CHAPTER 38

Crimes Related to the Electronic Financial Transactions Act Violation

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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses violating the Electronic Financial Transactions Act, Article 49, paragraph 4, subparagraphs 1 through 5.

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	General Crime Related to the Electronic Financial Transaction	– 8 mos.	4 mos. – 1 yr.	8 mos. – 2 yrs.
2	Offenses for the Commercial · Organizational · Criminal Purpose	– 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 concerning the offender's participation in, or motives for the offense • Mere participation (organized offense among Type 2)	• Cases where the offender played a leading role in planning the offense or directing its execution (organized offense among Type 2) • Multiple number of access used or substantial profits gained from the offense is substantial • Instigating the subordinate to commit the crime
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities or internal whistle-blowing, or voluntary full-disclosure of organized crime (organized offense among Type 2) • No risk of further offenses due to the voluntary suspension of transactions, reporting of loss, or other remedial actions	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Minor participation • Offenses driven by economic necessity • No profits were gained from the offense or profits gained are not substantial	• Morally reprehensible motives • Serious harm resulting from the further offenses

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
	Offender /Etc.	• Sincere remorse • No prior criminal convictions • Offender's cooperation with the investigation • Restitution for the subsequent offense or victim's intent of non-punishment of the offender	• Evidence tampering or attempt to conceal or destroy evidence while committing the offense • 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)

DEFINITION OF OFFENSES

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Transferred or Received a Means of Access and Violated Article 6, paragraph 3, subparagraph 1	Electronic Financial Transactions Act, Article 49, paragraph 4, subparagraph 1
Borrowed or Lent a Means of Access, or Storing, Delivering or Distributing a Means of Access and Violated Article 6, paragraph 3, subparagraph 2 or 3	Electronic Financial Transactions Act, Article 49, paragraph 4, subparagraph 2
A Pledger or a Pledgee who Violated Article 6, paragraph 3, subparagraph 4	Electronic Financial Transactions Act, Article 49, paragraph 4, subparagraph 3
Arranged, brokerage, or advertised in, or receipt, demand or promise of any compensation and Violation of Article 6, paragraph 3, subparagraph 5	Electronic Financial Transactions Act, Article 49, paragraph 4, subparagraph 4
Providing or being provided with information related to the account or storing, delivering or distributing the information and Violation of Article 6-3	Electronic Financial Transactions Act, Article 49, paragraph 4, subparagraph 5

1 GENERAL CRIME RELATED TO THE ELECTRONIC FINANCIAL TRANSACTIONS

- Crimes prescribed in the Electronic Financial Transactions Act that do not fall under the Type 2.

2 OFFENSES FOR THE COMMERCIAL · ORGANIZATIONAL · CRIMINAL PURPOSE

- This indicates cases in which the offender professionally commits offense of the Electronic Financial Transactions Act or multiple offenders engage in the commission of the offense of the Electronic Financial Transactions Act, involving an agreement to the crime in advance, allocating and professionally executing the commission (For example, operating voice phishing scams, illegal gambling sites, and others).

DEFINITION OF SENTENCING FACTORS

1. CASES WITH SPECIAL EXTENUATING CIRCUMSTANCES CONCERNING THE OFFENDER'S PARTICIPATION IN, OR MOTIVES FOR, THE OFFENSE

- 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,
  - Cases where the offender inevitably committed the offense because it was difficult to refuse a request from the principal with whom the offender had a close personal relationship, such as a family member or an employer,
  - Cases where the offender responded to a request made under the pretext of a loan, employment, or the like,
  - Other cases with comparable mitigating factors.

2. MERE PARTICIPATION (ORGANIZED OFFENSE AMONG TYPE 2)

- Where the offender did not lead, plan, or command the organized crime but participated in mere conduct during the execution phase of the offense.

3. OFFENSES DRIVEN BY ECONOMIC NECESSITY

- This applies where one or more of the following are present:
  - Cases where the offense was committed in order to escape from an impoverished household situation
  - Cases where the offense was committed in order to raise medical expenses, tuition, etc.
  - Other cases with comparable factors

4. MORALLY REPREHENSIBLE MOTIVE

- This means that there is an exceptionally high degree of condemnation in motives for committing the crime, such as raising money for entertainment or gambling expenses.

5. SUBSEQUENT OFFENSE RESULTED IN SUBSTANTIAL HARM

- This refers to cases in which a subsequent offense (such as voice-phishing, operation of illegal gambling websites, or similar crimes) resulting from the offender's conduct caused substantial harm, including large-scale economic losses or a significant number of victims (This does not apply where the offender is also charged with the subsequent offense and the rules on multiple offenses apply).

6. OFFENDER'S COOPERATION WITH THE INVESTIGATION

- This refers to cases where the offender did not qualify for 'Voluntary Full Disclosure of Crime,' but nonetheless truthfully stated the facts of his or her own offense and related subsequent offenses, thereby contributing to the investigation, including the punishment of involved parties and the prevention of further crimes.

7. 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.

8. NO PRIOR CRIMINAL CONVICTIONS

- It means that the offender has no previous criminal conviction. However, this does not apply to cases in which the offense was committed repeatedly over an extended 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.
  - 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

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Cases where the offender played a leading role in planning the offense or directing its execution (organized offense among Type 2) • Multiple number of access media or a significant amount of profits gained from the offense • 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 concerning the offender's participation in, or motives for, the offense • Mere participation (organized offense among Type 2) • Voluntary surrender to investigative authorities or internal whistle-blowing, or voluntary full-disclosure of organized crime (organized offense among Type 2) • No risk of further offenses due to the voluntary suspension of transactions, reporting of loss, or other remedial actions • No prior criminal convictions
General Circumstance	• Morally reprehensible motives • Subsequent offense resulted in substantial damage • Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • Lack of family/social ties • Absence of sincere remorse • Post-offense evidence tampering or attempt to conceal or destroy evidence	• Minor participation as a co-offender • Offenses driven by economic necessity • No profits gained from the offense or profits gained are not substantial • Offender's cooperation with the investigation • No prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Stable family/social ties • Sincere remorse • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members • Restitution for the subsequent offense or victim's intent of non-punishment

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.