CHAPTER 44

Crimes Related to Intellectual Property Infringement · Technology Infringement

- Promulgated on June 18, 2012. Effective on July 1, 2012.
- Amended on April 10, 2017. Effective on May 15, 2017.
- Amended on December 6, 2021. Effective on March 1, 2022.
- Amended on April 24, 2023. Effective on July 1, 2023.
- Amended on March 25, 2024. Effective on July 1, 2024.
- Amended on March 30, 2026. Effective on July 1, 2026.

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Patent Right, Exclusive License Infringement (Patent Act, Article 225, paragraph 1), Utility Model Right, Exclusive License Infringement (Utility Model Act, Article 45, paragraph 1), Design Right, Exclusive License Infringement (Design Protection Act, Article 220, paragraph 1), Trademark Right, Exclusive License Infringement (Trademark Act, Article 230), Author's Property Right Infringement (Copyright Act, Article 136, paragraph 1, subparagraph 1), Author's Moral Right Infringement (Copyright Act, Article 136, paragraph 2, subparagraph 1), Filing Deceitful Registration (Copyright Act, Article 136, paragraph 2, subparagraph 2), Infringing the Right of a Database Producer (Copyright Act, Article 136, paragraph 2, subparagraph 3), Using Information on the Relevant Reproducer or Interactive Transmitter for the Purposes Other Than Those Requested (Copyright Act, Article 136, paragraph 2, subparagraph 3-2), Circumventing Technological Protection Measures (Copyright Act, Article 136, paragraph 2, subparagraph 3-3), Removal etc. of Rights Management Information (Copyright Act, Article 136, paragraph 2, subparagraph 3-4), Circumvention, etc. of Encrypted Broadcasting Signals (Copyright Act, Article 136, paragraph 2, subparagraph 3-5), Forging, etc. of Labels (Copyright Act, Article 136, paragraph 2,

subparagraph 3-6), Transmitting Signals Prior to Broadcasting (Copyright Act, Article 136, paragraph 2, subparagraph 3-7), Committing an Act Deemed an Infringement (Copyright Act, Article 136, paragraph 2, subparagraph 4), Domestic and Overseas Infringement of Trade Secrets (Unfair Competition Prevention and Trade Secret Protection Act, Article 18, paragraph 1, subparagraph 1, subparagraph 2, subparagraph 3, paragraph 2), Overseas Infringement of National Core Technology (Act on Prevention of Divulgence and Protection of Industrial Technology, Article 36, paragraph 1), Overseas Infringement of Industrial Technology (Act on Prevention of Divulgence and Protection of Industrial Technology, Article 36, paragraph 2), Domestic Infringement of Industrial Technology (Act on Prevention of Divulgence and Protection of Industrial Technology, Article 36, paragraph 3), Divulge or Misappropriate any Secret Learned in the Course of Conducting Duties (Act on Prevention of Divulgence and Protection of Industrial Technology, Article 36, paragraph 6), Overseas Infringement of Defense Technology (Defense Technology Security Act, Article 21, paragraph 1), Domestic Infringement of Defense Technology (Defense Technology Security Act, Article 21, paragraph 2, limited to violation of Article 10, subparagraph 1, or subparagraph 2 of the same act), Divulge or Misappropriate any Secret Learned in the Course of Conducting Duties (Defense Technology Security Act, Article 21, paragraph 4), Overseas Infringement of Strategic Technology (Act on Special Measures For Strengthening the Competitiveness of, and Protecting National High-tech Strategic Industries, Article 50, paragraph 1, paragraph 2), Domestic Infringement of Strategic Technology (Act on Special Measures For Strengthening the Competitiveness of, and Protecting National High-tech Strategic Industries, Article 50, paragraph 3), Commission of Unfair Competition (Unfair Competition Prevention Act, Article 18, paragraph 3, subparagraph 1), and Using Badges or Marks (Unfair Competition Prevention Act, Article 18, paragraph 3, subparagraph 2).

