CHAPTER 43

Crimes Related to Securities · Finance

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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Use of Material Non-public Information, Market Price Manipulation, Unfair Trading (Financial Investment Services and Capital Markets Act, Article 443, paragraph 1, subparagraphs 1 through 9, paragraph 2), Offering or Selling Securities Without Filing a Registration Statement, Making a False Statement or Omitting Statement of a Material Fact on the Registration Statement and the like (Financial Investment Services and Capital Markets Act, Article 444, subparagraph 12 through 14), Making a False Statement or Omitting Statement of a Material Fact (Financial Investment Services and Capital Markets Act, Article 444, subparagraph 18), Violation of the Duty to Report on Stocks and the like held in bulk (Financial Investment Services and Capital Markets Act, Article 445, subparagraph 20), Preparing and Disclosing of False Financial Statements (Act on External Audit of Stock Companies, Article 39, paragraph 1), Forgery or Alteration of Accounting Information (Act on External Audit of Stock Companies, Article 41), Acceptance of a Bribe by an Officer or an Employee of a Financial Institution (Act on the Aggravated Punishment of Specific Economic Crimes, Article 5, paragraph 1, paragraph 2, and paragraph 4), Acceptance of a bribe for Commissioning by an Officer or an Employee of a Financial Institution (Act on the Aggravated Punishment of Specific Economic Crimes, Article 5, paragraph 3 and paragraph 4),

Offer of a bribe to an Officer or an Employee of a Financial Institution (Act on the Aggravated Punishment of Specific Economic Crimes, Article 6, paragraph 1, paragraph 2), Acceptance of a bribe for Commission on Matters belonging to the Duties of an Officer or an Employee of a Financial Institution (Act on the Aggravated Punishment of Specific Economic Crimes, Article 7).

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

1 SECURITIES-RELATED OFFENSES

1. OFFENSES DAMAGING THE FAIRNESS OF THE CAPITAL MARKET (USE OF MATERIAL NON-PUBLIC INFORMATION, MARKET PRICE MANIPULATION AND UNFAIR TRADING)

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 100 million	6 mos. – 1 yr. 4 mos.	10 mos. – 2 yrs.	1 yr. 6 mos. – 4 yrs.
2	100 million or more but is less than 500 million	1 yr. – 2 yrs. 6 mos.	1 yr. 6 mos. – 4 yrs.	3 yrs. – 6 yrs.
3	500 million or more but is less than 5 billion	1 yr. 6 mos. – 4 yrs.	3 yrs. – 6 yrs.	4 yrs. – 8 yrs.
4	5 billion or more but is less than 30 billion	3 yrs. – 6 yrs.	5 yrs. – 10 yrs.	7 yrs. – 13 yrs.
5	30 billion or more	5 yrs. – 9 yrs.	7 yrs. – 12 yrs.	9 yrs. – 19 yrs.

(unit: KRW)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Passive involvement in the offense due to *de facto* pressure, etc. • The offender played a limited role in the offense • Minor influence on the actual stock price or minor scale of unfair trading (market price manipulation, unfair trading)	• Significant influence on the actual stock price or large-scale unfair trading (in case of Market Price Manipulation, Unfair Trading) • Deliberate concealment of profits gained from the offense • Highly egregious conduct or methods • Instigating the subordinate person to commit the offense
	Offender/ etc.	• Hearing and/or speech disabilities • Voluntary surrender to investigative authorities or internal whistle-blowing, or	• Same-offense recidivism within the statutory recidivism period

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
		active cooperation in investigative and judicial proceedings	
General Sentencing Factor	Conduct	• Failure to spend or retain significant portions of the profits from crime • Minor participation	• Morally reprehensible motives
	Offender/ etc.	• No prior criminal convictions • Sincere remorse	• Post-offense evidence tampering or attempt to conceal or destroy evidence • 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) or prior history of disciplinary measures or penalty surcharge imposed by the regulatory organization

