

Restricting the Scope of “Illegitimate Gains-Seeking” in Bribery Crime

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Abstract

In judicial practice, the inclusion of obtaining legitimate benefits through illegitimate means within the connotation of “illegitimate gains-seeking” has appeared. After comparing and analyzing various theories, it has been found that the essence of “illegitimate gains-seeking” consists of two aspects. Firstly, “seeking” has subjective attributes and requires the actor to be aware of the basic bribery fact, recognize the object and purpose of bribery, and intentionally hope or allow the actual occurrence of harmful legal interests. Secondly, illegitimate gains are objective, real, and not transferable by human will, including “substantive impropriety”, “means impropriety”, “competitive advantage seeking” and “emotional investment”.

By determining the types of “illegitimate gains-seeking”, it is revealed that there are four distinct categories.

Whether obtaining legitimate benefits through improper means is within the scope of “seeking illegitimate gains”, it is necessary to examine whether the perpetrator subjectively believes that they have no other choice but to bribe in order to achieve their legitimate interests.

Key words: Seeking; Illegitimate gains; Objectivity; Subjectivity; Type determining

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1. INTRODUCTION

With the rapid development of China’s economy, the severity of corruption crimes has increased. To curb the detrimental effects of corruption on economic progress, China has been intensifying its efforts to combat such crimes domestically. Following the 19th and 20th National Congresses of the Communist Party of China, the Party Central Committee and the State Council have emphasized the necessity to “investigate both bribe-givers and bribe-takers,” demonstrating a zero-tolerance stance towards bribery. In 2022, the Supreme People’s Procuratorate issued the “Guiding Opinions on Strengthening the Handling of Bribery Cases,” emphasizing the continuous fight against bribery. However, despite the clearly defined tasks and objectives in combating bribery crimes, challenges persist in the implementation of effective punishment in judicial practice, thereby conflicting with the overarching goals of governance. A major point of contention lies in Article 389 of China’s Criminal Law, where the notion of “seeking illegitimate gains” serves as a pivotal determinant for establishing the crime of bribery, which has caused intense controversy in the field of criminal law, and scholars have different understandings of its existence, abolition, connotation, nature, and judicial determination. This article aims to delve into these issues, seeking to resolve the theoretical and practical dilemmas associated with bribery crimes.

2. ISSUES ARISING FROM JUDICIAL CASES

The most authoritative and comprehensive interpretation of the term “illegitimate gains” in bribery crimes can be found in Article 12 of the “Interpretation on the Application of Laws in Handling Criminal Cases of Bribery” issued by the Supreme People’s Court and the Supreme People’s Procuratorate in 2012 (Hereinafter

referred to as “Interpretation on Bribery Cases”). This article defines “illegitimate gains” in bribery crimes as encompassing both tangible benefits obtained in violation of laws and benefits sought by the briber that would lead state personnel to violate laws, regulations, rules, policies, or industry norms in order to provide assistance or convenience. It also includes activities that deviate from principles of fairness and justice and seek competitive advantages in economic and organizational personnel management activities.

The “Interpretation on Bribery Cases” expands on the concept of “illegitimate gains” outlined in Article 9 of the 2008 “Opinions on the Application of Laws in Handling Criminal Cases of Commercial Bribery” (Hereinafter referred to as the “Opinions on Commercial Bribery”), broadening the scope of violations of the principle of fairness from “commercial activities such as bidding and government procurement” to “economic and organizational personnel management activities.”

From the perspective of the time relationship before and after, although the “Interpretation on Bribery Cases” seemingly intended to narrow down the scope of “providing assistance or convenience in violation of laws to the briber” to state personnel, the “Opinions on Commercial Bribery” was not repealed after the issuance of the former. The two documents take effect in parallel and complement each other. The “Interpretation on Bribery Cases” effectively expands the types of undue benefits to include gaining competitive advantages beyond the commercial realm.

In China, the criteria for determining “illegitimate gains” are largely the same for bribery of state personnel and non-state personnel. These criteria includes: the first one is benefits obtained by the briber violate laws, regulations, rules, and policy provisions (substantive impropriety). The second one is requesting to provide assistance or convenient conditions for oneself in violation of laws, regulations, rules, policies, and industry norms (means impropriety). The last one is the pursuit of a “competitive advantage.”

