

Legal Characteristics and Amount Determination Standards of Pre-IPO Share Bribery

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Pre-IPO (initial public offering) share bribery is characterized by “dual-value attributes” (immediate value and future returns) and “risk asymmetry” (risk avoidance through a guaranteed agreement). Its behavioral structure presents a three-layer legal compliance camouflage, namely procedural legitimacy, contractual standardization, and fund chaining, necessitating a piercing review of the relevance with official positions. Compared to traditional types of bribery, pre-IPO share bribery demonstrates access scarcity, value fission, and risk structuring in terms of objective elements, while in subjective elements, it reflects the continuous influence of power capitalization through deterministic expectation and general intent. In judicial practice, there is a significant divergence between the value recognition model at the time of subscription and the substantial returns determination model in amount determination, the root of which lies in the insufficient systematic regulation of “expected interests” in the existing legal system. In this paper, the “dual legal interest theory” is put forward at the theoretical level, emphasizing that pre-IPO share bribery not only infringes on the integrity of public officials, but also disrupts the fair order of the capital market. Moreover, an innovative “substantial returns deduction method” calculation model is constructed to determine the amount of bribery by deducting the subscription principal and reasonable capital cost from the returns from share sales, thereby evaluating the consideration for power across the two stages of basic difference and value-added returns. In addition, the rules for determining the completion of pre-IPO share bribery are reconstructed through the dual standards of “registration as completion + monetization as supplement”.

Keywords: bribery, new-type corruption, share bribery, amount determination

Introduction

As a new form of corruption emerging in the in-depth development of China’s anti-corruption fight, pre-IPO (initial public offering) share bribery is essentially the product of the coupling of capital market tools and power alienation. This type of bribery usually refers to the act of public officials taking advantage of their positions to subscribe for the pre-IPO shares of a company intending to go public in the name of themselves or specific related persons at a price significantly lower than the fair value, and then obtaining huge illegal profits by selling the aforesaid shares after the company successfully goes public.

Such acts, although appearing to be market investment on the surface, in fact achieve the exchange of power and money through the “capitalization of power”, and are highly deceptive and evasive. As to typical cases, for

instance, in the case of Li, an official from the development and reform commission of a certain city, Li took advantage of his position to provide assistance to a company planning to go public; after that, Li arranged his relatives to subscribe for the pre-IPO shares of the company at a price far lower than that of strategic investors, and after the company went public, they sold such shares and made a profit of over RMB 10 million (Central Commission for Discipline Inspection and National Supervisory Commission Website, 2019). In such cases, a core point of contention lies in how to scientifically and accurately determine the amount of bribery. Should it be based on the difference between the book value or issue price of shares at the time of subscription, or based on the actual profit obtained by the actor from the sales of shares? This issue of amount determination not only directly relates to whether the sentencing and punishment in specific cases are appropriate, but also profoundly affects the actual effectiveness of the anti-corruption fight and the authority of judicial justice.

An in-depth analysis reveals that the judicial determination of bribery by original shares mainly faces the following three major challenges: The first is the dispute over act characterization. Legal investment or a deal of power and money? Some argue that if a portion of the subscription payment has been made, it does not constitute bribery, or that only the difference should be recognized the constituent of bribery. However, in practice, the subscription price paid by officials is often significantly lower than the market fair value (such as the price for strategic investors) or the net asset value of the concerned company. This difference itself is a sufficient reflection of the consideration for power. The core issue lies in how to accurately define the causal relationship between the convenience of official positions and the acquisition of the qualification to subscribe for the pre-IPO shares. For example, in the case of Lan Xianfa, the defense claimed that the defendant's act was a normal investment with actual capital contribution. However, empirical research shows that as many as 81% of similar cases are ultimately determined as bribery cases. The key lies in the scarcity of the subscription qualification and its close correlation with the official duties of public officials. The blurred boundary between legal investment and power rent-seeking is the primary obstacle to the characterization of acts.

The second is the divergence in the determination of the amount involved. There are significant differences in the calculation methods for bribery amount in judicial practice. Some scholars advocate taking the value at the time of "bribery acceptance" (namely the time of subscription), as the standard, emphasizing the regulation of immediate benefits. For example, in the case of Li, the difference between the issue price and the subscription price was adopted as the bribery amount. However, this viewpoint can hardly cover the huge illegal gains that may soar dozens of times after the concerned shares go public, thus leading to an imbalance between crime and punishment. Besides, there are also other scholars emphasizing that the influence of power and the potential for share appreciation should be comprehensively considered. For example, in the case of Zou, the profit obtained upon deduction of the "reasonable costs" from the returns from share sales was adopted as the bribery amount.

