The Regulation of Insider Trading in Malaysia

To my wife, *Lai Peng*,
and my daughters, *June and Julie*,
for being *my source of inspiration and encouragement*
and for *their love and support*.

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Insider Trading
in Malaysia

Kang Shew Meng
FCIS, LLM (Hons)

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Preface

Insider trading has captured the public's imagination more than any other white collar crime in recent history. The regulation of insider trading is an important issue in securities regulation. Today, virtually every country with a major stock market and countries with developing stock markets have adopted, or are actively considering, provisions outlawing insider trading.

Prior to 1998, insider trading was viewed and treated more as a criminal offence. The legislation forbidding insider trading provided only criminal sanctions and did not attempt to provide a civil remedy for the shareholders who may have suffered loss as a result of the insider's activities. Such approach has been criticised. It is surely inappropriate to cast the criminal law as the sole legislative vehicle for the regulation of insider dealing. The American experience illustrates that civil liability is a much more potent deterrent to insider dealing.

The Securities Industry (Amendment) Act 1998 which came into force on 1 April 1998 introduced far-reaching changes to the law on insider trading. The new insider trading laws broaden the net insofar as people who can be regarded as 'insiders' are concerned. Any person who possesses inside information is an 'insider' and is prohibited from trading in the relevant securities. A person who possesses inside information is also prohibited from communicating that information as he would be regarded as a 'tipper'. The new definition of 'insiders' also extend to the tippee, ie the recipient of inside information. Civil remedies are introduced to the array of weapons against insider trading by the amendment and are now available to victims of insider trading. The Securities Commission has also increased its powers of enforcement and expanded the disclosure requirements.

The widening of the insider trading regulations was a radical departure from the previous insider trading regulations. The objective of this book is to promote awareness of the insider trading legislation as contained in Division 2 of Part IX of the Securities Industry Act 1983. Chapter 1 covers what insider trading is and why it should be curbed. Chapter 2 discusses how common law remedies deal with insider trading followed by Chapter 3 on insider trading legislation. Chapter 4 sets out the criminal sanctions and civil remedies provided by the insider trading legislation. Chapter 5 discusses the various defences.

As the primary protection against misuse of insider information is the immediate and full disclosure by companies to which the insider information relate, such disclosure is implicit in insider trading regulations and may also facilitate enforcement. I have also taken the opportunity in Chapter 6 to discuss the disclosure regime imposed on the insiders as a measure to curb insider trading.

So far as possible I have stated the law as at 31 July 2000. I welcome comments from readers on omissions or errors, the responsibility for which is entirely mine.

In conclusion, it is my pleasant duty to express heartfelt thanks to all those who have in one way or another assisted me in the course of the preparation of this book. My heartfelt thanks go first to Mr Patrick Yeoh Chong Swee of PFA Corporate Services Sdn Bhd for understanding my personal endeavour and his encouragement.

I am also grateful to Dr David Kelly of Staffordshire University for his guidance and comments, and Professor Michael Adams of University of Technology, Sydney, Australia for his encouragement and assistance.

My thanks to friends in the Securities Commission and Kuala Lumpur Stock Exchange and colleagues in PFA Corporate Services Sdn Bhd. I hope they will forgive me for not mentioning them by name.

I should also express my gratitude to Ms Julie Thomas of Malayan Law Journal Sdn Bhd for her insistence in publishing this book.

Most of all, I thank my parents, my wife, Catherine Chan Lai Peng, and my two daughters, June Adelyn and Julie Anne, for tolerating me during the whole period of preparation of this book, for being my source of inspiration and encouragement, and for being so understanding throughout.

KANG SHEW MENG
31 July 2000

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Chapter 1

Insider trading

1.1 Introduction

Insider trading, or insider dealing, to many if not most people, conjures up a picture of a slick and rather smooth 'City-type' making a 'killing' on the Stock Exchange on the basis of a tip some buddy of his has given him over lunch. Insider trading has captured the public's imagination more than any other white collar crime in recent history. Insider trading achieved wide-spread notoriety in the 1980s with the US Securities and Exchange Commission's ('SEC') civil cases and the US Department of Justice's criminal cases against Michael Milken and Ivan Boesky which inspired even Hollywood's imagination with the movie 'Wall Street'. Ivan Boesky had to pay over $100 million in fine and disgorged profits and was convicted and sentenced to imprisonment for three years. Michael Milken who pleaded guilty in April 1990 to six felony counts simultaneously agreed to pay $600 million in disgorgement and penalties to settle securities fraud charges. The Recruit Cosmos scandal in Japan brought about the downfall of the Takeshita government. In Europe, the Guinness scandal gave a new urgency to developing a European-wide ban on insider trading.

In the US, the principle that insider trading is wrong was well-established long before the passage of federal laws. In 1909, the US Supreme Court in *Strong v Repide*[1] held that a director of a corporation who knew that the value of the stock of his company was about to skyrocket committed fraud when he bought company stock from an outsider without disclosing what he knew. The US criminalised insider trading in the 1930s. The US Congress passed the Securities and Exchange Act of 1934 making it a criminal and civil offence to commit a fraudulent or deceitful act when trading securities. The law of insider trading in the US only truly began to develop in the 1960s with the seminal decision of the SEC in *Re Cady Roberts & Co*[2] where it was clearly established that the obligation not to engage in insider trading rests on two principal elements:

> [F]irst, the existence of a relationship giving access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone, and second, the inherent unfairness involved

1 213 US 419 (1909).
2 40 SEC 907 (1961), p 912.

> where a party takes advantage of such information knowing it is unavailable to those with whom he is dealing. ... Intimacy demands restraint lest the uninformed be exploited.

The UK waited until 1980 to take similar action with Part V of the Companies Act 1980.[3] In Malaysia, insider trading was criminalised in 1966 when the Companies Act 1965 ('CA 1965') came into force on 15 April 1966.[4]

The regulation of insider trading is an important issue in securities regulation. Today, virtually every country with a major stock market and countries with developing stock markets have adopted, or are actively considering, provisions outlawing insider trading.[5]

This chapter examines what insider trading is and why insider trading should be curbed.

1.2 What is insider trading?

Traditionally, insider abuse has involved individuals who are connected with the management of companies, rather than the smooth operators conjured up in the popular press. It involves the deliberate exploitation of information (obtained by virtue of some privileged relationship or position) in dealing in securities, or other property to which the information relates. In other words, it involves 'taking advantage' of an opportunity to profit which is not available to others and from whom, directly or indirectly, the profit will be taken.

In economic sense, insider trading may be described as trading which is based on an imbalance of information, resulting in one party to the transaction having an advantage over the other party and possibly over the public in general. People have been taking advantage of others through the use of inside information since the dawn of civilisation. The gift of 'greater knowledge' or insight was counted as a blessing and certainly brought no disgrace to those who benefited by its use over those ill-informed and dispossessed.

Such informational asymmetry may occur in a wide variety of transactions, be they business or private or be they face to face or dealings on an

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3 Part V of the Companies Act 1980 which came into force on 23 June 1980 by virtue of the Companies Act 1980 (Commencement) Order 1980 (SI 1980/745). For the historical background of the insider dealing regulation in Britain see Brazier G, *Insider Dealing: Law and Regulation*, (London: Cavendish, 1996), pp 89–105. The current UK insider trading legislation is contained in Part V of the Criminal Justice Act 1993.

4 When the Companies Act 1965 (revised in 1973 as Act 125) ('CA 1965') came into force on 15 April 1966, see CA 1965, s 132(2)–(4) of the original CA 1965 prior to the amendment in 1985.

5 See Pitt, H and Hardison, DB, 'Games without Frontier: Trends in the International Response to Insider Trading' (1992) 55 Law & Contemp Prob 199.

organised and impersonal market.[6] The purchaser or vendor who has no knowledge of the information can only rely on the stipulations of the contract for legal protection in relation to the facts unknown to him. Insider trading is, in one sense, a problem of non-disclosure. If there are no such stipulations, the common law rule is that failure to disclose a material fact which might influence a prudent contractor does not give the right to avoid the contract.[7] English common law has in most instances denied contractual relationships the somewhat romantic notion of equality of information. It is up to each party to negotiate the terms they want in the contract.

In its legal sense, the phrases 'insider dealing' and 'insider trading' have been given a more specific application than that accorded by the economists and only encompass dealing in corporate securities. The legal concept of insider trading can be seen to have four constituent parts.

First, the insider concept relates to the corporate setting, the word 'insider' being one which conveniently describes those who are likely 'to be in the know' about significant corporate matters.

Secondly, the concept applies to that knowledge which may be gained not only by corporate insiders[8] but others who forge a relationship with an insider or his company (eg by virtue his employment, office or profession and those who have been tipped off by the insider).

Thirdly, that knowledge must be confidential in that it is information which is unavailable publicly, ie information that has not been made public — insider information.

Fourthly, the effect of that information is that when it is available it will affect the price of the securities concerned, ie information which would have a significant effect on the price of the securities — price-sensitive information such as dividend cuts, extraordinary gains and profitable contract secured.

Thus a very generalised attempt at defining the criminal offence of insider trading would be along the following lines: it is the buying or selling of transferable securities relating to a company by a person who by virtue of his position is in possession of specific information which relates to those securities that is not generally known but which would be likely, if made public, to have a significant effect on the market price of the securities. Hence, what is prohibited is the use (or, rather the misuse) by people, who as company officers or employees or as professional advisers, avail themselves of knowledge in the course of their work or by reason of their office, of confidential information to deal to their own profit in a company's securities.[9]

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6 Eg *Laidlaw v Organ* 15 US (2 Wheat) 178 (1817) concerning the use of advanced knowledge in the tobacco market and *Bell v Lever Brothers Ltd* [1932] AC 161 for dealing in land.

7 See *Bell v Lever Brothers Ltd* [1932] AC 161.

8 Ie directors, employees and shareholders.

9 Sealy, LS, *Cases and Materials in Company Law*, (London: Butterworths, 6th Ed, 1996), p 597.

The mere taking of advantage of superior knowledge whether gained by superior ability and analysis or just through mere good luck will not amount to insider trading.

A straightforward example is that of a director of a company who purchases shares before the imminent announcement by a company of a particularly profitable year. Such news is likely to force up the market value of shares in the company, making them more expensive to acquire but also more profitable to sell. His advantage is that he gets the shares at a lower price than that which they will command when that information is publicly available. Another example of such an advantage is a director of a merchant bank advising a company in the process of mounting a take-over of another company who acquired some shares of the target company in advance of the bid announcement.

1.3 What is wrong with insider trading?

In essence, insider trading is about stealing a march on the stock market. In terms of common law contract it may legitimately be asked: 'what is wrong with that?' since normal contractual terms are *caveat emptor*. Does insider trading do sufficient harm to justify that it should be regulated? There has been a good deal of academic argument in relation to the question of whether insider trading should be prohibited.[10]

The various justifications offered to support the prohibition on insider trading include:

(1) that of fairness, based on the proposition that market participants should have equal access to information from an issuer of securities — 'market fairness' argument.[11] In the US this justification is known as the 'equal access' theory[12] and the American commentators call it the concept of 'market egalitarianism';

(2) that of fiduciary duty, based on the proposition that a person who acquired information from the privilege position he occupied should not make use of it to his own advantage without the informed consent of his beneficiaries. In the US, this is known as the 'fiduciary duty' theory;[13]

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10 For the theoretical considerations on regulation of insider dealing, see Suter, JAC, *The Regulation of Insider Dealing in Britain*, (London: Butterworths, 1989), pp 14–49 and Hopt, KJ and E Wymeersch (eds), *European Insider Dealing — Law and Practice*, (London: Butterworths, 1991), pp 3–62.

11 See Suter, n 10, above, pp 38–44.

12 See Brudney, V, 'Insider, Outsider, and Informational Advantages under the Federal Securities Laws' (1979) 93 Harv L Rev 322, p 334; Scheppele, KL, ' "It's just not right": The Ethics of Insider Trading', (1993) 56 Law & Contemp Prob 123; and *Re Cady Roberts & Co* 40 SEC 907 (1961).

13 See Loss, L, 'The Fiduciary Concept as Applied to Trading by Corporate "Insider" in the United States' (1970) 33 MLR 34; *Chiarella v US* 445 US 222 (1980); and *Dirks v SEC* 463 US 646 (1983).

(3) that of economic efficiency, which suggests that insider trading is damaging to the efficient operation of the financial market;[14]

(4) that of corporate injury, based on the proposition that insider trading injures the company which issued the securities, the shareholders and investors who deal with insiders;[15]

(5) that it is contrary to good business ethics and morally wrong, based on the principle that the confidential information is not for the personal use or advantage of the person entrusted with it but belongs to the company which possesses it and for which he holds and accordingly if he uses such information and gains as a result he has become unjustly enriched.[16] In the US, this justification is known as the 'misappropriation' theory or 'property-right' argument.[17] If insiders are allowed to make use of their inside knowledge, there would be no 'level playing field' whereby all investors operate on the same basis. The fact that insider trading is regarded as dishonest behaviour may well be the long-standing common law concern to prevent unjust enrichment and to forestall situations where people with fiduciary or quasi-fiduciary obligations are able to take advantage of their favoured position. This was the approach taken during the initial development of regulation curbing insider trading.[18]

Probably the main convincing justification for controlling insider trading is that it has a perceived, adverse effect on confidence.[19] According to this view, it does not matter whether insider trading has a detrimental effect on the operation of the market or the fortunes of the issuers because, if enough opinion-forming individuals consider that it is wrong, insider trading will alienate investors and potential investors, with adverse consequences for society as a whole. It is based on the theory that insider trading undermines the confidence which investors should be able to have in the market — 'loss of confidence' argument. The policy objective of insider trading regulations in Malaysia has recently been reevaluated to

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14 See Suter, n 10, above, pp 22–32; and UK White Paper, *Company Law Reform*, (London: HMSO, 1973 Cmnd. 5391).

15 See Prentice, DD, 'Insider Trading', (1975) CLP 83, p 86 and the argument in *Diamond v Oreamuno* 24 NY 2d 494 (1969).

16 See *The Justice Report on Insider Trading*, (London: Justice, 1972) para 3; UK White Paper, *Company Law Reform* (London: HMSO, 1973 Cmnd. 5391); Prentice, n 15, above, p 92 and the Singapore case of *Public Prosecutor v Allan Ng Poh Meng* (1989) 1 MSCLC 95,260.

17 See *US v O'Hagan* 117 SCt 2199 (1997) where the US Supreme Court explicitly adopted the misappropriation theory of insider trading.

18 See original CA 1965, s 132(2)–(4) and UK Companies Act 1980, s 68(1) which concentrated on punishing persons who abused a confidential fiduciary duty by misuse of unpublished information acquired in confidence from the company. See also *Re Cady Roberts & Co* 40 SEC 907 (1961).

19 See Rider, B and Ashe, M, *Insider Crime — The New Law*, (Bristol: Jordan, 1993), pp 5–6; and Suter, n 10, above, pp 37–38; Ashe, M and Counsell, L, *Insider Trading*, (Surrey: Tolley, 2nd Ed, 1993), p 21; *Public Prosecutor v Allan Ng Poh Meng* (1989) 1 MSCLC 95,260, at p 95,272.

focus on the need to protect the integrity of the securities market.[20] As Professor Loss asserts, 'the very preservation of any capital market depends on liquidity, which rests in turn on the investor's confidence that current quotations accurately reflect the objective value of his investment.'[21] The theoretical basis of the European Community Directive on insider trading[22] is firmly based in the view that insider dealing undermines the confidence which investors should be able to have in the market.[23]

1.4 Arguments for insider trading

However, there are discordant views.[24] In the 1960s, some economists and others propounded the view essentially that there was nothing wrong with insider trading. The classic version of the case was made by Professor Manne in 1966.[25] His arguments concern both investor protection and market protection.

He argues that:

(1) investors are not hurt by insider trading[26] since they would have made the transaction at the same price with a non-insider as well (in the context of stock market dealing the insider's presence in the market will have no causal bearing on the decision of others to trade in the market[27]), ie thesis of insider trading as 'victimless crime'; and

(2) market and economy supposedly gain from insider trading because it enhances the production of good news within the firm and further the dissemination of price-sensitive news ensures accuracy in the pricing of the affected securities,[28] ie the dissemination of information argument. It is argued that insider trading actually benefits a securities market because it ensures that the market price of affected securities

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20 Securities Commission, 'Rationalisation of the Regulatory Framework — Some Lessons for Malaysia' (1997 Annual Report) (http://sc.com.my/html/publications/annual/1997_bm/feature_01.html).

21 Loss, n 13, above, p 36.

22 The Council Directive of 13 November 1989 co-ordinating regulations on insider dealing (89/592/EEC) [1989] OJ L334/30.

23 *Ibid*, the Preamble, Recitals 9 and 10.

24 See Newkirk, T and MA Robertson, 'Speech by SEC Staff: Insider Trading — A US Perspective', 16th International Symposium on Economic Crime, Jesus College, Cambridge, England, 19 September 1998 for a summary of the pro-insider trading argument (http://www.sec.gov/news/speeches/spch221.htm).

25 Manne, H, *Insider Trading and the Stock Market*, (New York: Free Press, 1966).

26 *Ibid*, p 61, 'that insider's gain is not made at the expense of anyone'. He argues that only speculative traders would suffer from insider dealing.

27 See also *The Justice Report*, n 16, above, para 2.

28 Manne, n 25, above, pp 77–110. This view is adopted by those who accept the efficient market theory, see eg Easterbrook, FH, 'Insider Trading, Secret Agents, Evidentiary Privileges, and the Production of Information' (1981) Sup Ct Rev 309, at p 326.

> moves in the appropriate direction thus ensuring accuracy in the pricing of the securities so traded. That is insider trading enhances market efficiency through signalling. This approach was further developed by economic literature in new fields such as economics of information, economics of agency and property rights analysis.[29]

In addition, he views insider trading as in fact the only form of compensation which can adequately compensate managers for their entrepreneurial skills.[30]

Most recently, these arguments have lost much of their appeal not only in securities law theory, but also in the law and economics debate.[31] In fact, allowing insider trading results in compensation packages which are difficult to evaluate both for the shareholders and the directors, and may lead to unwelcome monitoring costs, to moral hazard (in the case of bad news) and to free rider situations.[32] Also, the dissemination of information argument does not hold in view of the increasing number of early disclosure rules, both by law and in stock exchange practice.[33]

1.5 Conclusion

The traditional pro-legislation argument, focusing on the confidence of the investing public has gained new force as a result of the fact and the amount of public attention and reaction to the highly publicised insider trading scandals of the 1980s. It is argued that even if public fears of being hurt by insider trading were unfounded, loss of confidence on the part of the investing public as a reaction to insider trading is an economic fact.[34]

At the present time, as markets have become more international in character, they have also grown more competitive, the failure of any jurisdiction, which wishes to attract investors to its stock market, to prohibit insider trading will not assist its credibility amongst the international investment community. If the market is perceived as unsafe, then foreign

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29 Manne, n 25, above; and Scott, KE, 'Insider Trading: Rule 10b-5, Disclosure and Corporate Privacy' (1980) 9 J Leg Stud 801; Carlton, DW and DR Fischel, 'The Regulation of Insider Trading' (1983) 35 Stan L Rev 857.

30 Manne, n 25, above, pp 111–169.

31 See eg Fenn, P, McGuire, A and Prentice, D, 'Information Imbalance and the Securities Markets' and Schmidt, H, 'Insider Regulation and Economic Theory' in Hopt and Wymeersch, *op.cit.*, n 10, above, pp 3–38, and Suter, n 10, above, pp 14–49. See also Newkirk and Robertson, n 24, above, for a summary of the debate against pro-insider trading argument.

32 See Hopt, KJ, 'The European Insider Dealing Directive' in Hopt and Wymeersch (eds), n 10, above, p 130; and Suter, n 10, above, p 33.

