

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

Chapter 9

Crimes of Fraud

This guideline applies to adult offenders (aged 19 or older) who committed any offenses of Fraud (Criminal Act, Article 347), Fraud by the 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 the Criminal Act, Article 347, Article 347-2, and Article 348), and Fraud under the Specific Economic Crime Act (Specific Economic Crime Act, Article 3, paragraph 1).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01 | GENERAL FRAUD

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less Than 100 Million Won	- 1 yr.	6 mos. - 1 yr. 6 mos.	1 yr. - 2 yrs. 6 mos.
2	More Than 100 Million Won, but Less Than 500 Million Won	10 mos. - 2 yrs. 6 mos.	1 yr. - 4 yrs.	2 yrs. 6 mos. - 6 yrs.
3	More Than 500 Million Won, but Less Than 5 Billion Won	1 yr. 6 mos. - 4 yrs.	3 yrs. - 6 yrs.	4 yrs. - 7 yrs.
4	More Than 5 Billion Won, but Less Than 30 Billion Won	3 yrs. - 6 yrs.	5 yrs. - 8 yrs.	6 yrs. - 9 yrs.
5	More Than 30 Billion Won	5 yrs. - 9 yrs.	6 yrs. - 10 yrs.	8 yrs. - 13 yrs.



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Fraud by willful negligence or fraud with only a slight degree of deception • Offense caused a relatively small, actualized damages • Offender’s passive participation resulting from outside pressure • Cases where the victim is also primarily responsible for the crime or extent of the damage 	<ul style="list-style-type: none"> • Crime against unspecified multiples of victims or prolonged and repeated commission of the crime • Inflicting serious harm to the victim • Particularly malicious commission of the offense or offense of fraud in lawsuits by committing deception in court • Deliberate concealing of profits made from the offense • 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 (cases where the offender cannot be held liable) • Voluntary surrender to investigative agencies or whistleblowing • Offender expresses remorse and the victim opposes punishment, or a substantial portion of harm reversed 	<ul style="list-style-type: none"> • Habitual offenders • Repeated offenses of the same offense under the Criminal Act
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 • Offender’s passive participation 	<ul style="list-style-type: none"> • Condemnable motives • Vulnerable victims • Abuse of relationship of trust
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • Those with mental incapacity (cases where the offender cannot be held liable) • Expresses sincere remorse • No prior criminal history • Genuine efforts to reverse the harm 	<ul style="list-style-type: none"> • Destroying evidence or attempting to conceal evidence after the commission of the offense • Different types of repeated offenses under the Criminal Act, the criminal history of imprisonment by the same type of offense, and embezzlement or breach of trust that does not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)

02¹ ORGANIZATIONAL FRAUD

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less Than 100 Million Won	1 yr. - 2 yrs. 6 mos.	1 yr. 6 mos. - 3 yrs.	2 yrs. 6 mos. - 4 yrs.
2	More Than 100 Million Won, but Less Than 500 Million Won	1 yr. 6 mos. - 3 yrs.	2 yrs. - 5 yrs.	4 yrs. - 7 yrs.
3	More Than 500 Million Won, but Less Than 5 Billion Won	2 yrs. - 5 yrs.	4 yrs. - 7 yrs.	6 yrs. - 9 yrs.
4	More Than 5 Billion Won, but Less Than 30 Billion Won	4 yrs. - 7 yrs.	6 yrs. - 9 yrs.	8 yrs. - 11 yrs.
5	More Than 30 Billion Won	6 yrs. - 10 yrs.	8 yrs. - 13 yrs.	More than 11 yrs.



