

## Criminal law definition of Commercial bribery

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**Abstract:** As a new type of economic crime, commercial bribery crime has become a serious obstacle to the social and economic development. China's criminal law is too strict on the provisions of commercial bribery crimes and has not adapted to the development trend of the new situation. This paper draws on the foreign legislative provisions, combined with the actual situation in China, analyzes the theory of commercial bribery crimes in China, and proposes the definition of criminal law for commercial bribery crimes.

### 1. Introduction

In China, commercial bribery, as a “hidden rule” of the market, has long been out of the field of law enforcement. In recent years, various industries in the market economy have become popular and intensified. It seriously jeopardizes the country's market economic order. Unfair competition has led to a low-level and vicious circle in the industry, resulting in high prices, fake and shoddy products flooding the market, and seriously damaging the legitimate rights and interests of the masses. How to effectively manage commercial bribery has been widely concerned by all sectors of society? Governing commercial bribery is a key task of the anti-corruption campaign established by the central government in 2006. It has become an important duty of the judiciary to investigate and deal with commercial bribery crimes according to law. This paper makes some shallow research on the concept, characteristics and governance of commercial bribery crimes, and proposes the definition of criminal law for commercial bribery crimes. He can help to combat the increasingly rampant commercial bribery crimes.

### 2. Concept of commercial bribery

Commercial bribery is a behavior that violates the principle of fair competition in commercial activities and uses the means of giving, receiving, or other benefits to provide or obtain trading opportunities or other economic benefits.

According to the facts, plots and punishment basis, commercial bribery is divided into unfair trade behaviors, general illegal acts and criminal acts [1].

1) Unfair trading behavior is a behavior in which commercial plots are minor and the amount is small, violating business ethics and market rules, and should be dealt with in accordance with the relevant provisions of party and government organs, industry supervisory (regulatory) departments, and industry self-regulatory organizations.

2) The general illegal act is that the commercial bribery is less serious and the amount is small. Violation of the anti-unfair competition law and other laws and regulations does not constitute a crime, and administrative punishment should be given.

3) The criminal act is a large amount of commercial bribery (more than 5,000 yuan), or has other serious circumstances, and should be punished according to the criminal law. When the illegal act of commercial bribery reaches a certain degree of social harm, the civil, economic and administrative legal means are not enough to resist, and the punishment is required to punish the act, the commercial bribery can become a criminal act. It should be noted that commercial bribery crime is not a specific crime in criminal law, but a kind of criminal behavior with many similarities. Commercial bribery crimes include criminal acts of bribery and bribery in the field of commodity circulation. It also includes bribery crimes committed by public officials in the field of commodity circulation.

### **3. Domestic and foreign regulations on commercial bribery**

#### **3.1 Japan.**

Japanese criminal law theory and judicial precedents understand that bribery in bribery crimes of civil servants refers to “bribery” refers to unlawful remuneration in relevant positions. Whether such payments are tangible or intangible, including people needs desires and all interests. Therefore, in the civil law system of Japan, its criminal precedents interpret bribery as financial interests, debts, geisha performances, sexual services, favorable conditions for public and private positions, opportunities to participate in speculative careers, help with introduction of occupations, amounts, and performance periods have not yet been determined [1]. The gratitude, the stock of the company to be established in the future, and all other interests that satisfy the needs and desires of the people.

However, in the case of commercial bribery, the scope of bribery is much narrower. The draft "Commercial Law" submitted by the Japanese government to the parliament voted the same as the constitutional elements of commercial bribery crimes and the civil servant accepting bribes. That is, "receive, demand or agree on bribes in matters of position." However, the parliament will revise the constituent elements as “accepting improperly entrusted for their duties. Receiving, demanding or agreeing on the benefits”. Thus, the scope of bribery is limited to the benefits of the production. Japanese scholars therefore believe that bribery in commercial bribery “is limited to the benefits of production, including giving money, goods, debt relief, consumer credit, etc., but does not include providing status, satisfying lust, etc.” Providing opportunities to participate in speculation. Japanese jurisprudence believes that although it can satisfy people's desires. Nevertheless, the property that does not belong to property cannot establish commercial bribery [2]

#### **3.2 Germany.**

Article 12 of the German Anti-Unfair Competition Law stipulates:

1) In the commodity transaction, the actor provides promises or grants an interest to the employee of the industrial enterprise for the purpose of competition, In the case of obtaining a commodity or industrial payment, the employee or the third person is exchanged for the preferential payment in an improper manner. In this case, the perpetrator shall be sentenced to a maximum of one year's imprisonment or fine.

2) The employee or the attorney of a commercial enterprise requests, promises or accepts an interest in a commercial transaction as a corresponding payment for the preferential treatment of others in an unfair competition when obtaining a commodity or industrial payment. The employee or the assignee is equally punished. It can be seen that German law stipulates that commercial bribery objects include not only property but also certain non-property interests [2].

