

AN ANALYSIS OF THE LAW
RELATING TO INSIDER TRADING
IN MALAYSIA

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CHAPTER 1

INTRODUCTION

Insider trading is the term used to indicate the dealing in securities by person or persons (insiders) who by their relationship or connection with a Company are privy to confidential information regarding the Company which is likely to affect the price of its securities. The regulations against insider trading are directed not only to create a code of ethics¹ for those favoured with confidential corporate information but also to preserve a fair market in securities.

This is to ensure that all traders will have equal access for means to information about the securities traded. The policy which emphasive legislation regulating insider trading was clearly stated in a paper prepared in 1973 by the Department of Trade in the United Kingdom. The paper stated that :

¹ There are rules which applies to directors, other fiduciaries and trustees that prohibits them from making profits from information received because of their position that is not related to any concept of equality of means to information in the securities market. The rules forbid a director for e.g. from making profits from corporate information as Lord Cairns L.C. pointed out in *Parker V Mc Kenna* (1874) L.R. 10 ch App 96, "is based on the highest and trust principles of morality."

"The efficient operation of the market as a source of capital, as a measure of industrial success and hence as a means of achieving a desirable and efficient disposition of resources, requires that reliable information should be able to back their knowledge and judgement rather than that favoured individuals should be able to take private advantage of Confidential information."²

Equality of means to information is very important because information is the only definite aspect of the security for which its worth can be measured. Since there is no obligation³ or duty of the issuer to give a continuous flow of information, it is essential that any information which affects the value of the security is not only used by a section of the traders who have access to that information because of their relationship or connection with the company.

² Department of Trade and Industry, Company Law Reform 8 (U.K. 1973).

³ Apart from the obligation in the Stock Exchange regulations, there is no legal requirement for a Company to give continuous information on its securities or its activities the prospectus provisions of the Companies Act 1965 (PART V) which lays down a minimum amount of information relating to securities apply only when they are issued to the public. Other than this, the investor has to rely on information found in the annual reports and statement of accounts of the Company or information found in the newspapers.

To put it in simpler words insider dealing covers a situation where a person buys or sells securities when he but not the other party to the transaction is in possession of confidential information which affects the value to be placed on those securities.

The confidential information is in his possession because of his position e.g. he may be a director, employee or professional adviser of a company or someone in such a position has provided directly or indirectly with the information. Public confidence in directors and others closely associated with companies requires that these people should not use inside information to further their own interest. They would be in breach of their obligations to the companies if they were to do so and they would be held to be taking an unfair advantage of the people with whom they were dealing.

To discourage inside dealing, the Companies Act contain provision requiring disclosure of dealing by directors and substantial shareholders. In addition the Stock Exchange regulations and the City Code on take over and contains provisions against inside dealing and the Stock Exchange provides a model Code as a part of its listing agreement which lays down principles to be observed by directors and employees who wish to deal in their Company's Securities.

There is a proposition that statutory provisions which would make insider dealing in certain circumstances a