ACT AGAINST DELAY IN PAYMENT OF SUBCONTRACT PROCEEDS, ETC. TO SUBCONTRACTORS
(Law No. 120 of 1956)

(Tentative Translation)

Sec. 1 [Purpose]

This Law, by preventing delay in payment of subcontract proceeds, etc., aims to make transactions of parental entrepreneurs with subcontractors fair, and, at the same time, to protect the interests of the subcontractors, thereby contributing to the wholesome development of the national economy.

Sec. 2 [Definitions]

(1) The term “manufacturing commission” as used in this Law shall mean: an entrepreneur’s commissioning to another entrepreneur the manufacture (including processing, the same meaning shall apply hereinafter) of articles or semi-finished components, parts, accessories or raw materials or metal dies used in the manufacture of the said articles which are the object of sales conducted as a regular business or manufacture contracted as a regular business; or entrepreneur’s commissioning to another entrepreneur the manufacture of parts or raw materials which are necessary for repair of articles conducted as a regular business; or an entrepreneurs commissioning to another entrepreneur the manufacture of articles or semi-finished components, parts, accessories or raw materials or manufacture of metal dies used in the manufacture of the said articles when the said entrepreneur is engaging in the manufactures as a regular business of the said articles which he himself uses or consumes.

(2) The term “repairing commission” as used in this Act shall mean an entrepreneur’s commissioning to another entrepreneur all or a part of the repair of articles which the said entrepreneur contracted as a regular business; or an entrepreneur’s commissioning to another entrepreneur a part of the repair of articles when the entrepreneur is engaging in the repair, as a regular business, of the said articles which he himself uses.
(3) The term “information-based product creation commission” as used in this Act shall mean an entrepreneur’s commissioning to another entrepreneur all or part of the creation of information-based products which are the object of provision conducted as a regular business or creation contracted as a regular business; or an entrepreneur’s commissioning to another entrepreneur all or part of the creation of those information-based products when the entrepreneur is engaging as a regular business in the creation of those information-based products which he himself uses.

(4) The term “service provision commission” as used in this Act shall mean an entrepreneur’s commissioning to another entrepreneur all or part of the provision of a service which is the object of provision conducted as a regular business (excluding any person conducting a construction business (meaning a construction business as prescribed by Article 2 paragraph 2 of the Construction Business Act (Law No. 100 of 1949); the same shall apply in the following paragraphs) that is made to contract by other persons conducting a construction business all or part of the construction work it contracts as a regular business (means construction work prescribed in paragraph 1 of the same Article)).

(5) The term “manufacturing or other commission” as used in this Act shall mean manufacturing commission, repairing commission, information-based product creation commission and service provision commission.

(6) The term “information-based product” as used in this Act shall mean any of the items described in the following paragraphs.

(i) programs (shall mean any product that combines programming code to give instructions to a computer and achieve a result);

(ii) films, broadcast program, and other products composed of images or audio and other sounds;

(iii) products composed from letters, figures or symbols or from their combination, or from a combination of letters, figures, symbols and colors;

(iv) in addition to those stipulated in the preceding three paragraphs, similar products
that are stipulated by government ordinance.

(7) The term “parental entrepreneur” as used in this Act shall mean a person who comes under any one of the following paragraphs:

(i) Any juridical entrepreneur (excluding persons provided for in Section 14[mutatis
mutandis application to public corporations’ contracts] of the Act Concerning
Prevention of Delay in Payment under Government Contracts, etc. (Law No. 256 of
1949) whose amount of capital or total amount of subscribed equity exceeds 300 million
JPY and who gives a manufacturing or other commission (an information-based
product creation commission and a service provision commission, limited to
commissions concerning an information-based product and service, respectively,
stipulated by government ordinance; the same shall apply to the following paragraph
and paragraphs (i) and (ii) of the following subsection) to any individual or to any
juridical entrepreneur whose amount of capital or total amount of subscribed equity is
not more than 300 million JPY; or

(ii) Any juridical entrepreneur (excluding persons provided for in Sec. 14 of the Act
Concerning Prevention of Delay in Payment under Government Contracts, etc.) whose
amount of capital or total amount of subscribed equity is over 10 million JPY, but not
more than 300 million JPY, and who gives a manufacturing or other commission to
any individual or to any juridical entrepreneur whose amount of capital or total
amount of subscribed equity is not more than 10 million JPY.

