

Promulgated April 10, 2017. Effective on July 1, 2017.

# Chapter 37

## Crimes Related to Currencies, Valuable Securities, and the Illegal Check Control Act

This guideline applies to adult offenders (nineteen years of age or older) who committed any offense of Crimes of Counterfeiting Currency (Criminal Act, Article 207, paragraph 1, subparagraph 4), Counterfeiting Valuable Securities, etc. (Criminal Act, Article 214, paragraph 1, subparagraph 2), Drafting of Valuables Securities by Assuming False Capacity (Criminal Act, Article 215), Uttering Forged Valuable Securities (Criminal Act, Article 217), and the Violation of Illegal Check Control Act (Illegal Check Control Act, Article 2, paragraph 1, 2, Article 4, and 5).

## PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

### 01 | COUNTERFEITING, ALTERING, AND OTHERS OF CURRENCIES

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Counterfeiting, Altering, and Uttering Republic of Korea Currency	1 yr. - 2 yrs. 6 mos.	1 yr. 6 mos. - 3 yrs.	2 yrs. 6 mos. - 6 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Special consideration can be taken into account for engaging in the offense or its motive</li> <li>• No danger caused by the offense</li> </ul>	<ul style="list-style-type: none"> <li>• Cases where the offender is a central figure, executive, professional technician, or a person directly in charge of brokering and conveying to the aforementioned persons in positions</li> <li>• Counterfeiting and altering a large amount of currency for the long-term or repeatedly</li> <li>• Serious social and economic harm resulting from the offense</li> <li>• Instigating the subordinate person to commit the crime</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>• Those with hearing and visuals impairments</li> <li>• Those with mental incapacity (cases where the offender cannot be liable)</li> <li>• Voluntary surrender to investigative agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Repeated offenses under the Criminal Act (including crimes of counterfeiting document and securities and others)</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Passive participation</li> <li>• Profits gained from the offense or social and economic damages caused are insignificant</li> </ul>	<ul style="list-style-type: none"> <li>• Deliberate concealment of profits gained from the offense</li> <li>• Requested to professionals engaging in counterfeiting and altering or brokers of such activities</li> </ul>

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
			<ul style="list-style-type: none"> <li>The person who counterfeited and altered used the concerned counterfeited and altered currency</li> <li>Used professional counterfeiting and altering device</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>No prior criminal history</li> <li>Expresses sincere remorse</li> </ul>	<ul style="list-style-type: none"> <li>A 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 exists (This applies when the criminal history is within ten years after completion of sentence, including crimes of counterfeiting document and securities and others)</li> </ul>

## 02 | COUNTERFEITING, ALTERING, AND OTHERS OF VALUABLE SECURITIES

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Counterfeiting, Altering, and Uttering Valuable Securities	- 1 yr.	6 mos. - 2 yrs.	1 yr. - 3 yrs.
2	Counterfeiting, Altering Checks	6 mos. - 1 yr.	10 mos. - 2 yrs.	1 yr. - 4 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Special consideration can be taken into account for engaging in the offense or its motive</li> <li>• No danger caused by the offense</li> </ul>	<ul style="list-style-type: none"> <li>• Cases where the offender is a central figure, executive, professional technician, or a person directly in charge of brokering and conveying to the aforementioned persons in positions</li> <li>• Counterfeiting and altering a large amount of securities for the long-term or repeatedly</li> <li>• Serious social and economic harm resulting from the offense</li> <li>• Instigating the subordinate person to commit the crime</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>• Those with hearing and visual impairments</li> <li>• Those with mental incapacity (cases where the offender cannot be liable)</li> <li>• Voluntary surrender to investigative agencies</li> <li>• Victim opposes punishment (This includes genuine efforts to reverse the harm) or a substantial portion of harm reversed</li> </ul>	<ul style="list-style-type: none"> <li>• Repeated offenses under the Criminal Act (including crimes of counterfeiting document documents, securities, and others)</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Passive participation</li> <li>• The portion of altered securities does not account for much of the entire securities</li> <li>• Profits gained from the offense or social and economic damages caused are insignificant</li> </ul>	<ul style="list-style-type: none"> <li>• Deliberate concealment of profits gained from the offense</li> <li>• Requested to professionals engaging in counterfeiting and altering or brokers of such activities</li> <li>• The person who counterfeited and altered used the concerned counterfeited and altered securities</li> <li>• Used professional counterfeiting and altering device</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>• No prior criminal history</li> <li>• A portion of the damage was reversed</li> <li>• Expresses sincere remorse</li> </ul>	<ul style="list-style-type: none"> <li>• A prior criminal history of the same offense which does not fall within the repeated offenses under the Criminal Act and records of ten years after completion of sentence, including crimes of counterfeiting document and securities and others exists</li> </ul>

