

Potential liabilities of a director under Jersey's insider dealing and market abuse laws

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This guide examines the potential liabilities of a director of a Jersey company under Jersey's insider dealing and market abuse laws.

The key piece of legislation in this area is the Financial Services (Jersey) Law 1998 (the **1998 Law**) which contains provisions closely modelled on the insider dealing and market abuse provisions contained in the UK Criminal Justice Act 1993 and the UK Financial Services and Markets Act 2000.

Insider dealing

Under the 1998 Law, there are three offences relating to insider dealing: dealing in securities while in the possession of inside information, encouraging another person to deal in securities while in the possession of inside information and disclosure of inside information.

Offence of insider dealing

It is an offence under the 1998 Law for a director who has inside information as an insider to deal in price affected securities on a securities market (including the London Stock Exchange) or through a professional intermediary in relation to that inside information. For this offence to be committed, the director must know that the information is inside information and have knowingly acquired it from an inside source.

For these purposes:

- **inside information** is specific or precise unpublished information relating to a particular company or particular securities which, if made public, would be likely to have a significant effect on the price of any securities;
- a director is an **insider** if the director knowingly has inside information acquired from an inside source about the company; and
- **price affected securities** are securities to which inside information relates.

Offence of encouraging dealing

It is an offence under the 1998 Law for a director who has inside information as an insider to encourage another person to deal in securities that are (whether or not that other person knows it) price affected securities in relation to that inside information, knowing or having reasonable cause to believe, that the dealing would take place on a securities market (including the London Stock Exchange) or through a professional intermediary.

For these purposes, a professional intermediary is an entity which carries on the business of, and holds itself out as, acquiring or disposing of securities (as principal or agent) or acting as an intermediary in acquisitions or disposals of securities or an employee of the entity.

Offence of disclosure

It is an offence under the 1998 Law for a director who has inside information as an insider to disclose that inside information to another person otherwise than in the proper performance of the functions of the director's office.

Contract not void or unenforceable

The 1998 Law provides that a contract is not void or unenforceable by reason only that the director engaged in insider dealing, encouraging dealing or disclosure of inside information. Although the counterparty could enforce the contract, it is unlikely that the director (or the director's associate or accomplice) would be able to do so because courts generally will not enforce a claim that arises from a person's illegal conduct.

Penalties

A director who engages in insider dealing, encouraging dealing or disclosure of inside information commits an offence and is liable, upon conviction, to imprisonment for up to ten years or a fine.

Territorial scope

The offence of insider dealing will not be committed under the 1998 Law unless:

- the director was within Jersey at the time when the director is alleged to have done any act constituting or forming part of the alleged dealing; or
- the professional intermediary was within Jersey at the time when it is alleged to have done anything by means of which the offence is alleged to have been committed.

The offence of encouraging dealing or disclosure of inside information will not be committed under the 1998 Law unless:

- the director was within Jersey at the time when the director is alleged to have encouraged the dealing or disclosed the information; or
- the alleged recipient of the encouragement or information was within Jersey at the time when the alleged recipient is alleged to have received the encouragement or information.

Defences

It is a defence to an allegation of insider dealing or encouraging dealing if the director proves that:

- at the relevant time, the director did not expect the dealing to result in a profit or the avoidance of a loss attributable to the fact that the information in question was price sensitive information in relation to the securities;
- at the relevant time the director believed on reasonable grounds that the information had been, or (in the case of encouraging dealing or disclosure of inside information) would be, disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or
- the director would have taken the same course of action even if the director did not have the information.

It is a defence to an allegation of disclosure of inside information if the director proves that:

- the director did not, at the relevant time, expect any person to deal in the securities on a securities market or through a professional intermediary as a result of the disclosure; or
- although the director had that expectation at the relevant time, the director did not expect the dealing to result in a profit or the avoidance of a loss attributable to the fact that the information was price sensitive information in relation to the securities.

It is a defence to an allegation of dealing in securities, or encouraging another person to deal in securities, on a securities market if the director proves that the director acted in conformity with the relevant market rules.

There are also defences to an allegation of insider dealing or encouraging dealing based on market information which may also be available, for example, in connection with a takeover offer.

Misleading information

Offence

Under the 1998 Law, it is an offence for any person to:

- make a statement, promise or forecast which the person knows to be misleading, false or deceptive;
- dishonestly conceal any material facts; or
- recklessly make (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

for the purpose of inducing, or if the person is reckless as to whether it may induce, another person (whether or not the other person is the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to enter or offer to enter into, or refrain from entering or offering to enter into, an agreement or arrangement to buy, sell, subscribe for, or underwrite, any securities or to exercise, or refrain from exercising, any rights conferred by the securities.

Penalties

A person who commits this offence is liable, upon conviction, to imprisonment for up to ten years or a fine.

Territorial scope

This offence will not be committed under the 1998 Law unless:

- the statement, promise or forecast is made in or from, or the facts are concealed in or from, Jersey or arrangements are made in or from Jersey for the statement, promise or forecast to be made or the facts to be concealed;
- the person on whom the inducement is intended to, or may, have effect is in Jersey; or
- the agreement or arrangement is or would be entered into, or the rights are or would be exercised, in Jersey.

Defence

A person is not guilty of this offence in relation to a statement, promise or forecast if it was made in respect of a securities market and the person proves that the person acted in conformity with the relevant market rules.

Market manipulation

Offence

Under the 1998 Law, it is an offence for any person to do any act or engage in any course of conduct which creates a false or misleading impression as to the market in, or the price or value of, any securities for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite, the securities or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by the securities.

Penalties

A person who commits this offence is liable, upon conviction, to imprisonment for up to ten years or a fine.

Territorial scope

This offence will not be committed under the 1998 Law unless the person on whom the inducement is intended to or may have effect is in Jersey or any agreement or arrangement is or would be entered into, or the rights are or would be exercised, in Jersey.

Defence

A person is not guilty of this offence in relation to an act or a course of conduct if the person engaged in the act or course of conduct in respect of a securities market and the person proves that the person:

- reasonably believed that the act or conduct would not create an impression that was false or misleading as to the market in, or the price or value of, any securities; or
- acted in conformity with the relevant market rules.

Fraudulent dealings

Offence

Under the Investors (Prevention of Fraud) (Jersey) Law 1967, it is an offence for any person who, by any statement, promise or forecast which the person knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into, or offer to enter into, any agreement:

- for, or with a view to, acquiring, disposing of, subscribing for, or underwriting, securities; or
- the purpose, or pretended purpose, of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities.

Penalties

A person who commits this offence is liable, upon conviction, to imprisonment for up to seven years, a fine or both.

Criminal Offences (Jersey) Law 2009

Under the Criminal Offences (Jersey) Law 2009, where a statutory offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a person who is a director, manager, secretary or other similar officer of the body corporate, that person is also guilty of the offence and is liable in the same manner as the body corporate to the penalty for the offence.

Liability in connection with a prospectus

A director is potentially liable to pay compensation and/or subject to criminal liability in connection with the circulation of a prospectus which contains a statement of a material fact which is untrue or misleading or omits a statement of a material fact.

Contacts

A full list of contacts specialising in corporate law can be found [here](#).