※ 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 REGISTERED RIGHTS INFRINGEMENTS

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Act of Infringing Registered Rights	– 1 yr.	10 mos. – 2 yrs.	1 yr. 6 mos. – 4 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Actual loss is minor • Cases with special extenuating circumstances concerning the offender's participation in, or motives for the offense • Infringed products were not distributed • Dolus Eventualis	• Planned and/or organized offense • Deception directed at multiple consumers or involving active deceptive means • Inflicting serious harm to the right holder • Continuation of infringing acts despite a demand to cease, where the infringement is objectively apparent
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities, internal whistle-blowing, or voluntary full-disclosure of organizational crime • Victim expresses the intent of non-punishment or substantial restitution	• Same-offense recidivism within the statutory recidivism period • More than three prior convictions for the same-offense

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factor	Conduct	• Minor participation • Cases where the offense was committed out of economic necessity	• Repeated or prolonged commission of the offense • Inflicting serious harm
	Offender /Etc.	• Sincere remorse • No prior criminal convictions • Considerable restitution	• Prior conviction for the same-offense (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 COPYRIGHT INFRINGEMENTS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Act of Infringing Author's Property Right	- 10 mos.	8 mos. - 1 yr. 6 mos.	1 yr. - 3 yrs.
2	Act of Infringing Other Rights Related to Copyright	- 8 mos.	6 mos. - 1 yr. 4 mos.	10 mos. - 2 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Actual loss is minor • Cases with special extenuating circumstances concerning the offender's participation in, or motives for the offense • Not for profits • Dolus Eventualis	• Planned and/or organized offense • Inflicting serious harm to the right holder • Continuation of infringing acts despite a demand to cease, where the infringement is objectively apparent
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities, internal whistle-blowing, or voluntary full-disclosure of organizational crime • Victim expresses the intent of non-punishment or substantial restitution	• Same-offense recidivism within the statutory recidivism period • More than three prior convictions for the same-offense

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factor	Conduct	• Minor participation • Cases where the offense was committed out of economic necessity	• Repeated or prolonged commission of the offense • Inflicting serious harm • Infringement of a registered right
	Offender /Etc.	• Sincere remorse • No prior criminal convictions • Considerable restitution	• Prior conviction for the same-offense (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)

3 MISAPPROPRIATION OF TRADE SECRETS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Domestic Misappropriation of Trade Secrets	6 mos. – 1 yr. 6 mos.	10 mos. – 3 yrs.	2 yrs. – 5 yrs.
2	Overseas Misappropriation of Trade Secrets	10 mos. – 3 yrs.	1 yr. 6 mos. – 5 yrs.	3 yrs. – 8 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Actual loss is minor • Cases with special extenuating circumstances concerning the offender's participation in, or motives for the offense • The trade secret was not disclosed to external parties and was successfully recovered • Dolus Eventualis	• Planned and/or organized offense • Inflicting serious harm to the right holder • An offense involving a trade secret with substantial national or social impact
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities, internal whistle-blowing, or voluntary full-disclosure of organizational crime	• Same-offense recidivism within the statutory recidivism period • More than three prior convictions for the same-offense

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
		• Victim expresses the intent of non-punishment or substantial restitution	
General Sentencing Factor	Conduct	• Minor participation • Negligence in the supervision and management of trade secrets	• Actual use of disclosed trade secrets • The extent of the damage is significant • Disclosure of trade secrets that were unlawfully acquired or used • Economic profits gained from the offense
	Offender /Etc.	• Sincere remorse • No prior criminal convictions • Considerable restitution to the victim	• Prior conviction for the same-offense (less than 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)

