OVERVIEW OF THE LAW RELATING TO INSIDER DEALING

🗁Who is an insider and what is insider dealing?

Insider: a person who in the course of their employment or business obtains or has access to highly price-sensitive information about securities, such information not being generally known to the investing public (insider information). In the Securities Act, the term "insider information" in not expressly used, but the language therein "information that is not generally available but, if it were, would be likely to materially affect the price of [the] securities" describes what is generally regarded as insider information.
Classic examples of insiders are company directors or employees but the term may extend to securities brokers, to outside professional advisers and even printers, as well as to third parties who are tipped by persons who have access to non-public information by virtue of their employment or business.

Insider dealing: an insider who, while in possession of insider information about securities, trades or deals in those securities, usually of course with a view to personal gain (whether by making profit or avoiding loss). So it is the deliberate exploitation of information acquired via a privileged association or position by dealing in securities to which the information relates.

It is this activity that sections 51 - 60 of the Securities Act purport to regulate and which we will be examined in more detail. It might however be useful to examine the policy justification for regulating this activity.

🗁Why regulate insider dealing?

On what basis is regulation justified? A question well worth asking, not just because vigorous and even compelling arguments have been mounted in defence of insider dealing[1], but because an examination of the philosophy behind regulation assists in a better understanding of an appropriate legal mechanism for regulation.

Philosophies behind prohibition and regulation:

1. **Insider dealing breaches corporate fidelity**
The argument here is that the insider, because he acquires confidential information by way of his privileged relationship with a company, should not be allowed to use the information for his own benefit. This argument is very sound when the insider is a director or officer of the company whose securities are the subject of the insider deal because directors stand in a position of trust and

[1] For example, insider dealing is a victim-less offence; it is not unfair since the person with whom the insider deals is not deceived or misled and he has traded at the current market value of the securities; arguments bordering on economic liberalism in that insider dealing acts as a form of compensation for employees and creates an incentive for them to develop the company's products which in turn affects stock prices.

confidence with the company. Emanating from this fiduciary relationship is the principle that he ought not to make any secret profits; if he does he must account to the company for the profit.

The early development of laws regarding insider dealing was based on this argument of fidelity and its implications for the behaviour of directors in particular towards the company[2]. But the fidelity argument perhaps is less strong when insider dealing is carried out by persons other than those who stand in a fiduciary relationship with a company whose securities are the subject of the insider transaction.

2. **Insider dealing actually involves the unauthorised use of information which belongs to the issuer of the securities. This unauthorised use amounts to misappropriation.**
The idea is that the privileged information is the property of the company and if this information is entrusted to persons in confidence, they or any other person should not utilise the information for their personal advantage[3]. The misappropriation theory has gained ground in the United States and has formed the basis of a number of decisions[4] involving actions brought under the relevant provision in the Securities and Exchange Act 1934 and associated regulations aimed at insider abuse.

3. **Market egalitarianism**
The argument here is that there should be equality of information in the market and that investors should all be on an equal footing in relation to securities information so that they can make informed investment decisions. Critics of this rationale have argued however that significant profits in the securities market are usually only made by persons who have superior information which is not usually widely known or available. It is also argued in response to the market egalitarian theory, that insider dealing is itself an effective way of pulling information out

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[2] See for example Regal (Hastings) Ltd v Gulliver [1942] 1 All E R 378 in which the impeached activity carried out by the directors of Regal, viz, acquiring shares in a subsidiary of Regal, was done by reason only of the fact of their opportunities and **special knowledge** as directors which resulted in profits to themselves. They were held liable to account for the profits made on the sale of the shares. See too Boardman v Phipps [1967] 2 A C 46 in which fiduciaries, a trustee and a solicitor acting as agents for a trust, were held liable to account to a beneficiary after they used their position to make personal profits even though profits were not made at the expense of the trust.

[3] Under the theory, liability may extend to persons who are not in a fiduciary relationship with the issuer if trading has been carried out on the basis of information obtained as a result of a breach of a confidential relationship with the issuer. In United States v Newman 464 U S 863 (1983) the defendant was held liable for trading while in possession of non-public information which was supplied to him by two investment bankers who had misappropriated the information from their employer.

