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### Commercial Bribery and Administrative Vetting

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#### Abstract

This article analyzes guanxi-based bribery by using a case of CFDA, China's food and drug safety regulator. Guanxi-based bribery is a prominent feature of commercial bribery in oriental societies. Guanxi is an amalgam of both emotion and interest. Emotion and interest intermingle with each other and jointly take effect. Interest serves as the vehicle of emotion; emotion serves to rubricate exchanges of interest. To counter guanxi-based bribery, on the one hand, there must be a clear demarcation between public affairs and private connections; on the other hand, increased rationalization of the institutions is urgently needed.

#### Keywords

commercial bribery, guanxi, CFDA, pharmaceutical companies, rationalization

## Commercial Bribery and Administrative Vetting – A Case Study from CFDA

**Xiuyin Shi**

My speech today focuses on a bribery case in China in which pharmaceutical companies, Chinese and foreign alike, bribed officials of China Food and Drug Administration (CFDA). This case has attracted much attention thanks to the number of pharmaceutical companies implicated, the number of CFDA officials involved, and the size of bribes paid. The Chinese media dubbed it "a host of cases". *Guanxi*, the Chinese word that broadly describes relationships and connections people cultivate between each other over time, acted as another catalyzing medium apart from money in this case. In other words, the act of bribery is intermingled and intertwined with *guanxi*; and they are reinforcing each other in the process, which can therefore be called "*guanxi*-based bribery". By analyzing the common forms and the *modus operandi* of this type of "*guanxi*-based bribery", I will argue that it is well-entrenched in and idiosyncratic to the history and tradition of the Chinese society, and consequently can neither be prevented nor dealt with by using traditional anti-bribery methods nor modern countermeasures that are popular in the West.

China is a country with a deep-rooted authoritarian tradition. In an authoritarian system, power is highly centralized in order to maintain strict supervision and control of all areas at all levels by means of administrative orders. An important measure of such supervision and control is administrative vetting and approval, which is characterized by the overwhelming number of issues that demands it and the numerous steps each vetting and approval consists of. According to relevant statistics that are far from exhaustive, before the latest round of China's reform on administrative vetting and approval, the roughly 60 departments of China's

## Commercial Bribery and Administrative Vetting

State Council have 4,159 items that are subject to administrative vetting, on top of more than 8,000 items facing provincial governments. To give an example, a public works project must navigate through a labyrinth of more than 30 distinct vetting and approval procedures, requiring well over 100 official seals and costing at least 272 working days.

The vetting and approval of medicine and medical devices is an international norm. For instance, the U.S. Food and Drug Administration has a stringent vetting and approval regime for medicines and medical devices. The China Food and Drug Administration (CFDA) likewise puts food, medicine, medical devices and cosmetic products under vetting and approval procedures. Manufacturing processes and sales must also be vetted and approved by the CFDA. The key difference between the US and China lies in the fact that in the US, the breadth and depth of vetting procedures are administered by legislation; in China, administrative orders replace legislation and the administrative authorities have much greater leeway for discretion.

Under China's all-inclusive and strict administrative vetting and approval system, food and drug security should have been guaranteed. The reality, however, is starkly sobering. Serious accidents occur every once in a while. In 2006, for instance, contaminated glucose injections manufactured by Huayuan Pharmaceuticals in the Anhui Province caused over 430 cases of adverse drug reaction across 10 Chinese provinces, 11 of which were fatal.

One reason, among many, for such lackluster performance may lie in the huge number of vetting applications the CFDA has to deal with. For instance, CFDA heard 10,109 cases of new drug applications in 2004 alone; in the same year, the USFDA merely heard 148 cases. In 2005, the CFDA approved 1,113 new drug applications; in the same year, the USFDA only approved 81 applications. We can clearly see how lax CFDA's vetting regime was.

In fact, CFDA's vetting and approval procedures are not applied equally, they are stricter in some cases than in others. Some pharmaceutical companies filed applications similar to successful ones, only to be rejected; other applications that were not up to scratch, to everybody's surprise, succeeded. In other words, CFDA's vetting and approval regime is highly selective and biased.

