

Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors

(Act No. 120 of June 1, 1956)

(Purpose)

Article 1 The purpose of this Act is, by preventing a delay in payment of subcontract proceeds, etc., to ensure that transactions between large procuring enterprises and subcontractors are fair and, at the same time, to protect the interests of the subcontractors, thereby contributing to the sound development of the national economy.

(Definitions)

Article 2 (1) The term "manufacturing consignment" as used in this Act means an entrepreneur's agreement that entrusts another entrepreneur the manufacture (including processing, the same applies hereinafter) of goods or its semi-finished components, parts, accessories or raw materials or metal dies used in the manufacture thereof which are the object of sales conducted on a regular basis or manufacturing contracted on a regular basis; or entrusts manufacture of parts or raw materials which are necessary for repair of goods conducted on a regular basis; or an entrepreneur's agreement that entrusts another entrepreneur the manufacture of goods or its semi-finished components, parts, accessories or raw materials or metal dies used in the manufacture thereof when the entrepreneur is engaging in the manufacture of the goods which it uses or consumes itself on a regular basis.

(2) The term "repair consignment" as used in this Act means an entrepreneur's agreement that entrusts another entrepreneur all or a part of the repair of goods which the entrepreneur contracted on a regular basis; or an entrepreneur's agreement that entrusts another entrepreneur part of the repair of goods when the entrepreneur is engaging in the repair of the goods which it uses itself on a regular basis.

(3) The term "information-based product creation consignment" as used in this Act means an entrepreneur's agreement that entrusts another entrepreneur all or part of the creation of information-based products which are the object of provision conducted on a regular basis or creation on a regular basis; or an entrepreneur's agreement that entrusts another entrepreneur all or part of the creation of those information-based products when the entrepreneur is engaging in the creation of those information-based products which that entrepreneur uses on a regular basis.

(4) The term "service contract" as used in this Act means an entrepreneur's

agreement that entrusts another entrepreneur all or part of the provision of a service which is the object of provision conducted on a regular basis (excluding any contract by a person conducting a construction business (meaning a construction business as prescribed by Article 2 paragraph 2 of the Construction Business Act (Act No. 100 of 1949); hereinafter the same applies in this paragraph) of all or part of the construction work it contracts as a regular business (means construction work prescribed in paragraph 1 of the same Article) to other parties conducting a construction business of all or part of the construction work it contracts on a regular basis).

- (5) The term "manufacturing consignment, etc." as used in this Act means manufacturing consignment, repair consignment, information-based product creation consignment and service contract.
- (6) The term "information-based product" as used in this Act means any of the articles described in the following items.
- (i) programs (which mean those that are directives to a computer and arranged to achieve a single result);
 - (ii) films, broadcast programs, and other products composed of images or voice and other sounds;
 - (iii) products composed from letters, figures or symbols or from their combination, or from a combination of them and colors;
 - (iv) beyond what are set forth in the preceding three items, those that are similar thereto and are specified by Cabinet Order.
- (7) The term "large procuring enterprise" as used in this Act means any entity that falls under any of the following items:
- (i) any person doing business as a corporation (excluding persons provided for in Article 14 of the Act on Prevention of Delay in Payment under Government Contracts, etc. (Act No. 256 of 1949) with the amount of stated capital or total contributions exceeding 300 million yen that concludes a manufacturing consignment, etc. agreements (in case of an information-based product creation consignment and a service contract, limited to agreements concerning an information-based product and service, respectively, specified by Cabinet Order; the same applies to the following item and items (i) and (ii) of the following paragraph) with any individual or with any person doing business as a corporation with the amount of stated capital or total contributions of not more than 300 million yen; or
 - (ii) any person doing business as a corporation (excluding persons provided for in Article 14 of the Act on Prevention of Delay in Payment under Government Contracts, etc.) with the amount of stated capital or total contributions exceeding 10 million yen but not more than 300 million yen that concludes a manufacturing consignment, etc. agreements with any individual or any person doing business as a corporation with the amount of