## 03 | ISSUING, AND OTHERS OF ILLEGAL CHECKS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Issuance·Drawn Up Illegal Checks/Bad Checks	- 1 yr.	6 mos. - 1 yr. 6 mos.	1 yr. - 3 yrs.
2	False Report	- 1 yr.	6 mos. - 2 yrs.	1 yr. - 4 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Special consideration can be taken into account for engaging in the offense or its motive</li> <li>• Actual loss is insignificant (Type 1)</li> <li>• No danger caused by the offense (Type 2)</li> </ul>	<ul style="list-style-type: none"> <li>• Malicious non-payment (bad check)</li> <li>• Inflicting serious harm to the check holder and others</li> <li>• Instigating the subordinate person to commit the crime</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>• Those with hearing and visuals impairments</li> <li>• Those with mental incapacity (cases where the offender cannot be liable)</li> <li>• Voluntary surrender to investigative agencies</li> <li>• A substantial portion of the harm was reversed</li> </ul>	<ul style="list-style-type: none"> <li>• Repeated offenses under the Criminal Act</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Considerations can be taken into account of a dispute over the existence or scope of payment obligations (dishonored check)</li> <li>• Passive participation</li> </ul>	<ul style="list-style-type: none"> <li>• Active acquisition of gain or concealment of a substantial amount of gain</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>• Expresses sincere remorse</li> <li>• A portion of the damage was reversed</li> <li>• No prior criminal history</li> </ul>	<ul style="list-style-type: none"> <li>• A 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 exists (This applies when the criminal history is within ten years after completion of sentence)</li> <li>• Escaping after committing the crime</li> </ul>

## DEFINITION OF OFFENSES

### 01<sup>1</sup> COUNTERFEITING, ALTERING, AND OTHERS OF CURRENCIES

ELEMENTS OF OFFENSE	APPLICABLE LAW
Counterfeiting or Altering a Current Coin, Paper Money, or Bank Note of the Republic of Korea for the Purpose of Uttering	Criminal Law, Article 207, paragraph 1
Counterfeiting or Altering Currency for the Purpose of Uttering or to Import or Export	Criminal Law, Article 207, paragraph 4, paragraph 1

### 02<sup>1</sup> COUNTERFEITING, ALTERING, AND OTHERS OF VALUABLE SECURITIES

#### 1. TYPE 1 — COUNTERFEITING, ALTERING, AND OTHERS OF VALUABLE SECURITIES

ELEMENTS OF OFFENSE	APPLICABLE LAW
Counterfeiting or Altering Writings Concerning the Rights and Obligations of Valuable Securities For the Purpose of Uttering, Counterfeits or Alters Valuable Securities	Criminal Law, Article 214
Drafting Valuable Securities or Making an Entry in Matters Concerning the Rights and Obligations Thereof by Assuming a False Capacity For the Purpose of Uttering,	Criminal Law, Article 215
For the Purpose of Uttering Under Article 214 or Article 215 of Valuable Securities, or For the Purpose of Exporting or Importing	Criminal Law, Article 217

#### 2. TYPE 2 — FORGING OR COUNTERFEITING CHECKS

ELEMENTS OF OFFENSE	APPLICABLE LAW
Forging or Counterfeiting Checks	Illegal Check Control Act, Article 5

