

# Legislative Orientation of Chinese Regulation of Transnational Corporations' Corruption in China

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**Abstract.** With the acceleration of China's opening-up, the number and scale of multinational corporations' investment projects in China are constantly increasing. However, in order to obtain greater benefits in the Chinese market, some multinational corporations choose to seek illegitimate commercial interests through bribery. The increasing corruption cases of transnational corporations have bad influences on China's economic development, business environment and international reputation. However, there are still many deficiencies in China's legal system to regulate the corruption of transnational corporations. This paper will study the legislation on transnational corporations' corruption in China, and put forward more effective suggestions for China to regulate the corruption of transnational corporations in legislation. This paper will analyze the current anti-corruption legal system against transnational corporations in China and other countries, and use the method of comparison and case study to find deficiencies in Chinese laws. Through the analysis, it is concluded that China should formulate a special Anti-commercial Bribery Law in order to improve the legislation in relevant fields.

**Keywords:** Transnational Corporations; Corruption; Chinese Laws.

## 1. Introduction

China's pace of opening up to the outside world is getting faster and faster. The two-way investment of China is firmly at the forefront of the world. Since 2017, China has ranked second in the world in attracting foreign investment for four consecutive years. The "Belt and Road" economic and trade cooperation is advancing with high quality [1]. More and more multinational enterprises (MNEs) have entered the Chinese market, which has also brought great challenges to China's supervision of MNEs. Since entering the 21st century, the commercial bribery of transnational corporations has been gradually known by the public in China. Whether it is the major commercial bribery cases of "GlaxoSmithKline" and "Lucent", or the commercial bribery behaviors of MNEs such as Dumex, Carrefour and Siemens in China, which are constantly exposed, all undermine China's fair and orderly market competition environment.

The corruption of transnational corporations has always been a topic of widespread concern and discussion in the international community. In the concept of corruption, commercial bribery is a kind of academic classification of corruption. It is an important form of transnational corporation corruption, and also a weak part of Chinese legislation. Corruption involving transnational corporations is mostly caused by commercial bribery. Therefore, the corruption and commercial bribery of transnational corporations are inseparable. Moreover, the "corruption" and "bribery" referred to in this article include both bribery of state officials and private-to-private bribery. These two types of bribery often appear at the same time in cases, which is inappropriate to set apart, so we need to regulate them at the same time.

Although the increase of corruption cases of transnational corporations has sounded the alarm for Chinese society, China's legal system on transnational corporation corruption is still not perfect. At present, China does not have a special anti-corruption law. After years of development of the laws in China, there are still big loopholes in the legislation regarding commercial bribery. In contrast, major western developed countries have a complete set of legal systems against overseas corruption. There are not only strict punishment standards but also higher requirements for the construction of the enterprise's own compliance system, which has achieved good regulatory results. Only by formulating a complete legal system can we better promote the law enforcement and regulation of corruption

cases. Moreover, improving China's anti-corruption legislation can also prevent domestic enterprises from engaging in commercial bribery overseas. A study addressing the propensity of firms from 30 different countries to engage in international bribery shows that the propensity to provide bribes was the lowest when corruption was not tolerated in the multinational firms' home countries [2]. It is also an important measure for China to guard against and resolve possible risks in the future under the trend of expanding opening up. Therefore, it is of great significance to study the legislation on transnational corporation corruption.

Many scholars in China have paid attention to the problems of transnational corporations' corruption in China and put forward many suggestions on this issue. Most scholars have considered that it is difficult for relevant China's legal system to effectively punish the corrupt acts of transnational corporations and pointed out that the law enforcement agencies have not performed their duties effectively. Concerning how to effectively solve the corruption problem of transnational corporations in China at the legislative level, scholars have also given different suggestions. Many scholars believe that China should learn from international experience and formulate a special Anti-commercial Bribery Law or Anti-corruption Law to better regulate such acts. While some other scholars believe that China can simply add the content of anti-overseas corruption into the original law through the form of law amendment, without the need to introduce new laws [3-5]. Some suggest the legislature formulate the interpretation documents of relevant issues to improve the legislative defects [6]. In addition, most scholars also put forward suggestions on judicial reform, system innovation, international cooperation, enterprise compliance and other aspects. However, when discussing China's legal system against overseas corruption, many scholars are more inclined to bribery of foreign officials or officials of international public organizations by Chinese companies than to corruption of transnational corporations in China [7]. When putting forward specific suggestions on the corruption of transnational corporations in China, most of the papers involve multiple aspects and pay less attention to the legislation. Therefore, the depth of discussion related to the legislation aspect is limited. Moreover, when discussing the reform of law enforcement agencies and the enterprise compliance system, most of the papers are rarely combined these suggestions with the improvement of legislation. The implementation of these suggestions can be guaranteed through legislation.

