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This English translation of the Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors has been prepared (up to the revision of Act No. 87 of 2005 (Effective May 1, 2006)) in compliance with the Standard Bilingual Dictionary (March 2006 edition).

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Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors (Act No. 120 of June 1, 1956)

Article 1 (Purpose)

The purpose of this Act is, by preventing a delay in payment of subcontract proceeds, etc., to ensure that transactions between main subcontracting entrepreneurs 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.

Article 2 (Definitions)

(1) The term "manufacturing contract" as used in this Act means an entrepreneur's contract with another entrepreneur of the manufacture (including processing, the same shall apply 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 as a regular business or manufacturing contracted as a regular business; or manufacture of parts or raw materials which are necessary for repair of goods conducted as a regular business; or an entrepreneur's contract with another entrepreneur of the manufacture of goods or its semi-finished components, parts, accessories or raw materials or metal dies used in the manufacture thereof when the said entrepreneur is engaging in the manufacture of the said goods which it uses or consumes itself as a regular business.

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

- with another entrepreneur of all or a part of the repair of goods which the said entrepreneur contracted as a regular business; or an entrepreneur's contract with another entrepreneur of part of the repair of goods when the entrepreneur is engaging in the repair of the said goods which it uses itself as a regular business.
- (3) The term "information-based product creation contract" as used in this Act means an entrepreneur's contract with another entrepreneur of 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 contract with another entrepreneur of 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 he himself uses as a regular business.
- (4) The term "service contract" as used in this Act means an entrepreneur's contract with another entrepreneur of all or part of the provision of a service which is the object of provision conducted as a regular business (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); the same shall apply 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 as a regular business).
- (5) The term "manufacturing or other contract" as used in this Act means manufacturing contract, repair contract, information-based product creation contract 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 shall mean those that are instructions to a computer and arranged to achieve a 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) in addition to what are stipulated in the preceding three items, those that are similar thereto and are stipulated by a Cabinet Order.
- (7) The term "main subcontracting entrepreneur" as used in this Act means any entity that falls under any of the following items:
- (i) Any entrepreneur of juridical person (excluding persons provided for in Article 14 of the Act on Prevention of Delay in Payment under Government Contracts (Act No. 256 of 1949) with capital or total contributions exceeding 300 million yen that concludes a manufacturing or other contract (in case of an

information-based product creation contract and a service contract, limited to contracts concerning an information-based product and service, respectively, stipulated by a Cabinet Order; the same shall apply to the following item and items (i) and (ii) of the following paragraph) with any individual or with any entrepreneur of juridical person with capital or total contributions of not more than 300 million yen; or

- (ii) Any entrepreneur of juridical person (excluding persons provided for in Article 14 of the Act on Prevention of Delay in Payment under Government Contracts, etc.) with capital or total contributions exceeding 10 million yen but not 300 million yen that concludes a manufacturing or other contract with any individual or any entrepreneur of juridical person with capital or total contributions of not more than 10 million yen.
 - (iii) Any entrepreneur of juridical person (excluding persons provided for in Article 14 of the Act on Prevention of Delay in Payment under Government Contracts, etc.) with capital or total contributions exceeding 50 million yen that concludes an information-based product creation contract or a service contract (respectively excluding any contract concerning any information-based product or any service stipulated by a Cabinet Order of item 1; the same shall apply to the following item and items (iii) and (iv) of the following paragraph) to any individual or any entrepreneur of juridical person with capital or total contributions of not more than 50 million yen.
 - (iv) Any entrepreneur of juridical person (excluding persons provided for in Article 14 of the Act on Prevention of Delay in Payment under Government Contracts, etc.) with capital or total contributions exceeding 10 million yen but not 50 million yen that concludes an information-based product creation contract or a service contract with any individual or any entrepreneur of juridical person with 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 entrepreneur of juridical person, with capital or total contributions of not more than 300 million yen that receives a manufacturing or other contract from a main subcontracting entrepreneur provided for in item (i) of the preceding paragraph; or
 - (ii) An individual or any entrepreneur of juridical person with capital or total contributions of not more than 10 million yen that receives a manufacturing or other contract from a main subcontracting entrepreneur provided for in item (ii) of the preceding paragraph.
 - (iii) An individual, or any entrepreneur of juridical person with capital or total contributions of not more than 50 million yen that receives an information-based product creation contract or a service contract from a main subcontracting

