SAMYANG CORPORATION

COMPLIANCE MANUAL

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Chapter 1 Samyang Corporation Compliance Program

I. Compliance Program (CP)

1. Definition and Purpose

- It shall mean the Compliance Program introduced and implemented by the Company for the purpose of enhancing understanding of Fair Trade Laws and promoting voluntary compliance therewith.
- The core of the Compliance Program lies in establishing a system capable of proactively preventing risks associated with violations of Fair Trade Laws and in formulating standards of conduct to govern such compliance.

[Guidance on Fair Trade Laws]

- **Monopoly Regulation and Fair Trade Act**

- Prohibition of Abuse of Market-Dominant Position
- Restrictions of Business Combinations and Prohibition of Concentration of Economic Power
- Restrictions on Illegal Cartel Conduct
- Prohibited Acts for Trade Associations
- Resale Price Maintenance

- **Other Applicable Laws**

- Fair Transactions in Subcontracting Act / Fair Transactions in Franchise Business Act / Act on Fair Transactions in Large Retail Business / Fair Agency Transactions Act
- Installment Transactions Act / Act on Door-to-Door Sales
- Act on Fair Labeling and Advertising
- Act on the Regulation of Terms and Conditions
- Framework Act on Consumers, Act on the Consumer Protection in Electronic Commerce

2. Necessity of the CP

2.1 Enhancement of Corporate Competitiveness and Fair Trade Capacity

- A company may enhance its competitiveness and achieve sustainable growth through efforts toward voluntary compliance with fair trade principles.

2.2 Prevention of Losses Arising from Legal Violations

- In the event that a legal violation is detected, the Company shall bear not only financial burdens, including surcharges, damages, and litigation costs, but also both tangible and intangible costs, including reputational damage arising from public disclosure of such violations. Directors and employees who have participated in such violations or who hold positions of responsibility may also be subject to civil and criminal liability.
- The Company's CP activities contribute to reducing risks by enabling mitigation of sanctions imposed by competition authorities and minimizing reputational damage in cases where directors or employees inadvertently violate Fair Trade Laws.

2.3 Enhancement of Internal and External Credibility

- Where the introduction of the CP is publicly disclosed both internally and externally and is substantively implemented, the Company may further enhance its image as an enterprise committed to transparent and fair management.

3. Eight Elements of the Compliance Program

3.1 Establishment and Implementation of CP Standards and Procedures

- The Company shall establish and implement standards and procedures to ensure that its directors and employees clearly recognize and comply with Fair Trade Laws applicable to their duties and are able to effectively put such compliance into practice. Such standards and procedures shall be prepared in accordance with the Company's documentation policies..

3.2 Commitment and Support from Executive Management

- Top management shall sufficiently communicate that fair trade compliance constitutes a key element of corporate management and that all directors and employees are required to comply therewith.

3.3 Designation (Appointment) of the Compliance Officer

- The Compliance Officer shall be appointed by the Board of Directors and shall possess substantive authority and responsibility for the efficient management and operation of the CP.

3.4 Preparation and Distribution of the Compliance Manual

- The Company shall prepare and distribute a Compliance Manual as an internal guideline for fair trade compliance and shall ensure that directors and employees are able to access such manual with ease.

3.5 Implementation of Fair Trade-related Training for Directors and Employees

- The Company shall conduct training for directors and employees by providing specific case-based training concerning conduct that may violate Fair Trade Laws within their respective business areas. In particular, appropriate training shall be provided based on the roles of directors and employees and departments with a high risk of violating Fair Trade Laws, including procurement and sales departments.

3.6 Establishment of an Internal Monitoring System for the Prevention of Legal Violations

- The most critical aspect of operating the Compliance Program is the prevention and monitoring of legal violations. Accordingly, the Company shall establish and operate a systematic internal monitoring system composed of audit, supervision, and reporting mechanisms.

3.7 Sanctions for Violations of Fair Trade Laws

- In order to establish a culture of fair trade compliance, prompt and reasonable disciplinary measures

against legal violations are required. Accordingly, the Company shall establish internal regulations enabling the imposition of corresponding sanctions in the event of violations of Fair Trade Laws.

- There shall be no obligation to report to competition authorities the internal imposition of disciplinary measures for violations, and the Fair Trade Commission shall not use such measures as evidence for the enforcement of Competition Laws.

3.8 Effectiveness Evaluation and Improvement Measures

- The Company shall periodically conduct inspections and evaluations of CP standards, procedures, and operations in order to ensure the effective and continuous operation of the CP, and shall implement improvement measures based on the results thereof.

※ Definition of Terms

“Fair Trade Act” shall refer to the Monopoly Regulation and Fair Trade Act.

“Subcontracting Act” shall refer to the Fair Transactions in Subcontracting Act.

“Agency Act” shall refer to the Fair Agency Transactions Act.

“Fair Trade Laws” shall collectively refer to the abovementioned Acts and their Enforcement Decrees, whether individually or collectively.

The term “Act” or “Laws” shall, in a narrow sense, refer solely to the relevant statute itself, and, in a broad sense, shall include the Enforcement Decrees thereof as well as guidelines and public notices issued by delegated authorities.

Chapter 2 Guidance on Fair Trade Laws

I. Unfair Concerted Acts

1. Overview of Unfair Concerted Acts (Collusion)

1.1. Definition and Purpose

- It shall mean an act whereby two or more business operators, through contracts, agreements, resolutions, or any other means, restrict the price, transaction conditions, volume, counterparties, or transaction areas of goods or services, and such act shall be referred to as a cartel or collusion.

[Fair Trade Act Article 40 (1)]

Article 40 (Prohibition of Illegal Cartel Conduct) (1) No business entity shall **agree** to engage in any of the following **conduct that unfairly restricts competition jointly with other business entities** (hereinafter referred to as "illegal cartel conduct") by contract, agreement, resolution, or any other method or cause other business entities to do so:

1. **Determining**, **maintaining**, or **changing prices**;

2. Determining the **terms and conditions for transactions of goods or services**, or **for payments** of their prices or fees;

3. Imposing limitations on production, delivery, transportation, or transactions of goods or on transactions of services;

4. Imposing limitations on the area in which transactions can be made or on the other party to a transaction;

5. Hindering or imposing limitations on the establishment or extension of facilities or the installation of equipment necessary to produce goods or to provide services;

6. Imposing limitations on kinds of, and standards for, goods or services to be produced or provided;

7. Jointly performing and managing the main parts of business or establishing a company, etc. to perform and manage such parts;

8. Agreeing on a successful bidder, winning bidder, bidding price, successful bidding price, or other matters prescribed by Presidential Decree in a bidding or auction (bid-rigging);

9. Other practices substantially restricting competition in a particular business area by hindering or imposing limitations on the business activities or the details of business of other business entities (including business entities that engage in such conduct) or by **exchanging information prescribed by Presidential Decree, such as the price and the production volume (information exchange agreement).**

1.2 Status of Regulation

- Collusions represent the most severe form of restriction of competition arising from cartels and directly cause the greatest harm to consumers; accordingly, the Fair Trade Commission assigns the highest priority to the eradication of cartels in the enforcement of Fair Trade Laws.

1.3 Requisites for Unfair Concerted Acts (Collusion)

1.3.1 Existence of an Agreement Among Business Operators

- This includes not only explicit agreements such as contracts or formal arrangements but also implicit agreements such as mutual understandings among business operators.
- "A knowing wink can mean more than words" (Non-verbal reaction may be recognized as consent, even with just a nod.)
- In particular, courts have a broad interpretation of "agreement."
- Where an agreement exists, a cartel shall be deemed established even in the absence of actual implementation of the agreed conduct.

[Methods of Proving Communication]

First, as direct evidence capable of proving a "meeting of minds," there may be, in addition to written statements acknowledging participation in bid-rigging cartels by employees of business operators, agreements and minutes of meetings prepared among participants in such cartels.

1.3.2 Existence of "Restriction of Competition"

- "Restriction of competition" shall mean a situation in which competition in the market is reduced as a result of joint conduct by business operators, thereby creating a risk that decisions regarding prices, quantities, quality, or other transactions conditions may be influenced by the intent of the participants in such joint conduct (Supreme Court Decision, May 26, 2011, 2008Do6341).
- Not all agreements among business operators are prohibited; only agreements that unfairly restrict competition are subject to prohibition.
- In the case of price-fixing and bid-rigging, once the existence of an agreement is established, illegality shall be recognized without the need for additional proof or analysis of restriction of competition.

2. Presumption of Agreement

- Even in the absence of clear and sufficient evidence such as an explicit agreement, where there exist substantial circumstantial evidence indicating that a cartel has been formed in light of all relevant circumstances, an agreement may be presumed and sanctions may be imposed accordingly.
- In cases where such presumption has been applied, there have also been instances in which the existence of an actual agreement has subsequently been confirmed through voluntary reporting or reinvestigation processes.
- Where an agreement is presumed, the business operator may rebut such presumption by proving that the conduct in question was not based on an agreement. (Article 40 (5), Fair Trade Act)

3. Types of Unfair Concerted Acts (Collusion)

3.1 Determining, Maintaining, or Changing Prices ("Price Collusion")

3.1.1 Criteria for Determination

- The term "determining, maintaining, or changing prices" as prescribed under Article 40 (1) 1 of the Act shall mean acts whereby business operators jointly determine, maintain, or change the prices of goods or services in collaboration with other business operators.
- The term "price" as used herein refers to the consideration for goods or services provided by a business operator, that is, all economic benefits received by the business operator as counter-performance from its transaction counterpart, and shall include, regardless of its designation, any payment that the transaction counterpart is in substance required to make in exchange for such goods or services in light of the characteristics of the goods, the nature of the transaction, and the method thereof.

3.1.2 Types of Legal Violations

- Acts of jointly increasing prices, determining the rate or range of price reductions, or maintaining prices at a certain level
- Acts of establishing criteria for price setting, regardless of the terminology used, including average prices, reference prices, standard prices, maximum or minimum prices, and interest rate agreements
- Acts of substantially determining, maintaining, or changing prices in a uniform manner by jointly setting the level or limit of price components such as discount rates or profit margins, or by jointly determining methods of cost calculation
- Acts of agreeing not to bid below a certain price level on the grounds of preventing excessive competition or complying with government-notified prices

3.2 Restricting the Transaction of Goods or Services

3.2.1 Criteria for Determination

- The term "imposing limitations on the production, delivery, transportation, or transactions of goods or on transactions of services" as prescribed under Article 40 (1) 3 of the Act shall mean acts whereby business operators agree to limit or reduce their respective production or sales volumes to a certain level or ratio.

3.2.2 Types of Legal Violations

- Acts of agreeing to limit production volume, sales volume, shipment volume, transaction volume,

or transportation volume of goods or services to a certain level or ratio, or allocating such quantities among business operators

- Acts of substantially restricting production, shipment, or transportation by limiting operation rates, operating hours, or the procurement of raw materials

3.3 Imposing Limitations on Transaction Areas or on the Other Party

3.3.1 Criteria for Determination

- The term "Imposing limitations on the area in which transactions can be made or on the other party to a transaction" as prescribed under Article 40 (1) 4 of the Act constitutes a form of market allocation among types of unfair concerted acts, and includes acts whereby participating business operators jointly determine transaction areas and agree not to encroach upon one another, acts of restricting transaction counterparties by agreeing not to transaction with certain business operators or to transaction exclusively with specific business operators, and acts of restricting individual bidding activities of participating business operators and requiring joint bidding.

3.3.2 Types of Legal Violations

- Acts of agreeing to jointly bid or agreeing on the order or qualification of bidding or contract awards
- Acts of restricting transaction counterparties or transaction areas among participating business operators, or jointly determining transaction counterparties or transaction areas and agreeing not to encroach upon one another
- Acts of restricting transaction counterparties by agreeing not to transaction with specific business operators or to transaction exclusively with specific business operators
- Acts of effectively restricting transaction counterparties by arbitrarily classifying certain business operators as preferred or non-preferred entities without objective and reasonable criteria

4. Exchange of Information

- An information exchange agreement shall be deemed established where there exists a concurrence of intent to exchange information relating to the "market" or "competitively

sensitive information," and such concurrence of intent may be formed implicitly or tacitly.

- Competitively sensitive information (referred to as "elements of competition") includes price information and future production plans, and it should be noted that the existence of communication indicating an intention to exchange such information may constitute an "information exchange agreement."

4.1 Concept

- Acts of exchanging information such as prices, production quantities, or other matters prescribed by Presidential Decree, thereby substantially restricting competition in a particular field of transaction, are classified as a type of unfair collaborative conduct. (Article 40 (1) 9, Fair Trade Act)
  For example, where competing business operators exchange detailed price increase plans shortly before implementation and subsequently make pricing decisions consistent with the exchanged information.
- It should also be noted that indirect information exchange through third parties such as distributors, business associations, market research institutions, or the media may also give rise to legal concerns.

[Types of Information Prescribed by Presidential Decree]

- Costs
- Shipment volume, inventory volume, or sales volume
- Transaction conditions or payment conditions

- While it is a natural business activity for a company to collect information on competitors and utilize it for management purposes, the collection and exchange of so-called confidential or sensitive information (such as price, production volume, and costs) entails a risk of violating competition laws depending on its content and manner.
- The term "information exchange" refers to acts whereby a business operator directly or indirectly provides information such as prices or production volumes to another business operator.
- The act of publicly disclosing such information through media accessible to an unspecified number of persons, such as newspapers or publicly accessible websites, shall not constitute unlawful information exchange; however, where undisclosed information exchange has preceded such disclosure, it may constitute a violation of the Laws.
- Accordingly, even where information is publicly available, if such information has become more readily obtainable as a result of the exchange or has been combined with other non-public information, it may still be regarded as confidential information, and the exchange thereof may be deemed to have the potential to restrict competition.
- Information may be categorized as historical information, recent information, and future information. Except for historical information, the exchange of current information within one year or future information, particularly confidential information, may have a strong effect in restricting competition by facilitating the prediction of competitors' market strategies.

4.2 Requisites

(1) Definition of "Information"

- In a narrow sense, "information" refers to information that facilitates or promotes collusion, such as price increase plans, details of price increases, monthly sales targets, sales performance, achievement rates, promotional activities, and business strategies. In a broader sense, it refers to confidential and competitively sensitive information, including cost-related price information, production capacity such as production volume, and transaction conditions.
- Judicial precedents define "information" as information that facilitates or promotes collusion, including, for example, price increase plans and details of instant noodle manufacturers, price increase proposals for dairy products, monthly sales targets and performance of beverage companies, promotional content, new product pricing, and business strategies.
- The Fair Trade Act lists examples of information, including price information such as price and cost, transaction conditions such as production capacity and production volume.

(2) Exchange (Giving and Receiving)

- The act of "giving and receiving" information among business operators (hereinafter referred to as "information exchange") refers to acts whereby a business operator provides competitively sensitive information such as price, production volume, or cost to another business operator. The means of communication, including mail, email, telephone, or meetings, shall be irrelevant.
- Article 40 (1) 9 of the Fair Trade Act prohibits agreements to exchange information where such exchange restricts competition, and Article 40 (5) 2 provides that the existence of an agreement for unfair concerted acts may be presumed based on the exchange of information.
- Furthermore, indirect communication through intermediaries such as business associations, cooperatives, or third parties shall also be included (e.g., associations, cooperatives) or third-party business entities (where a company provides information to a third-party organization, and the third-party organization aggregates and accumulates the information and delivers it to the company in a format and frequency agreed upon in advance).
  - Where member companies provide inventory and sales information to a business association, and the association compiles and distributes such information to all member companies, such conduct shall be deemed as information exchange.
  - In order for indirect communication to be established, the information of a specific business operator must be transmitted to another competing business operator through an intermediary; mere unilateral provision of information to an intermediary without such transmission shall not constitute information exchange.
- Provided, publicly disclosing such information to an unspecified number of persons shall not be deemed as information exchange.
  - Public disclosure shall mean disclosure through media freely accessible to the general public without cost, such as newspapers, trade journals, or publicly accessible websites.
- It should be noted that the subsequent public disclosure of information does not exclude prior undisclosed information exchange from regulatory scope.

(3) Acts that Substantially Restrict Competition

- Such acts refer to conduct that reduces competition within a particular field of transaction and creates a situation in which prices, quantities, quality, or other transaction conditions may be influenced to a certain extent by the intent of specific business operators or business associations.

(4) Agreement for Information Exchange

- Such agreement includes not only explicit agreements but also implicit agreements, and its essence lies in the meeting of minds between two or more business operators.
- Mere parallel conduct shall not be immediately recognized as an agreement, and it must be additionally established that (i) there exists mutual communication of intent and (ii) the information exchange was conducted pursuant to an agreement (precedent). Provided, under the amended Fair Trade Act regulating information exchange itself, it remains subject to debate whether such standards will be maintained, and there exists the possibility that courts may recognize de facto presumptions, such as presuming the existence of an information exchange agreement based on the exchange of sensitive information.

[Cases Where Information Exchange Occurred Contrary to the Intent of a Business Operator]

- Where a business operator, upon receiving an email containing pricing information from a competitor, immediately requests that no further such communications be sent and no further emails are subsequently received
- Where a business operator provides sales information to a business association on the condition that such information is not shared with other members, but the association shares the information with other members contrary to such intent and also provides other members' information to the business operator

4.3 Presumption of Agreement Based on Information Exchange

(1) Definition and Requisites of Presumption of Agreement

- In order to presume the existence of an agreement such as price-fixing based on information exchange, (i) there must be an apparent parallelism in conduct whereby prices or other factors become similar or identical among two or more business operators, and (ii) there must be an exchange of information necessary to create such parallelism (Article 40 (5) 2, Fair Trade Act).
- Where these two requisites are satisfied, an agreement for unfair concerted acts shall be presumed to exist, and a business operator may rebut such presumption by proving either that no apparent parallelism exists or that, even if such parallelism exists, it was not based on an agreement or is unrelated to the exchanged information.

[Cases Where Presumption of Agreement May Be Rebutted]

- Where apparent parallelism arises coincidentally as a result of independent responses by business operators to external factors affecting prices, such as interest rates, exchange rates, or raw material prices
- Where apparent parallelism arises from conscious parallel conduct based on simple inference of competitors' price increases
- Where apparent parallelism arises as a result of individual compliance with administrative guidance

(2) Criteria for Determining Apparent Parallelism

- Whether apparent parallelism exists shall be determined by comprehensively considering the following factors.
  ① Rate and timing of changes in prices or other competitive variables
  - Where the rate, magnitude, and timing of changes in prices or other competitive variables are identical or similar, apparent parallelism may be recognized.

  ② Degree of substitution in purchasing
  - Even where there are slight differences in rates or magnitudes of changes in competitive variables, if the degree of substitution among goods or services is insignificant, apparent parallelism may still be recognized.

  ③ Content of the agreement to be established
  - Where the alleged agreement is relatively loose in form, such as an agreement to increase prices generally rather than to a specific level, apparent parallelism may be recognized even where differences exist in the rates of change.

[Examples of Apparent Parallelism]

- Where the price increase amounts of competing products are identical down to the smallest unit
- Where 10 non-life insurance companies changed transaction conditions by converting emergency towing and emergency fuel delivery services, previously provided free of charge among their roadside assistance services, into paid services over four months, and battery charging, tire replacement, and lockout services into paid services sequentially over six months.