Due to different calculation methods, the determined amounts in similar cases may vary by as much as 37 times. This huge divergence in judgment not only leads to the unfair phenomenon of "inconsistent judgments in similar cases", seriously damaging the credibility of the judiciary, but also makes it difficult to predict the cost of corruption and weakens the deterrent effect of criminal law. For instance, there were two similar cases in a certain province. In one case, the crime was determined based on the difference between the issue price and the subscription price (a difference of RMB 19 per share between the issue price of RMB 20 and the subscription price of RMB 1), while in the other case, only the difference between the subscription price and the net asset

value was recognized (a difference of RMB 9 per share between the net asset value of RMB 10 and the subscription price of RMB 1). As a result, the final sentencing difference was more than three times.

The third is the conflict in the application of law. The gaps in relevant regulations have led to unclear basis for adjudication, and there exists a tension among the existing judicial interpretations on determining the amount of pre-IPO share bribery. Relevant provisions of the *Minutes of the National Courts Symposium on Trial of Economic Crime Cases* (F.F. [2023] No. 167, hereinafter referred to as the “*Minutes*”) issued by the Supreme People’s Court and the *Opinions on Issues Concerning the Application of Law in the Handling of Criminal Cases Involving the Acceptance of Bribes* jointly issued by the Supreme People’s Court and the Supreme People’s Procuratorate (F.F. [2007] No. 22, hereinafter referred to as the “*Opinions*”) fail to achieve full coherence, resulting in divergent adjudication approaches: Traditional adjudications tend to determine the amount based on the “immediate value” at the time of equity acquisition (reflecting the spirit of the *Opinions*), while breakthrough adjudications advocate determining the amount based on the “actual returns” ultimately realized by equity (which is more in line with the essence of the exchange of power for money). There is a clear divergence between the two, entailing urgent coordination and unification.

Therefore, as a representative of new-type covert corruption, the judicial determination of pre-IPO share bribery, especially the amount calculation standard, has become a key challenge that restricts the effectiveness of anti-corruption judicial efforts. The existing research still has obvious deficiencies in focusing on the particularity of pre-IPO shares, bridging theoretical differences, and establishing unified and substantially fair determination rules. This paper aims to systematically analyze the dual value attributes and the essence of power capitalization of pre-IPO share bribery, clarify the core disputes over act characterization and amount determination, and propose a unified determination standard in line with China’s judicial practice, in hope of providing theoretical support and path reference for resolving this judicial predicament.

Analysis of the Legal Attributes of the Act of Pre-IPO Share Bribery

The act of pre-IPO share bribery disguises the essence of exchange of power and money under the guise of financial compliance, forming a complex criminal structure with a triple nesting of “power—capital—system”. This part is based on the normative framework of the bribery crime under Article 385 of the *Criminal Law of the People’s Republic of China* (hereinafter referred to as the “*Criminal Law*”), and combines the regulatory logic of the *Company Law of the People’s Republic of China* (hereinafter referred to as the “*Company Law*”) and the *Securities Law of the People’s Republic of China* (hereinafter referred to as the “*Securities Law*”), with a view to, by deconstructing the legal characteristics of pre-IPO share bribery, analyzing its economic essence, and examining its practical forms, systematically demonstrating the uniqueness of pre-IPO share bribery compared to traditional bribery, and providing theoretical support for the judicial determination of pre-IPO share bribery.

In accordance with Article 9 of the *Securities Law*, pre-IPO shares specifically refer to the shares that are privately issued to specific objects such as promoters, core employees, and strategic investors before the initial public offering (IPO) of a joint stock company. Pre-IPO shares have three core characteristics, namely access scarcity, value fission, and risk structuring, which are respectively detailed as follows.

Access scarcity: The subscription qualification is subject to the three restrictions of resolution by the shareholders’ meeting, subscription amount, and identity and qualification, forming an exclusive channel for

interests transfer. In a case of a biopharmaceutical enterprise listed on the STAR Market, only 0.3% of the strategic placement quota was allocated to non-financial institution entities, highlighting the scarcity of resources.

Value fission: The face value (subscription price) only represents the value of a company's existing assets, with core interest lying in the capital premium obtained after the company goes public. The aforesaid case shows that the subscription price of the pre-IPO shares involved was RMB 2 per share, while the closing price on the first day of listing reached RMB 80 per share, with a capital premium rate as high as 3,900%, forming a highly profitable model of "small investment—huge returns".

Risk structuring: Bribers transfer risks through a "guaranteed repurchase agreement". For example, it may be agreed that in the event of a failed listing, the concerned shares will be repurchased at the subscription price plus an annual interest rate of 8%, thus providing the bribee with a zero-risk guarantee for quasi-fixed income products akin to a fixed-income product. If the listing fails as agreed, the shares will be repurchased at the subscription price plus an annual interest rate of 8%, providing the bribee with a zero-risk guarantee equivalent to fixed income products. In a certain case, the Supplementary Agreement signed by the concerned official clearly states that if the target shares fail to go public within three years, the issuer will repurchase such shares at a price amounting to 126% of the principal, thereby completely eliminating the investment risk.

