CHAPTER 11

# Crimes Related to the Credit Business Act · Debt Collection Act

- Promulgated on April 10, 2017. Effective on July 1, 2017.
- Amended on December 6, 2021. Effective on March 1, 2022.
- Amended on April 24, 2023. Effective on July 1, 2023.
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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses violating Act on Registration of Credit Business, etc. and Protection of Finance Users (hereinafter 'Credit Business Act'), Article 19, paragraph 1, subparagraph 1 (Unregistered Credit Service Provider, etc.), the Credit Business Act, Article 19, paragraph 2, subparagraph 3 (Violation of the Restriction on Interest Rate), Credit Business Act, Article 19, paragraph 2, subparagraph 6 (Receiving Brokerage Commission etc.; this applies only to violations of Article 11-2, paragraph 2), Fair Debt Collection Practices Act, Article 15, paragraph 1 (Violence, Threats, etc.), and the Fair Debt Collection Practices Act, Article 15, paragraph 2, subparagraph 2 (Paying Visits, Telephoning, etc. Repeatedly or at Nighttime; this applies only to the Violations of the Article 9, subparagraph 2 and 3).

※ Note that the underlined provisions applied to certain crimes were deleted or amended following the statutory revisions made after the sentencing guidelines were established. The sentencing guidelines on those crimes will be revised later. For this reason, all or part of the current standards of sentencing would not be applied.

PART A

# TYPES OF OFFENSES AND SENTENCING RANGE

## 1 VIOLATIONS OF THE CREDIT BUSINESS ACT

| TYPE | CLASSIFICATION | MITIGATED SENTENCING RANGE | STANDARD SENTENCING RANGE | AGGRAVATED SENTENCING RANGE |
|---|---|---|---|---|
| 1 | Violation of the Restriction on the Interest Rates and others · Receiving Brokerage Commission, and others | – 6 mos. | 4 mos. – 10 mos. | 8 mos. – 2 yrs. |
| 2 | Unregistered Credit Service Provider, etc. | – 10 mos. | 6 mos. – 1 yr. 6 mos. | 1 yr. – 4 yrs. |

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|---|---|---|---|
| Special Sentencing Factor | Conduct | • Cases with special extenuating circumstances that mitigate the offender's involvement<br>• Minor degree of violation of the law | • Highly egregious conducts or methods<br>• A large amount of profits gained from the offense or the scale of business is large<br>• Instigating the subordinate to commit the crime |
| | Offender/ Etc. | • Hearing and/or speech disabilities<br>• Diminished mental capacity (without fault)<br>• Voluntary surrender to investigative authorities, internal whistle-blowing | • Same-offense recidivism within the statutory recidivism period (including violations of the Fair Debt Collection Practices Act) |

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|---|---|---|---|
| General Sentencing Factor | Conduct | • Cases where profits gained from the offense is minor<br>• Minor participation | • Attracting by using advertisement or media with high-dissemination<br>• Deliberate concealment of profits gained from the offense |
| | Offender/ Etc. | • Diminished mental capacity (with fault)<br>• Sincere remorse<br>• No prior criminal convictions | • Post-offense evidence tampering or attempt to destroy or conceal evidence<br>• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense, resulting in imprisonment which do not constitute statutory recidivism (within ten years after the completion of the sentence) |

## 2 VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

| TYPE | CLASSIFICATION | MITIGATED SENTENCING RANGE | STANDARD SENTENCING RANGE | AGGRAVATED SENTENCING RANGE |
|---|---|---|---|---|
| 1 | Paying Visits, Nighttime Visits, or Telephoning Repeatedly | - 6 mos. | 4 mos. - 10 mos. | 6 mos. - 2 yrs. |
| 2 | Violence, Threats, or Others | - 8 mos. | 6 mos. - 1 yr. 6 mos. | 10 mos. - 3 yrs. 6 mos. |

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|---|---|---|---|
| Special Sentencing Factor | Conduct | • Minor degree of assault, threat, arrest, confinement, deception, or force (Type 2)<br>• Cases with special extenuating circumstances that mitigate the offender's involvement | • Highly egregious conducts or methods<br>• Where the offense was committed against multiple victims, or was repeatedly committed over a prolonged period<br>• Vulnerable victims<br>• Instigating the subordinate to commit the crime |
| | Offender/ Etc. | • Hearing and/or speech disabilities<br>• Diminished mental capacity (without fault)<br>• Voluntary surrender to investigative authorities, or internal whistle-blowing<br>• Victim expresses intent of non-punishment or substantial restitution was made to the victim | • Same-offense recidivism within the statutory recidivism period (including violations of the Credit Business Act) |
| General Sentencing Factor | Conduct | • Cases where the offender failed to consume or retain most of the profit from the crime (Type 2)<br>• Minor participation | • Deliberate concealment of profits gained from the offense (Type 2) |
| | Offender/ Etc. | • Diminished mental capacity (with fault)<br>• Sincere remorse<br>• No prior criminal convictions<br>• Considerable restitution | • Post-offense evidence tampering or attempt to destroy or conceal evidence<br>• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense or a crime of violence resulting in imprisonment that do not constitute statutory recidivism (within ten years after the completion of the sentence)<br>• Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established) |

