

Promulgated on March 31, 2014. Effective on July 1, 2014.

# Chapter 25

## Violation of the Attorney-at-Law Act

This guideline applies to adult offenders (nineteen years of age or older) who committed any offense of Providing or Arranging Legal Services of Non-attorneys (Article 109, paragraph 1, Entering Into Partnership with Non-attorneys (Attorney-at-law Act, Article 109, paragraph 2, Article 34, paragraph 1 to 2), Receiving or Money, Valuables, or Other Benefits Under the Pretext of Associating with Judges, Prosecutors or Other Public Officials of Trial and Investigation Agencies (Article 110), or Receiving Money, Valuables, Entertainment or Other Benefits Under the Pretext of Soliciting or Arranging to Solicit a Public Official (Article 111).

## PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

### 01 | PROVIDING OR ARRANGING LEGAL SERVICES BY OR ENTERING INTO PARTNERSHIP WITH NON-ATTORNEYS

| TYPE | CLASSIFICATION   | MITIGATED SENTENCING RANGE | STANDARD SENTENCING RANGE       | AGGRAVATED SENTENCING RANGE |
|------|--|----------------------------|---------------------------------|-----------------------------|
| 1    | Less than 10 million won                               | - 4 mos.                   | 2 mos. - 8 mos.                 | 6 mos. - 1 yr.              |
| 2    | More than 10 million won but less than 30 million won  | 4 mos. - 8 mos.            | 6 mos. - 1 mos.                 | 10 mos. - 2 yrs.            |
| 3    | More than 30 million won But less than 50 million won  | 6 mos. - 1 yr.<br>6 mos.   | 10 mos. - 2 yrs.                | 1 mos. - 3 yrs.<br>6 mos.   |
| 4    | More than 50 million won But less than 100 million won | 1 mos. - 2 yrs.<br>6 mos.  | 1 yr. 6 mos. -<br>3 yrs. 6 mos. | 2 yrs. 6 mos. -<br>5 yrs.   |
| 5    | More than 100 million won                              | 2 yrs. - 4 yrs.            | 3 yrs. - 6 yrs.                 | 4 yrs. - 7 yrs.             |

| CLASSIFICATION                 |                | MITIGATING FACTOR   | AGGRAVATING FACTOR   |
|--------------------------------|----------------|---|--|
| Special Sentencing Determinant | Conduct        | <ul style="list-style-type: none"> <li>• Cases where the extent of the offender's participation and the actual gain is exceptionally insignificant</li> <li>• Cases where the offense ended only with a demand or promise to accept money or valuables</li> <li>• Cases where special considerations can be taken into account for engaging in the offense, especially the motive for committing the crime</li> </ul> | <ul style="list-style-type: none"> <li>• Cases where the offender committed repeatedly or in an organized manner or commercially to multiple victims</li> <li>• Instigating the subordinate person to commit the offense</li> <li>• Particularly malicious commission of the offense</li> <li>• Cases where legal services offered caused significant damages or multiple victims</li> </ul>   |
|                                | Actor/<br>Etc. | <ul style="list-style-type: none"> <li>• Money and valuables or other gains returned (including deposit)</li> <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 case of whistleblowing of corruption</li> </ul>  | <ul style="list-style-type: none"> <li>• Repeated offenses of the same type under the Criminal Act</li> </ul>  |
| General Sentencing Determinant | Conduct        |   | <ul style="list-style-type: none"> <li>• In cases in which the offender used work experience of engaging in related legal affairs or currently engages in related legal affairs</li> </ul>   |
|                                | Actor/<br>Etc. | <ul style="list-style-type: none"> <li>• Expresses sincere remorse</li> <li>• No prior criminal history</li> </ul>  | <ul style="list-style-type: none"> <li>• Destroying evidence or attempting to conceal evidence after the commission of the offense</li> <li>• Repeated offenses of the different type under the Criminal Act, the prior criminal history of the same offenses which does not fall within the repeated offenses under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)</li> </ul> |

## 02 | ACCEPTANCE OF MONEY OR VALUABLES FOR SOLICITING OR ARRANGING TO SOLICIT

| 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.<br>6 mos.    |
| 2    | More than 30 million won but less than 50 million won  | 6 mos. - 1 mos.            | 8 mos. - 1 mos.<br>6 mos. | 1 mos. - 2 yrs.<br>6 mos.   |
| 3    | More than 50 million won but less than 100 million won | 10 mos. - 2 yrs.           | 1 mos. - 2 yrs.<br>6 mos. | 2 yrs. - 3 yrs.<br>6 mos.   |
| 4    | More than 100 million won                              | 1 yrs. 6 mos. -<br>3 yrs.  | 2 yrs. - 4 yrs.           | 3 yrs. - 5 yrs.             |