33 *Ibid*; and see Semaan, L, Freeman, MA and Adams, MA, 'Is Insider Trading a Necessary Evil for Efficient Markets?: An International Comparative Analysis' (1999) 17 Co & Sec LJ 220 for a summary of the various arguments for and against insider trading regulations.

34 See Hopt, n 32, above; and Rider and Ashe, n 19, above, pp 5–6.

investors will not take the risk of entering it; and if it is perceived as unregulated, foreign states will be wary of it. Very simply there is an increasing trend, with the globalisation of securities markets, to expect all participants to play by the same rule.[35] Both the fairness argument (which is embedded not only in the securities regulations, but also in most of the securities and capital market regulation systems of most countries) and the demand for a level playing field are winning through.

Insider trading is thus regarded as morally wrong, unfair in itself and damaging to the confidence of investors in the integrity of the securities markets. Those close to the company must not be allowed to abuse their position by making use of confidential information, which concerns securities of that company and which is in their possession solely through their employment or other relationship, to some personal advantage. It is one form of unfair market trading contrary to the concept of a free and honest functioning of the market and economically dangerous and that the law should forbid.[36] Lord Lane CJ in *Attorney General's Reference (No 1 of 1989)*[37] had no qualms in branding it 'cheating'.[38] Most jurisdictions have taken, or are in the process of taking, steps to prohibit insider trading as a measure of promoting confidence in the integrity of the markets.[39]

35 See Ashe and Counsell, n 19, above, p 22; and Pitt and Hardison, n 5, above, p 202.

36 See Ter, KL and Tay, SK, 'A Comparative Study of the Regulation of Insider Trading in Singapore, Malaysia, Australia, England and the United States'[1987] 1 MLJ ciii; Pillai, P, 'Insider Trading in Singapore and Malaysia' (1976) 16 MalLR 333; *The Justice Report*, n 16, above, and Levitt, A, 'A Question of Integrity: Promoting Investor Confidence by Fighting Insider Trading', the 'SEC Speaks' Conference, 27 February 1998 (http://www.sec.gov/news/speeches/spch202.txt).

37 [1989] BCLC 193, at p 198.

38 See also Levitt, n 36, above.

39 See Pitt and Hardison, n 5, above, for a discussion of the principal factors which appear to motivate most countries to crack down on insider trading and the varying approaches to insider dealing regulation, and Ashe and Counsell, n 19, above, p 22.

Chapter 2

Common law remedies

Since it is widely recognised that insider trading should be curbed, an important issue for the regulation of insider trading is the provision of appropriate sanctions or remedies for violation as an effective deterrence against the commission of this detrimental practice. The two principal ways in which insider trading is regulated are the common law remedies and statutory regulation, ie Part IX, Division 2 of Securities Industry Act 1983.

2.1 Common law position

At common law, civil liabilities may arise in the law of contract, tort or through the application of fiduciary principles. The essence of insider trading is dealing without disclosing relevant information that the dealer possesses.

Under the law of contract, in the absence of express stipulation, the general rule of *caveat emptor* applies. There is no obligation for the contracting parties to disclose facts that might influence the mind of a prudent contractor. Non-disclosure or silence affords relief only in three instances:

(1) where silence distort a positive representation;[1]
(2) where the contract requires *uberrimae fides*;[2] and
(3) where there is a fiduciary or confidential relationship.[3]

Under the law of tort a person cannot be charged with fraudulent non-disclosure of information if he was under no duty to disclose it.[4] And equity turns on certain special relationships borne of confidence and proximity to impose exceptional obligations on those involved.

It was perhaps natural that early English cases which grappled with the problem turned, typically, on the question whether the parties to the transaction were in a fiduciary relationship.

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1 See *Oakes v Turquand and Harding* (1867) LR 2 HL 325, at p 342.
2 Eg contracts of insurance, contracts of suretyship and contracts to marry. Contracts for the sale and purchase of securities do not figure in this exception.
3 See *Moody v Cox and Hatt* [1917] 2 Ch 71, at p 88.
4 See *Moorgate Mercantile Co Ltd v Twitchings* [1976] 2 All ER 641, at p 645.

2.2 Breach of fiduciary duty

It is trite law that directors are fiduciaries.[5] As a fiduciary, a director:

(1) must not place himself in a position where there is a conflict between his duty to the company and his personal interests or duties of others — ie the 'no-conflict' rule.[6] He who owes fiduciary duties to one person is not allowed to put himself in a position where his duty to that person conflicts with his duty to another person;[7]

(2) must not make any secret profit out of the position as director — ie the 'secret profit' or 'no-profit' rule.[8] Any secret profit which accrues to the directors in breach thereof, must be disgorged and accounted for to the company,[9] even though the directors may have acted honestly.[10]

What is more, it makes no difference that the company may not indeed have benefited from the action, or could not itself have obtained the benefit[11] or that the benefit was obtained by the directors' own skill, efforts or funds.[12]

Percival v Wright[13] established conclusively that directors owed a fiduciary duty to the company and not to the shareholders individually or collectively, *a fortiori*, to a third party who has not yet become a shareholder,[14] not to use confidential information acquired by virtue of their position in the company to derive personal benefit. And it is tolerably clear that the reasoning in cases such as *Regal (Hastings) Ltd v Gulliver* and *Boardman v Phipps* would compel disgorgement by directors of any profit made from insider trading on the basis that corporate information is corporate property and its use for the benefit of the insider or anyone else renders the profit

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5 For a detailed discussion of directors' duties, see Farrar, JH *et al*, *Farrar's Company Law*, (London: Butterworths, 4th Ed, 1998), pp 377–428 and Davies, PL, *Gower's Principles of Modern Company Law*, (London: Sweet & Maxwell, 6th Ed, 1997), pp 598–657.

6 See *Aberdeen Railway Co v Blaikie Bros* (1854) 1 Macq 461, HL.

7 See *Re Haslam & Hier-Evans* [1902] 1 Ch 488, CA.

8 See *Keech v Sandford* (1726) Sel Cas Ch 61; *Bray v Ford* [1896] AC 44; *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134n; [1942] 1 All ER 378, HL. For the special problem created by a director's use of corporate property, opportunity or information, see *Regal* case; *Cook v Deeks* [1916] 1 AC 554, PC; Sealy, LS, *Cases and Materials in Company Law*, (London: Butterworths, 6th Ed, 1996) p 296 and Davies, n 5, above, pp 616–618 and 647–648.

9 See *Boston Deep Sea Fishing Co v Ansell* (1888) 3 ChD 339.

10 *Regal* case.

11 *Regal* case. This rule has given rise to the 'corporate opportunity doctrine'. See Farrar, n 5, above, pp 416–420 and Davies, n 5, above, pp 615–622 and the cases discussed: *Cook v Deeks* [1916] 1 AC 554, PC; *Canadian Aero Service Ltd v O'Malley* (1973) 40 DLR (3d) 371; *Industrial Development Consultants Ltd v Cooley* [1972] 2 All ER 162; *Boardman v Phipps* [1967] 2 AC 46, HL; [1966] 3 All ER 721; *Island Export Finance Ltd v Umunna* [1986] BCLC 460.

12 *Ibid*, but Commonwealth authorities have decided otherwise, see *Peso Silver Mines Ltd v Cropper* (1966) 58 DLR (2d) 1, a Canadian Supreme Court case.

13 [1902] 2 Ch 421.

14 *Ibid*, at pp 426–427.

made recoverable by the company,[15] although the company suffers no direct loss. Loss to beneficiary is not a condition precedent to a fiduciary's accountability.[16] Thus, the company could bring an action under the rule in *Foss v Harbottle*[17] to recover from the directors any profits made as a result of insider trading, though this would result in the company having an unexpected windfall since it has suffered no loss. A great advantage of the civil suit brought by the company for breach of fiduciary duty is that it does not have to show that it has suffered loss, simply that the insider fiduciaries have made an undisclosed profit.

Insider trading in most instances however, does not involve the company trading in its own shares,[18] the basic question at common law hence turns upon whether the shareholder and others, who bought or sold shares from or to an insider has a remedy against the insider. The courts since the *Percival* case are reluctant to imply that directors and other agents of the company owe anything other than duties created by contract to the shareholders or potential shareholders.[19] Thus, in the absence of fraud, it was not open to shareholders to recover damages against a director whose dealings with the shareholders were based on an informational advantage gained from his superior access to confidential information, unless the shareholder could show 'special facts' which created an independent fiduciary relationship between them, eg where the directors have acted in such a way that they become implied agents for the shareholders in negotiation with third parties.[20] The director's duty to disclose arose because of the agency created by the circumstances and not by the virtue of the director's position in the company. It is in such limited situation that the director-shareholder duty is found to exist.

The approach of the *Percival* case has been severely criticised for its narrowness and inconsistency with general equitable principles.[21] In practice,

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15 See *Boardman* case.

16 See *Boardman* case and *Reading v Attorney-General* [1951] AC 507. In the US, attempts were made to show corporate injury from insider dealing, see *Diamond v Oreamuno* 24 NY 2d 494 (1969).

17 (1843) 2 Hare 461; ie the proper plaintiff principle.

18 Historically, the common law system does not allow a company to transact in its own shares, see *Trevor v Whitworth* (1887) 12 App Cas 409; and CA 1965, s 67. Technically it now could be for listed companies; see CA 1965, s 67A.

19 See *Prudential Assurance Co Ltd v Newman Industries (No 2)* [1982] Ch 204; *Caparo Industries plc v Dickman* [1990] 2 AC 605.

20 *Allen v Hyatt* (1914) 30 TLR 444 and *Briess v Woolley* [1954] AC 333, HL. And in making recommendations to shareholders about responding to takeover bids, see *Gething v Kilner* [1972] 1 WLR 337 and *Coleman v Myers* [1977] 2 NZLR 225.

21 See eg *Coleman* case, where it was challenged as being *per incuriam*; Rider, B, 'Percival v Wright: per incuriam?' (1977) 40 MLR 471; Loss, L, 'The Fiduciary Concept as Applied to Trading by Corporate "Insider" in the United States' (1970) 33 MLR 34, at p 41; and Pillai, P, 'Insider Trading in Singapore and Malaysia' (1976) 16 Mal LR 333, p 335. See also the Jenkins Report, *Report of the Company Law Committee*, (London: HMSO, 1962 Cmnd 1749), paras 89 and 99(b); the Cohen Report, *Report of the Committee on Company Law Amendment*, (London: HMSO, 1945 Cmnd 6659), paras 86 and 87.

such fiduciary relationship has little application to most examples of insider trading between the parties to the contract. In market transactions the marrying of a buyer and seller will be random. The insider will not be in a position to induce the other party to trade and there is no relationship to ground the fiduciary duty. Even in off-market or face-to-face deals the previous relationship necessary to establish a fiduciary duty may still be absent. In addition, it is rather common that directors if they did engage in insider trading, would be dealing through nominees to conceal insider trading.

Basing insider liability upon a fiduciary or comparable duty narrows the categories of persons who would be under an obligation to disclose material price-sensitive information prior to dealing in securities. Major shareholders who are likely to be able to obtain information which is not available to minority shareholders or to the market do not owe any fiduciary duties to the company (unless the information is imparted in confidence) or to the other shareholders, *a fortiori*, to other participants in the market.

Senior officers in the top management of the company, such as general managers and company secretaries and employees will often be in a position while acting for the company to come into possession of inside information. The relationship between officers and the company can be a fiduciary one.[22] The position of an employee varies according to the nature of his duties and depending on the facts may be a fiduciary.[23] Under the service contracts they need to observe confidentiality by virtue of their fidelity covenant. They must not let their duty to the company and their self-interest conflict[24] and thus may have to account to the company for insider trading. But they do not owe any fiduciary duties to the shareholders.

Confidential information of companies may be imparted in confidence to the professional advisers of companies, but they owe no fiduciary duty to the shareholders. Similarly, those to whom an insider communicates confidential information, ie 'tippees' are not regarded as fiduciaries both to the company and the shareholders. A tippee however may be compelled to account as a constructive trustee for the company on the basis of knowing receipt or if he knowingly assists in the dishonest and fraudulent design on the part of the directors.[25]

2.3 Breach of confidence

An alternative civil remedy against insider dealing might lie in an action for breach of confidence. The main remedies available are an injunction

22 See *Canadian Aero Services Ltd v O'Malley* (1973) 40 DLR (3d) 371, at p 381.
23 See *Reading v Attorney-General* [1951] AC 507, at p 516.
24 See *Canadian Aero Services Ltd v O'Malley* (1973) 40 DLR (3d) 371, at p 381.
25 See *Belmont Finance Corporation Ltd v Williams Furniture Ltd (No 2)* [1980] 1 All ER 393; *Nanus Asia Co Inc v Standard Chartered Bank* [1990] 1 HKLR 296.

and account of profits or damages.[26] Injunction will rarely be an appropriate relief against an insider trader as the misuse of the confidential information would probably have occurred before the breach is known. The law on this subject is based on a broad principle of equity — a person who has in confidence received information shall not take unfair advantage of it and cannot use it for his own profit.[27] The law does not depend on any implied contract but is grounded in good faith.[28] There are three elements necessary to sustain an action for breach of confidence:

(1) the information itself must have the necessary quality of confidentiality;
(2) the information must have been imparted in circumstances importing an obligation of confidence; and
(3) there must be an unauthorised use of that information to the detriment of the party communicating it.[29]

The proposition that the misuse of inside information could be a breach of confidence is supported in *Dunford & Elliott Ltd v Johnson & Firth Brown Ltd.*[30]

Employees under service contracts need to observe confidentiality by virtue of their fidelity covenant and shall not take unfair advantage of the confidential information. Professional advisers and their employees have a duty of confidence not to use confidential information imparted to them by trading in securities or disclosing it to another person without the permission of the confider. Thus a confidant may be compelled to account for his profits to the company for insider trading[31] or to pay damages. However, the practical problem with regard to insider trading would be in establishing what element of profit or loss is attributable to the inside information.

However, the cause of action against all these confidants lies in the hand of the company, ie the confider — the person to whom the duty of good faith is owed[32] and not the persons whom the confidants have dealt with. This might not matter if the duty of confidence was routinely used to deprive insiders of their profits, ie one might be more concerned with depriving the insiders of their profits than with working out who precisely are the best persons to receive them. There are however, no reported cases of its use against insider dealers.

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26 For a detailed discussion see Suter, JAC, *The Regulation of Insider Dealing in Britain*, (London: Butterworths, 1989), pp 184–197.
27 See *Seager v Copydex Ltd (No 1)* [1967] 1 WLR 923, at p 931.
28 *Ibid.*
29 *Coco v AN Clark (Engineering) Ltd* [1969] RPC 41, at p 47.
30 [1977] 1 Lloyd's Rep 505.
31 See *Demerara Bauxite Co v Hubbard* [1923] AC 673.
32 See *Fraser v Evans* [1969] 1 QB 349, at p 361.

2.4 Other common law remedies

A person who misuses inside information entrusted to him by the company to deal in shares of the company for personal gain is said to have become unjustly enriched at the expense of the other party dealing with him.[33] A personal remedy against unjust enrichment may perhaps be invoked to extend the perimeter to inside dealing. In *Canadian Aero Services Ltd v O'Malley*,[34] the remedy for misuse of corporate opportunity took the form of an award of damages based on unjust enrichment instead of an account of profits.

An important point of this restitutionary right is that it is grounded on a basic duty of good faith[35] and no assumption of a pre-existing fiduciary relationship is made. However, the plaintiff has to fulfil certain requirements before appropriate relief on this principle can be granted. He has to show, the onus of proof presumably is on a preponderance of probability, that the defendant has been enriched by the receipt of an advantage at the former's expense and that it would be unjust to allow a retention of such benefit to subsist.[36] It is also hard to see whether a case for account of insider trading profits, in the absence of statutory intervention, would lie independently of an assertion that the defendant had transgressed some obligation of confidence imposed upon him.

There are no coherent remedies developed to restore profits made by the insider against the 'outsider' where no relationship exists, simply on the basis of unjust enrichment. It was also unclear whether there is a distinction between a remedy granted on an account of profits and one founded on unjust enrichment.

2.5 Conclusion

The cause of action under the general equity principles and breach of confidence lies with the company and not with the shareholders or the parties with whom the insider is dealing. Only in limited cases where the shareholder could show 'special facts' which created an independent fiduciary relationship would they have a cause of action against the insider.[37]

In practice, most instances of insider trading do not involve the company trading in its own shares.[38] The company suffers no loss as a result of its

33 See Chapter 1 n 16, above and accompanying text.
34 (1973) 40 DLR (3d) 371.
35 See *Seager v Copydex Ltd (No 1)* [1967] 1 WLR 923, at p 931.
36 See Jones, G, 'Unjust Enrichment and the Fiduciary's Duty of Loyalty' (1968) 84 LQR 472.
37 See n 20, above and accompanying text.
38 See n 18, above and accompanying text.

shares being traded by the insider. It is unlikely that the company will call the delinquent directors or officers to account, particularly where the wrongdoers retain *de facto* control. If only one director has committed the breach, the other directors may cause the company to take action against him as in *Industrial Development Consultants Ltd v Cooley*,[39] but most listed companies are likely to avoid damaging publicity by persuading the errant director to resign 'for personal reasons' and to go quietly.

Although a shareholder is allowed to bring proceedings in the name of the company if the directors do not commence proceedings, such shareholder action is highly unlikely.[40] The complexity of both substantive and procedural requirements and the legal cost involved have proved to be almost insurmountable for the minority.[41] In such proceedings if the defendants challenge his right to do so, the proceedings are stayed until a general meeting is held to decide whether the company should sue. If the general meeting decides not to adopt the suit, the action is dismissed. The court, as it seems, has no power to prevent defendants who are majority shareholders from voting at general meeting not to adopt the suit.

There are also the difficulties of detection and proof which abound in insider trading cases.[42] Insider trading involves complete silence. The only indicia that the insider may have traded are unusual price or share volume movements. The indirect nature of the evidence grounding a suspicion that insider trading has occurred necessitates investigation before a would-be plaintiff can file suit. At the minimum, the plaintiff has to find out who the insider is in order that a defendant can be named. He does not have available discovery techniques to enable him to flesh out his suspicion of insider trading.

From the foregoing, it is apparent that common law on its own is inadequate in accomplishing the task of curbing insider trading. It has not offered any realistic civil sanctions to effectively control insider trading. Legislative intervention is required to fill the gap.

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39 [1972] 1 WLR 443.

40 Especially after the fiasco of *Prudential Assurance Co Ltd v Newman Industries (No 2)* [1982] Ch 204.

41 See *Smith v Croft* (No 2) [1988] Ch 114. See Suter, n 26, above pp 152–164 for a comprehensive discussion on enforcement difficulties.

42 See Newkirk, T and MA Robertson, 'Speech by SEC Staff: Insider Trading — A US Perspective', 16th International Symposium on Economic Crime, Jesus College, Cambridge, England, 19 September 1998 (http://www.sec.gov/news/speeches/spch221.htm); Branson, DM, 'Insider Trading' [1982] JBL 343.

Chapter 3

Insider trading legislation

3.1 Introduction

Legislative intervention is required to fill the gap of the inadequacy of common law in accomplishing the task of prohibiting insider trading. The policy justification for regulating insider trading determines the form and effectiveness of insider trading regulations. The policy objective of insider trading regulations has recently been re-evaluated to focus on the need to protect the integrity of the securities market.[1]

The present provisions governing insider trading are contained in the amended Part IX of the Securities Industry Act 1983 ('SIA 1983').[2] Since the aims of the insider trading legislation are to protect the integrity of the securities market and to fill the gap of the common law inadequacy, the overall approach of the law is to prohibit any person in possession of unpublished inside information and knows its significance from dealing or procuring dealing in securities or communicating the inside information regardless of the existence of any duty. The determination of improper trading is based not on a fiduciary duty, but on trading while in possession of the information.