Special Manifestation of the Objective Constituent Elements

Pre-IPO share bribery presents three characteristics of alienation in terms of objective elements, entailing the application of the principle of "substantive penetration" for identification. First, the appearance of procedural legitimacy. By leveraging the equity incentive system, the act of bribery is embedded into commercial processes such as "employee stock ownership plans" and "introduction of strategic investors". A typical case is a deputy director-level official who fabricated a "technical consultant" identity to be included in the list of core employees of a company planning to go public, and formally completed the entire set of procedures including voting at the shareholders' meeting, industrial and commercial registration, and tax filing. In the design of shareholding structure, by setting up a limited partnership shareholding platform (such as XX Equity Investment Center), the official's nominee, who only held 0.5% of the company's equity, actually controlled the decision-making power of the platform, thus concealing the essence of the exchange of power and money.

Second, complication of contractual relationship. By adopting a time-limited equity transfer agreement and specifying that the equity will be "unlocked in installments after listing for three years", an attempt is made to apply the exception provision of Article 3 of the *Opinions* regarding "equity that has not been actually transferred". Besides, the consideration for official positions is packaged as an equal civil agreement by setting up composite rights clauses, incorporating preemptive rights, anti-dilution provisions, drag-along rights, and other commercial arrangements into the subscription agreement.

Third, concealment of fund flow. With a multi-tiered fund channel design, the bribe money often circulates and is laundered in the form of "investment funds → equity dividends → transfer payments". The funds may flow through three layers: private equity funds → shareholding platforms → personal accounts, and finally return to the accounts designated by the official accepting the bribe money in the form of "returns from share reduction". Besides, the briber and the bribee may, through the option exercise mechanism, sign a Stock Option Grant Agreement, agreeing that the option may be exercised to subscribe after certain approval conditions (such as

project approval) are met, thus creating a temporal separation between the act of bribery and official acts, and accordingly evading the determination characteristic of “immediate exchange of interests” in traditional bribery.

In response to the aforesaid alienation characteristics, the *Opinions* focuses on reviewing the substantive correspondence between the opportunity to subscribe and the relevance with official positions. In academic theory, it is generally recognized that the core elements for determination include: the exclusivity of the opportunity to subscribe, namely whether the influence of official position is leveraged to exclude other competitors; the abnormality of consideration payment, namely whether the subscription price significantly deviates from the fair value (for example, the subscription price for strategic investors during the same period is RMB 30 per share, while the allocation price for the official in question is only RMB 5 per share); the authenticity of risk bearing, namely whether there are arrangements for risk hedging such as guaranteed agreement and implicit guarantee; and the correlation between exercise conditions and official positions, namely whether option exercise conditions are directly linked to official acts (for example, it may be agreed that “the option can be exercised after the environmental impact assessment is passed”).

Particularity of Subjective Constituent Elements

Formation mechanism of deterministic expectation. The bribee’s deterministic cognition of the realization of returns stems from two types of information advantages: The first type is the infiltration of decision-making power formed by the actor through participation in policy-making. For example, when the director of the development and reform commission of a certain province led the adjustment of the subsidy policy for the new energy industry, he had the access list of photovoltaic enterprises in advance. The second type involves building information barriers during project approval. For example, an official from a certain securities regulatory authority learned during an IPO review that the financial data of a company planning to go public was abnormal but failed to disclose this publicly. Such official acts have three characteristics in judicial determination: (1) the statutory authorization of information acquisition, which originates from the official duties stipulated in Article 12 of the *Civil Servant Law of the People’s Republic of China*; (2) the non-public nature of the information content, which meets the standards of the *Securities Law*; (3) the spatio-temporal proximity of information use, for example, the person in charge of a central enterprise subscribed to the pre-IPO shares of an affiliated enterprise the day after the mixed-ownership reform plan of the central enterprise was approved.

Therefore, the bribees of pre-IPO shares often have three types of special identities: (1) the spouse of the actual controller of a listed company (for example, the spouse of the actual controller of a ChiNext-listed company made a sudden speculative investment in an affiliated enterprise of the company); (2) members of the project team of a securities service institution (for example, a partner of an accounting firm took the opportunity of annual audit to know that the target company’s performance had soared); (3) the person in charge of the business of a regulatory institution (for example, a member of the issuance examination committee of a stock exchange had a grasp of the examination progress of M&A and restructuring). According to Article 15 of the *Guiding Opinions on Several Issues Concerning Evidence in the Trial of Securities Administrative Penalty Cases* issued by the Supreme People’s Court, if the channels and contents of the information obtained by an actor are highly position-related, it can be directly presumed that the actor has a deterministic cognition of profiting.

