CHAPTER 21

Crimes of Fraud

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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Fraud (Criminal Act, Article 347), Fraud by the Use of Computer or Other Similar Devices (Criminal Act, Article 347-2), *Quasi*-fraud (Criminal Act, Article 348), Habitual Fraud (Criminal Act, Article 351, limited to habitual offenders of the Criminal Act, Article 347, Article 347-2, and Article 348), Fraud under the Act on the Aggravated Punishment of Specific Economic Crimes (Act on the Aggravated Punishment of Specific Economic Crimes, Article 3, paragraph 1), Telecommunications-Based Financial Fraud under the Special Act on the Prevention of Loss Caused by Telecommunications-Based Financial Fraud and Refund for Loss (hereinafter, 'Telecommunications Financial Fraud Act'; Telecommunications Financial Fraud Act, Article 15-2, paragraph 1, including Habitual Offender of paragraph 3, excluding Telecommunications Financial Fraud by Extortion), and Insurance fraud under the Special Act on Prevention of Insurance Fraud (hereinafter 'Insurance Fraud Act'; Insurance Fraud Act Article 8, paragraph 1, subparagraph 1, Habitual Offender of Article 9, Aggravated Punishment of Article 11, paragraph 1).

※ 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 GENERAL FRAUD

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 100 million	~ 1 yr.	6 mos. ~ 1 yr. 6 mos.	1 yr. ~ 2 yrs. 6 mos.
2	100 million or more, but less than 500 million	10 mos. ~ 2 yrs. 6 mos.	1 yr. ~ 4 yrs.	2 yrs. 6 mos. ~ 6 yrs.
3	500 million or more, but less than 5 billion	1 yr. 6 mos. ~ 4 yrs.	3 yrs. ~ 6 yrs.	4 yrs. ~ 8 yrs.
4	5 billion or more, but less than 30 billion	3 yrs. ~ 6 yrs.	5 yrs. ~ 9 yrs.	6 yrs. ~ 11 yrs.
5	30 billion or more	5 yrs. ~ 9 yrs.	6 yrs. ~ 11 yrs.	8 yrs. ~ 17 yrs.

(unit: KRW)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Fraud by Dolus Eventualis or fraud with only a slight degree of deception • Cases in which the risk of damage has not materialized to a significant extent • Offender's minor participation resulting from outside pressure • Cases where the victim is also primarily responsible for the crime or extent of the damage	• Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Inflicting serious harm to the victim • Highly egregious conducts or methods or offense of fraud in lawsuits by committing deception in court • Deliberate concealing of profits made from the offense • Instigating the subordinate to commit the offense
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities or internal whistle-blowing	• Habitual offenders • Same-offense recidivism within the statutory recidivism period

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
		• Victim expresses intent of non-punishment or substantial restitution was made to the victim	
General Sentencing Factor	Conduct	• 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 • Minor participation	• Morally reprehensible motives • Vulnerable victims • Abuse of position of trust
	Offender /Etc.	• Diminished mental capacity (with fault) • Sincere remorse • No prior criminal convictions • Considerable restitution	• Post-offense evidence tampering or attempt to destroy or conceal evidence • Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense, and offense of Embezzlement and/or Breach of Trust resulting in imprisonment which do not constitute statutory recidivism (within ten years after the completion of the sentence) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

2 ORGANIZATIONAL FRAUD

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 100 million	1 yr. – 2 yrs. 6 mos.	1 yr. 6 mos. – 3 yrs.	2 yrs. 6 mos. – 4 yrs.
2	100 million or more, but less than 500 million	1 yr. 6 mos. – 3 yrs.	2 yrs. – 5 yrs.	4 yrs. – 7 yrs.
3	500 million or more, but less than 5 billion	2 yrs. – 5 yrs.	4 yrs. – 7 yrs.	6 yrs. – 11 yrs.
4	5 billion or more, but less than 30 billion	4 yrs. – 7 yrs.	6 yrs. – 11 yrs.	8 yrs. – 17 yrs.
5	30 billion or more	6 yrs. – 10 yrs.	8 yrs. – 15 yrs.	11 yrs. or more, life imprisonment