Commercial bribery played a major part in the selectivity of CFDA's vetting and approval system. Behind many of the thousands of new drugs that were vetted and approved, stood frequent and fat bribes paid to CFDA officials. In 2004-2005, there were 5,820 cases of bribery among drug regulators, among which 138 cases were prosecuted and 152 individuals were given disciplinary punishment by the party, including 24 individuals who took criminal liability. After that, many more drug regulators were convicted, including Mr. Zheng Xiaoyu former Director-General of CFDA who was sentenced to death and executed in 2007 and Mr. Cao Wenzhuang, former Head of CFDA's drug registration division who was sentenced to death with a two-year reprieve. CFDA was dubbed the magnet of bribes of all departments within China's State Council.

Authoritarian states tend to maintain strict control by setting up layers after layers of administrative vetting and approval procedures. What, after all, breaches such a seemingly impermeable system and what is the power source that enables such a breakthrough? The answer is *guanxi*-based bribery.

*Guanxi*-based bribery is a prominent feature of commercial bribery in oriental societies and differs from issue-based commercial bribery more commonly seen in western societies. Both involve the transfer of money or items of value, but the social meaning they carry is different. In the latter case, the bribe is a kind of kickback or commission, its meaning being "I give you interest in expectation of being responded in kind". In the former case, the bribe is a

gift or an expression of emotion, its meaning being "we are friends and what I give you is to express my friendship". The undertone between the lines here, however, is that "friends help each other, and "I believe you will come to my assistance when I need it".

A precondition of *guanxi*-based bribery is for the bribe-givers to establish inter-personal connections with the bribe-takers. These connections are private in nature and rest upon affinity for each other. Instead of linking pharmaceutical companies and the CFDA, these connections link owners of these pharmaceutical companies with CFDA officials. *Guanxi* is an amalgam of both emotion and interest. Emotion could derive from blood ties, marriage, brotherhood, comradeship, friendship, whereas interest includes money, items of value, and social resources. Emotion and interest intermingle and jointly take effect. Interest serves as the vehicle of emotion; emotion serves to rubricate exchanges of interest.

*Guanxi* plays by its own rules, which are certain commonly acknowledged and respected ethics and code of conduct that are collectively known as *renlun* and *qingli* in the Chinese language. Simply put, both bribe-givers and bribe-takers must care for each other, giving each other exclusive and preferential treatments. Moreover, these two distinct processes need not occur at the same time, as emotional exchange could continue where transactional activities stop.

In the case at hand, the typical *modus operandi* of *guanxi*-based bribery works in the following ways: Once the owners of the pharmaceutical companies and CFDA officials have befriended each other, the former would give gifts at festivals or special family events such as marriages and funerals, disguising bribes as mere "small souvenirs" for school-age children or patients among the bribe-takers' beloved ones. These gifts are followed by subtle indication that special treatments were dispensed. As a *quid pro quo*, officials would do what they deem appropriate to help with the vetting procedure.

Such a transactional relationship may continue for an extended period of time. In a legal sense, this constitutes bribery, pure and simple. However, there is some justification to it from a *renlun* point of view. The embedded logic runs like this: Nothing is wrong with making friends; nothing is wrong with the exchange of gifts between friends and helping each other out; friendship persists even when it comes to vetting procedures, so there is nothing wrong with taking care of your friends by giving the green light to their applications which would have been rejected if the standards were fully upheld.

This is how, quietly and surely, the colosseum of China's seemingly power administrative vetting regime succumbs to *guanxi*-based bribery. Public service is corroded by private affairs, bribery is beautified as the means of emotional exchange. An overwhelming majority of the aforementioned CFDA officials who were convicted, fell victim to *guanxi*-based bribery.

#### **Four distinct ways of operations for *guanxi*-based bribery**

Viewed from the specific case we are now analyzing, there are four distinct ways of operation for *guanxi*-based bribery.

1. Disguising bribery as personal friendship with the targeted officials. The logic of this way of operation runs like this: Once the owners or sales managers of pharmaceutical companies have befriended CFDA officials, and interact with each other as such, illegal tunneling of interest ensues which is responded in kind by favoritism during the drug application process, mainly in the form of compromised standards or a substantially shortened vetting period. More cash and items of value are given in gratitude whereby a self-perpetuating cycle is created.

Foreign pharmaceutical companies suffered from disadvantaged positions upon their entry into the Chinese market due to their unfamiliarity with *guanxi*-based bribery. However,

they have rapidly come to master it. The Chinese branch of Johnson & Johnson, an American manufacturer of medical devices, employed such methods to bribe CFDA officials.