This paper will analyze the existing legal system of China and other countries, in order to conclude the problems in China's existing anti-corruption legal system of transnational corporations. In view of these problems, the author will consider feasible solutions in terms of legislation. This paper will use the method of international comparison to discuss and combine with the specific case that occurred in China. In conclusion, China needs to formulate a special Anti-commercial Bribery Law, and the regulation of transnational corporations' commercial bribery should be emphasized in the law.

## **2. The legislative status of regulating transnational corporations' corrupt behaviors**

### **2.1 Legislative status in China**

With the continuous development of China's economic society and the expansion of opening to the outside world, the number and scale of multinational enterprises' investment in China have been constantly increasing since China's reform and opening-up. Although China's economy is developing rapidly, the law against foreign corruption starts late and is not perfect either. At present, China does not have a special anti-corruption law. Corruption cases are regulated by the Criminal Law and the Anti-unfair Competition Law in the Chinese legal system.

In China's criminal law, although the law has specific provisions on the crime of bribery in Chapter VIII, there is no independent charge for the crime of commercial bribery. To make up for this deficiency, the Supreme People's Court and the Supreme People's Procuratorate of China issued their opinions on the application of laws in handling criminal cases of commercial bribery in 2008, which have detailed provisions on the definition, types, and legal subjects of commercial bribery cases. The

opinions pointed out that the commercial bribery crime involves 8 specific charges in the criminal law, which can be divided into three categories: offer bribes crime, accept bribes crime, and introduce bribes crime. In addition to these crimes, the commercial bribery of MNEs may also violate the crime of offering bribes to foreign public officials and international public organizations officials, and the crime of using influence to offer and accept bribes.

In addition to the criminal law, other laws regulating this issue mainly include the Anti-Unfair Competition Law, and a series of laws related to transnational corporations in China, such as the Bidding Law, the Construction Law and so on. Article 7 of the Anti-Unfair Competition Law clearly stipulates that commercial bribery is strictly prohibited in China. In order to stop commercial bribery, according to the Anti-Unfair Competition Law, the State Administration for Industry and Commerce issued the Interim Provisions on Prohibiting Commercial Bribery (Interim Provisions). This provision is a detailed and supplementary explanation of the relevant provisions of the Anti-Unfair Competition Law.

Moreover, the Chinese government has concentrated on fighting against all kinds of corruption and bribery cases related to civil servants and achieved remarkable results. Therefore, the number of corruption cases has decreased year by year. In order to carry out the anti-corruption work in depth, China promulgated the Supervision Law. The law stipulates that the State Supervision Commission is the highest supervisory organ. The main purpose of this law is to strengthen supervision over all public officials who exercise public power. With the continuous progress of the anti-corruption work, the central leading group for administering commercial bribery has issued the Opinions on Further Promoting the Work of Administering Commercial Bribery in recent years, pointing out the achievements and shortcomings of the current work and giving the direction for further work. To maintain industry self-discipline, some associations such as the Securities Association of China, have also issued their convention against commercial corruption.

The most prominent feature of China's legal regulation of transnational corporation bribery is that it is scattered in various legal norms. There is no doubt that the Chinese existing legal system can regulate the bribery of transnational corporations to some extent. The court can choose different laws according to the characteristics of the cases and impose appropriate legal sanctions. However, besides criminal law, there is a separation between different legal provisions due to the scattered distribution, and it is difficult to form a coordinated legal system against the bribery of MNEs. The scope of application of government regulations and industry conventions also has certain limitations.

## 2.2 Legislative status in international society

In international society, fighting against overseas corruption has become the consensus of most countries. Many countries or regions have enacted special laws or elaborated the laws related to overseas corruption in relevant legal systems. Among them, the most representative laws are the Foreign Corrupt Practice Act (FCPA) of the United States and the United Kingdom Bribery Act (UKBA), which have reference value for the legislation in relevant fields of China.