SIA 1983 imposes criminal sanctions and provides a range of civil remedies for insider trading.[3]

The new law governing insider trading contained in Part IX of SIA 1983 is based on a number of important definitions which must be applied in sequence to any consideration of a potential offence.

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1 Securities Commission, 'Rationalisation of the Regulatory Framework—Some Lessons for Malaysia' (1997 Annual Report).

2 As amended by Securities Industry (Amendment) Act 1998 (Act A1017) and Securities Industry (Amendment) (No 2) Act 1998 (Act A1040), which came into force on 1 April 1998 and 1 September 1998 respectively. CA 1965, ss 132, 132A and 132B also prohibit misuse of inside information. However, Part IX of SIA 1983 is the main insider trading law now.

3 See SIA 1983, ss 89E(4), 90 and 90A.

3.2 Securities

The prohibition applies in relation to 'securities' as defined under the Securities Commission Act 1993 ('SCA 1993'). The definition of 'securities' prior to 1 July 2000[4] means[5] 'debentures, stocks and shares in a public company or corporation, or bonds of any government or of any body, corporate or unincorporate, and includes any right or option in respect thereof and any interest in unit trust schemes'.

Such a definition would mean that the insider trading laws in Malaysia[6] apply to both market and off-market transactions involving listed and non-listed securities of public companies and corporations,[7] bonds and units in unit trust schemes. Transactions involving debentures, shares and stocks of private companies were excluded.

However, the Securities Commission (Amendment) Act 2000 ('SCAA 2000') which came into force on 1 July 2000 amended the definition of 'securities' to mean:[8]

(1) debentures, stocks or bonds issued or proposed to be issued by any government;
(2) shares in[9] or debentures of, a body corporate or an unincorporated body; or
(3) unit trusts or prescribed investments,

and includes any right, option[10] or interest in respect thereof.

The amendment was aimed at removing the ambiguity associated with the presence of the term 'public' in the earlier definition to clarify the SC's jurisdiction in respect of debentures issued by both public and private corporations.[11] However, it resulted in extending the prohibition of the insider trading laws to cover transactions involving shares and debentures of private companies.

It may seem that with this new definition, it will be necessary for seller and buyer of shares and stocks of private companies to disclose all information

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4 Ie prior to the coming into force of the Securities Commission (Amendment) Act 2000 (Act A1074) ('SCAA 2000').

5 SIA 1983, s 2 and Securities Commission Act 1993 ('SCA 1993'), s 2 prior to SCAA 2000.

6 Prior to 1 July 2000.

7 'Corporation' means any body corporate formed or incorporated or existing within or outside Malaysia and includes any foreign company, but excludes (a) any body corporate incorporated within Malaysia which is declared to be a public authority or an agency of the Malaysian Government or a body corporate which is not incorporated for commercial purposes, (b) any corporate sole, (c) any co-operative society, or (d) any trade union: SIA 1983, s 2.

8 SCA 1993, s 2.

9 The expression 'shares in ... a body corporate' does not include shares which have not yet been issued, see *Exicom Pty Ltd v Futures Corporation Ltd* (1995) 13 ACLC 1,758; (1995) 18 ACSR 404; (1995) 18 ACSR 711.

10 Thus call and put options are regulated by the insider trading provisions.

11 See note 2 of the Explanatory Statement to the Securities Commission (Amendment) Bill 2000.

to the other party and to furnish a series of warranties as part of the due diligence process or run the risk of being called to account for insider trading.[12] A contract made in contravention of insider trading provisions will render the contract unenforceable.[13]

If the intention of the Parliament is not to make such a far-reaching change to the insider trading laws, it may be necessary for the Minister of Finance to exercise the powers[14] to exempt such transactions.

3.3 Inside information

SIA 1983 does not specifically define inside information,[15] instead, it defines 'information' and 'material effect on price or value of securities' for the purpose of insider trading laws. 'Information' is defined[16] very broadly to cover:

(1) matters of suppositions,[17] eg financial analysts' conclusions or recommendations;
(2) matters which are insufficiently definite,[18] ie non-precise or non-specific information. Thus preliminary negotiation and rumours will be considered as information;
(3) any matters relating to:
    (a) intentions or likely intentions of a person,[19] presumably including one's own intention. Examples are the intention or contemplation of proceeding with a negotiation or a take over offer;
    (b) negotiations or proposals of commercial dealings or dealing in securities.[20] 'Dealing in securities' is defined in s 2 to mean whether as principal or agent:
        (i) acquiring, disposing of, subscribing for or underwriting, securities; or
        (ii) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into (a) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or (b) any agreement, other than a futures contract, the purpose or avowed purpose of which is to

12 To take advantage of the 'parity of information defence' under SIA 1983, s 89O. See Chapter 5, 5.8 below.
13 See common law remedies as discussed in Chapter 2, above.
14 Under SIA 1983, s 83E(5).
15 The term 'inside information', however, is contained in the marginal notes to SIA 1983, s 89E, the section which sets out the prohibited conduct of insiders.
16 SIA 1983, s 89.
17 SIA 1983, s 89(a).
18 SIA 1983, s 89(a).
19 SIA 1983, s 89(b).
20 SIA 1983, s 89(c).

secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities;

(c) the future,[21] and

(d) information relating to financial performance of a corporation[22] or proposed transaction or agreements in relation to securities dealings of a person.[23]

'Material effect' of information is defined[24] to mean information which on becoming generally available, would or would tend to influence a reasonable person who invests in securities in deciding whether or not to deal in securities, ie to acquire or dispose of or enter into an agreement with a view to acquire or dispose of such securities.

'Materiality' is defined not in relation to its direct effect on changes in the price or value of the securities but on its impact on the investment decision-making of reasonable investors, taken together with other information available in the market to such investors. This is similar to the objective 'reasonable investor' test adopted in the Singapore case of *Public Prosecutor v Allan Ng Poh Meng*.[25] 'Reasonable investor' was held in *Public Prosecutor v Chua Seng Huat*[26] to mean an investor who possesses general professional knowledge as opposed to the daily retailer or a person who has made specific researches.[27]

Information is 'generally available' for the purpose of insider trading if it has been made known in a manner that would, or would tend to bring it to the attention of reasonable persons who invest in securities of a kind whose price or value might be affected by the information, and a reasonable period for its dissemination among and assimilation by such persons has elapsed.[28] It includes information that comprises deductions or conclusions made or drawn from such information.[29] Trading based on information which is derived from the analysis of publicly available information is therefore not prohibited. It does not require the information to be disseminated to the public at large, but suffice if disseminated to the investors of that securities, such as an announcement to the stock exchange where the securities are quoted. The requirement that there must be a lapse of time for the information to be assimilated by such investors means that the insiders cannot deal immediately after the publication of the inside information, ie he cannot 'beat the news' and 'hairtrigger trade' or 'front-run'. Unfortunately, there is no guidance as to the reasonable period for

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21 SIA 1983, s 89(f).
22 SIA 1983, s 89(d).
23 SIA 1983, s 89(e).
24 SIA 1983, s 89B.
25 (1989) 1 MSCLC 95,260, at p 95,267.
26 [1999] 3 MLJ 305.
27 *Public Prosecutor v Chua Seng Huat* [1999] 3 MLJ 305, at p 328.
28 SIA 1983, s 89A(1).
29 SIA 1983, s 89A(2).

the information to be assimilated by investors. The Kuala Lumpur Stock Exchange ('KLSE') recognises that the waiting period is dependent on the circumstances and recommends, as a basic policy, a 24-hour waiting period for announcement made in accordance with its policy on thorough dissemination.[30]

Thus, 'information that is not generally available which on becoming generally available a reasonable person would expect it to have a material effect on the price or value of securities' may be termed as inside information.[31] There is no requirement that the inside information is specific or precise nor must it relate to particular securities or issuer.

3.4 Insider

Under SIA 1983, an 'insider' is a person (which includes a body corporate[32]) who possesses inside information and knows, or ought reasonably to know, that the information is not generally available.[33] Thus, companies and corporations can be prosecuted for insider trading in Malaysia. There is no requirement to show any connection between the insider and the issuer or how he has the information. A person is an insider so long as he knows the insider information he has is not generally available. An advantage of such an approach is that it would not be necessary to deal separately with tippees and corporations, for everyone would be subject to the same rule.

A corporation is taken to possess any inside information[34] which an officer (defined to include director, secretary or employee of the corporation[35]) of the corporation possesses and which comes into his possession in the course of his duties as such an officer, or he knows or ought reasonably to know because he is an officer of the corporation.[36]

Where the officer is also an officer of a related corporation,[37] the corporation is deemed to possess any inside information which came into his possession in the course of his duties as an officer of the related corporation in three circumstances:[38]

(1) where the officer is an insider by reason of being in possession of the information;
(2) where he is involved in the decision, transaction or agreement of the corporation in:
    (a) acquiring or disposing of securities in relation to which the officer is an insider;

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30 See KLSE Listing Requirements, ss 340 and 336.
31 See SIA 1983, s 89E(1)(a).
32 See Interpretation Acts 1948 and 1967 (Act 388), s 2(1).
33 SIA 1983, s 89E(1).
34 See SIA 1983, s 89G(2).
35 SIA 1983, s 2.
36 SIA 1983, s 89G(1)(a).
37 Ie holding company or subsidiary of the corporation, see CA 1965, s 6.
38 SIA 1983, s 89G(1)(b).

(b) procuring another person to acquire or dispose of such securities; or

(c) communicating the information in the circumstances as prohibited by the communicating offence; and

(3) where it is reasonable to expect that the officer would communicate the information to another officer of the corporation acting in his capacity as such, unless it is proved that the information was not in fact so communicated.

A member of a partnership is deemed to possess any inside information[39] possessed by another partner or employee of the partnership, if the information came into the latter's possession in his capacity as partner or in the course of duties as an employee or he knows or ought reasonably to know any matter or thing because he is a partner or employee as such.[40]

3.5 Prohibited activities

An insider is prohibited from acquiring or disposing of securities to which the information relates, or entering into an agreement to do so — *trading offence*,[41] or procuring another person to acquire or dispose of such securities or enter into an agreement to do so — *procuring offence*.[42] The term 'procure' is defined to include inciting, inducing, encouraging or directing an act or omission by another person.[43]

Where trading in the securities to which the inside information relates is permitted on a stock market of a stock exchange,[44] the insider is also prohibited from engaging in *communicating* or *tipping offence*, that is communicating or causing such information to be communicated to another person, if the insider knows, or ought reasonably to know that the other person would or would tend to:

(1) acquire or dispose such securities or enter into an agreement to do so; or

(2) procure a third person to acquire or dispose of such securities or enter into an agreement to do so.[45]

Communicating offences apply only to communication of information relating to listed securities.

The Minister of Finance may prescribe and make regulation to exempt any persons, particular class, category or description of persons or transactions

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39 SIA 1983, s 89H(2).
40 SIA 1983, s 89H(1).
41 SIA 1983, s 89E(2)(a).
42 SIA 1983, s 89E(2)(b).
43 SIA 1983, s 89D.
44 Even if the trading in those securities is suspended, SIA 1983, s 89C.
45 SIA 1983, s 89E(3).

or any particular class, category or description of transactions relating to securities from the prohibition of insider trading.[46]

3.6 Jurisdiction

There must be territorial connection between the offence and Malaysia. SIA 1983 provides a two-fold test of territorial connection:

(1) the prohibition applies to acts or omission occurring within Malaysia in relation to securities of any body corporate formed or carrying on business or is listed within or outside Malaysia.[47] In this case, the *conduct* constituting the offence occurred in Malaysia; or
(2) it applies to the acts or omissions occurring outside Malaysia in relation to securities of any body corporate formed or carrying on business or is listed within Malaysia.[48] In this case, the *body corporate* whose securities are involved is connected with Malaysia.

46 SIA 1983, s 89E(5).
47 SIA 1983, s 89P(a).
48 SIA 1983, s 89P(b).

Chapter 4

Criminal sanctions and civil remedies

The Malaysian regulation provides both criminal and civil remedies to curb insider trading. The imposition of stiff criminal sanctions and heavy civil penalties send a message to the community that the government considers insider trading to be a serious offence. Nevertheless, however well an insider trading law is framed, it is nothing without enforcement. If the law does not lead to successful prosecutions, its power as a deterrent is soon diminished. The effectiveness of the statutes in deterring insider trading thus depends on the enforceability of the sanctions and remedies provided.

4.1 Criminal sanctions

Under the Securities Industry Act 1983 ('SIA 1983'), the criminal sanctions imposed for contravention of insider trading are, on conviction, a *minimum* fine of RM1,000,000 *and* imprisonment for a term not exceeding ten years.[1] This is a minimum fine with mandatory imprisonment. Thus if the insider is found guilty of the offence, the minimum fine imposed will be at least RM1,000,000 with at least one day's imprisonment.

The Securities Commission ('SC') may, as an alternative to instituting the charge in court, compound the offence with the written consent of the Public Prosecutor, by accepting from the person reasonably suspected of having committed an insider trading offence a sum of money not exceeding the maximum fine.[2] No further proceedings shall be taken against such person in respect of the offence upon receipt of payment of the compound fine[3] by the SC.

4.2 Limitations of criminal sanctions

The imposition of criminal liability as a measure of control of insider trading is a policy consideration and may be supported by the economic model of criminal behaviour and the modern penal theory. Under the economic model of criminal behaviour, people are rational maximisers of

1 SIA 1983, s 89E(4).
2 SIA 1983, s 124(1).
3 SIA 1983, s 124(2).

satisfaction, they will avoid committing an act which yields them more pain than pleasure. Hence, a criminal is seen as a person who has chosen to engage in criminal activity because the expected utility of such behaviour to him, after deduction of costs, exceeds that of any legitimate alternative activity. According to modern penal theory, the threat and the imposition of imprisonment and harsh penalties may have a motivating influence apart from the creation of fear, through an expression of social condemnation of the forbidden act. It is thus a rational assumption that criminal sanctions provide the greatest deterrent to the commission of insider trading offences. However, it does not necessarily mean that the criminal justice system is the most suitable and effective instrument against insider trading.

With the expansion of criminal sanction to a wide range of activities, the risks of people breaching the criminal law increases. In turn, the stigma attached to conviction is reduced. Inadequate resources and investigative skills hinder effective enforcement. As the number of offences exceeds the enforcement capacity of the authorities and the courts, enforcement becomes selective and sometimes inconsistent. Criminal sanction may be insufficiently flexible to deal with the complexities of securities transactions which are arranged by sophisticated groups of professionals who deal through nominees. Its impact may be further weakened by delays in enforcement and subsequent proceedings may also be lengthy and costly.

In addition, criminal sanction faces the inherent extra difficulty of having to prove the ingredient elements of the crime beyond reasonable doubt, a much higher standard of proof than that of civil cases which is on a balance of probabilities.[4] This is particularly evident in insider trading cases which are complex and difficult to prove. A true insider trading involves complete silence. Direct evidence of insider trading is rare. It does not always have as obvious an evidence trail as other crimes that can be scientifically linked to a perpetrator. The only indicia that insider trades may have taken place are unusual price or share volume movements. The tasks of the investigators and prosecution are thus not easy. The prosecution must prove the ingredients of the offence beyond reasonable doubt.[5]

Under the SIA 1983, the ingredients of a *trading offence* required to be proved by the prosecution are:

(1) requisite territorial connection with Malaysia;[6]
(2) the offence relates to securities;[7]
(3) there is inside information;[8]
(4) the defendant must have the inside information;

4 See *Woolmington v DPP* [1935] AC 462; *R v Summers* [1952] 1 All ER 1059; *Miller v Minister of Pensions* [1947] 2 All ER 372.
5 *Ibid.*
6 SIA 1983, s 89P; see Chapter 3, 3.6 above.
7 SIA 1983, s 89E(2) and (3); see Chapter 3, 3.2 above.
8 Ie information that is not generally available which on becoming generally available a reasonable person would expect it to have a material effect on the price or value of securities; see Chapter 3, 3.3 above.

(5) he must as a principal or agent, actually *deal* (ie acquire or dispose of, or enter into an agreement to do so) in the securities to which the inside information relates;[9]
(6) at the time of dealing, the defendant knew or ought reasonably to have known that the inside information was not generally available.[10]

And for a *procuring offence*, the ingredients required to be proved by the prosecution are:

(1) requisite territorial connection with Malaysia;
(2) the offence relates to securities;
(3) the information is inside information;
(4) the defendant must have the inside information; and
(5) he must directly or indirectly, *procure* an acquisition or disposal of securities or the entering into an agreement to do so;[11] and
(6) at the time of procuring, the defendant knew or ought reasonably to have known that the inside information was not generally available.[12]

It seems that under SIA 1983, constructive knowledge would suffice. Thus if a person innocently overheard inside information in a lift, restaurant, street or park, he is prohibited if he knows or ought reasonably to know that the information is not generally available.

The ingredients to be proved by the prosecution for a *communicating offence* are:

(1) requisite territorial connection with Malaysia;
(2) the offence relates to securities;
(3) the information is inside information;
(4) the defendant must have the inside information relating to securities where trading is permitted on the stock market of a stock exchange;
(5) he *communicates* directly or indirectly the information to another person;[13] and
(6) at the time of communicating the inside information, the defendant knew or ought reasonably to have known both that the inside information was not generally available and that the other person (ie the tippee) would or would tend to deal in such securities or procure a third party to deal in such securities. The prosecution however is not obliged to prove that the tippee did subsequently enter into a transaction or agreement relating to the securities. It is enough that the defendant has reasonable cause to believe that the dealing will take place in the relevant circumstances. It will not be necessary that dealing actually takes place. However, in practice, in most cases a deal will be necessary to ensure conviction.

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9 SIA 1983, s 89E(1) and (2)(a).
10 SIA 1983, s 89E(1).
11 SIA 1983, s 89E(1) and (2)(b).
12 SIA 1983, s 89E(1).
13 SIA 1983, s 89E(1) and (3).

After the prosecution has proved the ingredients of the offence, the onus falls on the defendant to raise the statutory defences on a balance of probability. SIA 1983 provides a wide range of statutory defences.[14]

The defendant has the burden on a balance of probability of establishing that all of the requirements of the relevant provision of the statutory defence existed at the time of the securities transaction or agreement. However, the prosecution is not obliged to prove the non-existence of the facts or circumstances referred to in any of the defences.[15]

The high standard of proof coupled with the availability of a wide range of defences, will in most cases render the prosecution unsuccessful. It is therefore arduous for the prosecution to prove beyond reasonable doubt the essential elements of the crime to obtain a conviction, particularly the knowledge element of the offence which is a constituent part of insider trading offences. Hence, unless the insider trader confesses his knowledge in some admissible form, evidence is almost entirely circumstantial. While it is possible to prove beyond reasonable doubt that a defendant engaged in insider trading based entirely on circumstantial evidence, it poses significant challenges to the prosecution. Even in the US and the UK, the enforcement officials there have stated that virtually the only way of proving the knowledge element of the crime is to have the testimony of a person who is intimately involved in the scheme.[16]

Additionally, the method by which officials administer criminal justice in the securities markets helps to ensure enforcement problems. The bodies that monitor are separate from those that actually prosecute the criminals. The monitoring of the market is carried out by Kuala Lumpur Stock Exchange whilst the investigation[17] and prosecution[18] are by the SC. When the goals of these bodies diverge, effective enforcement will be hindered. The lax attitude of law enforcement officials is another problem the system faces.

To resolve these problems, the SC has recently been made[19] the sole regulatory authority of the securities industry.[20] And the SC is pushing for reform to strengthen the capital market regulatory framework by

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14 See Chapter 5, below.

15 SIA 1983, s 89F.

16 See Naylor, JM, 'The Use of Criminal Sanctions by UK and US Authorities for Insider Trading: How Can the Two Systems Learn from Each Other?' (1990) 11 Co Law 53 (Part I), 83 (Part II), p 54; Newkirk, T and MA Robertson, 'Speech by SEC Staff: Insider Trading — A US Perspective', 16th International Symposium on Economic Crime, Jesus College, Cambridge, England, 19 September 1998, p 9.

