of the relevant disposition and, if an administrative appeal is to be requested, the procedure for filing an appeal and the time period for filing an appeal (Article 58 (1) of the Administrative Appeals Act).
- In this case if the administrative agency incorrectly states a time period for filing an appeal that is longer than the period prescribed (90 days from the date of becoming aware of the disposition; the same shall apply below), then, if an appeal is filed within the incorrectly notified period, such an administrative appeal is deemed to have been made within the period prescribed (Article 27 (5) of the Administrative Appeals Act).
- If the administrative agency fails to notify the party of the time period for filing an appeal, then an appeal may be filed within 180 days of the date of the disposition (Article 27 (6) of the Administrative Appeals Act).

▶ **Method for Calculating Time Periods**

■ Method for Calculating Time Periods

- Since the Administrative Appeals Act does not specially make provisions in relation to the calculation of time periods, the method for calculating time periods under the Civil Act is followed (Article 155 of the Civil Act).

■ Starting Point for Counting Time Period

- If the time period is specified in days, weeks, months or years, the first day of that period is not counted; provided that, if the time period is starts from 0:00 AM, then the first day of that period is counted (Article 157 of the Civil Act).

■ Expiry Point of Time Period

- If the time period is specified in days, weeks, months or years, the period expires at the end of the final day of that period (Article 159 of the Civil Act).
- If the final day of the time period is a Saturday or a public holiday, then the period ends on the day after the final day (Article 161 of the Civil Act).

■ Example of Calculation of Time Period for Filing

- In the case of a written notification, the date the other party becomes aware of the disposition is the date on which the document reaches that party.
- For example, if the date the party becomes aware of the disposition is April 20, then starting date for the time period for filing is the following day, April 21. Accordingly, a written appeal must be submitted by July 19, which is the 90th day.
- When calculating the time period for filing an appeal, an administrative appeal is deemed to have been filed when a written appeal is submitted to the appellee administrative agency, or to the administrative appeals commission and the administrative body (Article 23 (4) of the Administrative Appeals Act).

### 3. Procedure for Administrative Appeal

#### 3.1. Outline of Procedure for Administrative Appeals

##### 3.1.1. Outline of Procedure for Administrative Appeals

###### ▣ Procedure for Administrative Appeals

###### ■ Submission of Written Appeal

- A person who wishes to request an administrative appeal shall prepare a written appeal and submit it to the appellee or the pertinent administrative appeals commission. In this case the appellant shall also submit as many copies of the written appeal as there are appellees (Article 23 (1) of the Administrative Appeals Act).

###### ■ Submission of Written Answer

- Where an administrative appeal has been filed by the appellant, the disposing administrative agency that is the opposing party in the administrative appeal, prepares material to rebut the appellant's appeal and submits it as its written answer, together with the written appeal, to the administrative appeals commission within ten days of the date of its receipt of the written appeal (Article 24 (1) of the Administrative Appeals Act).
- The administrative appeals commission serves the appellee's written answer on the appellant so that the appellant is informed of the appellee's arguments.
- If an administrative appeal is requested online, then the written answer can be viewed online on the Central Administrative Appeals Commission's website.

###### ■ Case Referral

- The disposing administrative agency refers the appellant's written appeal that has been submitted and its written answer to the administrative appeals commission without delay, so that the administrative appeals commission may swiftly review the appeal case.

###### ■ Review

- The administrative appeals commission, after a thorough examination of the arguments made by the appellant and the appellee in respect of the case that has been referred to it by the relevant administrative agency, sets a date for review and carries out a review to judge the illegality and injustice of the administrative disposition.
- After the review, the administrative appeals commission serves the outcome of the review on the relevant administrative agency and the appellant.

###### ■ Ruling

- The administrative appeals commission's ruling consists of externally notifying its decision on the administrative appeal case to the appellant and appellee. As such, a written ruling is served on the appellant and appellee.
- The administrative appeal takes effect when the written ruling has been served.

## 3.2. Requests for Administrative Appeal

### 3.2.1. Submission of Written Appeal

#### ▣ Preparation and Submission of Written Appeal

##### ■ Preparation of Written Appeal

- An appeal shall be requested in writing (Article 28 (1) of the Administrative Appeals Act).
- Information to be included in the written appeal (Article 28 (2) and (3) of the Administrative Appeals Act)
  - Appeal against a disposition
    - √ Appellant's name and address or business office (if the appellant wishes to be served with documentation at a place other than this address or office, then additionally include a service address);
    - √ Appellee and administrative appeals commission;
    - √ Details of the disposition being appealed;
    - √ Date on which the appellant became aware of the disposition;
    - √ Purpose of and grounds for appeal; and
    - √ Whether the appellee has notified the appellant of administrative appeals and details of such notification.
  - Appeal against an omission
    - √ Appellant's name, and address or business office (if the appellant wishes to be served with documentation at a place other than this address or office, then additionally include a service address)
    - √ Appellee and administrative appeals commission;
    - √ Purpose of and grounds for appeal; and
    - √ Details and date of the application in respect of which there has been an omission.
- If the appellant is a corporation, or an unincorporated association or foundation with standing to appeal, or the administrative appeal is being requested by a selected representative or agent, then the name and address of the representative, manager, selected representative or agent shall be included with the information above (Article 28 (4) of the Administrative Appeals Act).
- A written appeal must be signed or sealed by the appellant, representative, manager, selected representative or agent (Article 28 (5) of the Administrative Appeals Act).
- ※ If there is a deficiency in the information required to be stated in an administrative appeal, then the appellant may be required to correct it (Article 32 of the Administrative Appeals Act).