[4] See for example United States v O'Hagan 117 S Ct 2199 (1997) in which a partner in a law firm that was retained by a company to help prepare a takeover bid for Pillsbury, who traded on information he supposedly heard from his fellow partner, was convicted of securities fraud. His argument that he or his firm owed no fiduciary duty to Pillsbury and therefore was not in breach in using non-public information failed when the Supreme Court upheld the misappropriation theory which can apply when any price-sensitive confidential information about a company obtained from any source is used to trade in securities.

into the market and that equality of information is not a factor which is insisted upon in any other market.

4. **Maintaining confidence in the market and market efficiency**
Some writers argue that this is the strongest justification for insider regulation. It is predicated on the notion that insider dealing does harm to the market. Insider dealing, it is felt, destroys confidence in the market since investors will feel that the market is distorted when certain persons are trading on the basis of price-sensitive information which is not available to everyone. This affects the efficient allocation of resources. Additionally, the view that insider trading is unfair and unethical is a disincentive to investment and undermines investor confidence. The reputation of companies may also be negatively affected if their securities are suspected of being the subject of insider dealing. This harms the company which will suffer in the market because of the perceived loss of managerial integrity.

With these policy issues in mind, we will examine what the law proscribes in relation to insider dealing and the legal consequences of non-compliance. The scheme of the legislation may be summarised as follows:

- Restrictions on dealing in certain circumstances
- Requirements for disclosure of directors' and substantial shareholders' holdings and dealings
- Prohibition of differential disclosure to shareholders during the course of an offer (Takeovers and Mergers Regulations)
- Requirements for public disclosure of any notice received by directors of intention to make takeover bid (Takeovers and Mergers Regulations)
- Requirement for issuer of traded securities to make immediate public disclosure about possible price-sensitive information (Disclosure of Interest Regulations)
- Requirement for directors to act without regard to personal interests during the course of an offer
- Criminal sanctions for breaches
- Liability by insider to pay compensation to other person in transaction which contravenes statutory provisions

What activity is outlawed?

Section 51 is the principal provision in the Securities Act which proscribes insider trading. The trading activities of three main categories of insiders are targetted;

a) The first category involves insiders who obtain insider information by virtue of their connection[5] or **association with**[6] an issuer. Such an insider may not deal in

[5] The expression "connected with" [an issuer] or any grammatical variation of it is not used in section 51 except when it is defined in subsection 51(12)(c) which states that "a person is connected with an issuer if he occupies a position that may reasonably be expected to give him access to information of a kind to

the issuer's securities so long as he is connected with or had been connected with the issuer at any time over the preceding twelve-month period[7].

b) The second category involves insiders who through their connection or association with one issuer (Iss1), have information which could significantly (materially) affect the securities of another issuer (Iss2) and that information concerns a transaction between Iss1 and Iss2 or a transaction involving one of these issuers and the securities of the other. This insider may not trade in the securities of either Iss1 or Iss2 if he is connected with or has been connected with Iss1 at any time over the preceding twelve months.[8]

Dealing[9] by these insiders is a criminal offence under section 52 of the Act. In practical terms, in order to establish the offence in relation to an action against an insider falling within either of these categories, the prosecution will have to prove:

i) the connection between the insider and the issuer;
ii) the fact of dealing in the issuer's securities while in possession of non-public price-sensitive information; and
iii) the fact that the insider obtained the information on account of the connection referred to in (i).

While the first and second elements may be fairly easy to establish, it might be difficult to prove the third element. A securities analyst for example who may very well be associated with an issuer may create his own information on which he trades but he may not be said to have obtained such information by virtue of his association or professional relationship with the issuer. It is clear that unless the law provides that where the first and second elements exist, there is a rebuttable presumption that the information was obtained by the insider by virtue of his connection with the issuer, it is likely that the

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which subsections (1) and (2) apply by virtue of any professional or business relationship existing between himself (or his employer or a company of which he is an officer) and the issuer or an associated person". The term used in the section to establish the insider relationship between a person and an issuer is "**associated with**" which is defined elsewhere in the Act (see note 6). A hiatus appears to be created so that technically, insider dealing by "connected persons" as opposed to "associated persons" is not specifically proscribed. The term "connected with" is wider than "associated" and it is almost certain that despite the drafting omission, the courts could easily hold that the more inclusive term applies. It has been argued that the term "connected with" is wide enough to include the anecdotal window cleaner who may have access to non-public information by virtue of his professional relationship with the issuer. The better view appears to be that the information must be obtained in the course of the proper conduct of the professional relationship so that a window cleaner who gets a glimpse of confidential information should not be considered as having obtained such information by virtue of his professional or business relationship with the issuer.