17 SIA 1983, s 99.

18 *Ibid*, s 126; with written consent of the Public Prosecutor.

19 From 1 April 1998, all references to overlapping enforcement powers of the Registrar of Companies in SIA 1983, ss 2, 10, 33, 34, 35, 49, 50, 94A, 95, 96, 97, 98, 99, 100 and 126 were removed, see Securities Industry (Amendment) Act 1998 (Act A1017).

20 See Securities Commission Act 1993 (Act 498) as amended, s 15(1)(b) and (c) and (3). The Securities Commission was recently made the single regulatory authority for the supervision and regulation of the corporate bond market in Malaysia; see Explanatory Statement to the Securities Commission (Amendment) Bill 2000.

empowering KLSE and other market institutions such as the Malaysian Exchange of Securities Dealing and Automated Quotation (MESDAQ) as the front-line regulators and enhancing its enforcement capabilities and that of the front-line regulators with the SC as the oversight regulator.[21]

By definition, criminal penalties can be imposed only after detection and proof of the offence. The factors discussed above, ie:

(1) the high standard of proof;
(2) the structure of enforcement mechanism; and
(3) the scarcity of prosecutorial resources which lead to selective prosecution,

seriously restrict the force of criminal law in its deterrent effect against insider trading where the cost-benefits of breaking the law are more likely to be evaluated rationally.

The deterrent effect of criminal penalties for insider trading offences are reduced by the prospects of the breach not being detected and by the fact that even when detected, a heavy burden of proof is placed on the prosecution. Hence the limitations associated with the enforcement by the criminal law underline the need to consider provisions for other enforcement techniques, such as civil actions.

4.3 The first and only insider trading case in Malaysia

Malaysia to date has only one prosecution for insider trading,[22] involving the managing director of Kim Hin Industries Berhad ('KHIB'). The charges concerned two sales of 1,000,000 and 200,000 shares of KHIB on 23 May and 26 June 1995 respectively belonging to Kim Hin (M) Sdn Bhd by the accused through a stock broking company while having the confidential information regarding the decline in operating profits of KHIB Group for the interim period ending 30 June 1995.[23]

The Sessions Court of Kucing on 11 April 1998 acquitted the defendant on the ground that:

(1) S 90[24] covers only persons who are or were government or public service officers and not managing or other directors of public listed companies; and
(2) the prosecution failed to prove the case beyond reasonable doubt.

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21 The SC Press Release, 20 October 1998.

22 But the charge was under the old SIA 1983, ss 90 and 89 before the amendment by the Securities Industry (Amendment) Act 1998 (Act A1017), which came into force on 1 April 1998.

23 See *Sunday Star*, 12 April 1998. For an interesting write-up of the background of the case, see Backman, D, *Asian Eclipse: Exposing the Dark Side of Business in Asia*, (Singapore: Wiley, 1999), pp 37–41.

24 S 90 of SIA 1983 before the amendment by the Securities Industry (Amendment) Act 1998 (Act A1017), which came into force on 1 April 1998.

The prosecution appealed. The defence contended, amongst other things:

(1) the January to April 1995 accounts did not carry accurate stock figure with the result that the profit could not be ascertained;
(2) Chua, the accused, had considerable expectations of increased production, contribution from other companies of the Group and optimism of profit increase; and
(3) Chua could have received the management accounts after 26 June 1995.

The High Court on 8 June 1999 set aside the acquittal and ordered that the accused be called upon to enter his defence.[25] The High Court also held that:

(1) the term 'any person' in s 90[26] without more would apply to persons of whatever occupation, be it in the public or the private sector. The term must be given its ordinary and natural meaning;
(2) information need not be specific information or factual knowledge of a concrete kind but may include information obtained by means of a hint or a veiled suggestion;
(3) the prosecution must prove beyond reasonable doubt that the May 1995 accounts was handed to Chua before 26 June 1995;
(4) the information must affect the price of the share materially from the view of a reasonable investor. A reasonable investor must possess general professional knowledge as opposed to the daily retailer or a person who has made specific researches;
(5) the law requires more from the prosecution instead of just merely proving the existence of the price-sensitive information and the sales of the shares. The prosecution must additionally prove that the information was a factor in the decision of Chua to sell the shares;
(6) what is improper use of information under ss 89 and 90[27] depends not on what managing directors in similar position would do but is to be measured by whether such use is prohibited by law.

A date for the trial has yet to be fixed.

4.4 Civil remedies

SIA 1983 was amended to provide civil action[28] to complement the traditional criminal sanction for more effective enforcement. SIA 1983 now empowers the SC to institute civil proceedings against any person

25 *Public Prosecutor v Chua Seng Huat* [1999] 3 MLJ 305.
26 S 90 of SIA 1983 before the amendment by the Securities Industry (Amendment) Act 1998 (Act A1017), which came into force on 1 April 1998.
27 Ss 89 and 90 of SIA 1983 before the amendment by the Securities Industry (Amendment) Act 1998 (Act A1017), which came into force on 1 April 1998.
28 SIA 1983, ss 90 and 90A.

who has committed insider trading offence.[29] It also empowers a person who suffers 'loss or damages' (which is the actual loss suffered and includes unrealised loss or gain, as the case may be, in the price or value of securities of a corporation[30]) by reason of, or by relying on, the conduct of a contravenor of insider trading regulations to recover the amount of loss or damages by instituting civil proceedings against the contravenor.[31] Both civil actions by the SC or a person who suffers loss or damages may be taken whether or not the contravenor has been charged with an offence in respect of the contravention or a contravention has been proved in a prosecution. Such proceedings must be commenced within 12 years of the contravention or when the SC or the plaintiff, as the case may be, discovered the contravention, whichever is the later.[32]

In addition, SIA 1983 also sets out the measure of damages to be applied for trading and procuring offences. Where an insider deals (ie acquires or disposes or enters into an agreement to do so) or procures another person to deal in securities in contravention of the trading or procuring prohibitions, the seller[33] or the buyer[34] as the case may be, may bring civil action against the insider or any contravenor for recovery of loss or damages.[35] The amount of damages or loss claimed is the 'profit gained'[36] or the 'loss avoided'[37] by the insider or any other contravenor. The approach for the civil action is presumably along the line of a claim in tort.

Where trading and procuring offences involve listed securities, the SC may, if it considered in the public interest to do so, bring a civil action[38] against the insider or any other contravenor to recover an amount equal to three times the amount of the 'profit gained' or the 'loss avoided' by the insider or any other contravenor, and claim civil penalty in such amount which is not more than RM500,000, as the court considers appropriate taking into consideration of the seriousness of the contravention.[39] The SC may apply the amount recovered or obtained to compensate the sellers who disposed of or buyers who acquired, as the case may be, securities of the same class on the stock market when the information was not generally available between the time when the first contravention of trading or procuring prohibitions occurred and the time when the information became generally available.[40]

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29 SIA 1983, s 90(1).
30 See SIA 1983, s 90A(2).
31 SIA 1983, s 90A(1).
32 SIA 1983, s 90(2).
33 SIA 1983, s 90A(3).
34 SIA 1983, s 90A(4).
35 SIA 1983, s 90A(3) and (4).
36 SIA 1983, s 90A(3).
37 SIA 1983, s 90A(4).
38 By any officer authorised by the SC for the purpose, SIA 1983, s 126C.
39 SIA 1983, s 90A(5) and (6).
40 SIA 1983, s 90A(7).

As regards communicating offences, SIA 1983 however, does not set any measure of recovery in relation to such offence. The SC or a person who suffers loss or damages has to rely on the principal civil liability provisions[41] to institute civil proceedings. The loss to be recovered for a civil action[42] in relation to a communicating offence would thus be that of actual loss. However, it may be difficult to prove that a contravention of the communication prohibition caused the plaintiff to suffer loss.

The plaintiff or the SC, as the case may be, in a civil proceedings, must prove on the balance of probabilities that:

(1) the insider possessed inside information;
(2) knew or ought reasonably to know that the inside information is not generally available; and
(3) dealt or procured another person to deal in the securities.

The right of action a person has for recovery of loss or damages under SIA 1983[43] is in addition to any right that any other person may have under any other written law.[44] Thus the common law liability (as mentioned under Chapter 2 above) of an insider remains on foot.

An insider convicted of an insider trading offence is also liable to pay such compensation as the court may determine to any person who has purchased or sold any securities at a price affected by the offence for damages suffered by him as a result of that purchase or sale.[45]

In a proceeding under SIA 1983,[46] if the court finds that a contravention of insider trading prohibition has occurred, it may make such orders[47] as it thinks just in relation to the contravention in addition to any order it is entitled to make. The SC is empowered to apply to the court in relation to dealings in securities that contravene insider trading law, and if the courts finds that a contravention has occurred, it may make such orders as it thinks just in relation to that contravention.[48] These include:

(1) injunctions to restrain the carrying out of securities business;
(2) injunction to restrain issue or allotment of securities;
(3) injunctions to restrain the exercise of voting or other rights;
(4) injunctions to restrain acquisition or disposal of securities;
(5) orders directing disposal or vesting them in the SC;
(6) orders removing and barring the contravenor from becoming a director of public company (where the contravenor is a chief executive or director of a listed company, the SC may also apply to the court

41 Ie SIA 1983, ss 90(1) and 90A(1).
42 Under SIA 1983, s 90A(1).
43 SIA 1983 s 90A.
44 SIA 1983, s 90A(10).
45 SIA 1983, s 125.
46 SIA 1983, ss 90 and 90A.
47 SIA 1983, s 100(1)(c). The orders are listed out in s 100(1)(aa)–(mm).
48 SIA 1983, s 100(1)(a) and (b).

under SIA 1983, s 99C(3), to remove the contravenor from such office);

(7) orders cancelling agreements; and

(8) orders cancelling licences issued under SIA 1983.

In addition, if the contravenor is a company, the SC may also petition to the court for an order to wind up the company whether or not the contravenor has been charged with the offence or the contravention has been proved in prosecution.[49]

4.5 Limitations of civil remedies and suggestions for improvement

There is the practical problem which would deter private persons in taking civil actions — the lack of formal information-gathering and investigation powers. Since direct evidence of insider trading is rare, a would-be plaintiff does not have the means to investigate and gather the necessary information to back up his civil action. He may not even know who the insider is to name as defendant. It is submitted that perhaps a person who suffers loss or damages may have to resort to try for an application for leave of the court to join in as plaintiff[50] in the civil actions instituted by the SC, if the SC does take such an action.

In a situation where the plaintiff knows the identity of the contravenor, an *Anton Piller* order[51] compelling the contravenor to permit the plaintiff and his solicitors to enter his premises for the purpose of inspecting documents may be an effective means to unearth evidence.[52]

The civil remedies provided by SIA 1983, however, are still subject to the requirement to institute formal civil actions, which is costly and time consuming in bringing the perpetrator to book. To further enhance the enforcement power of civil remedies, it would be necessary to implement administrative civil penalties. The UK recently recognised strong civil enforcement powers as an important weapon in the regulator's arsenal. It is currently in the process of introducing a new civil regime for insider trading and market manipulation which will fill the gap in the current legislative framework and will complement the existing criminal regime.[53]

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49 SIA 1983, s 100A.

50 Ie as an intervener or joinder as parties under O 15 r 4 of the Rules of the High Court 1980.

51 *Anton Piller KG v Manufacturing Process Ltd* [1976] Ch 55.

52 Bokhary, K, 'Insider Dealing — Identifying and Tackling It' (1984) HKLJ 11, p 21.

53 See *Financial Services and Markets Bill: A Consultation Document*, (HM Treasury, July 1998), Part One, Chapter 15, para 15.5; Part Two cll 56 and 58; *Market abuse*, Consultation Paper 10 (Financial Services Authority, June 1998), paras 6–11, 71–125 and 136–144; and *Financial services regulation: Enforcing the new regime*, Consultation Paper 17, (Financial Services Authority, December 1998), para 119.

The Financial Services Authority ('FSA') will be empowered[54] to create a structure for administering civil penalties which includes the power to impose civil fines, order disgorgement of profit and seek or impose restitution order for market manipulation and insider trading.[55] Under this system, the FSA would build a case against a suspect, needing only to fulfil the civil burden of proof[56] and use its administrative enforcement powers to impose a civil fine for market abuse.[57]

4.6 Conclusion

Civil remedies have an effective role to play in curbing insider trading and other market manipulation.[58] It strikes at the very motive for the offence, in that it is aimed directly against the profits that the insider makes. The imposition of a civil penalty in addition to the other sanctions would serve as a means of making insider trading less attractive as the insider stands the risk of losing substantially more than his gain if he were caught. Insider trading is an economic crime, thus economic penalty would seem to be the most effective means of policing the activity.

Civil liability is far more flexible and may properly be imposed on a lesser standard of proof than the criminal law courts would countenance. It could be made available to a much wider range of plaintiffs than the prosecuting authorities which have charge of the criminal sanction. It is submitted that to be a far more effective deterrent, the primary civil penalty available to enforcement officials ought to be civil fines administered by a proper administrative enforcement structure. Such system will completely remove the problem of the criminal burden of proof, is less formal and more expeditious in bringing the perpetrators to book. It will be cost-effective and more flexible as one may always adjust the fine to achieve deterrence.

Effectiveness of sanctions and remedies in deterring insider trading lies on their enforceability. Sanction or remedy which requires a lesser burden of proof, is flexible, cost-effective and expeditious would thus be an effective deterrent. The multiple civil penalty administered by a simple procedure appears on its face to be capable of providing this deterrent. However, it

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54 Once the Financial Services and Market Bill ('FSMB') comes into force, which is expected to be some time in the spring or early summer of 2000; see Davies, H, 'Financial Regulation and the Law', speech delivered at the Chancery Bar Association and Combar Spring Lecture, Lincoln's Inn, London, Wednesday 3 March 1999 (http://www.fsa.gov.uk/speeches/1999/march/03031999.htm.).

55 Termed as 'market abuse' in FSMB, cl 56.

56 See *Market abuse* n 53, above, para 7.

57 See FSMB, cll 60–68 and 210–211; *Financial services regulation: Enforcing the new regime*, n 53, above, paras 168–218 for the proposed framework of the administrative structure.

58 Chairman's Statement (Securities Commission, 1997 Annual Report) (http://sc.com.my/html/publications/annual/1997_bm/feature_01.html).

does not mean that civil remedies should completely replace criminal sanction in policing insider trading. Criminal sanctions against insider trading remain necessary and important deterrents. For the more egregious cases, where criminal offences have been committed, criminal proceedings will be the appropriate course to be taken. Ordinary straightforward cases, however, should be dealt with by civil enforcement.

Chapter 5

Defences

There are statutory defences provided for insider trading offences. These defences are necessary to enable trades which would otherwise constitute improper insider trading and certain types of specialised trading in the securities markets to be carried out. Eight broad categories of exceptions and defences are provided by SIA 1983.

5.1 Chinese walls defence

First, the 'Chinese walls' defence for corporations and partnerships.

5.1.1 Chinese walls defence for corporation

A corporation does not contravene the trading and procuring offences by entering into a transaction or agreement at any time when one of its officers possesses inside information if:

(1) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than that officer who is in possession of the information;
(2) it had in operation at that time arrangements (ie 'Chinese wall') that could reasonably be expected to ensure that
  (a) the information was not communicated to any of the persons who was involved in, or made the decision to enter into, or be involved in, the transaction or agreement; or
  (b) no advice with respect to the decision or transaction or agreement was given to that person by the officer in possession of the information; or
  (c) the officer in possession of the information would not be involved in the decision or the transaction or agreement; and
(3) the information was not so communicated nor such advice given and the officer in possession of information was not involved in the decision or the transaction or agreement.[1]

1 SIA 1983, s 89G(3).

The so called 'Chinese wall' is a procedural device designed to restrict a corporation's or partnership's investment trading personnel from having access to inside information obtained by its advising personnel.

The corporation or the partnership which seeks the protection of this defence must establish that all of the statutory requirements were observed. Failure to establish that a Chinese wall is in place, may result in the company or the partnership being liable for insider trading even if the decision was made by a person who did not in fact possess the information.[2] Typically, it involves policies and procedures to limit dissemination of information and possibly the physical separation of departments within the organisation. Such policies:

(1) should be documented;
(2) should involve physical access restrictions and document control procedures, including limits on access to sensitive material held in computer files;
(3) should put in place separate supervision of divisions on opposite sides of the Chinese wall, except at senior management level;
(4) if possible, should limit on transfers between departments which are separated by the Chinese wall;
(5) should be reinforced by continuing education programmes and by imposing disciplinary sanctions for breach; and
(6) may require employees to report trading and the monitoring of trading by the corporation in its own account to detect any breach of the Chinese wall.[3]

The success of the Chinese wall will, in most cases, depend to a large extent upon the compliance within the corporation, ie self-regulation and self-enforcement which depend on the 'honesty' and 'integrity' of the corporation's employees.[4] Nevertheless, there will be considerable doubt as to how tight the Chinese wall arrangement must be. There may be certain kinds of decision-making that need to be taken by senior level or even by the board of directors, to whom the officers who gather information report. If the board puts into place an arrangement that prevent the board from having access to information reasonably necessary for their own decision-making, their conduct in setting up such arrangement could be inconsistent with their fiduciary duty as directors.[5]

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2 See *Sun Securities Ltd v NCSC* (1990) 2 ACSR 796, at pp 807–808.

3 See Baxt, R, HAJ Ford and Black, *A Securities Industry Law*, (Sydney: Butterworths, 3rd Ed, 1996), p 333.

4 It is perhaps due to these elements of self-regulation and self-enforcement that have drawn the most criticism of the Chinese wall as an effective combatant against insider trading. See *Mallesons Stephen Jaques v KPMG Peat Marwick & Ors*, (an unreported decision of the Supreme Court of Western Australia, 19 October 1990).

5 Ford, HA and Austin, RP, *Ford's Principles of Corporations Law*, (Sydney: Butterworths, 6th Ed, 1992), p 931.

Another problem as pointed out by Professor Ford[6] is how far the Chinese wall arrangement needs to go to qualify as such arrangement that 'could reasonably be expected to ensure' the separation of information and trading decisions.[7] In the US, Chinese walls are seen as part of a compliance programme rather than a self-sufficient defence. As a compliance programme, it would involve:

(1) periodic random checking of the effectiveness of the arrangements;
(2) possibly the appointment of a compliance officer; and
(3) also placing sensitive securities on a stop list or restricted list to prevent the company's dealers from trading in them so long as the information remain sensitive.

5.1.2 Chinese walls defence for partnerships

A corresponding defence is available for trading by partnership.[8] Since partnerships do not have separate legal personality, it is expressly provided that the defence applies where one or more but not all of the partners or employees are in actual possession of the information.[9] Thus if the decision to trade is taken by one or more partners, the defendant must show that those partners were not in actual possession of the information but are taken to have possessed the information merely because another partner or employee possessed it.

Professor Ford commented[10] that Chinese wall arrangements for partnerships are even more problematic than for corporations. The partner's personal economic interests and fiduciary responsibilities may coincide in requiring him to have access to information throughout the partnership. Partners may be reluctant to be excluded from information or trading decisions by Chinese wall arrangements where the information or decisions could lead to profit or liability for the firm and it is doubtful as to the effectiveness of the Chinese wall as a defence to an action for breach of fiduciary duty at general law. Therefore, the partner might find it impractical to take advantage of this statutory defence for fear that he might lose control of a situation which would lead to liability for breach of fiduciary duty otherwise than through a transaction in securities.

