

Client Alert

15 December 2023

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Cabinet Secretariat and Japan Fair Trade Commission Release Guidelines Concerning Price Negotiation for Appropriate Shifting of Labor Costs

1. Introduction

On November 29, 2023, the Cabinet Secretariat of Japan and the Japan Fair Trade Commission ("JFTC") jointly issued the Guidelines Concerning Price Negotiation for Appropriate Shifting of Labor Costs ("the Guidelines").¹

Rapid price inflation has made it particularly important to create a business environment in which small and medium-sized companies can secure resources for wage increases. The Japanese government has been working on price-shifting measures and established the Guidelines as one of its efforts to improve the business environment.

The JFTC has clarified that where prices do not reflect increases in labor and other costs, they may constitute an "abuse of superior bargaining position"² under the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade ("Antimonopoly Act") or "unjustly low-priced purchases"³ under the Act Against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors ("Subcontract Act"). In addition, the Guidelines state that the JFTC will take strict action under the Antimonopoly Act and/or the Subcontract Act if fair competition may be impeded by any conduct by a purchaser of goods or services from a counterparty who is not in compliance with the Guidelines. In light of this, it is highly likely that the JFTC will strengthen enforcement in the very near future.

2. Essential Points of the Guidelines

The Guidelines provide 12 rules for purchasers and suppliers of goods and services regarding the shifting of labor costs. For example, the Guidelines state that the top management of purchasers should decide their specific policies with regard to factoring increased labor costs into transaction prices. The Guidelines also provide that purchasers should give suppliers opportunities for periodic discussion with regard to shifting labor costs even where a purchaser has not been asked by a supplier to pay higher prices due to increased labor costs. On the other hand, the Guidelines also specify that a supplier should offer its preferred price to a purchaser without waiting for the purchaser's offer.

¹ https://www.jftc.go.jp/houdou/pressrelease/2023/nov/231129_02_romuhitenka.pdf

² Use by a party of a bargaining position superior to that of another party to unjustly disadvantage the other party, evaluated in light of ordinary business practices (Article 2, Paragraph 9(5) and Article 19 of the Antimonopoly Act)

³ Unjustly setting subcontract proceeds at a level conspicuously lower than the price ordinarily paid for the same or similar goods or services (Article 4, Paragraph 1(5) of the Subcontract Act)



The Guidelines clearly state that the JFTC will strictly enforce the Antimonopoly Act and the Subcontract Act where it finds a possibility of fair competition being impeded by any action/inaction contrary to the Guidelines' 12 rules. However, the Guidelines also provide that where all actions comply with the Guidelines' provisions, it will be presumed that sufficient discussions have taken place between the parties to a transaction and there will normally be no problems under the Antimonopoly Act or the Subcontract Act.

3. Practical Tips

The JFTC has identified and published the names of specific businesses that were found not to have actively engaged in price shifting last year and seems well prepared for enforcement. Purchaser businesses are advised to be particularly careful in reviewing their practices regarding price shifting going forward.