[6] See section 3 of the Securities Act for a comprehensive list of persons who are considered to be associated persons and it is clear that the term surrounds issues and permutations of control. The list does not therefore appear to include a company's employees in general. But subsection 51(6) contemplates that "officers" of the company may be insiders for the purposes of liability under 51(1)(2) or (3) and the term "officer" is defined in subsection 51(11) which clearly extends the meaning beyond the usual company law interpretation to include, inter alia, an employee, a receiver or liquidator of the company.

[7] See subsection 51(1) Securities Act

[8] See subsection 51(2) Securities Act

[9] Note that "deal" in relation to securities includes making or inducing a person to make an agreement or even attempting to induce a person to make an agreement for the sale or purchase of securities (see s.2 of the Act for definition). So a transaction need not be entirely completed before the insider becomes liable.

prosecution would be hard-pressed to establish the third element of the offence at the requisite criminal standard of proof.

c) The third category of insiders targetted by the Act are those who do not fall squarely within the first or second categories but are treated as insiders nonetheless because they are in possession of insider information about an issuer which they have acquired, directly or indirectly, from another person who falls in the first or second category. This third category of insiders constitutes the classical tippee or secondary insider. Under subsection 51(3), tippees may not deal in the securities of the relevant issuer if:
   - they were aware or ought to have been aware that the person from whom they obtained information (the tipper) is an insider who was prohibited from dealing: and
   - when they obtained the information they were associated with the tipper; and
   - they had an arrangement with this tipper for communicating insider information with a view to either or both of them dealing in the relevant securities.

The ingredients of the offence in relation to secondary tippees appear to drastically reduce the scope of persons who might have been caught within the secondary insider category. Firstly, there is a knowledge component to the offence. Secondly, the tippee must be associated with the tipper. Even if we read "associated with" as extending to the wider meaning ascribed to "connected with" in the Act, it will be necessary for the prosecution to establish a professional or business relationship between the tipper and the tippee. Finally, it must also be shown that in addition to this professional or business relationship between the tipper and the tippee, they had a special arrangement whereby insider information is shared with a view to insider abuse. This suggests that it will be necessary to show an intention to commit the offence which appears to be absent in relation to grounding the offence in respect of primary insiders referred to under the first and second categories above.

Section 51 also prohibits an insider falling within any of the three categories from:

- causing or procuring any other person to deal in the relevant securities (section 51(4)). (This provision plugs any loopholes that might have existed by virtue of insiders dealing through an agent or a body corporate in which they have an interest.)
- communicating the insider information to any other person if the relevant securities are traded on any recognised stock exchange (within or outside of Jamaica[10]) and the insider knows or ought to know that this other person will use the information to deal in the securities or to cause or procure other

[10] The reference in subsection 51(5) to an overseas "recognised stock exchange" presents a conceptual difficulty since the term "recognised stock exchange" is defined in s.2 of the Act and properly refers to a company licensed and declared as a recognised stock exchange by the Securities Commission whose jurisdiction must necessarily be confined to Jamaica.

persons to deal in them (section 51(5)). This offence of communicating insider information is therefore not committed if the insider does not know that the recipient of the information intends to deal or to cause other persons to deal in the relevant securities. This second limb of the offence may again be difficult to establish and the better position might have been to make the mere fact of communication other than in the course of the proper performance of the insider's profession, business or employment the crux of the offence.

Finally, during the time that any officer[11] of a company is himself prohibited from dealing in any securities because he possesses insider information, the company is also, by virtue of section 51(6) prohibited from dealing in those securities.

🗁Exceptions

1. This rule contained in subsection 51(6) is however mitigated by the provision in subsection 51(7) which allows the company to trade in the securities if the following conditions apply:

a) the decision to trade in the securities was not taken by the officer possessing insider information;
b) the company had arrangements to ensure that the insider information was not communicated to the decision-maker and that the insider did not provide any advice to the decision-maker (a species of Chinese walls[12]); and
c) the insider information was in fact not communicated to the decision-maker and no advice was in fact given to him by the insider.

2. Subsection 51(8) further mitigates the ban imposed on a company (Co1) under subsection 51(6) by providing that Co1 may deal in the securities of another company (Co2) during the time that an officer of Co1 has insider information if:

- this information was acquired by the officer in the course of performing his duties as an officer of Co1; and
- the information concerns proposed dealing by Co1 in the securities of Co2.

