

Original Paper

Exploring the Determination of the Amount of Bribe Accepted in Equity-Based Bribery Cases

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Abstract

With regard to the determination of the actual transfer of dry shares, firstly, it is necessary to determine whether the case belongs to the dry-share type of passive bribery, mainly depending on whether the national staff member who did not make the capital contribution receives the company's shares, and whether the perpetrator's purpose of bribery is to obtain the company's shares and dividends. Secondly, attention should be paid to the judgment of similar situations, such as: low-priced transferee-type bribe is not a transactional bribe but a dry-share-type bribe; in the case of shell transfer-type bribe, the defective or evaded contribution will not affect the determination of the crime of passive bribery. Finally, the determination of the actual transfer of shares should be judged from the substance of the transfer, and cannot be determined simply by whether or not an agreement has been signed. In determining the amount of the bribe, the first step is to determine whether the shares are transferred or not. In the case where the shares have been transferred, the value of the shares shall be used as the amount of the bribe, and the value of the shares shall be determined in a way that is as close as possible to the actual situation of the company. In the case where the shares have not been transferred, the amount of the bribe shall be the actual dividends received. In the case of active bribery, the transfer of the shares or the receipt of the dividends shall be the criterion for the attempt.

Keywords

dry share-based passive bribery, amount of bribe, value of shares, transfer of shares

1. Definition of Dry Shares and Basis of Incrimination

The crime of accepting bribes in the form of dry shares is not an independent crime, but only refers to a part of the crime of passive bribery. Article 2 of the Opinions of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues on the Application of Law in Handling Criminal Cases of Passive Bribery (hereinafter referred to as the Opinions), which was promulgated and came

into force on July 8, 2007, specifically stipulates that: "Dry shares refer to shares that are acquired without capital contribution. Where a state official uses the convenience of his or her position to seek benefits for a requestor and accepts dry shares from the requestor, he or she shall be punished as a passive bribe; where the registration of the transfer of shares has been carried out, or where the relevant evidence proves that the shares have been transferred, the amount of the passive bribe shall be calculated on the basis of the value of the shares at the time of the act of transfer, and the dividends shall be treated as the fruits and yields of the passive bribe; where the shares have not been transferred and the benefits have been obtained in the name of dividends on the shares, the amount of actual profit shall be deemed to be the amount of passive bribe. The amount shall be recognized as the amount of the bribe."

There are several representative views in the academic world, one of which is that dry shares refer to the right to receive income from the shares while not participating in the operation or bearing risks. Another viewpoint is that the dry shares refer to the shares in the limited company, the listed company and the limited liability company which are not contributed or contributed at an obviously unreasonable low price and do not enjoy the ownership but only share the dividends. Dry shares refer to the right of state employees to enjoy the shares and the dividends from the shares without fully contributing to the capital or bearing the risks. In the sense of criminal law, dry shares are essentially a kind of property interest, which can be directly converted into a specific and definite amount, and thus can become a kind of object of the bribery offence.

2. Characteristics of Active Bribery

The Opinion is an important judicial interpretation on the crime of accepting dry shares, according to the second provision of this judicial interpretation: the essence of dry shares lies in the fact that the state official uses his power not to contribute to the capital but obtains the shares of the company, and the amount of passive bribery is determined in accordance with the value of the dry shares received at the time of the act of passive bribery; if the shares do not have a transfer of rights effect, and the name of the shares is used as a justification to cover up the crime, the amount of ordinary passive bribery and the amount of dividends received is determined as the amount of the crime of ordinary passive bribery. The law is simple and clear, but in practice, the cases of dry-share bribery are often complex and varied, which has given rise to different interpretations of the law. In the academic and practical fields, the controversy over the characteristics of dry-share bribery mainly focuses on whether the value of dry-shares must be real, and whether the perpetrator enjoys the right of ownership or the right to dividends. Whether the receiving party bears the losses of the company.