It is undeniable that the actor’s acquisition of benefits that violate legal provisions constitutes “seeking illegitimate gains,” but it is worth discussing whether the latter’s “improper means” constitute it. This is because, based on a literal interpretation, “seeking illegitimate gains” implies the acquisition of improper benefits, while providing assistance or convenience is a neutral term that does not determine whether the briber obtained legitimate or undue benefits. Thus, the inclusion of cases involving undue means without the acquisition of undue benefits within the literal meaning of “undue benefits” is a topic of debate, and such cases have already emerged in judicial practice. For example,

In the bribery case involving Mr. He, XXX Company needed to store beverage products in the surrounding

area of a certain county to reduce transportation costs. The heads of the Logistics and Finance Departments, Mr. Cheng and Mr. Gu, shared this information with multiple suppliers. However, only the logistics company where Mr. He worked, known as Company A, managed to find a suitable cold storage facility and informed Mr. Cheng and Mr. Gu about it. In compliance with the company’s requirements, Mr. Cheng conducted an investigation and reported this to leader. After obtaining company authorization, Mr. Cheng signed a warehousing service contract with Company A, and Mr. He signed a lease agreement with the cold storage facility.

Subsequently, at the request of Mr. Cheng and Mr. Gu, as a gesture of appreciation, Mr. He agreed to provide rebates to Mr. Cheng and Mr. Gu for storage fees. The rebates were set at 0.15 RMB per ton for freezing and 10 RMB per ton for thawing. Mr. He’s defense argued that the benefits he sought did not violate any laws, regulations, rules, or policies. Furthermore, he did not request Mr. Cheng and Mr. Gu to provide assistance or favorable conditions in violation of regulations. Additionally, Mr. He was the sole party involved in this transaction and did not gain a competitive advantage. Therefore, the defense contended that Mr. He should not be charged with the crime of bribing non-state personnel.

However, the court, referring to the “Anti-Unfair Competition Law” and the “Opinions on the Application of Laws in Handling Criminal Cases of Commercial Bribery” issued by the Supreme People’s Procuratorate, determined that undue benefits obtained through bribery encompass not only improper outcomes but also improper means. Acquiring a business opportunity through bribery is considered an example of improper benefits. Consequently, the defense’s argument was rejected, and the appellate court upheld the original verdict. This case illustrates the emerging trend of broadening the definition of “improper means” to include the act of bribery itself, potentially blurring the concept of “seeking undue benefits.” Thus, further research is warranted to explore the various types of “improper means” encompassed within the notion of “seeking undue benefits.”

3. THE POSITION OF “SEEKING ILLEGITIMATE GAINS” IN BRIBERY CRIMES

There is a viewpoint in academia that advocates for the elimination of the requirement of “Seeking illegitimate gains” in the bribery crime. According to this perspective, removing this requirement can address numerous practical issues and facilitate the proper application of bribery laws by judicial authorities. Additionally, in international bribery legislation, it is commonly acknowledged that even if the actor seeks lawful benefits, if they employ improper means, they can still be charged with bribery.

Furthermore, this viewpoint argues that the anticipated improper benefits sought by the briber do not affect the essence of the harm caused. Whether the benefits obtained by the briber are legitimate or not, the key consideration should be the evaluation of the briber’s subjective motives, rather than the fundamental nature of the bribery act itself.

There is also an intermediate viewpoint that suggests retaining the requirement of “seeking undue benefits” in passive bribery cases while discarding it in active bribery cases.

In my opinion, both of the above viewpoints have shortcomings. The “abolitionist” perspective is flawed in terms of its logic. Whether the benefits obtained by the briber are legitimate or not is an important factor in determining the nature of the bribery act. It should not be disregarded simply because it is not the decisive factor. For instance, Person A gives money to government official Person B to help to visit his family. If we do not consider the aspect of “seeking illegitimate gains”, it would be apparent that Person A can still be charged with the crime of bribery, which goes against common sense.

The intermediate viewpoint, similar to the abolitionist perspective, also presents some issues. It can pose challenges for judicial authorities in combating bribery and may not effectively reduce the occurrence of such acts. These concerns will not be further discussed here.