#### **3.3 The United States.**

The US Foreign Corrupt Practices Act (FCPA) was enacted in 1977. After three revisions in 1988, 1994, and 1998, the 1988 amendment was the largest revision. The Act aims to restrict the bribery of foreign government officials or officials of international public organizations by US companies and individuals, and regulates the accounting records and internal controls of listed companies. The Foreign Corrupt Practices Act defines bribery as anything of anything.

#### **3.4 Other countries and regions.**

The Hong Kong Prevention of Bribery Ordinance stipulates, "a civil servant may claim or receive a certain benefit, or that someone in the public may provide certain benefits to a civil servant ... is a criminal act." The “benefits” include all the benefits that can be imagined in addition to the money.

Singapore’s 1970 Prevention of Bribery Act treats “remuneration other than legal remuneration” as a bribe, while giving a detailed list of the various forms of remuneration. This includes: 1) Money or any gift, loan, fee, gratuity, commission, marketable securities or other property or any form of property interest, whether movable or immovable; 2) Any position, employment or contract; 3) Any Support, waive, liquidate or liquidate any loan, liability or other liability, whether in whole or in part [3].

The Canadian Criminal Code expressly stipulates that non-material interests such as “positions, employment” can be the subject of accepting bribes.

The Taiwanese Criminal Law stipulates, “the object of bribery is bribery and other improper interests.” Bribery refers to money or other property that can be converted into money.

### **3.5 International conventions.**

In the United Nations Convention against Transnational Organized Crime, the object of bribery is expressed as the “undesired benefit” of a public official’s “conditions of doing or not acting in the performance of official duties”. In the United Nations Convention against Corruption, adopted on October 31, 2003, the object of bribery is the “unfair advantage” of public officials “conditions of doing or not doing things in the performance of official duties”. Obviously, “property” is only one of the undue advantages [4].

### **3.6 China.**

Articles 8 and 22 of the Anti-Unfair Competition Law of China, Articles 163 and 164 of the Criminal Law stipulate that commercial bribery crimes refer to the convenience of the staff of a company or enterprise to obtain the property of others or illegal. Accepting the property of others, seeking benefits for others, or accepting all kinds of nominal rebates and handling fees in the course of economic exchanges, and being personally owned, should be punished by criminal law. The Chinese criminal law stipulates that the object of bribery crimes is “property” and excludes other non-material interests or benefits [3].

## **4. The manifestations and main features of commercial bribery crimes**

### **4.1 Commercial bribery crimes are prominent in certain industries and fields.**

Commercial bribery occurs mostly in highly competitive industries such as healthcare, telecommunications, electricity, finance, and construction. These industries have strong monopoly and have more business in foreign exchanges. To a certain extent, they have become the "fertile" of commercial bribery or the "hardest hit". Unscrupulous profit seekers often use commercial bribery to exert undue influence on trading behavior, and make themselves dominant in the competition [4]. In commercial bribery, the main body of bribery is usually the operator of commercial activities, that is, legal persons, other economic organizations and individuals engaged in commodity management or profit-making services. This particular bribery subject is an important feature of commercial bribery that distinguishes it from other bribery. Commercial bribery has been defaulted to "regulations" by some people.

### **4.2 Commercial bribery mostly aimed at crowding out competitors.**

Commercial bribers are subjectively deliberate, mostly for crowding out competitors; objectively, they are generally expressed as secretly paying property to units or individuals, and are usually concealed in the form of falsified financial accounting books and other illegal forms. The operator gives the other unit or individual a property or other interest in order to exclude legitimate competition from business activities, obtain trading opportunities, thereby selling their products or services, or purchasing goods or receiving services on terms that are more favorable. This should be an essential feature of commercial bribery [5].

### **4.3 Commercial bribery is diverse and the criminal approach is more subtle.**

A considerable part of commercial bribery is based on information fees, research fees, agency fees, promotion fees, handling fees, labor costs, consulting fees, sponsorship fees, etc., or "reimbursement", or reimbursement of various expenses. Pay to the other unit or individual in cash and in kind. At present, commercial bribery crimes have penetrated into many industries and fields, from simply sending money to sending technical service fees, substituting insurance, arranging trips abroad, helping to transfer accounts, and arranging children to study outside the country. Employment, even providing sexual services. Other bribes are carried out directly outside the country, or the bribe party

directly transfers the money into the account set up by the bribe party outside the country [5].

#### **4.4 Commercial bribery cases are more complicated and the investigation is more arduous.**

Commercial bribery is often directly related to the malpractice, bribery, greed and corruption of some national staff. It not only violates the integrity of the state staff's duties, but also disrupts the normal management activities of state organs. Commercial bribery is mostly carried out in a "one-on-one" manner. After the crime is committed, it usually leaves no obvious traces. Even if the outsiders are suspicious, it is difficult to know the inside story. Since bribery and bribery parties in commercial bribery have obtained benefits from them and formed a community of interests, they often conceal relevant situations and establish an offensive and defensive alliance [6]. Under normal circumstances, it is difficult to break through. Due to the large number of commercial bribery, no accounts or false accounts, and the commercial bribery means are relatively hidden, which not only increases the complexity of the case, but also increases the arduousness of investigating commercial bribery.