- stated capital or total contributions of not more than 10 million yen.
- (iii) any person doing business as a corporation (excluding persons provided for in Article 14 of the Act on Prevention of Delay in Payment under Government Contracts, etc.) with the amount of stated capital or total contributions exceeding 50 million yen that concludes an information-based product creation consignment agreement or a service contract (respectively excluding any contract concerning any information-based product or any service specified by Cabinet Order of item 1; the same applies to the following item and items (iii) and (iv) of the following paragraph) to any individual or any person doing business as a corporation with the amount of stated capital or total contributions of not more than 50 million yen.
 - (iv) any person doing business as a corporation (excluding persons provided for in Article 14 of the Act on Prevention of Delay in Payment under Government Contracts, etc.) with the amount of stated capital or total contributions exceeding 10 million yen but not more than 50 million yen that concludes an information-based product creation consignment agreement or a service contract with any individual or any person doing business as a corporation with the stated amount of capital or total contributions of not more than 10 million yen.
- (8) The term "subcontractor" as used in this Act means any entity that falls under any of the following items:
- (i) an individual or any person doing business as a corporation, with the amount of stated capital or total contributions of not more than 300 million yen that receives a manufacturing consignment, etc. agreements from a large procuring enterprise provided for in item (i) of the preceding paragraph; or
 - (ii) an individual or any person doing business as a corporation with the amount of stated capital or total contributions of not more than 10 million yen that receives a manufacturing consignment, etc. agreements from a large procuring enterprise provided for in item (ii) of the preceding paragraph.
 - (iii) an individual, or any person doing business as a corporation with the amount of stated capital or total contributions of not more than 50 million yen that receives an information-based product creation consignment agreement or a service contract from a large procuring enterprise provided for in item (iii) of the preceding paragraph; or
 - (iv) an individual, or any person doing business as a corporation with the amount of stated capital or total contributions of not more than 10 million yen that receives an information-based product creation consignment agreement or a service contract from a large procuring enterprise provided for in item (iv) of the preceding paragraph
- (9) When a person doing business as a corporation, the appointment and dismissal of officers or the conduct or existence in business of which is

controlled by another person doing business as a corporation whose amount of stated capital or total contributions exceeds 10 million yen, receives a manufacturing consignment, etc. agreements from the person and subcontracts all or a considerable part of the act of manufacture, repair, creation or provision pertaining to the manufacturing consignment, etc. agreements with a third person (excluding the cases where a person coming under items (i) or (ii) of paragraph 7 above concludes the manufacturing consignment, etc. agreements with another person who falls under items (i) or (ii) respectively of the preceding paragraph and cases where a person falling under items (iii) and (iv) of the paragraph above concludes an information-based product creation consignment agreement or a service contract with another person who falls under items (iii) and (iv) respectively of the preceding paragraph), and when the person who receives the subcontract would fall under the items of the preceding paragraph if they were to receive that manufacturing consignment, etc. agreements directly from that person who controls the appointment and dismissal of officers, or conduct or existence in the business, the person who concludes such subcontract is to be deemed, in the application of this Act, a large procuring enterprise and the person who receives such subcontract is to be deemed a subcontractor.

(10) The term "subcontract proceeds" as used in this Act means the charges to be paid (provision of services in case of service contract; the same applies hereinafter) by the large procuring enterprise for work performed by the subcontractor in cases where the large procuring enterprise concludes a manufacturing consignment, etc. agreements.

(Date of Payment of Subcontract Proceeds)

Article 2-2 (1) The date of payment of subcontract proceeds must be fixed within sixty days, and moreover within as short a period as possible, from the day on which a large procuring enterprise receives the work from a subcontractor (the day on which a subcontractor provides the service entrusted in the event of service contract. The same applies in the following paragraph), regardless of whether or not the large procuring enterprise inspects the work in detail.

(2) The date of payment of subcontract proceeds is to be deemed the date on which a large procuring enterprise receives the work from a subcontractor when the date of payment was not fixed, or the day prior to the date on which sixty days from the day on which a large procuring enterprise receives the work from the subcontractor have elapsed, when the date of payment of the subcontract proceeds was fixed in violation of the preceding paragraph.

(Delivery of Documents)

Article 3 (1) A large procuring enterprise must, in cases where it has concluded

a manufacturing consignment, etc. agreements with a subcontractor, immediately deliver to the subcontractor a document setting forth, pursuant to the provisions of the Rules of the Fair Trade Commission, the details of work of the agreement, the amount of subcontract proceeds, the date of payment, the method of payment and other matters; provided, however, that if there are reasonable grounds not to determine the details of a matter, the matter does not have to be stated. In that case, the large procuring enterprise must deliver to the subcontractor a document setting forth the matter immediately after the determination of the details.