(3) Criteria for Determining Whether Information is "Necessary Information"

- Whether exchanged information constitutes "necessary information" shall be determined by comprehensively considering the following factors:
  ① Type and nature of the information
  - Information such as prices or production volumes that is likely to limit competition if exchanged is more likely to constitute "necessary information," whereas information such as personnel updates or consumer preference analyses is less likely to constitute such information.

  ② Time of information exchange
  - Where information is exchanged close to the timing of decision-making, it is more likely

to constitute “necessary information.”

③ Relationship between apparent parallelism and exchanged information

- Where apparent parallelism in competitive variables corresponds to the content of exchanged information, such information is more likely to be considered “necessary information.”

[Cases of Necessary Information Exchange]

- Where competitively sensitive information such as prices, production volumes, costs, sales volumes, inventory, transaction conditions, or payment conditions—particularly future or non-public information—is exclusively exchanged among competitors
- Where information such as price increase schedules or details is exchanged shortly before pricing decisions
- Where exchanged price increase plans correspond to actual price increases implemented by each company

[Cases Not Constituting Necessary Information Exchange]

- Where information exchanged consists of ordinary, non-competitive information (such as personnel updates, consumer preference analyses, or recent product trend analyses), or simple business goals (such as target growth rates or target sales figures)
- Where the correlation between the competitive variables exhibiting apparent parallelism and the exchanged competitive variable information is weak (for example, where there is apparent parallelism in price, but the exchanged information relates only to payment terms)

(4) Precautions in Business Execution

[Do’s]

- When preparing documents that refer to competitors’ prices, transaction conditions, production volumes, or marketing strategies, the source of such information shall be clearly identified and documented.
- When preparing internal reports, such reports shall be shared in advance with the Compliance Team in order to prevent the use of expressions or wording that may be misconstrued as collusion.
- Where contact with employees of competitors is unavoidable, the circumstances of such contact and the nature of the meeting shall be clearly documented.
- Analytical data and internal materials demonstrating that decisions regarding prices or supply volumes were made based on independent analysis and managerial judgment shall be accumulated and retained.

[Don’ts]

- Sensitive information that constitutes core elements of competition, such as price increase plans or details thereof, shall not be exchanged with competitors (including prices, transaction

conditions, profit margins, sales volumes, market share, sales territories, as well as sales performance, sales support policies, promotion and marketing plans, and new product launch schedules).

- Considering the bidirectional nature of electronic mail, the exchange of emails with employees of competitors should be avoided as much as possible, and where such exchange is unavoidable, expressions containing sensitive or exaggerated language shall not be used.

5. Bid-Rigging

5.1 Concept

- Bid-rigging refers to conduct whereby two or more business operators agree, by means of contract, agreement, resolution, or any other method, on matters such as the successful bidder, bid price, winning rate, or methods of design or construction in the course of bidding. (Article 40 (1) 8, Fair Trade Act)
- In both public and private bidding processes, bid-rigging constitutes conduct that limits competition by pre-determining the expected successful bidder or minimum bid price, thereby undermining the essence of the bidding system and violating the provisions of the Fair Trade Act prohibiting anti-competitive conduct.

5.2 Methods of Bid-Rigging

- Holding meetings to determine the expected successful bidder
- Determining the expected successful bidder through scoring systems or rotational order systems
- Determining the expected successful bidder through consensus-building meetings among designated bidders based on discussions of bidding intentions
- Confirming a bidder as the expected successful bidder based on communication from personnel of the contracting authority
- Where the pre-agreed successful bidder prepares a quotation and transmits it to cover bidders via email or other means, and **such cover bidders submit bids using the same or increased price**

5.3 Types of Bid-Rigging

- The following types are illustrative examples of typical bid-rigging practices, and activities that may give rise to concerns of bid-rigging shall be assessed on a case-by-case basis.

(1) Bid Price Collusion

- The joint determination of minimum bid prices (or maximum bid prices, depending on the contract), expected contract prices, or equivalent benchmarks constitutes conduct that restricts competition and is, in principle, unlawful.

- Prices must be formed through fair and free competition among business operators, and joint activities relating to price determination with other business operators are highly likely to violate the Fair Trade Act; such determination need not be explicit, as implicit understanding or a common intent regarding minimum bid prices is sufficient.
- Such conduct cannot be justified on grounds such as ensuring reasonable price levels, maintaining quality of outsourced manufacturing, or preventing unreasonably low bids.

1) **Conduct deemed as unlawful in principle**

- Joint determination of successful bid prices or bid prices by business operators (in consultation)

2) Case of Bid Price Collusion in the Furniture Manufacturing Industry

- (Agreement on bid prices, etc.) An agreement formed, without an explicit determination of the expected successful bidder, in such a manner that a company seeking to obtain the contract provides a quotation to another competing company while requesting that such competitor submit a higher bid; or a company wishing to maintain its eligibility to participate in bidding requests a quotation from a company having a high probability of winning the bid

(2) Pre-Determination of the Expected Successful Bidder (Acts Relating to the Selection of Contractor)

- The joint determination by business operators of the expected successful bidder or the method of selecting such expected successful bidder runs contrary to the purpose of the bidding system and fundamentally limits competition in transactions involving goods and services and is, in principle, unlawful.
- Such determination is not limited to an explicit determination, and it shall be sufficient that an implicit understanding or common intent be formed regarding the expected contractor or the method for selecting the expected contractor.

1) Conduct deemed as unlawful in principle

- Joint determination by business operators of the expected contractor in connection with bidding, or of the method for selecting such expected contractor.

(a) Means of Determining the Expected Contractor

- The following acts constitute means of determining the expected contractor and give rise to a substantial risk of violation, as they are highly likely to lead to the formation of an implicit understanding and a common intent regarding the expected contractor.

(i) Exchange of Information Concerning Willingness to Obtain the Contract, etc.

- The exchange among business operators of information relating to the willingness to obtain the contract in a given bid, business performance records, performance records relating to the relevant subject matter, or other information relevant to the selection of the

expected contractor

(ii) Compilation and Provision of Information Concerning Number of Designations, Contract Performance, etc.

- The joint compilation by business operators of information concerning the number of prior designations, contract performance, and similar matters relating to individual business operators in past bids, in a format using such matters as priority criteria for the selection of future expected contractors, and the provision of such information to participants in the bidding

(b) Determination of the Expected Contractor or the Method for Selecting the Expected Contractor

- The setting of each bid price in such a manner as to ensure that the expected contractor is awarded the contract, while being in receipt of communications or instructions from the expected contractor regarding bid prices

(c) Other

- The following acts are undertaken on the premise that the expected contractor or the method for selecting the expected contractor has already been determined, for the purpose of facilitating or reinforcing such determination, and such acts of determining the expected contractor or the method for selecting the expected contractor are, in principle, unlawful.

(i) Provision of Benefits to Other Bidders

- The joint act by business operators of causing the expected contractor to provide benefits, such as allocation of work or payment of money, to other bidding participants.
- In cases of manufacturing consignments awarded through designated competitive bidding, where, simultaneously with the determination of the expected contractor, and for the purpose of facilitating such determination, the contractor receiving the manufacturing consignment causes part of the manufacturing consignment to be performed, where necessary, by business operators other than the expected contractor who had wished to obtain the contract, or by business operators that had no contract performance during a certain period
- In cases of manufacturing consignments awarded through designated competitive bidding or designated quotations, where the expected contractor determines the method and amount of benefit allocation to persons other than the expected contractor in order to nearly equalize the benefits of participants in the designated competitive bidding—simultaneously with the determination of the expected contractor and the expected contract price.

(ii) Requests or Coercion to Participate in the Determination of the Expected Contractor, etc.

- This refers to conduct whereby business operators jointly request or coerce business operators expected to participate in bidding to participate in the determination of the expected contractor or to comply with the substance of such determination, and, with respect to business operators that do not participate in or cooperate with such determination, interfere

with their participation in bidding through refusal to transact, discriminatory treatment among business operators, or similar means, or impose disadvantages such as refusal to transact, discriminatory treatment among business operators, or payment of money upon business operators that submit bids without complying with the substance of such determination.

2) Conduct that likely constitutes a violation

- This refers to requiring each participating business operator to report whether it has received designation for designated competitive bidding and whether it intends to participate in such bidding.
- Exchange of Information Relating to Joint Ventures (Consortia)
  This refers to the exchange, among business operators intending to participate in a bid as a joint venture and other business operators intending to participate in the same bid as another joint venture, of information relating to the formation of a joint venture for the purpose of participating in such bid.
  Such information exchange is problematic insofar as it may develop into information exchange for determining the expected contractor and may lead to the determination of the expected contractor.

3) Conduct not deemed as unlawful in principle

- Explanation to the Contracting Authority of Willingness to Participate in the Bid, etc.
  This refers to a business operator, in designated competitive bidding, explaining to the contracting authority, at a stage prior to designation and upon request from the contracting authority as prescribed by the relevant system, its willingness to participate in the bid, technical information (such as records of similar work, information concerning technicians, and plans for performance of the relevant ordered work), without any contact or coordination with other business operators.
- Withdrawal from Bidding Based on Independent Judgment
  This refers to a business operator designated in designated competitive bidding withdrawing from the bid based on its own managerial judgment, without engaging in contact or coordination with other business operators or receiving any request from them.

4) Case of Collusion Concerning the Expected Successful Bidder in the Furniture Manufacturing Industry

- In bid-rigging involving built-in special-sale furniture, the expected successful bidder or the order of successful bidding was determined by various methods depending on the construction company, including rolling dice, drawing lots, or preferential treatment for companies that had engaged in prior sales activities (e.g., companies that built model houses).

(3) Inducing a Competitive Bidding Contract into a Private Contract

- The joint act by business operators of determining or inducing that a specific business operator be awarded a contract through a private contract arrangement excludes free competition and is, in principle, unlawful.

(4) Determination of Contract Volume, etc.

- The joint act by business operators of determining the volume of contracts relating to bidding and determining the allocation thereof among participating bidders in order to divide and allocate such contract volume constitutes a limitation of competition and is, in principle, unlawful.
- Such determination is not limited to an explicit determination, and it shall be sufficient that an implicit understanding or common intent be formed regarding contract quantities, ratios, or similar matters.

(5) Managerial Interference, etc.

- Where business operators intending to participate in a bid jointly provide direction concerning the business activities related to such bid in a manner that affects bid prices or the determination of the expected contractor, such conduct constitutes anti-competitive conduct and is, in principle, unlawful.

(6) Information Exchange, etc.

- The act of information exchange refers to acts whereby business operators exchange information concerning prices, production quantities, costs of goods or services, shipment quantities, inventory quantities, sales quantities, transaction conditions for goods or services, or conditions for payment of prices or consideration, thereby substantially limiting competition in a particular field of trade.
- While participating in a bid for the supply of special-sale built-in furniture, pre-designating an expected successful bidder, and inducing cover participants to participate in the bidding by having the expected successful bidder provide its quasi-bid price and detailed cost information to such cover participants

5.4 Sanctions for Bid-Rigging

(1) Corrective Measures

- Where business operators engage in bid-rigging through joint conduct, orders may be issued to cease such conduct, to publish the fact that a corrective order has been imposed, or to take other necessary measures for correction (Article 42, Fair Trade Act).
- Such necessary measures include the termination of agreements related to bid-rigging, thorough notification of such termination, prohibition of future acts that substantially restrict competition, and public disclosure of legal violations.

(2) Penalty Surcharges

- **Penalty surcharges may be imposed within the limit of 20% of the relevant sales amount**

(or up to KRW 4 billion where there is no sales amount) (Article 43, Fair Trade Act).

- In cases of bid-rigging, the relevant sales amount shall be determined as follows: (i) where a bid is successful, the contract amount; (ii) where a bid is successful but no contract is concluded, the bid amount; and (iii) where a bid is unsuccessful, the estimated amount (or the bid amount).

(3) Penalty Provisions

- Upon referral by the Fair Trade Commission, individuals who engage in or cause bid-rigging may be subject to imprisonment for up to three years or a fine of up to KRW 200 million (Article 124, Fair Trade Act), and imprisonment and fines may be imposed concurrently.
- **Corporate representatives, corporations, and individuals may also be subject to penalties.**
- Other criminal penalties: Imprisonment for up to five years or a fine of up to KRW 50 million under the Framework Act on the Construction Industry, and imprisonment for up to two years or a fine of up to KRW 7 million under the Criminal Act.

(4) Claims for Damages(Punitive Damages)

- The contracting authority may claim damages of up to three times the amount of loss against business operators engaged in bid-rigging (Article 109, Fair Trade Act).

(5) Presumed Damages System

- This refers to a system under which, where damage has occurred due to bid-rigging at the time of participation in bidding but the amount of damage is difficult or impossible to calculate, a certain percentage of the contract amount is stipulated in integrity agreements or similar documents as compensation. The Fair Trade Commission recommends introducing the presumed damages system to public organizations for activation of compensations.

6. Sanctions for Unfair Concerted Acts (Collusion)

6. 1 Administrative Sanctions

- The Fair Trade Commission may impose corrective measures, including cessation of the violation, public disclosure of the corrective order, and other necessary measures for correction. In addition, penalties of up to 20% of the relevant sales amount (in the case of bid-rigging, the contract amount shall be deemed as sales) may be imposed, and where calculation of relevant sales is difficult, a fixed penalty surcharge of up to KRW 4 billion may be imposed.

6. 2 Criminal Sanctions

- Imprisonment for up to three years or a fine of up to KRW 200 million may be imposed (Article 66 (1), Fair Trade Act).
- Under the dual punishment provision (Article 70, Fair Trade Act), where a representative of a corporation, or an agent, employee, or other worker of a corporation or individual commits

a violation in connection with the business of such corporation or individual, the corporation or individual may also be punished in addition to the actual offender. Provided, where reasonable care and supervision have not been neglected in relation to the relevant business for the purpose of preventing such violation, exemption from liability may be granted.

6.3 Civil Liability for Damages

- Third parties or consumers who have suffered damages (i.e., the difference between the price set through the cartel and the normal price that would have been formed under competition) as a result of joint conduct may claim damages against the business operators that engaged in such conduct (Article 56, Fair Trade Act).

[Material Submission Order System in Litigation for Damage Compensation (Article 111, Fair Trade Act)]

Where a party fails to comply with a material submission order without justifiable grounds, the court may deem the "opposing party's allegations regarding the contents of such documents" to be true (Article 111 (4), Fair Trade Act).

Where a party fails to comply with a material submission order without justifiable grounds, and the party requesting submission is in a significantly difficult position to make specific allegations regarding the contents of the materials, and it is also difficult to expect such facts to be proven by other evidence, the court may deem "the requesting party's allegations regarding the facts to be proven by the contents of such materials" to be true (Article 111 (5), Fair Trade Act).

[Precautions in Business Execution]

As the scope of submission has been expanded from "documents" to "materials," victims are now able to secure electronic documents, videos, photographs, drawings, and other materials in electronic form. From the perspective of companies, it is necessary to prepare for the potential leakage of various materials (including company secrets) stored on servers and similar systems.

As the effectiveness of document submission orders is expected to be strengthened, including the possibility that facts intended to be proven through such materials may be deemed true in cases of non-compliance, it is anticipated that such orders will have greater enforcement effect.

As the collection of evidence by victims becomes easier, there is a likelihood that claims for damages will become more active, and the amount of compensation for damages may also increase compared to the past.

7. Guidelines for Conduct at Competitor Meetings

- Directors and employees shall neither propose nor accept, nor attend, formal or informal meetings with competitors.
- In particular, meetings with employees of competitors where prices or transaction conditions may be discussed, such as "meetings among industry personnel," shall be strictly avoided.
- When it is intended to attend a meeting with employees of competitors for any reason, prior notification shall be made to the Compliance Officer, and participation shall be conducted in accordance with the principles and procedures governing participation in industry meetings.
- In the case of official industry meetings, the agenda shall be reviewed in advance, and attendance shall be permitted only where it is determined that there is no risk of violating the Fair Trade Act; where such determination is unclear, the Compliance Officer or the Legal

Department shall be consulted.

- Where discussions relating to prices or other transaction conditions arise during meetings with employees of competitors (including official industry meetings such as associations, as well as incidental or informal meetings), the employee shall (i) raise an objection, and (ii) if the discussion does not cease despite such objection, immediately leave the meeting and promptly report the matter to the Compliance Officer through the department's compliance administrator.
- In the case of official meetings, it shall be requested that the objection or departure be recorded in the minutes, and such matters shall also be documented internally within the Company.
- Where it is difficult to determine whether the type of information to be discussed or exchanged with competitors is lawful, prior consultation shall be conducted with the Compliance Officer or the Legal Department, and the details shall be accurately reported thereafter to the Compliance Officer.

8. Guidelines on Information Exchange with Competitors

- Officers and employees shall not request, provide, or exchange with competitors any information relating to prices or transaction conditions, or data necessary for determining such matters (including all means such as fax, email, telephone communication, as well as showing, providing, or receiving drafts or proposals in informal or private meetings).
- Officers and employees shall not exchange with competitors any information relating to future product development or production plans.
- Where inquiries or requests are received from competitors regarding prices or transaction conditions, it shall be clearly stated that such information cannot be provided, and the fact that such a request was made and refused shall be reported to the Compliance Officer and recorded.
- Where information relating to competitors is lawfully obtained through public materials or transaction counterparties, the source and manner of acquisition shall be clearly documented.
- Even where information relating to competitors is obtained through independent channels, decisions shall not be made solely in reliance thereon, but shall be made based on various competitive considerations, including market conditions, customer demand, and costs.

9. Guidelines on Documentation and Information Security

- Where the Company independently makes business judgments and determines product-related conditions, such independence shall be clearly reflected in the contents of documents (in particular, where competitors are expected to determine or change similar product conditions at a similar time or in a similar manner).
- Where competitor materials or information are cited in the preparation of documents, the source of such materials or information shall be clearly specified.
- Important information of the Company shall be managed internally by the responsible department with strict information security, and shall not be retained by persons other than those in charge.
- Where materials containing important Company information are distributed for purposes such

as meetings, such materials shall be collected upon completion of the meeting, and distribution via email shall be avoided.

10. Guidelines for Participation in Industry Meetings

- All directors and employees shall be mindful that participation in meetings with competing business operators, regardless of the form of such meetings, the specific matters discussed or the existence of a participation itself may be used as circumstantial evidence for the presumption of unfair concerted acts (hereinafter referred to as “collusion”).
- In the event that an industry meeting violates or could violate the Fair Trade Act, it shall be immediately reported to the Compliance Officer through the department’s compliance administrator.
- Matters prohibited as collusion under the Fair Trade Act, including prices, supply, and transaction conditions, shall not be discussed under any circumstances.
- As collusion is punishable based solely on the existence of an agreement, even without the execution thereof, a clear intention not to participate shall be expressed where discussions or resolutions to likely violate the Fair Trade Act are anticipated. Where there is uncertainty regarding the possibility of legal violations, immediate consultation shall be sought from the dedicated compliance department.
- Where attendance is unavoidable, even silence may be deemed as participation; therefore, a clear expression of opposition shall be made (and, where minutes are prepared, it shall be requested that such opposition be recorded), and refusal shall be clearly indicated by promptly leaving the venue or by other appropriate means.
- Where matters not actually discussed at industry meetings or matters that constitute mere opinions expressed by some participants are recorded in the form of minutes, reports, or activity records as if they had been agreed upon, such records may be misconstrued as collusion or used as evidence thereof; accordingly, records shall be made based on facts, and false reports shall be avoided.
- All participants in industry meetings shall submit an “Industry Meeting Participation Report” to the Compliance Officer prior to attending.
- The Compliance Officer may approve or prohibit participation after reviewing the report and conducting interviews with participants, or may require that the contents of the meeting be reported immediately thereafter if necessary.
- Where the contents of an industry meeting in which directors or employees participate fall under or are likely to fall under the collusion prohibition provisions of the Fair Trade Act, a clear expression of opposition shall be made. Participating directors or employees shall leave the venue, and the matter shall be immediately reported to the Compliance Officer through the department’s compliance administrator.
- The department’s compliance administrator shall include details of industry meetings attended by the department in monthly internal monitoring reports, and report such details to the Compliance Officer.