The FCPA was enacted in 1977, and its main purpose is to restrict and punish the corrupt acts of American enterprises and foreign enterprises referred to in the act [5]. The law addresses the problem of international corruption in two ways, one is the anti-bribery provisions and the other is the accounting provisions. The principle of "long-arm jurisdiction" is another important legal concept in the FCPA. This principle extends the jurisdiction to foreign companies and individuals in the territory of the United States through the principle of "territorial jurisdiction", which is essentially an expansion of the jurisdiction of the United States. The law enforcement agencies of FCPA are the SEC (Stock Exchange Commission) and the DOJ (Department of Justice). With the further development of economic globalization, the number of law enforcement cases of FCPA in the United States is increasing and has a high international influence.

The UKBA is one of the most stringent anti-corruption laws in the world [8]. UKBA stipulates four types of Bribery Offences including bribing another person, being bribed, bribery of foreign public officials, and failure of commercial organizations to prevent bribery. In the prosecution

procedure, the prosecution can be initiated only with the consent of the British Attorney General or the director of the Serious Fraud Office (SFO). They shall be responsible for initiating the proceedings in principle.

In addition to the United States and Britain, many other countries have also established relatively mature anti-corruption legal systems. Same as China, Germany is a country with the civil law system. Germany has a complete legal system to regulate commercial bribery including the anti-unfair competition law, the criminal code and the anti-corruption law. The anti-unfair competition law of Germany was formulated in 1909, which is the first law in the world to prohibit commercial bribery crime, including the commercial bribery of transnational corporations, in the form of a special law. In 1997, in order to curb corruption more effectively, Germany promulgated the anti-corruption law. This law has made further provisions based on the criminal code to strengthen the punishment of bribery crime by expanding the constitution of bribery crime [9].

### 3. Problems in China's legal system in relevant fields

Generally speaking, China's legal system for regulating transnational corporations' corruption has not formed a complete system, and there are certain deficiencies in the legal content. Specifically, the legal provisions are scattered and inconsistent, some of the contents do not keep pace with the times, the punishment standard is relatively light, the requirements for the construction of the enterprises' compliance system are less, and the statutory law enforcement agencies cannot effectively exercise jurisdiction.

Firstly, the relevant legal system in China is not systematic and complete, and legal content does not keep pace with time. China has not formulated a special anti-corruption law, so the relevant provisions related to this issue are scattered in different laws. There are no unified provisions on the definition, means and subjects of bribery in various laws. For example, in China's criminal law system, the provisions on the means of commercial bribery are mainly limited to "property". However, according to the Anti-unfair Competition Law and the Interim Provisions, the means of commercial bribery can be other means of interest besides "property". Different legal systems define the concept of bribery differently, which will have a negative impact on the application of the concept. The scattered distribution of provisions also hinders multinational enterprises from learning about China's anti-corruption legal system, especially various government regulations and industry conventions. As a result, the relevant legal system is not very effective in deterring multinational companies from corruption.

In addition, although China has attached great importance to anti-corruption work in recent years, the attention to commercial bribery and overseas corruption is relatively insufficient. There is no independent charge of commercial bribery in criminal law. For the application of criminal law to commercial bribery cases, only the opinions issued by the two supreme organs can be referred to. In the anti-unfair competition law and other laws, there are only one or two provisions prohibiting bribery in each law, let alone special provisions for commercial bribery of transnational corporations. In order to comply with the United Nations Convention Against Corruption (UNCAC) [7], China's criminal law has made supplementary provisions on the crime of bribery to foreign public officials and personnel of international organizations in Amendment VIII. Besides this crime, there is almost no regulation on overseas corruption. Therefore, the legal application of transnational corporations' corruption is lack pertinence. To a certain extent, this has also resulted in the increase of corruption in transnational corporations.

