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# **Chapter 24**

## **Crimes of Accepting or Offering Bribes by Breach of Trust**

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of accepting bribes by breach of trust (Criminal Act, Article 357, paragraph 1) or offering bribes by breach of trust (Criminal Act, Article 357, paragraph 2).

## PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

### 01 | ACCEPTING BRIBES BY BREACH OF TRUST

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 30 million won	- 6 mos.	4 mos. - 10 mos.	6 mos. - 1 yr. 6 mos.
2	More than 30 million won, less than 50 million won	6 mos. - 1 yr.	8 mos. - 1 yr. 6 mos.	1 yr. - 2 yrs. 6 mos.
3	More than 50 million won, less than 100 million won	10 mos. - 2 yrs.	1 yr. - 2 yrs. 6 mos.	2 yrs. - 3 yrs. 6 mos.
4	More than 100 million won	1 yr. 6 mos. - 3 yrs.	2 yrs. - 4 yrs.	3 yrs. - 5 yrs.



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Cases where the extent of the offender's participation and the actual gain is exceptionally insignificant</li> </ul>	<ul style="list-style-type: none"> <li>Engaging in improper conduct related to receiving a bribe</li> <li>Active demand of bribe</li> <li>Instigating the subordinate person to commit the offense</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>Those with hearing and visual impairments</li> <li>Those with mental incapacity (cases where the offender cannot be held liable)</li> <li>Voluntary surrender to investigative agencies</li> <li>Gains returned before the commencement of an investigation</li> <li>The victim (who entrusted the offender with business) does not want the offender to be punished</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses under the Criminal Act</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Cases where the extent of the offender's participation and the actual gain is insignificant</li> </ul>	<ul style="list-style-type: none"> <li>Accepting money and valuables or other benefits prolonged for more than two years</li> <li>Closely related to the duties of the offender</li> <li>Cases where public trust in fairness and publicness of duties undermined significantly due to the offense</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>Expresses sincere remorse</li> <li>No prior criminal history</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the different type under the Criminal Act, the prior criminal history of the same offense which does not fall within the repeated offenses under the Criminal Act</li> </ul>

## 02<sup>1</sup> OFFERING BRIBES BY BREACH OF TRUST

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 50 million won	- 6 mos.	4 mos. - 10 mos.	6 mos. - 1 yr.
2	More than 50 million won, But less than 100 million won	4 mos. - 10 mos.	6 mos. - 1 yr.	10 mos. - 1 yr. 6 mos.
3	More than 100 million won	6 mos. - 1 yr.	10 mos. - 1 yr. 6 mos.	1 mos. - 2 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Passive yielding to the recipient's active demand of bribe</li> <li>Cases where special considerations can be taken into account for engaging in the offense, especially the motive for committing the crime</li> </ul>	<ul style="list-style-type: none"> <li>An active offer of a bribe</li> <li>Instigating the subordinate person to commit the offense</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>Those with hearing and visual impairments</li> <li>Those with mental incapacity (cases where the offender cannot be held liable)</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the same type under the Criminal Act</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Passive participation</li> </ul>	<ul style="list-style-type: none"> <li>Offense is closely related to the duties of the recipient</li> <li>Cases where public trust in the fair and impartial performance of duties is significantly undermined due to the offense</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>Expresses sincere remorse</li> <li>No prior criminal history</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the different type under the Criminal Act, the prior criminal history of the same offense which does not fall within the repeated offenses under the Criminal Act</li> </ul>



## DEFINITION OF OFFENSES

### 01<sup>1</sup> ACCEPTANCE OF BRIBES BY BREACH OF TRUST

#### 1. TYPE 1

- This indicates cases in which the amount of bribes accepted does not exceed 30 million won.

#### 2. TYPE 2

- This indicates cases in which the amount of bribes accepted exceeds 30 million won but is less than 50 million won.

#### 3. TYPE 3

- This indicates cases in which the amount of bribes accepted exceeds 50 million won but is less than 100 million won.

#### 4. TYPE 4

- This indicates cases in which the amount of bribes accepted exceeds 100 million won.

### 02<sup>1</sup> OFFER OF BRIBES BY BREACH OF TRUST

#### 1. TYPE 1

- This indicates cases in which the amount of bribes offered does not exceed 50 million won.

