CHAPTER 10

Crimes of Bribery

- Promulgated on April 24, 2009. Effective on July 1, 2009.
- Amended on April 24, 2023. Effective on July 1, 2023.

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Acceptance of a Bribe (Criminal Act, Article 129, paragraph 1), Acceptance of a Bribe in Advance (Criminal Act, Article 129, paragraph 2), Improper Conduct After Acceptance of a Bribe (Criminal Act, Article 131, paragraph 1), Acceptance of a Bribe After Improper Conduct (Criminal Act, Article 131, paragraph 2, paragraph 3), Acceptance of a Bribe under Act on the Aggravated Punishment of Specific Crimes (Act on the Aggravated Punishment of Specific Crimes, Article 2, paragraph 1), Offering Bribes (Criminal Act, Article 133, paragraph 1) or Third Party Bribery (Criminal Act, Article 133, paragraph 2).

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

1 ACCEPTANCE OF A BRIBE

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 10 million	– 6 mos.	4 mos. – 1 yr.	8 mos. – 2 yrs.
2	10 million or more, but less than 30 million	8 mos. – 2 yrs.	1 yr. – 3 yrs.	2 yrs. – 4 yrs.
3	30 million or more, but less than 50 million	2 yrs. 6 mos. – 4 yrs.	3 yrs. – 5 yrs.	4 yrs. – 6 yrs.
4	50 million or more, but less than 100 million	3 yrs. 6 mos. – 6 yrs.	5 yrs. – 7 yrs.	6 yrs. – 8 yrs.
5	100 million or more, but less than 500 million	5 yrs. – 8 yrs.	7 yrs. – 10 yrs.	9 yrs. – 12 yrs.
6	500 million or more	7 yrs. – 10 yrs.	9 yrs. – 12 yrs.	11 yrs. or more, or life imprisonment

(unit: KRW)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases where the extent of the offender's participation and the actual gain is exceptionally minor • Cases where the offender is a candidate for a public official or an arbitrator • Cases where the offense ended only with a demand or a promise to accept the bribe	• Engaging in improper conduct related to bribe • Active demand of bribe • Instigating the subordinate to commit the offense
	Offender /Etc.	• Hearing and/or speech disabilities • Bribe was returned before the commencement of an investigation • Diminished mental capacity • Voluntary surrender to investigative authorities, internal whistle-blowing	• Repeated offenses within the recidivism period

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factor	Conduct	• Cases where the extent of the offender's participation and the actual gain is minor • Cases where the offender is deemed as public official under the Act on the Aggravated Punishment of Specific Crimes, Article 4	• Commission of the offense prolonged for more than two years • Closely related to the duties of the offender
	Offender /Etc.	• Sincere remorse • No prior criminal convictions	• Offender is a Grade 3 or higher public official • Prior convictions for same-offenses not within the statutory recidivism period, or prior disciplinary record for the similar type of misconduct

2 OFFER OF A BRIBE

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 30 million	– 6 mos.	4 mos. – 10 mos.	6 mos. – 1 yr. 6 mos.
2	30 million or more, but less than 50 million	6 mos. – 1 yr.	10 mos. – 1 yr. 6 mos.	1 yr. – 3 yrs.
3	50 million or more, but less than 100 million	1 yr. – 2 yrs.	1 yr. 6 mos. – 2 yrs. 6 mos.	2 yrs. – 4 yrs.
4	100 million or more	2 yrs. – 3 yrs.	2 yrs. 6 mos. – 3 yrs. 6 mos.	3 yrs. – 5 yrs.

(unit: KRW)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Offering bribes to a person who is a candidate for a public official or an arbitrator position • Passive yielding to the recipient's active demand of bribe • Cases where the offense ended only with a promise or expression of intent to offer the bribe	• Active offer of a bribe • Engaging in conduct in return for the bribe that constitutes an illegal or wrongful performance of duties • Instigating the subordinate person to commit the offense
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity • Voluntary surrender to investigative authorities, internal whistle-blowing	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Minor participation • Delivery of a bribe • Cases where the offender is deemed as public official under the Aggravated Punishment Act, Article 4	• Closely related to the duties of the offender
	Offender /Etc.	• Sincere remorse • No prior criminal convictions	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense which do not constitute statutory recidivism

DEFINITION OF OFFENSES

1 ACCEPTANCE OF A BRIBE

1. TYPE 1

- This indicates cases in which the amount of bribe involved is less than 10 million KRW.
- The 'amount of the bribe' indicates the monetary value of the bribe received, demanded, or promised to accept (the same applies hereinafter).