There is an additional defence for a partner of a partnership. Where a partner trades otherwise than on behalf of the partnership,[11] he is not taken to have contravened of the trading or procuring offences merely because he is deemed to possess information that is in the possession of another partner or employee.[12]

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6 *Ibid.*
7 as required under SIA 1983, ss 89G(3) and 89H(3).
8 SIA 1983, s 89H(3).
9 *Ibid.*
10 Ford, n 5, above, p 931.
11 Eg trading on his own account or on behalf of a client.
12 SIA 1983, s 89H(4).

5.2 Exception for underwriters

Secondly, an exception is made for underwriters in respect of acquisition/subscription of securities under an obligation of an underwriting or sub-underwriting agreement and the entering of such agreement.[13] It is specifically provided[14] that the trading and procuring offences[15] shall not apply in respect of:

(1) the entering into of an underwriting agreement or a sub-underwriting agreement; or
(2) the acquisition of securities under an obligation to do so in an agreement referred to in paragraph (1).

The communication of inside information for the purposes of procuring a person to acquire any such securities under an obligation of an underwriting agreement or to enter into an underwriting agreement is specifically allowed.[16] It is provided[17] that the communication or tipping offence[18] shall not apply in respect of the communication of information in relation to securities to a person solely for the purpose of procuring the person:

(1) to enter into an underwriting agreement or a sub-underwriting agreement in relation to any such securities; or
(2) to acquire any such securities under an obligation to do so in an agreement referred to in paragraph (1).

5.3 Schemes of arrangement, reconstructions and takeovers exception

Thirdly, exemption is provided for any acquisition or disposal of securities or the communication of information that is carried out under any other written law relating to schemes of arrangement, reconstructions and takeovers relating to corporations.[19]

5.4 Bidders' defence for corporation

Fourthly, the 'bidders' defence'. A corporation and its officers and agents are not prohibited[20] from entering into a transaction or agreement in relation to securities of another corporation merely because the corporation

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13 SIA 1983, s 89I(1).
14 *Ibid.*
15 Under SIA 1983, s 89E(2).
16 SIA 1983, s 89I(2).
17 *Ibid.*
18 Under SIA 1983, s 89E(3).
19 SIA 1983, s 89J.
20 SIA 1983, ss 89K(1) and (2).

or one of its officers[21] or the agent[22] is aware that it proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities.[23] This defence does not cover communication offences.[24]

This exception is directed at allowing a corporation proposing to make a takeover of a target company or otherwise proposing to acquire or dispose of securities of another corporation, to deal in the target company's or the other corporation's securities without contravening the insider trading provision.

5.5 Bidders' defence for natural person

Fifthly, the bidders' defence for a natural person. An individual is not prohibited from entering into a transaction or agreement in relation to securities merely because he is aware that he proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities.[25] For example, where a person buys a parcel of shares knowing that he intends to buys a further parcel at some other time. This defence however, does not cover communication offences.[26] The bidder therefore cannot tip others to deal with the securities he is dealing in.

5.6 Unsolicited transaction exception by a broker

The sixth exception applies to an unsolicited transaction by a broker. A dealer or a dealer's representative does not contravene the trading and procuring restrictions by entering into a transaction or agreement in relation to listed securities of a corporation as agent for his client principal if:

(1) the transaction or agreement is entered into under a specific instruction of his client principal which was not solicited by him;
(2) he has not given any advice to his client principal in relation to the transaction or agreement or otherwise sought to procure his client principal's instructions to enter into the transaction or agreement; and
(3) his client principal is not associated with him.[27]

This exception does not affect the client principal's liability for insider trading.[28]

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21 In the course of his duties, SIA 1983, s 89K(3) and (5).
22 In the course of acting as an agent of the corporation, SIA 1983, s 89K(5).
23 SIA 1983, s 89K(1), (2) and (4).
24 SIA 1983, s 89K(1) and (2) expressly exempt only offences under s 89E(2) and not s 89E(3).
25 SIA 1983, s 89L.
26 *Ibid*, which specifically exempts only offences under the SIA 83, s 89E(2) and not s 89E(3).
27 SIA 1983, s 89M(1).
28 SIA 1983, s 89M(2).

5.7 Redemption of units of a unit trust by trustee exception under buy-back covenant

The seventh exception provides that the trading and procuring restrictions shall not apply to a redemption by a trustee of units under a unit trust scheme in accordance with a buy-back covenant at a price that is required by the trust deed to be calculated by reference to the underlying value of the assets.[29]

5.8 'Parity of information' defence

Finally, the 'parity of information' defence. For trading and procuring offences, this defence is applicable to transactions or agreements relating to non-listed securities.[30] The defendant has a defence if:

(1) he shows that the other party to the transaction or agreement knew or ought reasonably to have known of the information before entering into the transaction or agreement;[31] and
(2) he acquires or disposes of such securities on such terms and in such circumstances that neither he nor the purpose of the acquisition or disposal is to obtain or secure any gain or avoid any loss for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available.[32]

For communicating offences, it is a defence if the court is satisfied that:

(1) the information came into his possession solely as a result of it being known in the manner likely to make it generally available;[33] and
(2) that the other party knew or ought reasonably to have known the information before the information was communicated.[34]

5.9 Exception prescribed by regulation

In addition to the above discussed exemptions, the Minister[35] may prescribe, and make regulations in respect of, persons, or transactions relating to securities, or any particular class, category or description of persons, or any particular class, category or description of transactions relating to securities, to whom or which the prohibition does not apply.[36]

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29 Ie by reference to the underlying value of the assets, less any liabilities of the unit trust scheme to which the units of the unit trust scheme relates, and less any reasonable charge for purchasing the units of the unit trust scheme or interest, see SIA 1983, s 89N.
30 SIA 1983, s 89O(1)(a).
31 SIA 1983, s 89O(1)(b).
32 SIA 1983, s 89O(1)(c).
33 Pursuant to SIA 1983, s 89A, see Chapter 3, n 28, above and accompanying text.
34 SIA 1983, s 89O(2).
35 Minister of Finance.
36 SIA 1983, s 83E(5).

5.10 Conclusion

SIA 1983 specifically provides that in a prosecution of an insider trading offence it is not necessary for the prosecution to prove the non-existence of facts or circumstances which if they existed would, by virtue of the statutory defences, preclude the act from constituting a contravention of the offences.[37] Thus the usual criminal law onus of proof is reversed in that the defendant must prove on a balance of probabilities, the facts or circumstances establishing one or more of the defences.

As it is necessary to define insider trading widely to cover the common law inadequacy in dealing with insider trading and to ensure that there is a level playing field whereby all investors operate on the same basis, the insider trading regulations under SIA 1983 are sufficiently broad in scope to cover all the practices that are considered undesirable: all persons who are not in a fiduciary or other special relationship to the corporation,[38] but who have in their possession information that is not generally available, taking unfair advantage of unpublished price-sensitive information. However, such definition encompasses both the prohibited and legal activity. It is thus necessary for SIA 1983 to provide a wide range of defences to enable certain corporate finance transactions and trades by specialist traders in the securities market to be carried out.

37 SIA 1983, s 89E

38 Whose information is being used.

Chapter 6

Disclosure

6.1 Introduction

The other ingredients for effective deterrence are effective disclosure requirements and good investigation. As the primary protection against misuse of insider information is the immediate and full disclosure by companies to which the insider information relates, such disclosure is implicit in insider trading regulation. Insider reporting provisions may also facilitate enforcement.

The disclosure requirements that are significant to insider trading deterrence are:

(1) Disclosure of directors' shareholdings under CA 1965, s 135;
(2) Disclosure by directors and chief executives of public corporation of interests in securities of the corporation or any associated corporation under SIA 1983, s 99B;
(3) Disclosure of substantial shareholdings under CA 1965, Part IV, Division 3A, ss 69B–69P and Securities Industry (Reporting of Substantial Shareholding) Regulations 1998 ('SIR 1998');
(4) Maintenance of a Register of Securities by market intermediaries under SIA 1983, s 30;
(5) Disclosure requirements of beneficial owners under Securities Industry (Central Depositories) Act 1991, ss 25 and 25A; and
(6) Corporate Disclosure requirements of KLSE and SC.

In addition, every listed company must adopt rules governing dealings by directors in its listed securities in terms that are no less exacting than those stipulated in Chapter 5 of the Securities Commission's Policies and Guidelines on Issue/Offer of Securities ('SC's Guidelines') which should be viewed as an aid to prevent directors and principal officers from committing insider trading.

6.2 Disclosure of directors' shareholdings

A director is under an obligation to notify the company by notice in writing of his interest in the company's shares, debentures, participatory interests, rights, options and contracts relating to the above out of which

the director is entitled to a benefit and any changes in respect of those interests.[1]

The notice must be given to the company within 14 days:

(1) of his date of appointment;
(2) the acquisition of such an interest in the securities of the company; and
(3) of the occurrence of the event of any change in respect of the particulars of his interest in the securities in the company.[2]

In the case of a director of listed company, a copy of the notice must be extended to the Stock Exchange on the day on which he gives the notice to the company.[3]

The information he must give in the notice in writing shall consist of (as the case may be):

(1) particulars relating to shares, debentures, participatory interests, rights, options and contracts relating to such securities out of which the director is entitled to a benefit; and
(2) particulars of any changes in respect of the above of which notice has been given to the company and the consideration (if any) received or paid resulting from the changes.

A copy of the notice must be sent by the company to each of the other directors of the company within seven days of receipt of the said notice.[4]

'Participatory interest' included in CA 1965, ss 134 and 135 refers to an interest within the meaning of CA 1965, s 84, ie, any right to participate or interest, whether enforceable or not and whether actual prospective or contingent:

(1) in any profits, assets or realisation of any financial or business undertaking or scheme (of the company) whether in Malaysia or elsewhere;
(2) in any common enterprise (of the company) whether in Malaysia or elsewhere in which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party (eg commission); or
(3) in any investment contract (of which the company is a party),

whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset.

When determining whether a person has an interest in the shares, debenture or participatory interest reference must be made to the provisions of CA 1965, s 6A which include deemed interests.

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1 CA 1965, s 135(1)(a) and (b). See Appendix 2 for specimens of the notices in writing.
2 CA 1965, s 135(2).
3 CA 1965, s 135(2A).
4 CA 1965, s 135(3).

Every company must keep a Register of Directors' Shareholdings at its registered office and the register must be opened for inspection by any member without charge and by any other person on payment of a prescribed fee as may be fixed by the company.[5]

Any person may request the company to furnish him with a copy of the register or any part of the register on payment in advance of a prescribed fee. The company must within 21 days after the day of the receipt of the request send the copy to that person.[6]

The company must produce its register at the commencement of each annual general meeting and keep it open and accessible during the meeting to all persons attending the meeting.[7]

The ROC may at any time in writing require a company to furnish him with a copy of its register or any part thereof and the company must furnish the copy within seven days after receiving the requirement.[8]

The register must show with respect to each director of the company particulars of:

(1) shares in the company or in its holding or subsidiary companies being shares in which the director has an interest, and the nature and extent of that interest;
(2) debentures of or participatory interests made available by the company or its holding or subsidiary companies being debentures or participatory interests in which the director has an interest and the nature and extent of that interest;
(3) rights or options of the director and/or other person(s) in respect of the acquisition or disposal of shares in, debenture of or participatory interest made available by the company or its holding or subsidiary companies; and
(4) contracts to which the director is a party or under which he is entitled to a benefit being contracts under which a person has a right to call for or to make delivery of shares in, debenture of or participatory interests made available by the company or its holding or subsidiary companies.[9]

Every company must within three days after receiving notice from a director[10] enter in its register the above particulars, including the number and description of shares, debentures, participatory interests, rights, options and contracts to which the notice relates, and:

(1) the price or other consideration for the transaction (if any) by reason of which an entry is required to be made under CA 1965, s 134; and

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5 CA 1965, s 134(8).
6 CA 1965, s 134(9).
7 CA 1965, s 134(11).
8 CA 1965, s 134(10).
9 CA 1965, s 134(1).
10 Under CA 1965, s 135(1)(a).

(2) the date of:

(a) the agreement for the transaction, or if it is later, the completion of the transaction; or

(b) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under CA 1965, s 134,

in respect of shares, debentures, participatory interests, rights, or options acquired or contract entered into after he becomes a director.[11]

The company must also within three days after receiving notice in writing from a director[12] enter in the register particulars of the change.[13]

The company shall not[14] be deemed to have notice of or to be put into inquiry as to the right of any person to or in relation to a share in, debenture of or participatory interest made available by the company (ie, the compliance with the requirement under CA 1965, s 134 shall not be deemed to constitute a constructive notice as to the right of any person to or in relation to a share, etc of the company).[15]

Compliance with the requirement of CA 1965 s 134 is important since the penalty for default is imprisonment for 3 years or a fine of RM15,000 with default penalty.[16]

The register need not show with respect to any director, particulars of shares in a related corporation that is the wholly-owned subsidiary of the company or of another corporation.[17]

A company that is a wholly-owned subsidiary shall be deemed to comply with the requirement of CA 1965, s 134 in relation to its director who is also a director of the holding company, if the particulars of the director required by CA 1965, s 134 to be shown in the register of the wholly-owned subsidiary are shown in the register of the holding company.[18] This provision does not excuse a wholly-owned subsidiary from maintaining a register of directors' shareholdings in respect of directors who are not also directors of the holding company.

6.3 Disclosure by directors and chief executives of public corporation

The Securities Industry (Amendment) Act 1998 which came into force on 1 April 1998 amongst other things requires additional disclosure from directors and the chief executive of a public corporation.

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11 CA 1965, s 134(5).
12 Under CA 1965, s 135(1)(b).
13 CA 1965, s 134(6).
14 By reason of anything done under the CA 1965, s 134.
15 CA 1965, s 134(7).
16 CA 1965, s 134(14).
17 CA 1965, s 134(2).
18 CA 1965, s 134(3).

The additional disclosure requirements are contained in SIA 1983, s 99B. The maximum penalty for non-compliance or breach is RM1,000,000 or imprisonment for a period not exceeding 10 years or both.[19]

In summary, s 99B imposes on every director and chief executive officer of a listed corporation,[20] a duty to disclose to the SC his interest in securities of the listed corporation and any associated corporation of the listed corporation.

SIA 1983, s 99B(1) provides that unless exempted by the SC in writing:

(1) on the date of coming into force of s 99B (ie, 1 April 1998), any person who is the chief executive or director of a listed corporation, and is then interested in the securities of the listed corporation or any associated corporation of the listed corporation; or
(2) after the date of coming into force of s 99B, any person who becomes a chief executive or director of a listed corporation and at the time when he does so is interested in securities of the listed corporation or any associated corporation of the listed corporation,

shall notify the SC in writing in the format of the Proforma Form,[21] of the subsistence of his interests at that time and the extent of his interests.

There is no definition as regards the term 'associated corporation'. However, the SC's press release of 7 May 1998 clarified that the term includes only 'related corporation' as defined under SIA 1983, s 2 which (in relation to a corporation) means a corporation that is related by way of holding-subsidiary or fellow subsidiary relationship of a group of companies as stated under CA 1965, s 6, and does not include associated companies as understood in accounting terms.

SIA 1983, s 99B does not provide a time frame for the chief executive/director to notify the SC. The press release of 7 May 1998 stated that any changes of interest in securities are to be notified within 14 days of such change.

SIA 1983, s 99B(2) requires a chief executive/director of a listed corporation to notify the SC during his tenure as chief executive/director, the occurrence of the following events:

(1) any event resulting in him becoming or ceasing to be interested in securities in the listed corporation or any associated corporation of the listed corporation;[22]
(2) the entering by him of a contract to sell any of the securities;[23]
(3) the assignment by him to any person, of any right granted to him by the listed corporation to subscribe securities in the listed corporation;[24]

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19 SIA 1983, s 99B(4).
20 And his spouse, child and parent, see SIA 1983, s 99B(5).
21 See Appendix 3.
22 SIA 1983, s 99B(2)(a).
23 SIA 1983, s 99B(2)(b).
24 SIA 1983, s 99B(2)(c).

(4) the grant to him by any associated corporation of the listed corporation to subscribe for securities in that associated corporation;[25]
(5) the exercise by him of the right granted by the associated corporation as in (4) above;[26]
(6) the assignment by him of the right as granted under (4) above to any other person;[27] and
(7) the event where a company in which he has an interest in its securities becomes an associated corporation of the listed corporation or where he will immediately have an interest in its securities after the company so becoming an associated corporation of the listed corporation.[28]

The notification by the chief executive/director has to state the extent of his interests. 'Interests in securities' includes indirect interest in the same meaning as interests in shares as provided under CA 1965, s 6A.[29]

The Proforma Form sets out the extent of information required. Under the Proforma Form, particulars to be disclosed include:

(1) For particulars of notifier[30] — name, nationality, identity card/passport number, residential address, business occupation, position in the listed corporation, date of appointment to the listed corporation and the relationship with the chief executive/director (for spouse, child or parent of the chief executive/director).
(2) For particulars of securities — type of securities, date of acquisition/disposal, number/amount and percentage of securities acquired/disposed of, balance amount and percentage of securities after the acquisition/disposal, the name of the registered holder of those securities and particulars of events by reason of which change has occurred (however, it did not give clarification as to what extent and type of particulars of the events need to be disclosed).

SIA 1983, s 99B(3) clarifies that s 99B(2) does not require the notification by a person of the occurrence of an event which comes to his knowledge after he had ceased to be a chief executive/director.

SIA 1983, s 99B(5) provides that for the purpose of s 99B, 'chief executive' and 'director' includes a spouse, child or parent of the chief executive or director. These 'connected persons' are required to notify the SC individually of their respective interests in securities. Every notifier[31] is required to submit a separate form for his interests in securities of each of the corporation. This would mean that if a director has interest in ten

25 SIA 1983, s 99B(2)(d).
26 SIA 1983, s 99B(2)(d).
27 SIA 1983, s 99B(2)(d).
28 SIA 1983, s 99B(2)(e).
29 SIA 1983, s 4.
30 A term used by the Proforma Form to denote the person making the notification.
31 Ie, chief executive, director and the spouse, child and parent who have an interest in securities.

of the subsidiaries of the listed corporation, he is required to submit ten notifications[32] to the SC.

6.4 Disclosure of substantial shareholdings

This disclosure requirement only applies to shareholders of the following companies:

(1) all public companies, whether listed or not; and
(2) declared companies, ie, body corporate incorporated in Malaysia or non-body corporate formed in Malaysia which are declared by the Ministry of Domestic Trade and Consumer Affairs by way of certification in the Gazette to be a company subjected to the provisions.[33]

CA 1965, s 69D and SIR 1998, r 7 set out what will constitute a substantial shareholding in a company:

(1) an interest or interests in not less than 2% of the total nominal amount of all the voting shares in a company;[34] or
(2) where the company has different classes of shares, an interest or interests in not less than 2% of the total nominal amount of all the voting shares of a class.[35]

A shareholder who has a substantial shareholding is therefore a substantial shareholder.[36] A bare trustee[37] although not regarded as having interest in the shares held by him under s 6A(9), is deemed to be a substantial shareholder for the purpose of disclosure under substantial shareholding requirement.[38] Thus the requirements of disclosure apply to a bare trustee.

Every substantial shareholder (which includes all natural persons resident in Malaysia or not and whether in Malaysia or not and to all body corporate whether incorporated or carrying on business in Malaysia or not[39]) is required to give within seven days after becoming a substantial shareholder:[40]

(1) a notice in writing in Form 29A to the Company[41] and the Stock Exchange;[42] and
(2) a notice in writing in the form prescribed in Schedule 1 of SIR 1998 to the SC.

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32 Proforma Form.
33 CA 1965, s 69B(2) and SIR 1998, r 5.
34 CA 1965, s 69D(1)and SIR 1998, r 7(1).
35 CA 1965, s 69D(2) and SIR 1998, r 7(2).
36 CA 1965, s 69D(3) SIR 1998, r 7(3).
37 See CA 1965, s 6A, eg authorised nominee holding securities for beneficial owner.
38 CA 1965, s 69P and SIR 1998, r 7A.
39 CA 1965, s 69C(1) and SIR 1998, r 4.
40 CA 1965, s 69E(2) and SIR 1998, r 8(2); for bare trustee disclosure, see CA 1965, s 69P(3) and SIR 1998, r 7A(2).
41 CA 1965, s 69E(1).
42 CA 1965, s 69I.