2. OFFENSES DAMAGING THE TRANSPARENCY OF THE CAPITAL MARKET

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Violating the duty to report on stocks, etc. held in bulk	- 8 mos.	4 mos. - 1 yr.	8 mos. - 2 yrs.
2	Violating the duty to disclose registration statement or similar documents/Forgery · alteration of accounting information/Forgery · alteration of audit working papers	4 mos. - 1 yr.	8 mos. - 1 yr. 6 mos.	1 yr. - 3 yrs.
3	Violating the duty of preparing · disclosing financial statements containing false information/False statement or representation in the audit reports	10 mos. - 2 yrs.	1 yr. - 3 yrs.	2 yrs. 6 mos. - 5 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Passive involvement in the offense due to *de facto* pressure, etc. • The offender played a limited role in the offense	• The offense was committed over a substantially prolonged period of time • Highly egregious conduct or methods • Instigating the subordinate to commit the offense
	Offender /etc.	• Hearing and/or speech disabilities • Voluntary surrender to investigative authorities or internal whistle-blowing	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Minor participation	• Morally reprehensible motives
	Offender /etc.	• No prior criminal convictions • Sincere remorse	• Post-offense evidence tampering or attempt to conceal or destroy evidence • 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), or prior history of disciplinary measures or penalty surcharge imposed by the regulatory organization

2 FINANCIAL CRIMES

1. ACCEPTANCE OF BRIBES BY OFFICERS OR EMPLOYEES OF FINANCIAL INSTITUTIONS · ACCEPTANCE OF MONEY OR VALUABLES FOR BRIBE INTERCESSION

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

(unit: KRW)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• The offender played a limited role in the offense and the actual gain obtained is exceptionally insignificant • The offense was limited to a demand or promise • The offense was unrelated to financial duties	• Engaging in improper conduct or act of intercession related to acceptance of a bribe or causing actual damage to a financial institution • Active demand • Instigating the subordinate to commit the offense
	Offender/ etc.	• Hearing and/or speech disabilities • Money or other valuables, or other profits returned before the commencement of an investigation • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities or internal whistle-blowing	• Recidivism within the statutory recidivism period

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factor	Conduct	• The offender played a limited role in the offense and the actual gain obtained is insignificant	• Commission of the offense over two years of extended period, involving the receipt of money or other valuables • Closely related to the offender's official duties
	Offender/ etc.	• No prior criminal convictions • Sincere remorse	• An officer of a financial institution • Prior convictions for the same-offense which do not constitute statutory recidivism, or a prior disciplinary record for the similar type of misconduct

2. OFFER OF A BRIBE TO AN OFFICER OR AN EMPLOYEE OF A FINANCIAL INSTITUTION

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

(unit: KRW)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Passive acquiescence to the recipient's active demand • The conduct was limited to a promise or an expression of intent to provide a benefit • The offense was unrelated to financial duties	• Active offer of a bribe • Engaging in conduct in return for the bribe that constitute an illegal or wrongful performance of duties • 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	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Minor participation • Delivery of money or other valuables	• Closely related to the offender's official duties
	Offender/ etc.	• No prior criminal convictions • Sincere remorse	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense resulting in imprisonment which do not constitute statutory recidivism

3. ACCEPTANCE OF A BRIBE FOR INTERCESSION ON MATTERS BELONGING TO THE DUTIES OF AN OFFICER OR AN EMPLOYEE OF A FINANCIAL INSTITUTION

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

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• The offender played a limited role in the offense and the actual gain obtained is exceptionally insignificant • The offense was limited to a demand or promise • The offense was unrelated to financial duties	• Active demand • Instigating the subordinate to commit the offense • Highly egregious conduct or methods
	Offender/ etc.	• Hearing and/or speech disabilities • Money or other valuables, or other profits returned • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities or internal whistle-blowing	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• The offender played a limited role in the offense and the actual gain obtained is insignificant	• Commission of the offense over two years of extended period, involving the receipt of money or other valuables • Act of intercession done
	Offender/ etc.	• No prior criminal convictions • Sincere remorse	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense resulting in imprisonment which do not constitute statutory recidivism