#### 2. TYPE 2

- This indicates cases in which the amount of bribes offered exceeds 50 million won but is less than 100 million won.

#### 3. TYPE 3

- This indicates cases in which the amount of bribes offered exceeds 100 million won.

## DEFINITION OF SENTENCING FACTORS

### 01<sup>1</sup> ACCEPTANCE OF BRIBES BY BREACH OF TRUST

#### 1. BRIBE RETURNED BEFORE THE COMMENCEMENT OF INVESTIGATION

- This means the offender voluntarily returned money and valuables or to the offerer before the investigative agency began its investigation. However, this excluded cases where the offender made an attempt to conceal the offense after returning the money and valuables or other benefits.

#### 2. EXPRESSION OF OBJECTION TO PUNISHING THE OFFENDER BY VICTIM (ENTRUSTING THE OFFENDER WITH MANAGEMENT OF BUSINESS)

- This indicates cases in which there is sincere remorse by the offender with genuine efforts to reach an agreement has been made, and the victim acknowledges this and expresses objection to punishing the offender.
- However, this should not apply in cases in which the victim expressed objection to punishing the offender by coercion or fraud of the offender.

#### 3. ACCEPTANCE OF BRIBES AND TAKING IMPROPER ACTION IN THE COURSE OF PERFORMING DUTIES

- This means that the offender accepted bribes before or after he/she took improper actions in the course of performing duties.
- However, when there is a criminal breach of trust regarding improper actions in performing duties and the sentencing guideline on the crime and the multiple offenses are applicable, this factor does not apply.

#### 4. ACTIVE DEMAND OF BRIBE

- Active demand of bribe means one or more of the following factors apply:
  - When the offender demanded money, valuables, or other benefits in a conspicuous manner

- When the offender demanded money and valuables or other benefits by implying that with the exercise of the offender's authority or influence, the offerer or the family member of the offerer will be treated unfairly if money and valuables or other benefits are not offered
- Other cases with comparable factors

## 5. CLOSELY RELATED TO THE DUTIES OF THE OFFENDER

- This means the offender, regardless of their position, had the decision-making authority regarding the demanded conduct of the offerer.

## 6. PUBLIC TRUST IN THE FAIR AND IMPARTIAL PERFORMANCE OF DUTIES IS SIGNIFICANTLY UNDERMINED

- This means one or more of the following factors apply:
  - When the offense significantly undermines social trust in the fair and impartial performance of duties of institutions for which relatively high integrity is required, such as schools, media companies, appraisal and assessment institutions, and enforcement agencies
  - Other cases with comparable factors

# 02<sup>1</sup> OFFER OF BRIBES BY BREACH OF TRUST

## 1. PASSIVE YIELDING TO THE RECIPIENT'S ACTIVE DEMAND OF BRIBE

- This means the offender offers money and valuables or other benefits to meet the recipient's active demand, as stated above in the *Acceptance of Bribes of 4. Active Demand of the Bribe*.

## 2. CONSIDERATION FACTORS FOR THE MOTIVE FOR COMMITTING THE CRIME

- It means one or more of the following factors apply:
  - The offender passively committed the offense in the interest of the company or organization where the offender has belonged under business instructions or pressure
  - The offender passively committed the offense where it was expected that the offerer or the family member of the offerer would be treated unfairly if money and valuables or other benefits are not offered to the recipient by exercising their authority or influence

- Other cases with comparable factors

### **3. AN ACTIVE OFFER OF A BRIBE**

- This means the offender made an active demand with regard to performing the recipient's duties in return, or for money, valuables, or other benefits that the recipient accepted.

### **4. CLOSELY RELATED TO THE DUTIES OF THE OFFENDER**

- This means the offender offers money and valuables or other benefits to a person who has the decision-making authority regarding the demanded conduct.



## ASSESSING PRINCIPLES APPLICABLE TO SENTENCING FACTORS

### 01<sup>1</sup> DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, the court must consider only the special sentencing determinants.
- However, in cases involving more than two special sentencing determinants, the applicable sentencing range is adjusted after assessing the factors as set forth below:
  - ① The same number of conduct factors shall be considered with greater significance than the actor or other factors.
  - ② The same number of conduct factors reciprocally, or the actor, or other factors reciprocally shall be treated as the same.
  - ③ If the sentencing range applicable cannot be determined by the aforementioned principles in ① and ②, the court is to decide the sentencing range by a comprehensive comparison and assessment based on the principles set forth in ① and ②.
- After an assessment, if a greater number of aggravating factors than the mitigating factors exist, then the aggravating zone is recommended when determining the sentencing range. If a greater number of mitigating factors exist, then a mitigating sentencing range is recommended. For other cases, the standard sentencing range is recommended.

