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Chapter 2

Crimes of Bribery

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Acceptance of a Bribe (Criminal Act, Article 129, paragraph 1), Acceptance of a Bribe in Advance (Criminal Act, Article 129, paragraph 2), Improper Conduct After Acceptance of a Bribe (Criminal Act, Article 131, paragraph 1), Acceptance of a Bribe After Improper Conduct (Criminal Act, Article 131, paragraph 2, paragraph 3), Acceptance of a Bribe under Aggravated Punishment Act (Aggravated Punishment Act, Article 2, paragraph 1), and Offering Bribes (Criminal Act, Article 133, paragraph 1) or Third Party Bribery (Criminal Act, Article 133, paragraph 2).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01 | ACCEPTANCE OF A BRIBE

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less Than 10 Million Won	- 6 mos.	4 mos. - 1 yr.	8 mos. - 2 yrs.
2	More Than 10 Million Won but Less Than 30 Million Won	8 mos. - 2 yrs.	1 yr. - 3 yrs.	2 yrs. - 4 yrs.
3	More Than 30 Million Won but Less Than 50 Million Won	2 yrs. 6 mos. - 4 yrs.	3 yrs. - 5 yrs.	4 yrs. - 6 yrs.
4	More Than 50 Million Won but Less Than 100 Million Won	3 yrs. 6 mos. - 6 yrs.	5 yrs. - 7 yrs.	6 yrs. - 8 yrs.
5	More Than 100 Million Won but Less Than 500 Million Won	5 yrs. - 8 yrs.	7 yrs. - 10 yrs.	9 yrs. - 12 yrs.
6	More Than 500 Million Won	7 yrs. - 10 yrs.	9 yrs. - 12 yrs.	More than 11 yrs. or life imprisonment



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Cases where the extent of the offender's participation and the actual gain is exceptionally insignificant • Cases where the offender is a candidate for a public official or an arbitrator • Cases where the offense ended only with a demand or a promise to accept the bribe 	<ul style="list-style-type: none"> • Engaging in improper conduct related to bribe • Active demand of bribe • Instigating the subordinate person to commit the offense
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • Those with hearing and visual impairments • Bribe was returned before the commencement of an investigation • Those with mental incapacity • Voluntary surrender to investigative agencies or cases of whistleblowing of corruption 	<ul style="list-style-type: none"> • Repeated offenses under the Criminal Act
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Cases where the extent of the offender's participation and the actual gain is insignificant • Cases where the offender is deemed as public official under the Aggravated Punishment Act, Article 4 	<ul style="list-style-type: none"> • Commission of the offense prolonged for more than two years • Closely related to the duties of the offender
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • Expresses sincere remorse • No prior criminal history 	<ul style="list-style-type: none"> • Offender is a Grade 3 or higher public official • Prior criminal history of the same offense which does not fall within the repeated offenses under the Criminal Act and records of disciplinary action against violation of the same offense

02¹ OFFER OF A BRIBE

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less Than 30 Million Won	- 6 mos.	4 mos. - 10 mos.	6 mos. - 1 yr. 6 mos.
2	More Than 30 Million Won, but Less Than 50 Million Won	6 mos. - 1 yr.	10 mos. - 1 yr. 6 mos.	1 yr. - 3 yrs.
3	More Than 50 Million Won, but Less Than 100 Million Won	1 yr. - 2 yrs.	1 yr. 6 mos. - 2 yrs. 6 mos.	2 yrs. - 4 yrs.
4	More Than 100 Million Won	2 yrs. - 3 yrs.	2 yrs. 6 mos. - 3 yrs. 6 mos.	3 yrs. - 5 yrs.