## 03<sup>1</sup> ISSUING ILLEGAL CHECKS

### 1. TYPE 1 — ISSUING, DRAWING UP ILLEGAL OR BAD CHECKS

ELEMENTS OF OFFENSE	APPLICABLE LAW
Issuing or Drawing Up Illegal checks	Illegal Check Control Act, Article 2, paragraph 1
Bad Checks	Illegal Check Control Act, Article 2, paragraph 2

### 2. TYPE 2 — FALSE REPORT

ELEMENTS OF OFFENSE	APPLICABLE LAW
Filing False Reports to Financial Institutions for the Purpose of Evading Payment of the Amount	Illegal Check Control Act, Article 4

## DEFINITION OF SENTENCING FACTORS

### 01 | COUNTERFEITING · ALTERING AND ETC. OF CURRENCY/ COUNTERFEITING · ALTERING AND ETC. OF VALUABLE SECURITIES

#### 1. SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR COMMITTING THE CRIME OR ITS MOTIVE

- This means one or more of the following factors apply:
  - Participation in the crime was forced by another person 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
  - The crime was committed out of mere curiosity or ostentation
  - The motive for the crime was not for the purpose of obtaining illegal benefits or solely for the purpose of other minor benefits
  - Other cases with comparable factors

#### 2. NO DANGER CAUSED BY THE OFFENSE

- This means one or more of the following factors apply:
  - Counterfeited or altered small amount of currency or securities mere curiosity
  - Cases where the counterfeiting and altering is extremely crude so that the counterfeiting and alternation is easily identifiable
  - Cases where the counterfeited and altered currency or securities were not distributed in reality
  - Other cases with comparable factors

#### 3. A SUBSTANTIAL PORTION OF THE HARM WAS REVERSED

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



#### **4. OFFENDER IS A CENTRAL FIGURE, EXECUTIVE, PROFESSIONAL TECHNICIAN, OR A PERSON DIRECTLY IN CHARGE OF BROKERING AND CONVEYING TO THE AFOREMENTIONED PERSONS IN POSITIONS**

- This indicates cases in which the offender holds a vital position in the criminal organization such as an actual central figure, executive, professional technician that engages in counterfeiting and altering, and executives of middle rank or higher in charge of the brokering or conveying the currency or securities.

#### **5. SERIOUS SOCIAL AND ECONOMIC HARM RESULTING FROM THE OFFENSE**

- This indicates cases in which the crime has caused enormous economic losses, the offender acquired large amounts of benefit, numerous victims to the offense, and other similar consequences causing a social and economic disturbance as well as serious and severe damages resulted from the offense.

#### **6. 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 crime.

#### **7. OFFENDER MADE REQUESTS TO PROFESSIONALS ENGAGING IN COUNTERFEITING AND ALTERING OR BROKERS OF SUCH ACTIVITIES**

- This means the offender, who is not a professional counterfeiter or involved in such organizations, has made requests of counterfeiting or altering of currency or securities to a professional counterfeiter, broker, or a member of an organization engaged in counterfeiting or altering (For example, this includes requesting counterfeiting or altering to a professional counterfeiter or a broker of such criminal organization through the use of internet websites).

#### **8. THE PERSON WHO COUNTERFEITED AND ALTERED THE CURRENCY USED SUCH CURRENCY**

- ※ In this case, the offense shall not be considered as a multiple offense but shall be regarded as a single offense that is a factor for the adjusting sentencing range.

## 02<sup>1</sup> ISSUING ILEL GAL CHECKS

### 1. SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR COMMITTING THE CRIME OR ITS MOTIVE

- This means one or more of the following factors apply:
  - Participation in the crime was forced by another person 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
  - The crime was committed out of mere curiosity or ostentation
  - The motive for the crime was not for the purpose of obtaining illegal benefits or solely for the purpose of other minor benefits
  - Cases where a check has been issued for a pledged check, certified check, security for existing debt, advanced payment, and others, or a check has been issued to allow a third party to use the check (Dishonored Check)
  - Cases where failure to pay was due to the third party, such as bankruptcy of the client, non-payment of the charge, economic recession, or breach of trust in office, or cases where failure to pay was due to financial deterioration, such as a sharp drop in profits, poor sales, poor turnover of capital, management deterioration, investment failure and others (Dishonored Check)
  - Other cases with comparable factors

### 2. ACTUAL LOSS IS INSIGNIFICANT

- This indicates cases in which the amount of bankruptcy can be assessed as a small amount compared to the check holder's size of the asset, sales volume, reliance on the defendant, and others.