(unit: KRW)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Fraud with only a slight degree of deception • Cases in which the risk of damage has not materialized to a significant extent • Offender's minor participation resulting from outside pressure or other similar circumstances • Mere participation • Cases where the victim is also primarily responsible for the crime or extent of the damage	• Active lead role in planning and orchestrating the commission of the offense • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Inflicting serious harm to the victim • Deliberate concealing of profits made from the crime • Instigating the subordinate person to commit the crime
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities, whistle-blowing of internal corruption, or full and voluntary disclosure of the entire Fraud offense • Victim expresses intent of non-punishment or substantial restitution was made to the victim	• Habitual offenders • Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Offense committed for basic living expenses or medical expenses • Cases where the offender failed to consume or retain most of the profit from the crime • Minor participation	• Morally reprehensible motives • Vulnerable victims • Abuse of relationship of trust
	Offender /Etc.	• Diminished mental capacity (with fault) • Sincere remorse • No prior criminal convictions • Offender's cooperation with the investigation • Considerable restitution	• Post-offense evidence tampering or attempt to destroy or conceal evidence • Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense, and offense of Embezzlement and/or Breach of Trust resulting in imprisonment which do not constitute statutory recidivism (within ten years after the completion of the sentence) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

DEFINITION OF OFFENSES

- Offenses of Fraud refers to acts that constitutes the offense with the following elements as prescribed in the applicable law.

ELEMENTS OF OFFENSE	APPLICABLE LAW
General Fraud	Criminal Act, Article 347
Fraud by Use of Computer, etc.	Criminal Act, Article 347-2
Quasi-Fraud	Criminal Act, Article 348
Habitual Fraud	Criminal Act, Article 351. Limited to Habitual offenders of Criminal Act, Article 347, 347-2, 348
Fraud of Aggravated Punishment of Specific Economic Crimes (where amount of criminal gain is 5 billion or more)	Act on the Aggravated Punishment of Specific Economic Crimes, Article 3, paragraph 1, subparagraph 1
Fraud of Aggravated Punishment of Specific Economic Crimes (where amount of criminal gain is 500 million or more but less than 5 billion)	Act on the Aggravated Punishment of Specific Economic Crimes, Article 3, paragraph 1, subparagraph 2
Telecommunications-Based Financial Fraud	Telecommunications Financial Fraud Act, Article 15-2, paragraph 1. Excluding cases constituting Extortion
Habitual Telecommunications-Based Financial Fraud	Telecommunications Financial Fraud Act, Article 15-2, paragraph 3. Excluding cases constituting Extortion
Insurance Fraud	Insurance Fraud Act, Article 8, paragraph 1, subparagraph 1
Habitual Insurance Fraud	Insurance Fraud Act, Article 9. Limited to Habitual offenders of Insurance Fraud Act, Article 8, paragraph 1, subparagraph 1
Insurance Fraud (where criminal proceeds are 5 billion or more)	Insurance Fraud Act Article 11, paragraph 1, subparagraph 1
Insurance Fraud (where criminal proceeds are 500 million or more but less than 5 billion)	Insurance Fraud Act Article 11, paragraph 1, subparagraph 2

(unit: KRW)

1 GENERAL FRAUD

1. TYPE 1

- This means where the amount of criminal gain from fraud is less than 100 million KRW. "Amount of criminal gain" means the value of property or pecuniary gain acquired, or had a third party acquire through the offense as a criminal proceeds (hereinafter the same).

2. TYPE 2

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

3. TYPE 3

- This indicates cases in which the amount of criminal gain involved is 500 million KRW or more but is less than 5 billion KRW.

4. TYPE 4

- This indicates cases in which the amount of criminal gain involved is 5 billion KRW or more but is less than 30 billion KRW.

5. TYPE 5

- This indicates cases in which the amount of profit involved is 30 billion KRW or more.