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Offering bribes to a person who is a candidate for a public official or an arbitrator position Passive yielding to the recipient's active demand of bribe Cases where the offense ended only with a promise or expression of intent to offer the bribe 	<ul style="list-style-type: none"> Active offer of a bribe Engaging in conduct in return for the bribe that constitutes an illegal or wrongful performance of duties Instigating the subordinate person to commit the offense
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> Those with hearing and visual impairments Those with mental incapacity Voluntary surrender to investigative agencies or cases of whistleblowing of corruption 	<ul style="list-style-type: none"> Repeated offenses of the same type under the Criminal Act
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Offender's passive participation Delivery of a bribe Cases where the offender is deemed as public official under the Aggravated Punishment Act, Article 4 	<ul style="list-style-type: none"> Closely related to the duties of the offender
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> Expresses sincere remorse No prior criminal history 	<ul style="list-style-type: none"> Repeated offenses of the different type under the Criminal Act, and the prior criminal history of the same offense which does not fall within the repeated offenses under the Criminal Act

DEFINITION OF OFFENSES

01 | ACCEPTANCE OF A BRIBES

(1) TYPE 1

- This indicates cases in which the amount of bribe involved does not exceed 10 million won.
- The amount of the bribe indicates the monetary value of the bribe received, demanded, or promised to accept (This definition applies throughout this guideline).

(2) TYPE 2

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

(3) TYPE 3

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

(4) TYPE 4

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

(5) TYPE 5

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

(6) TYPE 6

- This indicates cases in which the amount of a bribe involved exceeds 500 million won.



02¹ OFFER OF A BRIBES

(1) TYPE 1

- This means cases in which the amount of a bribe involved does not exceed 30 million won.
- The amount of the bribe indicates the monetary value of the bribe offered, promised to offer, or expressed to offer (This definition applies throughout this guideline).

(2) TYPE 2

- This means cases in which the amount of a bribe involved exceeds 30 million won but is less than 50 million won.

(3) TYPE 3

- This means cases in which the amount of a bribe involved exceeds 50 million won but is less than 100 million won.

(4) TYPE 4

- This means cases in which the amount of a bribe involved exceeds 100 million won.

DEFINITION OF SENTENCING FACTORS

01 | ACCEPTANCE OF A BRIBE

(1) ENGAGING IN IMPROPER CONDUCTS RELATED TO BRIBE

- This means cases of improper conduct after accepting a bribe or accepting a bribe after engaging in improper conduct.

(2) ACTIVE DEMAND OF BRIBE

- “Active demand of bribe” means one or more of the following factors apply:
 - When the offender demanded bribery in a conspicuous manner
 - When the offender demanded bribery by implying that with the exercise of the offender’s authority, the briber or the family member of the briber will be mistreated if the bribe is not offered
 - Other cases with comparable factors

(3) BRIBE RETURNED BEFORE THE COMMENCEMENT OF AN INVESTIGATION

- This means the offender voluntarily returned the bribe to the briber before the investigative agency began its investigation.
- However, this excludes cases in which the offender attempted to conceal the offense after returning the bribe.

(4) CASES OF WHISTLEBLOWING OF CORRUPTION

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

(5) CLOSELY RELATED TO THE DUTIES OF THE OFFENDER

- This means the offender, regardless of their position, had the decision-making authority regarding the demanded conduct of the briber.



02¹ OFFER OF A BRIBE

(1) PASSIVE YIELDING TO THE RECIPIENT'S ACTIVE DEMAND OF BRIBE

- This means the offender offers a bribe to meet the recipient's active demand as stated above in the *Acceptance of a Bribe* section of 2. *Active Demand of the Bribe*.

(2) ACTIVE OFFER OF A BRIBE

- This means the offender made an active demand with regards to his or her duties in return of the bribe.

(3) CASES OF WHISTLEBLOWING OF CORRUPTION

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

(4) DELIVERY OF A BRIBE

- This means the offender delivers money or the valuables to a third person as a bribe or when the third person knowingly receives the offered money or the valuables.