- entrepreneur provided for in item (iii) of the preceding paragraph; or
- (iv) An individual, or any entrepreneur of juridical person with capital or total contributions of not more than 10 million yen that receives an information-based product creation contract or a service contract from a main subcontracting entrepreneur provided for in item (iv) of the preceding paragraph
- (9) When an entrepreneur of juridical person, the appointment and dismissal of officers or the conduct or existence in business of which is controlled by another entrepreneur of juridical person whose capital or total contributions exceeds 10 million yen, receives a manufacturing or other contract from the said entrepreneur and subcontracts of all or a considerable part of the act of manufacture, repair, creation or provision pertaining to such manufacturing or other contract with a third entrepreneur (excluding the cases where a person coming under items (i) or (ii) of Paragraph 7 above concludes the manufacturing or other contract 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 contract or a service contract with another person who falls under items (iii) and (iv) respectively of the preceding paragraph), and when the entrepreneur who receives such subcontract would fall under the items of the preceding paragraph if he were to receive the said manufacturing or other contract directly from the said entrepreneur who controls the appointment and dismissal of officers, or conduct or existence in the business, the entrepreneur who concludes such subcontract shall be deemed, in the application of this Act, to be a main subcontracting entrepreneur and the entrepreneur who receives such subcontract shall be deemed to be a subcontractor.
- (10) The term "subcontract proceeds" as used in this Act means the charges to be paid in case of service contract; that same shall apply hereinafter) by the main subcontracting entrepreneur for work performed by the subcontractor in cases where the main subcontracting entrepreneur concludes a manufacturing or other contract.

Article 2-2 (Date of payment of subcontract proceeds)

- (1) The date of payment of subcontract proceeds shall be fixed within sixty days, and moreover within as short a period as possible, from the day on which a main subcontracting entrepreneur receives the work from a subcontractor (the day on which a subcontractor provides the service entrusted in the event of service contract. The same shall apply in the next paragraph), regardless of whether or not the main subcontracting entrepreneur inspects the work in detail.
- (2) The date of payment of subcontract proceeds shall be deemed to be the date on which a main subcontracting entrepreneur 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 main subcontracting entrepreneur 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.

Article 3 (Delivery of documents, etc.)

- (1) A main subcontracting entrepreneur shall, in cases where it has concluded a manufacturing or other contract 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 contract, the amount of subcontract proceeds, the date of payment, the method of payment and other matters; provided, however, that if the description is justifiably unable to be provided because the above details cannot be determined, the main subcontracting entrepreneur shall deliver to the subcontractor a document setting forth the said matter immediately after the determination of the details.
- (2) In lieu of delivering the document prescribed by the preceding paragraph, a main subcontracting entrepreneur may, with the agreement of a subcontractor and as provided by a Cabinet Order, provide matters to be set forth in said 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 main subcontracting entrepreneur shall be deemed to have delivered the necessary document.

Article 4 (Compliance by main subcontracting entrepreneurs)

- (1) No main subcontracting entrepreneur shall, in cases where it concludes a manufacturing or other contract with a subcontractor, effect any one 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 said 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 justifiable 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 main subcontracting entrepreneur is effecting such acts as mentioned in item (i) or item (ii), or has effected such acts as mentioned in items (iii) to (vi) inclusive, or where there exists a fact falling under any one of the items in the following paragraph as to the main subcontracting entrepreneur.
- (2) No main subcontracting entrepreneur shall, in cases where it concludes a manufacturing or other contract with a subcontractor, unjustly injure the interests of the subcontractor by effecting any one of the acts listed in the following items (excluding item (i) in the case of service contract):
- (i) In cases where the main subcontracting entrepreneur 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 main subcontracting entrepreneur, without reasons attributable to the subcontractor, deducting all or part of the price of the said 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 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 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 receives 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.

Article 4-2 (Interest for delay)

When a main subcontracting entrepreneur has not paid the subcontract proceeds to the subcontractor by the date of payment, he shall, with respect to the period from the day on which sixty days from the day on which he 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 said unpaid amount by the rate provided for in the Rules of the Fair Trade Commission according to the number of days.

Article 5 (Preparation and preservation of document etc.)