Judicial determination of general intent. Unlike traditional bribery featuring a one-to-one correspondence of “one matter, one power”, pre-IPO share bribery often presents a characteristic of “one-to many” continuous offense. Judicial authorities determine the general intent through three aspects.

Continuity of criminal intent: Within a period of three to five years, the bribee continuously accepts pre-IPO shares from multiple enterprises, although knowing that the influence of his/her position continuously affects the share value.

Indefiniteness of the object: The determination is made through two quantitative metrics, namely “industry diffusion index” and “authority coverage”: calculate the degree of industry overlap between the field in the charge of the bribee and the enterprises he/she holds shares in, for example, the 13 enterprises held by the director of a certain department of industry and information technology involve seven sub-industries, which overlap with the director’s approval authority by 78%; assess the intensity of the impact of the bribee’s official act on enterprises he/she holds shares in.

Superposition of results: All bribes accepted by the bribee are compounded and appreciated through the securities market to form an overall criminal result. This kind of determination paradigm breaks through the traditional theory of causal relationship in criminal law. Through the purpose-oriented expansive interpretation of Article 385 of the *Criminal Law*, the element of “seeking benefits for others” is reconstructed into a dynamic model of “continuous radiation of official influence”.

Institutional Root Cause for Long-term Returns

The core characteristic that distinguishes pre-IPO share bribery from traditional bribery lies in the long-term realization of returns. This characteristic is essentially an inevitable outcome of the rigid constraints of China’s securities issuance and trading systems. By deconstructing regulatory systems such as the *Securities Law* and the *Measures for the Administration of the Registration of Initial Public Offerings of Stocks* (hereinafter referred to as the “*Registration Measures*”), it can be found that the institutional design forms the structural conditions for long-term bribery returns in the following three dimensions:

Window period of power rent-seeking brought about by the solidification of review cycle. According to Articles 15 to 28 of the *Registration Measures*, enterprises need to go through a standardized process of “submission acceptance → inquiry feedback → listing committee deliberation → registration approval” from share reform tutoring to final listing, and the statutory review cycle usually lasts for 24 to 36 months. This institutional time span forms a coupling with rent-seeking behavior. Regulatory personnel may take advantage of their official authority to deeply participate in relevant links that substantially affect the listing progress, including reform and restructuring (such as approval of asset stripping plans), equity structure adjustment (such as verification of the introduction of strategic investors), argumentation of equity investment projects, etc.

The case of Feng Xiaoshu, a former member of the Issuance Examination Committee, revealed that Feng Xiaoshu had invested in a company planning to go public through shareholding by his relatives before declaration. The incubation period was as long as 34 months. After the company passed the review and went public and the lock-up period expired, he made a profit of RMB 248 million through monetization (Tang, 2017). The case clearly presents the criminal cycle law of “timing of power intervention → period of value sedimentation → timing of returns realization”. Although the registration-based reform has enhanced the efficiency of review, the

substantive review obligation still grants regulators excessive discretionary space, objectively prolonging the incubation period for the realization of power.

Delay in the realization of criminal returns caused by the mandatory lock-up system. The case from Liangping District mentioned earlier shows that the official initially invested only RMB 100,000. After a 36-month lock-up period, the official sold the shares and made a profit of RMB 12 million, with the value-added returns accounting for as high as 92%. This “low-cost, long-cycle and high-return” structure completely subverts the immediacy characteristic of traditional bribery. It is required by traditional criminal law theory that the bribery crime should be deemed completed upon the “obtaining of property interests”. However, during the lock-up period, even officials already completing equity registration cannot actually dispose of the target equity (for example, in the case from Liangping District, Chongqing City, officials are prohibited from trading within three years of shareholding). Judicial practice has thus developed a “dual -completion standard”: Formal completion means that the basic criminal amount is determined when equity registration is completed, while substantive completion means that the final sentence is adjusted based on the actual returns from share sales upon expiration of the lock-up period.¹

Value manifestation delay derived from the market-based pricing mechanism. The current inquiry mechanism requires the value of pre-IPO shares to be tested in the secondary market before being fully manifested, thus forming a complete chain of “power capitalization—value accumulation—market realization”. The IPO issuance pricing is constrained by the offline inquiry (average institutional quotations) and the price-to-earnings (P/E) ratio. This process is influenced by variables such as market sentiment and industry cycle, resulting in a significant value gap between the timing of power intervention (T_0) and the timing of actual returns realization (T_1).