2. Disguising bribery as a personal friendship with the families of targeted officials. The logic of this way of operation runs like this: Once the owners or sales managers of pharmaceutical companies have befriended the families of CFDA officials, and interact with each other as such, illegal tunneling of interest ensues; the knowledge of the existence of such exchanges prompts the officials to grant bribe-makers special treatment in vetting new drug applications.

3. Disguising bribery as a personal friendship with representatives from intermediaries. The logic of this way of operation runs like this: Once the owners or sales managers of pharmaceutical companies have befriended representatives of intermediaries who have in turn befriended CFDA officials, these representatives are paid to be the conduits through which interest is tunneled illegally from the private sector to the public one.

#### 4. Disguising bribery as a personal friendship among CFDA officials

CFDA's administrative vetting and approval regime is further divided into many disparate steps. For a new drug to be approved, each step has to be completed. To make matters worse, these steps are controlled by different divisions within the CFDA, and even within the same division, you need the consent of the officials in charge of different sub-divisions. At the end of the day, therefore, you have a widely spread net and the failure of one single knot renders the entire net useless. The logic of this way of operation runs like this: Officials in charge of each knot befriend each other, illegally tunneling interest between each other, making sure that the applications are approved. Therefore, these officials have formed an alliance in which cash and items of value circulate within a small circle of people.

*Guanxi*-based bribery is well-entrenched in the Chinese tradition. In history, successive dynasties of imperial China had resorted to various kinds of means from harsh laws and cruel punishments to moral teachings in order to end as well as to prevent such bribes but with little success. After the execution of its former director-general, Mr. Zheng Xiaoyu, the CFDA issued severe prohibitions against eight kinds of corrupt behaviors and even compared them to ‘high voltage cables’ that are not touchable. However, over the next decade, commercial bribery targeting medical regulators became more rampant, not less. It was almost seen as a necessary method of competing for market shares.

To combat persistent corruption in administrative vetting and approval regime, the Chinese government has resorted to reforms that dramatically slashed the number of issues that are subject to administrative vetting and approval. Between 2002 and 2012, six rounds of reforms had removed 2,497 items from the list of the central government, accounting for 69.3% of the total. On the provincial level, the 31 provincial governments have abolished over 37,000 items that used to require administrative vetting and approval, representing 68.2% of the total. However, when it comes to medical regulation, an area that is critically important for public health and a magnet for public attention, there is only limited space for deregulation.

To address and to prevent *guanxi*-based bribery, one must go back to its roots. When he compared the Chinese culture to the western one, Max Weber noted the eminent role of reason in the latter and the lack of it in the former. Protestantism tends to objectify everything, creating laws and contracts that are anchored in rationality, and to make institutional arrangements in a cool-headed and sophisticated manner with well-ordered records of economic activities. The Chinese culture, Weber observed, is full of ambiguity and disarray in its way of thinking, which Weber dubbed ‘witchcraft’, with rational knowledge and



institutional arrangements conspicuously missing. Moreover, the Chinese tend to prefer social relations that are based on blood ties to those that are based on purely rational transactional activities. This Weberian observation is highly valuable to finding the key to unlocking the tough problem of *guanxi*-based bribery.

The operating mechanism of *guanxi*-based bribery rests upon the fact that, firstly, the Chinese tend to distinguish between people who are related (that is, people who have *guanxi* with me) and those who are unrelated (that is, people who have no *guanxi* with me). For the former category, the *renlun-qingli* logic mentioned above automatically applies. Secondly, due to the lack of rational thinking, the Chinese tend to mix up public affairs with private ones. Thirdly, the Chinese are not good at rationalizing institutional arrangements and process control, but are used to relying on administrative orders characterized by a considerable degree of randomness. This is the very ground on which the distorted relations between pharmaceutical companies and their regulators are based, and on which the nepotism and corruption that China's history has witnessed for millennia are based.

Here is my take of it all: *Guanxi*-based bribery cannot be addressed without properly targeting its roots, features and mechanisms. On the one hand, there must be a clear demarcation between public affairs and private connections; on the other hand, increased rationalization of the institutions is urgently needed. With an institutional structure that clearly divides private life from public duty, making civil servants more independent and more accountable, we might have a regulatory regime that is closer to the Weberian ideal of being faithful to the fine print of laws and regulations and blind to anything else.

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