Moreover, the laws in the field of corruption are merely updated. The opinions issued by the two supreme organs were released in 2008, and the Interim Provisions were issued in 1996. These two legal documents issued ten to twenty years ago are still important reference documents in relevant fields. To some extent, these aged documents cannot keep pace with the times. For example, in terms of means of bribery, the opinion limits the scope of bribery to "property", which mainly refers to various ways and means that can be calculated with money. However, nowadays, many people choose

to use various ways that cannot be quantified with money for commercial bribery, such as providing free services, providing opportunities for further education or settling down. Such acts are difficult to regulate effectively in China's legal system, and more new means of bribery will appear in the future. If the laws are not followed up in time, many acts that should be regarded as corruption will easily be ignored, which is not conducive to the development of the legal system in China.

Secondly, the punishment for illegal acts is not enough. In the bribery case of GlaxoSmithKline China (GSKCI), GSKCI was fined 3 billion yuan, which is the largest fine issued by China so far [10]. However, according to the financial report of GlaxoSmithKline, the revenue in the fiscal year 2014 was £ 23 billion [11]. The punishment of RMB 3 billion seems to be a lot, but for large multinational companies with an annual income of hundreds of billions of RMB, the amount of such punishment will do little harm to them after years of wealth accumulation. China's criminal punishment for corruption cases of transnational corporations is far from enough compared with other countries. In the FCPA of the United States, for violating anti-bribery provisions, companies and other business entities are fined up to \$2 million, and individuals are fined up to \$250,000 and imprisoned for up to five years. For violating accounting provisions, companies and other business entities shall be fined up to \$25 million, and individuals shall be fined up to \$5 million and imprisoned for up to 20 years. According to the provisions of the Alternative Fines Act [12], the court may impose a fine of up to two times the benefit obtained by paying the money for corruption. However, the above penalties are only for single illegal acts. Multiple illegal acts can be accumulated, and there is no upper limit on the amount of punishment [8]. The UKBA in the United Kingdom also has almost no upper limit on criminal punishment, with a maximum of 10 years' imprisonment for individuals and unlimited fines for individuals and business organizations.

According to Article 19 of China's Anti-Unfair Competition Law, those who bribe others shall be confiscated of their illegal income by the supervision and inspection department and fined between 100,000 yuan and 3 million yuan. As for punitive damages, the Anti-Unfair Competition Law limits its application to malicious infringement of trade secrets. In terms of fines, according to the interpretation of the two supreme organs on Several Issues Concerning the Application of Laws in Handling Criminal Cases of Corruption and Bribery, the punishment of the crime of corruption and bribery in criminal law is divided into three levels. The highest level, i.e., those sentenced to imprisonment of more than 10 years or life imprisonment, shall also be fined between 500,000 yuan and twice the amount of the proceeds of crime or have their property confiscated. There are no specific provisions on the fine for the unit to offer or accept bribes, so the amount of the fine shall be determined according to the circumstances of the crime.

As for administrative punishment for commercial bribery, the means of punishment are still limited to fines in most cases. When formulating punishment standards, most local governments in China take the Anti-unfair Competition Law and the Interim Provisions as the basis, and the main content of the provisions is to determine the fine standards in different cases. Of course, the Anti-unfair Competition Law and other legal documents also provide for other types of administrative penalties. For example, if the circumstances are serious, the business license of the briber shall be revoked according to Article 19 of China's Anti-Unfair Competition Law. Moreover, the National Health and Family Planning Commission issued provisions on establishing bad records of commercial bribery in the field of pharmaceutical purchase and sales after the case of GSKCI. For enterprises that have been listed on the "black list" twice or more within five years, all public medical institutions in the country will not be allowed to purchase their drugs, medical equipment and medical consumables within two years [13]. In the majority of cases, large multinational enterprises pay more attention to the market than to immediate economic losses. If administrative measures other than fines are not fully formulated and applied, it is also difficult to form effective regulations for transnational corporations.

To sum up, although China's legal system has relatively strict provisions on statutory penalties, the provisions on fines are inadequate and the standards of fines are lower compared with other countries. The administrative punishment for transnational corporations is also not perfect. For large-

scale multinational enterprises, a small amount of fine is difficult to form a deterrent effect, and the result of preventing and controlling corruption will be greatly reduced.

Thirdly, there are few requirements for enterprise compliance construction and a lack of parent company responsibility in China. At present, China still lacks legislation on preventive criminal liability for unit crimes [14]. Although the charges of unit crime are increasing, they are still relatively few. So far, there are 187 charges of unit crime in China's criminal law, accounting for 41.37%. However, in the United States, Britain, Japan, Germany and other countries, it is a general trend to apply most of the charges to units [15]. The governance policy of bribery crime of transnational corporations is gradually transitioning from the traditional preventive punishment to the emerging punitive prevention in major developed countries. Only by putting forward higher requirements for enterprises in the law can the internal compliance construction of enterprises be promoted.