##### ■ Submission of Written Appeal

- A person who wishes to request an administrative appeal shall prepare a written appeal and submit it to the appellee or the administrative appeals commission. In this case the appellant shall also submit as many copies of the written appeal as there are appellees (Article 23 (1) of the Administrative Appeals Act).
- If in its disposition the administrative agency fails to notify the appellant as to whether an administrative appeal may be requested or gives incorrect notification, and as a result the appellant submits his/her written appeal to a different administrative agency, then the relevant administrative agency shall forward the written appeal, without delay, to the appellee (administrative agency) which has proper authority. In these circumstances, the administrative agency that has forwarded the written appeal shall inform the appellant without delay of the fact that the appeal has been forwarded (Article 23 (2) and (3) of the Administrative Appeals Act).
- Administrative Appeals Commission's Receipt and Processing of Written Appeal, etc.
  - Upon receiving a written appeal, the administrative appeals commission shall send a copy of it to the appellee without delay (Article 26 (1) of the Administrative Appeals Act).

※ Administrative Appeals Using Electronic Data Processing Systems

- A person who goes through the administrative appeal procedure under the Administrative Appeals Act may prepare his/her written appeal and other documentation as electronic documents and submit them, using an information and communications network, through an electronic data processing system (this refers to an electronic device equipped with data processing capabilities built by integrating items such as hardware, software, database, network and security elements, which enable electronic documents required for an administrative appeal process to be prepared, submitted and served; the same shall apply below) designated and operated by an administrative appeals commission (Article 52 (1) of the Administrative Appeals Act).
- Electronic data processing systems designated and operated by administrative appeals commissions are categorized as follows (Article 34 of the Enforcement Decree of the Administrative Appeals Act):
  - √ Central Administrative Appeals Commission: online administrative appeals system; and
  - √ administrative appeals commissions under the jurisdiction of the relevant administrative agency, a Mayor/Do Governor, or an administrative agency at the immediate upper level (this applies only to an administrative appeals commission that is equipped with an electronic data processing system): system designated by the relevant administrative appeals commission.
- Electronic documents submitted in accordance with the above are deemed to be submitted in accordance with the Administrative Appeals Act, and are exempt from the obligation to submit copies (Article 52 (2) of the Administrative Appeals Act).
- Electronic documents submitted in accordance with the above are deemed to be received with the details recorded on the electronic data processing system at the time when the person who submits the document confirms the receipt number provided by the electronic data processing system through an information and

communications network (Article 52 (3) of the Administrative Appeals Act). In this case, when calculating the time period for filing an appeal, the administrative appeal is deemed to have been filed when the relevant receipt is deemed to have occurred (Article 52 (4) of the Administrative Appeals Act).

- User Registration

- A person who wishes to use the electronic data processing system shall register as a user in the manner designated by the administrative appeals commission by entering the following information (Article 35 (1) of the Enforcement Decree of the Administrative Appeals Act):

- √ user's name;

- √ user's date of birth;

- √ user's address;

- √ user's telephone number;

- √ user's ID (this is an identification code used to identify a user of the electronic data processing system); and

- √ user's email address.

- If the administrative appeals commission deems it necessary for the conduct of administrative appeals process using an electronic data processing system, the appellee administrative agency shall register itself in the manner designated by the administrative appeals commission by entering the following information (Article 35 (2) of the Enforcement Decree of the Administrative Appeals Act):

- √ appellee's name;

- √ appellee's address;

- √ appellee's ID; and

- √ relevant department and personnel who will use the electronic data processing system.

### 3.2.2. Application for Suspension of Execution and Provisional Disposition

#### ▣ Submission of Written Application for Suspension of Execution

##### ■ Suspension of Execution

- "Suspension of execution" is a regime for suspending a disposition's effect or execution until a ruling is made on the administrative appeal, because there is a concern that, while the administrative appeal is ongoing, the appellant would suffer a harm that is difficult to repair.

##### ■ Principle of Non-Suspension of Execution and Exceptions

- Even if an administrative appeal is filed, a disposition's effect, execution or continuation of proceedings is not affected in principle (Article 30 (1) of the Administrative Appeals Act).

- The administrative appeals commission, if it deems that there is an urgent need to

prevent a serious harm from being caused by a disposition, execution of disposition or continuation of proceedings, may, *ex officio* or at the application of the relevant party, decide to suspend the execution of disposition or continuation of proceedings in whole or in part (referred to as "suspension of execution" below) (The main body of Article 30 (2) of the Administrative Appeals Act).

- However, a suspension of the disposition's effect is not permitted where its purpose can be achieved by suspending the disposition's execution or continuation of proceedings (Proviso to Article 30 (2) of the Administrative Appeals Act).

■ Requirements for Suspension of Execution

- The disposition that is the subject of the suspension of execution must exist
  - If the execution of the disposition is already complete or its purpose has been achieved, then since the disposition that is the subject of the suspension has no substance, suspension of execution is impossible.

√ There is no practical benefit to an application for suspension of execution in respect of a disposition involving refusal ([Supreme Court's Decision dated May 2, 1991, Case No. 91Du15](#)). This is because in the case of a disposition involving refusal, suspending the disposition's effect merely results in a state that is no different from what it would be had there been no disposition at all, and does not involve a proactive step beyond this, such as an order to the administrative agency for its disposition.

- Administrative appeal for the case in question must be ongoing
  - Suspension of execution in relation to a disposition requires the administrative appeal for the case in question, such as an appeal for revocation, to be ongoing ([Supreme Court's Decision dated June 15, 2007, Case No. 2006Mu89](#)).

