

Companies Act, 1990

[GA]

PART V INSIDER DEALING

[GA] Interpretation. **107.**—In this Part, except where the context otherwise requires

[GA] "dealing", in relation to securities, means (whether as principal or agent) acquiring, disposing of, subscribing for or underwriting the securities, or making or offering to make, or inducing or attempting to induce a person to make or to offer to make, an agreement—

[GA] (a) for or relating to acquiring, disposing of, subscribing for or underwriting the securities; or

[GA] (b) the purpose or purported purpose of which is to secure a profit or gain to a person who acquires, disposes of, subscribes for or underwrites the securities or to any of the parties to the agreement in relation to the securities;

[GA] "director" includes a shadow director within the meaning of *section 27*;

[GA] "officer", in relation to a company, includes—

[GA] (a) a director, secretary or employee;

[GA] (b) a liquidator;

[GA] (c) any person administering a compromise or arrangement made between the company and its creditors;

[GA] (d) an examiner;

[GA] (e) an auditor; and

[GA] (f) a receiver;

[GA] "public office" means an office or employment which is remunerated out of the Central Fund or out of moneys provided by

the Oireachtas or money raised by local taxation or charges, or an appointment to or employment under any commission, committee, tribunal, board or body established by the Government or any Minister of the Government or by or under any statutory authority;

[GA] "recognised stock exchange" includes, in particular, any exchange prescribed by the Minister which provides facilities for the buying and selling of rights or obligations to acquire stock;

[GA] "related company", in relation to a company, means any body corporate which is the company's subsidiary or holding company, or a subsidiary of the company's holding company;

[GA] "relevant authority", in relation to a recognised stock exchange, means—

[GA] (i) its board of directors, committee of management or other management body, or

[GA] (ii) its manager, however described;

[GA] "securities" means—

[GA] (a) shares, debentures or other debt securities issued or proposed to be issued, whether in the State or otherwise, and for which dealing facilities are, or are to be, provided by a recognised stock exchange;

[GA] (b) any right, option or obligation in respect of any such shares, debentures or other debt securities referred to in *paragraph (a)*;

[GA] (c) any right, option or obligation in respect of any index relating to any such shares, debentures or other debt securities referred to in *paragraph (a)*;
or

[GA] (d) such interests as may be prescribed;

[GA] "underwrite" includes sub-underwrite.

Companies Act, 1990

- [GA] Unlawful dealings in securities by insiders. **108.**—(1) It shall not be lawful for a person who is, or at any time in the preceding 6 months has been, connected with a company to deal in any securities of that company if by reason of his so being, or having been, connected with that company he is in possession of information that is not generally available, but, if it were, would be likely materially to affect the price of those securities.
- [GA] (2) It shall not be lawful for a person who is, or at any time in the preceding 6 months has been, connected with a company to deal in any securities of any other company if by reason of his so being, or having been, connected with the first-mentioned company he is in possession of information that—
- [GA] (a) is not generally available but, if it were, would be likely materially to affect the price of those securities, and
- [GA] (b) relates to any transaction (actual or contemplated) involving both those companies or involving one of them and securities of the other, or to the fact that any such transaction is no longer contemplated.
- [GA] (3) Where a person is in possession of any such information as is mentioned in *subsection (1)* or *(2)* that if generally available would be likely materially to affect the price of securities but is not precluded by either of those subsections from dealing in those securities, it shall not be lawful for him to deal in those securities if he has received the information, directly or indirectly, from another person and is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is then himself precluded by *subsection (1)* or *(2)* from dealing in those securities.
- [GA] (4) It shall not be lawful for a person at any time when he is precluded by *subsection (1)*, *(2)* or *(3)* from dealing in any securities, to cause or procure any other person to deal in those securities.
- [GA] (5) It shall not be lawful for a person, at any time when he is precluded by *subsection (1)*, *(2)* or *(3)* from dealing in any securities by reason of his being in possession of any information, to communicate that information to any other person if he knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing, or causing or

procuring another person to deal, in those securities.

[GA] (6) Without prejudice to *subsection (3)*, but subject to *subsections (7) and (8)*, it shall not be lawful for a company to deal in any securities at a time when any officer of that company is precluded by *subsection (1),(2) or (3)* from dealing in those securities.