In today's international community, many scholars have noticed that the United States is relying on FCPA to enforce the law against multinational enterprises in various countries and safeguard the interests of the United States. The long-arm jurisdiction principle of FCPA enables all kinds of transnational corruption cases related to the United States to be subject to law enforcement of the United States in international society. If Chinese enterprises fail to establish a compliance system in China's legal environment, they will face a greater risk of being subjected to law enforcement when going international. If the requirements of Chinese laws for the compliance construction of multinational corporations are lower than the international standards, it will also provide an opportunity for multinational corporations to engage in unfair competition, which is also bad for Chinese companies.

In addition, in China's anti-corruption cases against transnational corporations, there is a lack of responsibility for the parent company. The bribery of transnational corporations in China through their subsidiaries is a very common way of corruption among transnational corporations. However, these parent companies are rarely punished in China. If the parent company has the obligation to effectively manage the behaviors of its subsidiaries, the parent company shall also be held accountable.

Fourthly, there is a lack of specialized law enforcement agencies in China and the cooperation of existing departments is ineffective. The provisions of law enforcement agencies on transnational corruption should also be reflected in the legal system so that there can be laws to regulate the powers and responsibilities of law enforcement agencies.

In China, the cooperation between various departments is still not smooth enough for the investigation and prosecution of MNEs' corruption. The joint jurisdiction of multiple departments can easily lead to the shifting of responsibilities between departments. There is a division of work in each department between criminal law and anti-unfair competition law. When a crime is constituted, the procuratorate is responsible for the corruption cases of state personnel, and the public security organization is responsible for the corruption cases of non-state personnel. When it does not constitute a crime, the market supervision department and other competent departments shall investigate and deal with it. However, such a system cannot ensure its efficiency. In Tianjin Depu medical rebate case, the parent company Diagnostic Products Corporation (DPC) was accused to have violated the provisions of the FCPA on "offering bribes to foreign personnel", and was fined 2 million dollars and 2.04 million dollars respectively to the DOJ and the SEC. However, this 11-year-long commercial bribery was not discovered by the Chinese regulatory authorities but was widely known after being punished by the FCPA in the US [16]. There is also no public information showing that Chinese personnel who took bribes were punished according to Chinese laws [4]. Coincidentally, the situation was almost the same in the Zhang Enzhao case. Zhang was sentenced to 15 years' imprisonment for taking bribes. The bribery company Alltel Information Services was punished by FCPA rather than the Chinese law. It was after the punishment was made, that the Chinese authorities began to learn that Zhang was involved in a commercial bribery case [9,17]. In an interview according to the media in Depu case [18], the procuratorial organ of Tianjin Economic and Technological Development Zone replied that it was not clear about the matter even after DPC was punished in the US. the procuratorial

organ suggested the media consult the public security bureau about the relevant situation. However, the Criminal Investigation Brigade of the Public Security Bureau said that it had never received any report about Tianjin Depu.

Therefore, although the division of work in each department is clear, it is easy to shift responsibility among each other. The discovery of commercial bribery cases is not timely and effective for Chinese law enforcement agencies. There is also a lack of effective communication and resource sharing among departments. In this way, the corruption cases of transnational corporations are easy to be ignored and difficult to form effective regulations with the cooperation of multiple departments

#### **4. Reasons for the problems in the current legal system in China**

Although China attaches great importance to anti-corruption work, there are still many problems in the legal system against transnational corporation corruption. The author believes that the reasons can be roughly classified into two aspects. Insufficient attention has been paid to transnational corporation corruption, and importance should be attached to “special actions” to rectify corruption while ignoring legislation

Firstly, insufficient attention has been paid by China to the corruption of transnational corporations. In international society, countries have paid more and more attention to the corruption of transnational corporations in recent years. Their legislation gradually tends to be complete and systematic. China's existing legal system shows that China does not realize that anti-foreign corruption has become an international consensus and trend. Nor has it noticed that the major developed countries in the world have enacted anti-corruption legislation and greatly expanded their extraterritorial jurisdiction to safeguard their own interests. Therefore, Chinese companies are facing the challenge of the extraterritorial jurisdiction of these countries with anti-corruption laws. However, Chinese domestic laws cannot form a joint force to effectively control the corruption crimes committed by transnational enterprises in China.