### **5. Definition of several issues concerning commercial bribery crime**

#### **5.1 Definition of the subject of commercial bribery crime.**

Commercial bribery infringes on the normal market transaction order, that is, obtains market-trading opportunities by improper payment, and infringes the normal market trading order. However, the object of bribery violations between different subjects is different, and the nature of their behavior should not be treated the same. In the case of bribery between ordinary subjects, the object of infringement should also be a complex object. First, it violates the normal operation order of the commodity economy, and second, it infringes the integrity of the duties of companies, enterprises or other units in the market economy. Sex. Bribery behavior causes market participants to break through their own establishment purposes and relevant legal restrictions in order to obtain more benefits. To satisfy the desire for self-interest at the expense of misconduct, it will inevitably further undermine fairness by undermining the fair trading rules of the market. Fair market order: At the same time, when a company, company or unit is engaged in commercial activities on behalf of its company, enterprise or unit, its professional nature determines that they cannot place their personal interests in the company or enterprise when conducting business activities. Alternatively, the interests of the unit, therefore, commercial bribery also damages the unpurchaseable and cleanliness of the company, business or other unit staff. However, from the perspective of the current criminal law, the market bribery between the general subjects is placed in the chapter of the crime of undermining the socialist market economic order, and the object of destroying the market order of fair competition is more important [5-6].

Although commercial bribery occurs in the trading activities of production and business operators, it has a close relationship with government agencies and their staff to abuse their powers and to seek private ownership. According to the nature of commercial bribery stipulated in the Law on Unfair Competition, commercial bribery generally does not involve public power. However, there are still a large number of state-owned assets and administrative assets in China. A large number of commercial bribery acts in close contact with ordinary bribery. Inseparable, the commercial bribery involving state workers is essentially a power transaction, that is, the use of state public power in exchange for personal interests, which not only infringes the market order. More importantly, it violates the integrity of the national public officials. Therefore, the author advocates that the bribery of state employees is divided into bribery behaviors that occur in the administrative market and bribery that occurs in official duties [7]. Among them, the state staff members who constitute bribes in the administrative market are punished according to commercial bribery crimes; otherwise, they should be punished according to official bribery.

#### **5.2 On the issue of “property” in commercial bribery.**

In Chinese criminal law, the bribe that constitutes bribery is property. In theory and practice, it is

generally limited to property. If the bribe accepts other non-property interests, then it can only be considered as a sentencing plot. The author believes that the scope of "property" should be expanded [7]. The reason:

1) The connection and covalence of bribery and power and the seductive and corrosive nature of bribery against power are prominent features of bribery. Bribers who vote for bribers are not necessarily limited to property and property interests. In the current social life, the form of commercial bribery crimes is changeable, the forms of existence are diverse, and the means are diverse. They are indistinguishable from the monetary bribery in terms of nature and social harm. Such bribes and services for spiritual interests are the crime of bribery is not punished in China because of the lack of explicit provisions in the law, so that law has beaten some acts that should be punished. If these acts are not handled in accordance with commercial bribery, it will inevitably lead to weak blows. .

2) For a bribery act with the same social harm, it is not possible to make a legal evaluation of the nature of sin and non-crime simply because of the different content of the bribe. This does not guarantee the principle of criminal law that is compatible with sin and responsibility.

3) On October 27, 2005, the Standing Committee of the National People's Congress approved the United Nations Convention against Corruption. The Convention's object of bribery crimes is expressed as the concept of "unfair advantage", which is more important than the scope of bribery crimes under Chinese criminal law [7]. Wide, therefore, the fear of expanding the scope of bribery will be redundant because there are no specific quantitative criteria that are not conducive to the specific operation of judicial practice. Many countries in the world such as Italy, Switzerland, Singapore, etc., as well as Hong Kong, China In the legislation, commercial bribery crime objects are defined as interests, and there is no dilemma facing inoperability. As far as sentencing is concerned, if there is only non-material interest, there is no property or material interest that can be converted into money and it cannot be punished according to the crime of bribery. Therefore, in accordance with Article 15 of the Convention, Member States should adopt legislation and other measures to criminalize the introduction and acceptance of any illegitimate interests by public officials. It is necessary for China to redefine bribery crimes in order to be in line with international standards, fulfill its international duties, and comply with the trend of international anti-corruption crimes [7].

## 6. Summary

Commercial bribery makes the competition between enterprises become unfair. Enterprises no longer simply gain strength to gain market competitiveness, which will inevitably affect the normal operation of the market economy. The ultimate negative consequences will be borne by consumers and directly infringe upon the public's interests. By analyzing the definitions of commercial bribery in China and abroad, we can find that the legal system of commercial bribery in China is imperfect, so that commercial bribery in the process of market economy operation is repeatedly prohibited. Through the understanding of commercial bribery at home and abroad, this paper further analyzes and defines it, hoping to be beneficial to the theoretical and practical research on commercial bribery in the future.

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