[GA] (7) *Subsection (6)* does not preclude a company from entering into a transaction at any time by reason only of information in the possession of an officer of that company if—

[GA] (a) the decision to enter into the transaction was taken on its behalf by a person other than the officer;

[GA] (b) it had in operation at that time written arrangements to ensure that the information was not communicated to that person and that no advice relating to the transaction was given to him by a person in possession of the information; and

[GA] (c) the information was not so communicated and such advice was not so given.

[GA] (8) *Subsection (6)* does not preclude a company from dealing in securities of another company at any time by reason only of information in the possession of an officer of the first-mentioned company, being information that was received by the officer in the course of the performance of his duties as an officer of the first-mentioned company and that consists only of the fact that the first-mentioned company proposes to deal in securities of that other company.

[GA] (9) This *section* does not preclude a person from dealing in securities, or rights or interests in securities, of a company if—

[GA] (a) he enters into the transaction concerned as agent for another person pursuant to a specified instruction of that other person to effect that transaction; and

[GA] (b) he has not given any advice to the other person in relation to dealing in securities, or rights or interests in securities, of that company that are included in the same class as the first-mentioned securities.

[GA] (10) This section does not preclude a person from dealing in

securities if, while not otherwise taking advantage of his possession of information referred to in *subsection (1)*—

[GA]

(a) he gives at least 21 days' notice to a relevant authority of the relevant stock exchange of his intention to deal, within the period referred to in *paragraph (b)*, in the securities of the company concerned, and

[GA]

(b) the dealing takes place within a period beginning 7 days after the publication of the company's interim or final results, as the case may be and ending 14 days after such publication, and

[GA]

(c) the notice referred to in *paragraph (a)* is published by the exchange concerned immediately on its receipt.

[GA]

(11) For the purposes of this section, a person is connected with a company if, being a natural person—

[GA]

(a) he is an officer of that company or of a related company;

[GA]

(b) he is a shareholder in that company or in a related company; or

[GA]

(c) he occupies a position (including a public office) that may reasonably be expected to give him access to information of a kind to which *subsections (1) and (2)* apply by virtue of—

[GA]

(i) any professional, business or other relationship existing between himself (or his employer or a company of which he is an officer) and that company or a related company; or

[GA]

(ii) his being an officer of a substantial shareholder in that company or in a related company.

[GA]

(12) For the purposes of *subsection (11)* "substantial shareholder" means a person who holds shares in a company, the number of which is above the notifiable percentage for the time being in force under *section 70*.

[\[GA\]](#)

(13) The prohibitions in *subsections (1), (3), (4) and (5)* shall extend to dealings in securities issued by the State as if the references in *subsections (1), (9) and (11)* (other than *paragraphs (a) and (b)* of the last mentioned subsection) to a company were references to the State.

Companies Act, 1990

- [GA] Civil liability for unlawful dealing.
- 109.**—(1) Where a person deals in or causes or procures another person to deal in securities in a manner declared unlawful by *section 108* or communicates information in any such manner, that person shall, without prejudice to any other cause of action which may lie against him, be liable—
- [GA] (a) to compensate any other party to the transaction who was not in possession of the relevant information for any loss sustained by that party by reason of any difference between the price at which the securities were dealt in that transaction and the price at which they would have been likely to have been dealt in such a transaction at the time when the first-mentioned transaction took place if that information had been generally available; and
- [GA] (b) to account to the company that issued or made available those securities for any profit accruing to the first-mentioned person from dealing in those securities.
- [GA] (2) The amount of compensation for which a person is liable under *subsection (1)* or the amount of the profit for which a person is liable to account under that subsection is—
- [GA] (a) subject to *paragraph (b)*, the amount of the loss sustained by the person claiming the compensation or the amount of the profit referred to in *subsection (1) (b)*, as the case may be; or
- [GA] (b) if the person so liable has been found by a court to be liable to pay an amount or amounts to any other person or persons by reason of the same act or transaction, the amount of that loss or profit less the amount or the sum of the amounts for which that person has been found to be liable.
- [GA] (3) For the purposes of *subsection (2)*, the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.
- [GA] (4) An action under this section for recovery of a loss or profit shall not be commenced after the expiration of 2 years after the date of

completion of the transaction in which the loss or profit occurred.