2.1 The Need to Differentiate between the Real Existence of Share Value according to Different Scenarios

Prof. Fang Ming believes that the value of the shares in a dry-share bribe must be real, the shares must have a corresponding real capital backing in the company (Note 1). Prof. Wei Dong believes that there can be a capital backing, or there can be no capital backing (Note 2). The essence of a dry-share bribe is that the dry-share is essentially a full economic benefit, and that the core issue of concern in accepting a dry-share bribe is that the shares are acquired without capital contribution, and that in this way, an economic benefit can be obtained or has been obtained. As to whether the shares are fictitious shares of a specific company (the company itself cannot establish real shares), or fictitious shares of specific shareholders individually or jointly (in the name of the company), or shares established individually or jointly in real terms, as well as whether the holders of the shares enjoy the full rights of the shareholders (including the right to own the shares, the right to vote, and the right to participate in the company's operation, etc.), it is not in question. not be questioned.

The necessity of the real existence of the value of shares should be distinguished according to different scenarios, and that the real existence of the value of dry shares must to a certain extent confuse the difference between dry shares and real shares, as well as the nature of the dry-share bribery crime. the concepts of dry shares and real shares are different, dry shares refer to the shares that have been acquired without capital contribution, and real shares refer to the real shares; the rights of the two are different, dry shares do not refers to the real shares, but should refer to the assumption that the person owns so many shares and distributes dividends according to the corresponding proportion; the person who holds the real shares not only enjoys the dividend rights of the shares, but also enjoys the control decision-making right of the company as a shareholder and participates in the major decisions of the company, etc.; the essence of the dry-share bribery crime lies in the use of the recipient's expectation of the expected benefits of the dry-share for the purpose of seeking benefits, instead of merely The essence of the offence of passive bribery is to take advantage of the recipient's expectation of the expectable benefits of the shares, not only the value of the shares themselves, but also the value of the shares themselves, depending on the actual situation and whether the holder actually enjoys the rights and benefits of the shares.

2.2 Ownership or Dividend Rights

There is a difference in theories as to whether the dry shares acquired by the recipient only need to have the right to dividends or must include the right of ownership or either one of the two. the first view is to enjoy the right of ownership and the right of dividends. for example, some viewpoints believe that dry shares refer to the shares which do not put in the capital, do not participate in the operation, do not bear the risk, but enjoy the right of ownership of the shares and enjoy the dividends, also known as the power of the shares. the second view is to enjoy only the right of dividends. that is, dry shares are the reward shares which do not need to pay the consideration, only enjoy the right of dividends. The second point of view is that it only enjoys the right to dividends, the dry shares are the

reward shares without paying the consideration, only enjoying the right to dividends, and do not have the ownership of the shares themselves. There is another point of view that it enjoys the ownership and the right to dividends, or only enjoys the right to dividends (Note 3). The dry shares in the interpretation of criminal law theory refer to the shares that are obtained without capital contribution, which can be either the dry shares that enjoy the full shareholding and obtain the economic benefits, or the dry shares that enjoy the right to dividends only and obtain the economic benefits. The term “dry shares” is used in criminal law interpretations to refer to shares acquired without capital contribution, either with full equity and economic benefits, or with the right to dividends and economic benefits.

The reason why our country treats dry shares as an independent type of passive bribery crime is that they are not property in the traditional sense, but a kind of expectable property benefits, and the amount of passive bribery shall be determined according to the share of the shares, the price and other factors, etc. Ownership of dry shares or the right to dividends are the expectable benefits that the recipient hopes for when accepting, and they are the economic or other additional benefits according to the share of shares that he/she occupies. Therefore, it is sufficient that the shares corresponding to the dry shares have only the right to dividends or the right of ownership.

2.3 Recipient not Liable for Company Losses

Some scholars believe that the right to dividends on shares is not necessarily profitable, and may also bear the responsibility for the company's losses, so dividends can not be used as the amount of bribe. according to the practice, such a statement does not hold true. the realization of the right to dividends in the case of bribery in dry shares is generally manifested in the distribution of dividends or no dividends, and it is unlikely that there is an obligation to share the company's losses. otherwise, if the company's permanent losses may make the corresponding capital of the shares are ultimately offset, which is not consistent with the subjective purpose of the crime of bribery, nor is it consistent with the essence of the crime of trading in power and money. Otherwise, if the company suffers losses all the time, it may make the capital corresponding to the acquisition of shares to be offset eventually, which is not in line with the subjective purpose of the bribery crime, and also not in line with the nature of the bribe crime of power and money transactions. dry shares is “refers to the shares that do not have any share capital, and the shares that are not subject to any loss if they are not paid out as dividends”; in other words, the receiving party does not put in the share capital, participate in the operation and does not take the responsibility, and enjoys the rights but does not take the obligations. In other words, the recipient does not invest in the share capital, does not participate in the operation, does not assume responsibility, only enjoys the rights, but does not assume the obligations. Therefore, to some extent, the economic benefits obtained from the right to dividends of the bribe of the dry shares are definite and available benefits. The two parties recognize the dividends as the amount of the bribe at the time of the bribe, both parties tacitly agree that there is only the possibility of dividends to be paid to the recipient without assuming the company's losses, the dividends are a definitive and promised economic benefit.