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Cases in which only a slight degree of deception was involved • Offense caused a relatively small, actualized damages • Offender’s passive participation resulting from outside pressure or other similar circumstances • Mere participation • Cases where the victim is also primarily responsible for the crime or extent of the damage 	<ul style="list-style-type: none"> • Active lead role in planning and orchestrating the commission of the offense • Crime against unspecified multiples of victims or prolonged and repeated commission of the crime • Inflicting serious harm to the victim • Deliberate concealing of profits made from the crime • Instigating the subordinate person to commit the crime
Special Sentencing Determinant	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, whistleblowing, or complete voluntary disclosure of fraudulent crime • Offender expresses remorse and the victim opposes punishment, or a substantial portion of harm reversed 	<ul style="list-style-type: none"> • Habitual offenders • Repeated offenses of the same offense under the Criminal Act
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 • Offender’s passive participation 	<ul style="list-style-type: none"> • Condemnable motives • Vulnerable victims • Abuse of relationship of trust
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • Those with mental incapacity (cases where the offender cannot be held liable) • Expresses sincere remorse • No prior criminal history • Genuine efforts to reverse the harm 	<ul style="list-style-type: none"> • Destroying evidence or attempting to conceal evidence after the commission of the offense • Different types of repeated offenses under the Criminal Act, the criminal history of imprisonment by the same type of offense, and embezzlement or breach of trust that does not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)

DEFINITION OFFENSES

01 | GENERAL FRAUD

(1) 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 this guideline).

(2) TYPE 2

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

(3) TYPE 3

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

(4) TYPE 4

- This indicates cases in which the amount of a profit involved exceeds 5 billion won but is less than 30 billion won.

(5) TYPE 5

- This indicates cases in which the amount of a profit involved exceeds 30 billion won.

02 | ORGANIZATIONAL FRAUD

- This indicates cases in which multiple offenders engage in the 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 organization, gambling fraud



by a fraudulent gambling organization, insurance fraud by fraudulent insurance organization, real estate fraud by a fraudulent real estate organization, organizational government subsidy crimes, fraud in the form of multi-level marketing organization by the major participant of the organization or execution 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

01 | SLIGHT DEGREE OF DECEPTION INVOLVED

- This indicates cases in which one or more following factors apply:
 - Deception by the omission of acts (Cases where the fraudulent behavior did not exist at 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)
 - Cases 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
 - In cases in which the degree which the substance of fraudulent is out of accord with substantial facts is slight
 - Other cases with comparable factors

02 | OFFENSE CAUSED RELATIVELY SMALL, ACTUALIZED DAMAGES

- This indicates cases in which less than $\frac{1}{3}$ of the potential damage actualized through the offense.

03 | CASES WHERE THE VICTIM IS ALSO PRIMARILY RESPONSIBLE FOR THE CRIME OR EXTENT OF THE DAMAGE

- This indicates cases in which one or more following factors apply:
 - Cases where the victim believed in a fraudulent act that goes against common sense to gain an 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 an 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

04¹ INFLECTING SERIOUS HARM TO THE VICTIM

- This indicates cases in which one or more following factors apply and offenders have predicted or could predict:
 - Financial or management crisis of the company was due to the offense
 - Company's stocks collapsed due to the damaged reputation of the offense
 - Multiple bankruptcies was induced as a result of the offense
 - Victims suffered the loss of nearly all assets due to the offense
 - Other cases with comparable factors

05¹ PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This indicates cases in which one or more following factors apply:
 - Using highly intelligent schemes to commit the offense
 - In cases in which professional workers such as finance, securities, trade, accounting, etc. commit a crime using the opportunity to perform his/her duties
 - In cases in which crimes by actively using methods such as book manipulation or document forgery, etc.
 - In cases in which committing a crime using highly intelligent methods
 - Using new professional schemes previously unknown
 - Other cases with comparable factors
- * Crime of fraud accompanied by forgery, and similar documents are not be considered as multiple offenses, but the crimes concerning the documents shall be considered as a factor for adjusting the sentencing range.

06 | DELIBERATE CONCEALMENT OF PROFITS GAINED FROM THE OFFENSE

- This means profits gained from the offense were deliberately concealed by the offender, thereby causing delayed damage recovery or no recovery.

07 | 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.

08 | SUBSTANTIAL PORTION OF THE DAMAGE REVERSED

- This means more than $\frac{2}{3}$ of the caused damage has been reversed or will be reversed with certainty.

