NEWSLETTER

Construction Business Licenses under the Construction Business Act
– Introduction to Japanese Construction Law (3) –

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This series explains major topics in Japanese construction law, by comparison with overseas construction law. In this third installment, we introduce the construction business permits required to engage in construction business in Japan. The Construction Business Act ("CBA") was enacted after World War II, in response to the increased number of contractors engaging in reconstruction. Japan's CBA is a highly unique regulatory framework that was established without reference to foreign legislation, as foreign construction business regulations did not suit Japan's circumstances. In practice, there are some situations in which foreign contractors unintentionally violate the CBA due to a failure to understand the differences in the regulatory framework when engaging in construction projects in Japan or installing equipment associated with sales of machinery. This article provides a brief introduction to the permit system under the CBA.

1. Permit System Under the Construction Business Act

(1) Activities Subject to the Construction Business Act

The Construction Business Act (Act No. 100 of 1949) mandates that, except for exceptions described in section (2) below, a permit must be obtained when engaging in the business of contracting for the completion of construction work (CBA, Article 3). As of the date of this newsletter, there are 29 types of permits, which correspond to different types of work, and a permit appropriate to the contracted work must be obtained. Violation of this rule can result in criminal penalties, including imprisonment of up to three years or a fine of up to 3 million yen (CBA, Article 47). Since the CBA regulates contracting directly, a permit is required even when acting as a prime contractor and subcontracting the actual work to licensed contractors. Therefore, if a foreign contractor undertakes construction work in Japan for a client from the contractor's home country and then subcontracts the work to a Japanese contractor, the foreign contractor is still subject to the permit requirement.

Because the regulation targets the undertaking of construction work, machinery manufacturers who undertake installation work as part of their equipment sales also may need to obtain the relevant permits.

Even when no formal construction contract is executed, any agreement to complete construction work for compensation is considered a "construction contract" under the CBA (Article 24). Thus, even construction management services may be subject to permit requirements, particularly in the case of "at-risk" type CMs, where the construction manager bears certain construction risks.[1] Consequently, foreign entities involved in Japanese construction projects, even as consultants or CMs, should seek guidance from legal experts familiar with the CBA to ensure compliance and confirm any licensing requirements.

[1] Ministry of Land Infrastructure, Transport and Tourism (Japan), "The Guideline for utilization of construction management," (2002), https://www.mlit.go.jp/totikensangyo/const/1_6_bt_000185.html (Japanese Only)

(2) Exceptions for Minor Work

Permits are not required when only minor construction work is undertaken. "Minor work" is defined as (i) for “building work as a main contract”[2], construction valued at less than 15 million yen or construction of wooden residential buildings with total floor area less than 150 square meters, and (ii) for other types of work, construction valued at less than 5 million yen. Splitting a contract into smaller parts to ensure each one falls below these thresholds does not exempt the contractor from compliance. If the project owner supplies materials, their cost must be added to the amount when calculating “minor work.” (Construction Business Act Enforcement Order, Article 1-2).

2. Prohibition of Lump-Sum Subcontracting

Article 22 of the CBA prohibits a contractor from subcontracting most or all of the work to another contractor. Many standard forms also prohibit lump-sum subcontracting without the owner's consent, so compliance with contract terms often ensures compliance with the CBA. However, note that even subcontracting requires the approval of the owner of the project to be valid. Moreover, for public works and new-built residential apartment construction, this prohibition is absolute and cannot be waived (CBA, Article 22, paragraph 3; Act for Promoting Proper Tendering and Contracting for Public Works, Article 14; Construction Business Act Enforcement Order, Article 6-3).

Foreign contractors operating in Japan often intend to subcontract all of the actual work to local contractors. However, awareness of both contractual and statutory prohibitions on lump-sum subcontracting is essential.

3. Challenges in Obtaining Permits for Foreign Contractors

To comply with the permit system described above, foreign contractors engaging in construction work in Japan may be required to obtain a construction business permit. To obtain this permit, applicants must meet certain requirements, such as having executives with management experience in the construction business, technical personnel with relevant qualifications or experience in Japan, or equivalent personnel (CBA, Articles 7(1), 7(2), 15(1), and 15(2)). Foreign contractors must explain to, and negotiate with, the Japanese government, in Japanese, about their overseas experience and how it satisfies Japanese requirements, in accordance with relevant laws and guidelines. Therefore, when entering the Japanese market, it is crucial for foreign contractors to engage experts who can interpret and present their construction experience in a manner that complies with Japanese regulations, and who also can negotiate effectively with administrative authorities.

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[2] The term “building work as a main contract” is defined in the CBA.