4 MISAPPROPRIATION OF INDUSTRIAL TECHNOLOGY, ETC.

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Divulge · Misappropriation of confidential information acquired in the course of one's official duties	- 8 mos.	6 mos. - 1 yr. 6 mos.	1 yr. - 3 yrs. 6 mos.
2	Domestic Misappropriation	8 mos. - 2 yrs.	1 yr. - 4 yrs.	2 yrs. 6 mos. - 6 yrs.
3	Domestic Misappropriation of industrial technology	1 yr. - 3 yrs. 6 mos.	2 yrs. - 6 yrs.	4 yrs. - 10 yrs.
4	Overseas Misappropriation of National Core Technology	2 yrs. - 5 yrs.	3 yrs. - 7 yrs.	5 yrs. - 12 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Actual loss is minor • Cases with special extenuating circumstances concerning the offender's participation in, or motives for the offense • The technology was not disclosed to external parties and was successfully recovered	• Planned and/or organized offense • Inflicting serious harm to the right holder • An offense involving strategic technology (Type 4)
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities, internal whistle-blowing, or voluntary full-disclosure of organizational crime	• Same-offense recidivism within the statutory recidivism period • Offense committed by a person under a special duty of confidentiality
General Sentencing Factor	Conduct	• Minor participation • Negligence in the supervision and management of trade secrets	• Actual use of disclosed trade secrets • The extent of the damage is significant • Disclosure of strategic technology that was unlawfully acquired or used • Economic profits gained from the offense • Involving defense technology (Type 1, Type 3) • Involving strategic technology (Type 2, Type 3)
	Offender /Etc.	• Sincere remorse • No prior criminal convictions • Victim expresses the intent of non-punishment or substantial restitution	• Prior conviction for the same-offense (less than 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)

5 COMMISSION OF UNFAIR COMPETITION

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Act of Unfair Competition	– 8 mos.	6 mos. – 1 yr. 4 mos.	10 mos. – 2 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Actual loss is minor • Cases with special extenuating circumstances concerning the offender's participation in, or motives for the offense • Dolus Eventualis	• Planned and/or organized offense • Deception directed at multiple consumers or involving active deceptive means • Inflicting serious harm to the right holder • Continuation of infringing acts despite a demand to cease, where the infringement is objectively apparent
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities, internal whistle-blowing, or voluntary full-disclosure of organizational crime • 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 • Cases where the offense was committed out of economic necessity	• Repeated or prolonged commission of the offense • Inflicting serious harm
	Offender /Etc.	• Sincere remorse • No prior criminal convictions • Considerable restitution	• Prior conviction for the same-offense (less than 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 REGISTERED RIGHTS INFRINGEMENTS

- 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
Act of Infringing Patent Right or Exclusive License	Patent Act, Article 225, paragraph 1
Act of Infringing Utility Model Right or Exclusive License	Utility Model Act, Article 45, paragraph 1
Act of Infringing Design Right or Exclusive License	Design Protection Act, Article 220, paragraph 1
Act of Infringing Trademark Right or Exclusive License	Trademark Act, Article 230

2 COPYRIGHT INFRINGEMENTS

1. TYPE 1 – ACT OF INFRINGING AUTHOR'S INTELLECTUAL PROPERTY RIGHTS

ELEMENTS OF OFFENSE	APPLICABLE LAW
Author's Intellectual Property Right or Other Property Rights Protected Pursuant to Copyright Act (excluding rights under Article 93)	Copyright Act, Article 136, paragraph 1, subparagraph 1

2. TYPE 2 – ACT OF INFRINGING OTHER RIGHTS RELATED TO COPYRIGHT

ELEMENTS OF OFFENSE	APPLICABLE LAW
Infringement of author's moral rights	Copyright Act, Article 136, paragraph 2, subparagraph 1
Registration by fraudulent or unlawful means	Copyright Act, Article 136, paragraph 2, subparagraph 2
Infringement of rights of database producer	Copyright Act, Article 136, paragraph 2, subparagraph 3