DEFINITION OF OFFENSES

1 SECURITIES-RELATED OFFENSES

1. OFFENSES DAMAGING THE FAIRNESS OF THE CAPITAL MARKET

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Use of material non-public information	Financial Investment Services and Capital Markets Act, Article 443, paragraph 1, subparagraph 1 through 3 and paragraph 2
Market price manipulation	Financial Investment Services and Capital Markets Act, Article 443, paragraph 1, subparagraph 4 through 7 and paragraph 2
Unfair trading	Financial Investment Services and Capital Markets Act, Article 443, paragraph 1, subparagraph 8, subparagraph 9 and paragraph 2

(1) TYPE 1

- This indicates cases in which the criminal gain, or the loss avoided by the offense does not exceed 100 million KRW.

(2) TYPE 2

- This indicates cases in which the criminal gain, or the loss avoided by the offense equals or exceeds 100 million KRW but is less than 500 million KRW.

(3) TYPE 3

- This indicates cases in which the criminal gain, or the loss avoided by the offense equals or exceeds 500 million KRW but is less than 5 billion KRW.

(4) TYPE 4

- This indicates cases in which the criminal gain, or the loss avoided by the offense equals or exceeds 5 billion KRW but is less than 30 billion KRW.

(5) TYPE 5

- This indicates cases in which the criminal gain, or the loss avoided by the offense equals or exceeds 30 billion KRW.

2. OFFENSES DAMAGING THE TRANSPARENCY OF THE CAPITAL MARKET

(1) TYPE 1

ELEMENTS OF OFFENSE	APPLICABLE LAW
Violating the duty to report on stocks and the like held in bulk	Financial Investment Services and Capital Markets Act, Article 445, subparagraph 20

(2) TYPE 2

ELEMENTS OF OFFENSE	APPLICABLE LAW
Use of material non-public information, offering or selling securities without filing a registration statement, making a false statement or omitting statement of a material fact in registration statement, etc., making a false statement or omitting statement of a material fact in corrective registration statement and the like	Financial Investment Services and Capital Markets Act, Article 444, subparagraph 12 to 14 and subparagraph 18
Forgery or alteration of accounting information, forgery or alteration of audit working papers	External Audit Act, Article 41

(3) TYPE 3

ELEMENTS OF OFFENSE	APPLICABLE LAW
Preparing and disclosing of false statements, false statement or representation in the audit reports	External Audit Act, Article 39, paragraph 1

2 FINANCIAL CRIMES

1. ACCEPTANCE OF A BRIBE · INTERCESSION BY AN OFFICER OR AN EMPLOYEE OF A FINANCIAL INSTITUTION

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Acceptance of a bribe by an officer or an employee of a financial institution	Act on the Aggravated Punishment, etc. of Specific Economic Crimes, Article 5, paragraph 1, paragraph 2, paragraph 4
Acceptance of a bribe for intercession by an officer or an employee of financial institution	Act on the Aggravated Punishment, etc. of Specific Economic Crimes, Article 5, paragraph 3, paragraph 4

(1) TYPE 1

- This indicates cases in which the amount of bribe involved does not exceed 10 million KRW. The amount of bribe indicates the monetary value of the bribe offered, promised to offer or expressed to offer (hereinafter the same).

(2) TYPE 2

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

(3) TYPE 3

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

(4) TYPE 4

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

(5) TYPE 5

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

(6) TYPE 6

- This indicates cases in which the amount of bribe involved equals or exceeds 500 million KRW.