Chapter 3 Precautions in Internal Transactions

1. Overview of Unfair Internal Transactions

- The Fair Trade Act regulates unfair assistance not only for business groups subject to disclosure (with total assets of KRW 5 trillion or more) but also for all companies, and in particular contains provisions to regulate unfair assistance to related parties of large business groups (such as controlling shareholders' families).
- Previously, internal transactions among affiliates were subject to the provisions on unfair assistance (Article 45 (1) 9, Fair Trade Act). However, due to difficulties in proving the unfairness (anti-competitive nature) required for establishing such practices, the emergence of new types of unfair internal transactions such as pass-through transactions and the need to regulate the appropriation of business opportunities even in the absence of transactions, as well as the need to regulate the benefiting entity itself, amendments to the Fair Trade Act (newly established by the amendment dated August 13, 2013, and enforced from February 14, 2014) have resulted in the simultaneous application of provisions on unfair assistance (Article 45 (1) 9, Fair Trade Act) and unfair provision of benefits to specially related parties (Article 47, Fair Trade Act) to internal transactions of business groups subject to disclosure (including the Company).

[Comparison Table: Unfair Assistance vs. Unfair Provision of Benefits to Specially Related Parties]

Category	Unfair Assistance	Unfair Provision of Benefits to Specially Related Parties
Regulatory Objective	Prohibition of unfair assistance likely to impede fair trade (in particular, limitation of competition)	Prohibition of unfair provision of benefits to specially related parties (controlling shareholder families) within large business entities
Provision	Article 45 (1) 9, Fair Trade Act	Article 47, Fair Trade Act
Assisting Entity	All companies	Companies belonging to business groups subject to disclosure (corporate groups with total assets of KRW 5 trillion or more)
Assisted Entity	① Specially related parties ② Affiliated companies (excluding overseas affiliates under Fair Trade Commission practice) ③ Subsidiaries (including wholly owned subsidiaries with 100% shareholding, subject to change)	① Specially related parties ② Affiliated companies in which specially related parties hold shares of 20% or more (regardless of listing status) ③ Subsidiaries (where more than 50% of shares is held by the Company) of the Company in which specially related parties hold shares of 20% or more
Constituent	Supportive conduct + unfairness (impediment to fair trade)	Acting party + provision of unfair benefits

<table>
<tr><th>Category</th><th>Unfair Assistance</th><th>Unfair Provision of Benefits
to Specially Related Parties</th></tr>
<tr><td>Requisites</td><td>(safe harbor provisions exist for unfairness)</td><td></td></tr>
<tr><td>Regulatory Scope</td><td>① Transactions under significantly favorable conditions

② Tolling (addition of unnecessary transaction stages)

→ Difficult to regulate in cases of business abandonment

③ Allocation of business volume (“work concentration”): Transactions of substantial scale + favorable conditions compared to normal prices

→ No explicit provisions for exceptions</td><td>① Significantly favorable conditions (safe harbor provisions exist)

② Tolling (addition of unnecessary transaction stages)

③ Provision of business opportunities → business abandonment may also be regulated

④ Allocation of business volume (“work concentration”): Transactions of substantial scale + absence of proper transaction procedures (safe harbor provisions)

→ May be regulated even where there is no difference from normal prices or where proving is difficult, and explicit provisions exist for exceptions (efficiency, security, urgency)</td></tr>
<tr><td>Sanctions for Violations</td><td colspan="2">1) Assisting Entity

• Corrective measures: cessation of unfair assistance and other necessary measures for prevention of recurrence
• Penalty surcharges: Up to 10% of the average sales over the preceding three fiscal years (support amount × imposition rate), or up to KRW 4 billion where there is no sales amount
- Support amount: Difference between the normal price and the actual transaction amount
- Imposition rate: 80%, 50%, or 20% depending on the severity of the violation
• Criminal sanctions against those who executed, instructed, or were involved in the act: Imprisonment for up to three years or a fine of up to KRW 200 million

2) Assisted Entity

① Corrective measures and penalty surcharges (same as the assisting entity)

② In the case of criminal sanctions against individuals, unfair assistance are excluded; however, assisted entities in cases of unfair provision of benefits to specially related parties are subject to criminal sanctions</td></tr>
</table>

2. Prohibition of Unfair Internal Transactions

2.1 Definition and Purpose

2.1.1 Concept

- Unfair internal transaction refers to a conduct whereby an assisting company engages in transactions with an assisted company under significantly favorable conditions, or conducts transactions for goods or services directly with another business operator while using an intermediary company (such as a specially related party) that has no substantial role, despite the possibility of direct transactions, thereby conferring benefits. (Article 45 (1) 9, Fair Trade Act)
- A "transaction under significantly favorable conditions" refers to a situation where the economic benefit provided in an unfair assistance is greater than the normal price of the economic counter-performance received from the assisted business operator. The "normal price," which serves as the benchmark for such determination, means "the transaction price that would have been formed if the same economic benefit had been transacted between companies without a special relationship under similar circumstances in terms of timing, type, scale, duration, and credit status."
- The transaction price between parties without a special relationship is presumed to be the normal price, whereas in transactions between specially related parties, where there exists circumstantial evidence indicating an intent to provide support or where negotiation or transaction methods exist that would not appear in transactions between third parties, the assisting company must demonstrate that the transaction price is a normal price.
- In the case of "addition of unnecessary transaction stages," this refers to situations where the assisting company conducts transactions through an affiliated company despite the possibility of direct transactions, and the affiliated company receives a form of commission (so-called "toll"), in which case it is assessed what role the assisted affiliate performs and whether such transaction is more efficient in terms of cost compared to direct transactions.

2.1.2 Criteria for Determining Unfairness of Assistance

- Unfairness: The likelihood of impeding fair trade shall be assessed based on the following criteria:
  - Where the assisted entity is likely to establish, maintain, or strengthen its position as a dominant business operator in a particular field of trade
  - Where the assistance is likely to exclude competing business operators of the assisted entity
  - Where the assisted entity becomes significantly more favorable in competitive conditions compared to competing business operators as a result of the assistance
  - Where the assistance hinders the exit of the assisted entity or the entry of new competitors
  - Where the assistance is carried out through unfair methods, means of competition, or procedures, including evasion or circumvention of relevant laws and regulations, and as a result restricts competition or causes concentration of economic power in the market to which the assisted entity directly or indirectly belongs
- It should be noted that the mere existence of business necessity or transactional rationality does not negate unfairness.

- (Safe Harbor) Even where a business operator exceeds the total transaction threshold due to large-scale transactions, unfairness shall not be recognized where the support amount is less than KRW 100 million.

[Tip] Criteria for Determining the Substantiality of the Support Amount (Difference Between Normal Price and Support Amount)

In determining whether the support amount is substantial, consideration shall be given to (1) the difference between the normal price of the transaction and the support amount (the amount obtained by subtracting the normal price of the economic counter-performance received from the assisted entity from the normal price of the economic benefit provided by the assisted entity, including value-added tax where applicable), and (2) the magnitude of the support amount.

It is difficult to uniformly establish the threshold at which the difference from the normal price or the support amount satisfies substantiality, and such determination shall be made comprehensively in consideration of all specific circumstances of the relevant transaction (Supreme Court Decision 2009Du11911).

Courts and the Fair Trade Commission generally recognize substantiality wherein the relative ratio of favorable conditions compared to the normal price is 20% or more, while cases between 10% and 20% are assessed flexibly. Notably, the Fair Trade Commission has not intervened in cases where the relative ratio is less than 10%.

2.2 Types

2.2.1 Financial Assistance

(1) Criteria for Determination

- Determination is made based on the "normal interest rate."

- The normal interest rate refers to the interest rate that would have been applied if a financial transaction had occurred between independent parties without a special relationship under identical or similar circumstances in terms of timing, type, scale, duration, and credit status.
- Where it is difficult to determine the normal interest rate, and it is unlikely that the normal interest rate would fall below the average overdraft loan interest rate of deposit-taking banks announced by the Bank of Korea (general normal interest rate), such general normal interest rate shall apply.

- (Safe Harbor) Where the difference between the applied interest rate and the normal interest rate is less than 7% and the total amount of financial transactions in the relevant year is less than KRW 3 billion, unfairness shall not be recognized (exemption applies).

- The total amount of financial transactions for the relevant year shall include all financial transactions between the assisting entity and the assisted entity (including asset transactions such as securities, real estate leases, transactions involving goods and services, and support practices involving provision of personnel), and this shall apply *mutatis mutandis* in determining such amounts.

(2) Types of Violations

- Provision of low-interest loans, low-interest deposits, provision of funds in the form of

advance payments, low-interest acquisition of commercial paper or bonds, acquisition of subordinated bonds, acquisition and conversion of convertible bonds to affiliated companies.

- Failure to recover loans or service fees after the due date
- Subscription to new shares in the nature of capital contribution

2.2.2 Asset Assistance (Real Estate, Securities, Intangible Property Rights)

(1) Criteria for Determination

- In asset transactions involving securities, real estate, or intangible property rights, the difference between the actual transaction price and the normal price (i.e., the price under identical circumstances in terms of timing, type, scale, duration in transactions with non-affiliated parties) shall be adjusted to less than 7%.
  - Where there exists an actual transaction case between non-affiliated parties under identical circumstances, such transaction price shall be deemed the normal price.
  - Where no similar case of transaction exists, the normal price shall be determined through the following process: (i) selecting a comparable transaction, (ii) examining whether there are differences in transaction conditions that may affect price, and (iii) making reasonable adjustments to reflect such differences.
  - Determination of assistance shall be made based on the normal price; however, where it is difficult to determine the normal price (market price), the methods prescribed under Chapter 4 (Valuation of Property) of the Inheritance Tax and Gift Tax Act and its Enforcement Decree may be applied *mutatis mutandis* (Guidelines for Examination of Unfair Assistance).
- (Safe Harbor) Where the difference between the actual transaction price and the normal price is less than 7% of the normal price, and the total annual asset transaction amount between the parties is less than KRW 3 billion, unfairness shall not be recognized (exemption applies).

(2) Types of Violations

- Sale of unlisted shares at an undervalued price
- Subleasing leased buildings to affiliated companies at a low price
- Delay in receiving rent from affiliated companies
- Transfer of jointly developed intangible property rights to an affiliated company to allow sole patent application

2.2.3 Real Estate Lease Transactions

(1) Criteria for Determination

- Providing real estate for free use, leasing at significantly lower rent than the normal rent, or leasing at significantly higher rent than the normal rent, thereby conferring excessive economic benefits, constitutes assistance.
- Leasing real estate to an assisted entity on a substantial scale in a manner that confers

excessive economic benefits also constitutes assistance.

- (Safe Harbor) Where the difference between actual rent and normal rent is less than 7% of the normal rent, and the total annual real estate lease transaction amount between the parties is less than KRW 3 billion, unfairness shall not be recognized (exemption applies).

(2) Types of Violations

- Leasing factories, stores, or offices to assisted entities free of charge or at low rent [low-price lease]
- Receiving rent after the agreed payment date without charging or undercharging late interest [low-price lease]
- Paying excessive rent when leasing real estate from an assisted entity [high-price lease]
- Paying additional lease deposits or rent despite paying usage fees equivalent to those paid to independent parties without a special relationship [high-price lease]

2.2.4 Assistance in Transactions of Goods and Services

(1) Determination of Assistance in Transactions of Goods and Services

- Since it is difficult to determine the normal price compared to financial or asset transactions, assessment may be made based on transactions with non-related parties under similar conditions.
- (Safe Harbor) Where the difference between the actual transaction price and the normal price is less than 7% of the normal price, and the total annual transaction amount of goods and services between the parties is less than KRW 10 billion, unfairness shall not be recognized (exemption applies).

(2) Types of Violations

- Acquisition of unsecured bonds through affiliated securities companies, provision of special sales incentives exclusively to subsidiaries
- Purchase of raw materials at inflated prices
- Change of payment terms to more favorable conditions compared to existing terms

2.2.5 Personnel Assistance

(1) Determination Based on "Normal Compensation"

- Where the relationship between labor provision and compensation is reasonable and clear, the normal compensation shall be deemed the amount obtained by subtracting the compensation corresponding to labor provided to the assisting entity from the total compensation received from both the assisting and assisted entities.
- Where such relationship is not reasonable or is unclear, the normal compensation shall be deemed the amount allocated based on the proportion of the assisted entity's sales to the total sales of both entities in the relevant fiscal year (allocated based on scale of sales).
- (Safe Harbor) Where the difference between actual compensation and normal compensation

is less than 7% of the normal compensation, and the total annual labor cost of provided personnel is less than KRW 3 billion, unfairness shall not be recognized (exemption applies).

(2) Types

- Providing personnel (e.g., dispatch) to affiliated companies for business support without charging labor costs
- Providing personnel under dispatch contracts but failing to recover all or part of labor costs such as retirement reserves
- Appointing personnel who exclusively perform the business of the assisted entity as advisors of the assisting entity and providing payment or compensation
- Transferring or dispatching personnel of the assisting entity to the assisted entity and bearing part of their salaries

2.2.6 Allocation of Business Volume

(1) Concept

- This refers to the provision of excessive economic benefits through the provision or transaction of goods or services on a substantial scale

(2) Criteria for Determining Assistance of Substantial Scale

- Whether, despite the existence of cost-saving effects such as economies of scale resulting from transaction volume, such benefits are excessively attributed to the assisted entity
- Whether the transaction volume between the assisting entity and the assisted entity is sufficient to eliminate the business risk of the assisted entity by exceeding the minimum volume necessary for the commencement or continuation of its business
- Considerations for justification: Whether the transaction resulted in efficiency gains such as cost reduction or quality improvement for the assisting entity due to the inherent characteristics of the transaction
- (Safe Harbor) Where the total annual transaction amount of goods and services between the parties is less than KRW 10 billion and less than 12% of the average sales of the counterparty, unfairness shall not be recognized (exemption applies).

(3) Types of Violations

- Providing goods or services to a subsidiary at significantly low or high prices or on a substantial scale to assist the subsidiary
- Providing or transacting goods or services at significantly low or high prices or on a substantial scale
- “Substantial scale of transaction” refers to the provision of excessive economic benefits and shall be determined comprehensively on a case-by-case basis, taking into account factors such as the scale of support transactions, the difference between benefits and counter-benefits, economic benefits arising from the support practice, duration, frequency, timing, and the

economic condition of the assisted entity at the time of support.

2.2.7 Tolling (Addition of Transaction Stages or Intermediary Transactions)

(1) Concept

- This refers to conduct whereby transactions are conducted through a specially related party or another company that has no substantive role, thereby assisting such specially related party or company.

(2) Types

- Addition of transaction stages (where the added entity performs little or no role)
- Conducting transactions through a specially related party or another company with no or minimal role despite the availability of more favorable direct transactions
- Excessive compensation (where the intermediary performs some role but receives excessive compensation)
- Paying excessive compensation relative to the role performed in transactions conducted through an intermediary despite the availability of more favorable direct transactions

3. Prohibition of Unfair Provision of Benefits to Specially Related Parties

3.1 Overview

(1) Scope

- Domestic companies belonging to business groups subject to disclosure are prohibited from engaging in transactions with specially related parties (limited to the controlling shareholder and relatives) or **affiliated companies** in which such specially related parties, alone or together with other specially related parties, hold 20% or more of the total issued shares (regardless of listing status), or **affiliated companies** in which such affiliated companies alone hold more than 50% of the total issued shares, thereby conferring unfair benefits to such specially related parties (Article 47, Fair Trade Act).
  - Existence of voting rights are irrelevant, and only direct shareholding is considered. Unlike Article 45, it is not required to establish that the conduct is likely to restrict competition or concentrate economic power in the relevant market.
  - The determination of the assisting entity and the assisted entity shall be based on the time of the provision of benefits.
  - The shareholding ratio of specially related parties shall be calculated based solely on direct shareholding, and nominee holdings or indirect holdings shall also be deemed direct holdings.
  - Indirect transactions through third parties are also within scope.
- The assisting entity refers to a company belonging to a business group subject to disclosure with total assets of KRW 5 trillion or more.

[Business Groups Subject to Disclosure]

A business group in which the total assets of domestic companies belonging to the group, based on the balance sheet of the fiscal year immediately preceding designation, amount to KRW 5 trillion or more (limited to business groups where the controlling entity is a natural person).

- The assisted entity refers to a specially related party or an affiliated company in which such specially related party holds a certain percentage of shares.
  - A specially related party refers to the controlling shareholder and their relatives (including spouse, blood relatives within the fourth degree, relatives by marriage within the third degree, relatives within the fifth or sixth degree of blood relation or fourth degree of affinity holding at least 1% of issued shares of domestic companies controlled by the controlling shareholder, and biological parents of children born out of wedlock recognized under the Civil Act; excluding those excluded from specially related party status).

(2) Criteria for Determining Illegality

- Whether it constitutes an “unfair benefit” shall be determined by comprehensively considering the relationship among the providing entity, the receiving entity, and the specially related party, the purpose and intent of the conduct, the circumstances of the conduct and the economic situation of the receiving entity at the time, the scale of the transaction, the scale of the benefit attributed to the specially related party, and the duration of the benefit provision, and by assessing whether there is a concern that concentration of economic power centered on specially related parties within a large business group may be maintained or intensified through irregular transfers of wealth.
- Unlike unfair assistance under Article 45 (1) 9 of the Fair Trade Act, which require separate proof of impediment to fair trade, unfair provision of benefits to specially related parties does not require proof that the conduct is likely to limit competition or cause concentration of economic power in the market to which the receiving entity belongs, thereby undermining

fair trade (reflecting changes in Fair Trade Commission guidelines based on Supreme Court decisions such as 2017Du63993).

[Types of Unfair Provision of Benefits (Article 47 (1), Fair Trade Act)]

Types	Description
Transactions under significantly favorable conditions (Subparagraphs 1 and 3)	Transactions involving funds, assets, goods and services, personnel, or cash and other financial instruments with specially related parties under conditions significantly more favorable than normal prices ※ Exclusion from application: ① Where the difference between the actual price and the normal price is less than 7%, and ② Where the total annual transaction amount between the parties is less than KRW 5 billion (KRW 20 billion in the case of goods and services)
Provision of business opportunities (Subparagraph 2)	Providing business opportunities that would yield substantial benefits if performed directly by the company or through a company it controls (profitability), and that are closely related to the business currently performed or to be performed by the company (relatedness), to specially related parties ※ Exclusion from application: ① Where the company lacks the ability to perform the relevant business opportunity, ② Where fair consideration is received for the provision of the business opportunity, or ③ Where the company has reasonably refused the business opportunity
Transactions of substantial scale without reasonable consideration or comparison (Subparagraph 4)	Engaging in transactions of substantial scale without undergoing an appropriate selection process for counterparties that would ordinarily be conducted or expected in the nature of the transaction. ※ Exclusion from application: ① Where the total annual transaction amount of goods and services between the parties is less than KRW 20 billion, ② Where the aforementioned total annual transaction amount is less than 12% of the average sales of the counterparty over the preceding three years. ③ Where efficiency, security, or urgency is required.