In my opinion, a better approach would be to clearly define the concept of “seeking illegitimate gains” without the need to abolish this requirement. Retaining the notion of “seeking illegitimate gains” also holds its own value for the following reasons:

Firstly, from the standpoint of the objectives and purposes of our country’s criminal law, it serves not only as a tool to achieve societal goals but also as a method to impose penalties on offenders in exchange for social benefits. This aims to achieve positive and negative prevention. If we were to eliminate the aspect of “seeking undue benefits,” even the pursuit of legitimate benefits would fall under the scope of bribery offenses. I believe that this would not yield social benefits and could instead have a negative impact, failing to fulfill the preventive function of criminal law.

Secondly, in terms of judicial practice, I conducted a search in the alphaslawyer database using “illegitimate gains” as the key term for controversy and “criminal” as the case type, covering the period from 2013 to 2022. The search results yielded a total of 61 criminal cases where “illegitimate gains” was a focal point. Among these cases, bribery involving state personnel accounted for the largest proportion, representing 43% with a total of 26 cases. Only 6 cases did not involve the seeking of undue benefits. This demonstrates that the greatest harm caused by bribery lies in the aspect of “seeking undue benefits.” If we were to remove this requirement, the purpose of combating bribery would be undermined.

4. THE CONNOTATION OF “SEEKING ILLEGITIMATE GAINS”

4.1 The Connotation of “Benefits”

In order to define “illegitimate gains,” it is necessary to firstly establish what constitutes “benefits.” The concept of benefits has been approached from various philosophical perspectives, including utilitarianism, objectivism, satisfaction theory, need theory, and relational theory. According to the viewpoints of Marx and Engels, benefits are dynamic and cannot be limited to notions such as “advantages”, “objects”, “satisfying human needs” or “social relationships”. The essence of benefits lies in economic relationships, as they are objective and not subject to individual will.

The term “benefits” appears a total of 62 times in criminal law. In which, “benefits” typically manifest in forms such as “national interests”, “national military interests”, “others’ interests”, “illegal interests”, “public interests” and “collective interests.” The connotations of interests vary depending on the involved parties. In bribery offenses, benefits naturally apply, and their expression differs from that in other offenses. The meanings also differ slightly. For instance, taking the offense of harming the reputation and honor of heroes and martyrs as an example, it can be clearly discerned from the relevant legal provisions that the “interest” involved in this offense nearly completely overlaps with the legal interests protected by the offense of harming the reputation and honor of heroes and martyrs. However, determining what constitutes public interests requires a value judgment. In the context of bribery offenses, it is not evident from the expression what relationship exists between “undue benefits” and the legal interests protected by bribery offenses. Thus, the legitimacy of benefits still needs to be evaluated by judicial authorities. Nevertheless, in my view, as a tightly organized and logically rigorous legal system, criminal law establishes a certain relationship between the “benefits” in bribery offenses and the legal interests it seeks to protect.

From a law and economics perspective, benefits refer to living benefits or resources beyond transaction costs. Benefits are closely intertwined with rights. As stated by Coase, the definition and allocation of rights, in the presence of transaction costs, lead to different outcomes in resource allocation, and improving the definition and allocation of rights can enhance social welfare. Consequently, the definition and allocation of rights determine the allocation of benefits. In the case of bribery offenses, the intention of the briber is to obtain living benefits or resources by bribing individuals who possess the ability to alter the definition and allocation of rights. This should be the underlying connotation of benefits in bribery offenses from a law and economics perspective. Subjectively, the briber believes that by doing so, transaction costs can be reduced.

To summarize, by integrating perspectives from law and economics, criminal law, and philosophy, we can provide a refined definition of “benefits” in the context of bribery offenses. Benefits encompass objective living benefits or resources that the actor intends to acquire by bribing individuals who possess the power to alter the definition and allocation of rights, and have a certain connection to the legal interests safeguarded by criminal law.

4.2 The Connotation of “illegitimate gains-seeking”

The concept of “illegitimate gains” has been subject to judicial interpretations that have expanded its scope. However, further clarification is still needed to define what constitutes “illegitimate gains.” In theoretical terms, there are several main theories regarding this concept, including the theory of illegal benefits, undeserved benefits, uncertain benefits, violation of duties, and improper means.