2. OFFER OF A BRIBE TO AN OFFICER OR AN EMPLOYEE OF A FINANCIAL INSTITUTION

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
An offering of a bribe to an officer or an employee of a financial institution	Act on the Aggravated Punishment, etc. of Specific Economic Crimes, Article 6, paragraph 1, paragraph 2

(1) TYPE 1

- This indicates cases in which the amount of bribe involved does not exceed 30 million KRW. The amount of bribe indicates the monetary value of the bribe offered, promised to offer or expressed to offer (hereinafter the same).

(2) TYPE 2

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

(3) TYPE 3

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

(4) TYPE 4

- This indicates cases in which the amount of bribe involved equals or exceeds 100 million KRW.

3. ACCEPTANCE OF A BRIBE FOR INTERCESSION ON MATTERS BELONGING TO THE DUTIES OF AN OFFICER OR AN EMPLOYEE OF A FINANCIAL INSTITUTION

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Acceptance of a bribe for intercession on matters belonging to the duties of an officer or an employee of a financial institution	Act on the Aggravated Punishment, etc. of Specific Economic Crimes, Article 7

(1) TYPE 1

- This indicates cases in which the amount of bribe involved does not exceed 30 million KRW. The amount of bribe indicates the monetary value of the bribe offered, promised to offer, or expressed to offer (hereinafter the same).

(2) TYPE 2

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

(3) TYPE 3

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

(4) TYPE 4

- This indicates cases in which the amount of bribe involved equals or exceeds 100 million KRW.

DEFINITION OF SENTENCING FACTORS

1 OFFENSES DAMAGING THE FAIRNESS OF THE CAPITAL MARKET (SECURITIES-RELATED OFFENSES)[1)]

1. PASSIVE INVOLVEMENT DUE TO *DE FACTO* PRESSURE ETC.

- This applies where one or more of the following are present:
  - Cases where the offender only followed a superior's instructions. However, this excludes cases where the offender himself tried to gain profits in a capital transaction by taking advantage of crime opportunities,
  - Other cases with comparable factors.

2. THE OFFENDER PLAYED A LIMITED ROLE

- This refers to cases involving organized offenses in which the offender neither led, planned, nor directed the crime, but merely carried out limited and simple executory actions.

3. MINOR IMPACT ON THE ACTUAL STOCK PRICE OR CASES OF A SMALL SCALE OF UNFAIR TRADING (MARKET PRICE MANIPULATION OR UNFAIR TRADING)

- This applies where one or more of the following are present:
  - Cases where the offense barely affected the stock prices,
  - Cases where the extent of the offense can be considered insignificant in terms of the volume of transactions, the total value of transactions, and proportion of order with intent to manipulate the market price,
  - Cases where the main cause of the change in stock price is determined to be a factor that is independent from the offense,
  - Other cases with comparable mitigating factors.

1) Unless otherwise defined, sentencing factors with the same designation, as applied to Offenses Damaging the Transparency of the Capital Market (Securities Offenses) and Financial Offenses are the same as sentencing factors with the same name in this Section.

4. ACTIVE COOPERATION IN INVESTIGATIVE AND JUDICIAL PROCEEDINGS

- This means cases in which the offender voluntarily reports to the Securities and Futures Commission, provides a statement or testifies in investigative or judicial proceedings that establishes another person's crime in relation to the case, submits other relevant materials, or provides information leading to the arrest of a criminal.

5. SIGNIFICANT IMPACT ON STOCK PRICES OR LARGE-SCALE UNFAIR TRADING (MARKET PRICE MANIPULATION OR UNFAIR TRADING)

- This applies where one or more of the following are present:
  - Cases in which the offense had a significant impact on changes in stock prices,
  - Cases in which the scale of the offense is considered significant in terms of transaction volume, total transaction value, or the proportion of orders placed with intent to manipulate market prices,
  - Cases in which the offense was committed in connection with the securities or derivatives market,
  - Other cases with comparable factors.