(iii) Any juridical entrepreneur (excluding persons provided for in Sec. 14 of the Act
Concerning Prevention of Delay in Payment Under Government Contracts, Etc.) whose
amount of capital or total amount of subscribed equity is over 50 million JPY, and who
gives an information-based product creation commission or a service provision
commission (respectively excluding any commission concerning any information-based
product or any service stipulated by government ordinance of paragraph 1; the same
shall apply to the following paragraph and paragraphs (iii) and (iv) of the following
subsection) to any individual, or to any juridical entrepreneur whose amount of capital
or total amount of subscribed equity is not more than 50 million JPY.

(iv) Any juridical entrepreneur (excluding persons provided for in Sec. 14 of the Act
Concerning Prevention of Delay in Payment Under Government Contracts, Etc.) whose
amount of capital or total amount of subscribed equity is over 10 million JPY, but not more than 50 million JPY, and who gives an information-based product creation commission or a service provision commission to any individual, or to any juridical entrepreneur whose amount of capital or total amount of subscribed equity is not more than 10 million JPY.

(8) The term “subcontractor” as used in this Act shall mean a person who comes under any one of the following paragraphs:

(i) An individual or any juridical entrepreneur, whose amount of capital or total amount of subscribed equity is not more than 300 million JPY and who receives a manufacturing or other commission from a parental entrepreneur provided for in paragraph (i) of the preceding subsection; or

(ii) An individual or any juridical entrepreneur whose amount of capital or total amount of subscribed equity is not more than 10 million JPY and who receives a manufacturing or other commission from a parental entrepreneur provided for in paragraph (ii) of the preceding subsection.

(iii) An individual, or any juridical entrepreneur whose amount of capital or total amount of subscribed equity is not more than 50 million JPY, who receives an information-based product creation commission or a service provision commission from a parental entrepreneur provided for in paragraph (iii) of the preceding subsection; or

(iv) An individual, or any juridical entrepreneur whose amount of capital or total amount of subscribed equity is not more than 10 million JPY, who receives an information-based product creation commission or a service provision commission from a parental entrepreneur provided for in paragraph (iv) of the preceding subsection.

(9) When a juridical entrepreneur, whose appointment and dismissal of officers, or whose conduct or existence in business is controlled by another juridical entrepreneur whose amount of capital or total amount of subscribed equity is over 10 million JPY, receives a manufacturing or other commission from the said entrepreneur and gives re-commission of the whole or a considerable part of the act of manufacture, repair, creation or provision under such manufacturing or other commission to a third entrepreneur (excluding the cases where a person coming under paragraphs (i) or (ii) of
Subsection 7 above gives the manufacturing or other commission to another person who comes under paragraphs (i) or (ii) respectively of the preceding subsection and the cases where a person coming under paragraphs (iii) and (iv) of Subsection 7 above gives an information-based product creation commission or a service provision commission to another person who comes under paragraphs (iii) and (iv) respectively of the preceding subsection, and when the entrepreneur who receives such re-commission would come under each paragraph of the preceding subsection if he were to receive the said manufacturing or other commission directly from the said entrepreneur who controls the appointment and dismissal of officers, or conduct or existence in the business, the entrepreneur who gives such re-commission shall be deemed, in the application of this Act, to be a parental entrepreneur and the entrepreneur who receives such re-commission shall be deemed to be a subcontractor.

(10) The term “subcontract proceeds” as used in this Act shall mean the payment that should be made by the parental entrepreneur for work performed by subcontractor in the case the parental entrepreneur gives a manufacturing or other commission (the payment that should be made by the parental entrepreneur for provision of a service by a subcontractor in the case the parental entrepreneur gives a service provision commission; hereinafter the same).