3. Determination of the Amount of Active Bribery

3.1 Dividends Should Be in the Amount of the Bribe, not Fruits

In cases of passive bribery in the form of dry shares, where there is no share registration or transfer of shares involved, the dry share capital and dividends are usually accumulated and included in the total amount of the bribery offence. The controversy over the amount of the bribe and the fruits of the bribe is divided into the following two main views. One view is that dividends belong to the fruits, which is mainly based on the following considerations: First, the Summary of the National Working Conference on the Trial of Economic Crime Cases in the Courts reflects the views on the treatment of the issue of receiving shares, which have traditionally treated dividends as illegal income and fruits instead of recognizing them as the amount of the bribe. Firstly, as reflected in the Summary of the Symposium on Acceptance of Shares, dividends have traditionally been treated as illegal gains and fruits, rather than being recognized as bribes; secondly, the dry capital has been recognized as a bribe in the case of transfer of shares, and it is suspected of double evaluation to recognize the dividends as a bribe as a result of this; thirdly, the relationship between the shares and dividends is like that between originals and fruits, with the dividends dependent on the shares themselves, while the dividends exist as a fruits. Thirdly, the relationship between shares and dividends is just like the relationship between originals and fruits, and dividends are dependent on the shares themselves, and the dependence of dividends on shares determines that shares cannot be understood independently by separating the receipt of shares from the acquisition of dividends (Note 4).

Another viewpoint is also more favored, that is, the dividends belong to the bribe amount, and it is believed that the dividends should be treated as the bribe amount instead of the criminal fruits in the dry-share type of bribe. As some scholars have pointed out, in the specific determination of the amount of the bribe of the dry-share type of bribe, regardless of whether the equity shares have been transferred or not, the dividends that the perpetrator has actually received due to the dry-share shall be counted in the amount of the bribe. Firstly, the determination of the amount of the bribe should be First, the determination of the amount of the bribe should be centered on the nature of the power-money transaction of the crime of passive bribery. both parties recognize the dividends as the amount of the bribe when offering the bribe, and the recipient enjoys the right to dividends without bearing the company's losses, the dividends can be determined. secondly, the dividends of the dry shares have a different degree of certainty from the fruits obtained from other crimes in the generation of benefits, which is different from the fruits of the natural generation of fruits, such as cash and houses, as well as fruits from embezzlement and misappropriation of public funds, and the perpetrator usually does not care about the dry shares only. Thirdly, whether the dividends are treated as bribe amount depends on whether the shares are transferred or not, which will lead to logical contradiction and unfairness in conviction and sentencing. the two situations are in essence just different conditions of the power and money transactions that have been carried out, the former includes the ownership of shares and the right to dividends, while the latter only includes the right to dividends. The logic of Article 2 of the

Opinions lies in the fact that if the shares have been transferred, the amount of bribe can be determined according to the shares themselves, and the dividends are dependent on the shares, so the dividends are no longer regarded as the amount of the bribe (Note 5). In the case where there is a huge difference between the amount of the registered or actually transferred shares and the amount of the dividends received, in addition to the amount of the dry bribe to be calculated in accordance with the value of the shares, the dividends should not be treated directly as a bribe fruits, and should be treated as a bribe fruits, and should be treated as a bribe fruits. In addition to calculating the amount of the bribe according to the value of the shares, the entire dividend cannot be directly treated as a bribe yield, but rather the portion of the dividend that is in the nature of a yield and the portion that is in the nature of an independent bribe should be identified.