09 | CONDEMNABLE MOTIVES

- This means cases with one or more of the following factors and crimes' motives are condemnable:
 - 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
 - Other cases with comparable factors



10¹ MERE PARTICIPATION

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

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. However, the victim opposing the punishment of the offender can match the conduct determinant.
 - 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

- In determining the sentence, the court should consider comprehensively both the general and special sentencing determinants that are within the sentencing range as assessed under above 1.
- 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 concerning general fraud or convicted of multiple offenses of the same type of organized fraud, the court shall apply the following principles:
 - ① In setting the sentencing range, determine the total amount of profit gained, and select the sentencing range by considering all relevant factors.
 - ② However, after the total summation, when the applicable offense type is one level higher than the most severe single offense, then a reduction of $\frac{1}{3}$ is made to the minimum sentencing range. When the applicable offense type is two or more levels higher than the most severe single offense, a reduction



of $\frac{1}{2}$ is made to the minimum sentencing range by applying the minimum sentencing range of the most severe single offense.

- For offenders convicted of multiple offenses of the different type involving general fraud and organized fraud, apply the following principles for calculation:
 - * In cases in which the general and organized fraud constitute a single offense of habitual fraud, select either the general or organized fraud after taking relevant factors into account. Then select the sentencing guidelines set for offenders convicted of the same type of offense.

04 ¹ 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 offenses, the sentencing range should be the total sum of the following: (1) of the maximum sentencing range of the base offense, sum of $\frac{1}{2}$ of the maximum sentencing range of the offense 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 where the minimum sentencing range of the other offense 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 offense.
- However, in cases in which an offender convicted of multiple offenses of general fraud or organized fraud of the same type, first set the sentencing range for multiple conviction of the same offense, and then use the resulted point range to calculate the sentencing range for multiple conviction of different offenses.

PART B — GUIDELINE ON SUSPENDING A SENTENCE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years more than three incidents of fines) exists • Deliberate concealment of profits gained from the offense • Particularly malicious commission of the offense • No agreement entered with the victim • Actual damage is substantial or serious harm inflicted on the victim 	<ul style="list-style-type: none"> • Fraud by willful negligence or fraud with only a slight degree of deception • Offender’s passive participation resulting from outside pressure or other similar circumstances • Mere participation (in organized fraud) • Voluntary surrender to investigative agencies or cases of whistleblowing of corruption • Actual damage is slight or substantial harm reversed • Offender expresses remorse and the victim opposes punishment (This includes genuine efforts to reverse the harm) • No prior criminal history
General Consideration Factor	<ul style="list-style-type: none"> • Prior criminal history of same offenses or prior criminal history of the suspension of a sentence for two or more incidents • Condemnable motives • Lack of social ties • Absence of remorse • Primary role as an accomplice • Crime against multiple unspecified victims or prolong and repeated commission of the offense • Promising, giving, or receiving a benefit in return for the crime • Absence of efforts to reverse the harm • Destroying evidence or attempting to conceal evidence after the commission of the offense 	<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 the suspension of a sentence or imposing of more severe sentences • Motive or participation in crime can be taken into special consideration • Cases of elderly offenders • Offender’s passive participation as an accomplice • Cases where the offender failed to consume or retain most of the profit from the crime • A significant amount of money was deposited with the depository, certain portions of harm reversed, genuine efforts to reverse the harm



CLASSIFICATION	ADVERSE	AFFIRMATIVE
		<ul style="list-style-type: none">• Offense caused a relatively small, actualized damages• Cases of physically ill offenders• Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member

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, the prior criminal history is calculated from the final date the sentence was completed until the date the offense was committed.
- Cases where the actual damage is substantial
 - This indicates cases in which the offense did not inflict serious harm to the victim, but the total damages not recovered are more than 500 million won.
- Cases where the actual damage is slight
 - This indicates cases in which the total damages not recovered are less than 50 million won.



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.