| CLASSIFICATION                 |             | MITIGATING FACTOR  | AGGRAVATING FACTOR   |
|--------------------------------|-------------|--|--|
| Special Sentencing Determinant | Conduct     | <ul style="list-style-type: none"> <li>• Cases where the extent of the offender’s participation and the actual gain is exceptionally insignificant</li> <li>• Cases where the offense only ended with a promise to accept money or valuables</li> <li>• Passive yielding to the recipient’s active demand of money or valuables</li> </ul>   | <ul style="list-style-type: none"> <li>• Particularly malicious commission of the offense</li> <li>• The offense stipulated in the Attorney-at-Law Act, Article 110</li> <li>• Instigating the subordinate person to commit the offense</li> </ul>   |
|                                | Actor/ Etc. | <ul style="list-style-type: none"> <li>• Money and valuables or other gains returned (This includes cases where deposits were made)</li> <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 case of whistleblowing corruption</li> </ul> | <ul style="list-style-type: none"> <li>• Repeated offenses of the same type under the Criminal Act</li> </ul>  |
| General Sentencing Determinant | Conduct     |  | <ul style="list-style-type: none"> <li>• Cases where the offender engaged in the conduct of soliciting or arranging to solicit</li> </ul>  |
|                                | Actor/ Etc. | <ul style="list-style-type: none"> <li>• Express sincere remorse</li> <li>• No prior criminal history</li> </ul>   | <ul style="list-style-type: none"> <li>• In cases in which the offender is a public official performing the same duties subject to soliciting, or brokering, or impersonating a public official</li> <li>• Destroying evidence or attempting to conceal evidence after the commission of the offense</li> <li>• Repeated offenses of the different type under the Criminal Act, the prior criminal history of the same offenses which does not fall within the repeated offenses under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)</li> </ul> |

## DEFINITION OF OFFENSES

### 01 | PROVIDING OR ARRANGING LEGAL SERVICES BY OR ENTERING INTO PARTNERSHIP WITH NON-ATTORNEYS

- This means offenses with the following statutory elements of the offense under the applicable laws.

| ELEMENTS OF OFFENSE   | APPLICABLE LAW   |
|---|--|
| A person that is not an attorney-at-law provide legal service | Attorney-at-Law Act, Article 109, subparagraph 1                               |
| Those who enter a partnership with non-attorneys              | Attorney-At-Law, Article 109, subparagraph 2, and Article 34, paragraph 1 to 2 |

#### 1. TYPE 1

- This indicates cases in which the amount of money involved does not exceed 30 million won. The amount of money involved indicates the monetary value received, demanded, or promised to receive, provided or promised to provide to a third party, or offered or promised (This definition applies through the guideline).

#### 2. TYPE 2

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

#### 3. TYPE 3

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

#### 4. TYPE 4

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

## 5. TYPE 5

- This indicates cases in which the amount of money involved exceeds 100 million won.

## 02<sup>1</sup> ACCEPTANCE OF MONEY OR VALUABLES FOR SOLICITING OR ARRANGING TO SOLICIT

- This means offenses with the following statutory elements of the offense under the applicable laws:

| ELEMENTS OF OFFENSE   | APPLICABLE LAW               |
|---|------------------------------|
| Receiving money or valuables under the pretext of associating with public officials of trial and investigation agencies | Attorney-at-Law, Article 110 |
| Receiving money or valuable under the pretext of soliciting or arranging to solicit                                     | Attorney-at-Law, Article 111 |

### 1. TYPE 1

- This indicates cases in which the amount of money involved does not exceed 30 million won. The amount of money involved indicates the monetary value received, demanded, or promised to receive, provided or promised to provide to a third party, or offered or promised (This definition applies through the guideline).

### 2. TYPE 2

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

### 3. TYPE 3

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

### 4. TYPE 4

- This indicates cases in which the amount of money involved exceeds 100 million won.

## DEFINITION OF SENTENCING FACTORS

### 01 | PROVIDING OR ARRANGING LEGAL SERVICES BY OR ENTERING INTO PARTNERSHIP WITH NON-ATTORNEYS

#### 1. SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR ENGAGING IN THE OFFENSE

- This means one or more of the following factors apply:
  - When the offender passively yielded to the recipient's active demand of money or valuables
  - Cases in which the offender committed the offense by receiving only the amount of actual costs to help the acquaintance in difficulty
  - Cases in which the offender participated in the offense due to the employment relationship or business instructions
  - Other cases with comparable factors

#### 2. PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This indicates cases in which one or more following factors apply:
  - Cases in which the offender impersonated an attorney-at-law or provided legal services, or introduced an attorney-at-law, actively claiming that their conduct was legitimate
  - Cases in which the offender actively took the lead in performing legal affairs, such as taking over bonds or performing acts related to a lawsuit under employ relation
  - Other cases with comparable factors



## 02<sup>1</sup> ACCEPTANCE OF MONEY AND VALUABLES FOR SOLICITING OR ARRANGING TO SOLICIT

---

### 1. PASSIVELY YIELDING TO THE RECIPIENT'S ACTIVE DEMAND

- When the offender passively yielded not to mere requests but to an active demand of associating, soliciting, or arranging to solicit by putting forward money, valuables, hospitality, and other benefits.