3. Licensed dealers who are apparently in possession of insider information about an issuer's securities are allowed to trade in those securities if:

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[11] See subsection 51(11) for defintion

[12] An arrangement in companies (usually those engaged in multi-financial services) designed to prevent price-sensitive information known to employees engaged in one kind of service from being passed on to employees engaged in another service. The creation and maintenance of an information barrier thus seem to be required as part of the defence in showing that the insider information was not accessible to the decision-maker. The question has arisen (see for example, Young v Robson Rhodes [1999] 3 All E R 524) as to whether actual physical demarcations are required in order to create effective Chinese Walls. In Robson Rhodes, while the court stated that the test was whether the information barriers worked, it also acknowledged that Chinese Walls which have become a part of the fabric of the institution are more likely to work than those artificially put in place to meet a one-off problem.

- those securities are traded on the stock exchange;
- the licensee acts as agent on specific instructions by a principal to carry out the transaction in the securities;
- the licensee has not given the principal any advice regarding the securities;
- the principal in not associated with the licensee.

The activity stipulated at (2) is perhaps the only true exception to the proscription on insider dealing since the conditions in (1) and (3) are really designed to ensure that the insider information is not used or acted upon in the stipulated transactions.

🗀Sanctions

Insider dealing which is proscribed by section 51 is criminalised by virtue of section 52. This section provides for the imposition of a fine or a maximum term of imprisonment of ten years where an individual is convicted of the offence or to a fine alone where a company is found guilty of the offence. Trials for the offence are in the Supreme Court before a judge only.

Section 53 makes an insider liable to pay compensation to the person(s) with whom he transacted in the course of the prohibited dealing. So persons who have suffered loss in insider transactions may bring an action for compensation for the loss sustained. The measure of compensation will be the difference between the value of the securities in the insider transaction and their likely value in a similar legally permissible transaction occurring at the time when the prohibited dealing took place. The limitation period for instituting an action for compensation is three years from the date of the prohibited transaction. Considering that conviction of the insider in criminal proceedings is necessary to ground the civil proceedings allowed under this section[13], and in view of the truncated limitation period, timing difficulties may arise for would-be litigants who are desirous of making a claim for compensation under this section.

It is interesting to note that the issuer whose information is misused by the insider has no legal remedy under the legislation. A provision requiring that the insider disgorge his gains to the company as well would probably be a logical extension of the misappropriation theory which regards the information as property[14] of the company and the misuse of such information as a corporate violation. This kind of civil remedy is available in the U.S and it is interesting to note that the U.S. Insider Trading Sanctions Act 1984 goes beyond disgorgement and imposes penalties of up to three times the profit gained or the loss avoided by the insider in the prohibited transaction. If the dominant view in our market is that insider trading is a disdainful practice, grossly unfair and is

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[13] See subsection 53(1)

[14] Whether information can be regarded as "property" capable of being misappropriated is perhaps questionable in our jurisprudence. See the decision in Oxford v Moss (1979) 68 Cr App R 183 in which the court held that confidential information relating to a University examination paper which was improperly obtained by a student did not fall within the meaning of "property" for the purposes of grounding an offence under the UK Theft Act 1968.

inimical to healthy markets, then it might be useful to shore up the current sanctions with stronger measures on the civil side which contemplate the wrong done to the company.

It is acknowledged however that even though the common law does not boast well-developed rules regarding insider dealing, it does allow a company to bring an action against directors on the basis of breach of their fiduciary position which may involve misuse of insider information resulting in personal gains[15]. If directors are found to be in breach of their fiduciary duty in such a case, then their profits will be disgorged to the company. However, the common law action, because it is grounded in fiduciary responsibilities, is necessarily restricted to directors and cannot extend therefore to other insiders targetted by section 51 of the Act. Room therefore remains for legislative intervention in this area.

🗀Defence

In an action for insider dealing, the insider may avail himself of the statutory defence contained in subsection 51(10). He must show that the person with whom he transacted was aware, or ought to have been aware of the insider information prior to the transaction.

🗀Disclosure requirements

The theory behind disclosure requirements is that if information which is not generally known to the public is likely to be misused to the personal and unfair advantage of a few, then an obligation to make early disclosure of the information will provide less opportunities for those who are in a position to exploit the insider information. Additionally, insider trading is presumably discouraged when insiders, eg directors are required to make prompt disclosure to their companies about their interests in the company's securities.