China's anti-corruption work is more focused on state public officials. The Central Committee has punished many corrupt officials, and achieved remarkable results in fighting against corruption. However, as for the bribe giver, the strength is relatively lower, both at the level of anti-corruption propaganda and the level of the actual crackdown. The attention paid to the corruption of transnational corporations in China is even more insufficient. The only addition to the law is mainly to fulfil the obligations of contracting states to the UNCAC in terms of anti-foreign corruption legislation.

Secondly, China has always attached importance to anti-corruption work in the form of special actions but neglects the legal construction of anti-foreign corruption [7]. Although China has issued a special supervision law, it is mainly aimed at state public officials and cannot effectively regulate the bribery of enterprises. Since 2006, China has launched a special campaign to combat commercial bribery. Leading groups for combating commercial bribery have been set up from the central government to the local governments, mainly to crack down on commercial bribery of state functionaries. According to the Opinions on Further Promoting the Special Work of Combating Commercial Bribery issued by the central leading group in 2021, the special work is mainly carried out by self-examination and self-correction of every region and department, improving the level of supervision, promoting institutional reform, and strengthening publicity. All localities and departments are required to investigate and handle major and important cases through judicial, administrative, and disciplinary means. It does not emphasize the requirements for legislation. Although remarkable achievements have been made in anti-corruption through such special work, the construction of relevant legal systems has been neglected.

## **5. The implementation path of China's legislation to regulate transnational corporations' corruption in China**

The author recognized that China needs to formulate a special “Anti-commercial Bribery Law”. This law needs to cover all kinds of commercial bribery, and anti-corruption of transnational corporations should be included and emphasized in this law. Commercial bribery here includes both bribery of state public officials and private-to-private bribery. This law not only regulates the commercial bribery of domestic and foreign enterprises in China but also regulates Chinese enterprises engaging in overseas corruption. This law may not involve bribery of state public officials for non-commercial purposes, because China's anti-corruption work has attached great importance to the supervision and inspection of corrupt acts of state public officials. This kind of behavior can also be regulated by criminal law, which already has achieved good practical results. This paper will mainly focus on the legislative content of transnational corporations' corruption in China. Other types of commercial bribery are not discussed in this paper.

### **5.1 Analyze for choosing to enact a special Anti-commercial Bribery Law**

Regarding the question of choosing to formulate an anti-commercial bribery law instead of an anti-transnational corporation corruption law, on the one hand, it is not necessary to legislate separately for the corruption of transnational corporations because the subjects involved are relatively limited. On the other hand, the particularity and necessity of the regulation of transnational corporations make this content must be reflected in Chinese laws, and the corruption of transnational corporations is mostly commercial bribery. Therefore, the author believes that a broader anti-commercial bribery law should be enacted to fill the gap in the Chinese legal system.

Regarding the question of whether a special law should be enacted to regulate corruption, scholars' opinions vary on this topic. The author believes that China should choose to enact a special law from two aspects—the current situation of China's anti-corruption legislation and the characteristics of transnational corporation corruption.

Firstly, from the current situation and characteristics of China's anti-transnational corporation corruption legislation, it is not easy to modify the original basis and the result is not good as well. There is a lack of relevant content on the anti-corruption of transnational corporations and even the content on commercial bribery is also few. Moreover, China's relevant provisions are scattered in different laws. If China chooses to add the content of transnational corporation corruption to the existing legal system, many different laws will need to be amended and added. It is complex and costly to amend many laws at the same time for one thing. After adding these contents, the complexity of law application has not been reduced. The legal provisions still exist dispersedly in many laws, and it is still difficult to form a complete system. Therefore, the effect of such modification is not ideal as expected. China should formulate a special law against commercial bribery according to the actual situation in China on the basis of integrating the relevant provisions of the criminal law and the anti-unfair competition law.