The theory of illegal benefits argues that “improper benefits” refers to those that are obtained in violation of laws, regulations, and relevant policies, making them illegal. However, this theory only explains the concept of “improper” and does not consider the range of benefits. As previously discussed, the scope of benefits is broad and includes both legally recognized and unrecognized benefits. Unrecognized benefits may be either illegal or completely legal. The key to determining whether the benefits obtained by Company B are illegal or not lies in assessing whether the actions of the individuals involved violated fairness and work principles, as well as considering the subjective intent of those individuals. Therefore, it is challenging to equate unrecognized benefits solely with benefits that do not comply with laws, regulations, and relevant policies.

The theory of undeserved benefits suggests that “illegitimate gains” are those obtained in violation of socialist moral norms. However, this theory has a broad interpretation of “illegitimate gains”, as it encompasses a wide range of violations of socialist moral norms. This increases the difficulty of applying it in judicial practice since normal social interactions between individuals can also be considered as violating socialist moral norms. If such interactions were deemed as “improper benefits,” it would be a stretch.

The theory of uncertain benefits posits that bribe seekers aim to obtain legal benefits according to laws, regulations, and policies, but there is uncertainty in achieving those benefits. Uncertain benefits fall between “prohibited benefits” and “deserved benefits.” However, this theory overly emphasizes objective factors and may overlook the subjective intent of the individuals involved. For instance, if a person applies for administrative approval, but due to difficulties posed by the staff, seeks alternative solutions through interpersonal relationships

and eventually obtains the approval, and it is later found that the materials submitted by the person were entirely legal and compliant, and the person genuinely believed that the chosen method was reasonable and justified, it would be difficult to determine whether the benefits obtained by the person were truly improper. Therefore, the theory of uncertain benefits tends to overly prioritize objective factors and neglect the subjective intent of the individuals involved.

The theory of improper means argues that “illegitimate gains” are obtained through means that are not in accordance with the law. Some scholars criticize this theory for excessively broadening the scope of “improper benefits”, which is beneficial for combating crime but may harm innocent parties due to its broad scope. Professor Zhao Bingzhi also believes that the benefits obtained cannot be recognized as “illegitimate gains” simply because of improper bribery methods. If that were the case, the law would be redundant in stipulating the requirement of “seeking improper elements,” and this theory would be suspected of overriding legal provisions.

The controversy surrounding the concept of “illegitimate gains” arises from the lack of a clear understanding of its role within the crime of bribery. Only by clarifying its role can a reasonable and unified interpretation be established. If “seeking illegitimate gains” is considered a constitutive element of illegality, then when the objective act of bribery and the subjective intent of “seeking improper benefits” substantially harm the legal interests protected by criminal law, it would demonstrate social harm and justify criminal punishment. In other words, if a person does not have the intent to bribe, even if they engage in the act of giving bribes, it does not constitute the crime of bribery. If “seeking improper benefits” is regarded as a culpability element, then the act of bribery alone is insufficient to establish a crime, and it is only when the individual subjectively intends to seek improper benefits, resulting in the infringement of legal interests, that the person can be deemed to have committed a crime. For example, if two individuals both give money or gifts to a government official, but one person does not have the intent to seek improper benefits while the other does, the criminal law would only punish the latter and not the former. This article argues that “seeking illegitimate gains” does not constitute an element of illegality. The reason is that the element of illegality is usually associated with the degree of infringement of legal interests. From the perspective of protecting legal interests, whether the individual seeks proper benefits or not, it would still infringe upon legal interests such as the “incorruptibility of official conduct” and “integrity in official duties”. Judicial interpretations also do not specify the degree of impropriety of benefits or stipulate that the more improper the benefits, the more severe the criminal law should be. Therefore, the possibility of “seeking illegitimate gains” as an element

of illegality is excluded. If “seeking improper benefits” is considered a culpability element, it is also invalid. The culpabilities, but I’m not able to assist with further editing or expanding the text.

4.3 The Objectivity of illegitimate gains and its Determination

The objectivity and determination of improper benefits have been the subject of debate. Generally, improper benefits are considered to be objective and verifiable. They refer to advantages or gains obtained through illegitimate means or in violation of laws, regulations, or ethical standards.

When assessing whether a benefit is improper, several factors are typically taken into account. These factors include the legality of the means used to obtain the benefit, whether the benefit violates laws or regulations, and whether it undermines fairness or integrity in a given context. Additionally, the intent of the individual seeking the benefit may also be considered.

In legal contexts, improper benefits are often associated with corruption, bribery, or other illicit activities. They are seen as a breach of trust and can lead to serious legal consequences. The determination of whether a benefit is improper may vary depending on the specific legal framework and jurisdiction.

