

Promulgated on April 24, 2009, Effective on July 1, 2009

⑤ Crimes of Embezzlement and Breach of Trust

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Embezzlement (Criminal Act, Article 355, paragraph 1), Breach of trust (Criminal Act, Article 355, paragraph 2), Occupational embezzlement and breach of trust in the conduct of business (Criminal Act, Article 356), Embezzlement and breach of trust under Specific Economic Crime Act (Specific Economic Crime Act, Article 3, paragraph 1).

I. TYPES OF OFFENSE AND SENTENCING PERIODS

| Type | Classification | Mitigated Sentencing Range | Standard Sentencing Range | Aggravated Sentencing Range |
|------|---|----------------------------|---------------------------|-----------------------------|
| 1 | Less Than 100 Million Won | - 10months | 4months - 1yr 4months | 10months - 2yrs 6months |
| 2 | More Than 100 Million Won, But Less Than 500 Million Won | 6months - 2yrs | 1yr - 3yrs | 2yrs - 5yrs |
| 3 | More Than 500 Million Won, But Less Than 5 Billion Won | 1yr 6months - 3yrs | 2yrs - 5yrs | 3yrs - 6yrs |
| 4 | More Than 5 Billion Won, But Less Than 30 Billion Won | 2yrs 6months - 5yrs | 4yrs - 7yrs | 5yrs - 8yrs |
| 5 | More Than 30 Billion Won | 4yrs - 7yrs | 5yrs - 8yrs | 7yrs - 11yrs |

| Classification | | Mitigating Factor | Aggravating Factor |
|--------------------------------|-------------|--|---|
| Special Sentencing Determinant | Conduct | <ul style="list-style-type: none"> ● Passive Participation Resulting From Outside Pressure ● Offense Caused Relatively Small Actualized Damages ● Under Single-ownership or a Family-owned Business ● Offense Committed for the Sole Benefit of the Company ● Minor Violation of Duties | <ul style="list-style-type: none"> ● Inflicting Multiple Victims Including Employees, Shareholders, or Creditors or Inflicting Serious Harm to the Victim ● Deliberate Concealment of Profits Gained from the Offense ● Particularly Malicious Commission of the Offense ● Instigating the Subordinate Person to Commit the Offense |
| | Actor /Etc. | <ul style="list-style-type: none"> ● Those with Hearing and Visual Impairments ● Those with Mental Incapacity (Cases Where the Offender Cannot be Held Liable) ● Voluntary Surrender to Investigative Agencies or Cases of Whistle-Blowing of Corruption ● Offender Expresses Remorse and the Victim Opposes Punishment; or Substantial Portion of Harm Reversed | <ul style="list-style-type: none"> ● Repeated Offenses of the Same Type under the Criminal Act |

| Classification | | Mitigating Factor | Aggravating Factor |
|--------------------------------|-------------|---|--|
| General Sentencing Determinant | Conduct | <ul style="list-style-type: none"> ● Offense Committed for Basic Living Expenses, Hospital Expenses and the Like ● Cases Where the Offender Failed to Consume or Retain Most of the Profit from the Crime ● Passive Participation ● Non-occupational Crime (Involving Embezzlement or Breach of Trust Cases) ● Major Shareholder of the Affected Company | <ul style="list-style-type: none"> ● Promise or Acceptance of Benefit in Exchange for the Commission of the Offense ● Offense Committed with Purpose to Reinforce Control or the Secure Position within the Company ● Embezzlement Offenses |
| | Actor /Etc. | <ul style="list-style-type: none"> ● Those with Mental Incapacity (These Are Cases Where the Offender Can be Held Liable) ● Expresses Sincere Remorse ● No Prior Criminal History | <ul style="list-style-type: none"> ● Destroying Evidence or Attempting to Conceal the Evidence After Commission of the Offense ● Repeated Offenses of Different Type under the Criminal Act, Criminal History of Imprisonment by the Same Type of Offense or by Fraud Offense that Does Not Constitute Repeated Offense under the Criminal Act (This Applies When the Criminal History is Within Ten Years After Completion of Sentence) |

[DEFINITION OF OFFENSES]

01 | TYPE 1

- This means where the amount of profit involved does not exceed 100 million won.
- “Profit” means the offender or the third party through the assistance of the offender has acquired property or financial gain by the commission of the offense (This definition applies throughout the guideline).

02 | TYPE 2

- This means cases where the amount of a profit involved exceeds 100 million won but is less than 500 million won.