# DEFINITION OF OFFENSES

## 1 VIOLATIONS OF THE CREDIT BUSINESS ACT

### 1. TYPE 1 — VIOLATION OF THE RESTRICTION ON INTEREST RATE/RECEIVING BROKERAGE COMMISSION ETC.

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law.

| ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|
| A person who Charged Higher Interest Rate than the Interest Rate Prescribed in Credit Business Act, Article 8, or Article 11, paragraph 1 | Credit Business Act, Article 19, paragraph 2, subparagraph 3 |
| A person who Received Brokerage Commission, in violation of Article 11-2, paragraph 2 | Credit Business Act, Article 19, paragraph 2, subparagraph 6 |

### 2. TYPE 2 — UNREGISTERED CREDIT SERVICE PROVIDER ETC.

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law.

| ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|
| A person who Engaged in Credit Business Without Registration or Renewal of Registration, in Violation of Credit Business Act, Article 3 or 3-2 | Credit Business Act, Article 19, paragraph 1, subparagraph 1 |

## 2 VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

### 1. TYPE 1 — PAYING VISITS, NIGHTTIME VISITS, OR TELEPHONING REPEATEDLY

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law.

| ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|
| A person Who Violated the Fair Debt Collection Practices Act, Article 9, subparagraph 2, 3 | Fair Debt Collection Practices Act, Article 15, paragraph 2, subparagraph 2 |

## 2. TYPE 2 — VIOLENCE, THREATS, ETC.

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law.

| ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|
| A person who, in violation of the Fair Debt Collection Practices Act, Article 9, subparagraph 1, collected a debt by assaulting, intimidating, arresting, or confining a debtor or a person related to the debtor, or by using deception or force against such person | Fair Debt Collection Practices Act, Article 15, paragraph 1 |

# DEFINITION OF SENTENCING FACTORS

## 1 VIOLATIONS OF THE CREDIT BUSINESS ACT[1)]

### 1. CASES WITH SPECIAL EXTENUATING CIRCUMSTANCES THAT MITIGATE THE OFFENDER'S INVOLVEMENT

- This applies where one or more of the following are present:
  - The offender participated in the crime under coercion or threats by another person (excluding cases that fall under Article 12 of the Criminal Act).
  - The offender merely agreed to participate in the crime and neither directed nor directly took part in carrying out the offense.
  - Other cases with comparable factors

### 2. MINOR DEGREE OF VIOLATION OF THE LAW

- This applies where one or more of the following are present:
  - Cases of one-time or short-term business
  - The degree of violation of the maximum interest rate is minor
  - Other cases with comparable factors

### 3. HIGHLY EGREGIOUS CONDUCTS OR METHODS

- This applies where one or more of the following are present:
  - The means and methods of the offense were carefully planned in advance.
  - Where the offense was committed in an organized manner by multiple persons with divided roles, or by using specialized equipment or techniques, and the defendant played a leading role in planning or directing the execution of the offense, or assumed a key role
  - Other cases with comparable factors



1) Sentencing factors with the same designation that apply to Violations of the Fair Debt Collection Practices Act have the same definition unless defined otherwise.

## 4. A LARGE AMOUNT OF PROFITS GAINED FROM THE OFFENSE OR THE SCALE OF BUSINESS IS LARGE

- This applies where one or more of the following are present:
  - Cases where the amount of money acquired from the victim is very large, regardless of the pretext such as an amount of loan, amount of loan brokerage, interest, charge, or fee
  - Cases with a very large number of victims or operated business for the long-term
  - Cases with a large number of sales sites or many accomplices were involved
  - Other cases with comparable factors

## 5. MINOR PARTICIPATION

- This refers to cases in which the nature of participation in the commission of the offense was passive or the offender had a limited role.
- However, this is not applicable in cases in which the offender had an active role in the commission of the offense by causing another person to commit the offense.

## 6. ATTRACTION BY USING ADVERTISEMENT OR MEDIA WITH HIGH-DISSEMINATION

- Media with high-dissemination means internet [including SNS (Social Network Service)] and other media with widespread reach that targets unspecified or multiple people.

## 7. 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.

## 8. 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 VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

### 1. VULNERABLE VICTIMS

- This indicates cases in which the victim was especially vulnerable due to the physical and/or mental disability or age at the time of the crime and the offender was already aware of or possibly aware of the victim's such circumstances.