3.2 Details

3.2.1 Transactions under Significantly Favorable Conditions (Undervalued Provision or Overpriced Purchase)

(1) Scope

- This refers to conduct whereby a company supports a specially related party or an affiliated company by engaging in transactions under conditions significantly more favorable than those applied or expected in normal transactions, or by engaging in transactions of cash or other financial instruments with specially related parties under significantly favorable conditions.

(2) Exclusion from Application

- Where the difference from the normal price (conditions applied or expected in transactions between independent parties without special relationships under similar circumstances in terms of timing, type, scale, duration, and credit status) is less than 7%, and the total annual transaction amount between the parties is less than KRW 5 billion (KRW 20 billion in the case of goods and services), such conduct shall not be deemed to constitute significantly favorable conditions.

(3) Types of Violations

- Provision of low-interest loans, low-interest deposits, provision of funds in the form of advance payments, low-interest acquisition of commercial paper or bonds, acquisition of subordinated bonds, acquisition and conversion of convertible bonds and such assistance to affiliated companies.
- Providing assistance through subscription to new shares having the nature of capital contribution
- Purchase of commercial bill at high prices
- Purchase of corporate bonds at high prices
- Purchase of shares at high prices
- Purchase of real estate and other assets at high prices
- Delaying recovery of accounts receivable from the assisted entity or writing them off as uncollectible
- Failing to collect accounts receivable or service fees within the agreed period, or collecting them after delay without charging late interest
- Providing loans or arranging financing for employees purchasing goods produced or sold by the assisted entity, and bearing all or part of the interest using funds of the affiliated company to which such employees belong
- Paying excessive advertising expenses by placing advertisements on advertising media operated by the assisted entity at rates higher than normal advertising rates
- Providing personnel for business support while the assisting entity bears the labor costs
- Providing personnel under dispatch contracts but failing to recover all or part of labor costs such as retirement reserves

3.2.2 Provision of Business Opportunities

(1) Scope

- This refers to conduct whereby a company supports a specially related party or an affiliated

company by providing business opportunities that would yield substantial benefits if performed directly by the company or through a company it controls.

- This type of conduct is structured based on the requirements from the perspective of the providing entity and may be determined regardless of whether economic benefits are actually transferred to the recipient of the business opportunity.

(2) Definition of Business Opportunity

- A business opportunity that would yield substantial benefits if performed directly by the company or through a company it controls (profitability), and it is sufficient that the business opportunity yields substantial benefits from the perspective of the providing entity, without requiring that such benefits be transferred to the receiving entity.
- Although similar to the expression used in Article 397-2 of the Commercial Act concerning the prohibition of appropriation of corporate opportunities and assets, it differs in that liability is imposed on directors who violate the provision under that Act, and such liability is, in principle, excused if approval is obtained from the Board of Directors.

(3) Criteria for Determining Unfairness

- A business opportunity capable of yielding substantial benefits
  - This includes cases where trade rights that does not generate profit at the time of provision can reasonably be expected to generate significant operating profits in the future.
- Business opportunity currently being executed
  - This includes businesses for which the company has decided to commence and is undertaking preparatory activities such as investment in facilities.
- Business to be executed
  - This includes businesses subject to internal review or internal decision-making.
- Business closely related
  - Consideration shall be given to similarity with the original business, whether it is inevitably connected in the course of performing the original business, and whether it has forward or backward linkage.

(4) Exclusion from Application

- Where the company lacks the ability to execute the business opportunity (specifically, where there is legal or economic impossibility)
- Where the company receives fair consideration for providing the business opportunity (based on the market value of said business opportunity)
- Where the company has reasonably refused the business opportunity (where the refusal is based on objective and reasonable evaluation of the value of the business opportunity and the economic costs associated with its execution)
  - Whether the refusal of the business opportunity is reasonable shall be assessed from the perspective of the company that provided the opportunity, and circumstances such as the refusal being economically and rationally justified at the group level shall not, in principle, constitute grounds for exemption.

3.2.3 Transactions of Substantial Scale Without Reasonable Consideration or Comparison

(1) Scope

- This refers to conduct whereby a company supports a specially related party or an affiliated company by engaging in transactions of substantial scale without undergoing an appropriate selection process for counterparties that would ordinarily be conducted or expected in the nature of the transaction, including sufficient collection and investigation of information necessary for decision-making such as business capability, financial condition, credit, technical advantage, quality, price, transaction scale, timing, or transaction conditions, and objective and rational review or comparison with other business operators.
- Where, due to the nature of the transaction, cost-saving effects such as economies of scale arising from transaction volume exist for the assisted entity (controlling shareholder family), but such cost-saving effects are excessively attributed to the affiliated company, or where the transaction volume between the assisting entity and the assisted entity is sufficient to eliminate the business risk of the assisted entity by exceeding the minimum volume necessary for commencement or maintenance of its business, such conduct may constitute unfair provision of benefits through transactions of substantial scale.

(2) Exclusion from Application

- Where the total annual transaction amount of goods and services between the parties (in cases where two or more companies transact with the same counterparty, the sum of each company's transaction amount) is less than 12% of the average sales of the counterparty and less than KRW 20 billion, such transactions shall not be deemed to be of substantial scale.
- Exclusion also applies where such transactions are unavoidable due to reasons of efficiency, security, or urgency.

1) Transactions with Efficiency Enhancement Effects

- Transactions that clearly result in efficiency gains such as cost reduction, increased sales volume, quality improvement, or technological development.

- Where affiliated companies engage in transactions involving supply or purchase of parts, materials, or other inputs necessary for production, and due to technical characteristics such as product specifications and quality, the quality or competitiveness of the final product is evaluated in combination with that of the affiliated company providing such inputs, such transactions may be recognized as having efficiency enhancement effects.
- Where services essential to the company's planning, production, and sales processes are supplied by affiliated companies with high industrial relevance, such transactions may be considered integrated and organic rather than single-product transactions, and efficiency enhancement effects may be recognized.
- Where the company delegates certain business operations to specialized affiliated companies for purposes such as focusing on core business areas or restructuring, and engages in transactions with such affiliates, such transactions may be recognized as having efficiency enhancement effects.
- Where close and organic transactional relationships have been maintained over a long period of time, resulting in accumulated knowledge, improved understanding of operations, and enhanced proficiency, and a cooperative system has already been established, such transactions may be recognized as having

efficiency enhancement effects due to synergistic effects.

- Where transactions are conducted with affiliated companies in consideration of factors such as possession of specialized knowledge and personnel required for the transaction, close linkage as part of large-scale or continuous projects, or reliability in contract performance, such transactions may be recognized as having efficiency enhancement effects.

2) Transactions Requiring Security

- Transactions in which the leakage of technologies or information useful for business operations may cause or is likely to cause economically irreparable damage.
- Where transactions relate to the establishment or operation of essential facilities such as enterprise resource planning systems, factories, research and development facilities, or communication infrastructure, or involve research, development, or retention of core technologies, such transactions may be recognized as having security requirements.
- Where transactions involve access to confidential information such as business, sales, or procurement data, or customer personal information, and there is a risk of leakage of such information if conducted with third parties, such transactions may be recognized as requiring security.

3) Transactions Requiring Urgency

- This refers to transactions that are unavoidable due to urgent business needs arising from external factors such as sudden economic changes, financial crises, or natural disasters.
- In determining urgency, stricter and more limited standards are applied compared to efficiency or security considerations.
- Therefore, simple political or social changes, or natural disasters that do not rise to the level of sudden economic changes or financial crises, are unlikely to be recognized as urgency.
- Mere urgent necessity alone in business operations is unlikely to be sufficient to establish urgency.

(3) Provision of Benefits to Specially Related Parties

- It should be noted that even transactions conducted at normal prices may raise issues if conducted on a substantial scale without an ordinary and appropriate counterparty selection process.
- The Fair Trade Commission must establish both “significantly favorable conditions” and “unfairness.”

(4) Detailed Criteria for Reasonable Consideration and Comparison

① Collection of information on market participants through market research

② Comparison of transaction conditions by obtaining proposals from major market participants

③ Selection of counterparties based on reasonable grounds

④ Where substantive competitive bidding procedures have been conducted, it shall be deemed that reasonable consideration and comparison have been made.

Provided, cases where, although bidding procedures were formally conducted, only a specific affiliated company could meet the conditions from the outset, or where information related to bidding was not properly disclosed to market participants, or where the reasons for selecting the successful bidder are unreasonable, shall be excluded as not constituting substantive competitive bidding.

4. Precautions in Business Execution

4.1 Upon Selection of an Affiliate Company

- **Compare prices, transaction conditions, etc. between affiliated companies and non-affiliated companies.**
- Compare and review business capability, financial condition, credit, technical advantage, quality, price, or transaction conditions.
- Prepare and retain materials capable of proving the abovementioned matters (financial statements, credit rating tables, business performance records, price comparison materials, etc.).
- **Review whether tolling is involved. Particular caution is required where commissions are received from an affiliate company.**
- Prepare evidential materials concerning the specific role of the affiliated company acting as an intermediary, reduction of the Company's transaction costs, achievement of economies of scale by the Company, etc.
- Confirm whether the Company could have purchased goods or services at a lower price if the affiliated company were not involved as an intermediary (in direct transactions).
- Confirm changes in transactional relationships before and after the involvement of the affiliated company as intermediary.
- Confirm whether lower consideration is paid to non-affiliated companies.
- **Where the transaction falls within a safe harbor, the likelihood of illegality is relatively low; however, prior review by the Compliance Team is absolutely required.**

[Tip] Precautions in Calculating the Normal Price

- The term "normal price" means the transaction price that would have been formed between independent parties without a special relationship under identical circumstances in terms of timing, type, scale, duration, credit status, etc. in relation to the relevant transaction {Guidelines for Examination of Unfair Assistance (hereinafter, the "Examination Guidelines"), II.5.III.2.}.
- If no case identical to the relevant transaction can be found, the normal price shall be calculated through similar cases.

1) Select cases similar to the relevant transaction.
2) Confirm whether there exist differences in transaction conditions, etc., that may affect price between the similar cases and the relevant transaction.
3) If there are differences in transaction conditions, calculation of the normal price through a reasonable adjustment process.

- If no similar case exists, the price shall be calculated as a realistic price that ordinary transaction parties would generally have selected under the general economic and managerial circumstances at the time; however, the methods considered under the following statutes may be referred to. Nevertheless, the Fair Trade Commission does not determine that the conduct does not constitute unfair assistance merely due to such pricing methods being followed.
- Reference may be made to the methods prescribed under Article 8 (Arm's Length Pricing Method) of the Adjustment of International Taxes Act and Chapter 2, Section 1 of the Enforcement Decree thereof (Adjustment of Taxation on Transactions with Foreign Related Parties), or Chapter 4 (Assessment of Property) of the Inheritance Tax and Gift Tax Act and Chapter 4 (Assessment of Property) of the Enforcement Decree thereof.
- The burden of proof with respect to the normal price lies with the Fair Trade Commission (Supreme Court Decision 2014Du36112); the burden of proving that the "normal price" has been reasonably calculated in such manner lies with the Fair Trade Commission, which asserts the lawfulness of corrective orders and similar dispositions.

4.2 Upon Setting Prices

- A reasonable price shall be established through comparison with prices of non-affiliated companies.
- Review materials concerning the normal price, such as price comparison materials with non-affiliated companies and appraisal materials, shall be prepared and retained.
- Adjustment shall be made such that the difference between the actual transaction price and the normal price is less than 7%.

4.3 Upon Setting Other Transaction Conditions

- Internal review of the contract method and contents is required.
- Contract conditions must be reviewed through third parties, such as accounting firms or appraisal institutions.
- Transaction conditions shall be reasonably established at the level applied in transactions with non-affiliated companies.
- Supporting materials relating to the negotiation of transaction conditions (minutes, electronic mail, etc.) shall be prepared and retained.

Chapter 4 Fair Transactions in Subcontracting Act

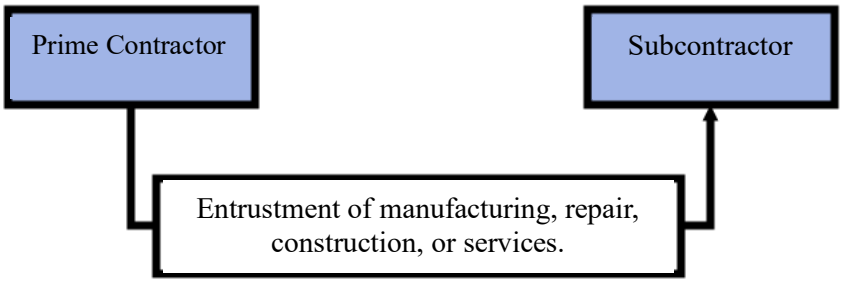
1. Overview of the Subcontracting Act

1.1 Purpose of the Subcontracting Act (Article 1 of the Act)

The purpose of the Subcontracting Act is to contribute to the sound development of the national economy by establishing a fair order in subcontract transactions so that the prime contractor and subcontractor may complement each other and develop balance on equal terms.

1.2 Definitions (Article 2 of the Act)

▣ A **subcontract transaction** means an act whereby a prime contractor entrusts manufacturing, repair, construction, or services to a subcontractor, and the subcontractor performs the same, supplies, delivers, or provides the result thereof, and receives a consideration in return.



• Prime contractor: a person who entrusts manufacturing, repair, construction, or services.

• Subcontractor: a person who performs the entrusted manufacturing, repair, construction, or services, supplies, delivers, or provides the same, and receives a consideration in return.

• Ordering party: a person who contracts with the prime contractor for manufacturing, repair, construction, or services.

*Types of Transactions

▣ Manufacturing Entrustment

• A case in which a business operator engaged in the business of manufacturing, selling, repairing, or constructing goods entrusts the manufacturing of goods pertaining to such business to another person.

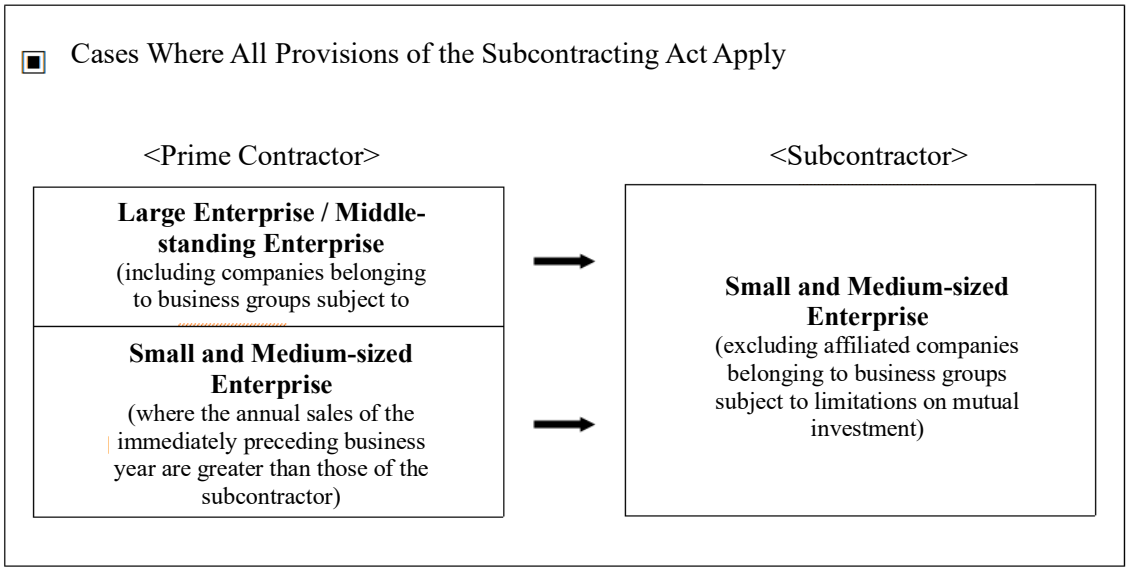
▣ Repair Entrustment

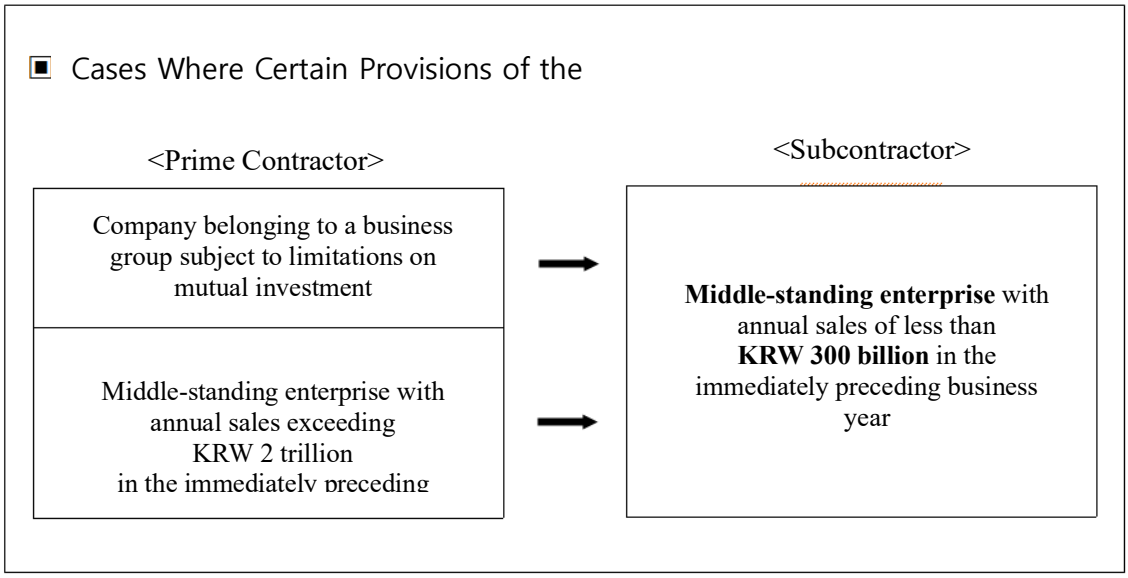
• A case in which a business operator engaged in the business of repairing goods upon order or repairing goods used by itself entrusts all or part of such repair activities to another business operator.

▣ Service Entrustment

• A case in which a service provider engaged in the business of preparing intellectual or information output or supplying services entrusts all or part of the performance of such services to another service provider.

1.3 Scope of Application (Article 2 of the Act)





▣ Scope of Application of the Subcontracting Act (Principle)

① Where a person that is not a small and medium-sized enterprise (a large enterprise or middle-standing enterprise) entrusts work to a small and medium-sized enterprise (meaning a small and

medium-sized enterprise under the Framework Act on Small and Medium Enterprises; the same shall apply hereinafter).