- The need to prevent a serious harm from being caused must be deemed to be urgent (Article 30 (2) of the Administrative Appeals Act).

- There must be no concern that the suspension of execution would have a serious impact on public welfare (Article 30 (3) of the Administrative Appeals Act).

· A "serious impact on public welfare" is an impact that goes beyond a mere interruption to realization of the public good, with its gravity being such that, even if it results an irreparable harm to the individual, that harm should be borne by the individual.

- It must not be clear that there are no grounds for this appeal
  - This is because it would go against the spirit of the regime if the suspension of a disposition's effect or execution were to be accepted in circumstances where there is no possibility that the disposition would be revoked on the merits ([Supreme Court's Decision dated November 26, 1999 Case No. 99Bu3](#)).

■ Subject Matter and Scope of Suspension of Execution

- The subject matter of a suspension of execution is the disposition's effect, the disposition's execution or the continuation of proceedings, and the scope of a suspension of execution is a part or the whole of such effect, execution or continuation (The main body of Article 30 (2) of the Administrative Appeals Act).

※ In these cases, a suspension of the disposition's effect is not permitted where its purpose can be achieved by suspending the disposition's execution or continuation of proceedings (Proviso to Article 30 (2) of the Administrative Appeals Act).

■ Submission of Written Application for Suspension of Execution

- Application for Suspension of Execution

- If the relevant party wishes to apply for suspension of execution, he/she shall, either at the same time as the filing of the appeal or before the decision of the commission or subcommission in respect of the appeal, submit to the administrative appeals commission a document setting out the purpose of and the grounds for the application (The main body of Article 30 (5) of the Administrative Appeals Act).
- In a case where a written administrative appeal is submitted to the administrative agency (appellee), if an application for suspension of execution is being made at the same time as the appeal, then the application shall be accompanied by a copy of the written appeal and the filing receipt (Proviso to Article 30 (5) of the Administrative Appeals Act).

- Decision on Suspension of Execution

- The decision on suspension of execution is made by the administrative appeals commission (Article 30 (2) of the Administrative Appeals Act).
- √ The chairperson, if he/she deems that waiting for the administrative appeals commission's review and decision may cause serious harm, may make a decision *ex officio* in lieu of the administrative appeals commission's review and decision (Former part of Article 30 (6) of the Administrative Appeals Act).
- √ If the chairperson makes an *ex officio* decision on suspension of execution, this shall be reported to the administrative appeals commission for its ratification. In this case, if the administrative appeals commission's ratification is not obtained, then the chairperson shall revoke his/her decision on the suspension of execution or the revocation of suspension of execution (Latter part of Article 30 (6) of the Administrative Appeals Act).
- The administrative appeals commission shall, upon reviewing and deciding on a suspension of execution or a revocation of suspension of execution, serve an authenticated copy of the decision to the relevant party without delay (Article 30 (7) of the Administrative Appeals Act).

■ Effect of Decision on Suspension of Execution

- If an application for suspension of execution is accepted, then the relevant disposition's effect or execution is suspended until a ruling is made on the administrative decision.
- Suspension of execution has an effect not only on the applicant and the respondent as the relevant parties, but also on any related administrative agencies and third parties.

■ Revocation of Suspension of Execution

- If, after the decision to suspend execution, the suspension of execution has a serious impact on public welfare or the grounds for suspension has ceased to exist, the administrative appeals commission may, *ex officio* or at the application

of the relevant party, revoke the decision to suspend execution (Article 30 (4) of the Administrative Appeals Act).

- If the relevant party wishes to apply for revocation of suspension of execution, he/she shall, after the decision to suspend execution but before the decision of the commission or subcommission in respect of the appeal, submit to the administrative appeals commission a document setting out the purpose of and the grounds for the application together with a copy of the written appeal and the filing receipt (Article 30 (5) of the Administrative Appeals Act).

#### Application for Provisional Disposition

##### Provisional Disposition Regime

- In a case where it is strongly suspected that the disposition or omission is illegal or unjust, if it is necessary to determine a temporary status to prevent a serious detriment that the relevant party may suffer, or a pressing danger to the relevant party, in each case as a result of the disposition or omission, the administrative appeals commission may, *ex officio* or at the application of the relevant party, decide on a provisional disposition (Article 31 (1) of the Administrative Appeals Act).

##### Requirements for Provisional Disposition (Article 31 (1) of the Administrative Appeals Act)

- It must be a case where it is strongly suspected that the disposition or omission is illegal or unjust.
- There must be a concern that the relevant party would suffer a serious detriment, or that there would be a pressing danger to the relevant party, in each case as a result of the disposition or omission.
- There must be a need to determine a temporary status to prevent the serious detriment or pressing danger to the relevant party.
- There must be no concern that the provisional disposition would have a serious impact on public welfare (Article 31 (2) and Article 30 (3) of the Administrative Appeals Act).

##### Application for Provisional Disposition and Decision

##### Application for Provisional Disposition

- If the relevant party wishes to apply for provisional disposition, he/she shall, either at the same time as the filing of the appeal or before the decision of the commission or subcommission in respect of the appeal, submit to the administrative appeals commission a document setting out the purpose of and the grounds for the application (Article 31 (2) and Article 30 (5) of the Administrative Appeals Act).
- In a case where a written administrative appeal is submitted to the appellee (administrative agency), if an application for provisional disposition is being made at the same time as the appeal, then the application shall be accompanied by a copy of the written appeal and the filing receipt (Article 31 (2) and proviso to Article 30 (5) of the Administrative Appeals Act).