A main subcontracting entrepreneur shall, in cases where it concludes a manufacturing or other contract with a subcontractor, prepare and preserve, in accordance with the Rules of the Fair Trade Commission, document 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 processing by computer. The same shall apply hereinafter.), setting forth the work of the subcontractor, the receipt of work (effecting the act of service provision by the subcontractor in the case of service contract), payment of the subcontract proceeds and other matters.

Article 6 (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 main subcontracting entrepreneur is effecting such acts as provided for in item (i), item (ii) or item (vii) of Paragraph (1) of Article 4 (Compliance by main subcontracting entrepreneurs), whether or not it has effected such acts as provided for in items (iii) to (vi) inclusive of the said paragraph or with respect to the main subcontracting entrepreneur whether or not there exists a fact falling under any one of the items of Paragraph 2 of the said article, and when he/she finds that such facts exist, he/she may request the Fair Trade Commission to take appropriate measures in accordance with the provisions of this Act.

Article 7 (Recommendation)

- (1) The Fair Trade Commission may, when it finds that a main subcontracting entrepreneur is effecting such an act as provided for in item (i), item (ii) or item (vii) of Paragraph (1) of Article 4 (Compliance by main subcontracting entrepreneurs), recommend to the main subcontracting entrepreneur that it promptly receive the work from a subcontractor, pay the subcontract proceeds or the subcontract proceeds and interest for delay pursuant to the provision of Article 4-2 (Interest for delay), or cease the disadvantageous treatment and take other necessary measures.
- (2) The Fair Trade Commission may, when it finds that a main subcontracting entrepreneur has effected such acts as provided for in items (iii) to (vi) inclusive of Paragraph (1) of Article 4, recommend to the said main subcontracting entrepreneur 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 main subcontracting entrepreneur, there exists a fact falling under any of the items of Paragraph (2) of Article 4 (Compliance by main subcontracting entrepreneurs), recommend to the main subcontracting entrepreneur that it promptly take the measures necessary to protect the interests of the subcontractor.

Article 8 (The relation with the Act on Prohibition of Monopolization and Maintenance of Fair Trade)

In the event the Fair Trade Commission has rendered a recommendation under the provisions of paragraphs (1) to (3) (Recommendation) inclusive of the preceding article, and to the extent that the main subcontracting entrepreneur 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) shall not apply to the act of that main subcontracting entrepreneur pertaining to the recommendation.

Article 9 (Collection of reports and inspection)

- (1) When it finds it necessary to make transactions with respect to a manufacturing or other contract of a main subcontracting entrepreneur with a subcontractor (hereinafter simply referred to as "transactions") fair, the Fair Trade Commission may cause a main subcontracting entrepreneur 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 main subcontracting entrepreneur or a subcontractor and to inspect books and documents and other materials.
- (2) The Director-General of the Small and Medium Sized Enterprise Agency may, when he/she finds it particularly necessary to protect the interests of a subcontractor, cause a main subcontracting entrepreneur or a subcontractor to submit a report on its transactions, or may cause his/her officials to enter an office or place of business of a main subcontracting entrepreneur or a subcontractor and to inspect books and documents and other materials.
- (3) The competent minister having jurisdiction over the business in which a main subcontracting entrepreneur or a subcontractor engages may, when he/she finds it particularly necessary to cooperate with the investigation pursuant to the provision 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 main subcontracting entrepreneur or a subcontractor engaging in the said business under his/her jurisdiction to submit a report on its transactions,

or may cause his/her officials to enter an office or place of business of these entrepreneurs and to inspect books and documents and other materials.

(4) The officials who enter pursuant to the provisions of the preceding three paragraphs shall 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) inclusive shall not be construed as granted for criminal investigation.

Article 10 (Penal provisions)

A representative, agent, employee or any other worker of a main subcontracting entrepreneur who has committed a violation that falls under any of the following items shall be punished by a fine not more than five hundred thousand yen.

- (i) In cases where a document is not delivered in accordance with the provisions of paragraph (1) of Article 3 (Delivery of documents, etc.) or,
- (ii) In case a document or electromagnetic record under the provisions of Article 5 (Preparation and preservation of document and the like etc.) is not prepared or preserved, or a false document or electromagnetic record is prepared.

Article 11

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

Article 12

When a representative of a juridical person, or an agent, employee or any other worker in the service of a juridical person or of an individual, has, with regard to the business of the said juridical person or individuals, committed a violation under the preceding two articles, not only the offender shall be punished but also the said juridical person or the said individual shall be punished by the fines as described in the respective articles.