ELEMENTS OF OFFENSE	APPLICABLE LAW
Reproducer or interactive transmitter for the purpose other than purposes requested	Copyright Act, Article 136, paragraph 2, subparagraph 3-2
Circumventing technological protection measures for own business or for profits	Copyright Act, Article 136, paragraph 2, subparagraph 3-3
Deleting management information for own business or for profit	Copyright Act, Article 136, paragraph 2, subparagraph 3-4
Manufacturing, etc. tangible or intangible measures for the purpose of decoding	Copyright Act, Article 136, paragraph 2, subparagraph 3-5
Forging, etc. of labels to attach to illegal copies	Copyright Act, Article 136, paragraph 2, subparagraph 3-6
Transmitting signals prior to broadcasting	Copyright Act, Article 136, paragraph 2, subparagraph 3-7
Committing act deemed an infringement	Copyright Act, Article 136, paragraph 2, subparagraph 4

3 MISAPPROPRIATION OF TRADE SECRETS

1. TYPE 1- DOMESTIC MISAPPROPRIATION OF TRADE SECRETS

ELEMENTS OF OFFENSE	APPLICABLE LAW
Acquire, use, or leak trade secrets for the purpose of making an improper profit or causing damage to a person who possesses trade secrets/leakage of trade secrets to places other than the designated location without permission/continued possession of trade secrets despite the owner's demand for their return or deletion.	Unfair Competition Prevention and Trade Secret Protection Act, Article 18, paragraph 2, paragraph 1 subparagraph 1
Acquire trade secrets by theft, deception, coercion or other improper means	Unfair Competition Prevention and Trade Secret Protection Act, Article 18, paragraph 2, paragraph 1 subparagraph 2
Acquire or use trade secrets with the knowledge of the fact that they have been acquired by theft, deception, coercion or other improper means	Unfair Competition Prevention and Trade Secret Protection Act, Article 18, paragraph 2, paragraph 1 subparagraph 3

2. TYPE 2 – OVERSEAS MISAPPROPRIATION OF TRADE SECRETS

ELEMENTS OF OFFENSE	APPLICABLE LAW
Acquire, use, or leak trade secrets with knowledge of the fact that they will be used overseas, for the purpose of making an improper profit or causing damage to the owner of trade secrets/leakage of trade secrets to places other than the designated location without permission/continued possession of trade secrets despite the owner's demand for their return or deletion.	Unfair Competition Prevention and Trade Secret Protection Act, Article 18, paragraph 1 subparagraph 1
Acquire trade secrets by theft, deception, coercion or other improper means with knowledge of the fact that they will be used overseas	Unfair Competition Prevention and Trade Secret Protection Act, Article 18, paragraph 1 subparagraph 2
Acquire or use trade secrets with knowledge of the fact that they are acquired by theft, deception, coercion or other improper means and they will be used overseas	Unfair Competition Prevention and Trade Secret Protection Act, Article 18, paragraph 1 subparagraph 3

4 MISAPPROPRIATION OF INDUSTRIAL TECHNOLOGY, ETC.

1. TYPE 1 – DIVULGENCE · MISAPPROPRIATION OF ANY CONFIDENTIAL INFORMATION OBTAINED IN THE COURSE OF DUTY

ELEMENTS OF OFFENSE	APPLICABLE LAW
Divulge or misappropriate secrets learned in the course of conducting duties	Act on Prevention of Divulgence and Protection of Industrial Technology, Article 36, paragraph 6
Divulge or misappropriate secrets learned in the course of conducting duties	Defense Technology Security Act, Article 21, paragraph 4

2. TYPE 2 – DOMESTIC MISAPPROPRIATION

ELEMENTS OF OFFENSE	APPLICABLE LAW
Divulge or Infringe Industrial Technology	Act on Prevention of Divulgence and Protection of Industrial Technology, Article 36, paragraph 3
Divulge or Infringe Defense Technology	Defense Technology Security Act, Article 21, paragraph 2 (limited to violation of Article 10, paragraph 1, or paragraph 2 of the same act)