##### Decision on Provisional Disposition

- The decision on provisional disposition is made by the administrative appeals commission (Article 31 (1) of the Administrative Appeals Act).

- √ The chairperson, if he/she considers that waiting for the administrative appeals commission's review and decision may cause a serious detriment or pressing danger, may make a decision *ex officio*, in lieu of the administrative appeals commission's review and decision (Article 31 (2) and former part of Article 30 (6) of the Administrative Appeals Act).
- √ If the chairperson makes an *ex officio* decision on provisional disposition, this shall be reported to the administrative appeals commission for its ratification. In this case, if the administrative appeals commission's ratification is not obtained, then the chairperson shall revoke his/her decision on the provisional disposition or the revocation of provisional disposition (Article 31 (2) and latter part of Article 30 (6) of the Administrative Appeals Act).
- Provisional disposition is not permitted where its purpose can be achieved by suspension of execution (Article 31 (3) of the Administrative Appeals Act).

### 3.2.3. Receipt and Processing of Written Appeal, etc.

#### ▣ Processing by Appellee (Administrative Agency)

##### ▣ Appellee's Receipt and Processing of Written Appeal, etc.

- If the appellee receives a written appeal or is served with the appeal by the administrative appeals commission, it shall, within ten days, send the written appeal (only applicable if it has been received directly) and its written answer to the administrative appeals commission. However, this does not apply if the appellant has withdrawn the appeal (Article 24(1) of the Administrative Appeals Act).
- If it is determined that the appeal is clearly unlawful because its content is not specified or for other reasons, the appellee may not send a written answer to the commission. In this case, the reason must be notified in writing to the commission within 10 days from the date the written appeal is received or forwarded (Article 24(2) of the Administrative Appeals Act).
- If the appellee is sending the written appeal, it shall send it to the administrative appeals commission, which has proper authority, even if an administrative appeals commission is not indicated on the written appeal or is indicated incorrectly (Article 24(5) of the Administrative Appeals Act).
- ※ In this case, the administrative agency shall inform the appellant without delay of the fact that the written appeal has been forwarded (Article 24(7) of the Administrative Appeals Act).

##### ▣ Ex Officio Revocation by Administrative Agency

- If upon receiving a written appeal the appellee accepts that there are proper grounds for the appeal, it may, *ex officio*, revoke or modify the disposition, confirm it, or opt for the disposition requested (referred to below as "*ex officio* revocation, etc."), in each case in accordance with the purpose of the appeal. In this case, the appellant shall be informed in writing (Article 25(1) of the Administrative Appeals Act).

##### ▣ Third Party Appeal

- If a third party, who is not the party subject to the disposition, files an

appeal, the appellee shall without delay inform the party subject to the disposition, of this fact. In this case, the appellee shall also send a copy of the written appeal (Article 24(2) of the Administrative Appeals Act).

■ Submission of Written Answer

- The appellee shall, within ten days of the date it receives a copy of the written appeal, submit to the administrative appeals commission a written answer setting out the following matters; when sending the written answer, the appellee shall also send as many copies of the written answer as there are appellants (Article 24(4) of the Administrative Appeals Act):
  - basis and grounds for the disposition or omission;
  - response to the purpose of and grounds for the appeal; and
  - in the case of an appeal by a third party:
    - √ name, address and contact details of the party subject to the disposition; and
    - √ whether obligations to 'notify the fact of third party appeal' and to 'serve a copy of the written appeal' to the party subject to the disposition, have been performed.
- If there has been an *ex officio* revocation, etc. by the appellee, it shall, save in a case where the appellant has withdrawn the appeal, submit documentation evidencing the fact of *ex officio* revocation, etc. when it sends documents such as the written appeal and written answer to the administrative appeals commission (Article 25(2) of the Administrative Appeals Act).

▶ Processing by Administrative Appeals Commission

- Administrative Appeals Commission's Receipt and Processing of Written Appeal, etc.
  - Where a written answer has been submitted by the appellee, the administrative appeals commission shall send a copy of the written answer to the appellant (Article 26(2) of the Administrative Appeals Act).

▶ Modification of Appeal

- Modification of Appeal
  - Prior to the administrative appeals commission's decision, the appellant may modify the purpose of or the grounds for the appeal, to the extent that there is no modification to the foundation of the appeal (Article 29(1) of the Administrative Appeals Act).
    - That "there shall be no modification to the foundation of the appeal" means the appellant's legal interest, in respect of which relief is being sought pursuant to the currently filed appeal, shall remain identical.
  - If, after an appeal has been filed, there is a new disposition or a modification to the disposition that is being appealed, in each case by the appellee administrative agency, then the appellant may modify the purpose of or the grounds for the appeal in line with the new disposition or the modified disposition (Article 29(2) of the Administrative Appeals Act).
  - Modification of appeal pursuant to the above shall be requested in writing (Article 29(3) of the Administrative Appeals Act).
  - The administrative appeals commission shall serve copies of the application for

modification of appeal on the appellee and any intervenors (Article 29(4) of the Administrative Appeals Act).

■ Procedure for Modifying Appeal

- Application

- Modification of appeal shall be requested in writing. In this case the appellant shall also submit as many copies of the application for modification of appeal as there are appellees and intervenors (Article 29(3) of the Administrative Appeals Act).
- The administrative appeals commission shall serve a copy of the application for modification of appeal on each of the appellee and any intervenors (Article 29(4) of the Administrative Appeals Act).