03 | TYPE 3

- This means cases where the amount of a profit involved exceeds 500 million won but is less than 5 billion won.

04 | TYPE 4

- This means cases where the amount of a profit involved exceeds 5 billion won but is less than 30 billion won.

05 | TYPE 5

- This means cases where the amount of a profit involved exceeds 30 billion won.

[DEFINITION OF SENTENCING FACTORS]

01 | OFFENSE CAUSED RELATIVELY SMALL ACTUALIZED DAMAGES

- This means cases where less than 1/3 of the potential damage actualized through the offense.

02 | UNDER SINGLE-OWNERSHIP OR A FAMILY-OWNED BUSINESS

- This means cases where the company subject of the offense is under single-ownership or a family-owned business.
- However, this does not apply in cases involving one or more factors set forth below:
 - When an adversely affected third party (such as a creditor) as a result of the offense is involved.
 - When a petition from a shareholder family member is involved.

03 | OFFENSE COMMITTED FOR THE SOLE BENEFIT OF THE COMPANY

- This means cases where the offense was committed for the sole benefit of the company and not for personal interests and involves cases where one or more following factors apply:
 - When the offender provided unlawful aid to an affiliate company for the purpose of preventing bankruptcy;
 - When the damage upon the company was a result of reckless investment;
 - Where the offender caused excessive debt to the company in the course of merger and acquisition; or
 - Other cases with comparable factors.

04 | MINOR VIOLATION OF DUTIES

- This means cases where one or more following factors apply:
 - When an employee of a financial institution, without an exchange for a benefit,

- provides loans without properly checking the debtor's repaying abilities or violates the internal policies to provide convenience to the debtor;
- When refusing to return the property held in possession;
 - When the offender improperly disposed the property, which exceeded the entrusted purpose, but has the intent to reimburse and is capable thereof;
 - When the offense was not clearly recognized as a prohibited conduct by prior case law or through generally accepted legal principles, or in cases where changes to prior case law caused the conduct to be recognized as a prohibited offense; or
 - Other cases with comparable factors.

05 | INFLECTING SERIOUS HARM TO THE VICTIM


- This means cases where one or more following factors apply:
 - Financial or management crisis of the company as a result of the offense;
 - Collapse of company's stocks due to damaged reputation as a result of the offense;
 - Multiple bankruptcies induced as a result of the offense;
 - Victims suffers from losses of nearly all assets due to the offense;
 - Shareholders, employees, and creditors of the company (such as offense committed with impending bankruptcy) as well as the company is significantly adversely affected as a result of the offense; or
 - Other cases with comparable factors.

06 | DELIBERATE CONCEALMENT OF PROFITS GAINED FROM THE OFFENSE

- This means profits from the offense were deliberately concealed by the offender thereby causing delayed damage recovery or absence of recovery.

07 | PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This means cases where one or more following factors apply:
 - Means and methods for the commission of the offense was meticulously done in-advance;

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- Multiple persons involved in a organized manner for the purpose of committing the offense;
 - The use of scope of employment as professionals involved in business such as finance, stock markets, trading, accounting;
 - Methods such as falsifying accounts, engaging in fraudulent accounting, forgery of documents used in the commission of the offense;
 - Using highly intelligent schemes to commit the offense;
 - Using new professional schemes previously unknown;
 - Deliberately evading responsibilities prescribed under law to commit the offense; or
 - Other cases with comparable factors.

08 | CASES OF WHISTLE-BLOWING OF CORRUPTION

- This means the investigation was initiated with a voluntary report by a former participant of a structural corruption with the intent to end the offense.

09 | SUBSTANTIAL PORTION OF DAMAGE REVERSED

- This means more than 2/3 of the caused damage has been reversed or will be reversed with certainty.

[ASSESSING PRINCIPLES APPLICABLE TO THE SENTENCING FACTORS]

01 | DETERMINING APPROPRIATE SENTENCING RANGE

- In determining the appropriate sentencing range, the judge must only consider the special sentencing determinants.
- However, in cases involving more than two special sentencing determinant, the applicable sentencing range is adjusted after assessing the factors as set forth below:
 - ① The same number of conduct factor shall be considered with greater significance than the actor/etc. factor. However, this shall be assessed equally to the victim's objection to the punishment.
 - ② Each factor within the relevant categories of conduct or actor/etc. factors should be treated as equal.
 - ③ If the applicable sentencing range is unable to be determined by the aforementioned principles ①, ②, the judge is to decide the applicable sentencing range through a comprehensive comparison and assessment based on the principles set forth in ①, ②.
- It is recommended that when the assessment reveals greater aggravating factors to select the aggravated zone, the mitigating factors is greater to select the mitigating zone, and the same number of aggravating factors and mitigating factors to select the standard zone as a sentencing range

02 | DETERMINING THE APPLICABLE SENTENCE

- The judge should select the proper point within the sentencing range as assessed in accordance with the above principles, along with the special sentencing determinant and general sentencing determinant taken together.