6. DELIBERATE CONCEALING OF PROFITS GAINED FROM THE OFFENSE

- This applies where one or more of the following are present:
  - Deliberate concealing of profits gained from the offense to avoid a claim for damages or execution of the monetary penalty,
  - Other cases with comparable factors.

※ Where the above grounds constitute a separate offense, such as a violation of the Act on Regulation and Punishment of Criminal Proceeds Concealment, and the offender is punished for concurrent offenses, such grounds shall be treated solely as a sentencing factor and the Guidelines on Sentencing Multiple Offenses shall not apply.

7. HIGHLY EGREGIOUS CONDUCT OR METHODS

- This indicates cases in which one or more of the following factors apply:
  - The means and methods for the commission of the offense were meticulously planned in advance,

- There were multiple persons involved in an organized manner for the purpose of committing the offense,
- Offense committed after Merger and Acquisition (M&A) through the use of borrowed capital, with the purpose to collect the capital or pay back the debt,
- Offense committed by, or conspiracy with a person responsible for forming and managing relevant information, such as a major shareholder, executive, and consulting agency,
- The use of the scope of employment as professionals involved in businesses such as finance, stock markets, or accounting,
- Other cases with comparable factors.

8. FAILURE TO SPEND OR RETAIN SIGNIFICANT PORTIONS OF THE PROFITS FROM CRIME

- This applies where one or more of the following are present:
  - Cases where the actual amount of profit involved, or the loss avoided by the crime is relatively small due to the loss created during the process of crime,
  - When the offender used the money gained from the disposition of the stocks by depositing it in the company account or repaying the existing company debt so that the increase in the amount of positive property is slight,
  - Other cases with comparable factors.
    - ※ However, the imposition of a fine, the sentencing of confiscation or additional collection, or the imposition of a regulatory surcharge shall not be taken into account.

9. 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 where crimes were committed repeatedly over a prolonged period.

10. 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.

11. MORALLY REPREHENSIBLE MOTIVES

- This applies where one or more of the following are present:
  - Cases where the offender raised the stock price to maintain the control of the company or engaged in trading of stocks by using material non-public information to secure cost to maintain the control of the company,
  - Cases where the offender dropped the stock price to decrease the cost of hostile M&A,
  - Other cases with comparable factors.

12. PRIOR HISTORY OF DISCIPLINARY MEASURES OR PENALTY SURCHARGES IMPOSED BY REGULATORY AUTHORITIES

- This refers to a prior history of administrative surcharges imposed by the Financial Services Commission or the Financial Supervisory Service, or disciplinary measures imposed as membership sanctions by the Korea Exchange.

2 OFFENSES DAMAGING THE TRANSPARENCY OF THE CAPITAL MARKET (SECURITIES-RELATED OFFENSES)

1. PASSIVE INVOLVEMENT DUE TO *DE FACTO* PRESSURE ETC.

- This applies where one or more of the following are present:
  - Cases where the offender only followed a superior's instructions. However, this excludes cases where the offender himself tried to gain profits in a capital transaction by taking advantage of crime opportunities,
  - Other cases with comparable factors.

2. EXTENUATING CIRCUMSTANCES FOR OFFENDER'S MOTIVE FOR COMMITTING OFFENSE

- This applies where one or more of the following are present:
  - Where the omission resulted from a mistake in the process of handling business tasks,
  - Misjudgment caused by modification of accounting standards,

- Dolus Eventualis,
- Other cases with comparable factors.

3. HIGHLY EGREGIOUS CONDUCT OR METHODS

- This applies where one or more of the following are present:
  - The means and methods for the commission of the offense were meticulously planned in advance,
  - There were multiple persons involved in an organized manner to commit the offense,
  - Use of highly intelligent schemes to commit the offense,
  - Other cases with comparable factors.

4. MORALLY REPREHENSIBLE MOTIVES

- This applies where one or more of the following are present:
  - Offense committed to conceal other crimes (such as embezzlement),
  - Offense committed to enable the capital to increase by issuing new stocks or bank advances,
  - Cases where the money was received in return for the crime,
  - Other cases with comparable factors.

