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Chapter 30

Interference with a Business

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Interference with Business (Criminal Act, Article 314, paragraph 1), Interference with Business by Destroying or Data Processor (Criminal Act, Article 314, paragraph 2), Interference with Auction or Bidding (Criminal Act, Article 315), and the Violation of Framework Act on the Construction Industry (Framework Act on the Construction Industry, Article 95, paragraph 1 to 3).

PART A – TYPES OF OFFENSES AND SENTENCING PERIODS

01¹ INTERFERENCE WITH BUSINESS

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Interference with Business	- 8 mos.	6 mos. - 1 yr. 6 mos.	1 yr. - 3 yrs. 6 mos.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Special considerations can be taken into for engaging in the offense • Considerations can be taken into motives • The extent of the threat of force, deceptive means, or interference with business is slight • Cases where offenses was committed with willful negligence 	<ul style="list-style-type: none"> • Active lead role in planning and orchestrating the commission of the offense • Particularly malicious commission of the offense • Cases where the crime was committed with no specific reason toward an indiscriminate (random) number of people or commission of the offense was repeated and prolonged for an extended duration • The extent of interference with business was serious • Instigating the subordinate person to commit the crime • Condemnable motives
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with hearing and visual impairments • Those with mental incapacity (cases where the offender can be held liable) • Voluntary surrender to investigative agencies or cases of whistleblowing • Victim opposes punishment (including genuine efforts to reverse the harm) 	<ul style="list-style-type: none"> • Repeated offenses of the same type under the Criminal Act

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Passive participation 	
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with mental incapacity (cases where the offender can be held liable) • Expresses sincere remorse • No prior criminal history 	<ul style="list-style-type: none"> • Repeated offenses of the different type under the Criminal Act that do not constitute repeated offenses, the criminal history by the same type of offenses or by crime or violence 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)

- ▷ Apply the following classification in cases in which the crime of violence was committed while intoxicated by the use of alcohol or drugs (including cases of habitual crimes of extortion, repeated offense of extortion, special offense of extortion):
- ① Cases where the offender voluntarily induced intoxication by taking alcohol or drugs and where the offender intended or foresaw the crime or attempted to use the condition as a ground for exemption, intoxication is considered as a general aggravating factor even though the offender was in a state of diminished mental capacity at the time of the crime.
 - ② Even if the cases do not fall within ①, intoxication should not be considered as a mitigating factor unless the offender's mental state at the time of the crime constitutes those with mental incapacity.

02¹ INTERFERING WITH AN AUCTION OR A BID

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	General Interference with an Auction or a Bid	- 8 mos.	6 mos. - 1 yr.	10 mos. - 2 yrs.
2	Interfering with a Bid for Construction	6 mos. - 1 yr.	10 mos. - 2 yrs.	1 yr. 6 mos. - 4 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Special consideration can be taken into account for engaging in the offense • Actual damage is slight • Cases where offenses were committed with willful negligence 	<ul style="list-style-type: none"> • Active lead role in planning and orchestrating the commission of the offense • Particularly malicious commission of the offense • Cases where the crime was repeated and prolonged for an extended duration • Offenses caused serious social and economic damages • Instigating the subordinate person to commit the offense
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with hearing and speaking impairments • Those with mental incapacity (cases where the offender cannot be held liable) • Voluntary surrender to investigative agencies or cases of whistleblowing 	<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"> • Passive participation 	
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with mental incapacity (cases where the offender can be held liable) • Expresses sincere remorse • No prior criminal history 	<ul style="list-style-type: none"> • Repeated offenses of the different type under the Criminal Act that do not constitute repeated offenses, the criminal history by the same type of offenses or by crime or violence 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 OF OFFENSES

01¹ INTERFERING WITH A BUSINESS

- This means offenses with the following elements as prescribed in the applicable law (This applies to all offenses).