2 ORGANIZATIONAL FRAUD

- This indicates cases in which multiple offenders engage in the commission of the offense in an organized scheme involving agreeing to the crime in advance, allocating and professionally executing the commission (for example, telemarketing fraud by a fraudulent telemarketing organization, gambling fraud by a fraudulent gambling organization, insurance fraud by fraudulent insurance

organization, real estate fraud by a fraudulent real estate organization, organizational government subsidy crimes, fraud in the form of multi-level marketing organization by the major participant of the organization or execution all fall within the definition).

- The definition for Offenses Type 1 through 5 is identical to that of the definition under General Frauds.

DEFINITION OF SENTENCING FACTORS

1. MINOR DEGREE OF DECEPTION INVOLVED

- This applies where one or more of the following are present:
  - Cases where fraud was committed through passive deception (for example, cases where the fraudulent act did not exist at the beginning, but materialized at a later stage. This includes cases where the recipient originally had the right to receive subsidies but continued to receive such subsidies without notifying the loss of entitlement due to changed circumstances; cases where a party continued financial dealings without disclosing business-related problems that arose during the ongoing transactions; cases where the insured violated the duty to disclose material facts to the insurance company in an insurance contract, etc.)
  - Cases of passive fraudulent behavior (For example, cases where the offender committed fraud by going along with the victim's misrepresentations and other similar circumstances)
  - Cases where the defrauded matter is not a significant part of a legal act
  - In cases in which the degree to which the substance of the deception is out of accord with substantial facts is minor
  - Other cases with comparable factors

2. OFFENSE CAUSED RELATIVELY SMALL, ACTUALIZED DAMAGES

- This indicates cases in which approximately 1/3 or less of the potential damage actualized through the offense.

3. VICTIM IS ALSO PRIMARILY RESPONSIBLE FOR THE CRIME OR EXTENT OF THE DAMAGE

- This applies where one or more of the following are present:
  - Cases where the victim fell for implausible fraudulent acts due to greed for improper future gains
  - Cases where the victim was aware of the illegal funds in operation but sought to make an investment with substantial profit for return
  - Cases where the victim's intent or motive for gaining illegal profit caused or

facilitated the crime
- Cases with other comparable factors

4. INFLICTING SERIOUS HARM TO THE VICTIM

- This applies where one or more of the following are present:
  - The offense caused a financial crisis and made the victim company go bankrupt or caused a serious management crisis for the company
  - The company's stock price plunged due to the reputation damage caused by the offense
  - The offense resulted in multiple bankruptcies
  - Victims lost nearly all their assets due to the offense
  - Other cases with comparable factors

5. 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.
  - In cases in which professional workers such as finance, securities, trade, accounting, etc. commit a crime using the opportunity to perform their duties
  - In cases in which professional workers in insurance or medical areas commit insurance fraud using the opportunity to perform their duties
  - In cases in which the offense was committed by actively using methods such as book manipulation or document forgery, etc.
  - Using highly intelligent schemes to commit the offense
  - Developing and using a new professional scheme previously unknown
  - Other cases with comparable factors

    ※ Where the crime of Fraud accompanied by offense regarding documents such as Forgery, and Other Similar Documents, the document-related offense shall not be considered as multiple offenses, but shall be regarded as a sentencing factor.

6. DELIBERATE CONCEALMENT OF PROFITS GAINED FROM THE OFFENSE

- This means profits gained from the offense were deliberately concealed by the offender, thereby causing delayed damage recovery or no recovery.

7. VICTIM EXPRESSES THE 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.

8. 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 (in cases where only property damage occurred, approximately two-thirds or more of the total loss), 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 offender 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.

9. 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.

10. MORALLY REPREHENSIBLE MOTIVES

- This applies where one or more of the following are present and motives for the Fraud are morally reprehensible:
  - Offense committed for the purpose of using the profit in illegal activities such as gambling
  - Offense committed for the purpose of preparing funds to commit another crime
  - Offense committed for the purpose of taking revenge on or harassing the victim by obtaining the victim's property by fraud
  - Offense committed for the purpose of prevailing over other criminal organizations by obtaining the victim's property by fraud
  - Other cases with comparable factors

11. MERE PARTICIPATION

- This refers to cases in which the person did not lead, plan, or orchestrate the organized fraud, in whole or in part, but merely participated in carrying out a very simple act of execution.