3.2 Differentiated rules for Determining the Amount of the Value of a Bribe's Dry Shares

In judicial practice, the specific screening and determination of the amount of the bribe in the form of dry shares is difficult, and opinions differ; the various ways of accepting and giving dry shares are far from being as simple as provided for in the Opinions; the specific screening and determination of the amount of the bribe in the form of dry shares should be based on the authenticity of the value of the shares, their variability and the complexity of their composition, and different rules should be adopted.

3.2.1 Timing for Determining the Value of Dry Shares

There are two main views in the academic community on the time standard for the determination of the value of the shares: one is based on the standard at the time of acceptance, the value at the time of acceptance is the value jointly recognized by the bribe giver and the bribe-taker, which not only reflects the value of both parties' power and money transactions, but also reflects the common understanding of both parties on the value of the item; and the transfer of the act occurs when the value of the shares may have appreciated or depreciated, and if the value of the shares is calculated according to the value of the shares at the time of the transfer, then there may be completely different amounts of bribe. If the amount of bribe is calculated according to the value of the shares at the time of the act of transfer, there may be completely different amounts of bribe, which is not feasible in the theory of criminal law, so it is more reasonable to recognize the value of the bribe item by the value of the item at the time of its receipt (Note 6).

The Opinion provides that the amount of the bribe is calculated according to the value of the shares at the time of the act of transfer if the bribe has been transferred, and according to the benefit derived from the actual dividend if the bribe has not been transferred. In judicial practice, the court tends to determine the amount of the bribe for the dry shares according to the time of the act of acceptance. The other is based on the criterion of the time of the act of transfer. Prof. Fang Ming believes that a distinction should be made between different treatments of the question of whether or not the bribe has been transferred prior to the crime. Prof. Fang Ming believes that different treatments should be made for whether or not the transfer has been made before the crime is committed. According to the time of criminal concealment and the interval time between the acceptance and the occurrence of the crime,

decide to apply the acceptance of the occurrence of the act or the transfer of the time. in the acceptance of dry shares of bribery, due to the bribe is the company enterprise and other economic organizations of the shares, the value will change according to the change of the market price, it is difficult to determine the acceptance of the occurrence of the act of the net worth value, can't do the right to convicted and sentenced. if the act of the acceptance of the crime soon after the occurrence of the act of the net worth is If the act of acceptance occurs soon after the crime, the value of the net assets is easier to calculate and assess, and the amount of bribe can be determined on the basis of the value of the net assets; therefore, the same standard cannot be used to determine the amount of bribe for the offence of "accepting dry shares", and the manner that is most consistent with the criminal liability of the perpetrator should be selected in accordance with the specific circumstances of the case.

3.2.2 Actual Capitalization for Determining the Value of Dry Shares

In judicial practice, there are different methods for calculating the capital contribution corresponding to the dry shares, and determining the actual capital contribution corresponding to the shares is the basis for determining the value of the shares. one is the registered capital calculation method, the amount of the bribe is determined by multiplying the value of the registered capital of the company by the proportion of the dry shares in the total number of shares at the time of the transfer of the shares. When the registered capital is in line with the actual capital contribution, the calculation method is scientific. Another is the actual capital calculation method, that is, the actual capital should be taken into account to determine the amount of bribe. in the case of dry-share bribery, both sides of the bribe in order to cover up, the use of registered capital of the publicity role, often take the actual contribution is much larger than the registered capital of the tactics, to cover up behind the existence of the greater transfer of benefits. When the registered capital of the enterprise and the actual capital is inconsistent, should follow the subjective-objective principle of consistency, as long as the recipient of the gift of the registered capital is the same. The principle of consistency, as long as the receipt of dry shares of the two sides of the dry shares corresponding to the actual capital contribution in the subjective cognition is the same, the latter rule is more in line with the reality, more reasonable, that is, the amount of bribe according to the time of receipt (before the crime is not transferred) or transfer (before the crime has been transferred) dry shares in the total shares in the proportion multiplied by the actual contribution of the company's numerical value of the calculation.

In addition, in practice, there is also a method of calculating the amount of bribe on the basis of the net assets of the enterprise. Net assets, as an accounting concept, is dynamic and closely related to the business profit and loss of the enterprise; the occurrence of active and passive bribery is certain, and the occurrence of each act is relatively static and has nothing to do with the business situation of the enterprise. therefore, the method of calculating the amount of bribe on the basis of the net assets of the enterprise should be discarded. This method may either increase the amount of active and passive bribery, which may result in the suspect incurring undeserved penalties, or decrease the amount of active and passive bribery, which may result in the suspect escaping the penalties that he or she should

have incurred.

