What is Insider Trading?

Simply put "insider trading" (also known as "insider dealing") occurs when someone makes an investment decision based on information that is not yet known to the public at large. Sometimes trading on this information allows persons to make a profit. At other times it can help them avoid a loss. Either way this type of trading is illegal.

The concept of "insider trading" is addressed under Part IX of the Securities Industry Act, 1995 ("SIA"), which provides for "Dealing by Persons Connected with Issuers."

Two concepts that are integral to the notion of "insider trading" under section 121 of the SIA" are *"price sensitive information"* and *"connected."*

In addition to the prohibition on trading with knowledge of price sensitive information by connected person, section 121 of the SIA also prohibits trading by persons who are "recipients" of such information (informally known as "tippees") from "connected" persons; by persons who are involved in making a take-over bid for an issuer or persons who receive such bidder information; and persons within any of the abovementioned categories from counseling or procuring another to trade which would be considered "tipping".

A person is "connected" with an Issuer if he is a director of that Issuer or a "related" issuer. The term "connected" also applies to officers or employees of an Issuer or related company or persons who have a professional or business relationship with that issuer or related company which relationship may give them access to price sensitive information about the Issuer or related company.

Examples of price sensitive information, as cited in the Commission's *Policy Guideline on Listed Companies'/Reporting Issuers' Handling of Price Sensitive Information, October 1, 2003* ("the Commission's Policy"), include, but are not limited to, the following:

- Significant increase or decrease in near term earnings prospects
- Earnings information including interim financial information, proposed dividend and earnings per share

- Proposed amalgamation, merger, acquisition, take-over bid or joint venture
- Significant acquisition and disposal of assets
- Change in control or significant change in management
- Significant change in capital investment plans or corporate objectives;
- Borrowing or lending a significant amount of funds or any mortgaging or encumbering of the Issuer's assets in any way;
- Events regarding the Issuer's securities (for example, an event of default under a financing arrangement; a call of securities for redemption; a declaration or omission of dividends; any stock split, share consolidation, stock dividend, exchange, redemption or other change in capital structure
- Receivership or capital reorganization

Selective Disclosure and Tipping

Issuers that deliberately practice selective disclosure of "material" information or price sensitive information may be guilty of breaching the tipping provisions of the SIA. Contravention of these provisions may also occur because of inadvertent disclosure of such information to selected persons.

1. In your own words explain what negative effects insider trading has on the investment sector and why it is prohibited

The objectives of securities regulation are the protection of investors and the fostering of fair, efficient and transparent markets. Insider dealing is prohibited conduct in all major financial markets as it is contrary to these objectives. The reasons for its prohibition include the desire for fairness in financial markets, the need to enhance investor confidence and encourage timely disclosure of price sensitive information, while deterring conduct on the part of insiders that often results in a breach of trust or duty.

For markets to operate successfully, investors must have confidence that there is a level playing field and that insiders are not benefiting to the detriment of public investors through access to insider information. The belief on the part of investors that "insiders" are profiting unfairly from the use of "inside information" undermines investor confidence and hinders market development. Fairness is a touchstone of securities regulation and a basic principle set forth by the International Organization of Securities Commissions.

2. ***Is there an open period during the fiscal year when insiders are allowed to trade in their companies' stock? If yes what time of the year is this?***

The Listing Requirements of the Stock Exchange has a Model Code for securities transactions by Directors of Listed Companies which provides that insiders such as Directors must accept that they will always be thought to be in possession of more information than can at any particular time be published. Accordingly, they are not at all times free to deal in their companies' securities.

A Director should not deal in any of the securities of the company at any time when he is in possession of information that is likely, upon publication, to affect the market price of those securities.

Dealings by Directors of listed companies should not normally take place for a minimum period prior to the announcement of regularly recurring information, particularly profits, dividends and other distributions, whether or not such announcements might be considered likely to affect the market price. At a minimum, a Director should not deal in securities of his own company during the two months immediately preceding the preliminary announcement of the company's annual results and the announcement of the half-yearly results, together with dividends and distributions to be paid or passed. Furthermore, dealings, should not normally take place prior to the announcement of matters of an exceptional nature which are considered likely to affect the market price.

The same restrictions should apply to dealings by a director in the securities of any company which are listed on the Stock Exchange when by virtue of his position as director (or executive) of his own company, he is in possession of information likely, upon publication, to affect the market price of those securities.

Notwithstanding this general constraint, there will be periods in the year when Directors are in principle to be regarded as free to deal in their companies' securities.

Companies producing quarterly results should consult the Stock Exchange on the formulation of modified dealing procedures appropriate to their case.