- **Requirements for disclosure of director's interests**

Directors of an issuer are required to disclose their **interest**[16] in the securities of the issuer or in an associated company of the issuer. The disclosure must be made to the issuer in writing. A director of an issuer must also disclose to the issuer the following transactions:

a) an acquisition or complete disposal of his interest in the securities of the issuer or in the securities of the issuer's subsidiary, sister-subsidiary or holding company;

b) any agreement by him for the sale of securities referred to in (a) above;

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[15] See for example Regal (Hastings) Ltd v Gulliver, supra, note 2

[16] Interest in securities is to be widely construed and includes, inter alia, the mere entry into a contract for the purchase of the securities and the possession of the right to control the exercise of at least one-tenth of the voting power in a general meeting. See section 55. Additionally, by virtue of section 56, a director's interest is deemed to include the interest of his spouse or minor children.

c) if he assigns to any member of his family an option that was granted to him by the issuer to subscribe for its securities;

d) if the issuer's subsidiary, sister-subsidiary or holding company gives him a right to subscribe for securities in the relevant company or if he exercises or assigns that right.

Disclosure must be made within fourteen days of the transaction and the issuer is required to maintain a register of the interests disclosed by its directors. This requirement for the maintenance of a register of directors' interest may be seen in tandem with the requirement under the Companies Act for similar disclosure by directors and the maintenance of a similar register which is available for public inspection under the Companies legislation.

It is perhaps interesting to note here that in the United Kingdom there is institutional monitoring of directors' trades[17] on the London Stock Exchange whereby a weekly report listing all directors' transaction is generated on a regular basis for public use. Since directors are in a special position and are very likely to be in possession of insider information, the tracking of their transactions is a useful mechanism in detecting suspicious trades.

The legal basis for publication of information regarding directors' transactions exists by virtue of the provision of section 58(5)[18] of our Act. It is worthwhile considering however whether disclosure made by directors to their companies should be automatically passed into the market rather than leaving publication to the discretion of the stock exchange. Particularly in view of the difficulties inherent in discovering or detecting insider dealing, it might be helpful to create, in practice, a reliable and regular tracking system to support the directors' disclosure requirements in the Act. Targetting directors in this way is justifiable given the peculiarities of the position they occupy and given that they would perhaps constitute a significant fraction of category 1 insiders referred to above. Such a tracking system would perhaps also provide critical information on which the Commission could proceed to carry out investigations under powers conferred in section 68[19] of the Act.

It is perhaps appropriate to point out here that in the context of takeover or merger situations, directors of both the offeror and target company are under a special statutory duty to act in the best interests of the company by setting aside concerns for their own

[17] The Model Code of the London Stock Exchange requires that companies advise the Exchange of alterations in directors' shareholding. It is from this report that a listing of the directors' transactions in securities of the relevant companies is compiled for publication.

[18] Under section 54(5), an issuer to whom disclosure of shareholding is made by directors and shareholders in keeping with the requirements under the Act, must in turn promptly convey the disclosed information to the board of the stock exchange. The stock exchange is entitled to publish any such information it receives.

[19] The section provides, inter alia, that the Commission may conduct investigations where it has reason to believe that a person has committed an offence under the Act or regulations or is guilty of fraud or dishonesty in relation to dealing in securities.

personal or family interests in the company[20] (see regulation 10 of The Securities (Takeovers and Mergers) Regulations 1999).

- **Reporting Requirement for Substantial Shareholders**

It is arguable whether shareholders, like directors, have privileged access to information about issuers but the extensive requirements for disclosure under section 58 of the Act seem to presume that this is so. Under this section, a report must be made to the company when:

a) someone who did not previously have an interest in an issuer's shares acquires an interest in at least one-tenth of its voting shares or in the voting rights of that portion of shares;
b) someone who previously had an interest in an issuer's shares alters his interest so that he acquires or retains at least one-tenth of the voting shares or acquires or retains the voting rights attached to that portion of shares or disposes of the issuer's shares entirely.

The report must be made within fourteen days of the transaction by the person who acquires or disposes of the interest. Licensees who are members of the stock exchange are not required to make these reports by virtue of the market maker[21] exception contained in section 58(4).