3.2.3 Cumulative Rules for Determining the Value of Dry Shares

In practice, the transfer or actual transfer of dry shares is not a one-time completion as stipulated in the Opinions, but is often completed several times, and if the transfer of dry shares is completed twice or more, the method of calculating the value of the shares shall be based on the cumulative method of the general bribery offence of receiving property several times as a rule of calculation, the value of the shares transferred each time shall be determined and then be cumulated, and the total amount obtained shall be the value of the dry shares, and the value of the dry shares shall be calculated according to the cumulative method. Value of dry shares.

3.2.4 Actual Contributions Should Be Excluded When Determining the Value of Dry Shares

When the acceptance of dry shares is mixed with the actual contribution, the value of the shares for which the bribe was paid shall be determined by removing the actual contribution from the value of the dry shares, and the value of the dry shares shall be determined as the amount of the bribe for the dry shares, and the actual contribution and its fruits shall be determined by the relevant authorities as the proceeds of disciplinary infractions, in accordance with the applicable disciplinary norms.

3.2.5 Determination of Transaction Price for Determining the Value of Dry Shares

The value of the shares of a joint-stock company is differentiated according to whether the company is listed or not; where the bribed shares are shares of a listed company, some scholars are of the view that the amount of the bribe should be calculated on the basis of the average price of the corresponding shares on the date of the bribe, while others are of the view that the amount of the bribe should be determined on the basis of the price of the shares on the stock market on the date of the transfer of the shares. For the determination of the value of the shares of non-listed companies, it was considered that the amount of the bribe should be determined directly by the proportion of the company's assets on the date of the bribe, while another view was that the amount of the bribe should be determined by the value of the shares on the property rights trading market on the date of the act of transfer.

Since there is a trading market for shares of listed companies, their price is generally reflected by the transaction price, but there is no transaction price between the requisitioner and the trustee as they only agree to transfer or actually transfer the shares, so it is more reasonable to calculate the value of shares of listed companies based on the average transaction price of the shares traded in the securities market on the date of the agreement to receive the shares (not transferred prior to the case) or on the date of the transfer (already transferred prior to the case). Unlike listed companies, the determination of the value of shares of non-listed companies does not have the corresponding stock market price as the basis for pricing, so it is more difficult to determine the value of the shares of non-listed companies. At present, the value of the shares of non-listed joint stock companies have a variety of pricing methods, such as comparable pricing, net asset value pricing, price-earnings pricing, price-sales pricing, etc. As long as the point in time of the receipt of the shares has been determined, the above pricing methods can be selected based on the specific circumstances of the case. Select the above pricing methods.

4. Determination of the Amount of the Bribe Paid in Terms of the Type of Bribe Paid in Dry Shares

4.1 Completely Unfunded

This type of behavior is the most typical in practice, most of the actors accept the company's shares did not actually contribute to the dividends, but can be dividends on a regular basis. this type of behavior is relatively simple, the theory and judicial practice on the completely unfunded type of acceptance of dry shares behavior nature there is no disagreement, and the unanimous conclusion that the dry shares of the crime of passive bribery. in practice, the majority of the case are In practice, most of the cases are completely unfunded as a typical type of behavior, but there is also a complete lack of actual funding and received dry shares and dividends and the perpetrator is completely not actually funded but did not receive dry shares and only dividends two situations, the former is in full compliance with the typical behavior of the dry shares bribery offense, found to be a dry shares of bribery, no doubt, the amount of the bribe that is the amount of dry shares and dividends the total amount of money received by the perpetrator. The second situation in practice the main reason is that although there is no so-called dry shares, if the amount of dry shares is simply recognized as a crime, the amount of dividends is recognized as bribe fruits, the case can not be convicted and punished, which is unfair. this situation is in the form of the perpetrator's power to acquire dividends, which in essence is still a dry-share passive bribery. the perpetrator did not actually contribute, although the dry shares were not acquired directly to obtain the dividends, but the dividends obtained should be Recognized as the amount of the bribe.

