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Chapter 5

Crimes of Embezzlement and Breach of Trust

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Embezzlement (Criminal Act, Article 355, paragraph 1), Breach of Trust (Criminal Act, Article 355, paragraph 2), Occupational Embezzlement and Breach of Trust in the Conduct of Business (Criminal Act, Article 356), and Embezzlement and Breach of Trust under the Specific Economic Crime Act (Specific Economic Crime Act, Article 3, paragraph 1).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less Than 100 Million Won	- 10 mos.	4 mos. - 1 yr. 4 mos.	10 mos. - 2 yrs. 6 mos.
2	More Than 100 Million Won, but Less Than 500 Million Won	6 mos. - 2 yrs.	1 yr. - 3 yrs.	2 yrs. - 5 yrs.
3	More Than 500 Million Won, but Less Than 5 Billion Won	1 yr. 6 mos. - 3 yrs.	2 yrs. - 5 yrs.	3 yrs. - 6 yrs.
4	More Than 5 Billion Won, but Less Than 30 Billion Won	2 yrs. 6 mos. - 5 yrs.	4 yrs. - 7 yrs.	5 yrs. - 8 yrs.
5	More Than 30 Billion Won	4 yrs. - 7 yrs.	5 yrs. - 8 yrs.	7 yrs. - 11 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Offender's passive participation resulting from outside pressure Damages actualized by offense were relatively small Under single-ownership or a family-owned business Offense committed for the sole benefit of the company Minor violation of duties 	<ul style="list-style-type: none"> Inflicting multiple victims including employees, shareholders, or creditors, or inflicting serious harm to the victim Deliberate concealment of profits gained from the offense Particularly malicious commission of the offense Instigating the subordinate person to commit the offense
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> Those with hearing and visual impairments Those with mental incapacity (cases where the offender cannot be held liable) 	<ul style="list-style-type: none"> Repeated offenses of the same type under the Criminal Act



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
		<ul style="list-style-type: none"> • Voluntary surrender to investigative agencies or cases of whistleblowing of corruption • Offender expresses remorse, and the victim opposes punishment, or the substantial portion of the harm was reversed 	
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Offense committed for basic living expenses, hospital expenses, and the like • Cases where the offender failed to consume or retain most of the profit from the crime • Offender's passive participation • Non-occupational crime (involving embezzlement or breach of trust cases) • Major shareholder of the affected company 	<ul style="list-style-type: none"> • Promise or acceptance of benefit in exchange for the commission of the offense • Offense committed with a purpose to reinforce control or the secure position within the company • Embezzlement offenses
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • Those with mental incapacity (these are cases where the offender can be held liable) • Expresses sincere remorse • No prior criminal history 	<ul style="list-style-type: none"> • Destroying evidence or attempting to conceal the evidence after the commission of the offense • Different type of repeated offenses under the Criminal Act that do not constitute as a repeated offense under the Aggravated Punishment Act or the Special Violent Crime Act, and the criminal history of imprisonment by the same type of offense, or a crime of violence that do not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)

DEFINITION OF OFFENSES

01 | TYPE 1

- This means where the amount of profit involved does not exceed 100 million won.
- “Profit” means the offender or the third party, through the assistance of the offender, has acquired property or financial gain by the commission of the offense (This definition applies throughout this guideline).

02 | TYPE 2

- This indicates cases in which the amount of a profit involved exceeds 100 million won but is less than 500 million won.

03 | TYPE 3

- This indicates cases in which the amount of a profit involved exceeds 500 million won but is less than 5 billion won.

04 | TYPE 4

- This indicates cases in which the amount of a profit involved exceeds 5 billion won but is less than 30 billion won.

05 | TYPE 5

- This indicates cases in which the amount of a profit involved exceeds 30 billion won.



DEFINITION OF SENTENCING FACTORS

01¹ DAMAGES ACTUALIZED BY OFFENSE WERE RELATIVELY SMALL

- This indicates cases in which less than $\frac{1}{3}$ of the potential damage actualized through the offense.

02¹ UNDER SINGLE-OWNERSHIP OR A FAMILY-OWNED BUSINESS

- This indicates cases in which the company subject of the offense is under single ownership or a family-owned business.
- However, this does not apply in cases involving one or more factors set forth below:
 - When an adversely affected third party (such as a creditor) as a result of the offense is involved
 - When a petition from a shareholder family member is involved

03¹ OFFENSE COMMITTED FOR THE SOLE BENEFIT OF THE COMPANY

- This indicates cases in which the offense was committed for the sole benefit of the company and not for personal interests and involves cases where one or more following factors apply:
 - When the offender provided unlawful aid to an affiliate company for the purpose of preventing bankruptcy
 - When the damage upon the company was a result of reckless investment
 - Where the offender caused excessive debt to the company in the course of merger and acquisition
 - Other cases with comparable factors

04¹ MINOR VIOLATION OF DUTIES

- This indicates cases in which one or more following factors apply:
 - When an employee of a financial institution, without an exchange for a benefit, provides loans without properly checking the debtor's repaying abilities or violates the internal policies to provide convenience to the debtor
 - When refusing to return the property held in possession
 - When the offender improperly disposed of the property, which exceeded the entrusted purpose, but the offender has the intent to reimburse the property and is capable thereof
 - When the offense was not clearly recognized as prohibited conduct by prior case law or through generally accepted legal principles, or in cases in which changes to prior case law caused the conduct to be recognized as a prohibited offense
 - Other cases with comparable factors

05¹ INFLICTING SERIOUS HARM TO THE VICTIM

- This indicates cases in which one or more following factors apply:
 - Financial or management crisis of the company as a result of the offense
 - Collapse of company's stocks due to a damaged reputation as a result of the offense
 - Multiple bankruptcies induced as a result of the offense
 - Victims suffers from losses of nearly all assets due to the offense
 - Shareholders, employees, and creditors of the company (such as offense committed with impending bankruptcy) as well as the company is significantly adversely affected as a result of the offense
 - Other cases with comparable factors

06¹ DELIBERATE CONCEALMENT OF PROFITS GAINED FROM THE OFFENSE

- This means profits from the offense were deliberately concealed by the offender, thereby causing delayed damage recovery or absence of recovery.