3 FINANCIAL OFFENSES

1. OFFENSE UNRELATED TO FINANCIAL DUTIES

- This means cases in which the duty that is the subject of the bribe received or arranged by an officer or employee of a financial company, or the duty of the officer or employee of a financial company that is the subject of the bribe given or arranged, is unrelated to financial business operations.

2. RETURN ON MONEY OR OTHER VALUABLES BEFORE THE COMMENCEMENT OF AN INVESTIGATION

- This means the offender voluntarily returned the object used for the bribe to the giver before the investigative agency began its investigation. However, this

excludes cases where the offender attempted to conceal the offense after returning the bribe.

3. ENGAGING IN IMPROPER CONDUCT OR ACT OF INTERCESSION RELATED TO ACCEPTANCE OF A BRIBE OR CAUSING ACTUAL DAMAGE TO A FINANCIAL INSTITUTION

- This applies where one or more of the following are present:
  - Improper conduct or act of commissioning after accepting a bribe or accepting a bribe after engaging in improper conduct or act of commissioning,
  - Where the loan improperly extended cannot be recovered and actual damage occurred to a financial institution,
  - Other cases with comparable factors.

4. ACTIVE DEMAND OF BRIBE

- This applies where one or more of the following are present:
  - When the offender conspicuously demanded money or the valuables,
  - When the offender demanded money or valuables by implying that with the exercise of the offender's authority, the briber or the family member of the briber will be maltreated if the profit is not offered,
  - Other cases with comparable factors.

5. CLOSELY RELATED TO THE DUTIES OF THE OFFENDER (IN CASES OF ACCEPTANCE OF A BRIBE, ACCEPTANCE OF A BRIBE FOR INTERCESSION BY AN OFFICER OR AN EMPLOYEE OF A FINANCIAL INSTITUTION)

- This refers to the cases when the offender, regardless of the offender's position, had the decision-making authority regarding the demanded conduct in return for the bribe.

6. PASSIVE ACQUIESCENCE TO THE RECIPIENT'S ACTIVE DEMAND

- This refers to the cases when the offender passively yielded to the active demand of acceptance of a bribe or mediation for such bribe.

7. ACTIVE OFFER OF A BRIBE

- This refers to cases where the offender, in providing money, valuables, or other benefits to a recipient of a bribe or a recipient of money, etc. for arranging matters, actively made a request, demand, or the like in connection with the duties.

8. DELIVERY OF MONEY OR OTHER VALUABLES

- This means the offender delivers money or the valuables to a third person with the purpose of offering a bribe to the officer or employee of the financial institution or when the third person knowingly receives the delivered money or the valuables.

9. CLOSELY RELATED TO THE OFFENDER'S DUTIES (CASES OF OFFERING A BRIBE TO AN OFFICER OR AN EMPLOYEE OF A FINANCIAL INSTITUTION)

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

10. HIGHLY EGREGIOUS CONDUCT OR METHODS

- This applies where one or more of the following are present:
  - The means and methods for the commission of the offense were meticulously planned in advance
  - There were multiple persons involved in an organized manner for the purpose of committing the offense
  - The use of the scope of employment as professionals involved in businesses such as finance, stock markets, and accounting
  - Other cases with comparable factors

11. ACT OF COMMISSIONING THE OFFENSE

- This indicates cases in which the offender receives bribes and engages in the act of commissioning, or receives bribes after the act of commissioning.

PRINCIPLES APPLICABLE TO SENTENCING FACTORS

1 DETERMINING THE SENTENCING RANGE

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

2 DETERMINING THE SENTENCE TO BE IMPOSED

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

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

1. CONCURRENT SAME-OFFENSES AMONG THE CRIMES DAMAGING THE FAIRNESS OF THE CAPITAL MARKET

- For concurrent same-offenses among Crimes Damaging the Fairness of the Capital Market, the following method of aggravation for multiple offenses shall apply.

