

Promulgated on March 21, 2011, Effective on July 1, 2011

## 9 Crimes of Fraud

This guideline applies to adult offenders (offenders aged 19 or older) who committed any offenses of Fraud (Criminal Act, Article 347), Fraud by Use of Computer or Other Similar Devices (Criminal Act, Article 347-2), *Quasi*-fraud (Criminal Act, Article 348), Habitual Fraud (Criminal Act, Article 351, Nonetheless, this application is limited to offenders of Criminal Act, Article 347, Article 347-2, and Article 348), or Fraud Under Specific Economic Crime Act (Specific Economic Crime Act, Article 3, paragraph 1).

# I. TYPES OF OFFENSE AND SENTENCING PERIODS

## 01 | GENERAL FRAUD

Type	Classification	Mitigated Sentencing Range	Standard Sentencing Range	Aggravated Sentencing Range
1	Less Than 100 Million Won	- 1yr	6months - 1yr 6months	1yr - 2yrs 6months
2	More Than 100 Million Won, But Less Than 500 Million Won	10months - 2yrs 6months	1yr - 4yrs	2yrs 6months - 6yrs
3	More Than 500 Million Won, But Less Than 5 Billion Won	1yr 6months - 4yrs	3yrs - 6yrs	4yrs - 7yrs
4	More Than 5 Billion Won, But Less Than 30 Billion Won	3yrs - 6yrs	5yrs - 8yrs	6yrs - 9yrs
5	More Than 30 Billion Won	5yrs - 9yrs	6yrs - 10yrs	8yrs - 13yrs

Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>● Fraud by Willful Negligence or Fraud with Only Slight Degree of Deception</li> <li>● Offense Caused Relatively Small Actualized Damages</li> <li>● Passive Participation Resulting From Outside Pressure</li> <li>● Cases where the Victim is Also Primarily Responsible for the Crime or Extent of the Damage</li> </ul>	<ul style="list-style-type: none"> <li>● Crime Against Unspecified Multiples of Victims or Prolonged and Repeated Commission of the Crime</li> <li>● Inflicting Serious Harm to the Victim</li> <li>● Particularly Malicious Commission of the Offense or Offense of Fraud in Lawsuits by Committing Deception in Court</li> <li>● Deliberate Concealing of Profits Made from the Offense</li> <li>● Instigating the Subordinate Person to Commit the Offense</li> </ul>

Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>● Those with Hearing and Visual Impairments</li> <li>● Those with Mental Incapacity (Cases Where the Offender Cannot be Held Liable)</li> <li>● Voluntary Surrender to Investigative Agencies or Whistle-blowing</li> <li>● Offender Expresses Remorse and the Victim Opposes Punishment or Substantial Portion of Harm Reversed</li> </ul>	<ul style="list-style-type: none"> <li>● Habitual Offenders</li> <li>● Repeated Offenses of Same Type under the Criminal Act</li> </ul>
	Conduct	<ul style="list-style-type: none"> <li>● Offense Committed for Basic Living Expenses, Hospital Expenses and the Like</li> <li>● Cases Where the Offender Failed to Consume or Retain Most of the Profit from the Crime</li> <li>● Passive Participation</li> </ul>	<ul style="list-style-type: none"> <li>● Condemnable Motives</li> <li>● Vulnerable Victims</li> <li>● Abuse of Relationship of Trust</li> </ul>
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>● Those with Mental Incapacity (Cases Where the Offender Cannot be Held Liable)</li> <li>● Expresses Sincere Remorse</li> <li>● No Prior Criminal History</li> <li>● Genuine Efforts to Reverse Harm</li> </ul>	<ul style="list-style-type: none"> <li>● Destroying Evidence or Attempting to Conceal Evidence After Commission of the Offense</li> <li>● Repeated Offenses of Different Type under the Criminal Act, Criminal History of Imprisonment by the Same Type of Offenses, and Embezzlement or Breach of Trust that Does Not Constitute Repeated Offense under the Criminal Act (This Applies When the Criminal History is Within Ten Years After Completion of Sentence)</li> </ul>

## 02<sup>1</sup> ORGANIZATIONAL FRAUD

Type	Classification	Mitigated Sentencing Range	Standard Sentencing Range	Aggravated Sentencing Range
1	Less Than 100 Million Won	1yr - 2yrs 6months	1yr 6months - 3yrs	2yrs 6months - 4yrs
2	More Than 100 Million Won, But Less Than 500 Million Won	1yr 6months - 3yrs	2yrs - 5yrs	4yrs - 7yrs
3	More Than 500 Million Won, But Less Than 5 Billion Won	2yrs - 5yrs	4yrs - 7yrs	6yrs - 9yrs
4	More Than 5 Billion Won, But Less Than 30 Billion Won	4yrs - 7yrs	6yrs - 9yrs	8yrs - 11yrs
5	More Than 30 Billion Won	6yrs - 10yrs	8yrs - 13yrs	More Than 11yrs

Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>● Cases with Only Slight Degree of Deception</li> <li>● Offense Caused Relatively Small Actualized Damages</li> <li>● Passive Participation Resulting From Outside Pressure or Other Similar Circumstances</li> <li>● Mere Participation</li> <li>● Cases where the Victim is Also Primarily Responsible for the Crime or Extent of the Damage</li> </ul>	<ul style="list-style-type: none"> <li>● Active Lead Role in Planning and Orchestrating the Commission of the Offense</li> <li>● Crime Against Unspecified Multiples of Victims or Prolonged and Repeated Commission of the Crime</li> <li>● Inflicting Serious Harm to the Victim</li> <li>● Deliberate Concealing of Profits Made from the Offense</li> <li>● Instigating the Subordinate Person to Commit the Offense</li> </ul>

Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>● Those with Hearing and Visual Impairments</li> <li>● Those with Mental Incapacity (Cases Where the Offender Cannot be Held Liable)</li> <li>● Voluntary Surrender to Investigative Agencies, Whistle-blowing, or Voluntary Full-Disclosure of Crime</li> <li>● Offender Expresses Remorse and the Victim Opposes Punishment or Substantial Portion of Harm Reversed</li> </ul>	<ul style="list-style-type: none"> <li>● Habitual Offenders</li> <li>● Repeated Offenses of Same Type under the Criminal Act</li> </ul>
	Conduct	<ul style="list-style-type: none"> <li>● Offense Committed for Basic Living Expenses, Hospital Expenses and the Like</li> <li>● Cases Where the Offender Failed to Consume or Retain Most of the Profit from the Crime</li> <li>● Passive Participation</li> </ul>	<ul style="list-style-type: none"> <li>● Condemnable Motives</li> <li>● Vulnerable Victims</li> <li>● Abuse of Relationship of Trust</li> </ul>
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>● Those with Mental Incapacity (Cases Where the Offender Cannot be Held Liable)</li> <li>● Expresses Sincere Remorse</li> <li>● No Prior Criminal History</li> <li>● Genuine Efforts to Reverse Harm</li> </ul>	<ul style="list-style-type: none"> <li>● Destroying Evidence or Attempting to Conceal Evidence After Commission of the Offense</li> <li>● Repeated Offenses of Different Type under the Criminal Act, Criminal History of Imprisonment by the Same Type of Offenses, and Embezzlement or Breach of Trust that Does Not Constitute Repeated Offense under the Criminal Act (This Applies When the Criminal History is Within Ten Years After Completion of Sentence)</li> </ul>

## [ DEFINITION OFFENSES ]

### 01 | GENERAL FRAUD

---

- 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).
- TYPE 2 : This means cases where the amount of a profit involved exceeds 100 million won but is less than 500 million won.
- TYPE 3 : This means cases where the amount of a profit involved exceeds 500 million won but is less than 5 billion won.
- TYPE 4 : This means cases where the amount of a profit involved exceeds 5 billion won but is less than 30 billion won.
- TYPE 5 : This means cases where the amount of a profit involved exceeds 30 billion won.

### 02 | ORGANIZATIONAL FRAUD

---

- This means cases where multiple offenders engage in commission of the offense in an organized scheme involving agreeing to the crime in advance, allocating and professionally executing the commission (for example, telemarketing fraud by a fraudulent telemarketing organizations, gambling fraud by a fraudulent gambling organizations, insurance fraud by a fraudulent insurance organizations, real estate fraud by fraudulent real estate organizations, organizational government subsidy crimes, fraud in the form of multi-level marketing organization by the major participant of the organization or execution would all fall within the definition)
- The definition for Type 1 or 5 is identical to that of the definition under *General Frauds*.

---

## [ DEFINITION OF SENTENCING FACTORS ]

### 1. SLIGHT DEGREE OF DECEPTION INVOLVED

- This means cases where one or more following factors apply:
  - Deception by omission of acts (Cases where the fraudulent behavior did not exist in the beginning of the transaction in question but occurred only in the later stages. This includes cases where the offender continued to take financial assistance without notifying the termination of such rights, cases where the offender underwent monetary transactions without informing the financial difficulties in the course of such ongoing transaction, cases where the offender violated the duty to notify insurance companies with certain facts or other similar cases);
  - Cases involving passive fraudulent behavior (For example, cases where the offender committed fraud by going along with the victim's misrepresentations and other similar circumstances);
  - Cases where the defrauded matter is not a significant part of a legal act;
  - Cases where the extent of fraudulent behavior is slight in that it does not fall within the actual matters of fact; or
  - Other cases with comparable factors.

### 2. OFFENSE CAUSED RELATIVELY SMALL ACTUALIZED DAMAGES

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

### 3. CASES WHERE THE VICTIM IS ALSO PRIMARILY RESPONSIBLE FOR THE CRIME OR EXTENT OF THE DAMAGE

- This means cases where one or more following factors apply:
  - Cases where the victim believed in a fraudulent act that goes against common sense to gain undue benefit or make large profits in a short period of time;
  - Cases where the victim was aware of the illegal funds in operation but sought to make investment with substantial profit for return;
  - Cases where the victim's intent or motive for gaining illegal profit caused or facilitated the crime;

- Cases with other comparable factors.