ELEMENTS OF CRIME	APPLICABLE LAW
Spread false information or interfere with the business by a threat of force or through deceptive means	Criminal Act, Article 314, paragraph 1
Interferes with another person's business by damaging or destroying any data processor (such as computers), or special media records (such as electromagnetic records), or inputting false information or improper order into the data processor, or making any impediment in processing any data by another way	Criminal Act, Article 314, paragraph 2

02¹ INTERFERING AN AUCTION OR A BID

1. TYPE 1

ELEMENTS OF CRIME	APPLICABLE LAW
Interfering with the impartial conduct of an auction or a bid through fraudulent means or by the threat of force or other means	Criminal Act, Article 315

2. TYPE 2

ELEMENTS OF CRIME	APPLICABLE LAW
An offender who does any of the following acts: (1) Tendering at a prearranged price in collusion with other bidders for purposes of making unjust enrichment or interfering with fair price-fixing (2) Presenting an estimated tender of another constructor (3) Interfering with tenders of other constructors by deceptive means, the threat of force, or other means.	Framework Act on the Construction Industry, Article 95, paragraph 1 to 3

DEFINITION OF SENTENCING FACTORS

01 | INTERFERENCE WITH A BUSINESS

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

- “Special considerations can be taken into account for engaging in the offense” means one or more of the following factors apply:
 - Another person's participation in the crime was forced or resulted from threats (This excludes cases where the Criminal Act, Article 12 is applicable)
 - When the offender merely agreed to participate in the crime but did not lead or participate in the commission of the crime
 - Other cases with comparable factors

2. CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR MOTIVES TO COMMIT THE CRIME

- This means cases with one or more of the following factors:
 - Cases where the victim is also primarily responsible for the crime
 - Offenses that are committed for the purpose of realizing the public interests or other interests
 - Legitimacy or effectiveness of the interfered business is relatively low, and it influences on the motives for committing the crime
 - Other cases with comparable factors

3. THE EXTENT OF INTERFERENCE WITH A BUSINESS IS SLIGHT

- This indicates cases in which the extent of impediment or paralysis of business performance caused by interference with business is slight.

4. VICTIM OPPOSES PUNISHMENT (THIS INCLUDES GENUINE EFFORTS TO REVERSE THE HARM)

- This indicates cases in which the offender expresses signs of remorse and the member of the deceased victim or the victim acknowledges this and objects to publishing the offender.



- This includes cases where deposits are made on a considerable amount of money comparable to reaching of an agreement with the family of the deceased victim or the victim as a result of the offender's genuine efforts to reverse the harm.

5. PASSIVE PARTICIPATION

- This indicates cases in which the nature of participation in the commission of the offense was passive or the offender had a limited role.
- However, this is not applicable in cases in which the offender had an active role in the commission of the offense by causing another person to commit the crime.

6. PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This means one or more of the following factors apply:
 - Offenses were committed while carrying dangerous objects such as a weapon
 - Offenses were committed by mobilizing members of criminal organizations or other security services to show strength or take control of the site
 - Means and methods for the commission of the offense were meticulously planned in advance
 - Methods (such as forgery or alteration of documents) were used in the commission of the offense (However, this is not applied to cases where the crime of forgery or alteration of documents was established and the guideline on multiple offenses on the crime was applied)
 - Highly intelligent schemes to commit the offense were used
 - New professional schemes previously unknown were used
 - Other cases with comparable factors

7. EXTENT OF INTERFERENCE WITH BUSINESS IS SERIOUS

- This indicates cases in which the extent of impediment or paralysis of business performance or damages caused by interfering with business is severe, considering the size of the victim's business.

8. CONDEMNABLE MOTIVES

- This means one or more of the following factors apply:
 - Offenses were committed out of retaliation, grievance, or hatred.

- Offenses were committed in return for unreasonable economic gains or benefits.
- Motive derived from the pleasure of committing the crime itself.
- Other cases with comparable factors.