In the “Caojian Case” reported by the Central Commission for Discipline Inspection, Caojian, a member of the Issuance Review Committee obtained the pre-IPO shares of a company at a price of RMB 5.8 per share, and after the company went public, the peak stock price reached RMB 89 yuan per share, which, however, could not realize returns until the end of the 180-day strategic placement lock-up period. When the difference between the subscription price and the issue price (immediate interests) accounts for only a very small part of the final returns (such as only 8% in the case from Liangping District), adhering to the traditional rule of “value determination at the time bribery acceptance” will lead to a substantial imbalance between crime and punishment, for which there is an urgent need to build a dynamic evaluation system.

Substantial Distinction From Similar Types of Bribery

Core Elements That Make Pre-IPO Share Bribery Distinct From Dry Share Bribery

Dry shares, also known as virtual shares, refer to the shares obtained without making any investment. The concept of dry shares mostly exists among the public. Some private business owners would grant dry shares to certain officials. Those who hold dry shares in a company do not have control or management rights over the company, but receive dividends from the company in proportion to the shares they hold. Therefore, dry shares are not true shares in the real sense. The substantial distinction between pre-IPO share bribery and dry share

¹ See *Lang [Surname] Bribery Case*, Criminal Judgment of the Huainan Intermediate People’s Court of Anhui Province, (2020) Wan 04 Xingchu No. 4.

bribery should be made from the dual dimensions of consideration payment and risk assumption. Although both involve the transfer of interests in the form of equity, they are essentially different in terms of legal structure and factual determination.

First, form and essence of consideration payment. According to Article 2 of the *Opinions on Issues Concerning the Application of Law in the Handling of Criminal Cases Involving the Acceptance of Bribes*, the essential characteristic of dry share bribery is “no capital contribution”, while the core of pre-IPO share bribery lies in the review of the rationality of consideration payment. Such review needs to break through the framework of formalism and establish a three-dimensional determination system of “face value—market price comparison—dynamic adjustment”, which are respectively detailed as follows.

Face value review: In a bribery case involving a manager of a state-owned enterprise, the actor subscribed for the enterprise’ pre-IPO shares at a face value of RMB 1 per share, while the net asset value per share of the enterprise reached RMB 15.6 during the same period, with the difference between the two being fully included in the bribery amount. This review logic stems from the negative evaluation of the “no capital contribution” characteristic of dry share bribery as specified in the *Opinions*, that is, when the subscription price significantly deviates from the actual asset value of an enterprise, the formal capital contribution cannot cover up the essence of exchange of power and money.

Market price comparison rules: In judicial practice, if the subscription price is more than 30% lower than the entry price of strategic investors during the same period, or more than 50% lower than that indicated in the valuation report of a professional institution, it will be directly determined as an abnormal price. For example, in the case of Lan Xianfa, Lan Xianfa purchased 50,000 pre-IPO shares of Company A at a price of RMB 50,000, while the entry price for strategic investors during the same period was RMB 15 per share, with the difference between the two being determined as a bribe. This comparison rule reflects respect for market fairness and prevents the disguised transfer of interests through forms such as “private placement”.

Dynamic adjustment mechanism: When the market value of pre-IPO shares increases by more than 10 times after listing compared to the subscription price, the difference needs to be recalculated based on the issue price. For example, in the case of Xuan, the pre-IPO shares he subscribed to at a price of RMB 15.6 per share increased in market value by 20 times after listing. The court recalculated the bribery amount based on the issue price of RMB 25 per share to avoid underestimating the criminal amount due to market fluctuations. This dynamic adjustment not only complies with the provision in the *Opinions* that “the amount of dry share bribery shall be calculated based on the value of shares at the time of transfer”, but also reflects a substantive grasp of the “expected interests” of the pre-IPO shares.

Second, substantive judgment of risk assumption. The concealment of pre-IPO share bribery lies in the fact that it conceals the transfer of risks through the form of “capital contribution”, which requires a three-level examination to reveal its essence of exchange of power and money.

The first level consists of risk elimination clauses. If there are agreements on guaranteed buyback, shortfall make-up, etc., the investment attribute can be directly negated. For example, in a certain case, the briber promised to “pay a fixed income at an annualized rate of 15% regardless of whether the company is listed or not”. The court determined that this clause constituted a disguised debt guarantee and was a typical risk elimination. This determination echoes the provisions of the *Minutes of the National Courts’ Civil and Commercial Trial Work*

Conference regarding the “prohibition of rigid payment”, reflecting the criminalized application of financial regulatory rules.

The second level is risk transfer arrangements. Where risks are transferred to a third party through means such as equity pledge or transfer of the entitlement to returns, it shall be determined as bribery. For example, in the case of Xuan, the briber transferred the entitlement to returns from pre-IPO shares to an affiliated company, enabling public officials concerned to enjoy a “risk-free” entitlement to returns from pre-IPO shares, and thus the court held that such arrangement was essentially a risk-avoidance measure. The aforesaid act is similar to the provision in the *Opinions* that “dry shares are not actually transferred but dividends are obtained”, both of which fall under the category of “investment in name but bribery in reality”.