### 2. PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This indicates cases in which one or more following factors apply:
  - When the offender demanded money, valuables, or other benefits by implying that with the exercise of the offender's influence, the offerer will be treated unfairly if money, valuables, or other benefits is not offered
  - Cases in which the offender committed the offense by acting as though they have a special relationship with public officials and even referring to the future actions in detail
  - Other cases with comparable factors

## 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 shall consider the special and general sentencing determinants that are within the sentencing range assessed according to 1 above comprehensively.

## 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 other 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 among providing or arranging legal services by or entering into partnership with non-attorneys, the court shall apply the following principles:
  - ① In setting the sentencing range, determine the total amount of accepted, demanded, promised to accept, provided or promised to provide to a third party, then select the sentencing range by considering all relevant factors.
  - 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)  $\frac{1}{3}$  of the maximum sentencing range of the remaining offense with the second-highest sentencing range.

- For convictions of multiple offenses of providing or arranging legal services by or entering into partnership with non-attorney, and accepting money or valuables under the pretext of soliciting and arranging to solicit, apply the sentencing range by calculating the multiple offenses of the different type

## 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 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 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, when the offender is convicted of multiple offenses of providing or arranging legal services by or entering into a partnership with non-attorney or accepting money or valuables under the pretext of soliciting and arranging to solicit includes same offenses, first set the sentencing range for multiple offense conviction of the same offense and then use the resulted point range to calculate the sentencing range for different type of offenses.

## PART B — GUIDELINE ON SUSPENDING A SENTENCE

### 01 | PROVIDING OR ARRANGING LEGAL SERVICES BY ENTERING INTO PARTNERSHIP WITH NON-ATTORNEYS

| CLASSIFICATION               | ADVERSE  | AFFIRMATIVE  |
|------------------------------|--|--|
| Primary Consideration Factor | <ul style="list-style-type: none"> <li>• Cases where the offender committed repeatedly or organized crime, or commercially to multiple victims</li> <li>• Particularly malicious commission of the offense</li> <li>• Cases where legal services offered caused significant damages or multiple victims</li> </ul> | <ul style="list-style-type: none"> <li>• Cases where the extent of the offender's participation and the actual gain is exceptionally insignificant</li> <li>• Cases where special considerations can be taken into account for engaging in the offense, especially the motive for committing the crime</li> <li>• Express significant remorse (<i>e.g.</i>, voluntary surrender to investigative agencies, confession, internal whistleblowing, etc.)</li> <li>• Money, valuables, or other gains returned (This includes cases where deposits were made)</li> </ul> |
| General Consideration Factor | <ul style="list-style-type: none"> <li>• A criminal history of the same offense</li> <li>• Destroying evidence or attempting to conceal the evidence</li> <li>• Active participation as an accomplice</li> </ul>   | <ul style="list-style-type: none"> <li>• No criminal history of suspending of a sentence or imposing other sentences more severe</li> <li>• Cases of elderly offenders</li> <li>• Passive participation as an accomplice</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> <li>• Strongly established social ties</li> </ul>   |

## 02<sup>1</sup> ACCEPTANCE OF MONEY OR VALUABLES FOR SOLICITING OR ARRANGING TO SOLICIT

| CLASSIFICATION  | ADVERSE   | AFFIRMATIVE  |
|---|---|--|
| <p style="text-align: center;">Primary<br/>Consideration<br/>Factor</p> | <ul style="list-style-type: none"> <li>• Cases where the solicitation is related to illegal or unfair affairs</li> <li>• Particularly malicious commission of the offense</li> </ul>  | <ul style="list-style-type: none"> <li>• Cases where the extent of offender's participation and the actual gain is exceptionally insignificant</li> <li>• Express significant remorse (<i>e.g.</i>, voluntary surrender to investigative agencies, confession, internal whistleblowing, etc.)</li> <li>• Money, valuables, or other gains returned (This includes deposits were made)</li> </ul>   |
| <p style="text-align: center;">General<br/>Consideration<br/>Factor</p> | <ul style="list-style-type: none"> <li>• A criminal history of the same offense</li> <li>• Cases where the offender engaging in soliciting or referring</li> <li>• Destroying evidence or attempting to conceal evidence after the commission of the offense</li> </ul> | <ul style="list-style-type: none"> <li>• No criminal history of suspending of a sentence or imposing other sentences more severe</li> <li>• Cases of elderly offenders</li> <li>• Passive participation as an accomplice</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> <li>• Strongly established social ties</li> </ul> |

## 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.



## 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 only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factor by two or more, suspension of the sentence 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 the sentence section comprehensively.