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Chapter 38

Crimes Related to the Credit Business Act and the Debt Collection Act

This guideline applies to adult offenders (nineteen years of age or older) who committed any offense of Crimes of the Act on Registration of Credit Business, etc. and Protection of Finance Users (hereinafter referred to as “Credit Business Act”), Article 19, paragraph 1, subparagraph 1 (Unregistered Credit Service Provider, etc.), the Credit Business Act, Article 19, paragraph 2, subparagraph 3 (Violation of the Restriction on Interest Rate), Credit Business Act, Article 19, paragraph 2, subparagraph 6 (Receiving Brokerage Commission etc. and in Violation of Article 11-2(2)), Fair Debt Collection Practices Act, Article 15, paragraph 1 (Violence, Threats, etc.), and the Fair Debt Collection Practices Act, Article 15, paragraph 2, subparagraph 2 (Paying Visits, Telephoning, etc. Repeatedly or at Nighttime and only applies to the Violations of the Article 9, subparagraph 2 and 3).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01 | VIOLATIONS OF THE CREDIT BUSINESS ACT

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Violation of the Restriction on the Interest Rates, Receiving Brokerage Commission, and others	- 6 mos.	4 mos. - 10 mos.	8 mos. - 2 yrs.
2	Unregistered Credit Service Provider, etc.	- 10 mos.	6 mos. - 1 yr. 6 mos.	1 yr. - 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 or its motive • The degree of violation of the law is not grievous 	<ul style="list-style-type: none"> • Particularly malicious commission of the offense • A large amount of profits gained from the offense or the scale of business is large • Instigating the subordinate person to commit the crime
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with hearing and visual impairments • Those with mental incapacity (cases where the offender cannot be liable) • Voluntary surrender to investigative agencies or whistleblowers 	<ul style="list-style-type: none"> • Repeated offenses under the Criminal Act (including violations of the Fair Debt Collection Practices Act)



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Cases where profits gained from the offense is not substantial Passive participation 	<ul style="list-style-type: none"> Attracting by using advertisement or media with high transmission Deliberate concealment of profits gained from the offense
	Actor/ Etc.	<ul style="list-style-type: none"> Those with mental incapacity (cases where the offender is liable) Expresses sincere remorse No prior criminal history 	<ul style="list-style-type: none"> Destroying evidence or attempting to conceal evidence after the commission of the offense Repeated offenses of the different type under Criminal Act, criminal history of imprisonment by the same type of offenses that do not constitute repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)

02¹ VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Paying Visits, Telephoning Repeatedly or at Nighttime	- 6 mos.	4 mos. - 10 mos.	6 mos. - 2 yrs.
2	Violence, Threats, or Others	- 8 mos.	6 mos. - 1 yr. 6 mos.	10 mos. - 3 yrs. 6 mos.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Minor violation of assault, threat, arrest, or confinement, or the degree of force is minor (Type 2) • Special consideration can be taken into account for engaging in the offense or its motive 	<ul style="list-style-type: none"> • Particularly malicious commission of the offense • Crime against unspecified multiples of victims or prolonged and repeated commission of the crime • Vulnerable victims • Instigating the subordinate person to commit the crime
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with hearing and visual impairments • Those with mental incapacity (cases where the offender can be liable) • Voluntary surrender or whistleblowing • The victim opposes punishment (This includes genuine efforts to reverse the harm), or a substantial portion of damages was reversed 	<ul style="list-style-type: none"> • Repeated offenses under the Criminal Act (This includes Violation of the Credit Business Act)
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Cases where the offender failed to consume or retain most of the profit from the crime (Type 2) • Passive participation 	<ul style="list-style-type: none"> • Deliberate concealment of profits gained from the offense (Type 2)
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with mental incapacity (cases where the offender is liable) • Expresses sincere remorse • No prior criminal history 	<ul style="list-style-type: none"> • Destroying evidence or attempting to conceal evidence after the commission of the offense • Repeated offenses of the different type under the Criminal Act, the criminal history of imprisonment by the same type of offenses or by a crime of violence that do 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 VIOLATIONS OF THE CREDIT BUSINESS ACT

1. TYPE 1 — VIOLATION OF THE RESTRICTION ON INTEREST RATE/RECEIVING BROKERAGE COMMISSION

ELEMENTS OF OFFENSE	APPLICABLE LAW
A person who Charged Interest at a Higher Rate than the Interest Rate Prescribed in Article 8 or 11, paragraph 1	Act on Registration of Credit Business, etc. and Protection of Finance Users (hereinafter referred to as the Credit Business Act), Article 19, paragraph 2, subparagraph 3
A person who Received Brokerage Commission, in violation of Article 11-2, paragraph 2	Credit Business Act, Article 19, paragraph 2, subparagraph 6

2. TYPE 2 — UNREGISTERED CREDIT SERVICE PROVIDER

ELEMENTS OF OFFENSE	APPLICABLE LAW
A person who Engaged in Credit Business Without Registration or Renewal of Registration, in Violation of Article 3 or 3-2	Credit Business Act, Article 19, paragraph 1, subparagraph 1

02¹ VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT

1. TYPE 1 — PAYING VISITS, TELEPHONING REPEATEDLY OR AT NIGHTTIME

ELEMENTS OF OFFENSE	APPLICABLE LAW
A person Who Violated the Fair Debt Collection Practices Act, Article 9, subparagraph 2, 3	Fair Debt Collection Practices Act, Article 15, paragraph 2, subparagraph 2