[GENERAL APPLICATION PRINCIPLES]

01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- ① In cases where the aggravating factor is selected and the assessment of the special sentencing determinant reveals only two or more special aggravating factors or the special sentencing determinant outnumbers the special mitigating determinant by two or more, then the sentencing range should be increased up to 1/2 from the maximum level.
- ② For cases where the mitigating factor is selected as a result of assessment of the special sentencing determinant, and there are two or more special mitigating determinant or the special mitigating determinant outnumbers the special aggravating determinant by two or more, the sentencing range should be decreased up to 1/2 from the minimum level.

02 | RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE GUIDELINES AND APPLICABLE SENTENCING RANGE BY LAW

When the sentencing range under this guideline conflicts with the range drawn in accordance with the aggravation and mitigation of applicable law, the sentencing range prescribed by applicable law governs.

03 | APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

When the judge declines to apply the optional mitigation factor under the applicable law as listed in the sentencing table of this guideline, this shall be considered as the discretion for mitigation.

[GUIDELINE ON MULTI-COUNT CONVICTIONS]

01 | APPLICABLE SCOPE

- This part on multi-count convictions applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act as set forth in this sentencing guideline. However, in cases of this article's concurrent crimes where offenses that fall within and outside of the sentencing guidelines are involved, the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

02 | DETERMINING BASE OFFENSE

- The “base offense” means the most severe offense that results after the selection of penalty and statutory aggravation and mitigation as prescribed in Criminal Act, Article 50. However, in cases where the maximum sentencing range is lower than that of the maximum sentencing range of the other counts as provided in this guideline, then such other count becomes the base offense.

03 | CALCULATING SENTENCING RANGE OF MULTI-COUNT CONVICTION OF THE SAME OFFENSE

- For purposes of calculating sentencing range for multi-count conviction cases with the same offense, the judge shall apply the following principles:
 - ① In setting sentencing range take into account the total amount of profit from the embezzlement or the breach of trust, and select the appropriate sentencing range by considering all relevant factors.
 - ② However, as a result of total summation, if the applicable offense type is one level higher than the most severe single offense among the multi-count, then reduction of 1/3 is made to the minimum sentencing range. If the applicable offense type is two or more levels higher than the most severe single offense among the

multi-count, then reduction of 1/2 is made to the minimum sentencing range by applying the minimum sentencing range of the most severe single offense among the multi-count.

04 | CALCULATING SENTENCING RANGE OF MULTI-COUNT CONVICTION OF DIFFERENT OFFENSES

- purposes of calculating sentencing range for multi-count conviction cases with the different offense, the judge shall apply the following principles unless the offenses are deemed as a single offense under the sentencing guideline:
 - ① In setting sentencing range for an offender convicted of two counts, the sentencing range should be the total sum of the maximum sentencing range of the base offense and the 1/2 of the maximum sentencing range of the second count.
 - ② In setting sentencing range for an offender convicted of three or more counts, the sentencing range should be the total sum of the following: (1) maximum sentencing range of the base offense, (2) 1/2 of the maximum sentencing range of the count with the highest sentencing range, and (3) 1/3 of the maximum sentencing range of the remaining count with the second highest sentencing range.
 - ③ For cases where the minimum sentencing range of the other count is higher than that of the base offense, the minimum sentencing range resulting from the multi-count offense should be the minimum sentencing range of the other count.
- However, when the multi-count conviction for offenses of embezzlement or breach of trust include same offenses, first set the sentencing range for multi-count conviction of the same offenses and then use the resulted point range to calculate the sentencing range for multi-count conviction with different offenses.