② Where a small and medium-sized enterprise with greater annual sales in the immediately preceding business year entrusts work to a small and medium-sized enterprise with smaller annual sales in the immediately preceding business year.

• Provided, cases where the annual sales or construction capacity evaluation amount of the entrusting small and medium-sized enterprise is below the following standards shall be excluded.

‣ Manufacturing / Repair Entrustment: Annual sales of less than KRW 3 billion.

‣ Construction Entrustment: Construction capability evaluation amount of less than KRW 4.5 billion.

‣ Service Entrustment: Annual sales of less than KRW 1 billion.

▣ Scope of Application of the Subcontracting Act (Exceptions)

• Where a company belonging to a business group subject to limitations on mutual investment makes an entrustment, the Subcontracting Act shall apply; where such company receives an entrustment, the Subcontracting Act shall not apply.

• Where a middle-standing enterprise with annual sales of less than KRW 300 billion receives an entrustment from a company belonging to a business group subject to limitations on mutual investment or from a business operator with annual sales of KRW 2 trillion or more, it shall be deemed a subcontractor with respect to payment of subcontract consideration and retaliatory measures.

▣ Applicable Period and Statute of Limitations for Dispositions

• A subcontract transaction for which three years have elapsed from the date on which the transaction ended shall not be subject to commencement of investigation by the Fair Trade Commission. However, an investigation may be commenced with respect to a subcontract transaction reported within three years from the date on which the transaction ended, or for which the disputing parties applied for dispute mediation within such period.

‣ The date on which the transaction ended shall be as follows.

→ In the case of manufacturing entrustment, repair entrustment, and service entrustment involving the creation of intellectual or information output: The date of supply or delivery.

→ In the case of service entrustment involving the supply of services: The date on which the supply of services is completed.

→ Provided, however, that where the subcontracting contract is terminated or suspended before completion, the date of such termination or suspension.

• In the case of reported matters, where three years have elapsed from the date of report, or, in the case of ex officio investigations, where three years have elapsed from the date of commencement of investigation, no corrective measures shall be ordered and no penalty surcharges shall be imposed in relation to the violation.

4 Relationship to Other Statutes (Article 34 of the Act)

▣ Priority Application of the Subcontracting Act (Article 34 of the Act)

• With respect to acts of abuse of superior bargaining position in subcontracting transactions, **the Subcontracting Act shall apply in priority to the Fair Trade Act.**

• Where the Act on the Promotion of Mutually Beneficial Cooperation Between Large Enterprises and Small and Medium Enterprises (hereinafter referred to as the "Mutually Beneficial Cooperation Act"), the Electrical Construction Business Act, the Framework Act on the Construction Industry, and the Information and Communications Construction Business Act are inconsistent with the Subcontracting Act, the Subcontracting Act shall prevail.

▣ Relationship of the Subcontracting Act and the Mutually Beneficial Cooperation Act

• Although the Mutually Beneficial Cooperation Act contains regulatory content similar to that of the Subcontracting Act, the scope of consignment transactions to which it applies is broader than the scope of subcontract transactions to which the Subcontracting Act applies.

‣ The Subcontracting Act requires that the entrustment pertain to the business of the prime contractor; however, the Mutually Beneficial Cooperation Act applies even where the entrustment is unrelated to the business of the prime contractor.

‣ The Mutually Beneficial Cooperation Act applies even where the sales of the entrusting company are smaller than those of the entrusted company.

‣ Where a middle-standing enterprise with annual sales of less than KRW 300 billion receives an entrustment from a company belonging to a business group subject to limitations on mutual investment or from a business operator with annual sales of KRW 2 trillion or more, such transaction is not subject to "subcontract price adjustment" under the Subcontracting Act, but is subject to "delivery price adjustment" under the Mutually Beneficial Cooperation Act.

2. Key Regulatory Provisions of the Subcontracting Act by Transaction Stage

2.1 Stages of Conclusion of the Subcontract

2.1.1 Issuance and Retention of Documents (Article 3 of the Act)

▣ The prime contractor shall: (i) complete a written document stating the statutory matters; (ii) complete the signature or name-and-seal affixation of both parties thereon; (iii) issue the same in advance to the subcontractor (prior to commencement of the entrusted work); and (iv) preserve it for at least the period prescribed by Presidential Decree (3 years / 7 years).

* Violation of Item (i) constitutes issuance of an incomplete written document; violation of Item (ii) constitutes failure to issue a written document; violation of Item (iii) constitutes delayed issuance of a written document; and violation of Item (iv) constitutes violation of the duty to preserve written documents.

• Matters requiring legal documentation:

‣ **Details of matters entrusted to the subcontractor (hereinafter referred to as "subject matter")** and date of entrustment

‣ The date of entrustment and the time and place at which the subcontractor shall supply, deliver, or provide the subject matter, etc. to the prime contractor

‣ The method and time of inspection of the subject matter, etc.

‣ **The subcontract consideration, and the method and due date of payment thereof**

‣ Where there are owner-supplied materials, the name, quantity, date of provision, price, method of payment, and due date thereof

‣ The requirements, methods, and procedures for adjustment of subcontract consideration.

‣ **Matters relating to the subcontract price adjustment system**

▣ Matters Relating to the Subcontract Price Adjustment System

• "Subcontract price adjustment system" means reflecting fluctuations in the price of raw materials supplied by a subcontractor in the subcontract consideration in accordance with prior agreement, where the price of such raw materials changes beyond a certain level.

• As of October 4, 2023, matters relating to the subcontract price adjustment system were added to the

statutory matters required to be stated in document; therefore, for contracts newly executed or renewed on or after October 4, 2023, such matters must mandatorily be included in the statutory written document.

* The name of the subject matter, etc. subject for adjustment; major raw materials; adjustment requirements; indices for major raw material prices; formula for subcontract price adjustment; base point and comparison point for calculating the fluctuation rate of major raw material prices; adjustment date; adjustment cycle; and date of reflection of adjusted consideration

• "Major raw materials" subject to subcontract price adjustment means raw materials used in subcontract transactions, the cost of which accounts for 10% or more of the subcontract consideration; accordingly, it is necessary to identify in advance, at the contract execution stage, whether major raw materials exist.

• Where major raw materials exist, it must be examined whether any exception to subcontract price adjustment applies, and, if there is no separate ground for exception, matters relating to subcontract price adjustment must be determined through consultation in good faith.

① Where the period of the subcontract transaction is short-term (90 days).

② Where the subcontract consideration is of a small amount (KRW 100 million or less).

③ Where the prime contractor and the subcontractor agree not to apply subcontract price adjustment. In such case, the prime contractor and the subcontractor must state in the agreement the intent and reasons for non-adjustment.

▣ Precautions in Non-Adjustment Agreements

• **Where evasive conduct is undertaken in the form of coercing agreement to non-adjustment**, demerits, fines, etc. may be imposed.

• In particular, where **bidding** or similar procedures are conducted; acts such **as setting bidding conditions to coerce non-adjustment agreement** may be deemed as evasive conduct.

• If the prime contractor uniformly requires subcontractors to submit non-adjustment agreements as a required contractual document, thereby effectively compelling non-adjustment, such conduct may be deemed as evasive conduct.

▣ Establishment of Procedures for Faithful Consultation Relating to the Adjustment System

• Substantive exchange of opinions shall be conducted. Evidential document such as minutes or emails is required.

• Determining non-adjustment conditions and then notifying the subcontractor thereof, followed only by ex post consultation, may not be recognized as faithful consultation.

• The intent and reasons for a non-adjustment agreement must be clearly stated in document.

▣ An act of failing to issue, prior to commencement of the work pursuant to the entrustment, a written document stating matters relating to subcontract consideration, etc. constitutes a violation of Article 3 of

the Subcontracting Act.

◆ **Type of Violation**

<Issuance and Retention of Documents>

• Where a separate document was not issued in advance despite additions or changes to the contract contents.

• Where a purchase order (PO) corresponding to an individual contract is issued without a separate affixation of seal.

• Where the prime contractor sent a document bearing its seal to the subcontractor but failed to separately receive and retain the document bearing the subcontractor's seal.

◆ **Relevant Cases**

1. Case in which it was held that advance issuance of a written document is required when entrustment is added or modified (Fair Trade Commission Decision No. 2021-037, dated February 8, 2021)

▣ Facts

• The respondent entrusted construction work to an in-house subcontractor but failed to issue a written document stating the subcontract consideration and the method of payment thereof before the subcontractor commenced the entrusted work.

• The respondent argued that the above cases merely constituted modifications or additions to the work, amounting only to "frequent and minor work that constitutes a simple change in work content or may be substituted by a post-settlement agreement."

▣ Fair Trade Commission's Decision

• The provision regarding exceptions to the obligation of advance issuance of documents under the Guidelines for Fair Subcontract Transaction must be interpreted strictly and narrowly so as not to undermine the purpose of the obligation to issue documents.

2. Case in which issuance of a work order (purchase order; PO) without a separate affixation of seal to a subcontractor was sanctioned (Fair Trade Commission Decision No. 2024-008, dated January 8, 2024; Decision No. 2024-009, dated January 8, 2024; Decision No. 2024-015, dated January 9, 2024)

▣ Facts

• The respondents instructed work through purchase orders lacking legally required matters or lacking signatures or name-and-seal affixations of both contracting parties.

▣ Fair Trade Commission's Decision

• If legally required matters are not fully stated in the basic contract, such matters must be specified in the subsequently issued work order, and the signatures or name-and-seal affixations of both parties must be completed.

<Subcontract Price Adjustment Agreement>

• Where statutory required matters relating to subcontract price adjustment are not stated, despite not falling under the cases in which such matters may be omitted (Article 3 (4) of the Act).

* (i) Where the prime contractor qualifies as a small enterprise under Article 2 (2) of the Framework Act on Small and Medium Enterprises; (ii) where the subcontract transaction period is within the period prescribed by Presidential Decree within 90 days; (iii) where the subcontract consideration is below the amount prescribed by Presidential Decree within KRW 100 million; (iv) where the prime contractor and the subcontractor agree not to apply subcontract price adjustment (provided, however, that the intent and reasons are clearly stated in writing).

• Where a subcontract agreement automatically renewed after October 4, 2023 does not include provisions relating to subcontract price adjustment.

• Where the prime contractor abuses its superior bargaining position to evade application of the above provisions by false or other improper means (e.g., split contracts, side agreements).

‣ An act where the prime contractor compels a non-adjustment agreement by **giving or threatening disadvantages**, such as stating that it will no longer maintain the business relationship if the adjustment system is applied.

‣ An act where the prime contractor forces a non-adjustment agreement **as a condition for contract formation**, such as by indicating that the subcontractor will not be selected as the successful bidder for expressing intent to apply the adjustment system.

‣ An act where the prime contractor **effectively induces a non-adjustment agreement** by promising to allocate a greater volume of work to subcontractors that agree not to apply adjustment compared to those that agree to apply it.

‣ An act where the prime contractor, despite having maintained a subcontract through automatic annual renewals over several years or where continuous transactions are expected by the nature of the contract, **intentionally enters into contracts by dividing the transaction period into segments of 90 days or less** in order to evade obligations related to the adjustment system.

‣ An act where the prime contractor, after maintaining subcontracting contracts worth several hundred million KRW over multiple years, intentionally enters into contracts by dividing the subcontract price into amounts of KRW 100 million or less to evade obligations related to the adjustment system.

‣ An act where the prime contractor, in order to avoid classification as a major raw material, specifies in quotations or other documents that materials which are substantively identical are separated and treated as if they were distinct materials.

◆ Relevant Case

1. Case in which matters relating to subcontract price adjustment were not stated in writing (Fair Trade Commission, dated September 22, 2025)

▣ Facts

• Company S and others failed to issue an adjustment agreement to subcontractors despite the cost of major raw materials accounting for 10% or more of the subcontract consideration.

▣ Fair Trade Commission’s Decision

• Where the cost of raw materials accounts for 10% or more of the subcontract consideration, the transaction is subject to the adjustment system; therefore, omission of matters relating to subcontract price adjustment constitutes a violation of law.

2.1.2 Prohibition of Unfair Special Agreements (Article 3-4 of the Act)

▣ The prime contractor shall not establish contractual conditions that unfairly infringe upon or restrict the interests of the subcontractor.

• "Contractual conditions" refer to the subcontract agreement, design drawings, specifications, instructions, site explanation documents, requests for proposals, bill of quantities, general/special contract conditions, statements of work, special agreement terms, descriptions of contracted work, quotations, agreements, memoranda, covenants, written undertakings, etc.

▣ The following three types of unfair special agreements shall be immediately null and void:

• Agreements where the prime contractor imposes on the subcontractor **costs incurred from demands not stated in documents.**

• Agreements that impose on the subcontractor **costs related to civil complaints, industrial accidents, etc. that should be borne by the prime contractor.**

• Agreements where the prime contractor imposes on the subcontractor **costs incurred from demands not stated in details of bidding.**

▣ Through the amendment of the Subcontracting Act on April 1, 2025, "agreements that restrict the subcontractor's right to receive subcontract consideration, etc." have been newly added as a type of unfair special agreement (effective October 2, 2025).

• Where an agreement restricting the subcontractor's right to receive subcontract consideration, such as agreements reserving payment of progress payments or completion payments, is significantly unfair to one party, such agreement shall be invalid to that extent under civil law.

‣ "Right to receive subcontract consideration, etc." means: (i) where the prime contractor receives an advance payment from the ordering party, the subcontractor's right to receive an advance payment within 15 days in proportion to the amount and ratio received; (ii) the subcontractor's right to receive subcontract consideration within a period as short as possible within 60 days from receipt of the subject matter; (iii) where the prime contractor receives progress or completion payments from the ordering party, the subcontractor's right to receive payment within 15 days; (iv) where the prime contractor receives a refund of customs duties, the subcontractor's right to receive such refund within 15 days; (v) where there is no fault attributable to the subcontractor, the right to receive the equivalent of refunded customs duties within 60 days; (vi) where the prime contractor receives an increase in contract amount, the subcontractor's right to receive a corresponding increase within 30 days.

‣ "Restriction of rights" refers to agreements not to pay or to defer payment of all or part of subcontract consideration, etc.

‣ Whether there is "justifiable cause" shall be determined comprehensively in light of the characteristics of the subject matter and transaction, performance of obligations such as performance guarantees and defect warranties, scale and ratio of retained amounts, and trade practices.

◆ **Type of Violation**

<Unfair Special Agreements>

• Agreements imposing on the subcontractor costs arising from matters not stated in the written document.

• Agreements imposing on the subcontractor costs related to civil complaints, industrial accidents, etc. that should be borne by the prime contractor.

• Agreements imposing on the subcontractor costs arising from matters not included in the bid details.

• Agreements imposing on the subcontractor costs arising from permits, environmental management, or quality control required of the prime contractor under relevant laws, costs arising from changes in design or work content by the prime contractor (including the ordering party), costs arising from rework, additional work, or repair work due to instructions of the prime contractor, and costs arising without fault of the subcontractor, as well as warranty liability or liability for damages that should be borne by the prime contractor under relevant laws or contracts.

• Agreements imposing unreasonable responsibility on the subcontractor for events unforeseeable at the time of entrustment, such as natural disasters, discovery of cultural heritage, hacking, or computer viruses.

• Agreements uniformly restricting the scope of indirect costs (i.e., amounts excluding material costs, direct labor costs, and expenses) without considering the characteristics of the subcontract transaction (except where consistent with the contract between the ordering party and the prime contractor).

• Agreements restricting the subcontractor's right to request adjustment of subcontract consideration during the contract period.

• Agreements deferring payment of part of progress payments until completion of the work or for a certain period thereafter.

• Agreements that allow the prime contractor to withhold payment of the contract price if the subcontractor fails to fulfill its defect repair guarantee obligation, while permitting the scope or duration of such withholding to exceed the defect repair guarantee amount and the defect liability period (including cases where the scope or duration of withholding is not specified).

• Agreements that allow the prime contractor to comprehensively withhold payment of the contract price in the event of delays in settling progress payments or completion payments, regardless of the subcontractor's performance guarantee or defect repair guarantee obligations.

• Agreements that link the timing of the return of the performance guarantee deposit—which should be returned after completion of the construction—to the submission of a defect repair guarantee bond, which is unrelated to such return.

- Refer to the "Guidelines for Examination of Unfair Special Agreements."

◆ **Relevant Cases**

1. Case in which a clause requiring the subcontractor to bear damages arising from accidents caused by violations of the Occupational Safety and Health Act by the prime contractor was deemed an unfair special agreement (Fair Trade Commission Decision No. 2024-109, dated April 3, 2024)

▣ Facts

• A clause was established requiring the subcontractor to bear all damages in the event of a safety accident during construction.

▣ Fair Trade Commission's Decision

• Since obligations regarding safety and health management (Articles 62 and 63) and prevention of industrial accidents (Article 64) are imposed on the prime contractor under the Occupational Safety and Health Act, liability for related costs shall also be borne by the prime contractor.

2. Case in which a clause shifting additional costs to the subcontractor was deemed an unfair special agreement (Fair Trade Commission Decision No. 2023-139, dated September 14, 2023)

▣ Facts

• The respondent set conditions denying adjustment of subcontract consideration due to price fluctuations, paying only 95% of progress payments, and denying the effect of advance payments under the standard contract.

▣ Fair Trade Commission's Decision

• A clause is deemed unfair if it completely blocks the subcontractor from receiving an increase in subcontract payment in proportion to and consistent with the increased contract amount obtained by the prime contractor from the client, and from requesting an adjustment of the subcontract price in the event of changes in the supply cost of the subject matter.

• A clause is deemed unfair if it requires a portion of progress payments to be made beyond the statutory payment deadline under the Subcontracting Act.

• A clause is deemed unfair if it prevents the subcontractor from receiving an advance payment, even though the subcontractor is entitled to receive such payment when the prime contractor has received an advance from the client.

2.1.3 Prohibition Against Fixing Unreasonable Subcontract Payment (Article 4 (2) of the Act)

A business operator shall not, when entrusting manufacturing, etc. to a subcontractor, **unfairly determine the subcontract consideration at a level lower than the consideration generally paid** for the same or similar subject matter, etc., or compel the subcontractor to accept such subcontract.

◆ **Type of Violation**

<Unfair Determination of Consideration>

• Fixing subcontract price by **indiscriminately reducing the unit price** without good cause

• Fixing subcontract price by deducting an amount after allotting unilaterally such amount under some pretext, such as a request for cooperation, etc.

• Fixing subcontract price by discriminating against a specific subcontractor without good cause

• Fixing subcontract price by **causing a subcontractor to make an error regarding the terms and conditions of a transaction, such as order quantity, etc., or by deceiving a subcontractor in such a way as to show the quotations of another business entity or false quotations** to take advantage of it

• Fixing subcontract price unilaterally by a prime contractor at a low price

• Fixing subcontract price at a price lower than the total amount of direct construction expenses prescribed by Presidential Decree without good cause when a private subcontract is concluded

• **Fixing subcontract price at a price lower than the lowest tender price without good cause** in concluding a subcontract through competitive bidding

• Fixing subcontract price unfavorable to a subcontractor for a subcontract on continuing transactions on the pretext of an event for which no subcontractor shall be held liable, such as a prime contractor's deficit in business or the fall of sale prices

- Refer to the "Guidelines for Examination of Unfair Subcontract Price Determination and Reduction."