(2) In lieu of delivering the document prescribed by the preceding paragraph, a large procuring enterprise may, with the consent of a subcontractor and as specified by Cabinet Order, provide matters to be set forth in the document by information and communications technology means including electronic data processing system means provided by the Rules of the Fair Trade Commission. In this case, the large procuring enterprise is to be deemed to have delivered the necessary document.

(Matters to be Observed by Large Procuring Enterprises)

Article 4 (1) No large procuring enterprise may, in cases where it concludes a manufacturing consignment, etc. agreements with a subcontractor, conduct any one of the acts listed in the following items (excluding item (i) and (iv) in cases where it concludes a service contract):

- (i) refusing to receive the work from a subcontractor without reasons attributable to the subcontractor;
- (ii) failing to make payment of subcontract proceeds after the lapse of the date of payment;
- (iii) reducing the amount of subcontract proceeds without reasons attributable to the subcontractor;
- (iv) causing a subcontractor to take back the goods relating to its work after receiving the work from the subcontractor without reasons attributable to the subcontractor;
- (v) unjustly setting subcontract proceeds at a level conspicuously lower than the price ordinarily paid for the same or similar content of work;
- (vi) coercing the subcontractor to purchase designated goods or to use designated services except in such cases where it is necessary to standardize or to improve the content of the work performed by a subcontractor or where there are other reasonable grounds; or
- (vii) reducing the volume of transactions, suspending transactions or giving some other disadvantageous treatment because the subcontractor informed the Fair Trade Commission or the Director-General of the Small and Medium Sized Enterprise Agency of such a fact, where a large procuring enterprise is

conducting such acts as mentioned in item (i) or item (ii), or has conducted such acts as mentioned in items (iii) to (vi), or where there exists a fact falling under any one of the items in the following paragraph as to the large procuring enterprise.

- (2) No large procuring enterprise may, in cases where it concludes a manufacturing consignment, etc. agreements with a subcontractor, unjustly injure the interests of the subcontractor by conducting any one of the acts listed in the following items (excluding item (i) in the case of service contract):
- (i) in cases where the large procuring enterprise has caused the subcontractor to purchase from oneself semi-finished goods, parts, accessories or raw materials (hereinafter referred to as "raw materials, etc.") necessary for the work performed for the large procuring enterprise, without reasons attributable to the subcontractor, deducting all or part of the price of the raw materials, etc. from the amount of the subcontract proceeds to be paid, or causing the subcontractor to pay all or a part of the price of the raw materials, etc. at a time earlier than the date of payment of the subcontract proceeds for the work in which the raw materials, etc. are employed: or
 - (ii) with respect to the payment of subcontract proceeds, delivering a negotiable instrument which is found difficult to be discounted, by the date of payment of the subcontract proceeds, by a general financial institution (this term refers to a person who accepts deposits or savings and lends funds as a business).
 - (iii) causing a subcontractor to provide cash, services or other economic gains for oneself.
 - (iv) causing a subcontractor to change the content of the work, or to re-work after the receipt of the work (after provision of service by the subcontractor in the case of service contract), without reasons attributable to the subcontractor.

(Delayed Interest)

Article 4-2 When a large procuring enterprise has not paid the subcontract proceeds to the subcontractor by the date of payment, it must, with respect to the period from the day on which sixty days from the day on which it received the work from the subcontractor (the day on which a subcontractor provided the service entrusted in the case of service contract.) to the day when the payment is made, pay as interest for the delay the amount of money obtained by multiplying the unpaid amount by the rate provided for in the Rules of the Fair Trade Commission according to the number of days.

(Preparation and Preservation of Documents)

Article 5 A large procuring enterprise must, in cases where it concludes a

manufacturing consignment, etc. agreements with a subcontractor, prepare and preserve, in accordance with the Rules of the Fair Trade Commission, document or electronic or magnetic record (meaning a record created in a form that cannot be recognized through one's sense of perception such as in an electronic form or magnetic form that is used for information processing by computer. The same applies hereinafter.), setting forth the work of the subcontractor, the receipt of work (conducting the act of service provision by the subcontractor in the case of service contract), payment of the subcontract proceeds and other matters.

(Request by Director-General of Small and Medium Sized Enterprise Agency)

Article 6 The Director-General of the Small and Medium Sized Enterprise Agency may investigate whether or not a large procuring enterprise is conducting such acts as provided for in item (i), item (ii) or item (vii) of paragraph (1) of Article 4 (Matters to be Observed by Large Procuring Enterprises), whether or not it has conducted such acts as provided for in items (iii) to (vi) of the paragraph or with respect to the large procuring enterprise whether or not there exists a fact falling under any one of the items of paragraph 2 of the Article, and when the Director-General finds that such facts exist, they may request the Fair Trade Commission to take appropriate measures in accordance with the provisions of this Act.