  ❶ The Type of offense shall be determined based on the aggregate amount of criminal gain or the loss avoided by the offense. Within that Type, the

sentencing range shall be selected by the judges taking into account 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 or more higher than that of the most severe single offense, the lower end of the sentencing range shall be reduced by 1/2. However, the reduced lower end of the sentencing range shall not fall below the lower end of the sentencing range of the offense Type applicable to the most severe single offense.

○ For concurrent offenses between Crimes Damaging the Fairness of the Capital Market and Financial Crimes, the following methods of 'Determining the Sentencing Range for the Concurrent Multiple Different-Offense' shall apply.

2. CONCURRENT SAME-OFFENSES AMONG THE CRIMES DAMAGING THE TRANSPARENCY OF THE CAPITAL MARKET

○ For concurrent same-offense among Crimes Damaging the Transparency of the Capital Market, 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.

3. CONCURRENT SAME-OFFENSES AMONG FINANCIAL CRIMES

- For concurrent same-offense among Financial Crimes, the following method of aggravation for multiple offenses shall apply.

❶ In setting sentencing range, judges should take into account for the total amount of profit or the loss avoided by the offense and decide the Type of the offense based on:

i) The aggregate amount of the bribe received, demanded, or promised by the executive or employee of the financial institution;

ii) The aggregate amount of the bribe given, promised to be given, or offered to the executive or employee of the financial institution;

iii) The aggregate amount of the bribe received, demanded, or promised in connection with the duties of the executive or employee of the financial institution.

After selecting the Type of offense, judges shall then decide appropriate sentencing range by considering all relevant factors.

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.

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

- Except for concurrent different-offenses 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 of the Crimes Damaging the Fairness of the Capital Market, or Financial Crimes, the sentencing range shall first be determined by applying the method for concurrent same-offenses involving above offenses, 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

1 SECURITIES-RELATED OFFENSES

1. OFFENSES UNDERMINING THE FAIRNESS OF THE CAPITAL MARKET

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Deliberate concealment of profits gained from the offense • Highly egregious conduct or methods • Significant influence on the actual stock price or large-scale unfair trading (market price manipulation, unfair trading) • 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)]	• Passive involvement in the offense due to *de facto* pressure, etc. • The offender played a limited role in the offense • Minor influence on the actual stock price or minor scale of unfair trading (market price manipulation, unfair trading) • Voluntary surrender to investigative authorities, internal whistle-blowing or active cooperation in investigative and judicial proceedings
General Circumstance	• Prior conviction for the same-offense or two or more prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment, or prior history of disciplinary measures or penalty surcharge imposed by the regulatory organization • Lack of family/social ties • Absence of sincere remorse • Leading role as a co-offender • Post-offense evidence tampering or attempt to conceal or destroy evidence after the commission of the offense • Morally reprehensible motives	• Stable family/social ties • Sincere remorse • No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment • Minor participation as a co-offender • The offender's physical condition is severely impaired • Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member • Failure to spend or retain significant portions of the profits from crime

2. OFFENSES UNDERMINING TRANSPARENCY OF THE CAPITAL MARKET

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• The offense was committed over a substantially prolonged period of time • Highly egregious conduct or methods • 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)]	• Passive involvement in the offense due to *de facto* pressure, etc. • Extenuating motives for the offense • Voluntary surrender to investigative authorities or internal whistle-blowing
General Circumstance	• Prior conviction for the same-offense or two or more prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment, or prior history of disciplinary measures or penalty surcharge imposed by the regulatory organization • Lack of family/social ties • Absence of sincere remorse • Leading role as a co-offender • Post-offense evidence tampering or attempt to conceal or destroy evidence after the commission of the offense • Morally reprehensible motives	• Stable family/social ties • Sincere remorse • No prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Minor participation as a co-offender • The offender's physical condition is severely impaired • Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member