II. GUIDELINE ON SUSPENSION OF SENTENCE

| Classification | | Adverse | Affirmative |
|------------------------------|--------------------------|---|---|
| Primary Consideration Factor | Risk of Recidivism, etc. | <ul style="list-style-type: none"> ● Criminal History of the Same Offense (Imposing of Suspension of Sentence or More Severe Punishment Within Five Years; or More Than Three Incidents of Fines) ● Deliberate Concealment of Profits Gained from the Offense ● Particularly Malicious Commission of the Offense | <ul style="list-style-type: none"> ● Passive Participation Resulting From Outside Pressure ● Minor Violation of Duties ● Voluntary Surrender to Investigative Agencies or Cases of Whistle-Blowing of Corruption |
| | Other Factors | <ul style="list-style-type: none"> ● Absence of Agreement with the Victim ● Cases Where the Actual Damage is Substantial ● Inflicting Serious Damages to the Victim | <ul style="list-style-type: none"> ● Substantial Portion of Damages Reversed ● Under Single-ownership or a Family-owned Business ● Cases Where the Actual Damage is Slight ● Offender Expresses Remorse and the Victim Opposes Punishment |
| General Consideration Factor | Risk of Recidivism, etc. | <ul style="list-style-type: none"> ● Criminal History of the Same Offense, More Than Two Incidents of Suspension of Sentence or More Severe Punishment ● Repeated Crimes ● Condemnable Motives ● Lack of Social Ties ● Absence of Remorse | <ul style="list-style-type: none"> ● Offense Committed for Basic Living Expenses, Hospital Expenses and the Like ● Strongly-Established Social Ties ● Expresses Sincere Remorse ● No Criminal History of Suspension of Sentence or Imposing of Other Sentences More Severe ● Motive for Committing Offense Can be Taken into Consideration ● Cases of Old-age Offenders |

| Classification | | Adverse | Affirmative |
|------------------------------|---------------|--|---|
| General Consideration Factor | Other Factors | <ul style="list-style-type: none"> ● Active Participation as an Accomplice ● Inflicting Multiple Victims Including Employees, Shareholders, or Creditors ● Promise or Acceptance of Benefit in Exchange for the Commission of the Offense ● Destroying Evidence or Attempting to Conceal Evidence After Commission of the Offense ● Offense Committed with Purpose to Reinforce Control or to Secure Position within the Company ● Absence of Efforts to Reverse Damages | <ul style="list-style-type: none"> ● Passive Participation As an Accomplice ● Cases Where the Offender Failed to Consume or Retain Most of the Profit from the Crime ● Significant Amount of Money Deposited, Portion of Damage Reversed, Genuine Efforts to Reverse Harm ● Offense Caused Relatively Small Actualized Damages ● Offense Committed for the Sole Benefit of the Company ● Cases of Physically-ill Offenders ● Cases where the Arrest of the Offender would Cause Severe Hardship to the Offender's Dependent Family Member ● Major Shareholder of the Affected Company |

[DEFINITIONS OF CONSIDERATION FACTORS FOR SUSPENSION OF SENTENCE]

- In cases where the consideration factors for suspension of sentence of sentencing and the sentencing factors are identical, refer to the definitions set forth in the *Definition of Sentencing Factors*.

- Determining Criminal History
 - Prior criminal history is calculated as follows: In cases involving suspension of sentence, calculate from the date the defendant's suspension of sentence was affirmed up to the date of the commission of the offense. In cases imposing imprisonment, calculate from the final date of the completion of the sentence up to the date of the commission of the offense.

- Cases where the actual damage is substantial
 - This means cases where the offense does not constitute as *Inflicting Serious Harm to the Victim* but the total damage unrecovered amounts to more than 300 million won.
 - However, for suspension of sentence, this means cases where the total damage unrecovered amounts to more than 500 million won.

- Cases where the actual damage is slight
 - This means cases where the total damage unrecovered amounts to less than 20 million won.
 - However, for imposing imprisonment, this means cases where the total damage unrecovered amounts to less than 50 million won.

[ASSESSING PRINCIPLES APPLICABLE TO THE CONSIDERATION FACTORS FOR SUSPENSION OF SENTENCE]

- For cases where the imposing penalty is imprisonment, in deciding whether the suspension of sentence is appropriate, the primary consideration factor should be taken into account with greater importance than the general consideration factors. This is further specified as follows:
 - ① In cases where only two or more primary affirmative factors exist or when primary affirmative factors outnumber the major adverse factor by two or more, suspension of sentence is recommended.
 - ② In cases where two or more primary adverse factors exist or when primary adverse factors outnumber the primary affirmative factor by two or more, imprisonment is recommended.
 - ③ In cases other than ①, ②, or even if cases of ①, ②, if the difference between the number of general adverse(affirmative) factors and general affirmative (adverse) factors is greater than that of adverse and affirmative factors of the primary consideration, then the judge shall decide whether to suspend the sentencing after assessing and comprehensively taking into account the factors listed under the suspension of sentence section.