[Legislative history: total amendment of Subsec. 3 and 4 (Law No. 157 of 1963); addition of Subsec. 5 and shift of old Subsec. 5 to Subsec. 6 (Law No. 125 of 1965); partial amendment of Subsec. 3 and 4 (Law No. 115 of 1973); partial amendment of subsec. 3, 4 and 5 (Law No. 146 of 1999); partial amendment of Subsec. 1 and 2, addition of Subsec. 3, 4, 5 and 6 and partial amendment of old Subsec. 3 (i) and (ii) and shift of those paragraphs to Subsec. 7 (i) and (ii), addition of Subsec. 7 (iii) and (iv), partial amendment of old Subsec. 4 (i) and (ii) and shift of those paragraphs to Subsec. 8 (i) and (ii), addition of Subsec. 8 (iii) and (iv), partial amendment of old Subsec. 5 and 6 and shift of those paragraphs to Subsec. 9 and 10 (Law No. 87 of 2003) ]
(1) The date of payment of subcontract proceeds shall be fixed within sixty days, and moreover within as short a period as possible, reckoning from the day on which a parental entrepreneur received the work from a subcontractor (the day on which a subcontractor provided the service commissioned in the event of service providing commission. Same in the next subsection), regardless of whether or not the parental entrepreneur inspects the content of the work.

(2) The date of payment of subcontract proceeds shall be demand the date on which a parental entrepreneur received the work from a subcontractor when the date of payment was not fixed, or the day prior to the lapse of sixty days reckoning from the day on which a parental entrepreneur received the work from the subcontractor when the date of payment of subcontract proceeds was fixed in violation of the preceding subsection.

[Legislative history: addition of this section (Law No. 135 of 1962); partial amendment of Subsec. 1 (Law No. 125 of 1965); partial amendment of Subsec. 1 (Law No. 87 of 2003)]

Sec. 3 [Delivery of written statement, etc.]

(1) A parental entrepreneur shall, in case he has given a manufacturing or other commission to a subcontractor, immediately deliver to the subcontractor a written statement setting forth, in accordance with the provisions of the Rules of the Fair Trade Commission, the contents of work of the contact, the amount of subcontract proceeds, the date of payment, the method of payment and other matters: Provided that description is not required for a matter with justifiable reason for being unable to determine the content among the above matters; in that case, the parental entrepreneur shall deliver to the subcontractor a written statement setting forth the said matter immediately after the determination of the content.

(2) In lieu of providing the documentation stipulated by the above article, a parental entrepreneur shall be able, with the agreement of a subcontractor and as provided by government ordinance, to provide said documentation by information / telecommunication means including data processing means provided by the competent
government authority. In such a case, the parental entrepreneur shall be deemed to have provided the necessary documentation.

[Legislative history: partial amendment of Sec. 1 (Law No. 135 of 1962, Law No. 125 of 1965); partial amendment of Subsec. 1 (Law No. 87 of 2003)]

Note: “the Rules of the Fair Trade Commission” means the Rules on Matters to be Described in Written Statement under Section under Section 3 of the Subcontract Act

Sec. 4 [Prohibited conduct of parental entrepreneurs]

(1) No parental entrepreneur shall, in case he gives a manufacturing or other commission to a subcontractor, effect any one the following acts (excluding Item (i) and (iv) in case he gives a service provision commission):

(i) Refusing to receive the work from a subcontractor without a reason for which the subcontractor is responsible;

(ii) Failing to make payment of subcontract proceeds after the lapse of the date of payment;

(iii) Reducing the amount of subcontract proceeds without reason for which the subcontractor is responsible;

(iv) Causing a subcontractor to take back the things relating to his work after receiving the work from the said subcontractor without a reason for which the subcontractor is responsible;

(v) Unjustly fixing a conspicuously lower amount of subcontract proceeds than the price ordinarily paid for the same or similar contents of work;

(vi) Coercing the purchase of items designated by oneself or coercing the use of services except in such cases where it is necessary to standardize or improve the content of the
work performed by a subcontractor or where there is other proper justification; or

(vii) Reducing quantity of transactions, suspending transactions or affording 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 fact, where a parental entrepreneur is effecting such acts as mentioned in paragraph (i) or paragraph (ii), or has effected such acts as mentioned in paragraph (iii) to the preceding paragraph inclusive, or where the parental entrepreneur is found to be effecting acts which come under any one of the paragraph in the following subsection.

(2) No parental entrepreneur shall, in case he gives a manufacturing commission or other commission to a subcontractor, unjustly harm the interests of the subcontractor by effecting any one of the following acts (excluding Item (i) in the case of service provision commission):

(i) In case the parental entrepreneur has caused the subcontractor to purchase from himself semi-finished goods, parts, accessories or raw materials (hereinafter referred as “raw materials, etc.”) necessary for the work performed for him, without a reason for which the subcontractor is responsible, deducting the whole or a part of the price of the said raw materials, etc. from the amount of other subcontract proceeds to be paid, or causing the subcontractor to pay the whole or a part of the price of the said raw materials, etc. at a time earlier than the date of payment of the subcontract proceeds for the work in which the said raw materials, etc. are employed: or

(ii) With respect to the payment of subcontract proceeds, delivering a bill which is found difficult to be accepted, by the date of payment of the subcontract proceeds, at discount by a general financial institution (this term refers to a person who receives deposits or saving and lends funds as a business).