◆ **Relevant Cases**

2. Case in which the act of determining subcontract consideration at a price lower than the lowest bid price was deemed unfair determination of consideration (Fair Trade Commission Decision No. 2023-227, dated December 13, 2023)

▣ Facts

• The respondent conducted lowest-price competitive bidding through an electronic bidding system, but, while concluding 829 subcontract contracts, did not determine subcontract consideration at the lowest bid price offered by the successful bidder and instead determined subcontract consideration at a price lower than the lowest bid price of the successful bidder through means such as additional price reduction negotiations.

• In particular, in 317 of the above subcontract contracts, subcontract consideration was determined at an amount lower than the lowest bid price despite the lowest bid price being formed below the standard amount set by the respondent.

▣ Fair Trade Commission's Decision

• The person in charge of the procurement team stated that the cause of the subcontract consideration being determined below the lowest bid price was that "it was necessary to minimize the risk of cost fluctuations, and

the amount presented by the successful bidder was expensive from the perspective of profit."

• This merely reflects the respondent's internal circumstances (improvement of profitability, reduction of outsourcing costs) and cannot be regarded as justifiable grounds.

2.2 Stages of Execution of the Subcontract Contract

2.2.1 Prohibition of Unreasonable Cancellation of Entrustment and Refusal of Receipt (Article 8 of the Act)

▣ Prohibition of Unreasonable Cancellation of Entrustment

• The prime contractor shall not arbitrarily **cancel or change entrustment**, **unless any reason attributable to the subcontractor exists after entrusting the subcontractor.**

• What is time of entrustment?

① **[Principle]** The point in time when the prime contractor entrusts manufacturing, etc. to the subcontractor.

② **[Subcontract on continuing transaction]** In cases where subcontract transactions are frequent, and the general terms relating to transaction conditions such as payment settlement, transportation, inspection, and return, and specifications, materials, manufacturing processes, etc. are included in the basic contract, while the direct and specific order contents such as quantity, unit price, time, and place of delivery, etc. are delegated to and ordered through a special agreement/order sheet, etc., it means **the point in time when such special agreement/order sheet is notified to the subcontractor**.

• Reasons attributable to the subcontractor mean cases where the contract cannot be performed due to reasons attributable to the subcontractor, or where the purpose of the contract cannot be achieved because the subcontractor has violated the terms of the contract. Examples are as follows:

‣ Where a serious managerial cause such as an application for bankruptcy or rehabilitation proceedings occurs to the subcontractor, and, as a result thereof, it is recognized that the subcontractor cannot normally perform the contractual obligations.

‣ Where the subcontractor has been subject to a disposition such as revocation or suspension of business by the supervisory authority, and it is recognized that the subcontractor lacks the qualifications or ability to normally perform the contract.

‣ Where the subcontractor, without special reason, refuses to commence the manufacture, repair, construction, or service relating to the subject matter, etc., and it is recognized that there is no possibility of completion within the delivery deadline.

‣ Where the subcontractor violates an important part of the contract, such as by arbitrarily changing major processes or methods affecting the quality of the subject matter, etc., and, due to such violation, it is recognized that the purpose of the contract cannot be achieved.

▣ Prohibition of Unfair Refusal of Receipt

• The prime contractor shall not **refuse or delay the receipt or takeover of the delivered subject matter**, **unless any reason attributable to the subcontractor exists after entrusting the subcontractor**; provided, where the supply of labor among entrustment with service is entrusted, the same shall not apply.

• Reasons attributable to the subcontractor mean, as in the case of unfair cancellation of entrustment, cases where the contract cannot be performed due to reasons attributable to the subcontractor, or where the purpose of the contract cannot be achieved because the subcontractor has violated the contract terms. Examples are as follows:

‣ Where the manufacture of a subject matter concentratedly sold in a certain period or season has been entrusted with a sufficient lead time, but, **the subject matter is delivered after the aforementioned**

period or season due to the subcontractor's own circumstances such as failure to procure raw materials.

‣ Where the purpose of the contract is recognized as not fulfilled due to the **subject matter delivered being flawed from defects in the quality of raw materials** directly procured by the subcontractor.

‣ Where the purpose of the contract is recognized as not fulfilled due to the **subject matter being damaged or contaminated** in the course of production or transportation from the subcontractor's failure of proper management.

• Where the subject matter, etc. has been received, the prime contractor shall, even before inspection, immediately issue a **certificate of receipt** to the subcontractor; provided, where the supply of labor among entrustment with service is entrusted, the same shall not apply.

▣ Criteria for Determination of Arbitrary Cancellation or Change

• Whether **the grounds for cancellation of entrustment are stipulated in the contract, and proceedings of such cancellation was in accordance to the terms and procedures in the contract.**

• Whether there was **substantive negotiation** between the prime contractor and the subcontractor.

• Whether the prime contractor canceled entrustment with **sufficient negotiation** and **rightful compensation** with respect to the losses that would be incurred to the subcontractor due to cancellation of entrustment.

◆ Type of Violation

<Unfair Cancellation of Entrustment>

• An act of arbitrarily canceling entrustment on the grounds of changes in the prime contractor's business conditions or market circumstances, including a decrease in sales volume, specification changes, model discontinuation, changes in production plans, deterioration of internal financial conditions, or cancellation or suspension of orders by the ordering party

• An act whereby, after entrusting manufacturing, etc., the prime contractor unilaterally cancels the entrustment in order to perform the work directly or to have another subcontractor perform it in lieu thereof

• An act of canceling entrustment on the grounds that the subcontractor did not comply with unjust requests such as demands for reduction of subcontract consideration

• An act of canceling entrustment on the grounds of the subcontractor's alleged lack of technical capability, notwithstanding the absence of objective evidence substantiating that defects in the subject matter are attributable to the subcontractor

• An act of canceling entrustment by obtaining only formal consent or agreement from the subcontractor through coercive means such as compelling consent or agreement

• An act of canceling entrustment by stipulating, as contractual conditions, reasons that are difficult to regard as attributable to the subcontractor under normal commercial practices, and canceling entrustment pursuant thereto

- Refer to the "Guidelines for Examination of Unfair Cancellation of Consignment, Refusal to Accept, and Return of Goods."

◆ Relevant Cases

1. Case in which entrustment was canceled on the grounds of changes in production plans (Fair Trade Commission Decision No. 2022-040; September 16, 2022)

▣ Facts

• The entrustment to the subcontractor was canceled due to changes in production plans arising from delays in supply by other parts suppliers and circumstances of the customer.

▣ Fair Trade Commission's Decision

• It was determined that the entrustment had been arbitrarily canceled without justifiable cause.

‣ No evidence was found of any negotiation regarding the economic damage that would be incurred to the subcontractor as a result of the cancellation of entrustment.

‣ Considering that the antennas supplied by the subcontractor could not practically be supplied to other clients, and that the subcontractor had a high dependency on sales to the respondent and had not received payment for products already delivered, the subcontractor cannot be deemed to have accepted the cancellation decision under free and voluntary intent.

2. Case in which entrustment was canceled on the grounds of delay in work processes and insufficient worker capability (Fair Trade Commission Decision No. 2018-033 January 15, 2018)

▣ Facts

• The respondent canceled the entrustment while requesting the subcontractor to submit a "letter of business abandonment" on the grounds of delay in work processes and insufficient worker capability

▣ Fair Trade Commission's Decision

• Considering that the contract stipulated that delays related to drawings and materials were attributable to the respondent, it is difficult to conclude that the responsibility for the delay in this case lies entirely with the subcontractor; even if certain reasons attributable to the subcontractor existed, such reasons cannot be deemed to render it impossible to perform the contract normally or to achieve the purpose of the contract; accordingly, it was determined to constitute an unfair cancellation of entrustment.

◆ Type of Violation

<Unfair Refusal of Receipt>

• An act of refusing receipt even though it is difficult to determine whether the subject matter delivered by the subcontractor conforms to the entrusted content due to ambiguity in the entrusted specifications

• An act of refusing receipt on the grounds that the subject matter differs from the entrusted content or has defects in quality or performance, by applying standards higher than normal without establishing inspection criteria, or by applying unclear inspection criteria or criteria exceeding those stipulated in the original contract

• An act of refusing receipt on the grounds that delivery was not made within the deadline, notwithstanding that the prime contractor unilaterally shortened the delivery deadline or delayed the supply of raw materials it was obligated to provide, thereby making timely delivery difficult

• An act of refusing receipt by requiring the subcontractor to bear full responsibility for defects in the subject matter, notwithstanding that the allocation of liability for such defects is unclear

• An act of refusing receipt of subject matter manufactured, repaired, constructed, or serviced in accordance with the entrusted content, on the grounds of cancellation or suspension of orders by the ordering party, claims by the ordering party, foreign importers, or customers, poor sales performance, changes in production plans, or specification

• An act of refusing receipt of other items on the grounds of defects in certain items where multiple items have been entrusted

- Refer to the "Guidelines for Examination of Unfair Cancellation of Consignment, Refusal to Accept, and Return of Goods."

◆ **Relevant Cases**

1. Case in which receipt was refused on the grounds that delivery was not made within the scheduled delivery date (Fair Trade Commission Decision No. 2015-086; June 1, 2015) 의결 제2015-086호)

▣ Facts

• The respondent, engaged in the manufacture of electric motors and generators, refused receipt of 7,000 units of motor parts (Item No. N2760 1009), asserting that there existed justifiable grounds for such refusal on the basis that delivery was not made within the scheduled delivery date specified in the purchase order.

▣ Fair Trade Commission's Decision

• Considering that, among the total 13 items transacted with the subcontractor, the respondent had not eliminated undelivered quantities from the previous month when placing new orders for items other than Item N2760 1009, the refusal of receipt in this case was determined to have been unilaterally decided without considering prior transaction practices or circumstances.

• With respect to Item N2760 1009, the delivery period was set short (14 to 21 days) for three out of four orders, no prior agreement existed regarding liability for delivery delays, and there had been no prior cases in which the respondent imposed delay penalties or refused receipt on the grounds of failure to meet the scheduled delivery date

2. Case in which receipt was refused on the grounds of defects in a separate item (Fair Trade Commission Decision No. 2022-075; March 2022)

▣ Facts

• The respondent refused receipt of 300,000 sheets of silk fabric for mask packs entrusted for manufacturing (August 2018)

▣ Fair Trade Commission's Decision

• The respondent refused receipt of a separate item entrusted for manufacturing in August 2018 on the grounds that ants had occurred in products entrusted for manufacturing in June 2018; although the respondent asserted that the occurrence of ants was attributable to the subcontractor, there existed no objective evidence substantiating such attribution of liability; accordingly, it was determined to constitute an unfair refusal to accept.

2.2.2 Obligation to Inspect and Notify Inspection Results (Article 9 of the Act)

▣ Standards and Methods of Inspection

• The standards and methods for inspection of the subject matter, etc. shall be determined objectively, fairly, and reasonably through consultation between the prime contractor and the subcontractor.

▣ Obligation to Notify Inspection Results

• The prime contractor shall, unless there exist justifiable grounds, notify the subcontractor in writing of the inspection results based on pre-established standards within 10 days from the date of receipt of the subject matter, etc. (in the case of construction entrustment, the date on which completion of construction or a completed portion is notified by the subcontractor); provided, where the supply of labor among entrustment with service is entrusted, the same shall not apply.

• Justifiable grounds

‣ Ordinary reasons such as excessive daily inspection volume or compliance with delivery deadlines to the ordering party shall not be recognized as justifiable grounds.

‣ Cases requiring long-term inspection due to the necessity of complex and diverse technical inspections, such as large-scale construction projects (e.g., dams, bridges, large-scale plant construction), or system integration services, may be recognized as justifiable grounds.

• Where inspection results are not notified within the above period, the subject matter shall be deemed to have passed inspection.

‣ Accordingly, from that point forward, the prime contractor shall not, in principle, return or reduce payment on the grounds of failure to pass inspection, and the payment period for subcontract consideration shall commence from that date.

• Upon receipt of delivery of the subject matter, the prime contractor shall issue a certificate of receipt to

the subcontractor immediately, even prior to inspection.

◆ Type of Violation

<Failure to Notify Inspection Results>

• Where unfair special agreements are established regarding inspection standards and methods

• Where inspection results are not notified in writing within 10 days

• Where entrustment is canceled, receipt is refused, goods are returned, payment is reduced, or payment is not made despite unclear inspection standards

◆ Relevant Cases

1. Case in which inspection results were not notified within 10 days from the date of receipt of the subject matter (Fair Trade Commission Decision No. 2024-259; July 11, 2024)

▣ Facts

• A trading company entrusted the manufacture of apparel for home shopping sales to a subcontractor on three occasions during the period from January 2022 to April 2022, but only issued an incoming sample confirmation sheet* to the subcontractor and failed to notify the inspection results in writing within 10 days from the date of receipt of the subject matter.

▣ Fair Trade Commission's Decision

• It constitutes a violation of Article 9 (2) of the Subcontracting Act, which requires that, unless there is justifiable cause, the prime contractor shall notify the subcontractor in writing of the inspection results within 10 days from the date of receipt of the subject matter, etc.

* Document stating the measured size of the incoming sample; it is difficult to ascertain, based solely on such document, whether the subject matter has failed, the criteria for determining failure, the quantity of defective items, and subsequent demands.

2. Case where acceptance was deemed automatically upon the expiration of the notification period, and no separate written notification of acceptance was made (Supreme Court Decision, March 13, 2023, 2022Du57893, 2022Du57909)

▣ Facts

• The plaintiff received furniture parts entrusted for manufacture but failed to notify the inspection results in writing within 10 days from the date of receipt, without justifiable cause.

▣ Supreme Court Decision

• The lower court revoked the disposition on the grounds that, even if the subcontractor had not been notified of the inspection results by the prime contractor, the subcontractor could readily recognize that the subject matter had been deemed accepted upon the expiration of the notification period and thus suffered no impediment in exercising its rights.

• Nevertheless, the Supreme Court held that, even where the subject matter is deemed to have passed inspection, considering that the subcontractor may be placed in an unstable position if the prime contractor subsequently asserts justifiable grounds for failure to notify, etc., it is in violation of Article 9 (2) of the Subcontracting Act—**regardless of whether a separate notification of rejection had been sent**.

2.2.3 Prohibition of Unfair Return (Article 10 of the Act)

• Where the prime contractor has received delivery of the subject matter, etc. from the subcontractor, the prime contractor shall not return such subject matter, etc. to the subcontractor if there is no cause attributable to the subcontractor; provided, where the supply of labor among entrustment with service is entrusted, the same shall not apply.

• "Cause attributable to the subcontractor" refers to cases where, due to reasons attributable to the subcontractor, the subject matter, etc. delivered by the subcontractor differs from the contents entrusted by the prime contractor or contains defects, thereby rendering the achievement of the contractual purpose impossible.

◆ Type of Violation

<Unfair Return>

• An act of returning the subject matter, etc. on the grounds of cancellation of orders by the transaction counterparty (client) or changes in economic conditions

• An act of returning the subject matter, etc. by unfairly determining it as defective due to unclear inspection standards and methods

• An act of returning the subject matter, etc. despite the fact that it was determined to be defective due to poor quality of raw materials supplied by the prime contractor

• An act of returning the subject matter, etc. on the grounds of delay in delivery, despite such delay having been caused by delayed supply of raw materials by the prime contractor

• An act of returning the subject matter, etc. after having accepted it, on the grounds of delay in delivery,

despite the existence of objective facts showing that the prime contractor had tolerated such delay

• An act of returning the subject matter, etc. while requiring the subcontractor to bear full responsibility for defects, despite the allocation of liability for such defects being unclear

- Refer to the "Guidelines for Examination of Unfair Cancellation of Consignment, Refusal to Accept, and Return of Goods."

◆ **Relevant Case**

▣ Case where goods were returned on the grounds of processing defects caused by the ordering party (Fair Trade Commission Decision No. 2016-014; February 2, 2016)

• Case where the act of the respondent returning goods on the grounds of processing defects caused by the ordering party was deemed as an unfair return

2.2.4 Prohibition of Unfair Reduction of Subcontract Consideration (Article 11 of the Act)

▣ Prohibition of Unfair Reduction

• The prime contractor shall not reduce the subcontract consideration determined at the time of entrusting manufacturing, etc.

• Provided, the subcontract consideration may be reduced where the prime contractor substantiates justifiable cause. Examples of justifiable cause are as follows:

‣ Where, after the conclusion of the subcontract, the prime contractor discovers a critical and evident error in the subcontract price calculation data submitted by the subcontractor, corrects such error properly, and reduces the amount accordingly.

‣ Where, due to reasons attributable to the subcontractor, such as the delivery of subject matter different from the entrusted contents, defective goods, or delivery beyond the specified due date, the prime contractor returns the delivered subject matter and reduces the subcontract consideration corresponding to such returned subject matter.

‣ Where the subcontractor delivers defective goods that are repairable but there is insufficient time to return them for repair, and the prime contractor directly repairs for use and reduces the amount by the cost thereof. Provided, however, that specific standards for calculating repair costs that the subcontractor can accept must be established in advance, and the reduction shall be limited to the amount calculated in accordance with such standards.

‣ Where the prime contractor allows the subcontractor to use equipment free of charge, but such equipment is damaged due to negligent management by the subcontractor, and the appropriate repair cost for such equipment is deducted from the subcontract consideration.

‣ Where the subcontract consideration is reduced in accordance to the **terms of a prior subcontract price adjustment agreement** between the prime contractor and the subcontractor.

▣ Obligation to Provide Written Notice of Reduction

• Where the prime contractor reduces the subcontract consideration, it shall provide the subcontractor in advance with a written document stating the following:

- Reasons and standards for the reduction
- Quantity of the subject matter, etc. subject to the reduction
- Amount of the reduction
- Method of reduction, including deduction
- Other matters capable of substantiating that the reduction by the prime contractor is justified

◆ **Type of Violation**

<Unfair Reduction of Consideration>

• An act of reducing subcontract consideration after entrustment **without specifying conditions for reduction at the time of entrustment,** on unreasonable grounds such as requests for cooperation, cancellation of orders by the transaction counterparty, or changes in economic conditions

• An act of reducing subcontract consideration **by retroactively applying the agreed unit price reduction to portions entrusted prior to the formation of such agreement,** where an agreement on unit price reduction has been reached with the subcontractor

• An act of excessively reducing subcontract consideration on the grounds that payment is made in cash or prior to the due date

• An act of reducing subcontract consideration on the grounds of a fault by the subcontractor that does not substantively affect the occurrence of damage to the prime contractor

• An act of deducting from the subcontract consideration an amount exceeding the proper purchase price or proper usage fee where the subcontractor is required to purchase goods from or use the equipment of the prime contractor for the manufacture, repair, construction, or performance of services related to the subject matter, etc.

• An act of reducing subcontract consideration on the grounds that prices or material costs at the time of payment have decreased compared to those at the time of delivery, etc.

• An act of unfairly reducing subcontract consideration on unreasonable grounds such as operating losses or reductions in selling prices

• An act of imposing on the subcontractor costs such as employment insurance premiums, industrial safety and health management expenses, and other expenses that the prime contractor is required to bear pursuant to the Act on the Collection of Insurance Premiums for Employment Insurance and Industrial Accident Compensation Insurance, the Occupational Safety and Health Act, etc.