The notice must be given even if he has ceased to be a substantial shareholder before the expiration of the said seven days.[43]

The particulars required to be given as set out by CA 1965, s 69E(1) and Form 29A are as follows:

(1) that he hereby gives notice to the company that he is a substantial shareholder;
(2) his name, nationality, identification (ie, I/C No or passport No) and addresses — particulars of substantial shareholder;
(3) full particulars of voting shares he has an interest in:
    (a) the date of acquisition of the interest;
    (b) if the shares are held under another person's name (eg nominee), the name and address of the nominee (registered holder); and if the substantial shareholder holds the shares himself, state accordingly;
    (c) the number of shares or amount of stock and the different classes if any;
    (d) full particulars of each interest:
        (i) as beneficiary under trust;[44]
        (ii) as a joint holder;[45]
        (iii) arising from controlling directly or indirectly a company which has interest(s) in the shares;[46] and
        (iv) as holder;
    (e) full particulars of the circumstances by reason of which the substantial holder has interest:
        (i) arising from the execution of a contract;
        (ii) arising from the right (other than under trust) to have a share transferred to him or to his order, whether present or in the future, conditional or not, eg
            - executor administrator or personal representative;
            - under scheme of arrangement;
        (iii) arising from the rights under an option exercisable at present or in the future and whether conditional or not; or
        (iv) by way of entitlement (otherwise than as proxy or corporate representative) to exercise or control the exercise of a right attached to shares of which he is not a registered holder;[47]
    (f) in the case of bare trustee, the fact that he is a bare trustee shall be stated and in relation to the particulars of the voting shares, the full name and address, the I/C or passport No of each of the beneficiaries and the number of shares held by each of the beneficiaries shall be disclosed.[48]

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43 CA 1965, s 69E(3) and SIR 1998, r 8(3).
44 See CA 1965, s 6A(2).
45 See CA 1965, s 6A(7).
46 CA 1965, s 6A(4) & (5).
47 CA 1965, s 6A(6).
48 CA 1965, s 69P(2) and SIR 1998, r 7A(3).

The notice[49] must be enclosed together with a copy of the contract, scheme of arrangement and a statement in writing verifying the copy of the contract, scheme or arrangement; or where such documents are not reduced to writing or not readily available a memorandum setting out full particulars of the circumstances, contracts or scheme of arrangement together with a statement in writing verifying that memorandum.[50] It must be dated and signed by the substantial shareholder. In case of a body corporate, it shall be signed by a director or the secretary.

The substantial shareholder and bare trustee (who holds substantial shares) must within seven days after the date of a change in the interest(s) notify the company and the Stock Exchange of the change in Form 29B and the SC in a Schedule 2 Form of SIR 1998 stating his name and the date of the change and the full particulars of the change in interest.[51] Any acquisition or disposal of voting shares in the company is deemed to be a change in the interest(s) of the substantial shareholder in voting shares in that company.[52]

A notice in writing in Form 29C must be given to the company and the Stock Exchange and a Schedule 3 Form of SIR 1998 must be given to the SC within seven days after a person (or bare trustee) ceases to be a substantial shareholder.[53] The notice shall state his name, the date on which he has ceased to be a substantial shareholder and full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.[54]

A listed company is required to provide the Stock Exchange with a copy of any notice of substantial shareholding or notice of changes thereof that the company receives from its substantial shareholders for public release.[55]

Every company to which the provisions apply must keep a Register of Substantial Shareholders at the company's registered office in Malaysia and the Register shall be open for inspection by any member free of charge and by any other person on payment for each inspection of a sum of RM5 or such lesser sum as the company may require.[56]

The particulars to be included in the register are as follows:

(1) the names in alphabetical order of all the substantial shareholders from whom notices in Form 29A have been received by the Company as required under CA 1965, s 69E; and
(2) full particulars/information given in the notices given under CA 1965, ss 69E, 69F and 69G.[57]

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49 Form 29A. See Appendix 4.
50 Companies Regulations 1966, r 8B.
51 CA 1965, ss 69F(1)(2) & 69I and SIR 1998, r 9(1) & (2). See Appendix 4 and 5.
52 CA 1965, s 69F(3) and SIR 1998, r 9(3).
53 CA 1965, ss 69G(2) & 69I and SIR 1998, r 10(2). See Appendix 4 and 5.
54 CA 1965, s 69G(1) and SIR 1998, r 10(1).
55 SC's Guidelines, para 7.05.
56 CA 1965, s 69L(1) & (2).
57 CA 1965, s 69L(1).

The penalty for non-compliance in giving Form 29A, 29B and 29C to the company as required under as CA 1965, ss 69E, 69F and 69G is a fine of RM1,000,000 with default penalty of RM5,000 per day.[58] The penalty for non-compliance with SIR 1998 in giving the Schedule 1, 2 and 3 Forms is a fine of up to RM1,000,000 or imprisonment of up to five years or both.[59] Therefore care must be taken to ensure compliance of the provisions.

6.5 Register of securities

SIA 1983, s 30 requires a dealer, dealers' representative, investment adviser, investment representative, fund manager, fund manager's representative and financial journalist to maintain a Register of Securities in the prescribed form ie, Form 14 of the Securities Industry Regulations 1987 ('SIR 1987') — 'Register of Securities', of the securities quoted in Malaysia in which he has an interest.[60] The register shall be kept at such place in Malaysia nominated by such person who shall notify the SC in writing ie, Form 15 of SIR 1987 — 'Notice of Place at which Register is to be kept', after he commenced keeping the register.[61] Annually, the Form 14 shall be lodged with the SC within two months after each financial year giving particulars of all dealings in securities which have been made by him during the last preceding year.[62]

Any change in the place where the register is kept shall be notified to the SC in Form 16 of SIR 1987 — 'Notice of Change of Place or Cessation of Keeping of Register'.[63]

He is required to enter the particulars of the securities in which he has an interest and the particulars of his interest in the register within seven days.[64] Where there is a change, not being a prescribed change, in the interest or interests in securities he shall enter in the register full particulars of the change including the date of the change and the circumstances by reason of which that change has occurred.[65] The entry shall be made within seven days after the date of the change.[66] Where he acquires or disposes of securities there shall be deemed to be a change in the interest or interests.[67]

A dealer, dealers' representative, investment adviser, investment representative, fund manager and fund manager's representative shall give

58 CA 1965, s 69M.
59 SIA 1983, s 123.
60 SIA 1983, ss 30(1) and 31(1).
61 SIA 1983, ss 30(2) and 31(1).
62 SIR 1987, r 18(2).
63 SIA 1983, s 31(1).
64 SIA 1983, s 30(3).
65 SIA 1983, s 30(4)(a).
66 SIA 1983, s 30(4)(b).
67 SIA 1983, s 30(4)(c).

notice to the SC in the prescribed form ie, Form 14 of SIR 1987 of such particulars as are prescribed including the place at which he will keep the register as part of his application for the licence.[68] In the case of a financial journalist, he is required to give such notice to the SC within 14 days from the date he became such a financial journalist by way of lodgement of a Form 14.[69] A financial journalist is a person who is not a licensed person but who in the course of his business or employment contributes advice, prepares analyses or reports about securities for publication in a newspaper or periodical and other means of information services.[70] The notice shall be given to the SC even if he has ceased to be such a person before the expiry of the period referred to in SIA 1983, s 31(2).[71] A person who ceases to be such a person shall give notice of his cessation in the prescribed form[72] within 14 days of his so ceasing.[73] Failure to comply with these requirements may render the person in default liable to a penalty of imprisonment of up to five years or to a fine of up to RM1,000,000 or to both.[74]

The SC may require such a person to produce for inspection the register.[75] The SC may make a copy of or make extracts from the register.[76] Failure to produce the register for inspection is an offence. Failure to comply with these requirements may render the person in default liable to a penalty of imprisonment of up to five years or to a fine of up to RM1,000,000 or to both.[77]

The SC may by notice require the proprietor or publisher or a newspaper or periodical to supply the name and address of the financial journalist who has contributed any advice or prepared any analysis or report that has been published in a newspaper or periodical owned or published by that proprietor or publisher or the names and addresses of all the financial journalists who have contributed any such advice or prepared any such analysis or report within a period specified in the notice.[78] A proprietor or publisher who wilfully fails to comply with such a notice commits an offence.[79] Failure to comply with these requirements may render the person in default liable to a penalty of imprisonment of up to five years or to a fine of up to RM1,000,000 or to both.[80]

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68 SIA 1983, s 31(1) and (2)(a).
69 SIA 1983, s 31(1) and (2)(b).
70 SIA 1983, s 29(2).
71 SIA 1983, s 31(3); ie 14 days.
72 Ie Form 16 of SIR 1987.
73 SIA 1983, s 31(4).
74 SIA 1983, ss 31(5) and 123.
75 SIA 1983, s 33(1).
76 SIA 1983, s 33(1).
77 SIA 1983, ss 33(2) and 123.
78 SIA 1983, s 34(1).
79 SIA 1983, s 34(2).
80 SIA 1983, ss 34(2) and 123.

6.6 Disclosure requirements of beneficial owners

The Securities Industry (Central Depositories) Act 1991 ('SICDA 1991') was amended by the Securities (Central Depositories) (Amendment) Act 1998 which came into force on 1 November 1998 to ensure transparency of nominee holdings.

Under SICDA 1991 after the amendments, all securities listed or proposed to be listed for quotation on the official list of a stock exchange are required to be deposited with a central depository, ie, the deposit of securities with the central depository is mandatory.[81] And only beneficial owners and authorised nominees can be securities account holders.[82]

A beneficial owner in respect of deposited securities is defined as the ultimate owner of the deposited securities who is the person who is entitled to all rights, benefits, powers and privileges and is subject to all liabilities, duties and obligations in respect of, or arising from, the deposited securities, and does not include a nominee of any description.[83] An authorised nominee is a person who is authorised to act as nominee as specified under the rules of a central depository.[84] A list of authorised nominees is set out under r 1.01 of the Rules of Malaysian Central Depository Sdn Bhd ('MCD').

An account holder of a securities account is required to declare in such manner as may be specified in the rules of the central depository that he is the beneficial owner or the authorised nominee, as the case may be.[85] An authorised nominee is required to open a separate securities account for each of the beneficial owners whose deposited securities the authorised nominee is holding.[86] An authorised nominee is required to furnish to the central depository in such manner as may be specified in the rules of the central depository, the name and other particulars of the beneficial owner of the securities deposited in the securities account opened in the name of the authorised nominee.[87]

All dealings in respect of deposited securities shall only be effected by the beneficial owners of such deposited securities or an authorised nominee, as the case may be.[88]

Any person who contravenes ss 25(5) and 25A(1) & (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding RM3,000,000 or to imprisonment for a term not exceeding ten years or to both.[89]

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81 SICDA 1991, s 14(1).
82 SICDA 1991, s 25(4).
83 SICDA 1991, s 2.
84 SICDA 1991, s 2.
85 SICDA 1991, s 25(5).
86 SICDA 1991, s 25A(1).
87 SICDA 1991, s 25A(2).
88 SICDA 1991, s 29A.
89 SICDA 1991, ss 25(6) and 25A(3).

These new requirements as regards depositing all listed securities with a central depository and disclosure of the ultimate beneficial owner of the deposited securities ensure full transparency. The loophole of using nominees to deal in securities to avoid discovery of the true beneficial owners is now plugged.

6.7 Corporate disclosure requirements

Under s 13 of the KLSE Listing Requirements, all companies applying for listing on the Exchange are required to enter into an undertaking with the Exchange, *inter alia*, to comply with the Corporate Disclosure Policy requirements which impose on the companies duties in the dissemination of corporate information under these rules. All listed companies are also required to comply with the SC's Policies and Guidelines on Issue/Offer of Securities ('SC's Guidelines').

As such all listed companies are required to comply with the Corporate Disclosure Policy as set out in Part 10 of the Listing Requirements and Chapter 6 of the SC's Guidelines. The objective of these two policies is based on the belief that the conduct of fair and orderly market requires every listed company to make available to the public information necessary to make informed investment decisions. The listed companies are required to take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information.

The KLSE Corporate Disclosure Policy sets out six specific policies concerning disclosure. They are as follows:

(1) Policy on Immediate Public Disclosure of Material Information. A listed company is required to make immediate public disclosure of all material information concerning its affairs except in exceptional circumstances.[90]
(2) Policy on thorough public dissemination. A listed company is required to release material information to the public in a manner designed to obtain its fullest possible public dissemination.[91]
(3) Policy on clarification or confirmation of rumours and reports. Whenever a listed company becomes aware of a rumour or report, true or false, that contains information that is likely to have, or has had, an effect on the trading in the company's securities or would be likely to have a bearing on investment decisions, the company is required to publicly clarify the rumour or report as promptly as possible.[92]
(4) Policy on response to unusual market action. Whenever unusual market action takes place in a listed company's securities, the company is expected to make inquiry to determine whether rumours or other

90 KLSE Listing Requirements, s 335.
91 KLSE Listing Requirements, s 336.
92 KLSE Listing Requirements, s 337.

conditions requiring corrective action exist, and if so, to take whatever action is appropriate. If, after the company's review, the unusual market action remains unexplained, it may be appropriate for the company to announce that there has neither been any material development in its business and affairs not previously disclosed nor, to its knowledge, any other reason to account for the unusual market action.[93]

(5) Policy on unwarranted promotional disclosure. A listed company should refrain from promotional disclosure activity which exceeds that necessary to enable the public to make informed investment decisions. Such activity includes inappropriately worded news releases, public announcements not justified by actual developments in a company's affairs, exaggerated reports or predictions, flamboyant wording and other form of over-stated or over-zealous disclosure activity which may mislead investors and cause unwarranted price movements and activity in a company's securities.[94]

(6) Policy on insider trading. 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.[95]

Failure to comply with the Policy may render the listed company liable to the sanctions set out in KLSE Listing Requirements, s 392.

Chapter 6 of the SC's Guidelines requires listed companies:

(1) to make immediate announcement of information which may be reasonably expected to have a material effect on market activity in, and prices of, its listed securities;[96]

(2) to make immediate public disclosure of all material information concerning its affairs;

(3) to release information to the public in a manner designed to achieve the widest possible dissemination;

(4) to make periodic announcements of the status of any memorandum of understanding (MOU), where such MOU has been entered into with another party; and

(5) to refrain from promotional disclosure activity beyond that necessary to enable the public to make informed investment decisions, in an attempt to influence prices of securities.[97]

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93 KLSE Listing Requirements, s 338.
94 KLSE Listing Requirements, s 339.
95 KLSE Listing Requirements, s 340.
96 SC's Guidelines, Chapter 6, para 6.01.
97 SC's Guidelines, Chapter 6, para 6.02.

Generally, any material information which:

(1) is necessary to enable holders of the issuer's listed securities and the public to appraise the position of the listed company and its group;
(2) is necessary to avoid the establishment of a false market in the listed securities; and
(3) might reasonably be expected to materially affect market activity in and the price of its securities,

must be submitted promptly to the Exchange for public release.

In addition, there is guidance contained in Part 2 of the KLSE Listing Requirements relating to specific immediate announcements. The guiding principle is: there should be an immediate announcement of 'any information concerning the company or any of the subsidiary companies to avoid the establishment of a false market in the company's securities or which would be likely to materially affect the price of its securities'.

The SC will take appropriate action where it considers that improper use is being made of price-sensitive information. The SC will not tolerate the practice of allowing information to leak prior to publication and formal announcement of the details of a proposal, especially where price-sensitive information is acquired by virtue of one's position as an officer, agent or employee of a corporation, and is used in an improper manner to gain personal advantage.[98]

6.8 Dealings by directors in securities of the company

Every listed company must adopt rules governing dealings by directors in its listed securities in terms that are no less exacting than those stipulated in Chapter 5 of the SC's Guidelines[99] which should be viewed as an aid to prevent directors and principal officers from committing insider trading.

The rules must apply to the following types of dealings:[100]

(1) Dealings in the securities of a listed company by a director of the company, any person connected with a director,[101] or any principal officer of a listed public company;[102] and
(2) Dealings by a director, any person connected with a director or any principal officer of a listed company, in the securities of other listed

98 SC's Guidelines, Chapter 6, para 6.03.

99 SC's Guidelines form part of securities laws; see SIA 1983, s 2. Thus non-compliance with the Guidelines will render the defaulter liable to a fine of not exceeding RM1,000,000 or imprisonment not exceeding 5 years or both; and a fine not exceeding RM5,000 per day for continuing offences; see SIA 1983, s 123.

100 Such dealings shall be deemed as the director's dealings for the purpose of these Guidelines; see SC's Guidelines, Chapter 5, para 5.02.

101 As defined by CA 1965, s 122A.

102 A principal officer shall include the chief executive officer, financial officer or key officer who has access to the company's latest financial performance or who is privy to price-sensitive information; see SC's Guidelines, Chapter 5, para 5.02.

companies when, by virtue of his/her position in his/her own listed company or his/her connection with a director of that listed company, as the case may be, he/she is in possession of unpublished price-sensitive information in relation to these other securities.

6.8.1 Closed periods

Under the guidelines, the circumstances under which dealings are prohibited, ie closed periods are:[103]

(1) During the period commencing from the time information is obtained up to one full trading day[104] after the announcement of a matter that involves unpublished price-sensitive material information in relation to the securities of the company (or, where relevant, any other listed company);
(2) During the period from the commencement of negotiation for a corporate proposal involving a transaction having a value exceeding 25% of the net assets of the listed company up to one full trading day after the announcement or one full trading day after the abortment of negotiation, as the case may be; or
(3) During the period commencing from one month prior to the targeted date of announcement of the quarterly, interim and preliminary financial results up to one full trading day after the announcement of financial results for the relevant period.

6.8.2 Procedure for securities transactions by directors

Other than the closed periods as provided above, a director is free to deal in his/her company's securities. However, the following guidelines should be observed:[105]

(1) Any such dealings should be carried out only during the period commencing after one full trading day from the announcement of the annual, half-yearly or quarterly results, as the case may be, up to the day prior to the expiry of the current financial year, half-year or quarter, as the case may be, in which the announcement is made;
(2) A director who has entered into any such dealings shall give notification in writing to the company secretary, or any other person authorised in writing by the board, within 14 days after the transaction had taken place, stating the date of transaction, the transaction price,

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103 See SC's Gudelines, Chapter 5, para 5.03(1).

104 One full trading day is defined as one full market day of the stock exchange, not including the day when an announcement is made, which commences from 9.30 am to 5.00 pm in a given business day. In other words, regardless of what time the stock exchange receives an announcement on a given day, dealings can only commence after one full trading day from such an announcement, not counting the day of the announcement; see SC's Gudelines, Chapter 5, para 5.04.

105 See SC's Gudelines, Chapter 5, para 5.03(2).

the amount of securities acquired or disposed of and the figure as a percentage of the company's issued capital;

(3) The company should maintain proper written record of the notifications given. Any such notifications received shall be furnished to the SC and the Stock Exchange within one full trading day of the notifications; and

(4) The company secretary shall, at each meeting of the board, table a summary of the director's dealings notified to the company since the previous board meeting.