ELEMENTS OF OFFENSE	APPLICABLE LAW
Divulge or Infringe Strategic Technology	Special Act on Competitiveness Enhancement and Protection of National Advanced Strategic Industries, Article 50, paragraph 3

3. TYPE 3 – OVERSEAS MISAPPROPRIATION OF INDUSTRIAL TECHNOLOGY

ELEMENTS OF OFFENSE	APPLICABLE LAW
Divulge or infringe industrial technologies for the purpose of using or having them used overseas	Act on Prevention of Divulgence and Protection of Industrial Technology, Article 36, paragraph 2
Divulge or infringe defense technologies for the purpose of using or having them used overseas	Defense Technology Security Act, Article 21, paragraph 1
Export strategic technologies without permission for the purpose of using or having them used overseas/ Cross-border acquisitions and mergers without permission for the purpose of using or having them used/Refusing to comply with or evading a request by the strategic technology holder to delete the strategic technology due to the lapse of the right to retain or use the strategic technology, or retaining copies thereof, by a person who has a duty to maintain the confidentiality of a strategic technology for the purpose of obtaining unfair profits or causing damage to the holder/ uses or discloses strategic technology for purposes other than the purpose for which it has been provided.	Act on Special Measures for Strengthening the Competitiveness of, and Protecting National High-Tech Strategic Industries, Article 50, paragraph 2

4. TYPE 4 – OVERSEAS MISAPPROPRIATION OF NATIONAL CORE TECHNOLOGY

ELEMENTS OF OFFENSE	APPLICABLE LAW
Divulge or Infringe national core technology	Act on Prevention of Divulgence and Protection of Industrial Technology, Article 36, paragraph 1
Acquiring the strategic technology of any institution possessing strategic technology by theft, fraud, threat, or other improper means or using for the purpose of using or having strategic technology thereof. /Divulging strategic technology for the purpose of obtaining unfair profits or causing losses to an institution possessing strategic technology by a person who has a duty to maintain confidentiality of strategic technology/acquiring strategic technology knowing that it is acquired improper means	Special Act on Competitiveness Enhancement and Protection of National Advanced Strategic Industries, Article 50, paragraph 1

5 COMMISSION OF UNFAIR COMPETITION

ELEMENTS OF OFFENSE	APPLICABLE LAW
Unfair competition acts under the Unfair Competition Prevention and Trade Secret Protection Act, Article 2, subparagraph 1 [excluding items 8, item 10, item 11 (1) through (3), item 12, item 13]	Unfair Competition Prevention Act, Article 18, paragraph 3, subparagraph 1
Act of Using Trademark, Contrary to Article 3, An Identical or Similar Badge or Mark of a Party in Violation of the Paris Convention	Unfair Competition Prevention Act, Article 18, paragraph 3, subparagraph 2

DEFINITION OF SENTENCING FACTORS

1. ACTUAL LOSS IS MINOR

- This means one or more of the following factors apply:
  - When the holder (or victim) of a right did not actually use the right concerned, or the trade secrets or industrial technology, etc. (except when the right is in use or it is a foundational aspect of the secret for developing trade secrets, industrial technology, etc.),
  - When the infringed right, trade secrets or industrial technology, etc. is used in merely one process of the product or service so that the offender could produce products or services using other alternative technology even without the right or trade secrets and the decline in sales by the offense is insignificant to the holder,
  - When the infringement involves only a small portion of the object of copyright or other rights,
  - Other cases with comparable factors.

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

- This means one or more of the following factors apply:
  - 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,
  - When the offender used the work protected by copyright to help the cultural life of children, persons with disabilities, senior citizen,
  - Other cases with comparable mitigating factors.

3. INFRINGED PRODUCTS WERE NOT DISTRIBUTED

- The whole products made from infringing rights, trade secrets, or industrial technology are not transferred or possessed by the third party but are still under the offender's control.