2. TYPE 2 — VIOLENCE, THREATS, ETC.

ELEMENTS OF OFFENSE	APPLICABLE LAW
A Person who violated the Fair Debt Collection Practices Act, Article 9, subparagraph 1 and Committed Assault and Battery on, Threatens, Arrests, or Confines on a Debtor or a Person Related to the Debtor	Fair Debt Collection Practices Act, Article 15, paragraph 1



DEFINITION OF SENTENCING FACTORS

01¹ VIOLATIONS OF THE CREDIT BUSINESS ACT

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

- 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
 - Other cases with comparable factors

2. THE DEGREE OF VIOLATION OF THE LAW IS NOT GRIEVOUS

- This indicates cases in which one or more following factors apply:
 - Cases of one-time or short-term business
 - The degree of violation of the maximum interest rate is insignificant
 - Other cases with comparable factors

3. PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This indicates cases in which one or more following factors apply:
 - The means and methods for the commission of the offense were meticulously done in advance
 - Multiple persons involved in an organized manner for the purpose of committing the offense or in the case of using professional devise or technology, the offender was leading the crime by planning or executing the crime or was in the key role
 - Other cases with comparable factors

4. A LARGE AMOUNT OF PROFITS GAINED FROM THE OFFENSE OR THE SCALE OF BUSINESS IS LARGE

- This indicates cases in which one or more following factors apply:

- Cases where the amount of money acquired from the victim is very large, regardless of the pretext such as an amount of loan, amount of loan brokerage, interest, charge, or fee
- Cases with a very large number of victims or operated business for the long-term
- Cases with a large number of sales sites or many accomplices were involved
- Other cases with comparable factors

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 crime.

6. ATTRACTION BY USING ADVERTISEMENT OR MEDIA WITH WIDE SPREADABILITY

- Media with wide spreadability means internet [including SNS (Social Network Service)] and other media with a wide spreadability that targets unspecified or multiple people.

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 - Other cases with comparable factors

2. PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This indicates cases in which one or more following factors apply:
 - The means and methods for the commission of the offense were meticulously done in advance
 - Multiple persons involved in an organized manner for the purpose of committing the offense or in the case of using professional device or technology, the offender was leading the crime by planning or executing the crime or was in the key role
 - Other cases with comparable factors

3. VULNERABLE VICTIMS

- This indicates cases in which the victim was especially vulnerable due to reduced physical or mental capacity or age at the time of the crime and the offender was already aware of or possibly aware of the victim's such circumstances.

4. 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.

5. CASES WHERE THE OFFENDER FAILED TO CONSUME OR RETAIN MOST OF THE PROFIT FROM THE CRIME (TYPE 2)

- This indicates cases in which one or more following factors apply:
 - Cases where losses incurred in the process of debt collection and the actual profit gained or avoided amount of loss (excluding the legal gained or avoided loss) is insignificant
 - Cases where the amount of collection was used for principal and interest of the previous debt or expenses incurred by other collection activities and there the positive property was not significantly increased
 - 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 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 | VIOLATIONS OF THE CREDIT BUSINESS ACT

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Particularly malicious commission of the offense • A large amount of profits gained from the offense or the scale of business is large • A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years or a more than three incidents of fines) exists 	<ul style="list-style-type: none"> • Special consideration can be taken into account for engaging in the offense or its motive • The degree of violation of the law is not grievous • No prior criminal history • Voluntary surrender or whistleblowing
General Consideration Factor	<ul style="list-style-type: none"> • Attracting by using advertisement or media with high transmission • Deliberate concealment of profits gained from the offense • More than two incidents of suspension of sentence or more severe punishment • Lack of social ties • Absence of remorse • Destroying evidence or attempting to conceal evidence after the commission of the offense 	<ul style="list-style-type: none"> • The actual gain is insignificant • Money and other valuables or gains returned (This includes deposits) • No criminal history of the suspension of sentence or imposing of other sentences more severe • Strongly-established social ties • Offender expresses remorse • Passive participation as an accomplice • Cases of elderly offenders • Cases of physically ill offenders • Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member



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CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Particularly malicious commission of the offense • Crime against unspecified multiples of victims or prolonged and repeated commission of the crime • Vulnerable victims • 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 	<ul style="list-style-type: none"> • Special consideration can be taken into account for engaging in the offense or its motive • A minor degree of violation of assault, threat, arrest and confinement, or the degree of force (Type 2) • No prior criminal history • Voluntary surrender or whistleblowing • Victim opposes punishment (This includes genuine efforts to reverse the harm)
General Consideration Factor	<ul style="list-style-type: none"> • Deliberate concealment of profits gained from the offense (Type 2) • More than two incidents of suspension of sentence or more severe punishment • Lack of social ties • Absence of remorse • Destroying evidence or attempting to conceal evidence after the commission of the offense • Absence of efforts to reverse damages 	<ul style="list-style-type: none"> • Cases where the offender failed to consume or retain most of the profit from the crime (Type 2) • No criminal history of the suspension of sentence or imposing of other sentences more severe • Strongly-established social ties • Offender expresses remorse • Passive participation as an accomplice • Cases of elderly offenders • 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.



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.