6.8.3 Flexibilities

However, under exceptional circumstances[106] directors are given the flexibilities to deal in his/her company's securities during the closed periods, subject to adherence to the following conditions:[107]

(1) prior to dealings, an announcement should be made to the Stock Exchange by the affected director, stating—
   (a) his/her current shareholding in the company; and
   (b) his/her intention to acquire or dispose of the securities of the company during the closed periods where dealings are prohibited by the SC;

(2) dealings should commence after one full trading day from such announcement as stipulated in (1) above;

(3) the director should report to the Board of the listed company through the company secretary, within one full trading day after dealings have taken place;

(4) an announcement should be made to the stock exchange by the affected director not later than one full trading day following each dealing, stating—
   (a) the date of transaction;
   (b) the transaction price; and
   (c) the amount of securities acquired or disposed of and the figure as a percentage of the company's issued capital;

(5) the director should observe the procedure for securities transactions under SC's Guidelines, chapter 5, para 5.03(2).[108]

6.8.4 Dealings exempted from closed period restrictions

The following types of dealings are exempted from the closed period restrictions on dealings:[109]

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106 Eg where a pressing financial commitment has to be met during the closed periods as illustrated under SC Guidelines, Chapter 5, para 5.03(1).

107 See SC's Guidelines, Chapter 5, para 5.03(3).

108 See 6.8.2 above.

109 See SC's Guidelines, Chapter 5, para 5.05.

(1) exercise of options or rights under an employee share or share option scheme;
(2) exercise of warrants or conversion of convertible securities;
(3) acceptance of entitlements under an issue or offer of securities, where such issue or offer is made available to all holders of the listed public company's securities (or to all holders of a relevant class of its securities) on the same terms; or
(4) undertakings to accept, or the acceptance of, a take-over offer.

6.9 Conclusion

The disclosure requirements are intended to have a direct bearing on insider trading. By requiring such data to be recorded and maintained, it is argued that insiders run the risk of their trading being publicised and are deterred from so trading. The requirements of allowing only authorised nominees to hold securities on behalf of beneficial owners and the requirements for authorised nominees to disclose the identity of beneficial owners filled the loophole of using multiple nominees to hide the identity of the true owners. The threat of discovery, through disclosure of holdings, dampens the temptation to trade on inside information.

These disclosure requirements coupled with the Corporate Disclosure Policy of the Stock Exchange would, to a large extent, work as an effective deterrent framework to reduce the occurrence of insider trading.

There are also restrictions on dealings by directors and principal officers in the company's securities during closed periods. Such restrictions are meant to ensure that directors and principal officers who are privy to inside information do not deal with the securities of the company.

In conclusion, Malaysia has a potentially impressive array of weapons on the statute book to deal with insider trading. However, the effectiveness of insider trading regulation is conditional upon monitoring market operators, the stock exchange and insiders, and the ability to expeditiously bring offenders to task.

Nevertheless, regulators will probably never be able to stop insider trading, an effective deterrent framework at best would only reduce the occurrence but not elimination.

Appendix 1

SECURITIES INDUSTRY ACT 1983
ACT 280

PART IX
TRADING IN SECURITIES

DIVISION 2

Insider Trading

89. Information

For the purposes of this Division, "information" includes–

(a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;
(b) matters relating to the intentions, or likely intentions, of a person;
(c) matters relating to negotiations or proposals with respect to–
  (i) commercial dealings; or
  (ii) dealing in securities ;
(d) information relating to the financial performance of a corporation;
(e) information that a person proposes to enter into, or has previously entered into one or more transactions or agreements in relation to securities or has prepared or proposes to issue a statement relating to such securities; and
(f) matters relating to the future.

89A. Information generally available

(1) For the purposes of this Division, information is generally available if the information has been made known in a manner that would, or would tend to, bring it to the attention of reasonable persons who invest in securities of a kind whose price or value might be affected by the information, and since it was so made known, a reasonable period for it to be disseminated among, and assimilated by, such persons has elapsed.

(2) The information referred to in subsection (1) includes information that consists of deductions or conclusions made or drawn from such information.

89B. Material effect on price or value of securities

For the purposes of this Division, an information that on becoming generally available would or would tend to have a material effect on the price or value of securities, refers to such information which would or

would tend to, on becoming generally available, influence reasonable persons who invest in securities in deciding whether or not to acquire or dispose of such securities, or enter into an agreement with a view to acquire or dispose of such securities.

89C. Trading in securities

For the purposes of this Division, trading in securities that is ordinarily permitted on the stock market of a stock exchange is to be taken to be permitted on that stock market even though trading in any such securities on that stock market is suspended.

89D. Reference to "procure"

For the purposes of this Division and section 90A but without limiting the meaning of the term "procure" as provided in this section, if a person incites, induces, encourages or directs an act or omission by another person, the first-mentioned person is taken to procure the act or omission by the other person.

89E. Prohibited conduct of person in possession of inside information

(1) A person is an "insider" if that person–

(a) possesses information that is not generally available which on becoming generally available a reasonable person would expect it to have a material effect on the price or the value of securities; and

(b) knows or ought reasonably to know that the information is not generally available.

(2) An insider shall not, whether as principal or agent, in respect of any securities to which information in subsection (1) relates–

(a) acquire or dispose of, or enter into an agreement for or with a view to the acquisition or disposal of such securities; or

(b) procure, directly or indirectly, an acquisition or disposal of, or the entering into an agreement for or with a view to the acquisition or disposal of such securities.

(3) Where trading in the securities to which the information in subsection (1) relates is permitted on a stock market of a stock exchange, the insider shall not, directly or indirectly, communicate the information referred to in subsection (1), or cause such information to be communicated, to another person, if the insider knows, or ought reasonably to know, that the other person would or would tend to–

(a) acquire, dispose of, or enter into an agreement with a view to the acquisition or disposal of, any securities to which the information in subsection (1) relates; or

(b) procure a third person to acquire, dispose of or enter into an agreement with a view to the acquisition or disposal of, any securities to which the information in subsection (1) relates.

(4) A person who contravenes or fails to comply with subsection (2) or (3) commits an offence and is liable on conviction to a fine of not less than one million ringgit and to imprisonment for a term not exceeding ten years.

(5) The Minister may prescribe, and make regulations in respect of, persons, or transactions relating to securities, or any particular class, category or description of persons, or any particular class, category or description of transactions relating to securities, to whom or which this section does not apply.

89F. Proof of contravention of section 89E

In a prosecution of an offence under subsection (2) or (3) of section 89E, it is not necessary for the prosecution to prove the non-existence of facts or circumstances which if they existed would, by virtue of section 89G, 89H, 89I, 89J, 89K, 89L, 89M, 89N or 89O, or any regulations made under subsection (5) of section 89E, preclude the act from constituting a contravention of subsection (2) or (3) of section 89E, as the case may be.

89G. Secrecy arrangements by corporation

(1) For the purposes of this Division, a corporation is deemed to possess any information–

(a) which an officer of the corporation–

(i) possesses and which came into his possession in the course of his duties as an officer of the corporation; or

(ii) knows or ought reasonably to have known because he is an officer of the corporation; or

(b) which an officer of the corporation possesses and which came into his possession in the course of his duties as an officer of a related corporation of the first-mentioned corporation where–

(i) the officer is an insider by reason of being in possession of the information;

(ii) the officer is involved in, the decision, transaction or agreement of the first-mentioned corporation in acquiring or disposing of securities in relation to which the officer is an insider or entering into an agreement to acquire or dispose of such securities, procuring another person to acquire or dispose of such securities or enter into an agreement to do so, or communicating the information in circumstances referred to in subsection (3) of section 89E; or

(iii) it is reasonable to expect that the officer would communicate the information to another officer of the first-mentioned corporation acting in his capacity as such, unless it is proved that the information was not in fact so communicated.

(2) In this section, "information" refers to information which a corporation is taken to possess and where a person in possession of the information is an insider.

(3) A corporation does not contravene subsection (2) of section 89E by entering into the transaction or agreement at any time merely because of information in the possession of the corporation if–

(a) the decision to enter into the transaction or agreement was taken on behalf of the corporation by a person or persons other than an officer of the corporation in possession of the information;

(b) the corporation had in operation at that time arrangements that could reasonably be expected to ensure that–

(i) the information was not communicated to a person or one of the persons who was involved in, or made the decision to enter into, or be involved in, the transaction or agreement;

(ii) no advice with respect to the decision to enter into, or be involved in, the transaction or agreement was given to that person by the person in possession of the information; or

(iii) the person in possession of the information would not be involved in the decision to enter into or be involved in, the transaction or agreement, or involved in the transaction or agreement; and

(c) the information was not so communicated, no such advice was given and the person in possession of the information was not involved in the decision to enter into, or be involved in, the transaction or agreement or was not involved in the transaction or agreement.

89H. Secrecy agreements by partnerships

(1) For the purposes of this Division, a partner of a partnership is deemed to possess any information–

(a) which another partner possesses and which came into the other partner's possession in his capacity as a partner of the partnership;

(b) which an employee of the partnership possesses and which came into the employee's possession in the course of his duties; or

(c) if a partner or an employee of a partnership knows or ought reasonably to know any matter or thing because the partner or employee is a partner or an employee as such, it is presumed that every partner and employee of the partnership know or ought reasonably to know that matter or thing.

(2) In this section,"information" refers to information which a partnership is deemed to possess and where a partner or an employee of the partnership in possession of that information is an insider.

(3) A partner of a partnership does not contravene subsection (2) of section 89E by entering into the transaction or agreement referred to in

that subsection at any time merely because one or more (but not all) partners, or an employee or employees of the partnership, were in actual possession of information at the time if–

(a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:
  (i) a partner who is taken to possess the information merely because another partner, or an employee of the partnership, was in possession of the information; or
  (ii) an employee of the partnership who was not in possession of the information; and
(b) the partnership had in operation at that time agreements that could reasonably be expected to ensure that–
  (i) the information was not communicated to a partner or an employee or one of the partners or employees who was or were involved in, or made the decision with respect to the entering into the transaction or agreement in question;
  (ii) no advice with respect to the decision to enter into the transaction or agreement was given to that partner or employee by a partner or an employee in possession of the information;
  (iii) the partner or employee in possession of the information would not be involved in the decision to enter into, or be involved in, the transaction or agreement; and
(c) the information was not communicated, no advice was given and the partner or employee in possession of the information was not involved in the decision to enter into, or be involved in, the transaction or agreement.

(4) A partner of a partnership does not contravene subsection (2) of section 89E by entering into the transaction or agreement referred to in that subsection otherwise than on behalf of the partnership merely because the partner is taken to possess information that is in the possession of another partner or employee of the partnership.

89I. Underwriting and sub-underwriting

(1) Subsection (2) of section 89E shall not apply in respect of–

(a) the entering into of an underwriting agreement or a sub-underwriting agreement; or
(b) the acquisition of securities under an obligation to do so in an agreement referred to in paragraph (a).

(2) Subsection (3) of section 89E shall not apply in respect of the communication of information in relation to securities to a person solely for the purpose of procuring the person–

(a) to enter into an underwriting agreement or a sub-underwriting agreement in relation to any such securities; or

(b) to acquire any such securities under an obligation to do so in an agreement referred to in paragraph (a).

89J. Non-application of section 89E to transactions carried out under schemes of arrangement, etc. under any written law

Section 89E shall not apply to an acquisition or disposal of securities or the communication of information that is carried out under any other written law relating to schemes of arrangement, reconstructions and take-overs relating to corporations.

89K. Exception for corporation with knowledge of its intention

(1) A corporation does not contravene subsection (2) of section 89E by entering into a transaction or an agreement in relation to securities other than those of the corporation merely because 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.

(2) Subject to subsection (3), a corporation does not contravene subsection (2) of section 89E by entering into a transaction or an agreement in relation to securities other than those of the corporation because an 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.

(3) Subsection (2) shall not apply unless the officer of the corporation became aware of the matter referred to in that subsection in the course of his duties.

(4) Subject to subsection (5), a person does not contravene subsection (2) of section 89E by entering into a transaction or an agreement on behalf of a corporation in relation to securities other than those of the corporation merely because the person is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(5) Subsection (4) shall not apply unless the person became aware of the matters referred to in the course of his duties as an officer of the first-mentioned corporation or in the course of acting as an agent of the first-mentioned corporation.

89L. Exception of knowledge of individual's own intentions or activities

An individual does not contravene subsection (2) of section 89E by entering into a transaction or an agreement in relation to securities merely because he is aware that he proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

89M. Unsolicited transaction by a broker

(1) A dealer or a dealer's representative does not contravene subsection (2) of section 89E by entering into a transaction or an agreement as an agent for another person, being a transaction or an agreement entered into on the stock market of a stock exchange in securities which are quoted for trading on the stock market of that stock exchange if–

(a) the transaction or agreement is entered into under a specific instruction by the other person which was not solicited by the dealer or the dealer's representatives;

(b) the dealer or dealer's representative has not given any advice to the other person in relation to the transaction or agreement or otherwise sought to procure the other person's instructions to enter into the transaction or agreement; and

(c) the other person is not associated with the dealer or the dealer's representative.

(2) Nothing in this section shall affect the application of subsection (1) in relation to the principal.

89N. Exception for redemption of units of a unit trust scheme under buy-back covenant

Subsection (2) of section 89E shall not apply in respect of the redemption by a trustee under a trust deed relating to a unit trust scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets, less any liabilities of the unit trust scheme to which the units of the unit trust scheme relates, and less any reasonable charge for purchasing the units of the unit trust scheme or interest.

89O. Parity of information defence

(1) A person does not contravene subsection (2) of section 89E if–

(a) the securities that are the subject of the transaction or agreement or the action of procuring a transaction or an agreement are not securities which are permitted on the stock market of a stock exchange;

(b) the Court is satisfied that the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement; and

(c) that person acquires or disposes of such securities on such terms and in such circumstances that–

(i) he does not obtain any gain or avoid any loss, including an unrealised gain or unrealised avoidance of loss in price or value, of the securities, as the case may be, for himself

or any other person by reason of the effect that the information is likely to have when it becomes generally available; and

(ii) the purpose of the acquisition or disposal of the securities does not include any purpose of securing a gain or avoiding a loss, as the case may be, for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available.

(2) In a prosecution for an offence under subsection (3) of section 89E where the person communicated information or caused information to be communicated to another person, it shall be a defence–

(a) if the Court is satisfied that the information came into the possession of the person so communicating the information solely as a result of it being made known in a manner likely to make it generally available pursuant to section 89A; or

(b) if the Court is satisfied that the other party knew of, or ought reasonably to have known, the information before the information was communicated.

89P. Acts and omission within and outside Malaysia relating to insider trading

This Division applies to–

(a) acts and omission occurring within Malaysia in relation to securities of any body corporate which is formed or is carrying on business or is listed within or outside Malaysia; and

(b) acts and omission occurring outside Malaysia in relation to securities of any body corporate which is formed or is carrying on business or is listed within Malaysia.

DIVISION 3

Liability for Unlawful Activity

90. Civil remedies

(1) Where it appears to the Commission that any person has contravened section 84, 85, 86, 87, 87A, 88 or 89E, the Commission may institute civil proceedings in the Court against that person, whether or not that other person has been charged with an offence in respect of the contravention, or whether or not a contravention has been proved in a prosecution.

(2) A proceeding under subsection (1) or under section 88A or 90A may be begun at any time within twelve years from–

(a) the date on which the cause of action accrued; or

(b) the date on which the Commission or the plaintiff, as the case may be, discovered the contravention, whichever is the later.

90A. Recovery of loss or damages

(1) A person who suffers loss or damages by reason of, or by relying on, the conduct of another person who has contravened section 89E may recover the amount of loss or damages by instituting civil proceedings against the other person, whether or not the other person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution.

(2) In subsection (1), "loss or damages" includes an unrealised loss or gain, as the case may be, in the price or value of securities of a corporation being the difference between–

(a) the price or value of securities in a transaction in connection with which the person first-mentioned in subsection (1) claims to have suffered loss or damages; and

(b) the price which would have been the likely price of the securities in the transaction, or the value which it is likely that such securities would have had at the time of that transaction, if the contravention had not occurred.

(3) Where an insider acquired or agreed to acquire, or procured another person to acquire or agree to acquire, securities from a person (the "seller") who did not possess the information, in contravention of subsection (2) of section 89E, the seller may, by civil action against the insider or any other person involved in the contravention, recover, as a loss or damages suffered by the seller, the difference between–

(a) the price at which the securities were acquired, or agreed to be acquired, by the insider or the other person, from the seller; and

(b) the price at which the securities would have been likely to have been acquired at the time of the acquisition or agreement, as the case may be, referred to in paragraph (a) if the information had been generally available.

(4) Where an insider disposed of or agreed to dispose of, or procured another person to dispose of or agree to dispose of, securities to a person (the "buyer") who did not possess the information, in contravention of subsection (2) of section 89E, the buyer may, by civil action against the insider or any other person involved in the contravention, recover, as a loss or damages suffered by the buyer, the difference between–

(a) the price at which the securities were disposed of, or agreed to be disposed of, by the insider or the other person, to the buyer; and

(b) the price at which they would have been likely to have been disposed of at the time of the disposal or agreement, as the case may be, referred to in paragraph (a) if the information had been generally available.

(5) Where an insider acquired or agreed to acquire, or procured another person to acquire or agree to acquire, securities, in contravention of subsection

(2) of section 89E, and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider or any other person involved in the contravention has been charged with an offence in respect of the contravention or whether or not the contravention has been proved in a prosecution, the Commission may, if it considers that it is in the public interest to do so, by civil action against the insider or any other person involved in the contravention–

(a) recover an amount equal to three times the amount being the difference between the price at which the securities were acquired, or agreed to be acquired, by the insider or the other person, and the price at which they would have been likely to have been acquired at the time of the acquisition or agreement, as the case may be, if the information had been generally available; and

(b) claim civil penalty in such amount as the Court considers appropriate having regard to the seriousness of the contravention, being an amount not more than five hundred thousand ringgit.

(6) Where an insider disposed of or agreed to dispose of, or procured another person to dispose of or agree to dispose of, securities, in contravention of subsection (2) of section 89E, and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider or any other person involved in the contravention has been charged with an offence in respect of the contravention or whether or not the contravention has been proved in a prosecution, the Commission may, if it considers that it is in the public interest to do so, by civil action against the insider or any other person involved in the contravention–

(a) recover an amount equal to three times the amount being the difference between the price at which the securities were disposed of, or agreed to be disposed of, by the insider or the other person, and the price at which they would have been likely to have been disposed of at the time of the disposal or agreement, as the case may be, if the information had been generally available; and

(b) claim civil penalty in such amount as the Court considers appropriate having regard to the seriousness of the contravention, being an amount not more than five hundred thousand ringgit.

(7) An amount recovered or obtained by the Commission in an action pursuant to subsection (5) or (6), respectively, shall be applied–

(a) firstly, to reimburse the Commission for all costs of the investigation and proceedings in respect of the contravention or suspected contravention; and

(b) secondly–

(i) where it relates to subsection (5), to compensate the sellers who disposed of securities of the same class on the stock market of the stock exchange when information was not generally available between the time when the first

contravention of subsection (2) of section 89E occurred and the time when information became generally available; and

(ii) where it relates to subsection (6), to compensate the buyers who acquired securities of the same class on the stock market of the stock exchange when the information was not generally available between the time when the first contravention of subsection (2) of section 89E occurred and the time when the information became generally available.

(8) If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (b) of subsection (7), in view of the likely administration costs, the amount of any potential distribution to each person and the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in paragraph (b) of subsection (7).

(9) To the extent that any of the amount recovered or obtained in a civil action under subsection (5) or (6) has not been distributed pursuant to subsection (7), it shall be paid to the compensation fund maintained under Part VIII or retained by the Commission to defray the costs of regulating market trading, as the Commission, with the approval of the Minister, may determine.

(10) Any right of action that a person has by virtue of this section is in addition to any right that any other person has under any other written law.

...