4. THE TRADE SECRET WAS NOT DISCLOSED TO EXTERNAL PARTIES AND WAS RECOVERED

- This indicates cases in which the risk of damage to the holder of a trade secret or industrial technology is low, because the offender did not disclose the secret or technology externally and it was either returned to the holder of the right (the victim) or destroyed.

5. PLANNED AND/OR ORGANIZED CRIME

- This means cases with one or more of the following factors:
  - 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,
  - Other cases with comparable factors.

6. DECEPTION DIRECTED AT MULTIPLE CONSUMERS OR INVOLVING ACTIVE DECEPTIVE MEANS

- This indicates cases in which the offender deceived consumers and caused confusion in the market by using pictures of authentic goods in advertisements or by displaying counterfeit goods together with authentic ones.

7. INFLICTING SERIOUS HARM TO THE HOLDER OF THE RIGHT (VICTIM)

- This means one or more of the following factors apply:
  - The proportion of profit gained from the act of infringement, unfair competition constitutes most of the total sales of the offender, or a considerable part of the total sales of the holder of a right (the victim),
  - The offender established a corporation or place of business solely to infringe the specific right,
  - The business of a right holder (the victim) faced bankruptcy crisis or fatal financial problems due to severe decline in sales,
  - The offender infringed trademark rights with substantial recognition of the trademark in the marketplace,
  - The offender infringed patent rights, which became the basis of a specific industry area or brought innovative advances in a special field,

- Cases where a small or medium enterprise infringes or leaks technology of small or medium enterprise that is under the protection under the Framework Act on Small and Medium Enterprises and the large enterprise is in competition or a supplier and/or in contract with the small or medium enterprise under the Framework Act on Small and Medium Enterprises,
- The offender infringed a patent, trade secret, or technology that required a substantial amount of research and development investment,
- Other cases with comparable factors.

8. 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 the 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 punishment of 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.

9. 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 (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 court deposit, it constitutes substantial recovery of damages only when such a determination is made after carefully examining and assessing the opinions of the victim of the underlying offense or their legal representative (including the spouse, lineal relatives, and siblings if the victim is deceased) regarding the deposit, whether the offender is legally permitted or intends to retrieve the deposited funds, the nature of the infringed legal interests, and the scale and extent of the damage.

10. OFFENSE COMMITTED BY A PERSON UNDER SPECIAL DUTIES TO MAINTAIN CONFIDENTIALITY

- This means cases with one or more of the following factors:
  - the offender is the person prescribed in the Industrial Technology Act, Article 34,
  - the offender is not employed by the holder of a right. The offender received a considerable amount of money from the right holder (the victim) for developing the technology of the holder by participating as a subcontractor,
  - the offender promised not to use the industrial technology or trade secrets transferred to the current holder of a right but instead disclosed or used them,
  - the offender is the person with the duty to maintain confidentiality of trade secret or industrial technology in accordance with a contract, etc.,
  - Other cases with comparable 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 means that the offender has no previous criminal conviction. 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.

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

- This indicates cases in which the offender consistently harassed the victim while attempting to reach settlement, or put undue pressure on the victim by means of implying tangible or intangible disadvantages, otherwise causing harm through comparable means in response to refusal of settlement.

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 or bereaved family member has no intent of 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 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 INFRINGEMENT OF REGISTERED RIGHT, COPYRIGHT, ACT OF UNFAIR COMPETITION