(iii) Causing a subcontractor to provide cash, services or other economic benefits for oneself.

(iv) Causing a subcontractor to change the content of the work, or to rework after the receipt of the work (after provision of service by the subcontractor in the case of service
provision commissioning), without a reason for which the subcontractor is responsible,

[Legislative history: partial amendment of this section (Law No. 135 of 1962); partial amendment of Subsec. 1 and addition of Subsec. 2 (Law No. 125 of 1965); partial amendment of Subsec. 1, 1 (vi), 2, addition of Subsec 2 (iii) and (iv) (Law No. 87 of 2003)]

Sec. 4-2 [Interest for arrears]

When a parental entrepreneur has not paid the subcontract proceeds to the subcontractor by the date of payment, he shall, with respect to period from the day when sixty days have passed reckoning from the day on which he received the work from the subcontractor (the day on which a subcontractor provided the service commissioned in the case of service provision commission.) to the day when the payment is made, pay as interest for arrears the amount of money obtained by multiplying the said unpaid amount times the rate provided for in the Rules of the Fair Trade Commission according to the number of days.

[Legislative history: addition of this section (Law No. 135 of 1962); partial amendment of this section (Law No. 87 of 2003)]

Note: “the Rules of the Fair Trade Commission” means the Rules Providing for the Rate of Interest for Arrears under the Provisions of Section 4-2 of the Subcontract Act

Sec. 5 [Preparation and preservation of document and the like]

A parental entrepreneur shall, in case he gives a manufacturing commission or other commission to a subcontractor, prepare and preserve, in accordance with the Rules of the Fair Trade Commission, documentation or electromagnetic 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 proceeding by computer. Hereinafter the same.), expressly setting forth the work of the subcontractor, the receipt of work (performance of service provision by the
subcontractor in the case of service provision commission), payment of the contract proceeds and other matters.

[Legislative history: partial amendment of this section (Law No. 87 of 2003)]

Note: “the Rules of the Fair Trade Commission” means Rules Concerning Preparation and Preservation of Documentation Under the Provisions of Section 5 of Act Against Delay In Payment of Subcontract Proceeds, etc. to Subcontractors

Sec. 6 [Investigation and Request by Director-General of Small and Medium Sized Enterprise Agency]

The Director-General of the Small and Medium Sized Enterprise Agency may investigate whether or not a parental entrepreneur is effecting such acts as provided for in paragraph (i), paragraph (ii) or paragraph (vii) of Subsection (1) of Section 4, whether or not he has effected such acts as provided for in paragraphs (iii) to (vi) inclusive of the said subsection or with respect to the parental entrepreneur whether or not any fact exists as provided for in the paragraphs of Subsection 2 of the said section, and of he fines that facts do exist, he may request the Fair Trade Commission to take appropriate measures in accordance with the provisions of this Act.

[Legislative history: partial amendment of this section (Law No. 135 of 1962, Law No. 125 of 1965)]

Sec. 7 [Recommendation]

(1) The Fair Trade Commission may, when it finds that a parental entrepreneur is doing such an act as provided for in paragraph (i), paragraph (ii) or paragraph (vii) of Subsection (1) of Section 4, recommend to the parental entrepreneur that it forthwith receive the work from a subcontractor, pay the subcontract proceeds or the subcontract proceeds and interest for arrears provided for in Section 4-2, or cease the disadvantageous treatment and take other necessary measures.
(2) The Fair Trade Commission may, when it that a parental entrepreneur has effected such acts as provided for in paragraph (iii) to (vi) inclusive of Subsection (1) of Section 4, recommend to the said parental entrepreneur that it forthwith pay the amount so reduced, accept the things relating to the work of the subcontractor, increase the amount of such subcontract proceeds or take back the items that the subcontractor was coerced to purchase and take other necessary measures.