12. 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.

13. NO PRIOR CRIMINAL CONVICTIONS

- This indicates cases in which, the offender 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.

14. OFFENDER'S COOPERATION WITH THE INVESTIGATION

- This refers to cases where, although the offender's conduct does not amount to a "Voluntary Full Disclosure of Crime," the offender truthfully stated the facts of the offender's own offense and related subsequent offenses, thereby contributing to the investigation, including the punishment of those involved and the prevention of further offenses.

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.
- Where the upper limit of the sentencing range under the sentencing guidelines exceeds 25 years, life imprisonment may be imposed.

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. 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.

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-offense among General Fraud or Organizational Fraud, the following method of aggravation for multiple offenses shall apply.
  - ❶ The Type of offense shall be determined based on the aggregate 'Amount of Profit (criminal proceeds)'. Within that Type, the sentencing range shall be selected by judges after taking into account for all relevant circumstances.
  - ❷ (1) Where the aggregation of criminal gain 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 criminal gain results in an offense Type two levels 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 1/2. 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.

- For concurrent offenses between General Fraud and Organizational Fraud, the following methods of 'Determining the following methods of 'Determining the Sentencing Range for the Concurrent Multiple Different-Offenses' shall apply.

  ※ In cases in which the General and Organizational Fraud constitute a single offense of Habitual Fraud, first select either the General Fraud or Organizational Fraud after taking relevant factors into account, and then apply the method of 'Determining the Sentencing Range for the Concurrent Multiple Same-Offenses'.

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.

- However, where the multiple offenses include concurrent same-offenses involving General Fraud or Organizational Fraud, the sentencing range shall first be determined by applying the method for concurrent same-offenses involving the above offense, and the method of aggravation for multiple different-offenses set out above shall then be applied to that sentencing range.

PART B

GUIDELINE ON SUSPENDING A SENTENCE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Prior convictions for the same-offense [suspended sentence of imprisonment without labor or a more severe punishment imposed within the past five years, or three or more fines (including suspended fine)] • Deliberate concealment of profits gained from the offense • Highly egregious conducts or methods (General Fraud) • No settlement reached • Actual damage is substantial or serious harm inflicted on the victim • Playing a leading role or directing/coordinating the offense of Fraud (Organizational Fraud)	• Fraud by Dolus Eventualis (General Fraud) or fraud with only a slight degree of deception • Offender's minor participation resulting from outside pressure or other similar circumstances • Mere participation (Organizational Fraud) • Voluntary surrender to investigative authorities or whistle-blowing • Actual damage is relatively minor • No prior criminal convictions • Victim expresses intent of non-punishment or substantial restitution was made to the victim
General Circumstance	• Prior conviction for the same-offense or two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Morally reprehensible motives • Lack of social/family ties • Absence of sincere remorse • Leading role as a co-offender • Offense was committed against an unspecified persons or multiple victims, or was repeatedly committed over a prolonged period • Promising, giving, or receiving a benefit in return for the crime • Post-offense evidence tampering or attempt to destroy or conceal evidence • Absence of efforts to recover the harm • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)	• Offense committed for basic living expenses or medical expenses • Stable social/family ties • Sincere remorse • No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment • Special circumstances extenuating the offender's motives to commit the offense exists • Minor participation as a co-offender • Cases where the offender failed to consume or retain most of the profit from the crime • Cases in which the risk of damage has not materialized to a significant extent • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members • Offender's cooperation with the investigation (Organizational Fraud) • 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.
- Cases where the actual damage is substantial
  - This indicates cases in which the offense did not inflict serious harm to the victim, but the total unrecovered damages are more than 500 million KRW.
- Cases where the actual damage is minor
  - This indicates cases in which the total damages not recovered are less than 50 million KRW.

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.