02¹ INTERFERE WITH AUCTION OR BID

1. ACTUAL LOSS IS INSIGNIFICANT

- This means one or more of the following factors apply:
 - Offense does not result in a delay in the auction, lower price bid, or selection of the specific company
 - The offense caused minor damage to interested parties, such as the owner, creditors, successful bidder, or bid implementer
 - Other cases with comparable factors

2. PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This means one or more of the following factors apply:
 - Offenses were committed while carrying dangerous objects such as a weapon
 - Offenses were committed by mobilizing members of criminal organization or other security service to show strength or to take control of the site
 - Means and methods for the commission of the offense were meticulously planned in advance
 - For cases in which forgery or alteration of documents was used in the commission of the offense. (However, this does not apply to cases in which the offense established is forgery or alteration of documents and where the offense's sentencing guideline and the guideline on multiple offenses is applicable)
 - Using highly intelligent schemes to commit the offense
 - Using new professional schemes previously unknown
 - Other cases with comparable factors

3. OFFENSES RESULTED IN SIGNIFICANT SOCIAL AND ECONOMIC HARM

- This means one or more of the following factors apply:
 - Offenses resulted in serious damages to multiple interest parties through low-priced bids, delay of auction, or other means
 - Offenses hindered fairness of a bid that could have significant impact on social safety such as a bid for parts for nuclear power plants
 - Offenses undermined fairness of large scale bids for national projects conducted by the government or public organizations
 - 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

- 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.

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 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 | CALCULATING THE SENTENCING RANGE

- To calculate the sentence of an offender convicted of multiple offenses 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) $\frac{1}{3}$ of the maximum sentencing range of the remaining offense 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.

PART B – GUIDELINE ON SUSPENDING A SENTENCE

01 | INTERFERENCE WITH A BUSINESS

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Particularly malicious commission of the offense • Cases where the crime was committed with no specific reason toward an indiscriminate (random) number of people or commission of the offense repeated and prolonged for an extended duration • The extent of interference with business is serious • Condemnable motives • The criminal history of the same offense (imposing of suspension of the sentence or more severe punishment within five years or more than three incidents of fines) 	<ul style="list-style-type: none"> • Special considerations can be taken into account for engaging in the offense or motive • Voluntary surrender to investigative agencies or cases of whistleblowing • The offender attempted to thwart the accomplice's commission of the crime • The extent of the threat of force, deceptive means, or interference with business is slight • Cases where offense was committed with willful negligence • The victim opposes punishment (including genuine efforts to reverse the harm) • No prior criminal history
General Consideration Factor	<ul style="list-style-type: none"> • Two or more criminal history on the suspension of the sentence or for a greater offense • Lack of social ties • Drug or alcohol addiction • Absence of sincere remorse • Premeditated crime • Active lead role in the commission of the offense as an accomplice • Destroying evidence or attempting to conceal evidence after the commission of the offense • No genuine effort to reverse the harm 	<ul style="list-style-type: none"> • Strongly-established social ties • Accidental crime • Expresses sincere remorse • A significant amount of money was deposited, and a portion of the damages was reversed • No criminal history of the suspension of the sentence or imposing of other sentences more severe • Cases of elderly offenders • Cases of physically ill offenders • Passive participation as an accomplice • Cases where the arrest of the offender would cause severe hardship to the offender's dependant family member

02¹ INTERFERING WITH AN AUCTION OR A BID

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Particularly malicious commission of the offense • Commission of the offense was repeated and prolonged for an extended duration • Offenses resulted in serious social or economic harm • Criminal history of the same offense (imposing of suspension of the sentence or more severe punishment within five years or more than three incidents of fines) 	<ul style="list-style-type: none"> • Special considerations can be taken into account for engaging in the offense • Voluntary surrender to investigative agencies or cases of whistleblowing • Actual loss is insignificant • Cases where offenses were committed with willful negligence • Offender attempted to thwart the accomplice's commission of the crime • No prior criminal history
General Consideration Factor	<ul style="list-style-type: none"> • Two or more criminal history on the suspension of the sentence or for a greater offense • Lack of social ties • Drug or alcohol addiction • Absence of sincere remorse • Active lead role in the commission of the offense as an accomplice • Destroying evidence or attempting to conceal evidence after the commission of the offense 	<ul style="list-style-type: none"> • Strongly-established social ties • Expresses sincere remorse • No criminal history of the suspension of the sentence or imposing of other sentences more severe • Cases of elderly offenders • Cases of physically ill offenders • Passive participation as an accomplice • Cases where the arrest of the offender would cause severe hardship to the offender's dependant 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 imposing 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 sentence section comprehensively.