(3) The Fair Trade Commission may, when it finds that with respect to the parental entrepreneur, facts exist as provided for in one of the paragraphs of Subsection (2) of Section 4, recommended to the parental entrepreneur that if forthwith take necessary measures for protection of the interest of the subcontractor.

[Legislative history: partial amendment of Subsec. 1 and 2 (Law No. 135 of 1962 and Law No. 125 of 1965); addition of Subsec. 3, partial amendment of old Subsec. 3 and shift of that Subsection to Subsec. 4 (Law No. 125 of 1965); partial amendment of Subsec.1 and 2, deletion of Subsec. 4 (Law No. 87 of 2003)]

Sec. 8 [The relation with the Act Concerning Prohibition of Monopoly and Maintenance of Fair Trade]

In the event the Fair Trade Commission has rendered a recommendation under the provisions of Subsections (1) to (3) inclusive of the preceding Section, and to the extent the parental entrepreneur has complied with the recommendation, the provisions of Section 48 (recommendation, recommendation decision), Section 49 (initiation of hearing procedures), Section 53-3 (consent decision) and Section 54 (hearing decision) of Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54 of 1947) shall not apply to the act of that parental entrepreneur under the recommendation.

[Legislative history: total amendment of this section (Law No. 125 of 1965)]
Sec. 9 [Collection of report and inspection]

(1) In case it finds it necessary to make transactions with respect to a manufacturing commission or other commission of a parental entrepreneur to a subcontractor (hereinafter simply referred to as “transactions”) fair, the Fair Trade Commission may cause a parental entrepreneur or a subcontractor to file a report on such transactions, or may cause its officials to enter an office or place of business of a parental entrepreneur or a subcontractor and to inspect books, documents and other things.

(2) The Director-General of the Small and Medium Sized Enterprise Agency may, in case he finds it particularly necessary to protect the interest of a subcontractor, cause a parental entrepreneur or a subcontractor to file a report on such transactions, or may cause his officials to enter an office or place of business of a parental entrepreneur or a subcontractor and to inspect books, documents and other things.

(3) The competent minister having jurisdiction over the business in which a parental entrepreneur or a subcontractor engages may, in case he finds it particularly necessary to cooperate with the investigation under the provision of Section 6 by the Director-General of the Small and Medium Sized Enterprise Agency, cause a parental entrepreneur or a subcontractor engaging in the said business to file a report on such transactions, or may cause his officials or places of business of these entrepreneurs and to inspect books, documents and other things.

(4) The officials who enter in accordance with the provisions of the preceding three paragraphs shall carry with them an identification card showing their status and shall present it to interested persons.

(5) The authority to enter and inspect under the provisions of Subsections (1) to (3) inclusive shall not be construed to have been authorized for the purpose of a criminal investigation.

[Legislative history: partial amendment of Subsec. 1 (Law No. 87 of 2003) ]

Note: Subsec. 4 “identification card” means form of identification card showing the status carried by the officials of the Fair Trade Commission under the Subcontract
Act, form of identification card showing the status carried by the officials of Ministry of Infrastructure Land and Transport under the Subcontract Act, form of identification card showing the status carried by the officials of Ministry of Economy, Trade and Industry or Small and Medium Sized Enterprise Agency under the Subcontract Act

Sec. 10 [Penal provisions]

A representative, agent, employee or any other worker of a parental entrepreneur who has committed a violation coming under any one of the following paragraphs shall be punished by a fine of not more than five hundred thousand JPY.

(i) In case a written statement is not delivered in accordance with the provisions of Section 3 (1) or,

(ii) In case a document or electromagnetic record under the provisions of Section 5 is not prepared or preserved, or a false document or electromagnetic record is prepared.

[Legislative history: total amendment of this section (Law No. 125 of 1965) partial amendment of this section (Law No. 87 of 2003) ]

Sec. 11

A person who fails to file a report under the provisions of Subsections (1) to (3) inclusive of Section 9 [report and inspection] or files a false report, or who refuses, disturbs or evades inspection shall be punished by a fine of not more than five hundred thousand JPY.

[Legislative history: partial amendment of this section (Law No. 87 of 2003) ]

Sec. 12
When a representative of juridical person, or an agent, employee or any other worker of a juridical person or an individual, has committed an offense under the preceding two sections concerning the business of such juridical person or individual, in addition to the punishment of the offender, the said juridical person or individual shall be punished by the fines provided for in the respective sections.