- Submission of Opinion

- The administrative appeals commission may specify a time period for the appellee and any intervenors to submit their opinion on the application for modification of appeal. In these circumstances, if the appellee and intervenors do not submit their opinion within this time period, they are deemed not to have an opinion on the matter (Article 29(5) of the Administrative Appeals Act).

- Decision

- The administrative appeals commission shall decide whether to give its permission in respect of the application for modification of appeal and, without delay, serve an authenticated copy of the decision to the applicant and a certified copy on each of the parties and any intervenors (Article 29(6) of the Administrative Appeals Act).
- The applicant may, within seven days of its receipt of the written decision, raise an objection with the administrative appeals commission (Article 29(7) of the Administrative Appeals Act).

■ Effect of Modifying Appeal

- If there is a decision to modify the appeal, an administrative appeal is deemed to have been filed with the modified purpose or on the modified grounds at the time when the administrative appeal was initially filed (Article 29(8) of the Administrative Appeals Act).

### 3.3. Review

#### 3.3.1. Review Proceedings

▶ Review

■ Meaning of Review

- A procedure under which the relevant parties are, for the purpose of clarifying the factual relationships that are disputed and the legal relationships associated with them, informed of related parties' arguments or counterarguments, and under which various evidence and material that justify such arguments are gathered and examined, is called a "review".

Review Body

- 
- The administrative appeal commission handles the review of administrative appeals. Review begins when a written administrative appeal is submitted or referred to the administrative appeals commission.

▶ **Review Date**

- **Setting and Modification of Review Date**
  - The administrative appeals commission specifies a review date *ex officio* (Article 38 (1) of the Administrative Appeals Act).
  - The review date is modified by the administrative appeals commission *ex officio* or at the application of the relevant party (Article 38 (2) of the Administrative Appeals Act).
  - If the review date is modified, the administrative appeals commission shall inform the parties of that fact and of its grounds without delay (Article 38 (3) of the Administrative Appeals Act).
- **Notification of Review Date**
  - Notification of the review date or notification of a modification of the review date may be made in writing or may use simple notification methods, such as a telephone call to the number set out in the written appeal, sending of a text message to a cellular phone, or by facsimile or email (Article 38 (4) of the Administrative Appeals Act).

▶ **Content of Review (Review of Requirements and Review on Merits)**

- **Review of Requirements**
  - In a review of requirements, the relevant appeal is reviewed as to whether it meets the requirements for an appeal. If, as a result of the review, the appeal is found to be unlawful on the basis that it does not meet the requirements for an appeal, that appeal is dismissed without prejudice.
  - If the appeal is not lawful but is deemed to be capable of correction, the administrative appeals commission may set a time period and require its correction; provided that, matters that are trivial may be corrected by the commission *ex officio* (Article 32 (1) of the Administrative Appeals Act).
    - Corrections shall be made in writing and in such cases the appellant shall also submit as many copies of the written correction as there are parties (Article 32 (2) of the Administrative Appeals Act).
    - The administrative appeals commission shall serve a copy of the written correction on each of the other parties (Article 32 (3) of the Administrative Appeals Act).
    - If a correction is made the administrative appeal is deemed to have been filed lawfully from the beginning (Article 32 (4) of the Administrative Appeals Act).
- **Review on Merits**
  - If as a result of the review of the requirements the administrative appeal is found to be lawful, in a review on the merits, the administrative disposition's illegality or injustice is reviewed.
  - If as a result of the review on the merits it is found that there are proper grounds for the appellant's appeal, an acceptance ruling is made and, if it is

groundless, a dismissal ruling is made.

▣ Method of Review

▣ Adversarial System

- Administrative appeals adopt the adversarial system. The "adversarial system" is a system under which reviews are conducted through the offense and defense of the opposing parties to the dispute.
- The administrative appeals commission requires the appellant and appellee to submit their methods of offense and defense, and conducts its review on the basis of the methods of offense and defense that have been submitted (Article 23, Article 24, Article 33 and Article 34 of the Administrative Appeals Act).

▣ Inquisitorial System

- The "inquisitorial system" is a system under which the administrative appeals commission conducts reviews *ex officio*, and at the same time, gathers the necessary material.
- The administrative appeals commission may, if it is necessary for the review of the case, review facts which have not been argued by the parties, question the parties and persons for reference *ex officio*, and may request appraisals and verifications, etc. from experts (Article 39 and Article 36 of the Administrative Appeals Act).

▣ Oral Review or Written Review

- The administrative appeals commission's review is carried out either as an oral review or a written review (The main body of Article 40 (1) of the of the Administrative Appeals Act).
  - In an "oral review", the ruling is based on oral statements.
  - In a "written review", the ruling is based solely on written statements.
- If any of the parties request an oral review, the administrative appeals commission shall, unless a written review is deemed sufficient on its own for the decision, conduct an oral review (Proviso to Article 40 (1) of the Administrative Appeals Act).

▣ Non-Disclosure

- Remarks made by the members of the administrative appeals commission at its meetings, and other matters falling under one of the following, the disclosure of which may have an adverse effect on the fairness of the administrative appeals commission's review and decision, are not disclosed to the public (Article 41 of the Administrative Appeals Act and Article 29 of the Enforcement Decree of the Administrative Appeals Act):
  1. documents containing remarks made by the members of the administrative appeals commission (including a subcommission and expert commission) at their meeting;
  2. the list of commission members who are to participate in the ruling of the appeal case which is under review; or
  3. matters other than those prescribed in 1 and 2, the disclosure of which is deemed to involve a risk of adversely affecting the fairness of the administrative appeals commission's review and ruling.