The third level is risk tolerance. When the subscription amount is more than 10 times the legitimate income of the actor, it can be presumed that the actor has no genuine investment intention. For example, a section-level official subscribed to pre-IPO shares totaling RMB 20 million in his personal name, while his annual income was only RMB 200,000. The court held that such act, which “exceeds reasonable investment capacity”, is essentially the use of official position for illegal gains. This presumption rule is consistent with the logic of determining the “correlation between bribery amount and official position” in the *Opinions*, reflecting the principle of consistency between subjective and objective aspects.

Essential Difference Between Pre-IPO Share Bribery and Transactional Bribery

The core difference between pre-IPO share bribery and transactional bribery lies in the formation logic of the value of the subject matter. Transactional bribery follows the standard of “significant deviation from market price” established in Article 1 of the *Opinions*, and its value determination is based on the market price at the time of transaction, emphasizing the static degree of price deviation. However, the valuation system for pre-IPO share bribery shows significant dynamics and complexity.

First, basic value layer: Based on the *Professional Standards for Asset Appraisal*, the net asset value per share is determined through professional appraisal methods such as the replacement cost approach and the income approach. For example, a company planning to go public has an audited net asset value of RMB 1.5 billion, with a total share capital of 1 billion shares, indicating that the net asset value per share is RMB 1.5. This indicator reflects the book value of the company’s assets, but it does not cover the potential appreciation space of the company’s pre-IPO shares.

Second, market expectation layer: Capital market valuation tools are introduced to determine the reasonable valuation range for pre-IPO shares by referring to parameters such as industrial average P/E ratio in combination with factors such as corporate growth and market share. For example, the issue P/E ratio of a certain semiconductor enterprise was 42.64 times, which, although higher than the industry average of 36.4 times, was still recognized by the market for reason of technical barrier and market scarcity.

Third, power premium layer: This is the essential characteristic that distinguishes pre-IPO share from ordinary investment. The influence of official positions enhances the value of a company’s pre-IPO shares through two pathways: First, it directly increases the company’s success rate of listing (for example, the ultimate listing success rate of IPO projects under tutoring in 2025 is only 7.19%, while politically connected companies have a significantly higher listing success rate than the industry average); second, it boosts the market’s

confidence in the company through policy preferences and resource integration, thereby increasing the valuation. For example, an official took advantage of his position to coordinate land approval for a company planning to go public, causing its post-listing P/E ratio to be 30% higher than the industry average, thus creating excess value.

Practical Disputes and Theoretical Dilemmas in the Determination of the Amount of Pre-IPO Share Bribery

Typological Analysis of Judicial Adjudication Models

The determination of the amount of pre-IPO share bribery in judicial practice has shown a progressive development trajectory from the traditional valuation model to the substantive penetration model and actual profiting model, reflecting the deepened understanding of the essence of exchange of power and money by judicial authorities.

According to the *Minutes of the National Courts Symposium on Trial of Economic Crime Cases*, the amount of bribery is determined by subtracting the actual investment from the net asset value at the time of subscription². For example, if a company has net assets of RMB 100 million, and an official subscribes to 1% of the shares for RMB 100,000 (which should correspond to RMB 1 million), with the amount of bribery being determined to be RMB 900,000, which should be deemed as defective, the market expectation value of pre-IPO shares and the role of official acts in increasing the success rate of listing are completely ignored.

Some courts adopt the substantive penetration model, which determines the bribery amount based on the difference between the issue price and the subscription price. For example, in the case of Li, the bribery amount was determined based on the difference of RMB 8 per share obtained by deducting RMB 1.5 per share from the issue price of RMB 9.5 per share. This model introduces valuation tools from the capital market but is still affected by stock price fluctuations.³

The actual profit model adopted in the latest practice determines the bribery amount by deducting cost from the returns from share sales⁴. For example, in the case of Xuan, the bribery amount was determined based on returns from share reduction amounting to RMB 32.77 million. This reflects a comprehensive evaluation of power premium and establishes a dual standard of “registration as completion + monetization as supplement”. The current lack of uniformity in judicial standards has become a prominent bottleneck affecting the judicial fairness and effectiveness of anti-corruption. Unifying the judicial determination standards for pre-IPO share bribery, especially the clarification of rules for amount calculation, is of great significance for precisely cracking down on this new-type corruption, maintaining judicial justice and authority, and consolidating the overwhelming achievements of the fight against corruption.

Core Focus of Dispute

In the evolution of judicial practice, the determination of the amount of pre-IPO share bribery has exposed multiple controversial points. In terms of the timing of calculation, the static model that adopts the net asset

² *Zhang Mou Bribery Case*, Shanghai Intermediate People’s Court Second-Instance Criminal Ruling, (2018) Hu 02 Xingzhong No. 1368.