(Recommendation)

Article 7 (1) The Fair Trade Commission may, when it finds that a large procuring enterprise is conducting such an act as provided for in item (i), item (ii) or item (vii) of paragraph (1) of Article 4 (Matters to be Observed by Large Procuring Enterprises), recommend to the large procuring enterprise that it promptly receive the work from a subcontractor, pay the subcontract proceeds or the subcontract proceeds and interest for delay pursuant to the provisions of Article 4-2 (Delayed Interest), or cease the disadvantageous treatment and take other necessary measures.

(2) The Fair Trade Commission may, when it finds that a large procuring enterprise has conducted such acts as provided for in items (iii) to (vi) of paragraph (1) of Article 4, recommend to the large procuring enterprise that it promptly pay the amount so reduced, accept the goods pertaining to the work of the subcontractor, increase the amount of such subcontract proceeds or take back the goods that the subcontractor was forced to purchase and take other necessary measures.

(3) The Fair Trade Commission may, when it finds that with respect to the large procuring enterprise, there exists a fact falling under any of the items of paragraph (2) of Article 4 (Matters to be Observed by Large Procuring

Enterprises), recommend to the large procuring subcontractor that it promptly take the measures necessary to protect the interests of the subcontractor.

(Relation with the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade)

Article 8 In the event the Fair Trade Commission has rendered a recommendation under the provisions of paragraphs (1) to (3) (Recommendation) of the preceding Article, and to the extent that the large procuring enterprise has complied with the recommendation, the provisions of Article 20 (Elimination Measures against Unfair Trade Practices) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947) do not apply to the act of that large procuring enterprise pertaining to the recommendation.

(Collection of Reports and Inspection)

- Article 9 (1) When it finds it necessary to make transactions with respect to a manufacturing consignment, etc. agreements of a large procuring enterprise with a subcontractor (hereinafter simply referred to as "transactions") fair, the Fair Trade Commission may cause a large procuring enterprise or a subcontractor to submit a report on its transactions, or may cause its officials to enter an office or place of business of a large procuring enterprise or a subcontractor and to inspect books and documents and other objects.
- (2) The Director-General of the Small and Medium Sized Enterprise Agency may, when they find it particularly necessary to protect the interests of a subcontractor, cause a large procuring enterprise or a subcontractor to submit a report on its transactions, or may cause their officials to enter an office or place of business of a large procuring enterprise or a subcontractor and to inspect books and documents and other objects.
- (3) The competent minister having administrative jurisdiction over the business in which a large procuring enterprise or a subcontractor engages may, when they find it particularly necessary to cooperate with the investigation pursuant to the provisions of Article 6 (Request by Director-General of Small and Medium Sized Enterprise Agency) by the Director-General of the Small and Medium Sized Enterprise Agency, cause a large procuring enterprise or a subcontractor engaging in the business under their jurisdiction to submit a report on its transactions, or may cause their officials to enter an office or place of business of these enterprises and to inspect books and documents and other objects.
- (4) The officials who enter the offices pursuant to the provisions of the preceding three paragraphs must carry their identification cards and produce them to relevant persons.

(5) The authority to enter and inspect under the provisions of paragraphs (1) to (3) may not be construed as granted for criminal investigation.

(Penal Provisions)

Article 10 A representative, agent, employee or any other worker of a large procuring enterprise who has committed a violation that falls under any of the following items is punished by a fine not more than five hundred thousand yen.

(i) in cases where a document is not delivered in accordance with the provision of paragraph (1) of Article 3 (Delivery of Documents) or,

(ii) in case a document or electronic or magnetic record under the provision of Article 5 (Preparation and Preservation of Documents) is not prepared or preserved, or a false document or electronic or magnetic record is prepared.

Article 11 A person who has failed to submit a report under the provisions of paragraphs (1) to (3) of Article 9 (Report and Inspection) or submitted a false report, or refused, disturbed or evaded inspection is punished by a fine of not more than five hundred thousand yen.

Article 12 When a representative of a corporation, or an agent, employee or any other worker in the service of a corporation or of an individual, has, with regard to the business of the corporation or individuals, committed a violation under the preceding two Articles, not only the offender is punished but also the corporation or the individual is punished by the fines as described in the respective Articles.