(5) CLOSELY RELATED TO THE DUTIES OF THE OFFENDER

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

ASSESSING PRINCIPLES APPLICABLE TO SENTENCING FACTORS

01 | DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, the court must consider only the special sentencing determinants.
- However, in cases involving more than two special sentencing determinants, the applicable sentencing range is adjusted after assessing the factors as set forth below:
 - ① The same number of conduct factors shall be considered with greater significance than the actor or other factors.
 - ② The same number of conduct factors reciprocally, or the actor, or other factors reciprocally shall be treated as the same.
 - ③ If the sentencing range applicable cannot be determined by the aforementioned principles in ① and ②, the court is to decide the sentencing range by a comprehensive comparison and assessment based on the principles set forth in ① and ②.
- After an assessment, if a greater number of aggravating factors than the mitigating factors exist, then the aggravating zone is recommended when determining the sentencing range. If a greater number of mitigating factors exist, then a mitigating sentencing range is recommended. For other cases, the standard sentencing range is recommended.

02 | DETERMINING THE SENTENCE APPLICABLE

- When determining the sentence, the court should consider both the general and special sentencing determinants that are within the sentencing range as assessed according to 1 above comprehensively.
- In cases in which the maximum of the sentencing range exceeds twenty-five years, the court may impose life imprisonment.



GENERAL APPLICATION PRINCIPLES

01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- ① When only two or more special aggravating factors apply, or the special sentencing determinant outnumber the special mitigating determinants by two or more, then increase the maximum level of the recommended sentencing range up to $\frac{1}{2}$.
- ② When only two or more special mitigating factors apply, or the special sentencing determinant outnumber the special aggravating determinants by two or more, then reduce the minimum level of the recommended sentencing range down to $\frac{1}{2}$.

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

- When the sentencing range under this guideline conflicts with the range determined according to the aggravation and mitigation of the applicable law, the sentencing range prescribed by the applicable law shall govern.

03 | APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

- When the court declines to apply a permissive mitigating factor under applicable law as listed in this guideline's sentencing table, the factor shall be treated as a discretionary mitigating factor.

GUIDELINES ON SENTENCING MULTIPLE OFFENSES

01 | APPLICABLE SCOPE

- 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 involve an offense set forth in the sentencing guidelines, as well as an offense the sentencing guidelines do not cover, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

02 | DETERMINING THE BASE OFFENSE

- The “base offense” indicates the most severe offense that results after selecting the penalty and determining the statutory aggravation and mitigation. However, in cases in which the maximum sentencing range is lower than that of the maximum sentencing range of the above offense as set forth in this guideline, the offense resulting in the concurrent crime becomes the base offense.

03 | DETERMINING THE SENTENCE OF AN OFFENDER CONVICTED OF MULTIPLE OFFENSES OF THE SAME TYPE

- To calculate the sentence of an offender convicted of multiple offenses of the same type that is not treated as a single offense under this guideline, the court shall apply the following principles:
 - ① In setting the sentencing range, the court shall take into account the total amount of bribe accepted, demanded, promised to accept or offered, promised to offer, expressed the intent to offer, and select the appropriate sentencing range by considering all relevant factors.

- ② However, after the total summation, if the applicable offense type is one level higher than the most severe single offense, then the minimum sentencing range is reduced by $\frac{1}{3}$. If the applicable offense type is two or more levels higher than the most severe single offense, the minimum sentencing range is reduced by $\frac{1}{2}$ by applying the minimum sentencing range of the most severe single offense.

04 | DETERMINING THE SENTENCE OF AN OFFENDER CONVICTED OF MULTIPLE OFFENSES OF THE DIFFERENT TYPE

- To calculate the sentence of an offender convicted of multiple offenses of the different type that is not treated as a single offense under this guideline, the court shall apply the following principles:
 - ① In setting the sentencing range for an offender convicted of two offenses, the sentencing range should be the total sum of the maximum sentencing range of the base offense and the $\frac{1}{2}$ of the maximum sentencing range of the second offense.
 - ② In setting the sentencing range for an offender convicted of three or more counts, the sentencing range should be the total sum of the following: (1) of the maximum sentencing range of the base offense, set the range as $\frac{1}{2}$ of the maximum sentencing range of the count with the highest sentencing range, and (2) sum of $\frac{1}{3}$ of the maximum sentencing range of the remaining count with the second-highest sentencing range.
 - ③ For cases in which the minimum sentencing range of the other offense is higher than that of the base offense, the minimum sentencing range resulting from the multiple offense should be the minimum sentencing range of the other offense.
- However, in cases in which an offender convicted of multiple offenses of bribery of the same type is involved, first set the sentencing range for multiple offense conviction of the same offense, and then use the resulting point range to calculate the sentencing range for different type of offenses.

