

## Client Alert

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## New Act obligating business operators to protect freelancers effective 1 November 2024

### 1. Introduction

In recent years, the diversification of work styles has progressed, and some people are choosing to work as freelancers.<sup>1</sup> This has resulted in a disparity in bargaining power and information-gathering ability between individual freelancers and the business operator organizations that employ them. To address this situation, the Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators<sup>2</sup> (Act No. 25 of 2023, the “Act”) was promulgated on 12 May 2023 and entered into effect on 1 November 2024. The enforcement ordinance and guidelines pursuant to the Act entered into effect on the same date. The Act has two objectives: (1) ensuring the propriety of transactions involving freelancers and (2) improving the working environment for freelancers.<sup>3</sup>

### 2. Overview of the Act

The Act imposes the following obligations on business operators when they entrust work to freelancers:

- (i) Details of the freelancer's responsibilities and other matters relevant to the work to be performed by the freelancer must be clearly indicated by the business operator in writing in the form of a hard copy or electronic media.<sup>4</sup>
- (ii) A date must be established by the business operator for payment of the freelancer's remuneration no more than 60 days from the date on which the freelancer's services were performed, and payment must be made when due.<sup>5</sup>
- (iii) The business operator must refrain from engaging in certain prohibited acts when entrusting work to a freelancer for a period longer than one month

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<sup>1</sup> In the Act, freelancers are referred to as “specified entrusted business operators.” Article 2(1) of the Act defines a “specified entrusted business operator” as follows:

The term “specified entrusted business operator” as used in this Act means an enterprise who is the other party to the business entrustment and who falls under any of the following items:

- (i) an individual that does not employ any employees;
- (ii) a corporation that has no other officers (meaning directors, executive officers, members who execute business, auditors or company auditors, or persons equivalent thereto; the same applies in paragraph (6), item (ii) other than a single representative, and that does not employ any employees.

<sup>2</sup> An official translation of the Act can be found at the following URL: [https://www.japaneselawtranslation.go.jp/ja/laws/view/4691#je\\_ch2at1](https://www.japaneselawtranslation.go.jp/ja/laws/view/4691#je_ch2at1)

<sup>3</sup> [https://www.jftc.go.jp/fllaw\\_limited/fllaw\\_ga.html](https://www.jftc.go.jp/fllaw_limited/fllaw_ga.html)

<sup>4</sup> Article 3 of the Act.

<sup>5</sup> Article 4 of the Act.



(e.g., refusing to accept the freelancer's work or reducing the amount of the freelancer's remuneration, etc.).<sup>6</sup>

(iv) The business operator must provide accurate recruitment information and refrain from making false or misleading representations concerning recruitment to the freelancer.<sup>7</sup>

(v) The business operator must give due consideration to the pregnancy, childbirth, childcare and/or nursing care needs of the freelancer.<sup>8</sup>

(vi) The business operator must take measures to prevent and address problems arising during the engagement of the freelancer (e.g., by establishing a harassment prevention system).<sup>9</sup>

(vii) The business operator must provide advance notice of the termination of a freelancer where the freelancer has been engaged for a period longer than six months and provide reasons for the termination.<sup>10</sup>

The applicability of the above provisions will vary depending on the length of the freelancer's entrustment period and whether the business operator engaging the freelancer is itself an individual (i.e., a sole proprietor with no employees) or has one or more employees in addition to the freelancer.

### **3. Authorities' responses and penalties for violations**

The authorities may collect reports and conduct on-site inspections to the extent necessary for enforcement of specific Articles.<sup>11</sup> If they find a violation, they may issue recommendations.<sup>12</sup> Should the business operator fail to follow these recommendations without a justifiable reason, the authorities may then order the business operator to take measures regarding the recommendations and publicize the same.<sup>13</sup> However, where the business operator fails to establish a harassment prevention system, the authorities may only collect reports (i.e., an on-site inspection will not be conducted). Further, if the authorities' recommendation to establish a harassment prevention system is not followed without just cause, they may only publicize the same (i.e., an order to take measures regarding the recommendation cannot be issued).<sup>14</sup>

A business operator that violates an order, fails to submit a report, submits a false report or refuses, impedes or evades an inspection is subject to a fine of up to JPY 500,000.<sup>15</sup> There is also a joint punishment provision under which a business operator can be punished for an illegal act that violates Article 24 by one of its directors or employees, etc. in connection with its business.<sup>16</sup> However, failure to submit a report or submission of a false report with regard to establishing a harassment prevention system is punishable only by a maximum fine of JPY 200,000 yen.<sup>17</sup>

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<sup>6</sup> Article 5 of the Act.

<sup>7</sup> Article 12 of the Act.

<sup>8</sup> Article 13 of the Act.

<sup>9</sup> Article 14 of the Act.

<sup>10</sup> Article 16 of the Act.

<sup>11</sup> Articles 11 and 20 of the Act.

<sup>12</sup> Articles 8 and 18 of the Act.

<sup>13</sup> Articles 9 and 19 of the Act.

<sup>14</sup> Article 19, Paragraph 3 of the Act.

<sup>15</sup> Article 24 of the Act.

<sup>16</sup> Article 25 of the Act.

<sup>17</sup> Article 26 of the Act.



#### **4. Suggested actions**

The increasing popularity of freelancing makes it advisable for business operators to review their procedures, systems, internal rules, manuals and templates, etc. related to engaging, accepting inspection and paying, etc. freelancers. Given that the Act entered into effect on 1 November 2024, business operators should ensure that they understand their obligations and make any necessary preparations and modifications to their working environments to comply with the Act's requirements.