07¹ PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This indicates cases in which one or more following factors apply:
 - The means and methods for the commission of the offense was meticulously done in-advance
 - There were multiple persons involved in an organized manner for the purpose of committing the offense
 - The use of the scope of employment as professionals involved in business such as finance, stock markets, trading, accounting
 - Methods such as falsifying accounts, engaging in fraudulent accounting, forgery of documents used in the commission of the offense
 - Using highly intelligent schemes to commit the offense
 - Using new professional schemes previously unknown
 - Deliberately evading responsibilities prescribed under the law to commit the offense
 - Other cases with comparable factors

08¹ CASES OF WHISTLEBLOWING OF CORRUPTION

- This means the investigation was initiated with a voluntary report by a former participant of structural corruption with the intent to end the offense.

09¹ SUBSTANTIAL PORTION OF THE DAMAGE WAS REVERSED

- This means more than $\frac{2}{3}$ of the caused damage has been reversed or will be reversed with certainty.

ASSESSING PRINCIPLES APPLICABLE TO SENTENCING FACTORS

01¹ 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. However, the victim or the victim's family member opposing the punishment of the offender can match the conduct determinant.
 - 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.

02¹ DETERMINING THE SENTENCE APPLICABLE

- In determining the sentence, the court should consider comprehensively both the general and special sentencing determinants that are within the sentencing range as assessed under above 1.



GENERAL APPLICATION PRINCIPLES

01¹ 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 $\frac{1}{2}$.

02¹ 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.

03¹ 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 | 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 | 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 offense as set forth in this guideline, the offense resulting in the concurrent crime becomes the base offense.

03 | 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, the court shall apply the following:
 - ① In setting the sentencing range, determine the total amount of profit gained from the embezzlement or the breach of trust, and select the sentencing range by considering all relevant factors.

- ② However, after the total summation, when the applicable offense type is one level higher than the most severe single offense, then a reduction of $\frac{1}{3}$ is made to the minimum sentencing range. When the applicable offense type is two or more levels higher than the most severe single offense, a reduction of $\frac{1}{2}$ is made to the minimum sentencing range by applying the minimum sentencing range of the most severe single offense.

04 ¹ 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 the 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 of multiple offenses of embezzlement or 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

CLASSIFICATION		ADVERSE	AFFIRMATIVE
Primary Consideration Factor	Risk of Recidivism, etc.	<ul style="list-style-type: none"> • A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years or there were more than three incidents of fines) exists • Deliberate concealment of profits gained from the offense • Particularly malicious commission of the offense 	<ul style="list-style-type: none"> • Offender's passive participation resulting from outside pressure • Minor violation of duties • Voluntary surrender to investigative agencies or cases of whistleblowing of corruption
	Other Factors	<ul style="list-style-type: none"> • Absence of agreement with the victim • Cases where the actual damage is substantial • Inflicting serious damages to the victim 	<ul style="list-style-type: none"> • Substantial portion of the damages reversed • Under single-ownership or a family-owned business • Cases where the actual damage is slight • Offender expresses remorse, and the victim opposes punishment
General Consideration Factor	Risk of Recidivism, etc.	<ul style="list-style-type: none"> • Criminal history of the same offense, more than two incidents of suspension of a sentence or more severe punishment • Repeated crimes • Condemnable motives • Lack of social ties • Absence of remorse 	<ul style="list-style-type: none"> • Offense committed for basic living expenses, hospital expenses and the like • Strongly established social ties • Expresses sincere remorse • No criminal history of the suspension of a sentence or imposing of a more severe sentences • Motive or participation in crime can be taken into special consideration • Cases of elderly offenders
	Other Factors	<ul style="list-style-type: none"> • Active participation as an accomplice • Inflicting multiple victims including employees, shareholders, or creditors 	<ul style="list-style-type: none"> • Offender's passive participation as an accomplice • Cases where the offender failed to consume or retain most of the profit from the crime



CLASSIFICATION		ADVERSE	AFFIRMATIVE
		<ul style="list-style-type: none">• Promise or acceptance of benefit in exchange for the commission of the crime• Destroying evidence or attempting to conceal evidence after the commission of the crime• Offense committed with the purpose to reinforce control or to secure position within the company• Absence of efforts to reverse damages	<ul style="list-style-type: none">• A significant amount of money was deposited with the depository, a portion of the damage was reversed, or there were genuine efforts to reverse the harm• Damages actualized by offense were relatively small• Offense committed for the sole benefit of the company• Cases of physically ill offenders• Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member• Major shareholder of the affected company

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.
- Cases where the actual damage is substantial
 - This indicates cases in which the offense does not constitute serious harm to the victim, but the total unrecovered damages are more than 300 million won.
 - However, in determining whether to suspend a sentence, this indicates cases in which the total unrecovered damages are more than 500 million won.
- Cases where the actual damage is slight
 - This means cases in which the total unrecovered damages are less than 20 million won.
 - However, for imposing imprisonment, this indicates cases in which the total unrecovered damages are less than 50 million won.



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 two or more primary adverse factors exist or when the primary adverse factors outnumber the primary affirmative factor by two or more, imprisonment 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 sentence section comprehensively.