▶ Examination of Evidence

■ Method of Examination of Evidence

- If it is necessary for the review of the case, the administrative appeals commission may, *ex officio* or at the application of the relevant party, conduct an examination of evidence using the following methods (Article 36 (1) of the Administrative Appeals Act):
  - by requiring the parties or related parties (including public officials from related administrative agencies; the same shall apply below) to attend the meeting of the administrative appeals commission for questioning;
  - by requiring the parties or related parties to submit documents, ledgers, objects and other evidence in their possession, and keeping them in custody;
  - by requiring a third party with special knowledge and experience to conduct an appraisal; and
  - by entering the place of address, residence, or place of business of the parties or related parties, or other places as are necessary, and making inquiries of the parties or related parties, or inspecting or verifying documents or objects.
- The administrative appeals commission may, if necessary, conduct the examination of evidence by entrusting it to the personnel of the administrative agency under whose jurisdiction the commission is established, or to another administrative agency (Article 36 (2) of the Administrative Appeals Act).

▶ Consolidation and Separation of Related Appeals

■ Consolidation and Separation of Related Appeals

- If multiple appeal cases have been filed in respect of identical or connected issues, or if it is deemed to be necessary because of factors such as the cases being concerned with similar dispositions by the same administrative agency, the administrative appeals commission may, in view of the expediency or economy of review, review the cases by consolidating them, or review connected appeals that have been consolidated by separating them (Article 37 of the Administrative Appeals Act).

▶ Withdrawal of Appeal

■ Withdrawal of Appeal

- An appellant or intervenor in an appeal may, prior to a ruling on the appeal, withdraw the appeal in writing (Article 42 (1) and (2) of the Administrative Appeals Act).

### 3.4. Conclusion of Review

#### 3.4.1. Rulings

▶ Meaning of Rulings

■ Meaning of Rulings

- A "ruling" means a decision made by an administrative appeals commission in

respect of an appeal filed against an administrative agency's disposition or omission (Subparagraph 3 of Article 2 of the Administrative Appeals Act).

■ Nature of Rulings

- As an expression of an administrative appeals commission's will, rulings are quasi-judicial acts in nature.

▶ Time Period for Making Rulings

■ Time Period for Making Rulings

- A ruling shall be made within 60 days of the date on which the administrative agency or the administrative appeals commission receives a written appeal. However, if there are circumstances beyond the commission's control, the chairperson may *ex officio* extend the time period by 30 days (Article 45 (1) of the Administrative Appeals Act).
- If the time period for making a ruling has been extended due to circumstances beyond the commission's control, the parties shall be informed of this no later than seven days before the expiry of the time period for making a ruling (Article 45 (2) of the Administrative Appeals Act).
- If the administrative appeals commission has ordered a correction to be made to the appeal, the time period for correction is not included in the time period for ruling (Article 32 (5) of the Administrative Appeals Act).

▶ Method of Ruling

■ In Writing

- A ruling is made in writing (Article 46 (1) of the Administrative Appeals Act).
- The administrative appeals commission shall set out the following matters on the written ruling (Article 46 (2) of the Administrative Appeals Act):
  - case number and case name;
  - name and address of the parties, representatives or agents;
  - main text of the ruling;
  - purpose of the appeal;
  - reasoning; and
  - date of the ruling.

■ Reasoning for Rulings

- A written ruling shall include its reasoning (Subparagraph 5 of Article 46 (2) of the Administrative Appeals Act).
- The reasoning set out in a written ruling shall indicate a level of judgment such that one is able to accept that the main text of the ruling is justified (Article 46 (3) of the Administrative Appeals Act).

▶ Scope of Rulings

■ Scope of Rulings

- The administrative appeals commission may not rule on matters other than the disposition or omission that is being appealed (Article 47 (1) of the Administrative Appeals Act).

- The administrative appeals commission may not make a ruling that is more disadvantageous to the appellant than the disposition that is being appealed (Article 47 (2) of the Administrative Appeals Act).

**▶ Service and Public Announcement of Rulings**

■ Service of Rulings

- If a ruling has been made, the administrative appeals commission shall serve authenticated copies of the written ruling to the parties without delay, and the ruling takes effect when it has been served on the appellant (Article 48 (1) and (2) of the Administrative Appeals Act).
- Certified copies of the ruling are served on any intervenors in the appeal (Article 48 (3) of the Administrative Appeals Act).
- In a case where an appeal has been filed by a third party who is not a party subject to the disposition, a certified copy of the ruling is also served on the third party (Article 48 (4) of the Administrative Appeals Act).

■ Public Announcement

- If a disposition for which a public announcement or notification has been made pursuant to statutory provisions is revoked or modified by a ruling, the relevant administrative agency that has made the disposal shall without delay make a public announcement or notification that the disposition has been revoked or modified (Article 49 (5) of the Administrative Appeals Act).

■ Notification

- If a disposition which has been notified to an interested party other than the party subject to the disposition is revoked or modified by a ruling, the administrative agency that has made the disposal shall without delay inform the interested party of the disposition's revocation or modification (Article 49 (6) of the Administrative Appeals Act).