3. ***If an individual who is not employed at the company trades on information they received from a company insider before the information became public knowledge, is that still insider trading?***

Yes, assuming that the information is "price sensitive" and the person from whom the information was received is "connected" to the company as that term is defined in the SIA, trading by an individual on such information, commonly called "a tippee" can amount to illegal insider trading contrary to section 121(3) and (4).

The restrictions on dealings by a director contained in the aforementioned model code are regarded as equally applicable to any dealings by the director's spouse or on behalf of any infant child. It is every director's duty, therefore, to seek to avoid any such dealing at a time when he himself is not free to deal.

4. ***If the information is passed on more than once such as a CEO tells his wife, who tells her hair dresser, etc, are the wife and hairdresser considered" temporary insiders" as they are privy to insider info, and are they also restricted from trading based on the information they received?***

The concept of “temporary insider” does not arise under the SIA. Persons such as a CEO’s spouse or the latter’s hairdresser who may become privy to such insider information however fall within the category of “tippees” as described above as they are “recipients” of information from “connected” persons. The prohibition on dealing in securities applies to persons who trade on price sensitive information whether or not that information was obtained directly or indirectly from a connected person.

5. ***How does the TTSEC suggest that companies manage and limit the occurrence of insider trading?***

It is in a company’s best interest to police insider trading itself. There could be lasting detrimental effects on the company even if its staff members are cleared of insider trading after an investigation.

The Commission’s Policy states that it is the responsibility of each reporting issuer to determine what information is price sensitive. Price sensitive information will vary from Issuer to Issuer depending on the nature of the information itself, the size of the Issuer, its corporate culture, the industry volatility of the issuer’s securities and prevailing market conditions.

The issuer should adopt an Insider Trading policy that provides for a senior officer to approve and monitor the trading activity of all of the employees of the Issuer. An insider trading policy should prohibit purchases and sales by insiders when such persons are in possession of price sensitive information. The policy should also provide for trading “blackout periods” during which periods employees must not be allowed to trade (for example, during a specified number of weeks or months immediately prior and subsequent to scheduled earnings announcements).

If an Issuer makes an unintentional selective disclosure, it should take immediate steps to ensure that a full public announcement is made. The Issuer should contact the relevant Stock Exchanges and request that trading be halted pending the issuance of a news release. Pending the public release of the material information the Issuer should also tell those parties who have knowledge of the information that the information is price sensitive and that it is generally not known. The public announcement must be done as soon as is reasonably practicable but in any event no later than the commencement of the next day’s trading.

6. (a) Give an educated guess of figures of how many people in TNT have been charged with insider trading within recent time.

No one has been charged with insider trading although one formal Section 138 investigation on illegal insider trading has been conducted.

It should be noted that the concept of insider trading also arises under the Companies Act Chap 81:01

(b) What are the penalties for insider trading?

Persons suspected of illegal dealing in securities can be pursued via administrative proceedings held by the Commission under the SIA or via criminal proceedings.

Under the SIA, a person found guilty after a hearing by the Commission of contravening the prohibition found in section 121 on illegally dealing in securities is liable to a penalty of up to $50,000 that is payable to the State, for each contravention of which he is found guilty.

Furthermore, if the Commission considers it to be in the public interest, it may after a hearing, order that a person resign any position that he holds as a director or officer of a registered issuer.

Such illegal dealing also renders persons liable:

a. on conviction on indictment, to a fine of $200,000 and to imprisonment for 2 years; and

b. on summary conviction, to a fine of $50,000 and to imprisonment for 6 months.

It should be noted that the High Court, on an application by the Commission, has the ability to order that an individual shall not, without the prior leave of the Court, be a director of an issuer, or be in any way, directly or indirectly, concerned with the management of the issuer of the Court is satisfied that an individual is unfit to be concerned in the said management of that issuer.

In the proposed legislation, penalties and fines for persons found guilty of insider trading will be greatly increased. A person found guilty after a hearing by the Commission of contravening the prohibition on illegally dealing in securities will be **liable to a penalty of $500,000** that is payable to the State.

Illegal insider trading matters that are dealt with in the criminal jurisdiction will render persons liable:

a) On summary conviction - to a minimum fine equal to the profit made or loss avoided by him and a maximum fine equal to the greater of double the profit made or the loss avoided by him and **$1 million dollars and to imprisonment for up to 6 months**; or

b) On conviction on indictment - to a minimum fine equal to the profit made or loss avoided by him and a maximum fine equal to he greater of triple the profit made or the loss avoided by him and **$2 million and to imprisonment for up to 2 years**.