2. TYPE 2

- This indicates cases in which the amount of a bribe involved is 10 million KRW or more but is less than 30 million KRW.

3. TYPE 3

- This indicates cases in which the amount of a bribe involved is 30 million KRW or more but is less than 50 million KRW.

4. TYPE 4

- This indicates cases in which the amount of a bribe involved is 50 million KRW or more but is less than 100 million KRW.

5. TYPE 5

- This indicates cases in which the amount of a bribe involved is 100 million KRW or more but is less than 500 million KRW.

6. TYPE 6

- This indicates cases in which the amount of a bribe involved is 500 million KRW or more.

2 OFFER OF A BRIBE

1. TYPE 1

- This means cases in which the amount of a bribe involved is less than 30 million KRW.
- The 'amount of the bribe' indicates the monetary value of the bribe offered, promised to offer, or expressed to offer (the same applies hereinafter).

2. TYPE 2

- This means cases in which the amount of a bribe involved is 30 million KRW or more but is less than 50 million KRW.

3. TYPE 3

- This means cases in which the amount of a bribe involved is 50 million KRW or more but is less than 100 million KRW.

4. TYPE 4

- This means cases in which the amount of a bribe involved is 100 million KRW or more.

DEFINITION OF SENTENCING FACTORS

1 ACCEPTANCE OF A BRIBE[1)]

1. ENGAGING IN IMPROPER CONDUCTS RELATED TO BRIBE

- This refers to cases of improper conduct after accepting a bribe or accepting a bribe after engaging in improper conduct.

2. ACTIVE DEMAND OF BRIBE

- This applies where one or more of the following are present:
  - When the offender demanded bribery in a conspicuous manner
  - When the offender demanded bribery by implying that with the exercise of the offender's authority or influence, the briber or the family member of the briber will be mistreated if the bribe is not offered
  - Other cases with comparable factors

3. BRIBE WAS RETURNED BEFORE THE COMMENCEMENT OF AN INVESTIGATION

- This means the offender voluntarily returned the bribe to the briber before the investigative agency began its investigation.
- However, this excludes cases in which the offender attempted to conceal the offense after returning the bribe.

4. CASES OF WHISTLE-BLOWING 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.

5. CLOSELY RELATED TO THE DUTIES OF THE OFFENDER

- This means the offender, regardless of their position, had the *de facto* decision-making authority regarding the demanded conduct of the briber.

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1) Sentencing factors with the same designation that apply to Offering Bribes have the same definition unless defined otherwise.

6. SINCERE REMORSE

- This indicates cases in which, after examining and assessing the specific circumstances surrounding the offender's admission of the offense and any voluntary efforts made toward victim restitution and/or the prevention of re-offending, the offender is deemed to show genuine remorse for the offense.

7. NO PRIOR CRIMINAL CONVICTIONS

- This indicates cases in which, the defendant has never committed a crime even once prior to the relevant offense. However, this excludes cases where crimes were committed repeatedly over a prolonged period.

2 OFFER OF A BRIBE

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

- This means the offender offers a bribe to meet the recipient's active demand as stated above in the Acceptance of a Bribe (Section 1, item 2, Active Demand of the Bribe).

2. ACTIVE OFFER OF A BRIBE

- This means the offender, in offering a bribe to the recipient, made an active solicitation or demand regarding the recipient's duties.

3. DELIVERY OF A BRIBE

- This means the offender delivers money or the valuables to a third person as a bribe or when the third person knowingly receives the offered money or the valuables.

4. CLOSELY RELATED TO THE DUTIES OF THE OFFENDER

- This means the offender offers a bribe to a person who has the *de facto* decision-making authority regarding the demanded conduct.

PRINCIPLES APPLICABLE TO SENTENCING FACTORS

1 DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, judges must consider only the Special Sentencing Factors.
- However, where multiple Special Sentencing Factors are present, the applicable sentencing range shall be determined after assessing the factors in accordance with the following principles:
  - ❶ Greater weight is accorded to Conduct Factors than to Offender/Etc. Factors of equal number.
  - ❷ Conduct Factors *inter se*, and Offender/Etc. Factors *inter se*, shall be treated as equivalent.
  - ❸ If the sentencing range applicable cannot be determined by the aforementioned principles in ❶ and ❷, judges are to decide the sentencing range by a comprehensive comparison and assessment of Special Sentencing Factors based on the principles set forth in ❶ and ❷.
- After the assessment of sentencing factors, where aggravating factors outweigh mitigating factors, the aggravating sentencing range is recommended; where mitigating factors outweigh aggravating factors, the mitigating sentencing range is recommended; and in all other cases, the standard sentencing range is recommended.