2 FINANCIAL CRIMES

1. ACCEPTANCE OF BRIBES BY OFFICERS OR EMPLOYEES OF FINANCIAL INSTITUTIONS · ACCEPTANCE OF MONEY OR VALUABLES FOR BRIBE INTERCESSION

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Active demand for a bribe • Engaging in improper conduct or act of commissioning related to acceptance of a bribe or causing actual damage to a financial institution	• Cases where the amount of money or other valuables received is less than 20 million • Expresses substantial penitence (including voluntary surrender, confessions, whistle-blowing, and the like) • The offense was unrelated to financial duties
General Circumstance	• Prior convictions for same-offenses, or prior disciplinary record for the similar type of misconduct • Commission of the offense over two years of extended period, involving the receipt of money or other valuables • Leading role as a co-offender • An officer of a financial institution • Post-offense evidence tampering or attempt to conceal or destroy evidence after the commission of the offense	• Money or other valuables, or other profits returned before the commencement of an investigation • Faithful long-term serving of duties • Minor participation as a co-offender • The offender's physical condition is severely impaired • Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member • No prior criminal convictions

(unit: KRW)

2. OFFER OF A BRIBE TO AN OFFICER OR AN EMPLOYEE OF A FINANCIAL INSTITUTION

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Cases where the amount of bribe is 50 million or more • Prior conviction for the same-offense (a suspended sentence of imprisonment without labor or a more severe punishment imposed within the past ten years) • Active offer of a bribe • Engaging in conduct in return for the profit which constitutes illegal or wrongful performance of duties	• Cases where the amount of money or other valuables received is less than 20 million • Minor participation • Passive acquiescence to the active demand from the receiver • Expresses substantial penitence (including voluntary surrender, confessions, whistle-blowing, and the like) • The offense was unrelated to financial duties

CLASSIFICATION	ADVERSE	AFFIRMATIVE
General Circumstance	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Offering of bribe to the officer of a financial institution • Offering of bribe concerning significant benefits • Post-offense evidence tampering or attempt to conceal or destroy evidence after the commission of the offense • Lack of family/social ties • Prolonged duration of offering of bribe	• No prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • The offender's physical condition is severely impaired • Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member

(unit: KRW)

3. ACCEPTANCE OF A BRIBE FOR INTERCESSION ON MATTERS BELONGING TO THE DUTIES OF AN OFFICER OR AN EMPLOYEE OF A FINANCIAL INSTITUTION

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Active offer of a bribe • Engaging in conduct in return for the profit which constitutes illegal or wrongful performance of duties • Highly egregious conduct or methods	• Cases where the amount of money or other valuables received is less than 20 million • Expresses substantial penitence (including voluntary surrender, confessions, whistle-blowing, and the like) • The offense was unrelated to financial duties
General Circumstance	• Prior convictions for same-offenses • Commission of the offense over two years of extended period, involving the receipt of money or other valuables • Act of intercession done • Post-offense evidence tampering or attempt to conceal or destroy evidence after the commission of the offense	• Money or other valuables received returned • No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment • Minor participation as a co-offender • The offender's physical condition is severely impaired • Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member

(unit: KRW)

DEFINITIONS OF CIRCUMSTANCES TO CONSIDER WHEN SUSPENDING A SENTENCE

- For identical factors in both Sentencing Factors and the Circumstances for Suspending a Sentence, refer to the definitions set forth in the Definition of Sentencing Factors.
- Calculation of the Period of Prior Criminal Convictions
  - For cases where a suspended sentence of imprisonment 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.

❹ Even where ❸ above is applicable, in case of crimes harming the Fairness of the Capital Market, imprisonment shall be recommended if:

- Where the offense constitutes market manipulation and the amount of profit gained or loss avoided equals or exceeds 500 million, and the offense involves highly egregious conduct or methods.