An issuer is given the right under section 59 to require someone to submit a report regarding their shareholding in the issuer where it is suspected that he has altered his interest in such a way that would require disclosure to the company under section 58 but he has not made the required disclosure. The issuer also has a right to make enquiries to ascertain whether someone holds his interest beneficially or merely as trustee and if as trustee, to require disclosure regarding the person holding the interest beneficially. An issuer also has the right to ask any of its shareholders to disclose whether their shareholding is subject to any agreement which gives a third party the right to control the voting power or any other rights attached to the shareholding. If disclosure about interest is made only as a result of enquiries made by the issuer under section 59, then an entry specifying this should be made in a separate part of the Register of directors' shareholdings.

Failure to make the required disclosure under the Act or the disclosure of false information is a criminal offence which attracts a fine.

Under the Takeovers and Mergers Regulations of 1999, a person who acquires 20% or more of the equity in a company must advise both the Commission and the company of particulars of the acquisition within ten days of the acquisition.

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[20] The enforcement of this statutory duty may be difficult in itself but the difficulty is compounded because breach of the duty does not appear to be an offence to which even the general penalty under section 69 of the Securities Act might apply.

[21] A market maker is someone who holds himself out at all times, in compliance with the rules of a regulated market, as willing to acquire and dispose of securities and is usually recognised as doing so under the rules governing the market.

- **Requirement for public disclosure of intention to make takeover bid**

Takeovers and mergers provide fertile ground for insider abuse. The Securities (Takeovers and Mergers) Regulations 1999 therefore make specific provision to guard against the misuse of insider information in the circumstances leading up a takeover or merger. Regulation 14(4) is an attempt to ensure that investors in the marketplace are placed on an equal footing and to remove the spectre of unfair information advantage which tends to be typical of the circumstances leading up to a takeover or merger. The regulation provides that if the Board of Directors of a target company has received a notice of a firm intention to make an offer (regarding a takeover or merger), then the Board must promptly advise shareholders of the offer by publishing a notice in a daily newspaper. This regulation is underpinned by a similar disclosure requirement under the JSE Rules governing takeovers and mergers.

- **Prohibition of selective disclosure to shareholders**

Regulation 9(2) of the Takeovers and Mergers Regulations underscores the principle of equality of information (at least among the shareholders of the companies involved) as a rationale for insider regulation. It provides that when an offer is being considered the companies involved must not provide information to some shareholders which is not made available to all. A similar provision exists in the JSE Rules relating to takeovers and mergers.

- **Requirement for prompt disclosure of material changes**

Again in keeping with the theory of market egalitarianism, the Securities (Disclosure of Interest) Regulations 1999 require that an issuer of traded securities promptly disclose by way of a press release the nature and substance of a **material change**[22] in the issuer's affairs. The Commission should also be directly provided with a report on the material change. An exception to the requirement for public disclosure will apply in the following cases:

- if the disclosure might be detrimental to the issuer's interests; or
- if the material change is in the form of a decision made by an officer of the issuer to institute a change but Board confirmation of the decision, though likely, has not been received and there is no reason to believe that persons who know about the material change will engage in insider dealing.

Where the exception applies, the issuer is still required to submit a confidential report of the material change to the Commission accompanied by reasons for the non-disclosure to the public. Additionally, the issuer must continually (every 10 days) justify the non-disclosure to the Commission until public disclosure occurs.

[22] A material change as a change in the business operations or capital of the issuer that would reasonably be expected to have a significant impact on the price of the issuer's securities. See regulation 2(1) of Disclosure of Interest Regulations for actual definition.

Failure to comply with the disclosure requirements under the Disclosure of Interest Regulations is an offence for which a fine or a prison term may be imposed upon conviction.

🗁Summary

The legislation combines both restrictions on insider dealing and requirements for disclosure in order to regulate insider abuse. Disclosure requirements in the principal Act are supported by further requirements to disclose in both the Takeovers and Mergers Regulations (which are themselves underpinned by the JSE Rules) and the Disclosure of Interest Regulations. The scheme of sanctions is largely criminal though there is a provision for civil action by someone who has suffered loss in a transaction with an insider. The Act certainly extends insider dealing beyond the limited common law notions which are grounded in fiduciary duties. The common law remains important however particularly in light of the fact that it remains the only legal basis on which a company whose information has been used in an insider transaction in breach of a duty owed at least by its directors, may claim some redress by way of a restitution.

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