2 DETERMINING THE SENTENCE TO BE IMPOSED

- The sentence to be imposed shall be determined within the sentencing range established under paragraph 1 above, by comprehensively taking into account both General Sentencing Factors and Special Sentencing Factors.
- Where the upper limit of the sentencing range under the sentencing guidelines exceeds 25 years, life imprisonment may be imposed.[2)]

GENERAL APPLICATION PRINCIPLES

1 SPECIAL ADJUSTMENTS TO THE RECOMMENDED SENTENCING RANGE

❶ After the assessment of Special Sentencing Factors, if a case falls within the Aggravating Sentencing Range and either i) two or more Special Aggravating Factors exist alone, or ii) Special Aggravating Factors outnumber Special Mitigating Factors by two or more, the upper limit of the recommended sentencing range may be increased by up to 1/2.[3] If the resulting upper limit exceeds 25 years, life imprisonment may be imposed.

❷ After the assessment of Special Sentencing Factors, if a case falls within the Mitigating Sentencing Range and either i) two or more Special Mitigating Factors exist alone, or ii) Special Mitigating Factors outnumber Special Aggravating Factors by two or more, the lower limit of the recommended sentencing range may be reduced by up to 1/2.

2 RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE UNDER THE SENTENCING GUIDELINES AND THE APPLICABLE SENTENCING RANGE BY LAW

- Where the sentencing range recommended under this guideline conflicts with the statutory applicable aggravated/mitigated sentencing range, the upper or lower limit of the applicable sentencing range by law shall govern.

3 APPLICATION OF DISCRETIONARY MITIGATING FACTORS BY LAW

- Where a judge declines to apply discretionary statutory mitigating factors listed in the Sentencing Factor Table of this guideline, such factors shall be considered as extenuating circumstances among mitigating factors.

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[2] Added on April 15, 2011
[3] Amended on April 15, 2011

GUIDELINES ON SENTENCING MULTIPLE OFFENSES

1 APPLICABLE RANGE

- 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 include both an offense set forth in the sentencing guidelines and an offense not covered by the sentencing guidelines, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

2 DETERMINING THE BASE OFFENSE

- The "base offense" refers to the offense subject to the most severe punishment after selecting the type of punishment and applying any statutory aggravation and/or mitigation thereto. However, where the upper end of the sentencing range under the sentencing guidelines for an offense covered by this chapter is lower than the upper end of the sentencing range under the sentencing guidelines for the other concurrent offense, the other concurrent offense shall become the base offense.

3 DETERMINING THE SENTENCING RANGE FOR THE CONCURRENT MULTIPLE SAME-OFFENSES

- For concurrent same-offenses the following method of aggravation for multiple offenses shall apply.
  - ❶ The Type of offense shall be determined based on the total amount of bribe accepted, demanded, promised to accept or offered, promised to offer, expressed the intent to offer. Within that Type, the sentencing range shall be selected by the judges taking into account all relevant circumstances.

❷ (1) Where the aggregation of total amount of bribe results in an offense Type one level higher than that of the most severe single offense among offenses of the same Type, the lower end of the sentencing range shall be reduced by 1/3. (2) Where the aggregation of total amount of bribe results in an offense Type two levels or more higher than that of the most severe single offense, the lower end of the sentencing range shall be reduced by 1/2. However, the reduced lower end of the sentencing range shall not fall below the lower end of the sentencing range of the offense Type applicable to the most severe single offense.[4)]

4 DETERMINING THE SENTENCING RANGE FOR THE CONCURRENT MULTIPLE DIFFERENT-OFFENSES

- Except for concurrent different-offense that are treated as a single offense under the sentencing guidelines, the following method of aggravation for multiple offenses shall apply.

  ❶ The sentencing range for multiple offenses involving two offenses shall be determined by adding 1/2 of the upper end of the sentencing range of the other offense to the upper end of the sentencing range of the base offense.

  ❷ For multiple offenses involving three or more offenses, the upper end of the sentencing range shall be determined by adding the following three figures: (1) the upper end of the sentencing range of the base offense, (2) 1/2 of the upper end of the sentencing range of the offense with the highest upper end of the sentencing range among the other offenses, and (3) 1/3 of the upper end of the sentencing range of the offense with the second highest upper end of the sentencing range among the other offenses.

