

Promulgated on March 25, 2019. Effective on July 1, 2019.

# **Chapter 40**

## **Crimes Related to Violations of the Act on Regulations of Conducting Fund-Raising Business Without Permission**

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of the Act on Regulations of Conducting Fund-Raising Business Without Permission, Article 6, paragraph 1 (Conducting Fund-Raising Business Without Permission).

## PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Offense is Not an Organized Crime	- 8 mos.	4 mos. - 1 yr.	8 mos. - 2 yrs.
2	Offense is an Organized Crime	- 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"> <li>• Special consideration can be taken into account for engagement or motive in offense</li> <li>• Mere participation</li> </ul>	<ul style="list-style-type: none"> <li>• Active lead role in planning and orchestrating the commission of the offense (Type 2)</li> <li>• A large amount of profits gained from the offense or the scale of business is large</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, internal whistleblowing, or voluntary full-disclosure of crime (Type 2)</li> <li>• The victim opposes punishment or a substantial portion of harm 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>• Passive participation</li> <li>• Cases where profits gained from the offense is not substantial</li> <li>• A small amount of profits gained from the offense or the scale of business is small</li> </ul>	<ul style="list-style-type: none"> <li>• Attracting by using advertisement or media with high transmission</li> <li>• Deliberate concealment of profits gained from the offense</li> </ul>



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
	Actor/ Etc.	<ul style="list-style-type: none"><li>• Expresses sincere remorse</li><li>• No prior criminal history</li><li>• A portion of damage was reversed</li><li>• Offender's cooperation with the investigation on general matters</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, criminal history of imprisonment by the same type of offenses that do not constitute a repeated offense under the Criminal Act exist (This applies when the criminal history is within ten years after completion of sentence)</li></ul>

## DEFINITION OF OFFENSES

### 01 | NOT ORGANIZATIONAL CRIME

---

- Crimes of fund-raising business without permission that do not fall under Type 2.

### 02 | ORGANIZATIONAL CRIME

---

- This indicates cases in which multiple offenders engage in the commission of the offense in a fund-raising business without permission, involving an agreement to the crime in advance, allocating and professionally executing the commission.



## DEFINITION OF SENTENCING FACTORS

### 01 | SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR ENGAGING IN OR MOTIVATION OF 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
  - Cases where there was a possibility that the announced business can be operated and even the offender believed in the feasibility of the project and invested in such a project
  - Other cases with comparable factors

### 02 | MERE PARTICIPATION

- Where the offender did not lead, plan, or command the organizational crime but participated in mere conduct during the execution phase of the offense.

### 03 | A LARGE AMOUNT OF PROFITS GAINED FROM THE OFFENSE OR THE SCALE OF BUSINESS IS LARGE

- This indicates cases in which one or more of the following factors apply:
  - Irrespective of the cause of the money, there was a large amount of profits gained from the offense
  - Cases where there were a large number of investors or sales sites were operated for a long period
  - Cases where a substantial amount of profits gained from the offense
  - Other cases with comparable factors

## 04 | THE VICTIM OPPOSES PUNISHMENT OR A SUBSTANTIAL PORTION OF THE HARM WAS REVERSED

---

- This means that on more than  $\frac{2}{3}$  of the total caused damage (which is the total amount of fund-raising deducted from the amount received from the investors), the investors expressed opposition to punishment or the investor's damage has been reversed or is certain to be reversed.

## 05 | 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.

## 06 | DELIBERATE CONCEALMENT OF PROFITS GAINED FROM THE OFFENSE

---

- This means profits from the offense were deliberately concealed by the offender, thereby causing delayed damage recovery or absence of recovery.

## 07 | THE OFFENDER'S COOPERATION WITH THE INVESTIGATION ON GENERAL MATTERS

---

- This means that the offender did not reach the "Voluntary Full-Disclosure of Crime," but the offender stated the true facts of the offender's own crime and the succeeding crime so that it contributed to the investigation, such as punishment of the involved parties and prevention of succeeding crimes.



## 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 SENTENCE OF A MULTIPLE OFFENDER

- 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

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> <li>• Active lead role in planning and orchestrating the commission of the offense (Type 2)</li> <li>• A large amount of profits gained from the offense or the scale of business is large</li> <li>• A repeated offense under the Criminal Act (imposing of suspension of sentence or more severe punishment within five years; or more than three incidents of fines) exists</li> </ul>	<ul style="list-style-type: none"> <li>• Special considerations can be taken into account for engagement or motive in offense</li> <li>• Mere participation</li> <li>• A small amount of profits gained from the offense or the scale of business is small</li> <li>• Voluntary surrender to investigative agencies, internal whistleblowing, or voluntary full-disclosure of crime (Type 2)</li> <li>• The victim opposes punishment or a substantial portion of damages reversed</li> <li>• No prior criminal history</li> </ul>
General Consideration Factor	<ul style="list-style-type: none"> <li>• Attracting by using advertisement or media with high transmission</li> <li>• Deliberate concealment of profits gained from 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> <li>• Absence of efforts to reverse damages</li> <li>• Concealing evidence or attempts to conceal after the commission of the offense</li> </ul>	<ul style="list-style-type: none"> <li>• Passive participation as an accomplice</li> <li>• Cases where profits gained from the offense is not substantial</li> <li>• Offender's cooperation with the investigation on general matters</li> <li>• No criminal history of the suspension of sentence or imposing of other sentences more severe</li> <li>• Strongly-established social ties</li> <li>• Expresses sincere remorse</li> <li>• A portion of damage was reversed</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 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.