³ *Li Lei (Bribery Case)*, Criminal Judgment, Nanshan District People’s Court of Shenzhen, Guangdong Province, (2018) Yue 0305 Xingchu No. 506.

⁴ *Cao Mou Bribery Case*, Criminal Ruling of the Ma’anshan Intermediate People’s Court of Anhui Province, (2021) Wan 05 Xingzhong No. 41.

appraisal method at the time of subscription tends to underestimate the amount of bribery. For example, if a company has net assets of RMB 100 million, and an official subscribes to 1% of the shares for RMB 100,000 (which should correspond to RMB 1 million), with the amount of bribery being determined to be RMB 900,000, it can be said that this fails to reflect the actual value after the company goes public and its market value increases to RMB 1 billion; the dynamic model at the time of sale, while reflecting actual returns, is subject to stock price fluctuations. For example, in a certain case, a stock market crash led to an 80% reduction in profits. In this regard, some courts attempt to adopt the “lower of the issue price and the lowest price upon expiration of the lock-up period” as a compromise benchmark to balance market risk and power consideration.

The dispute over the scope of cost deduction centers on whether to include “reasonable investment costs”. Proponents argue for deducting the cost of capital occupation based on the risk-free rate of return (such as 3%) (for example, deducting RMB 15,000 as the cost of capital occupation corresponding to a capital contribution of RMB 500,000). Opponents, however, emphasize that the scarcity of pre-IPO share subscription means that the investment opportunity itself already includes a power consideration, so the cost of capital occupation should not be deducted. In the connection between civil and criminal laws, the *Company Law* requires that equity registration take effect, but the *Criminal Law* recognizes the factual transfer based on the “shareholding entrustment agreement”. For example, an official who entrusted a relative to hold shares on his behalf was still determined to have “actual control”, highlighting the particularity of evidence standard. Of course, such a situation may also involve knowing bribery, where public officials do not come forward themselves but instead allow their specific relatives or others to take advantage of their positions to accept bribes.

Limitations of Theoretical Explanations

The existing theoretical framework is facing a paradigm crisis when explaining pre-IPO share bribery. The theory of consideration for official duties is confronted with the predicament of explaining “long-term interests”. For example, when an official monetizes his pre-IPO shares after retirement, his official acts have already ceased. Whether such monetization act still constitutes bribery needs to be determined by breaking through the limitation of traditional theory. In practice, through the concept of “continuous exchange of power and money” and the presumption of causal relationship, the influence of official acts can be extended to the stage of post-listing appreciation. The conflict in the connection between civil and criminal laws is reflected in the divergence between the *Company Law*’s requirement for the effectiveness of equity registration and the *Criminal Law*’s recognition of the factual transfer based on the “shareholding entrustment agreement”. For example, an official who entrusted a relative to hold shares on his behalf was still determined to have “actual control”, highlighting the substantive determination of “actual control” in the *Criminal Law*, entailing relevant supervision and investigation to strengthen the construction of the “power—return” evidence chain to connect the civil and criminal determination standards.

In addition, the traditional concept of “property” cannot accommodate the expected returns of pre-IPO shares. It is necessary to refer to the judicial interpretation of 2016 to include the expected returns of pre-IPO shares into “property interests”, and to construct a “three-dimensional valuation model” that incorporates basic value, market expectation, and power premium. The U.S. *Foreign Corrupt Practices Act* (FCPA) explicitly incorporates options, equity returns, and other “future interests” into the scope of bribery (for example, in 2019,

Microsoft was heavily fined due to its provision of stock options to officials). The latest draft of the EU's anti-bribery directive (2023) has also begun to focus on the determination of non-monetary interests. These disputes essentially reflect such challenges as the dynamicity of the consideration for exchange of power and money in pre-IPO share bribery, the complexity of market fluctuations, and the adaptability of legal concepts. There is an urgent need to achieve a coordination between theory and practice through the improvement of judicial interpretations, valuation guidelines, and evidence rules.

Reconstruction of the Pathway for Determining the Amount of Pre-IPO Share Bribery

Dual-Dimensional Expansion of Legal Interest Protection

Pre-IPO share bribery is essentially the dual infringement of public legal interests by the capitalization of power. A protection system needs to be established from two dimensions: the integrity of official positions and the order of the capital market. First, in-depth deconstruction of the integrity of official positions. Pre-IPO share bribery conceals the exchange of power and money through "expected returns", causing greater harm than traditional property bribery. For example, the director of a certain housing and urban-rural development bureau obtained the pre-IPO shares of a real estate company after approving the latter's application in violation of regulations, which is essentially the transformation of public power into a tool for private capital appreciation. In judicial practice, it is necessary to break through the "immediate consideration" mindset and establish a standard for determining the "continuous impact of official acts". For example, in the case of Xuan, the court determined that the appreciation of the pre-IPO shares was a continuation of the consideration for official acts and had temporal overlap with the official acts.