Secondly, from the characteristics of transnational corporations' corruption, the anti-foreign corruption act itself is a very complex system. Taking the FCPA as an example, it not only has a single act but also has many relevant legal provisions to supplement it, which have many detailed rules. To regulate the corruption of transnational corporations, countries often face many complicated problems, such as transnational law enforcement, parent company responsibility, the particularity of foreign investors, and international relations. Legislation on transnational corporation corruption also needs to cover all kinds of situations. However, there are too many legal gaps in China's existing legislation. Many basic contents are missing, so it is not easy to modify the existing laws. Such a complex system is also difficult to integrate into the existing legal provisions of our country.

## 5.2 The basic content of the new law needs to be more perfect than the original law

When defining whether it constitutes commercial bribery, it should be noted that the means of bribery include not only providing property benefits, but also other non-property benefits. At present, the bribery of multinational corporations is not limited to providing property benefits. In early bribery cases of multinational corporations, most companies chose to provide activities such as travel opportunities or free study opportunities abroad for the bribe recipients. For example, in the Lucent case, Lucent was exposed to have funded nearly 1000 Chinese government officials and telecom operator executives to visit the United States, and arranged trips to Hawaii, Las Vegas, New York and other places under the excuse of “visiting factories and receiving training” [19]. With the development of the times, more and more behaviors that are difficult to determine the specific amount of money also appear in bribery, such as providing some gratuitous services and providing employment opportunities. China can make appropriate reference to the determination of corruption in the FCPA. To file a lawsuit according to the anti-bribery provisions of the FCPA, the law enforcement agency must prove that the act meets the requirement of “anything of value”. It is worth noting that the premise of its determination is that the payor must have corrupt intent regardless of the form, amount and payment method of “anything of value”. Law enforcement agencies have certain discretion in judging this concept. China should incorporate all the means used to achieve improper commercial purposes into commercial bribery. Law enforcement agencies can be appropriately given certain powers in judging this concept to deal with various possible special situations flexibly.

In the way of obtaining benefits, due consideration should also be given to the expected benefits that may be realized due to promises or invitations in addition to vested interests. For example, Singapore's Prevention of Corruption Act stipulates that no matter whether the intended purpose of both parties is achieved, it constitutes a crime of bribery. The FCPA of the United States stipulates that it is illegal to offer or promise to make corrupt payments if the corrupt act that does not require inducement has been realized. In addition, there are indirect corruption-related acts such as conspiracy, aiding and abetting of a third party, which should also be considered. The judgment standard shouldn't be limited to the completion of the payment or the achievement of the purpose of bribery. When defining whether it constitutes commercial bribery or not, the law should stipulate that law enforcement agencies should focus on the purpose of obtaining or retaining some improper commercial interests, and should not restrict the specific means of bribery too much.

When defining the subject of transnational corporations' commercial bribery in China, the author believes that the applicable subject should not be interpreted too broadly like the FCPA of the United States. The scope of the subject should be appropriately expanded according to the principles of personal jurisdiction and territorial jurisdiction, and radical law enforcement that forcibly expands the scope of jurisdiction should be avoided. In addition, China also needs to apply the principle of territorial jurisdiction to hold the parent company of transnational corporations accountable.

Moreover, the punishment standards for transnational corporations' commercial bribery should be improved. At present, China's punishment standards for commercial bribery are relatively low, and the standards have not kept pace with the times. In China's criminal law, the personal punishment standard for corrupt acts has tended to be perfect, and it does not need to be amended too much. However, in terms of economic punishment, the punishment is far from enough and it is difficult to form a deterrent to MNEs. When formulating a new law, China should change the tendency of punishing the bribe taker heavier, especially state public officials, and mete out punishment equally to both sides. China should also change the problem of low illegal costs and introduce a punitive damages system for transnational corporations' commercial bribery. Article 17 of China's Anti-unfair Competition Law for the punitive damage compensation standard for stealing commercial secrets can be referred to. Referring to this article, the amount of compensation shall be determined according to the interests of corruption or the losses of the victim from more than one time to less than five times for serious commercial bribery. For exceptional cases, the author believes that a huge compensation standard can be determined as well. It is also necessary to establish a complete standard for calculating

the amount of punishment in the law. For the administrative punishment of commercial bribery companies, China should seek more punishment means than just fines. Regulations such as the “black list” mentioned above can be widely used in different business fields.