  ❸ For multiple offenses where the lower end of the sentencing range of the other offense is higher than the lower end of the sentencing range of the base offense, the lower end of the sentencing range after applying the method of aggravation for multiple offenses shall be the lower end of the sentencing range of the other offense.

4) Amended on April 15, 2011

- However, where the multiple offenses include concurrent same-offenses of the Bribery, the sentencing range shall first be determined in accordance with 'Determining the Sentencing Range for Concurrent Same-Offenses', and the aggravation method for Different-Offense set out above shall then be applied to the sentencing range determined.

PART B

GUIDELINE ON SUSPENDING A SENTENCE

1 ACCEPTANCE OF A BRIBE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstances	• Active demand of bribe • Engaging in conduct in return for the bribe which constitutes illegal or wrongful performance of duties	• Cases where the amount of bribe involved is less than 10 million • Expresses substantial penitence (including voluntary surrender, confessions, whistle-blowing, and the like)
General Circumstances	• Commission of the offense prolonged for two years or more • Offender is a Grade 3 or higher public official • Prior convictions for same-offenses and prior disciplinary record for the similar type of misconduct • Post-offense evidence tampering or attempt to destroy or conceal evidence • Engaging in improper conduct related to bribe	• Offender's minor participation as a co-offender • Bribe returned before the commencement of an investigation • Faithful long-term serving of duties • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members • No prior criminal convictions

(unit: KRW)

▷ Circumstances not to be considered:

❶ Loss of position or damage to one's reputation

❷ Confiscation of improper gains

❸ Disciplinary actions concerning the offense

2 OFFER OF A BRIBE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstances	• Cases where the amount of bribe involved is 50 million or more • Prior convictions for the same-offenses (suspended sentence of imprisonment without labor or a more severe punishment imposed within the past ten years) • Active offer of a bribe • Engaging in conduct in return for the bribe which constitutes illegal or wrongful performance of duties	• Cases where the amount of bribe involved is less than 10 million • Minor participation (*e.g.,* following superior's instructions, etc.) • Passive yielding to the recipient's active demand of a bribe • Expresses substantial penitence (including voluntary surrender, confessions, whistle-blowing, and the like)
General Circumstances	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Offering a bribe to a Grade 3 or higher public official • Offering bribe concerning significant benefits • Post-offense evidence tampering or attempt to destroy or conceal evidence • Lack of social/family ties • Prolonged duration of an offering of bribe	• No prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members

(unit: KRW)

DEFINITIONS OF CIRCUMSTANCES TO CONSIDER WHEN SUSPENDING A SENTENCE

- For identical factors in both Sentencing Factors and the Circumstances for Suspending a Sentence, refer to the definitions set forth in the Definition of Sentencing Factors.
- Calculation of the Period of Prior Criminal Convictions
  - For cases where a suspended sentence of imprisonment was imposed, the period of a prior conviction is calculated from the date on which the judgment became final to the date of the commission of the offense.
  - For cases where a sentence of imprisonment was executed, the period of a prior conviction is calculated from the date on which the sentence was fully served to the date of the commission of the offense.
- Faithful Long-Term Serving of Duties
  - This means cases in which the offender has faithfully performed the duties of a public official or as an arbitrator for 20 years or more without receiving any disciplinary action or criminal conviction.

PRINCIPLES APPLICABLE TO CIRCUMSTANCES WHEN SUSPENDING A SENTENCE

- When the recommended sentence is imprisonment with labor and judges decide to suspend execution of the sentence, they must give greater weight to the Primary Circumstances than to the General Circumstances, and the following principles should be considered:

  ❶ When two or more Primary Affirmative Circumstances exist alone, or when Primary Affirmative Circumstances outnumber Primary Adverse Circumstances by two or more, it is recommended to suspend the sentence.

  ❷ When two or more Primary Adverse Circumstances exist alone, or when Primary Adverse Circumstances outnumber Primary Affirmative Circumstances by two or more, imprisonment is recommended.

  ❸ In cases in which ❶ or ❷ apply, but the difference between the number of General Adverse (Affirmative) Circumstances and General Affirmative (Adverse) Circumstances is greater than the difference between the number of Primary Affirmative (Adverse) Circumstances and Primary Adverse (Affirmative) Circumstances, or in cases other than ❶ or ❷, the judges shall decide whether to suspend the sentence after comparing and assessing all the Circumstances comprehensively.[5)]

5) Amended on April 15, 2011