

## FUND MANAGEMENT REGULATIONS SECURITIES OFFENCES

### INSIDE TRADING

In addition to the provisions of the CMSA 2007, the Bursa Malaysia Securities Berhad's Corporate Disclosure Guide on insider trading states that insiders should not trade on the basis of material information which is not known to the investing public.

Moreover, insiders should refrain from trading, even after material information has been released to the press and other media, for a period sufficient to permit thorough public dissemination and evaluation of the information.

#### Rationale

The rationale for prohibiting insider trading includes the following:

**(a) fairness in the marketplace, equal access to information to all market participants**

**(b) market integrity**

**(c) fiduciary duty of company officers to the company and its shareholders**

**(d) prevention of injury to the company, its shareholders and investors.**

Those who trade on privileged or price-sensitive information to make quick profits in the market are said to be profiteering at the expense of those who do not have access to the same inside information. Those occupying privileged positions may hoard information or keep it away from the public because they feel or they know that once the information is made public it will cause the price of the shares issued by the company to rise or fall. By keeping this information to themselves they may make large profits by buying or selling the stock before its price rises or they may protect themselves by selling stock before its price falls. If the information was made freely available then they would not have had the unfair advantage.

In *Public Prosecutor v. G. Choudhury* [1981], ML) 76, the judge said:

"Recently, in the Court of Appeal (UK) in AG's Reference (NO. 1 of 1988),

Lord Lane in a reference to insider dealing stated that gaining an unfair advantage amounts to cheating the other party to the transaction". There can be no doubt that offence such as these are serious. Their description with the seemingly innocuous title "Insider dealing" or trading which to a layman may not even suggest an offence should be stripped of this artificial veneer and exposed in what Lord Lane likened them to, as plain cheating.

But the real gravman of the offence, lest this be missed, is the abuse of corporate confidence."

*Source: The Malayan Law Journal*

#### Capital Markets and Services Act Provisions

The CMSA, in s.208 provides that a person (such as an officer, agent or employee) shall not make improper use of Information' to gain an advantage for himself or herself or any other person. The 'information' caught by this section must:

(a) Be price-sensitive information

(b) Be obtained by virtue of his or her official capacity or former official capacity

(c) Be information that except for the proper performance of his or her official duties, would not be disclosed

(d) Be known by the person to be unpublished price-sensitive information relating to an underlying instrument which is the subject of a derivatives or relating to the dealing in derivative

Insider trading of securities is provided for in s.183 – s.198 (Subdivision 2 of Division 1 in Part V). Section 183 defines 'information' as:

(a) Matters insufficiently definite so as to inform the public about it

(b) Matters relating to the intentions or likely intentions of a person

(c) Matters relating to negotiations or proposals relating to commercial dealings or dealings in securities

(d) Information relating to the financial performance of a corporation

(e) Information relating to the future transactions or proposed transactions or agreements in relation to securities

For the context of this sub-division, information is categorised as becoming generally available if it has or tend to have a material effect upon the price or the value of securities. It is noted that a material effect arises when the information, once becoming generally available, will influence a reasonable person who invests in securities to decide whether to acquire or dispose or enter into agreement to acquire or dispose such securities.

Inside information in the context to this sub-division relates to a person who possesses information that is not generally available to the public. Such information, once

disseminated to the public would have a material effect on the price or the value of securities. Such a person would be performing an act of insider trading if/when that person acquires, disposes or enters into an agreement with the intention either to acquire or dispose of such securities. This is inclusive of whether the person acted as an agent or principal in the transaction. In addition to this, such a person would also be performing an act of insider trading when that person procures, either directly or indirectly, an acquisition or disposal of such securities.

This includes the act of procuring another person to enter into an agreement to acquire or dispose of such securities.

As for corporations, the CMSA provision is under s.190. Here, a corporation is deemed to possess any information when the officer of the corporation is in possession of such information which arise in the course of his duties as an officer of the corporation. This includes when the officer receives in his duties to a related corporation either through his involvement in a transaction or agreement in the acquisition or disposal of the first corporation in relation to particular securities. It

must also be of reasonable expectation that the person would communicate the information to the first mentioned corporation.

Exceptions from s.188(2), with respect to corporations, are provided under s.194.

(a) A corporation is not in breach of s.188(2) merely because the corporation is aware that it proposes to enter or has previously entered into one or more transactions or agreements relating to those securities.

(b) A corporation does not contravene s.188(2) on the basis that the officer of the corporation is aware that it proposes to enter into or has previously entered into, one or more transactions or agreements in relation to those securities.

This however, shall not be applicable if the person became aware in the course of his said duties.

In accordance with s.188(4), a person who contravenes and performs the act of insider trading is liable on conviction, to imprisonment for a term not exceeding ten years and to a fine of not less than RM1 million.

It is important to note that the insider trading is inclusive of those acts or omissions regarding securities outside Malaysia or insider trading performed outside Malaysia relating to securities in Malaysia.