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Planned and/or organized crime • Inflicting serious harm to the victim (right holder) • Continuation of infringing acts despite a demand to cease, where the infringement is objectively apparent • No compensation for the damage caused • Prior convictions for the same-offense [a suspended sentence of imprisonment or a heavier punishment within the past five years, or three or more fines (including suspended sentences)]	• Actual loss is minor • Cases with special extenuating circumstances that mitigate the offender's involvement • Infringed products were not distributed • Dolus eventualis • Not-for-profit use • Voluntary surrender to investigative authorities, internal whistle-blowing, or voluntary full-disclosure of organizational crime • No prior criminal convictions • Victim expresses the intent of non-punishment or substantial restitution to the victim
General Circumstance	• Morally reprehensible motives • Lack of family/social ties • Absence of remorse • Leading role as a co-offender • Repeated or prolonged commission of the offense • Extent of damage is substantial • Prior conviction for the same-offense (less than ten years after the completion of the sentence) or two or more prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • Absence of efforts to recover the harm • Causing harm in the course of attempting to reach a settlement (excepting cases where the act constitutes a crime of coercion)	• Sincere remorse • Offender's minor participation as a co-offender • Cases where the offense was committed out of economic necessity • Stable family/social ties • No prior conviction of a suspended sentence of imprisonment without labor or a heavier punishment • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members • Considerable restitution

2 MISAPPROPRIATION OF TRADE SECRETS

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Planned and/or organized crime • Inflicting serious harm to the victim • Offense committed by a person under a special duty of confidentiality • Non-compensation of the damage • Prior convictions for the same-offense [a suspended sentence of imprisonment or a heavier punishment within the past five years, or three or more fines (including suspended sentences)]	• Actual loss is insignificant • In cases where there are special circumstances that mitigate the offender's involvement in the offense • The trade secret was not disclosed to external parties and was successfully recovered • Dolus Eventualis • Voluntary surrender to investigative authorities, internal whistle-blowing, or voluntary full-disclosure of organizational crime • Victim expresses the intent of non-punishment or substantial restitution
General Circumstance	• Morally reprehensible motives • Lack of family/social ties • Absence of remorse • Leading role as a co-perpetrator • Repeated or prolonged commission of the offense • Extent of damage is substantial • Prior conviction for the same-offense (less than ten years after the completion of the sentence) or two or more prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • Absence of efforts to recover the harm • Causing harm in the course of attempting to reach a settlement (excepting cases where the act constitutes a crime of coercion)	• Sincere remorse • Offender's minor participation as a co-offender • Stable family/social ties • No prior conviction of a suspended sentence of imprisonment without labor or a heavier punishment • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members • Considerable restitution

3 MISAPPROPRIATION OF INDUSTRIAL TECHNOLOGY, ETC.

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Planned and/or organized crime • Inflicting serious harm to the victim • Offense committed by a person with special duties to maintain confidentiality • Misappropriation of industrial technology, etc. (Type 2, Type 3, Type 4) • Non-compensation of the damage • Prior convictions for the same-offense [a suspended sentence of imprisonment or a heavier punishment within the past five years, or three or more fines (including suspended sentences)]	• Actual loss is insignificant • In cases where there are special circumstances that mitigate the offender's involvement in the offense • The industrial technology was not disclosed to external parties and was successfully recovered • Voluntary surrender to investigative authorities, internal whistle-blowing, or voluntary full-disclosure of organizational crime
General Circumstance	• Morally reprehensible motives • Lack of family/social ties • Absence of remorse • Leading role as a co-offender • Repeated or prolonged commission of the offense • Extent of damage is substantial • Prior conviction for the same-offense (less than ten years after the completion of the sentence) or two or more prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • Absence of efforts to recover the harm • Causing harm in the course of attempting to reach a settlement (excepting cases where the act constitutes a crime of coercion)	• Sincere remorse • Offender's minor participation as a co-offender • Stable family/social ties • No prior conviction of a suspended sentence of imprisonment without labor or heavier punishment • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members • Victim expresses the intent of non-punishment or substantial restitution

DEFINITIONS OF CIRCUMSTANCES TO CONSIDER WHEN SUSPENDING A SENTENCE

- For identical factors in both Sentencing Factors and 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 among Mitigating 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, judges shall decide whether to suspend the sentence after comparing and assessing the Circumstances among Mitigation Circumstances for suspension of execution of the sentence comprehensively.