4.2 Partially Funded

In the case where the state employee actually paid part of the share capital, but paid dividends on the entire amount of the contribution, Professor Li Fangfang believes that in this type of case, the behavior of the state employee can be considered as two parts, one is the actual partially funded shares receiving dividends, and the other is the remaining part of the un-funded shares receiving dividends (Note 7). When the perpetrator has only partially funded the share capital, the actor's behavior can be "separated" from the other. "The actual part of the actor's contribution, the nature of its behavior belongs to the normal commercial investment behavior, and in fact to be regulated by the criminal law is the rest of the actor to obtain gratuitous. The recipient of a part of the contribution is to circumvent the legal act, the essence is still the power and money transactions, there is no normal commercial investment behavior, a part of the contribution is often to avoid legal acts, there is no normal Business investment behavior, part of the contribution is often to confuse.

4.3 "Borrowing" for Equity Participation (False Borrowing Without Repayment, False Borrowing with Repayment)

"Borrowing", meaning that the state official receives the dry shares provided by the requestor, and in the name of borrowing from the requestor, the state official issues a "loan note" for the investment money, and borrows money for the shares, ostensibly to form an ordinary civil borrowing and lending relationship between the two parties. In fact, the national staff did not have the intention to return the

loan, and the requestor did not want the national staff to return the intention of the situation. the characteristics of this kind of behavior are manifested in three points: firstly, the actor and the requestor have formed a civil borrowing and lending relationship; secondly, the actor borrowed money to invest in the shares; thirdly, the actor and the requestor have reached a consensus, and the borrower does not have to return the loan. the borrowing and lending relationship is essentially a cover for the fact of bribe-taking, and it is recognized as a dry-share bribe without any doubt, and it is also recognized as a dry-share bribe. There is no doubt that the bribe was paid in dry shares, and the actual amount of the loan and the subsequent benefits received should be recognized as the amount of the bribe.

4.4 Low Price Transferee Type

According to Article 2 of the Opinions, the core of the dry shares is that the recipient has not actually made the contribution, and since the national staff actually paid part of the consideration for the shares, it cannot be recognized as a dry shares. If the price paid for the shares is obviously lower than the value of the shares, it can be recognized as transactional bribery (Note 8). Some scholars also believe that, according to the second provision of the Opinion, the essential characteristic of dry shares is shares acquired without actual capital contribution. If the national staff actually paid the equity consideration, just because the payment of equity is obviously lower than the value of the shares, it does not belong to the dry shares of passive bribery, and can be recognized as transactional bribery, and the amount of the bribe should be calculated by the underpayment of the share capital, and the dividends generated can not be counted together (Note 9). The reason for recognizing the dry shares as passive bribery is twofold, one of which is that the dry shares do not fall into the category of the “goods” of transactional bribery. Scholars holding the view of “transactional bribery” believe that once the shares are contributed, they should no longer be regarded as dry shares, and thus belong to the “goods” of “transactional bribery”. “However, it can be seen from the preceding argument that shares are not goods. secondly, for whether or not the actual contribution is made in the case of passive bribery in dry shares, it should be in terms of all the contributions, that is, the actor’s low-priced shares corresponding to the high-priced shares are in essence the actor’s contributions can only be purchased to the reality of purchasing only a part of the shares, and the rest of the shares are the shares that have not been contributed to the capital, which are still in essence dry shares. For this type of conduct, the difference in price should be evaluated in criminal law, and when it constitutes a larger amount, it should be recognized as a dry share of passive bribery, and the difference in price should be recognized as the amount of the bribe.

4.5 Dividend and Bonus Type

In practice, there are views that “the value of the dividends exceeds the value of the shares, resulting in an imbalance where the amount of bribe transferred is lower than the amount of bribe not transferred, and the appropriate way to deal with this is to confiscate the dividends as the fruits of the bribe” []. However, there is a challenge to this view, namely, that the act of receiving the shares itself does not constitute a crime because the amount does not meet the incrimination standard, and thus the dividends

are treated as a bribe". (Note 10). However, there is a little doubt in this view, that is, the behavior of the perpetrator himself accepting the shares, because the amount does not meet the incrimination standard and can not constitute a crime, and thus at this time, the dividends as the fruits of bribery is inappropriate. The perpetrator's high rate of return on the dividends in fact is the essence of the use of the money to buy the integrity of the state staff to achieve their own undue interests. This behavior is a clear act of passive bribery, the actor's surface is legal shares, the actual behavior is similar to the low-priced transferee, belongs to the dry shares of passive bribery.