### 3. A SUBSTANTIAL PORTION OF THE HARM WAS REVERSED

- This means one or more of the following factors apply, and in each factor, the offender's perception of each case and the extent of the offender's involvement in recovering the damages shall be comprehensively considered:
  - Where the identifiable amount of check before the prosecution was initiated and the collected amount of the check are considered comprehensively and it could be assessed that the significant portion of the amount of check had been collected

- Cases where the check holder or others expressed the opposition of punishment (Issuance and Writing an Illegal Check/Dishonored Check)
- Cases where considerable security was provided for the check holder and others or a reliable recovery of damage is expected in the future due to a reliable payment plan and others
- Other cases with comparable factors

#### 4. MALICIOUS NON-PAYMENT

- This means one or more of the following factors apply:
  - Issued checks excessively in the short-term, even in anticipation of bankruptcy
  - The concealed executable property, pretended to be out of business, or used other person's name as business owner and operated same or similar type of company to evade duty to pay
  - Other cases with comparable factors

#### 5. INFLECTING SERIOUS HARM TO THE CHECK HOLDER AND OTHERS

- This means one or more of the following factors apply and in each factor, the offender's perception of each case and the extent of the offender's involvement in recovering the damages such as check restitution shall be comprehensively considered:
  - Cases where the dishonored check directly caused the check holder to bankruptcy or a serious financial crisis
  - Cases where the amount of bankruptcy can be assessed as a large amount compared to the check holder's size of asset, sales volume, reliance on the defendant, and others
  - Other cases with comparable factors

#### 6. 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 a crime.

## 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 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.
  - ※ In this case, if the person who counterfeited and altered the currency used the concerned counterfeited and altered local or foreign currency, it should not be considered a multiple conviction. Instead, this shall be regarded as a single offense that can be used as a factor to adjust the sentencing range.

## PART B — GUIDELINE ON SUSPENDING A SENTENCE

### 01 | COUNTERFEITING OR ALTERING OF CURRENCIES

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> <li>• The offender is a central figure, executive, professional technician, or a person directly in charge of brokering and conveying to the aforementioned persons in positions</li> <li>• Counterfeiting and altering a large amount of currency repeatedly</li> <li>• Social and economic harm resulting from the offense</li> <li>• A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years or more than three incidents of fines) exists</li> </ul>	<ul style="list-style-type: none"> <li>• Special consideration can be taken into account for engaging in or motive for committing the offense</li> <li>• No danger caused by the offense</li> <li>• Voluntary surrender or whistleblowing</li> <li>• No prior criminal history</li> </ul>
General Consideration Factor	<ul style="list-style-type: none"> <li>• Deliberate concealment of profits gained from the offense</li> <li>• Requested to professionals engaging in counterfeiting and altering or brokers of such activities</li> <li>• The person who counterfeited and altered used the concerned counterfeited and altered currency</li> <li>• Used professional counterfeiting and altering device</li> <li>• More than two incidents of suspension of sentence or more severe punishment</li> <li>• Lack of social ties</li> <li>• Absence of remorse</li> </ul>	<ul style="list-style-type: none"> <li>• Passive participation as an accomplice</li> <li>• Profits gained from the offense or the social and economic harm caused is insignificant</li> <li>• Strongly-established social ties</li> <li>• Offender expresses remorse</li> <li>• A criminal history of the suspension of sentence or imposing of other sentences more severe exists</li> <li>• Cases of elderly offenders</li> <li>• Cases of physically ill offenders</li> <li>• Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member</li> </ul>