PART X
ENFORCEMENT AND INVESTIGATION

DIVISION 1

General

100. Power of court to make certain orders

(1) Where—

(a) on the application of the Commission, it appears to the High Court that a person has committed an offence under this Act, any other written law relating to dealing in securities, fund management or investment advice, or has contravened the conditions or restrictions of a licence or the rules or listing requirements of a stock exchange or of the rules of a recognised clearing house or is about to do an act with respect to dealing

in securities that, if done, would constitute such an offence or contravention, or has engaged in, is engaging in, or is proposing to engage in, any conduct that constitutes or would constitute a contravention of this Act, any other written law relating to dealing in securities, fund management or investment advice, whether or not that person has been charged with an offence in respect of the contravention, or whether or not a contravention has been proved in a prosecution;

(b) on the application of a stock exchange, it appears to the High Court that a person has contravened the rules or listing requirements of the stock exchange;

(ba) on the application of a recognised clearing house, it appears to the High Court that a person has contravened the rules of the recognised clearing house; or

(c) in a proceeding under section 88A, subsection (1) of section 90, or section 90A, it appears to the High Court that a person has contravened section 84, 85, 86, 87, 87A, 88 or 89E, whether or not the person has been charged with an offence in respect of the contravention, or whether or not a contravention has been proved in a prosecution,

the High Court may, without prejudice to any order it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders:

(aa) in the case of persistent or continuing breaches of this Act, any other written law relating to dealing in securities, fund management or investment advice, of the conditions or restrictions of a licence, or of the rules or listing requirements of a stock exchange, or of the rules of a recognised clearing house, an order restraining a person from carrying on a business of dealing in securities, acting as a fund manager or an investment adviser or as a dealer's representative, a fund manager's representative or as an investment representative, or from holding himself out as carrying such business or acting as such manager, adviser or representative;

(bb) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities that are specified in the order;

(cc) an order directing a person to dispose of any securities that are specified in the order;

(dd) an order restraining the exercise of any voting or other rights attached to any securities that are specified in the order;

(ee) an order restraining a person from making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, or alloting any securities that are specified in the order;

(ff) an order appointing a receiver of the property of a dealer or a fund manager or of property that is held by a dealer or a fund

manager for or on behalf of another person whether on trust or otherwise;

(gg) an order vesting securities that are specified in the order in the Commission or a trustee appointed by the High Court;

(hh) an order declaring the whole or any part of a contract relating to securities, including a contract for the acquisition or disposal of securities, to be void, and if the High Court thinks fit, to have been void *ab initio* or at all times on or after a specified date before the order is made;

(ii) where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that he is required to do under this Act, an order requiring such person to do such act or thing;

(jj) in the case of a contravention by a person of the rules or listing requirements of a stock exchange or the rules of a recognised clearing house, an order giving directions concerning compliance with or enforcement of those rules or listing requirements to–

(i) the person; and

(ii) if the person is a body corporate, the directors of the body corporate;

(kk) in a case where the person is a director, an order removing him from office and that he be barred from becoming a director of any other public company for such period of time as may be determined by the High Court;

(ll) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; and

(mm) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) The High Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(2A) Where an application is made to the High Court for an order under paragraph *(ii)* of subsection (1), the High Court may grant the order–

(a) where the High Court is satisfied that the person has refused or failed to do the required act or thing, whether or not it appears to the High Court that the person intends to again refuse or fail, or continue to refuse or fail, to do the required act or thing; or

(b) where it appears to the High Court that in the event that such an order is not granted it is likely that the person will refuse or fail to do the required act or thing, whether or not the person has previously refused or failed to do the act or thing and

whether or not there is any imminent risk of damage to any person if the person required to do such act or thing refuses or fails to do so.

(2B) Where an application for an order under subsection (1) is made by the Commission or a stock exchange or a recognised clearing house or any person duly authorised by the Commission, or a stock exchange, or a recognised clearing house, the High Court shall not, as a condition of the grant of the order, require any undertaking as to damages to be given by or on behalf of the Commission, a stock exchange or a recognised clearing house.

(3) A person appointed by order of the High Court under subsection (1) as a receiver of the property of a dealer or a fund manager–

(a) may require the dealer or the fund manager, as the case may be, to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;

(b) may acquire and take possession of any property of which he has been appointed receiver;

(c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the dealer or a fund manager might lawfully have dealt with the property; and

(d) has such other powers in respect of the property as the High Court specifies in the order.

(4) In paragraph *(ff)* of subsection (1) and subsection (3), "property", in relation to a dealer or a fund manager, includes monies, securities, and documents of title to securities or other property entrusted to or received on behalf of any other person by the dealer or another person in the course of or in connection with the business of the dealer or the fund manager.

(4A) The Commission or a trustee appointed by an order of the High Court under paragraph *(gg)* of subsection (1)–

(a) may require any person to deliver to the Commission or trustee any securities specified in the order or to give to the Commission or trustee all information concerning the securities that may reasonably be required;

(b) may acquire and take possession of the securities;

(c) may deal with the securities in any manner as it deems fit; and

(d) shall have such other powers in respect of the securities as may be specified by the High Court in the order.

(4B) The proceeds of the dealing in or disposal of securities under paragraph *(gg)* of subsection (1) shall be paid into the High Court, and any person claiming to be beneficially entitled to the whole or any part of such proceeds may, within thirty days of such payment into the High Court, apply to the High Court for payment out of the proceeds to him.

(5) A person who contravenes or fails to comply with–

(a) an order under subsection (1) that is applicable to him;

(b) a requirement of a receiver appointed by order of the High Court under subsection (1); or

(c) a requirement of the Commission or trustee appointed by order of the High Court under paragraph *(gg)* of subsection (1)

commits an offence and is liable on conviction to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

(6) Subsection (5) does not affect the powers of the High Court in relation to the punishment of contempt of court.

(7) The High Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

100A. Application for winding up

(1) Notwithstanding the provisions of the Companies Act 1965, if a person referred to in subsection (1) of section 100 is a company, whether or not the company is being wound up voluntarily, the person may be wound up under an order of the Court on the petition of the Commission, a stock exchange or a recognised clearing house, in accordance with the provisions of the Companies Act 1965.

(2) The Court may order the winding up on a petition made under subsection (1) if the person referred to in subsection (1) of section 100–

(a) has held a licence under this Act,and that licence has been revoked or suspended; or

(b) has contravened any rules or listing requirements of the stock exchange or rules of the recognised clearing house or has contravened a provision of a securities law, whether or not that person has been charged with an offence in respect of the contravention, or whether or not the contravention has been proved in prosecution.

Appendix 2

Notice of Director's Interests in Shares under s 135 of Companies Act 1965 for Newly Appointed Director

The Company Secretary

Dear Sir

NOTICE OF DIRECTOR'S INTEREST UNDER SECTIONS 135 & 131 OF THE COMPANIES ACT, 1965

In compliance with Section 135 of the Companies Act, 1965, I hereby give notice as follows:

1. **Interest in Shares, Debentures, etc.**

The particulars relating to shares, debentures, participatory interests, rights, options, and contracts in accordance with the provisions of Section 134 are as set out below for inclusion in the Register of Directors' Shareholdings, etc.:

	Direct Interest (units & %)	**Indirect Interest (units & %)**	**Date** (of agreement or transaction or occurrence of event resulting entry required to be enter into register)	**How held** (as holder/in trust for/through nominee/right to become holder through options or contracts to purchase/joint holder)	**Consideration** (if any)
In the company					
Shares					
Debentures					
Participatory Interests					
Rights					
Options					

In related corporation					
Shares					
Debentures					
Participatory Interests					
Rights					
Options					

2. **Interest in contracts, properties, offices, etc.**

Pursuant to section 131(4) of the Companies Act, 1965, I hereby give general notice of my interest in the following offices and that I am to be regarded as interested in any contract which may, after the date of this notice, be made or proposed to be made with the aforesaid company.

Name of corporation or firm	Nature of interest	
	Office held	Shares held

3. The date at which I will attain the age of 70 years is _____*(applicable only to public company)

4. Particulars of any directorship of public companies or companies which are subsidiaries of public companies

Name of public company or subsidiaries of public company	Date of Appointment

Kindly update your Register of Directors' Shareholdings, etc. and I hereby authorise and instruct you to forward a copy of this notice to the members of the Board and Kuala Lumpur Stock Exchange on my behalf.

Dated this day of , 20 .

Yours faithfully,

.....
[Director's name]

Note:

Pursuant to section 135 of the Companies Act, 1965:

1. a notice in writing must be given by the director to the company within 14 days after the date of becoming a director, or the date of acquisition/change of interest in shares, debentures, participatory interests, rights, option or contracts in the company or in a related corporation, and particulars of any change thereof;
2. a director required to give notice of any matters relating to shares or debentures which are listed on the official list of a stock exchange as defined in the Securities Industry Act,1983 shall , on the day on which he gives that notice, serve a copy of the notice to the stock exchange and the stock exchange may publish, in any manner as it may determine, any information contained in the notice.

Notice of Director's Interests in Shares under s 135 of Companies Act 1965 for existing Director when there is a change in the interest

The Company Secretary

Dear Sir

NOTIFICATION OF CHANGES IN DIRECTOR'S INTEREST PURSUANT TO SECTION 135 OF THE COMPANIES ACT, 1965

In compliance with Section 135 of the Companies Act, 1965, I hereby give notice of changes to the particulars relating to my following interest:

1. Description (class & nominal value):

2. Particulars of changes

Acquired/ Disposed	Date of change	No. of shares	Price transacted (RM)

3. Circumstances by reason of which change has occurred:

4. Nature of interest:

5. Consideration (if any):

6. Total no. of shares after change

Direct (units)
Direct (%)
Indirect/deemed interest (units)
Indirect/deemed interest (%)

Kindly update your Register of Directors' Shareholdings, etc and I hereby authorise and instruct you to forward a copy of this notice to the members of the Board and Kuala Lumpur Stock Exchange on my behalf.

Dated this day of , 20 .

Yours faithfully,

Disclosure of Interest in Securities
Proforma Form in Relation to Section 99B of the Securities Industry Act 1983

To: The Director, Issues & Investment Division, Securities Commission, 3, Persiaran Bukit Kiara, Bukit Kiara, 50490 Kuala Lumpur

1. This notice is given by (name of notifier) in relation to the interest held in the securities of (name of listed corporation/associated corporation of the listed corporation).

2. (name of listed corporation/associated corporation of the listed corporation) is a corporation which is (specify whether listed or not, and, if listed, specify on which stock exchange the corporation is listed).

3.* (name of notifier) is the (specify whether spouse, child or parent) of (name of chief executive or director of the listed corporation) who is the (specify whether chief executive or director of the listed corporation) of (name of listed corporation).

4.* (associated corporation of the listed corporation) is an associated corporation of (name of listed corporation) by virtue of (please describe relationship).

5. Particulars of Notifier

Name : _____	Position in the corporation* : _____ (specify whether chief executive, executive director or non-executive director of the listed corporation)
Nationality : _____	
Identity card no./Passport no. : _____	
Residential Address : _____	Date of appointment to the listed corporation* : _____
Business Occupation : _____ (if any)	

6. Particulars of Interest

Type of securities	Date interest acquired**	Date interest disposed of	No. or amount of securities acquired or disposed of	Price of Securities acquired or disposed of	Percentage of securities acquired or disposed of+	Total no. or amount of securities held after acquisition or disposal	Percentage of securities held after acquisition or disposal+	Name of registered holder of securities++	Particulars of events by reason of which change has occured*+

7. This notice is dated _____ (specify the day, month and year of the notice).

_____

(Signature and name of notifier)

---

* If applicable.

** If a person has an interest on the date on which the new section 99B of the Securities Industry Act 1983 came into force, the date the interest is acquired should be that date.

\+ In relation to the total securities of the same class issued by the corporation.

++ The name of each person registered as holder of the securities in which the interest is held must be stated. If none, please state accordingly.

*+ Please see section 99B(2) of the Securities Industry Act 1983.

Appendix 4

FORM 29A

Companies Act 1965 Section 69E(1)

NOTICE OF INTEREST OF SUBSTANTIAL SHAREHOLDER

To: **(Name of Company)**

*I/*We hereby give notice that *I/*we *am a/*are substantial shareholder(s) and *I/*we give below the information, particulars and circumstances as required by section 69E:-

Particulars of Substantial Shareholder

Name : Company No. :

Address : Nationality :

Full Particulars of Voting Shares

Date interest Acquired+	Name and address of registered holder#	No of shares or amount of stock@	Full particulars of each interest and of circumstances by reason of which the substantial shareholders has interest$

Dated this ..... day of ....., 2000.

.....
Signature of Substantial Shareholder##

* Strike out whichever is mapplicable.

\+ If a person was a substantial shareholder on the date on which the new Division 3A of Part IV of the Companies Act, 1965 came into operation, the date the interest is acquired should be that date.

\# The name and address of each person registered as holder of the voting shares in which the interest is held must be stated. If none, state accordingly.

@ When the shares are of different classes state clearly the class of voting shares in which the interest is held.

$ Please see section 6A of the Companies Act, 1965 in relation to the definition of "interest in a share", section 69H of the Companies Act, 1965 as regards circumstances by reason of which a person has an interest in a share and regulation 8B of these Regulations.

\## If the substantial shareholder is a body corporate, this notice shall be signed by a director or secretary of the body corporate.

FORM 29B

Companies Act 1965 Section 69F(1)

CHANGE IN THE INTERESTS OF SUBSTANTIAL SHAREHOLDER

To: **(Name of Company)**

*I/*We hereby give notice that there is a change in *my/*our interest and I/*we give below the information, particulars and circumstances as required by section 69F:–

Particulars of Substantial Shareholder

Name	:	I/C No./Passport No.	:
Address	:	Nationality	:

Full Particulars of Change in Interest

Date of Change	No. of Shares amount of stock acquired or disposed+	Name of registered holder#	Total No. of shares or amount of stock held after change@	Circumstances by reason of which change has occurred$

Dated this ..... day of ....., 2000.

.....
Signature of Substantial Shareholder##

* Strike out whichever is inapplicable.

\+ Where a substantial shareholder in a company acquires or disposes of voting shares in the company, there shall be deemed to be a change in the interest or interests of the substantial shareholder.

\# The name and address of each person registered as holder of the voting shares in which were acquired or disposed must be stated. If none, state accordingly.

@ State the total number and description of voting shares in which interest(s) is held after the change.

$ Please see section 69F(3) and section 69H(6) of the Companies Act, 1965 with regards circumstances by reason of which the change has occurred and regulation 8B of these Regulations.

If the substantial shareholder is a body corporate, this notice shall be signed by a director or secretary of the body corporate.

FORM 29C

Companies Act 1965 Section 69G(1)

NOTICE OF PERSON CEASING TO BE A SUBSTANTIAL SHAREHOLDER

To: **(Name of Company)**

*I/*We hereby give notice that *I/*we have ceased to be a substantial shareholder(s) and *I/*we give below the information, particulars and circumstances as required by section 69G:-

Particulars of Substantial Shareholder

Name	:	I/C No./Passport No.	:
Address	:	Nationality	:

Particulars of Cessation

Date of Cessation	No of shares or amount of stock@	Name of registered holder#	Full particulars of circumstances by reason of which a person ceases to be a substantial shareholder$

Dated this ..... day of ....., 2000.

.....

Signature of former Substantial Shareholder##

* Strike out whichever is inapplicable.

@ State the number and description of voting share disposed of.

\# The name and address of each person registered as the holder of the voting shares that are disposed of must be stated. If none, state accordingly.

$ Please see section 69G(1) and section 69H(C) of the Companies Act, 1965 with regards to the circumstances by reason of which a person has ceased to be a substantial shareholder and regulation 8B of these Regulations.

If the former substantial shareholder is a body corporate, this notice shall be signed by a director or secretary of the body corporate.

Appendix 5

SCHEDULE 1

Securities Industry (Reporting of Substantial Shareholding) Regulations 1998

(Subregulation 8(1))

NOTICE OF INTEREST OF SUBSTANTIAL SHAREHOLDER

To :The Securities Commission

*I/*We hereby give notice that *I am a /*we are substantial shareholder(s) of (name of the listed company) and *I/*we give the following information:

Particulars of Substantial Shareholder

Name: I.C. No./Passport No.:

Address: Nationality:

Full Particulars of Voting Shares

Date interest acquired+	Name and address of registered holder(s)++	No. of voting shares#	Circumstances by reason of which the substantial shareholder has interest##

Dated this day of 2000.

Signature of Substantial Shareholder**

* Strike out whichever is inapplicable.

\+ If a person was a substantial shareholder on the date on which those Regulations came into operation, the date the interest is acquired should be that date.

++ The name and address of each person registered as a holder of the voting shares in which the interest is held must be stated. If none, state accordingly. If the substantial shareholder is a bare trustee, to state accordingly.

\# If the shares are of different classes, state clearly the class of voting shares in which the interest is held. If the substantial shareholder is a bare trustee, to state the particulars of the shareholding of each beneficial owner.

Please see regulation 6 of these Regulations in relation to the definition of "interest in a voting share" as regards circumstances by reason of which a person has an interest in a voting share. If the substantial shareholder is a bare trustee, to state also the particulars of each beneficial owner as required under subregulation 7A(3) of these Regulations.

** If the substantial shareholder is a body corporate, this notice shall be signed by a director or secretary of the body corporate.

SCHEDULE 2

Securities Industry (Reporting of Substantial Shareholding) Regulations 1998

(Subregulation 9(1))

NOTICE OF CHANGE IN THE INTERESTS OF SUBSTANTIAL SHAREHOLDER

To :The Securities Commission

*I/*We hereby give notice that there is a change in *my/*our interest in (name of the listed company) and *I/*we give the following information:

Particulars of Substantial Shareholder

Name: I.C. No./Passport No.:

Address: Nationality:

Full Particulars of Change in Interest

Date of change	No. of voting shares acquired or disposed+	Name and address of registered holder(s)++	Total no. of voting shares held after charge#	Circumstances by reason of which change has occurred##

Dated this day of 2000.

Signature of Substantial Shareholder**

* Strike out whichever is inapplicable.

\+ If a substantial shareholder in a company acquires or disposes of voting shares in the company, there shall be deemed to be a change in the interest or interests of the substantial shareholder. If the substantial shareholder is a bare trustee, to state the particulars of the shareholding of each beneficial owner whose shares have been acquired or disposed of.

++ The name and address of each person registered as a holder of the voting shares which were acquired or disposed must be stated. If none, state accordingly. If the substantial shareholder is a bare trustee, to state accordingly.

\# State the total number and description of voting shares in which interest(s) is held after the change has occurred. If the substantial shareholder is a bare trustee, to state the particulars of the shareholding of each beneficial owner.

Please see subregulation 9(3) of these Regulations as regards circumstances by reason of which the change has occurred. If the substantial shareholder is a bare trustee, to state also the particulars of each beneficial as required under subregulation 7A(3) of these Regulations.

** If the substantial shareholder is a body corporate, this notice shall be signed by a director or secretary of the body corporate.

SCHEDULE 3

Securities Industry (Reporting of Substantial Shareholding) Regulations 1998

(Subregulation 10(1))

NOTICE OF PERSON CEASING TO BE A SUBSTANTIAL SHAREHOLDER

To :The Securities Commission

*I/*We hereby give notice that *I/*we have ceased to be a substantial shareholder(s) of (name of the listed company) and *I/*we give the following information:

Particulars of Substantial Shareholder

Name: I.C. No./Passport No.:

Address: Nationality:

Full Particulars of Cessation

Date of cessation	No. of voting shares+	Name and address of registered holder(s)#	Circumstances by reason of which a person ceases to be a substantial shareholder

Dated this day of 2000.

Signature of Substantial Shareholder**

* Strike out whichever is inapplicable.

\+ State the number and description of voting shares disposed of. If the substantial shareholder is a bare trustee, to state the particulars of the shareholding of the beneficial owner whose shares have been disposed of.

\# The name and address of each person registered as a holder of the voting shares which were disposed must be stated. If none, state accordingly. If the substantial shareholder is a bare trustee, to state accordingly.

** If the former substantial shareholder is a body corporate, this notice shall be signed by a director or secretary of the body corporate.

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