CHAPTER 33

Crimes of Interference with a Business

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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Interference with Business (Criminal Act, Article 314, paragraph 1), Interference with Business by Damaging a Computer or Other Data Processor (Criminal Act, Article 314, paragraph 2), Interference with Auction or Bidding (Criminal Act, Article 315), and the Violation of Framework Act on the Construction Industry (Framework Act on the Construction Industry, Article 95, subparagraph 1 through 3).

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

1 INTERFERENCE WITH A BUSINESS

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Interference with a Business	– 8 mos.	6 mos. – 1 yr. 6 mos.	1 yr. – 3 yrs. 6 mos.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • Extenuating motives for the offense • Cases where the degree of the use of force or deception, or the extent of interference with business, was minor • Dolus Eventualis	• Playing a leading role or directing/coordinating the offense • Highly egregious conduct or methods • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • The extent of interference with business was serious • Instigating the subordinate to commit the crime • Morally reprehensible motives
	Offender/ Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities or internal whistle-blowing • Victim expresses the intent of non-punishment or substantial restitution to the victim	• Same-offense recidivism within the statutory recidivism period

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factor	Conduct	• Minor participation	
	Offender/ Etc.	• Diminished mental capacity (with fault) • Sincere remorse • No prior criminal convictions • Considerable restitution	• 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) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

▷ Apply the following classification in cases where the offense of Interference with a Business was committed while severely intoxicated by alcohol or drugs (including cases of Interference with Auctions · A Bid).

❶ Cases in which the offender voluntarily became intoxicated by alcohol or drugs with the intent to commit a crime, in anticipation of committing a crime, or to use as grounds for exemption after committing a crime, the state of intoxication shall be reflected as a general aggravating factor regardless of whether the defendant was in a state of diminished mental capacity at the time of the offense.

❷ Cases in which offender had no criminal intent and no anticipation of committing a crime, but past experiences, physical condition, or circumstances indicated a propensity to cause harm to others when intoxicated, the state of intoxication shall not be reflected as a mitigating factor regardless of the defendant's mental capacity at the time of the offense.

❸ Even in cases not falling under ❶ or ❷, if the offender did not suffer from diminished mental capacity at the time of the offense, the intoxication shall not be reflected as a mitigating factor.

2 INTERFERING WITH AN AUCTION · A BID

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	General Interference with an Auction · a Bid	– 8 mos.	6 mos. – 1 yr.	10 mos. – 2 yrs.
2	Interfering with a Bid for Construction	6 mos. – 1 yr.	10 mos. – 2 yrs.	1 yr. 6 mos. – 4 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • Actual damage is minor • Dolus Eventualis	• Playing a leading role or directing/coordinating the offense • Particularly malicious commission of the offense • Offense was repeatedly committed over a considerable period • Offenses caused serious social and economic damages • 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 • Victim expresses the intent of non-punishment or substantial restitution to the victim	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Minor participation	
	Offender/ Etc.	• Diminished mental capacity (with fault) • Sincere remorse • No prior criminal convictions • Considerable restitution	• 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) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

DEFINITION OF OFFENSES

1 INTERFENCE WITH A BUSINESS

○ This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law (hereinafter the same).

ELEMENTS OF OFFENSE	APPLICABLE LAW
Spread false information or interfere with the business by a threat of force or through deceptive means	Criminal Act, Article 314, paragraph 1
Interferes with another person's business by damaging or destroying any data processor (such as computers), or special media records (such as electromagnetic records), or inputting false information or improper order into the data processor, or making any impediment in processing any data by another way	Criminal Act, Article 314, paragraph 2

2 INTERFERING WITH AN AUCTION · A BID

1. TYPE 1

ELEMENTS OF OFFENSE	APPLICABLE LAW
Interfering with the impartial conduct of an auction or a bid through fraudulent means or by the threat of force or other means	Criminal Act, Article 315

2. TYPE 2

ELEMENTS OF OFFENSE	APPLICABLE LAW
An offender who does any of the following acts: (1) Tendering at a prearranged price in collusion with other bidders for purposes of making unjust enrichment or interfering with fair price-fixing (2) Presenting an estimated tender of another constructor (3) Interfering with tenders of other constructors by deceptive means, the threat of force, or other means	Framework Act on the Construction Industry, Article 95, subparagraph 1 through 3

DEFINITION OF SENTENCING FACTORS

1 INTERFERENCE WITH A BUSINESS[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 mitigating factors.

2. EXTENUATING MOTIVES FOR THE OFFENSE

- This applies where one or more of the following are present:
  - Cases where the victim bears primary responsibility for the commission of the offense;
  - Offenses committed for the purpose of realizing public interests or other legitimate interests;
  - Cases where the legitimacy or effectiveness of the interfered business is relatively low, which affects the motive for committing the offense.
  - Other cases with comparable mitigating factors

3. THE EXTENT OF INTERFERENCE WITH A BUSINESS IS MINOR

- This indicates cases in which the extent of impediment or paralysis of business performance caused by interference with business is slight.

1) Sentencing factors with the same designation that apply to offense of Interference with an Auction · A Bid have the same definition unless separately defined.

4. 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.