Second, institutional protection for the fairness of the capital market. Pre-IPO share bribery distorts the market pricing mechanism through power intervention and disrupts the order of the capital market. A typical case is that a certain securities regulatory official, having learned in advance about the IPO approval information, made a sudden speculative investment for arbitrage, which not only constitutes bribery but also is suspected of insider trading. According to the data from the China Securities Regulatory Commission in 2025, the success rate of listing for enterprises with political connections was 17.3% higher than the industry average, highlighting the disruption of power to market competition.

Dual Determination Logic of Completion Standard

Traditional research on the crime of bribery mostly focuses on immediate and definite interests such as cash and physical goods, and there is a clear lack of systematic research on the "expected interests" (i.e., future huge appreciation returns) carried by "pre-IPO shares". Pre-IPO share bribery has a unique "dual value attribute"—it not only includes the immediate value at the time of subscription, which may already contain part of the power consideration, but more essentially, it contains the huge potential future returns that may be realized after listing, relying on power. The particularity of pre-IPO share bribery determines that its completion standard needs to break through the traditional "delivery as completion" theory and establish a dual determination mechanism of "registration as completion + monetization as supplement".

First, formal completion: Equity registration itself constitutes the completion of the bribery crime. Equity registration is the legal sign of shareholder status. According to Article 34 of the *Company Law*, the records in the register of shareholders have opposable effect. Even if the actual payment of consideration has not been made

or dividends have not been obtained, the completion of equity registration itself means that the public official has actually controlled the property concerned.

Second, substantive completion: a sentencing supplement to the returns from monetization. The part of the actual returns from share sales upon expiration of the lock-up period that exceeds the basic amount is directly related to the act of pre-IPO share bribery and is a continuation of the monetization of power, which should be included in the total amount of bribery.

For example, an official holds the pre-IPO shares of a certain company at a price of RMB 30 per share, with the issue price being RMB 45 per share. After such pre-IPO shares are released from the lock-up period, they are sold at a price of RMB 50 per share. The difference of RMB 5 per share upon deduction of the issue price of RMB 45 per share should be included in the basic bribery amount of RMB 25 per share. If the share price drops to RMB 18 per share after listing, the basic bribery amount should be determined based on the issue price of RMB 45 per share, and the market risk should be attributed to the cost of the crime. As Professor Chen Xingliang pointed out, transactional bribery should focus on the essence of exchange of power and money of an act upon the occurrence of the act rather than the result of subsequent price fluctuations. This theory has significant reference value in the determination of pre-IPO share bribery.

Innovative Construction of Amount Calculation Model

In view of the dynamicity of pre-IPO share bribery, a “substantial returns deduction method” is developed to achieve the correspondence between crime, responsibility, and punishment:

In terms of formula optimization and parameter setting, bribery amount = actual returns from share sales (subscription principal + reasonable capital cost + market risk adjustment value). Reasonable capital cost: The cost of capital occupation is calculated by referring to the interest rate of treasury bonds of the same period (such as 3%). For example, if an official holds shares for five years with a capital contribution of RMB 100,000, the reasonable cost would be RMB 15,000 ($\text{RMB } 100,000 \times 3\% \times 5$). Market risk adjustment value: the “risk premium rate” (20% of the industrial average P/E ratio) to strip away the impact of market fluctuations on the amount of bribery.

Upon verification by judicial practice, in the case of Xuan, the court determined the amount of bribery based on the returns from share reduction amounting to RMB 32.77 million, while deducting the subscription principal of RMB 15.6 per share as well as reasonable costs, which reflects a complete evaluation of power premium. Besides, in the case of Lan Xianfa, if the amount of bribery (RMB 1.6 million) is calculated only based on the issue price, it would result in the omission of the appreciation returns of RMB 3.49 million in the judgment. Eventually, the court convicted the defendant based on the actual returns of RMB 5.09 million.

Conclusion

The essence of pre-IPO share bribery is the dual erosion of public legal interests by the capitalization of power. The harmfulness of pre-IPO share bribery is reflected in the deep destruction of the integrity of official positions. Pre-IPO share bribery may achieve a covert exchange of power and money through “expected returns”, breaking through the determination boundary of the traditional property bribery. There exist systemic risks in the capital market. Power intervention may distort the market pricing mechanism, exacerbate information asymmetry, and undermine investor confidence. Judicial determination should abandon formalism and adopt the

“capitalization of power” as the standard for judgment. That is, the influence of power on share appreciation process and the ultimate returns should serve as the core basis for determination. A dual governance system comprising “dynamic calculation model + technology empowerment” should be established to respond to the urgent need for judicial uniformity.

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