**▶ Categories of Rulings**

■ Dismissal Without Prejudice Ruling

- A "dismissal without prejudice ruling" is a decision of the administrative appeals commission which refuses a review on the merits on the grounds that, having reviewed the appeal on the requirements, the appeal does not meet the requirements for an appeal and is therefore unlawful (Article 43 (1) of the Administrative Appeals Act).
- The main text of the ruling in the written ruling would state: 'The instant appeal shall be dismissed without prejudice.'
- An appeal is dismissed without prejudice as being unlawful in the following circumstances:
  - if a person who is unable to appeal has filed an appeal;
  - if the subject matter of the appeal is not an administrative disposition;
  - if the appeal has been filed after the expiry of the time period for an appeal;
  - if there is a deficiency in the information required to be stated in an appeal;
 or

- if the written appeal does not attach documents evidencing a person's capacity to act as a representative, manager or agent.
- However, if an entry in the written appeal is omitted or documentary evidence for a person's capacity to act as a representative, etc. is not attached, then a correction in relation to the requirements is possible. If a correction is made, the administrative appeal is deemed to have been filed lawfully from the beginning (Article 32 (1) and (4) of the Administrative Appeals Act).
- Dismissal Ruling
  - A "dismissal ruling" is a decision of the administrative appeals commission which, after reviewing the appeal on the merits, rejects the matters requested by the appellant and upholds the administrative agency's original disposition (Article 43 (2) of the Administrative Appeals Act).
  - The main text of the ruling in the written ruling would state: 'The appellant's appeal shall be dismissed.'
- Acceptance Rulings
  - An "acceptance ruling" is a decision of the administrative appeals commission which recognizes the illegality or injustice of the appellee's disposition or omission, and accepts the matters applied for by the appellant (Article 43 (3), (4) and (5) of the Administrative Appeals Act).
  - Depending on the appeal that has been filed, acceptance rulings are categorized as revocation or modification rulings, affirmation of nullity, etc. rulings, and performance of obligation rulings.
  - Revocation or Modification Rulings
    - A "revocation or modification ruling" is a ruling which is made when the administrative appeals commission accepts that there are proper grounds for a revocation appeal, and which revokes or modifies the disposition, or orders the disposing administrative agency to revoke or modify its disposition (Article 43 (3) of the Administrative Appeals Act).
    - The main text of the ruling in the written ruling would state: 'The appellee's disposition on January 1, 2015 in respect of the appellant involving △△ shall be revoked' or 'The appellee's disposition on May 20, 2015 in respect of the appellant involving △△ shall be modified to the disposition suspending △△ for three months.'
  - Affirmation of Nullity, etc. Rulings
    - An "affirmation of nullity, etc. ruling" is a ruling which is made when it is accepted that there are proper grounds for an appeal for affirmation of nullity, etc., and which affirms the validity or nullity, or the existence or non-existence, of the relevant disposition (Article 43 (4) of the Administrative Appeals Act).
    - The main text of the ruling in the written ruling would state: 'The appellee's △△ disposition on May 16, 2004 in respect of the appellant of July 16, 2004 is hereby affirmed as a nullity.'
  - Performance of Obligation Rulings
    - A "performance of obligation ruling" is a ruling which is made when it is accepted that there are proper grounds for an appeal for performance of

obligation, and which disposes of the matter in accordance with the application forming the basis of the omission, or which orders such disposition (Article 43 (5) of the Administrative Appeals Act).

- The main text of the ruling in the written ruling would state: 'The appellee is hereby ordered to disclose △△ among the information in respect of which the appellant has made an application for disclosure of information.'

■ Circumstantial Rulings

- A "circumstantial ruling" is a ruling that dismisses an appeal in circumstances where it is accepted that there are proper grounds for the appeal, because to recognize it would be seriously detrimental to public welfare (The main body of Article 44 (1) of the Administrative Appeals Act).
  - Circumstantial rulings are only applicable to appeals for revocation and appeals for performance of obligation, and are not applicable to appeals for affirmation of nullity, etc. (Article 44 (3) of the Administrative Appeals Act).
  - If a circumstantial ruling is made, the administrative appeals commission shall expressly state in the main text of the ruling that the relevant disposition or omission is illegal or unjust, so that, by conclusively settling the illegality or injustice of the disposition or omission, an administrative claim for compensation, etc. may be made with ease (Proviso to Article 44 (1) of the Administrative Appeals Act).
  - The main text of the ruling in the written ruling would state: 'The appellant's appeal shall be dismissed. However, the appellee's disposition on February 3, 2005 in respect of the appellant involving △△ is illegal.'
  - When making a circumstantial ruling, the administrative appeals commission may provide a reasonable remedy to the appellant, or order the appellee to provide an reasonable remedy (Article 44 (2) of the Administrative Appeals Act).
- ※ A "reasonable remedy" in principle relates to the entirety of the harm suffered by the appellant as a result of the circumstantial ruling, and refers to a monetary compensation or other appropriate means such as the installation of facilities which would eliminate the harm.

▶ Effect of Rulings

■ Binding Force

- Meaning
  - "Binding force" refers to the force which requires the administrative agency that is the party to the appeal, and related administrative agencies, to comply with the spirit of the ruling.
  - A ruling binds the administrative agency that is the party to the appeal, and other related administrative agencies (Article 49 (1) of the Administrative Appeals Act).
- Obligation Not to Repeat (Negative Obligation)
  - As the disposing administrative agency is bound by the ruling, if there has been a ruling revoking a disposition, the disposing administrative agency may not repeat dispositions which are contrary to the spirit of the ruling. In other words, the dispositions of the same substance may not be repeated under identical circumstances.