### 02<sup>1</sup> DETERMINING THE SENTENCE APPLICABLE

- When determining the sentence, the court shall consider the special and general sentencing determinants that are within the sentencing range assessed according to 1 above comprehensively.

## GENERAL APPLICATION PRINCIPLES

### 01<sup>1</sup> SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- ① When only two or more special aggravating factors apply, or the special sentencing determinant outnumber the special mitigating determinants by two or more, then increase the maximum level of the recommended sentencing range up to  $\frac{1}{2}$ .
- ② When only two or more special mitigating factors apply, or the special sentencing determinant outnumber the special aggravating determinants by two or more, then reduce the minimum level of the recommended sentencing range down to  $\frac{1}{2}$ .

### 02<sup>1</sup> RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE UNDER THE GUIDELINES AND THE APPLICABLE SENTENCING RANGE BY LAW

- When the sentencing range under this guideline conflicts with the range determined according to the aggravation and mitigation of the applicable law, the sentencing range prescribed by the applicable law shall govern.

### 03<sup>1</sup> APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

- When the court declines to apply a permissive mitigating factor under applicable law as listed in this guideline's sentencing table, the factor shall be treated as a discretionary mitigating factor.



## GUIDELINES ON SENTENCING MULTIPLE OFFENSES

### 01<sup>1</sup> APPLICABLE SCOPE

- This section applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act. However, when concurrent crimes under the first part of Article 37 of the Criminal Act involve an offense set forth in the sentencing guidelines, as well as an offense the sentencing guidelines do not cover, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

### 02<sup>1</sup> DETERMINING THE BASE OFFENSE

- The “base offense” indicates the most severe offense that results after selecting the penalty and determining the statutory aggravation and mitigation. However, in cases in which the maximum sentencing range is lower than that of the maximum sentencing range of the other offense as set forth in this guideline, the offense resulting in the concurrent crime becomes the base offense.

### 03<sup>1</sup> DETERMINING THE SENTENCE OF AN OFFENDER CONVICTED OF MULTIPLE OFFENSES OF THE SAME TYPE

- To calculate the sentence of an offender convicted of multiple offenses of the same type among the offer or acceptance of bribes by breach of trust, the court shall apply the following principles:
  - ① In setting the sentencing range, determine the total amount received or offered, and select the sentencing range by considering all relevant factors.
  - ② For cases in which the minimum sentencing range of the other offense is higher than that of the base offense, the minimum sentencing range resulting from the multiple offense should be the minimum sentencing range of the other offense.

- However, for multiple offenders of acceptance of bribes or offer of bribes by breach of trust, apply the sentencing range by calculating the multiple offenders of different offenses as below.

## 04<sup>1</sup> DETERMINING THE SENTENCE OF AN OFFENDER CONVICTED OF MULTIPLE OFFENSES OF THE DIFFERENT TYPE

- To calculate the sentence of an offender convicted of multiple offenses of the different type that is not treated as a single offense under this guideline, the court shall apply the following principles:
  - ① In setting sentencing range for an offender convicted of two offenses, the sentencing range should be the total sum of the maximum sentencing range of the base offense and the  $\frac{1}{2}$  of the maximum sentencing range of the second offense.
  - ② In setting the sentencing range for an offender convicted of three or more offenses, the sentencing range should be the total sum of the following: (1) of the maximum sentencing range of the base offense, sum of  $\frac{1}{2}$  of the maximum sentencing range of the offense with the highest sentencing range, and (2) sum of  $\frac{1}{3}$  of the maximum sentencing range of the remaining count with the second-highest sentencing range.
  - ③ For cases in which the minimum sentencing range of the other offense is higher than that of the base offense, the minimum sentencing range resulting from the multiple offense should be the minimum sentencing range of the other offense.
- However, in cases in which an offender convicted acceptance or offer of bribes by breach of trust of the same type, first set the sentencing range for multiple conviction of the same offense, and then use the resulted point range to calculate the sentencing range for multiple conviction of different offenses.