### 2. CASES WHERE THE OFFENDER FAILED TO CONSUME OR RETAIN MOST OF THE PROFIT FROM THE CRIME (TYPE 2)

- This applies where one or more of the following are present:
  - Cases where the profit gained or loss avoided from the offense, or the actual profit gained or loss avoided, is minor due to losses incurred in the process of debt collection or other reasons
  - Cases where the amount of collection was used for principal and interest of the previous debt or expenses incurred by other collection activities and the positive property was not significantly increased
  - Other cases with comparable factors

### 3. VICTIM EXPRESSES INTENT OF NON-PUNISHMENT

- This indicates cases in which the offender shows sincere remorse with genuine efforts to reach a settlement with the victim; the victim or the family of victim (in the case of a deceased victim) fully understands the legal and social implications of opposing punishment and clearly expresses the intent not to seek punishing the offender. However, this should not apply in the following cases:
  - (1) in cases in which the victim or the family of the deceased opposes punishment as a result of *de facto* coercion or deceit by the offender against the victim's will, or
  - (2) where there is no reasonable or convincing basis for the victim or their legal representative to express no desire for punishment.
- This applies only to cases in which, upon careful and thorough examination and assessment of the victim's or legal representative's age, intelligence, and ability to fully understand the meaning, content, and legal implications of expressing an intent not to seek punishment, it is determined that such expression is both informed and genuine.

## 4. SUBSTANTIAL RESTITUTION TO THE VICTIM

- This refers to cases in which the offender, through genuine and sustained efforts, has restored the damages to a degree comparable to a formal settlement or in which restitution of such degree is reasonably assured.
- In the case of a deposit, this applies only where it amounts to substantial recovery of damages, as determined through careful examination of the following: the opinion of the victim or the victim's legal representative (in case of a deceased victim, this includes the spouse, lineal relatives, and siblings); whether the defendant is able by law to recover the deposited money or is likely to do so; and the nature of the legal interest harmed and the scale and degree of the damage.

## 5. CAUSING HARM IN THE COURSE OF ATTEMPTED SETTLEMENT (EXCLUDING CASES WHERE SEPARATE CRIMES SUCH AS COERCION ARE ESTABLISHED)

- This indicates cases in which harm is inflicted by persistently harassing the victim, by applying undue pressure by suggesting tangible or intangible disadvantages for refusing the settlement, or by using other equivalent methods, in the course of attempting settlement.

## 6. 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 targeting unspecified victims or multiple victims, or cases where crimes were committed repeatedly over a prolonged period.

# 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. However, where a victim has intent of non-punishment, such wishes may be treated on a par with a Conduct Factor.
  - 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.

# 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.

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.

# 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 OFFENSES

- Except for concurrent offenses that are treated as a single offense under the sentencing guidelines, the following method of aggravation for multiple offenses shall apply:
  - ❶ For multiple offenses involving two offenses, the upper end of the sentencing range 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 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 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.

PART B

# GUIDELINE ON SUSPENDING A SENTENCE

## 1 VIOLATIONS OF THE CREDIT BUSINESS ACT

| CLASSIFICATION | ADVERSE | AFFIRMATIVE |
|---|---|---|
| Primary Circumstance | • Highly egregious conducts or methods<br>• A large amount of profits gained from the offense or the scale of business is large<br>• Prior convictions for the same-offense [a suspended sentence of imprisonment or a heavier punishment within the past five years, or three or more fines (including suspended sentences)] | • Cases with special extenuating circumstances that mitigate the offender's involvement<br>• Minor degree of violation of the law<br>• No prior criminal convictions<br>• Voluntary surrender to investigative authorities, internal whistle-blowing |
| General Circumstance | • Attracting by using advertisement or media with high-dissemination<br>• Deliberate concealment of profits gained from the offense<br>• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment<br>• Lack of social/family ties<br>• Absence of sincere remorse<br>• Post-offense evidence tampering or attempt to destroy or conceal evidence | • The actual gain is insignificant<br>• Money and other valuables or gains returned (This includes deposits)<br>• No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment<br>• Stable social/family ties<br>• Sincere remorse<br>• Minor participation as a co-offender<br>• The offender's physical condition is severely impaired<br>• Cases where detaining the offender would impose excessive hardship on offender's family members |

## 2 VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

| CLASSIFICATION | ADVERSE | AFFIRMATIVE |
|---|---|---|
| Primary Circumstance | • Highly egregious conducts or methods<br>• Crime against multiples of victims or prolonged and repeated commission of the crime<br>• Vulnerable victims<br>• Prior convictions for the same-offense [a suspended sentence of imprisonment or a heavier punishment within the past five years, or three or more fines (including suspended sentences)] | • Cases with special extenuating circumstances that mitigate the offender's involvement<br>• Minor degree of assault, threat, arrest, confinement, deception, or force (Type 2)<br>• No prior criminal convictions<br>• Voluntary surrender to investigative authorities, or internal whistle-blowing<br>• Victim expresses intent of non-punishment or substantial restitution was made to the victim |
| General Circumstance | • Deliberate concealment of profits gained from the offense (Type 2)<br>• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment<br>• Lack of social/family ties<br>• Absence of sincere remorse<br>• Post-offense evidence tampering or attempting to destroy or conceal evidence<br>• Absence of efforts to reverse damages<br>• Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established) | • Cases where the offender failed to consume or retain most of the profit from the crime (Type 2)<br>• No prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment<br>• Stable social/family ties<br>• Sincere remorse<br>• Minor participation as a co-offender<br>• The offender's physical condition is severely impaired<br>• Cases where detaining the offender would impose excessive hardship on dependent family members<br>• Considerable restitution |

## 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 or a fine 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.

## 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.