## 02<sup>1</sup> COUNTERFEITING OR ALTERING OF VALUABLE SECURITIES

CLASSIFICATION	ADVERSE	AFFIRMATIVE
<p style="text-align: center;">Primary Consideration Factor</p>	<ul style="list-style-type: none"> <li>• The offender is a central figure, executive, professional technician, or a person directly in charge of brokering and conveying to the aforementioned persons in positions</li> <li>• Counterfeiting and altering a large amount of securities repeatedly</li> <li>• Social and economic harm resulting from the offense</li> <li>• A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years or more than three incidents of fines) exists</li> </ul>	<ul style="list-style-type: none"> <li>• Special consideration can be taken into account for engaging in the offense or its motive</li> <li>• No danger caused by the offense</li> <li>• Victim opposes punishment (includes genuine efforts to reverse the harm) or a substantial portion of damages were reversed</li> <li>• Voluntary surrender or whistleblowing</li> <li>• No prior criminal history</li> </ul>
<p style="text-align: center;">General Consideration Factor</p>	<ul style="list-style-type: none"> <li>• Deliberate concealment of profits gained from the offense</li> <li>• Requested to professionals engaging in counterfeiting and altering or brokers of such activities</li> <li>• The person who counterfeited and altered used the concerned counterfeited and altered currency</li> <li>• Used professional counterfeiting and altering device</li> <li>• More than two incidents of suspension of sentence or more severe punishment</li> <li>• Lack of social ties</li> <li>• Absence of remorse</li> </ul>	<ul style="list-style-type: none"> <li>• Passive participation as an accomplice</li> <li>• The portion of altered securities does not account for much of the entire securities</li> <li>• Profits gained from the offense or social and economic damages caused are insignificant</li> <li>• A portion of the damage was reversed</li> <li>• Strongly-established social ties</li> <li>• Offender expresses remorse</li> <li>• No criminal history of the suspension of sentence or imposing of other sentences more severe</li> <li>• Cases of elderly offenders</li> <li>• Cases of physically ill offenders</li> <li>• Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member</li> </ul>

## 03<sup>1</sup> ISSUING ILLEGAL CHECKS

CLASSIFICATION	ADVERSE	AFFIRMATIVE
<p>Primary Consideration Factor</p>	<ul style="list-style-type: none"> <li>• Malicious non-payment (dishonored check)</li> <li>• Inflicting serious harm to the check holder and others</li> <li>• Criminal history of the same offense (imposing of suspension of sentence or more severe punishment within five years or more than three incidents of fines)</li> </ul>	<ul style="list-style-type: none"> <li>• Special consideration can be taken into account for engaging in the offense or its motive</li> <li>• Actual loss is insignificant (issuance and writing a illegal check/ dishonored check)</li> <li>• No danger caused by the offense (false report)</li> <li>• Substantial portion of damages were reversed</li> <li>• Voluntary surrender or whistleblowing</li> <li>• No prior criminal history</li> </ul>
<p>General Consideration Factor</p>	<ul style="list-style-type: none"> <li>• Active acquisition of gain or concealment of substantial amount of gain</li> <li>• Escaping after committing the offense</li> <li>• More than two incidents of suspension of sentence or more severe punishment</li> <li>• Lack of social ties</li> <li>• Absence of remorse</li> </ul>	<ul style="list-style-type: none"> <li>• Considerations can be taken into account of a dispute over the existence or scope of payment obligations (dishonored check)</li> <li>• Passive participation as an accomplice</li> <li>• A portion of the damage was reversed</li> <li>• Strongly-established social ties</li> <li>• Offender expresses remorse</li> <li>• No criminal history of the suspension of sentence or imposing of other sentences more severe</li> <li>• Cases of elderly offenders</li> <li>• Cases of physically ill offenders</li> <li>• Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member</li> </ul>

## DEFINITIONS OF 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 adverse factors exist or when the primary adverse factors outnumber the primary affirmative factors 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 the sentence section comprehensively.