### **5.3 The new law should guide enterprises to establish a compliance system**

As for whether the criminal acts committed by individuals in the unit can be attributed to the unit itself, some scholars believe that they cannot be attributed. If the unit is responsible for the crimes committed by individuals in the unit, the unit will be involved in endless litigation [20]. However, some other scholars believe that because the unit lacks an effective and enforceable compliance system, it is unable to effectively supervise the employees of the unit, and the unit and its supervisors should bear relevant criminal responsibilities. The author believes that strengthening the construction of the internal compliance system of enterprises needs to be introduced into China's laws, and the units that are derelict in supervision need to bear responsibility. The unit may need to bear criminal responsibility, and may also be punished in the commercial field, such as market access qualifications.

At present, China pays more attention to punishment than to the education work afterwards in dealing with commercial bribery cases. The punishment measures adopted are traditional personal punishment and economic punishment, and there is no requirement for the compliance construction of enterprises in Chinese laws. The author believes that when formulating a new law, it is necessary to put forward requirements for enterprise compliance construction. Through the combination of punishment and prevention education, the occurrence of corruption can be better reduced.

When constructing this system, China can refer to the “failure of commercial organizations to prevent bribery offences” in the UKBA of the United Kingdom, and add the dereliction of duty of commercial organizations to prevent corruption in China's criminal system as a crime. According to Article 7 of UKBA, commercial organizations are essentially required to bear strict responsibilities. If the personnel associated with the relevant commercial organization have committed bribery, the law enforcement agency does not need to bear the burden of proof, and can directly presume that the commercial organization is guilty of an offence. The SFO v. Standard Bank PLC case in 2015 was the first case to be prosecuted for violating the failure of commercial organizations to prevent bribery offences, and also the first case to reach a Deferred Prosecution Agreement (DPA). China can also introduce the accounting provisions and the “carrot and stick” policy in the FCPA to guide enterprises to strengthen internal management, and actively supervise and report internal violations.

At the same time, there is also a lack of accountability for the parent company in the enforcement of transnational corporation corruption. If the parent company's dereliction of duty in the supervision of its subsidiaries causes its subsidiaries to engage in bribery in China, the parent company shall also bear corresponding responsibilities. The accountability of the parent company should also be reflected in the legal system.

### **5.4 A competent authority of commercial bribery should be determined in the new law**

At present, China's supervisory committee is in charge of the anti-corruption work related to state public officials. For the management of commercial bribery cases, multiple competent authorities are responsible for different types of cases. Although each of them has its own jurisdiction, it is easy to overlap and prevaricate. Therefore, their management efficiency is not high, and the lack of information exchange and cooperation often makes it impossible to find commercial bribery cases in time. When formulating a new law, China should also establish a competent authority for commercial bribery cases and make it clear in the law.

From the perspective of international experience, it is a common practice in various countries to set up special institutions to carry out centralized and unified punishment against overseas corruption. This institution often has the ability of international cooperation and cross-departmental implementation, such as the designated criminal division of the DOJ and the SEC of the United States, and the SFO of the United Kingdom. China can learn from the law enforcement experience of foreign countries on commercial bribery and establish an independent and authoritative investigation

department against commercial bribery in line with China's national conditions. This authority should be specified in the law.

## 6. Conclusion

Through the research, this paper believes that it is necessary for China to formulate a special Anti-commercial Bribery Law. In this law, the problem of transnational corporation corruption needs to be emphasized. The new law should define commercial bribery in detail, improve the punishment standard, guide enterprises to establish a compliance system through the provisions, and specify the competent authority of relevant cases in this law.

The study of this paper analyzes in detail the necessity of formulating a special law to regulate the corrupt acts of transnational corporations and highlights the important role of the Anti-commercial Bribery Law in regulating such acts. Guiding other researchers and Chinese legislative organs to pay attention to the legislation in the field of commercial bribery and improve the relevant legal system. This article believes that through such a law, China can be handier in regulating the corruption of transnational corporations.

The current research focuses on the importance of separate legislation regarding commercial bribery, and mainly discusses the corruption of transnational corporations. However, there are many issues to be considered in formulating a new law. This article only points out the general direction for legislation and emphasizes the issues that need attention. There are still many details that need to be improved. Therefore, there is still a lot of research space for the details of the law. The author looks forward to more discussions related to this issue in order to achieve victory in China's anti-corruption work.

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