PART B — GUIDELINE ON SUSPENDING A SENTENCE

01¹ ACCEPTANCE OF A BRIBE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Active demand of bribe • Engaging in conduct in return for the bribe which constitutes illegal or wrongful performance duties 	<ul style="list-style-type: none"> • Cases where the amount of bribe involved is less than 10 million won • Expressing significant remorse (<i>e.g.</i>, voluntary surrender to investigative agencies, confession, whistleblowing corruption, etc.)
General Consideration Factor	<ul style="list-style-type: none"> • Commission of the offense prolonged for more than two years • Offender is a Grade 3 or higher public official • Prior criminal history of the same offense and records of disciplinary action against violation of the same offense • Destroying evidence or attempting to conceal evidence after the commission of the offense • Engaging in improper conduct related to bribe 	<ul style="list-style-type: none"> • Offender's passive participation as an accomplice • Bribe returned before the commencement of an investigation • Faithful long-term serving of duties • Cases of physically ill offenders • Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member • Cases of elderly offenders • No prior criminal history

* Factors not to be considered:

- ① Loss of position or damage to one's reputation
- ② Confiscation of improper gains
- ③ Disciplinary actions concerning the offense



02¹ OFFER OF A BRIBE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Cases where the amount of bribe involved exceeds 50 million won • Criminal history of the same offense (for suspension of a sentence or penalty within ten years) • Active offer of a bribe • Engaging in conduct in return for the bribe which constitutes illegal or wrongful performance duties 	<ul style="list-style-type: none"> • Cases where the amount of bribe involved is less than 10 million won • Offender's passive participation (<i>e.g.</i>, following superior's instructions, etc.) • Passive yielding to the recipient's active demand of a bribe • Expressing significant remorse (<i>e.g.</i>, voluntary surrender to investigative agencies, confession, and whistleblowing corruption, etc.)
General Consideration Factor	<ul style="list-style-type: none"> • Two or more criminal record on suspension of a sentence or greater offense • Offender is a Grade 3 or higher public official • Offering bribe concerning significant benefits • Destroying evidence or attempting to conceal the evidence • Lack of social ties • Prolonged duration of an offering of bribe 	<ul style="list-style-type: none"> • No criminal history of the suspension of a sentence or imposing of more severe sentences • Cases of physically ill offenders • Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member • Cases of elderly offenders

DEFINITIONS OF FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In cases in which the factors to consider in suspending a 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 that involve a suspension of the sentence, the prior criminal history is calculated from the date the defendant's suspension of the sentence was affirmed until the date of the commission of the offense. In cases that impose imprisonment, prior criminal history is calculated from the final date the sentence was completed until the date of the offense was committed.
- Faithful Long-Term Serving of Duties
 - This means cases in which the offender has faithfully served the duties of a public official or as an arbitrator for more than 20 years without receiving any disciplinary action or criminal conviction.



ASSESSING PRINCIPLES APPLICABLE TO THE FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In deciding whether the suspension of a sentence is appropriate in cases in which imprisonment is imposed, the court should give the primary consideration factor greater importance than the general consideration factors. The following principles should be considered:
 - ① In cases in which only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factors by two or more, it is recommended to suspend the sentence.
 - ② In cases in which two or more primary adverse factors exist or when the primary adverse factors outnumber the primary affirmative factor by two or more, imprisonment is recommended.
 - ③ In cases in which ① or ② apply, but the difference between the number of general adverse (affirmative) factors and general affirmative (adverse) factors is greater than the difference between the number of primary affirmative (adverse) factors and primary adverse (affirmative) factors, or in cases other than ① or ②, the court shall decide whether to suspend the sentence after comparing and assessing the factors listed under the suspension of sentence section comprehensively.