4.6 Shell Transfer Type

The "shell" transfer type refers to the situation where the shareholders of a company evade their capital contribution obligations by means of misrepresentation of registered capital or evasion of capital contributions after advancing funds in the process of establishing the company, forming a shell company and transferring shares to State officials through it.

Under this type, the main problem in the judicial determination is that the dry shares do not have actual capital counterparts, and at this time, there is no share value corresponding to the amount of bribe that can be calculated. in the case where the bribe-giving company has a false capital contribution that leads to the lack of authenticity of the bribed shares, the procuratorial authorities are unable to calculate the amount of the bribe due to the absence of a share value. dry shares received by the state officials in fact, do not have a share carrier themselves, but only the dividends at the end of the year agreed by both parties to the bribe, which also belongs to the pretext for receiving money. The dry shares accepted by the state official in fact have no shares in themselves, but are only the dividends at the end of the year agreed by both parties to the bribe, which also belongs to the pretext for accepting money. such dry shares neither have the surface form of dry shares referred to in the Opinions, nor do they have the essential characteristics of dry shares. for this kind of behavior, it should be recognized as the crime of accepting a bribe directly, and the transfer of the dry shares should also be recognized as the dry shares belonging to the dry shares of the dry shares in the bribery. For this type of passive bribery, the value of the shares received by the perpetrator shall be based on the value of the shares at the time of their transfer or the actual value of their assets in the corresponding company assets as the amount of the passive bribery, but it should be noted that if the perpetrator did not actually acquire or transfer them, the company's pre-determined value shall not prevail.

4.7 Expanded Dividend Type

National staff to capital contribution, in the process of the company's operations, but the national staff of the part of the capital increase did not contribute to the enjoyment of the dividends arising from the capital increase, for this type, should be viewed in different situations, that is, if the capital increase belongs to the company's capital reserve, essentially is the company in the expansion of the company before the shareholders of the distribution of profits of the company's accumulation of profits, belong to the lawful profits, and does not constitute a crime. if the company's capital increase is If the capital increase of the company is formed by the operation of the company, the company's shareholders

re-funding behavior, and the perpetrator did not contribute to the part of the dividends, but enjoy the dividends, then it should be recognized that the part of the bribe, such as the case of the national staff A, in the absence of the actual proportional increase in the capital and get the dividends brought by the part of the increase in the capital, shall be regarded as a passive bribe, and the increase in the value of the shares that have not been actually contributed to the amount of the bribe.

5. Conclusions

The criminal law meaning of “dry shares” is different from the civil law meaning of dry shares, the criminal law meaning of dry shares refers to the state employees relying on the convenience of their positions for the benefit of others, do not contribute to the capital, but can enjoy the shares sent by the bribe giver and the dividends brought about by the shares, the act of acceptance of dry shares is essentially a transaction of power and money. Sort out the facts of the case, accurately summarize the focus of the dispute, and then analyze the facts and law. At the same time, the sentencing and conviction are equally important, unified standards for the application of law, in order to accurately punish criminal offenses, and better maintain social harmony and stability. “The law and the time turn is rule”, the law should keep pace with the times, adjust with the trend in order to achieve efficacy. Through the analysis of the amount of dry type bribe, from jurisprudence to judicial practice, analyzed the current “Opinions” in the jurisprudence of the loopholes as well as in the judicial practice of the confusion brought about by the dry type of bribery case study in the “Opinions” to improve the proposal, in order to adapt to the law more to the current changes in the social environment, as well as to the judicial practitioners in the future to determine the dry type of bribery crime can have some The purpose is to make the law more adaptable to the current changes in the social environment, and to provide some reference for judicial workers in determining the offence of active bribery.

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Notes

- Note 1. Fang, M. (2016). Identification of Several Difficult Issues in the Offense of Bribe-taking in Dry Shares. *Politics and Law*, 2016(10).
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Note 9. Qiu, X. F., & Peng, L. Q. (2012). Judicial Determination of the Amount of the Offense of Bribe-taking in Dry Shares. China Prosecutor, 2012(16), 33-36.

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