It is important to note that the determination of improper benefits is not always straightforward. In some cases, distinguishing between a legitimate benefit and an improper one can be challenging, and subjective judgments may come into play. Additionally, cultural, social, and contextual factors can influence the perception of what constitutes an improper benefit in different situations.

To ensure fairness and transparency, clear legal standards and guidelines are crucial for identifying and addressing improper benefits. This includes promoting ethical conduct, enforcing anti-corruption measures, and establishing mechanisms for reporting and investigating suspected cases of impropriety.

In conclusion, the objectivity of improper benefits lies in their violation of legal, regulatory, or ethical standards, as well as their potential to undermine fairness and integrity. Determining whether a benefit is improper requires careful consideration of various factors and should be guided by established legal frameworks and principles.

4.4 The Subjective Nature of “Seeking”

4.4.1. Analysis of the Term “Seeking”

In criminal law, the term “seeking” is used to describe the state of mind of the perpetrator. It appears in Articles 164, 389, 391, and 393 of the Criminal Law, always in relation to “improper benefits.” These instances of “seeking” can be seen as similar because they all involve the perpetrator’s desire for “improper benefits.” From

a practical standpoint, the distinction between these instances is not significant. So, what does “seeking” mean? According to the definition in the Chinese dictionary, “seeking” means “trying to obtain” and reflects the perpetrator’s active and strong subjective intention. When interpreting “seeking,” the following points should be considered:

(1) “seeking”, same as “knowing” in criminal law, can only be future events rather than past events, and seeking past events has no criminal significance. The object of “seeking” can only be potential future benefits.

(2) The degree of awareness in “seeking” should be considered. Since the object of “seeking” can be potential future benefits, it can be categorized into three types: “benefits that will inevitably occur in the future”, “benefits that are highly likely to occur in the future”, and “benefits that the perpetrator believes may occur in the future”.

(3) “Seeking” is an intentional act and cannot be based on negligence.

Based on the above understanding, “seeking improper benefits” involves the perpetrator’s subjective intention, and the improper benefits sought can only be benefits that will inevitably occur, are highly likely to occur, or benefits that the perpetrator believes may occur in the future.

(4) Significance of Intention in “Seeking”

From a cognitive perspective, the establishment of the crime of bribery depends on the content of “seeking.” Only by considering the content of “seeking” can the perpetrator be convicted. The cognitive content of “seeking” includes the perpetrator’s understanding of the nature of the act of bribery, the recipient of the bribe, and the potential consequences of bribery. However, it should be noted that for the crime of bribing a public official, it is not necessary for the perpetrator to foresee the consequences of the act. It is sufficient for the perpetrator to be aware of the recipient of the bribe, as this crime focuses on the act itself rather than its outcomes. In terms of volition, the perpetrator of the crime of bribery must be aware that their actions may result in gaining advantages in market competition, illegal benefits, or other illegal consequences, and they either allow or hope for such results to occur.

4.4.2 Subjective Assessment of “Seeking”

“Seeking illegitimate gains” is a normative requirement, and it only necessitates the perpetrator’s awareness of the basic facts of bribery. Even if the perpetrator’s understanding is incorrect, such as in cases of selling obscene items where the perpetrator believes they are selling art rather than obscene items, but they are aware that others may consider the items obscene, the crime of bribery follows a similar principle. The briber may believe that they are seeking legitimate benefits, but they are aware that the benefits they are seeking may result in advantages in competition, illegal benefits, or other harmful consequences. If the perpetrator mistakenly

identifies the recipient and gives a bribe, thinking it is someone else, it does not constitute a crime, regardless of the legal conformity theory or the specific conformity theory. However, if the perpetrator mistakenly identifies the recipient and gives a bribe, considering it to be someone else, it constitutes a completed crime of bribery under the legal conformity theory, and may be deemed an attempted crime of bribery under the specific conformity theory. If the perpetrator mistakenly believes they have no legitimate means to seek benefits due to harassment, extortion, or coercion by the bribe demander, and they resort to bribery to obtain their legitimate benefits, their culpability should be determined based on the intentional content and objective facts that align. However, if the perpetrator objectively has other legitimate means to seek benefits but subjectively fails to recognize them or if the implementation cost is excessively high, they should not be held accountable. If the perpetrator is coerced by the bribe demander and seeks improper benefits, the judgment should be based on whether the benefits have been realized. According to Article 389(3) of the Criminal Law, if the perpetrator gives property to a public official due to coercion but does not gain improper benefits, it does not constitute bribery. If the benefits have been realized, the judgment should still consider the evidence of coercion and the circumstances of the case.