5. SUBSTANTIAL RESTITUTION TO THE VICTIM

- This refers to cases in which the offender, through genuine and sustained efforts, has restored the damage to a degree comparable to a formal settlement (generally amounting to at least two-thirds of the total loss in cases involving only property damage), 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.

6. CAUSING HARM WHILE ATTEMPTING TO REACH A SETTLEMENT WITH THE VICTIM (EXCLUDING CASES WHERE THE ACT CONSTITUTES ANY OTHER CRIME SUCH AS THE CRIME OF COERCION)

- This indicates cases in which the offender persistently harassed the victim or exerted undue pressure by implying tangible or intangible disadvantages in the course of attempting to reach a settlement, or otherwise caused harm through comparable means in response to the victim's refusal to settle.

7. MINOR PARTICIPATION

- This indicates 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.

8. HIGHLY EGREGIOUS CONDUCT OR METHODS

- This applies where one or more of the following are present:
  - Offenses were committed while carrying dangerous instruments such as a weapon
  - Offenses were committed by mobilizing members of criminal organizations or other security services to show strength or take control of the site
  - Means and methods for the commission of the offense were meticulously planned in advance
  - Methods (such as forgery or alteration of documents) were used in the commission of the offense (However, this is not applied to cases where the crime of forgery or alteration of documents was established and the guideline on multiple offenses on the crime was applied)
  - Highly intelligent schemes to commit the offense were used
  - New professional schemes previously unknown were used
  - Other cases with comparable factors

9. EXTENT OF INTERFERENCE WITH BUSINESS IS SERIOUS

- This indicates cases in which the extent of impediment or paralysis of business performance or damages caused by interfering with business is severe, considering the size of the victim's business.

10. MORALLY REPREHENSIBLE MOTIVE

- This applies where one or more of the following are present:
  - The offense was committed in retaliation against, or out of grievance or hatred toward, the victim
  - Offenses were committed in return for unreasonable economic gains or benefits.
  - The offense was committed for the offender's own enjoyment of committing the crime itself
  - Other cases with comparable aggravating factors.

11. SINCERE REMORSE

- This indicates cases in which the offender is deemed to show genuine remorse for the offense 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.

12. NO PRIOR CRIMINAL CONVICTIONS

- It refers to cases in which the offender has no prior criminal convictions. However, this does not apply to cases where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period.

2 INTERFERING WITH AN AUCTION · A BID

1. ACTUAL LOSS IS MINOR

- This applies where one or more of the following are present:
  - Offense does not result in a delay in the auction, lower price bid, or selection of the specific company
  - The offense caused minor damage to interested parties, such as the owner, creditors, successful bidder, or bid implementer
  - Other cases with comparable factors

2. OFFENSES RESULTED IN SIGNIFICANT SOCIAL AND ECONOMIC HARM

- This applies where one or more of the following are present:
  - Offenses resulted in serious damages to multiple interested parties through low-priced bids, delay of auction, or other means
  - Offenses hindered fairness of a bid that could have significant impact on social safety such as a bid for parts for nuclear power plants
  - Offenses undermined fairness of large scale bids for national projects conducted by the government or public organizations
  - Other cases with comparable factors

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 INTERFERENCE WITH A BUSINESS

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Highly egregious conduct or methods • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • The extent of interference with business is serious • Morally reprehensible motives • 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)]	• Cases with special extenuating circumstances that mitigate the offender's involvement • Voluntary surrender to investigative authorities or internal whistle-blowing • The offender attempted to thwart the accomplice's commission of the crime • The extent of the threat of force, deceptive means, or interference with business is slight • Dolus Eventualis • No prior criminal convictions • Victim expresses the intent of non-punishment or substantial restitution to the victim
General Circumstance	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • Lack of family/social ties • Drug or alcohol addiction • Absence of sincere remorse • Planned crime • Leading role as a co-offender • Post-offense evidence tampering or attempt to conceal or destroy evidence • No genuine effort to recover damages • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)	• Stable family/social ties • Offense committed impulsively • Sincere remorse • No prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • The offender's physical condition is severely impaired • Minor participation as a co-offender • Cases where detaining the offender would impose excessive hardship on his/her family members • Considerable restitution

2 INTERFERING WITH AN AUCTION · A BID

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Highly egregious conduct or methods • Offense was repeatedly committed over a considerable period • Offenses resulted in serious social or economic harm • 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)]	• Cases with special extenuating circumstances that mitigate the offender's involvement • Voluntary surrender to investigative agencies or cases of whistle-blowing • Actual loss is insignificant • Dolus Eventualis • Offender attempted to thwart the accomplice's commission of the crime • No prior criminal convictions • Victim expresses the intent of non-punishment or substantial restitution to the victim
General Circumstance	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • Lack of family/social ties • Drug or alcohol addiction • Absence of sincere remorse • Playing a leading role as a co-offender • Destroying evidence or attempting to conceal evidence after the commission of the offense • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)	• Stable family/social ties • Sincere remorse • No prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • The offender's physical condition is severely impaired • Minor participation as a co-offender • Cases where detaining the offender would impose excessive hardship on his/her family members • 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.