- Obligation to Act Again (Positive Obligation)

- If a disposition that is revoked or affirmed as a nullity or as non-existent, involves a refusal of an application made by the relevant party, the disposing administrative agency shall, in accordance with the spirit of the ruling, dispose of the previous application again (Article 49 (2) of the Administrative Appeals Act).
- If there is an acceptance ruling, the appellee administrative agency and related administrative agencies become subject to an obligation to revoke or modify dispositions in accordance with the ruling. If there is a ruling ordering the execution of a disposition in which the relevant party's application was refused or neglected through an omission, then the administrative agency shall act without delay in its disposition of the previous application in accordance with the spirit of the ruling (Article 49 (3) of the Administrative Appeals Act).

※ If the appellee does not make the disposal as set out above, the commission may at the application of the appellant specify a reasonable time period and, if the appellee fails to comply within that period, may make an order for the appellee to pay certain amount of compensation corresponding to the period of delay, or to pay immediate compensation (Article 50-2 (1) of the Administrative Appeals Act).

- Obligation to Eliminate Outcome

- If a revocation ruling or nullity ruling is made in an administrative appeal, any subsequent dispositions, or legal relationships and factual relationships based on the actual measures taken, by the administrative agency in connection with the relevant disposition are rendered illegal. Accordingly, the administrative agency is under an obligation to reinstate all such matters.

- Violation of Binding Force

- Violation of Obligation Not to Repeat

√ If the administrative agency makes the same disposal again in violation of the obligation not to repeat contrary dispositions, its defect is both serious and manifest, and the disposition is therefore void.

- Violation of Obligation to Act Again (Direct Disposition)

√ If appellee does not make the disposal in accordance with the ruling, the administrative appeals commission may, at the relevant party's application, specify a time period and make a written order for its rectification. If the appellee does not comply within this time period, the commission may dispose of the matter directly; provided that, this does not apply where, due to the nature of the disposition or other unavoidable causes, the administrative appeals commission is unable to dispose of the matter directly (Article 50 (1) of the Administrative Appeals Act).

√ Where there has been a direct disposition by the administrative appeals commission, the appellee administrative agency shall treat the administrative appeals commission's disposition as though it were the relevant administrative agency's own disposition, and take the necessary measures in accordance with relevant statutes such as administration and supervision (Article 50 (2) of the Administrative Appeals Act).

■ Formative Force

- "Formative force", in a case where the administrative appeals commission has made a ruling revoking or modifying a disposition, refers to the ruling's effect in giving rise to changes in legal relationships in administration, without the need to wait for the appellee administrative agency's separate disposition.

■ Finality as to Disputes

- Where certain grounds exist, the party subject to an administrative act may not dispute such an administrative act's validity in a dispute resolution procedure. This is called "finality as to disputes". If a ruling of an administrative appeals commission is itself illegal, an administrative lawsuit may be filed in respect of such ruling. However, if the period for filing lawsuit is exceeded, then it is no longer possible to dispute the validity of the ruling.
- After a ruling is made in an administrative appeal, an administrative lawsuit shall be filed within 90 days of the date of receiving service of an authenticated copy of the written ruling on the administrative appeal, and within one year of the date of the ruling (Article 20 of the Administrative Litigation Act).

■ Finality as to Modification

- Certain administrative acts are binding on the disposing administrative agency itself, who may not revoke or modify the acts *ex officio*. Such an effect of an administrative act is called "finality as to modification".
- As a ruling of the administrative appeals commission is an act of adjudication pursuant to a dispute resolution procedure, once the ruling has been made it cannot be revoked or modified even by the administrative appeals commission itself.

■ Authentication

- "Authentication" is the effect of generally treating a defective administrative act, save where it is clearly and obviously void, as being provisionally valid until it is revoked by an authoritative agency ([Supreme Court's Decision dated November 9, 1993, Case No. 93Nu14271](#)).
- A ruling of an administrative appeals commission, as a type of administrative disposition, has authentication.

### 3.4.2. Dissatisfaction

▶ Dissatisfaction with Rulings

■ Prohibition of Further Administrative Appeal

- If a ruling is made in respect of an appeal, no further administrative appeal may be filed against the relevant ruling and any dispositions or omissions that are the same (Article 51 of the Administrative Appeals Act).

■ Lawsuit Seeking Revocation of Ruling

- A lawsuit may be filed to seek revocation of a ruling only in cases where there is an inherent illegality within the ruling itself (Proviso to Article 19 of the Administrative Litigation Act).

- A lawsuit seeking revocation of a ruling shall be filed within 90 days of the date of becoming aware of the ruling (disposition), and within one year of the date of the ruling (Article 20 of the Administrative Litigation Act).

**▣ Filing Administrative Lawsuit**

▣ Principle of Original Administrative Disposition

- A lawsuit for revocation is in principle filed against the administrative agency's original disposition. Therefore, a lawsuit may be filed against a ruling of an administrative appeals commission only in cases where there is an inherent illegality within the ruling itself (Proviso to Article 19 of the Administrative Litigation Act).

▣ Principle of Rulings (Exception to Principle of Original Administrative Disposition)

- In the case of special administrative appeals prescribed in individual statutes, there are circumstances where a lawsuit for revocation may not be filed in respect of the original disposition and may only be filed in respect of a ruling. This is called the "principle of rulings".
- Examples of the principle of rulings adopted in individual statutes are as follows:
  - a review adjudication of the Board of Audit and Inspection of Korea (Article 40 (2) of the Board of Audit and Inspection Act); and
  - √ An administrative lawsuit may not be filed against a disposition by the Board of Audit and Inspection of Korea involving compensation adjudication, and an administrative lawsuit may only be filed against the Board of Audit and Inspection of Korea as defendant in respect of a review adjudication which constitutes a ruling.
  - a review adjudication of the National Labor Relations Commission (Article 26 and Article 27 of the Labor Relations Commission Act).