• An act of **requiring the subcontractor to waive receipt of additional payment, despite the obligation to pay such additional amount under adjustment conditions agreed in advance** between the prime contractor and the subcontractor, **as a condition for entering into a subsequent contract** for which the subcontractor has been awarded the bid

◆ Relevant Cases

1. Case where subcontract consideration was reduced on the grounds of increased quantity (Seoul High Court Decision, August 25, 2022, 2021Nu48443, 2021Nu58372)

▣ Facts

• Case where a business operator (plaintiff) engaged in furniture manufacturing and sales reduced subcontract consideration on the grounds of increased quantity of order

• The plaintiff argued that the reduction was justified, asserting that, by agreement of both parties, the reduction reflected "the amount that would have been determined had such increase in quantity been known at the time of the initial determination of subcontract consideration"

▣ Court Decision

• The court ruled that justifiable cause is not recognized.

‣ The plaintiff did not specify in advance in the contract that subcontract consideration could be reduced on the grounds of increased transaction scale, nor did it stipulate any criteria for such reduction.

‣ The plaintiff failed to explain the basis for each item of reduction, and, rather, as will be discussed below, certain items were found to have been intended to recover the bill substitute settlement fees paid by the plaintiff.

‣ Even if the reduction was based on increased transaction scale as argued by the plaintiff, the plaintiff failed to submit any reasonable basis for estimating the specific increased transaction quantity or the amount of reduction.

2. Case where the effective date of a reduced unit price was applied retroactively prior to the agreement date (Seoul High Court Decision, August 22, 2019, 2018Nu57485)

▣ Facts

• A business operator (plaintiff) engaged in the manufacturing of mobile phones, etc., agreed individually with subcontractors to reduce delivery unit prices, and specified in meeting minutes and price reduction negotiation records that the effective date of the reduced unit price would be applied retroactively from 1 day up to 29 days prior to the agreement date.

▣ Court Decision

• It is appropriate to interpret that prohibited retroactive application of unit price reduction agreements includes not only cases where the prime contractor unilaterally applies the agreement retroactively, but also cases where there exists an apparent agreement on retroactive application between the prime contractor and the subcontractor.

• There was no objective evidence to support that the plaintiff and the subcontractors had agreed in advance to retroactively apply the reduced unit price prior to the agreement date, thus constituting an unfair reduction.

3. Case where subcontract consideration was reduced on the grounds of improvement of productivity (Seoul High Court Decision, February 2, 2023, 2020Nu64561)

▣ Facts

• A business operator (plaintiff) manufacturing automotive air conditioners and engine cooling systems reduced subcontract consideration on the grounds of productivity improvement of subcontractors resulting from its technical guidance, etc.

• The plaintiff argued that productivity improvements resulting from its technical guidance led to cost reductions, and that the amount received by agreement with subcontractors corresponded to the portion of cost savings attributable to the plaintiff's contribution, thereby constituting justifiable cause.

▣ Court Decision

• For a reduction based on productivity improvement to be exceptionally justified, the mere fact that the subcontractor agreed to such a reduction or that the prime contractor simply assisted in improving the subcontractor's productivity is insufficient.

• It must be clearly established in advance that the amount allocated to the prime contractor (reduction amount) reasonably reflects the degree of the prime contractor's contribution or the costs incurred by the prime contractor, including specific details of productivity improvement support activities, costs incurred, the resulting concrete productivity improvement effects, and the method of distribution of such benefits, to a level that can be clearly verified even in hindsight. Furthermore, it must be proven by specific and objective evidence that cost reduction effects through productivity improvement were actually generated as a result of the prime contractor's contributory activities.

2.2.5 Prohibition of Request for Provision and Misappropriation of Technical Data (Article 12-3 of the Act)

▣ Prohibition of Request for Provision of Technical Data

• The prime contractor shall not request the subcontractor to provide **technical data** to the prime contractor or to third parties.

• Provided, however, the prime contractor may request such provision where the prime contractor has proven **justifiable cause**.Cases that may constitute justifiable cause refer to situations where the subcontractor's technical data is procedurally and technically indispensable for achieving the purpose of entrustment of manufacturing, etc. Examples of justifiable cause are as follows:

‣ Where the prime contractor requests technical data necessary for patent application in the course of jointly developing a patent with the subcontractor

‣ Where the prime contractor and the subcontractor enter into a joint technology development agreement and technical data necessary for technology development within the scope of such agreement is requested

‣ Where a defect occurs in a product and technical data directly related to such defect is requested for the purpose of identifying the cause

• Even in the case of a justified request for provision of technical data, the request shall not exceed **the minimum scope required** to achieve the purpose of such request.

▣ Technical Data

• Information that is managed as confidential, is useful for business activities, and has independent economic value, and falls under any of the following items:

1) Information or data relating to methods of manufacturing, repair, construction, or performance of services

2) Technical information or data related to intellectual property rights such as patents, utility model rights, design rights, copyrights, etc., which are technically useful and have independent economic value in the subcontractor's research and development (R&D), production, or business activities

3) Construction process manuals, equipment specifications, design drawings, research materials, research and development reports, and other information or data of a business operator that are technically useful and have independent economic value in the subcontractor's research and development (R&D), production, or business activities

• Examples of information that may constitute technical data:

‣ Approval drawings, design drawings, circuit diagrams, work process charts, process descriptions, work standard sheets (instructions), machine operation manuals, methods of machine operation, specifications, raw material composition tables, formulation methods and ratios, software testing methods, source code or information related to source code, clinical trial protocols, clinical trial methods, etc.

▣ Obligation to Issue Technical Data Request Document

• Even where there is justifiable cause, when the prime contractor requests technical data from the subcontractor, it shall, after prior consultation with the subcontractor on the following matters, provide

the subcontractor with a written document stating such matters:

‣ Ownership and attribution of rights related to the requested technical data

‣ Consideration for the requested technical data and the method of payment thereof

‣ Name and scope of the requested technical data

‣ Date of request, date of provision, and method of provision

‣ Other matters capable of substantiating that the request for provision of technical data by the prime contractor is justified

▣ Obligation of Non-Disclosure Agreement

• Where the subcontractor provides technical data to the prime contractor, the prime contractor shall, by the date on which such technical data is provided, enter into a non-disclosure agreement with the subcontractor that includes the following matters:

‣ Name and scope of the technical data

‣ Period of use of the technical data

‣ List of directors and employees who will receive and retain the technical data

‣ Compensation for damages arising from breach of confidentiality obligations or unauthorized use of technical data beyond the agreed purpose

‣ Method and date of return or disposal of technical data

‣ Relevant materials shall be retained for a period of seven (7) years from the date of termination of the relevant transaction.

▣ Prohibition of Misappropriation of Technical Data

• The prime contractor shall not unfairly use the technical data of the subcontractor that it has acquired for itself or for a third party, nor provide (disclose) such data to a third party.

• Misappropriation refers to acts of using technical data beyond the purpose of acquisition and the agreed scope of use for the purpose of obtaining benefits for itself or a third party, or causing damage to the subcontractor.

◆ **Type of Violation**

<Request for Provision of Technical Data>

◆ **Relevant Cases**

1. Case where it was determined that there was no necessity to directly receive or retain technical data for the purpose of quality improvement and preparation of an asset acquisition list (Fair Trade Commission Decision No. 2022-239, September 16, 2022)

▣ Facts

• A business operator (respondent) engaged in the manufacturing and sale of automobile door parts, etc., requested a total of 22 drawings from the subcontractor while entrusting the manufacture of automobile parts.

▣ Fair Trade Commission's Decision

• It was determined that there was no justifiable cause for requesting the provision of technical data.

‣ The 22 drawings were single-part drawings that are not customarily requested from approved drawing suppliers under industry practice, and although the respondent claimed that the request was made to support drawing modifications, no actual modifications were made to the single-part drawings received.

‣ Even if drawings were necessary for quality improvement, there was no necessity to request and "retain" the drawings in this case.

‣ For the purpose of preparing an asset acquisition list, it would have been sufficient to verify whether the drawings existed, and there was no reason to directly receive the actual drawings.

2. Case where drawings were requested for quality verification after a considerable period had elapsed following delivery (Fair Trade Commission Decision No. 2022-083, March 28, 2022)

▣ Facts

• A business operator (respondent) engaged in the manufacturing of machinery related to agriculture and fisheries entrusted the manufacture of molds required for the production of turbocharger hoses and, in doing so, requested and received mold design drawings from the subcontractor.

▣ Fair Trade Commission's Decision

• It was determined that there was no justifiable cause for requesting the provision of technical data or that the request exceeded the minimum necessary scope.

‣ It is difficult to regard it as customary to request mold drawings for quality verification approximately eight (8) months after the initial delivery.

‣ Even if the purpose was quality verification, it would have been sufficient to request improvements for the portions requiring modification; thus, requesting the entire set of mold drawings exceeds the minimum scope necessary to achieve the intended purpose.

◆ Type of Violation

<Misappropriation of Technical Data>

• Where the prime contractor receives technical data such as process charts or circuit diagrams from the subcontractor during the component approval process and **provides such data to a competitor of the subcontractor in order to induce price competition for supply**.

• Where the prime contractor acquires manufacturing methods of goods from the subcontractor under the pretext of technical guidance or quality control, and thereafter **directly produces the goods or transfers such manufacturing methods to a third party to have them manufacture and supply the goods.**

• Where the prime contractor enters into a technology transfer agreement (including technology use agreements) with the subcontractor, acquires the necessary technology by receiving technical data, and subsequently unilaterally terminates the agreement or, after termination, utilizes such technology independently or through a third party in violation of non-disclosure obligations under the agreement to provide such technology to another enterprise without authorization.

• Where the prime contractor jointly conducts technology development with the subcontractor, misappropriates the subcontractor's main technology, and thereafter discontinues the joint development and produces the product independently.

• Where, with respect to technology acquired from the subcontractor, the prime contractor files a prior application before the subcontractor files for registration, thereby preemptively securing patent rights or utility model rights for such technology, or modifies the technology provided by the subcontractor and files a prior application.

• Where the prime contractor requires the subcontractor to jointly file for patent rights, utility model rights, etc. with respect to technology independently developed by the subcontractor.

• Where, for the purpose of reducing the unit price or replacing the subcontractor, the prime contractor provides the technical data of the existing subcontractor to a third party and causes such third party to manufacture and supply identical or similar products.

- Refer to the "Guidelines for Inspection of Request for and Misuse of Technical Data."

◆ Relevant Cases

1. Case where manufacturing drawings were provided to another subcontractor for the purpose of defect remediation (Seoul High Court Decision, July 22, 2020, 2018Nu77120)

▣ Facts

• The plaintiff, a business operator engaged in the manufacturing or sale of construction machinery such as excavators and diesel engines for generators, delivered manufacturing drawings of a small air compressor received from subcontractor "C" to a new supplier "E" in order to change the supplier of air compressors, thereby enabling E to supplement insufficient manufacturing technology for the air compressor.

▣ Court Decision

• It was determined that the plaintiff used C's drawings beyond the original purpose in order to receive defect-free small air compressors.

‣ The plaintiff, while requesting the provision of manufacturing drawings from C, did not notify that such drawings would be provided to a competitor or other business operator and used for the manufacture of identical small air compressors.

‣ Although the plaintiff asserted a superficial reason that the drawings were required for the conclusion of a quality target compliance agreement, the issues in the agreement process were not focused on verifying defects in welding of the air compressor air tank, and it is difficult to recognize that there existed circumstances necessitating the request for such drawings.

2. Case where approval drawings were provided to another subcontractor for the purpose of dual sourcing (Seoul High Court Decision, February 17, 2022, 2019Nu51675)

▣ Facts

• The plaintiff, a business operator engaged in the manufacturing and sale of construction machinery and industrial vehicles, provided harness manufacturing drawings (approval drawings) belonging to subcontractors "M" and "N", which had been supplying harnesses to the plaintiff, to "CB" for the purpose of dual sourcing suppliers.

▣ Court Decision

• Considering that the plaintiff requested the provision of the drawings from M and N on November 13, 2017, approximately 1–3 years after the drawings had been prepared, it cannot be deemed that the request was made for the design approval or related business purposes, thus constituting misappropriation of technical data.

2.2.6 Prohibition of Unfair Requests for Economic Profits (Article 12-2 of the Act)

▣ The prime contractor shall not, without justifiable cause, require the subcontractor to provide cash, goods, services, or any other economic benefit for itself or for a third party.

▣ "Provision of economic benefits" includes not only unilateral economic benefits without consideration but also cases where the prime contractor imposes its own costs or economic burdens in indirect or circumstantial forms on the subcontractor, such as securing liquidity (Supreme Court Decision, December 9, 2010, 2009Du2368).

• Indiscriminately requiring the provision of sales incentives equivalent to 5.5% to 9.9% of the purchase price of the goods while entrusting the manufacture of goods bearing its own private brand trademark to the subcontractor.

• Requiring the subcontractor to bear the full cost of promotional events that contribute to the prime contractor's profit.

◆ Type of Violation

<Unfair Request for Economic Profits>

• Where economic profits (including property and benefits having economic value; hereinafter the same) such as sponsorship funds, incentives, or support funds are demanded on unreasonable grounds such as deterioration of the prime contractor's profitability or business conditions.

• Where economic profits such as sponsorship funds, incentives, or support funds are demanded as a condition for initiating subcontract transactions or engaging in large-volume transactions.

• Where economic profits such as sponsorship funds, incentives, or support funds are demanded despite the absence of any legal obligation on the part of the subcontractor to bear such costs.

- Refer to the "Guidelines for Fair Subcontract Transaction."

◆ **Relevant Cases**

1. Case where a subcontractor was requested to purchase clothing sold by the prime contractor (Fair Trade Commission Decision No. 2020-009, January 9, 2020)

▣ Facts

• A prime contractor engaged in the manufacturing and sale of clothing entrusted 96 small and medium-sized enterprises with the manufacture of clothing and raw and auxiliary materials and required such enterprises to purchase golf apparel sold by the prime contractor at department stores or directly operated stores, and to report the purchase details via telephone or text message.

▣ Fair Trade Commission's Decision

• Even if the prime contractor's conduct was close to a mere "request," considering the overall superior-subordinate relationship and the continuous transaction relationship, it was determined to be closer to a "demand."

2. Case where execution of a sales contract was required (Seoul High Court Decision, February 17, 2022, 2021Nu52596)

▣ Facts

• A civil engineering and construction business operator entrusted construction work and required subcontractors to enter into contracts to purchase commercial units developed by its affiliates or to assume subscription rights thereto.

▣ Court Decision

• There is no evidence to conclude that the subcontractors obtained profits equivalent to taking gains from the construction work without tax settlement, and even if such profits had been obtained, there is no evidence to support that the subcontractors entered into the contracts for the sale or assignment of the commercial units in order to obtain such profits; therefore, illegality cannot be deemed extinguished.

2.2.7 Prohibition of Unreasonable Intervention in Management (Article 18 of the Act)

▣ The prime contractor shall not interfere with the management of the subcontractor by means such as adjusting the volume of subcontract transactions.

▣ The following acts shall be deemed unreasonable intervention in management:

• Restricting the subcontractor's export of technical data or restricting transactions on the grounds of such export without justifiable cause

• Binding the subcontractor to transact with the prime contractor or with a designated business operator without justifiable cause

• Requesting management information such as cost data from the subcontractor without justifiable cause

‣ Types of management information are as follows:

→ Information on costs such as material costs and labor costs incurred by the subcontractor for the delivery of the subject matter, etc. (cost calculation sheets, cost breakdowns, cost statements, detailed cost calculation data, detailed payment records for material and labor costs, etc.)

→ Sales-related information on subject matter, etc. supplied by the subcontractor to other business operators (sales statements, sales breakdowns by client, etc.)

→ Management strategy-related information of the subcontractor (product development and production plans, sales plans, new investment plans, etc.)

→ Business-related information of the subcontractor (client lists, supply conditions for subject matter, etc. delivered to other business operators, including delivery prices)

→ Information required to access electronic data interchange systems used by the subcontractor in transactions with other business operators, such as unique identifiers and passwords for such systems

‣ "Justifiable cause" refers to cases where, considering the purpose of the act and the availability of alternative means, the subcontractor's management information is procedurally and technically indispensable for achieving the purpose of entrustment of manufacturing, etc. Provided, even in such cases, the information requested shall not exceed the minimum scope necessary to achieve such purpose.

◆ **Type of Violation**

<Unreasonable Intervention in Management>

• Interfering with hiring decisions by requiring the subcontractor to obtain its instructions or approval when appointing or dismissing directors or employees, or by forcing the subcontractor to hire specific individuals against its will

• Restricting the subcontractor's production items or scale of facilities

• Intervening in secondary subcontract transactions of first-tier subcontractors and restricting the selection of second-tier subcontractors or the setting of contract terms for the purpose of private gain of

the prime contractor or a specific person (corporation or individual), unrelated to the achievement of the purpose of the subcontract transaction such as quality maintenance or delivery compliance

• Preventing the subcontractor from transacting with competitors of the prime contractor or its affiliates

• Entering the subcontractor's workplace and inspecting production processes, manpower input, material composition, etc., for the purpose of private gain of the prime contractor or a specific person (corporate body or natural person), unrelated to the achievement of the purpose of the subcontract transaction such as quality maintenance or delivery compliance; provided, however, entry into the construction site by the prime contractor shall not fall under this category in the case of construction entrustment.

- Refer to the "Guidelines for Fair Subcontract Transaction."

◆ **Relevant Cases**

1. Case in which management control standards for partner companies were operated to control the appointment of directors and employees and the composition of shareholdings of partner companies (Fair Trade Commission Decision No. 2021-037, February 8, 2021)

▣ Facts

• Management control standards were established and operated, including specific matters concerning the internal management of partner companies such as the term of office of executives, executive compensation, dividend rates, appropriate capital size including retained earnings, and shareholding composition.

‣ Upon the expiration of an executive's term, an internal employee to be appointed to the position was selected as the successor and notified to the partner company, and the successor acquired the shares of the partner company held by the predecessor and assumed the predecessor's position.

‣ The shareholding structure was altered in such a way that a portion of the shares held by executives of the partner companies was held by other partner companies.

▣ Court Decision

• It was determined that influence was exercised, against the will of the partner companies, over management matters that they could freely determine, and that such conduct deviated from normal trade practices and constituted unfair interference with the management of the partner companies.

2.3 Stages of Payment of Subcontract Consideration

2.3.1 Obligation to Pay Subcontract Consideration (Article 13 of the Act)

▣ Where a prime contractor entrusts manufacturing, etc. to a subcontractor, the subcontract consideration shall be paid within sixty (60) days from the date of receipt of the subject matter, etc. (in the case of construction entrustment, the date of acceptance; in the case of service entrustment, the date on which the subcontractor completes the entrusted services; and where deliveries are frequent and the prime contractor and the subcontractor have agreed on a date for issuance of tax invoices at least once per month, such agreed date), by the payment due date determined within the shortest possible period.

• Provided, exceptions shall be recognized in any of the following cases:

① Where it is recognized that the prime contractor and the subcontractor have determined the payment due date on an equal footing

② Where the payment due date is recognized as justified in light of the characteristics of the relevant industry and economic conditions

▣ The subcontract consideration shall be paid within sixty (60) days from the date of receipt of the subject matter or the date of issuance of the tax invoice; however, where payment is made beyond such period, delay interest (15.5% per annum) shall be paid.