## PART B — GUIDELINE ON SUSPENDING A SENTENCE

### 01<sup>1</sup> ACCEPTANCE OF BRIBES BY BREACH OF TRUST

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> <li>Engaging in the conduct in return for accepting the bribe which constitutes illegal or wrongful performance of duties</li> <li>Active demand of bribe</li> </ul>	<ul style="list-style-type: none"> <li>Cases where the extent of the offender's participation and the actual gain is exceptionally insignificant</li> <li>Money and valuables, or gains returned before the commencement of an investigation</li> <li>Victim (who entrusted the offender with business) who expressed that they do not want the offender punished</li> <li>Expressing significant remorse (<i>e.g.</i>, voluntary surrender to investigative agencies, confession, internal whistleblowing, etc.)</li> </ul>
General Consideration Factor	<ul style="list-style-type: none"> <li>A prior criminal history of the same offense</li> <li>Accepting the money and valuables or other benefits prolonged for more than two years</li> <li>Closely related to the duties of the offender</li> <li>Cases where public trust in fairness and publicness of duties undermined significantly due to the offense</li> <li>Active participation as an accomplice</li> <li>Concealing or destroying or evidence or attempting to conceal or destroy evidence after the commission of the offense</li> </ul>	<ul style="list-style-type: none"> <li>A faithful long-term serving of duties</li> <li>No criminal history of the suspension of the sentence or imposing of other sentences more severe</li> <li>Cases of aging offenders</li> <li>Cases of physically ill offenders</li> <li>Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member</li> <li>Strongly-established social ties</li> </ul>

## 02<sup>1</sup> OFFER OF BRIBES BY BREACH OF TRUST

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> <li>• An active offer of bribes</li> <li>• A prior criminal history of the same offense (suspension of a sentence of the penalty within ten years) exists</li> </ul>	<ul style="list-style-type: none"> <li>• When the offender passively yielding to the recipient's active demand of money or valuables</li> <li>• Cases where special considerations can be taken into account for engaging in the offense</li> <li>• Express significant remorse (<i>e.g.</i>, voluntary surrender to investigative agencies, confession, internal whistleblowing, etc.)</li> </ul>
General Consideration of Factor	<ul style="list-style-type: none"> <li>• Closely related to the duties of the offender</li> <li>• Cases where public trust in fairness and publicness of duties undermined significantly due to the offense</li> <li>• Active participation as an accomplice</li> <li>• Concealing or destroying evidence or attempting to conceal or destroy the evidence after the commission of the offense</li> </ul>	<ul style="list-style-type: none"> <li>• Passive participation</li> <li>• No criminal history of the suspension of the sentence or imposing of other sentences more severe</li> <li>• Cases of elderly offenders</li> <li>• Passive participation as an accomplice</li> <li>• Cases of physically ill offenders</li> <li>• Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member</li> <li>• Strongly-established social ties</li> </ul>



## DEFINITIONS OF FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In cases in which the factors to consider in suspending a sentence and the sentencing factors are identical, refer to the definitions set forth in the *Definition of Sentencing Factors*.
- Determining Criminal History
  - Prior criminal history is calculated as follows: In cases that involve a suspension of the sentence, the prior criminal history is calculated from the date the defendant's suspension of the sentence was affirmed until the date of the commission of the offense. In cases that impose imprisonment, the prior criminal history is calculated from the final date the sentence was completed until the date the offense was committed.

## ASSESSING PRINCIPLES APPLICABLE TO THE FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In deciding whether the suspension of a sentence is appropriate in cases in which imprisonment is imposed, the court should give the primary consideration factor greater importance than the general consideration factors. The following principles should be considered:
  - ① In cases in which only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factors by two or more, it is recommended to suspend the sentence.
  - ② In cases in which only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factor by two or more, suspension of the sentence is recommended.
  - ③ In cases in which ① or ② apply, but the difference between the number of general adverse (affirmative) factors and general affirmative (adverse) factors is greater than the difference between the number of primary affirmative (adverse) factors and primary adverse (affirmative) factors, or in cases other than ① or ②, the court shall decide whether to suspend the sentence after comparing and assessing the factors listed under the suspension of the sentence section comprehensively.