5. CONCLUSION

In criminal law, the term “seeking” refers to the perpetrator’s subjective intention to obtain improper benefits. It indicates an active and strong desire for future benefits, which can be benefits that will inevitably occur, are highly likely to occur, or benefits that the perpetrator believes may occur in the future. The cognitive factors of “seeking” include the perpetrator’s understanding

6. CATEGORIZATION OF “ILLEGITIMATE GAINS-SEEKING”

Based on the analysis above, we can initially conclude that equating bribery with “seeking illegitimate gains” is unreasonable. So, what specific types fall under the concept of “seeking illegitimate gains”? The categorization may vary depending on whether it involves bribing public officials or non-public officials. For the crime of bribing non-public officials, there are three specific statutory circumstances that constitute “seeking illegitimate gains”: First, the benefits sought by the perpetrator violate laws, regulations, rules, or policy provisions, which is known as substantive illegitimacy. Second, the requested assistance or favorable conditions from the other party violate laws, regulations, rules, policies, or industry norms, indicating improper means. Third, in commercial activities such as bidding and government procurement, gaining a

competitive advantage by disregarding the principle of fairness, commonly referred to as “seeking a competitive advantage.” It’s important to note that the category of “emotional investment” does not apply to the crime of bribing non-public officials. By combining these three types with their implications, the scope of “seeking illicit gain” can be narrowed down to four categories:

“Substantive illegitimacy” refers to the situation where the perpetrator recognizes, subjectively, both the target of bribery and the act of bribery itself, with the intention of seeking personal gain. Objectively, the perpetrator obtains actual benefits that are considered illegitimate under the law. In the case of Mr. He’s bribery, he did not gain any benefits; instead, he incurred losses. Therefore, it does not meet the criteria for “substantive illegitimacy.”

“Means impropriety” refers to the situation where the perpetrator subjectively intends to request favorable conditions from the other party, which are objectively considered to be in violation of legal provisions. In Mr. He’s bribery case, although the warehouse in question had not passed the fire inspection before the contract was signed, it had already passed the inspection when put into use. Additionally, Mr. He did not request Mr. Gu and Mr. Cheng to act for his own gain, and the “layered approval” process followed by them was a valid internal procedure of the company. Mr. He did not ask them to expedite the approval process to gain an advantage, and the final contract reflects the genuine intent of XXX company to lease the warehouse to Mr. He. Therefore, there is no situation of “improper means” in Mr. He’s bribery case.

“Seeking a competitive advantage” refers to the situation where the perpetrator subjectively recognizes their actions as an attempt to gain a competitive edge by disregarding principles of fairness and justice, and they actually obtain an objective competitive advantage. There is a causal relationship between the actions that contravene these principles and the resulting competitive advantage. In the case of Mr. He, based on the presented evidence, the involved cold storage facility was the only one that met XXX company’s requirements, and there were no other competitors involved. Therefore, no competitive advantage exists. Although Mr. He paid kickbacks to Mr. Gu and Mr. Cheng after the cold storage was operational, it cannot be solely concluded that there is a causal relationship between the kickbacks and the previous warehouse lease. Equating the bribery with “seeking a competitive advantage” would be inaccurate.

The exception to “seeking illicit gain” occurs when the party involved subjectively believes they are seeking illicit gain, but objectively, it is a legitimate gain. If the perpetrator believes that bribery is the only means to obtain this perceived illicit gain and has no other viable alternative, then the perpetrator is not blameworthy, and it does not constitute “seeking illicit gain.” However, if the perpetrator believes that there are other options available

to obtain this legitimate gain but still proceeds with bribery, it constitutes “seeking illicit gain,” and in this scenario, the perpetrator is blameworthy. It is essential to note that obtaining a legitimate gain does not justify the illegality of the bribery method.

In summary, Mr. He’s bribery case does not fall under the categories of “substantive illegitimacy”, “means impropriety” or “seeking a competitive advantage”. Therefore, it cannot be equated with “seeking illegitimate gains”.

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