▣ For example, where the subcontract consideration is paid ninety (90) days after receipt of the subject matter, delay interest for thirty (30) days shall be paid.

• Under the Subcontracting Act, where the prime contractor pays subcontract consideration by promissory note, a discount charge (7.5%) for the excess period shall be mandatorily paid to the subcontractor if the maturity date of the note exceeds sixty (60) days from the date of receipt of the subject matter.

▣ For example, where the prime contractor issues a promissory note with a maturity of thirty (30) days to the subcontractor on the statutory payment due date, a discount charge for thirty (30) days shall be paid.

◆ **Type of Violation**

<Non-payment or Delayed Payment of Consideration>

• Where additional construction costs are shifted to the subcontractor

• Where payment to the subcontractor is not made on the grounds that there is a civil dispute regarding the subcontract consideration (e.g., occurrence of a claim for damages)

• Where payment is made by a promissory note with a maturity date exceeding sixty (60) days from the date of receipt of the subject matter without paying a separate discount charge

• Where, **notwithstanding the obligation to additionally pay the subcontract consideration adjusted pursuant to pre-agreed adjustment conditions**, only the subcontract consideration prior to adjustment is paid and **the additionally adjusted subcontract consideration is not paid**

• Where, **notwithstanding the obligation to adjust the subcontract consideration pursuant to pre-agreed adjustment conditions**, the adjusted subcontract consideration is not paid on the grounds that the **subcontractor did not apply for adjustment**

• Where, **notwithstanding the obligation to adjust the subcontract consideration pursuant to pre-agreed adjustment conditions,** the **adjusted subcontract consideration is not paid on the grounds that the prime contractor did not receive an increase in payment** from the ordering party

◆ **Relevant Cases**

1. Case in which it was determined that payment of subcontract consideration for additional work is required unless a responsibility construction agreement is proven (Fair Trade Commission Decision No. 2021-037, February 8, 2021)

▣ Facts

• The respondent did not pay subcontract consideration for additional work, where the volume increased compared to the original design, to the subcontractor within sixty (60) days from the date of receipt of the subject matter.

• The respondent argued that an agreement on responsible construction had been made, but lost in the related civil litigation.

▣ Decision of the Fair Trade Commission and the Court

• The responsibility construction agreement cannot be recognized in accordance with the civil court judgment.

• The mere fact that the subcontractor participated in the design does not necessarily imply the existence of a responsibility construction agreement.

2. Case in which a claim for set-off based on arbitrarily calculated damages was not accepted (Fair Trade Commission Decision No. 2022-098, April 28, 2022)

▣ Facts

• The respondent, upon discovering scratched defective products during shipment inspection, carried out retouch work and delivered the products to the ordering party; however, the ordering party refused to accept products delivered after retouch work from around June 2018.

• Accordingly, the respondent determined that returns and defects were attributable to the subcontractor and demanded compensation for damages from the subcontractor.

• However, when the subcontractor did not pay such damages, the respondent did not pay the subcontract consideration (approximately half of the claimed compensation for damages) to the subcontractor.

▣ Fair Trade Commission's Decision

• Corrective measures were imposed considering that: (i) it is difficult to conclusively determine that the defects were attributable to the reporting party, and even if attributable, the obligation to pay subcontract consideration arises once the goods pass incoming inspection, (ii) the damages claimed by the respondent were arbitrarily calculated and cannot be deemed legally confirmed claims, and (iii) if payment orders cannot be issued merely because there exists a civil dispute regarding the scope of subcontract consideration, the legislative intent of prohibiting delayed payment and allowing payment orders would be undermined.

2.3.2 Obligation to Pay Advance Payments (Article 6 of the Act)

▣ The prime contractor shall pay advance payments to the subcontractor within fifteen (15) days from the date on which it receives advance payments from the ordering party, and where advance payments are received prior to entrustment, within fifteen (15) days from the date of entrustment.

▣ Advance payments shall be paid to the subcontractor in accordance with the content and ratio of such advance payments.

• That is, (i) where the ordering party designates the construction work or items subject to advance payment, payment shall be made only for the designated purpose, and (ii) where the ordering party does not specify the subject construction work or items, the amount calculated by multiplying the advance payment received from the ordering party by the ratio of the subcontract amount to the total contract amount shall be paid to the subcontractor as advance payment.

• Where the period exceeds fifteen (15) days, **delay interest of 15.5%** shall be paid for the excess period.

※ Provided, however, where the subcontractor fails to submit an advance payment guarantee despite being requested to do so, delay interest for the relevant period need not be paid.

◆ **Type of Violation**

<Advance Payments>

• Where advance payments are not paid within the statutory payment due date despite having received advance payments from the ordering party, or where delay interest is not paid after delayed payment.

◆ **Relevant Cases**

1. Case in which failure to pay or delayed payment of advance payments was sanctioned (Fair Trade Commission Decision No. 2020-031 (Summary), May 7, 2020)

▣ Facts

• The respondent, a small and medium-sized enterprise, entrusted metal window construction work to another small and medium-sized enterprise with a lower total amount of construction capability evaluation and failed to pay advance payments within the prescribed period.

▣ Fair Trade Commission's Decision

• The respondent must pay advance payments to the subcontractor in accordance with the ratio of advance payments received from the ordering party and must also pay separate delay interest for delayed payment.

2.3.3 Obligation to Adjust Subcontract Consideration Due to Design Changes (Article 16 of the Act) and Obligation to Adjust Subcontract Consideration Due to Fluctuations in Supply Costs (Article 16-2 of the Act)

▣ Where, after entrusting manufacturing, etc., all of the following conditions are met, the prime contractor shall increase the subcontract consideration in accordance with the content and ratio of the increased contract amount received from the ordering party.

1. Where the contract amount is increased due to design changes, changes in delivery timing of the subject matter, or changes in economic conditions

2. Where additional costs are incurred for completion of the subject matter due to the reasons set forth in Subparagraph 1.

• The subcontractor may apply for adjustment of the subcontract consideration where, after receiving entrustment of manufacturing, etc., adjustment is unavoidable due to any of the following:

1. Where the supply cost of the subject matter changes

2. Where, due to reasons not attributable to the subcontractor, the delivery timing of the subject matter is delayed and costs other than supply costs, such as overhead expenses, change

3. Where a contract was concluded providing for stepwise reduction of subcontract consideration over time on the assumption that supply costs or other costs would decrease, but such costs do not decrease, or the rate of decrease is lower than the rate of reduction of subcontract consideration, due to reasons not attributable to the subcontractor, such as reduction in volume or scale by the prime contractor

▣ The prime contractor shall commence consultation within ten (10) days from the date of application and shall not refuse or neglect such consultation without justifiable cause.

▣ Relationship between the adjustment system and the obligation to negotiate on adjustment of consideration

• The prime contractor is obligated to respond **where a negotiation on adjustment of consideration is requested** by the subcontractor, **even after a written document concerning subcontract price adjustment has been issued.**

• **Where a major raw material exists in the subcontract agreement**, the prime contractor shall **issue a written document regarding adjustment, even if the subcontract agreement contains a clause on adjustment of contract payment amount** with respect to changes in prices and design changes.

• Where a major raw material exists in the subcontract agreement, **the prime contractor shall adjust the subcontract consideration** according to the agreed conditions, **even if the prime contractor was not able to receive the contract payment amount** from the ordering party.

• Where the prime contractor has the contract amount adjusted by the ordering party and adjusts the subcontract consideration for the subcontractor in accordance to **Article 16 of the Subcontracting Act**, the adjustment and its scope may be **determined by comparison of obligation to adjustment in accordance to Article 16 and the obligation to adjustment in accordance to the implemented subcontract consideration adjustment system.**

◆ **Type of Violation**

<Adjustment of Subcontract Consideration Due to Design Changes>

• Where, despite receiving an increase in the contract amount from the ordering party due to design changes, a modified contract for increasing the subcontract consideration is not concluded within thirty (30) days

<Adjustment of Subcontract Consideration Due to Changes in Supply Costs, etc.>

• Where negotiation is not commenced within ten (10) days from the date of application

• Where negotiation is commenced but is intentionally neglected, such as by having employees without decision-making authority attend meetings

◆ **Relevant Case**

1. Case in which failure to conclude a modified contract despite receiving an increase in the contract amount due to design changes from the ordering party was sanctioned (Fair Trade Commission Decision No. 2024-011 (summary), January 30, 2024)

▣ Facts

• The respondent received an increase in the contract amount due to design changes from the ordering party but did not increase the subcontract consideration to the subcontractors within thirty (30) days from the date of such increase.

▣ Fair Trade Commission's Decision

• The respondent's conduct constitutes a violation of Article 16 (3) of the Act.

3. Sanction Standards

3.1 Sanction Standards

Corrective Measures	Payment of subcontract consideration, fulfillment of disclosure obligations or correction of disclosed content, cessation of violations, deletion or modification of special agreements, prevention of recurrence, and other necessary measures (Article 25 of the Act)
Penalty Surcharge	Within the scope not exceeding two (2) times the relevant subcontract consideration (Article 25-3 of the Act). Provided, however, incomplete issuance of written documents related to the subcontract price adjustment system (Article 3 (3) 2) shall be excluded from the imposition of penalty surcharges.
Compensation for Damages	In cases of violation of Article 4, Article 8 (1), Article 10, Article 11 (1) and (2), and Article 19: Up to three (3) times the amount of damages
	In cases of violation of Article 12-3 (4): Up to three (5) times the amount of damages

Criminal Penalties	Violation of obligations or prohibitions of the prime contractor Provided, however, incomplete issuance of written documents related to the subcontract price adjustment system (Article 3 (3) 2) shall be excluded from criminal punishment.	A fine not exceeding an amount equivalent to twice the subcontract consideration (Article 30 (1))
	Prohibition of retaliatory measures	A fine not exceeding KRW 300 million (Article 30 (2))
	Violation of corrective orders and prohibition of management intervention and evasion	A fine not exceeding KRW 150 million (Article 30 (2))

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3.2 Frequently Asked Questions

Q. Is a seal also required on a purchase order (PO)?
A. In general, it is common practice to execute a master agreement first and then place orders for detailed quantities through POs. In such cases, since most of the statutory required matters not stated in the master agreement are set forth in the PO, the PO must be incorporated into the contract in order to avoid constituting issuance of an incomplete document. The Korea Fair Trade Commission recently sanctioned prime contractors that, after executing master agreements omitting certain statutory required matters, instructed work by issuing only purchase orders without signature or seal (Fair Trade Commission Decision No. 2024-008, January 8, 2024; Fair Trade Commission Decision No. 2024-009, January 8, 2024; Fair Trade Commission Decision No. 2024-015, January 9, 2024).
Q. Is affixing the company seal and sending the PO to the subcontractor sufficient?

A. In practice, there are also cases where work is performed after a PO bearing the completed seal of the prime contractor is sent to the subcontractor.

However, if the final version bearing the subcontractor's seal is not separately returned and received, this constitutes a violation of the obligation to preserve documents. Therefore, it is important to request return of the final version from the subcontractor and preserve the PO for three (3) years.

Q. What are the grounds for agreeing not to conclude a subcontract price adjustment agreement?

A. Cases in which a non-adjustment agreement may be recognized include: (i) where the subcontractor does not wish to provide the prime contractor with the cost information necessary for adjustment of subcontract consideration; (ii) where the price of raw materials is expected to decline, and subcontract consideration is therefore expected to be reduced; (iii) where a subcontract price adjustment agreement has already been concluded with respect to other major raw materials (where there are multiple major raw materials); (iv) where the subcontractor is a subsidiary of the prime contractor; and (v) where the prime contractor is already sufficiently adjusting subcontract consideration for the subcontractor pursuant to obligations under other laws such as the National Contract Act.

However, whether the prime contractor has engaged in good-faith negotiation or whether the non-adjustment agreement constitutes an evasive act is determined by comprehensively considering the progress, content, and manner of the negotiation. Therefore, in determining compliance with the obligation of good-faith negotiation or whether an evasive act exists, the reason for agreeing not to apply adjustment is not the only important factor in itself. (KFTC FAQ on the Subcontract Price Adjustment System)

Accordingly, where a partner company voluntarily wishes to enter into a non-adjustment agreement, it is advisable to receive from the partner company an official letter stating the relevant reasons.

Q. What types of conduct should be particularly noted with respect to the subcontract price adjustment system?

A. With respect to the subcontract price adjustment system, care should be taken regarding: (i) violations of the duty of good-faith negotiation (failure to conduct negotiation on adjustment, failure to conduct substantive negotiation such as holding meetings or exchanging views, absence of a responsible person with decision-making authority from the negotiation); and (ii) evasive acts (inducing split contracts relating to price or duration, coercing or inducing non-adjustment agreements).

Q. Does merely establishing an unfair special contract clause constitute a violation of law, regardless of whether such clause is effective or whether costs were actually imposed?

A. Article 3-4 (1) of the Act merely prohibits the establishment of contractual conditions that unfairly infringe upon or restrict the interests of the subcontractor, and does not presuppose either the validity of the unfair special clause or the actual passing on of costs thereunder; therefore, whether such clause was actually applied does not affect the establishment of the act of setting an unfair special agreement (Seoul High Court Decision, March 30, 2017, 2016Nu37753; appeal dismissed).
Q. How is a unit price determined to be low?
A. It is generally determined based on whether it is lower than the consideration ordinarily paid. The level of "consideration ordinarily paid" is assessed by comprehensively considering the details of prior transactions between the parties to the act in question, the degree and variance of the level of consideration formed in other comparable transactions, the timing, method, scale, and duration of such comparable transactions, the market position or business scale of the business operators in the comparable transactions, and market conditions such as prices at the time of the transaction (Supreme Court Decision, December 7, 2017, 2016Du35540).
Q. If a request is made for "adjustment of subcontract consideration due to changes in supply costs, etc." while the subcontract price adjustment system is being implemented, is a response required?
A. The duty of good-faith negotiation under Article 16-2 of the Act is an obligation imposed independently of the subcontract price adjustment system. However, unlike the subcontract price adjustment system, under which subcontract consideration must be increased (or reduced) in accordance with prior agreement, a request for adjustment under Article 16-2 of the Act is deemed compliant with the Subcontracting Act so long as the prime contractor faithfully engages in negotiation within the prescribed period.

4. Code of Conduct Checklist

4.1 Code of Conduct Checklist

▣ Are you using the standard contract provided by the Korea Fair Trade Commission or a contract that has been reviewed and approved by the Legal Department?

▣ Have you confirmed that all statutory required matters are stated in the contract?

• Date of entrustment, details of the entrusted work, time and place of delivery, etc.

• Method and timing of inspection of the subject matter, etc.

• Payment method of subcontract consideration and the payment due date.

• Where owner-supplied materials are provided, the name, quantity, date of provision, price, method of payment, and due date for such raw materials, etc.

• Requirements, methods, and procedures for adjustment of subcontract consideration due to changes in the supply cost of the subject matter, etc. after entrustment

▣ Have both parties completed affixing their seals on the contract, purchase order, etc.?

▣ Are documents related to subcontract transactions, such as contracts, purchase orders, and inspection confirmation sheets, being preserved?

▣ Where changes arise in the existing entrusted contents, are instructions being issued after undergoing the due procedure for execution of an amended contract?

▣ Does the contract include any clause that imposes to the partner company additional costs that could not have been anticipated at the time of the initial construction or costs that the Company is required to bear by law?

▣ Does the contract include any clause that imposes liability on the partner company regardless of fault (e.g., “all costs,” “full liability”)?

▣ Have you refrained from indiscriminately reducing unit prices compared to the existing contract or determining transaction consideration after allocating and deducting a fixed amount for each partner company?

▣ Have you refrained from exaggerating transaction volume and lowering unit prices on that basis?

▣ Even where competitive bidding was conducted, have you refrained from determining subcontract consideration at a price lower than the lowest bid price through separate consultations?

▣ Is the timing of payment of subcontract consideration under the contract set as “within 60 days from

the date of receipt of the subject matter”?

▣ Have you refrained from paying subcontract consideration later than 60 days from the date of receipt of the subject matter, or later than the contractual payment timing?

▣ Where subcontract consideration is provided by promissory note, etc., does the maturity of such note fall before the promised payment timing of the subcontract consideration?

▣ When receiving advance payments from the ordering party, are you paying advance payments to the subcontractor in compliance with the applicable ratio?

▣ Where subcontract consideration is adjusted by the ordering party due to design changes, etc., are you notifying the subcontractor within 15 days and increasing the amount within 30 days in accordance with the applicable ratio?

▣ Where the partner company applies for adjustment of subcontract consideration due to changes in supply costs, etc., have you commenced negotiation within 10 days?

▣ Have you participated in negotiations regarding adjustment of subcontract consideration due to changes in supply costs, etc. in good faith (e.g., securing meeting schedules, ensuring participation of a person with decision-making authority, etc.)?

4.2 Practical Guide

▣ Please note that **even where subcontract consideration has been paid** under a subcontract, **failure to issue an individual subcontract agreement** constitutes a violation of the Subcontracting Act.

▣ Please note that the following shall not be deemed to constitute conclusion of a subcontract price adjustment agreement:

• Where adjustment is agreed only in the event of a decline in raw material prices; where the adjustment cycle is set longer than the contract period; where the burden-sharing ratio for changes in raw material prices is set excessively disadvantageously to the subcontractor; where the burden-sharing ratio differs between increases and decreases in raw material prices, and such content is unilaterally disadvantageous to the subcontractor or objectively unreasonable; where the benchmark index is unreasonable such that

changes in raw material prices cannot in substance be reflected; or where a adjustment agreement is concluded through other evasive conduct such that the purpose of the adjustment system cannot be reflected

▣ Examples that may constitute evasive conduct under the adjustment system:

• Perfunctory contract: processing the matter as "to be discussed later" without stating adjustment criteria in the contract

• Dual contract: settlement being made at a unit price different from that prescribed in the written contract

• Unilateral setting of standards: ignoring the subcontractor's request to reflect price changes

▣ Standards and procedures in the case of a non-adjustment agreement

• A "reasonable ground" must be **substantiated by objective supporting documents.**

• A **separate written agreement** or a **clear clause in the contract is required.**

• Where written documentation is inadequate or substantiation is insufficient, there is a **possibility of KFTC sanctions.**

▣ Matters to note regarding non-adjustment agreements

• Even in the case of a "non-adjustment agreement" under which the adjustment system is not to be applied, the procedures and requirements set forth in the standard contract must be observed.

• Sufficient information must be provided to the subcontractor, an opportunity for consultation must be granted, and the results thereof must be clearly retained **in written document.**

• **Where such agreement is judged to be perfunctory**, caution is required as there is a risk of legal violation.

▣ Since the KFTC's practice tends to interpret technical data very broadly, even where justifiable cause is recognized, care must be taken to ensure that the scope of technical data does not exceed the minimum necessary to achieve the purpose.

▣ Matters to note regarding advance payments

• Even if there is an agreement between the prime contractor and the subcontractor who did not receive advance payments that the advance payment shall instead be paid as progress payments, this does not exempt the prime contractor from the obligation to pay advance payments.

• Even if the prime contractor and the subcontractor have entered into a contract providing that no advance payment shall be made, **the prime contractor is not exempted from the obligation to pay advance payments** in light of the legislative purpose of the Subcontracting Act and Article 6 thereof.