#### **4. 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; or
  - Other cases with comparable factors.

#### **5. 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;
  - The use of scope of employment as professionals involved in business such as finance, stock markets, trading, accounting;
  - Actively employing methods such as falsifying accounts, forging documents used in the commission of the offense;
  - Using highly intelligent schemes to commit the offense;
  - Using new professional schemes previously unknown; or
  - Other cases with comparable factors.
- ※ Crime of fraud accompanied by forgery, and the like of documents are not be considered as multi-count convictions, but the crimes concerning the documents shall be considered as a factor for adjusting sentencing range.

#### **6. DELIBERATE CONCEALMENT OF PROFITS GAINED FROM THE OFFENSE**

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

#### **7. 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.



---

## **8. SUBSTANTIAL PORTION OF DAMAGE REVERSED**

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

## **9. CONDEMNABLE MOTIVES**

- This means cases with one or more of the following factors:
  - Offense committed for the purpose of using the profit in illegal activities such as gambling;
  - Offense committed for the purpose of preparing funds to commit another crime;
  - Offense committed for the purpose of taking revenge or assaulting the victim by obtaining the victim's property by fraud;
  - Offense committed for the purpose of prevailing over other criminal organizations by obtaining the victim's property by fraud ; or
  - Other cases with comparable factors.

## **10. MERE PARTICIPATION**

- This means cases where the offender did not lead, plan, or command the organized fraud in its entirety or partially, but participated in a mere conduct during the execution phase of the offense.

## [ 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.
- When the maximum of the sentencing range exceeds twenty-five years, the judge may impose a life imprisonment.

---

## [ 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 offenses of general fraud or offenses of organizational fraud, the judge shall apply the following principles:
  - ① In setting sentencing range, take into account the total amount of profit from the fraud, 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.

- For multi-count convictions of different type of offenses involving multi-count conviction of general fraud and organizational fraud, apply the following principles for calculation.
  - ※ In cases where the general and the organizational fraud constitute a single offense of habitual fraud, select either the general or the organizational fraud after taking relevant factors into account, then select the principle of multi-count conviction of the same type of offense.

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

---

- For 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 of fraud includes the same offenses of general fraud or offenses of organizational fraud, first set the sentencing range for multi-count conviction of the same offense 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
<p><b>Primary Consideration Factor</b></p>	<ul style="list-style-type: none"> <li>● 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)</li> <li>● Deliberate Concealment of Profits Gained from the Offense</li> <li>● Particularly Malicious Commission of Offense</li> <li>● No Agreement Entered With the Victim</li> <li>● Actual Damage is Substantial or Serious Harm Inflicted to the Victim</li> </ul>	<ul style="list-style-type: none"> <li>● Fraud by Willful Negligence or Fraud With Only Slight Degree of Deception</li> <li>● Passive Participation Resulting From Outside Pressure or Other Similar Circumstances</li> <li>● Mere Participation (in Organized Fraud)</li> <li>● Voluntary Surrender to Investigative Agencies or Cases of Whistle-Blowing of Corruption</li> <li>● Actual Damage is Slight or Substantial Harm Reversed</li> <li>● Offender Expresses Remorse and the Victim Opposes Punishment</li> <li>● No Prior Criminal History</li> </ul>
<p><b>General Consideration Factor</b></p>	<ul style="list-style-type: none"> <li>● Prior Criminal History of Same Offenses or Prior Criminal History of Suspension of Sentence for Two or More Incidents</li> <li>● Condemnable Motives</li> <li>● Lack of Social Ties</li> <li>● Absence of Remorse</li> <li>● Primary Role as an Accomplice</li> <li>● Crime Against Unspecified Multiple Victims or Prolong and Repeated Commission of the Offense</li> <li>● Promising, giving, receiving benefit in return for the crime</li> <li>● Destroying Evidence or Attempting to Conceal Evidence After Commission of the Offense</li> <li>● Absence of Efforts to Reverse Harm</li> </ul>	<ul style="list-style-type: none"> <li>● Offense Committed for Basic Living Expenses, Hospital Expenses, and the Like</li> <li>● Strongly-Established Social Ties</li> <li>● Expresses Sincere Remorse</li> <li>● No Criminal History of Suspension of Sentence or Imposing of Other Sentences More Severe</li> <li>● Motive for Committing Offense Can be Taken into Consideration</li> <li>● Cases of Old-age Offenders</li> <li>● Passive Participation as Accomplice</li> <li>● Cases Where the Offender Failed to Consume or Retain Most of the Profit from the Crime</li> <li>● Significant Amount of Money Deposited, Certain Portions of Harm Reversed, Genuine Efforts to Reverse Harm</li> <li>● Offense Caused Relatively Small Actualized Damages</li> <li>● Cases of Physically-ill Offenders</li> <li>● Cases where the Arrest of the Offender would Cause Severe Hardship to the Offender's Dependent Family Member</li> </ul>

---

## [ DEFINITIONS OF CONSIDERATION FACTORS FOR SUSPENSION OF SENTENCE ]

- In cases where the consideration factors for suspension of sentence 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 500 million won.
  
- Cases where the actual damage is slight
  - 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.