Companies Act, 1990

- [GA] Exempt transactions. **110.**—(1) Nothing in *section 108* shall prevent a person from—
- [GA] (a) acquiring securities under a will or on the intestacy of another person; or
- [GA] (b) acquiring securities in a company pursuant to an employee profit sharing scheme—
- [GA] (i) approved by the Revenue Commissioners for the purposes of the Finance Acts, and
- [GA] (ii) the terms of which were approved by the company in general meeting, and
- [GA] (iii) under which all permanent employees of the company are offered the opportunity to participate on equal terms relative to specified objective criteria;
- [GA] (c) entering in good faith into a transaction to which *subsection (2)* applies.
- [GA] (2) This *subsection* applies to the following kinds of transactions—
- [GA] (a) the obtaining by a director of a share qualification under *section 180* of the Principal Act;
- [GA] (b) a transaction entered into by a person in accordance with his obligations under an underwriting agreement;
- [GA] (c) a transaction entered into by a personal representative of a deceased person, a trustee, or liquidator, receiver or examiner in the performance of the functions of his office; or
- [GA] (d) a transaction by way of, or arising out of, a mortgage of or charge on securities or a mortgage, charge, pledge or lien on documents of title to securities.

[\[GA\]](#)

(3) This Part shall not apply to transactions entered into in pursuit of monetary, exchange rate, national debt management or foreign exchange reserve policies by any Minister of the Government or the Central Bank, or by any person on their behalf.

Companies Act, 1990

[\[GA\]](#) Criminal liability for
unlawful dealing.

111.—A person who deals in securities in a manner
declared unlawful by *section 108* shall be guilty of an
offence.

Companies Act, 1990

- [\[GA\]](#) Restriction on dealing. **112.**—(1) Subject to *subsection (2)*, a person convicted of an offence under *section 111* or this section shall not deal within the period of 12 months from the date of the conviction.
- [\[GA\]](#) (2) Where a person convicted of an offence under *subsection (1)* has, before the date of his conviction, initiated a transaction under which some element of performance remains to be rendered, *subsection (1)* shall not prohibit him from completing the transaction where a relevant authority of a recognised stock exchange has indicated in writing, to the parties to the transaction, its satisfaction that—
- [\[GA\]](#) (a) the transaction was initiated but not completed before the date of the conviction, and
- [\[GA\]](#) (b) if the transaction were not concluded, the rights of an innocent third party would be prejudiced, and
- [\[GA\]](#) (c) the transaction would not be unlawful under any other provision of this Part.
- [\[GA\]](#) (3) A person who contravenes this section shall be guilty of an offence.

Companies Act, 1990

[\[GA\]](#) Duty of agents in relation to unlawful dealing.

113.—(1) A person shall not deal on behalf of another person if he has reasonable cause to believe or ought to conclude that the deal would be unlawful, within the meaning of *section 108*.

[\[GA\]](#)

(2) A person who contravenes this section shall be guilty of an offence.

Companies Act, 1990

[\[GA\]](#) Penalties for offences under this Part. **114.**—A person who commits an offence under this Part shall be liable—

[\[GA\]](#) (*a*) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding £1,000 or 2 to both, or

[\[GA\]](#) (*b*) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine not exceeding £200,000 or to both.

[\[GA\]](#) Duty of recognised stock exchange in dealing.

115.—(1) If it appears to a relevant authority of a recognised stock exchange that any person has committed an offence under this Part, such authority shall forthwith report the matter to the Director of Public Prosecutions and shall furnish to the Director of Public Prosecutions such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of such authority and relating to the matter in question, as the Director of Public Prosecutions may require.

[\[GA\]](#)

(2) Where it appears to a member of a recognised stock exchange that any person has committed an offence under this Part, he shall report the matter forthwith to a relevant authority of the recognised stock exchange concerned, who shall thereupon come under the duty referred to in *subsection (1)*.

[\[GA\]](#)

(3) If it appears to a court in any proceedings that any person has committed an offence as aforesaid, and that no report relating to the matter has been made to the Director of Public Prosecutions under *subsection (1)*, that court may, on the application of any person interested in the proceedings concerned or of its own motion, direct a relevant authority of the recognised stock exchange concerned to make such a report, and on a report being made accordingly, this *section* shall have effect as though the report had been made in pursuance of *subsection (1)*.

[\[GA\]](#)

(4) If, where any matter is reported or referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted and institutes proceedings accordingly, it shall be the duty of a relevant authority of the recognised stock exchange concerned, and of every officer of the company whose securities are concerned, and of any other person who appears to the Director of Public Prosecutions to have relevant information (other than any defendant in the proceedings) to give all assistance in connection with the prosecution which he or they are reasonably able to give.

[\[GA\]](#)

(5) If it appears to the Minister, arising from a complaint to a relevant authority of a recognised stock exchange concerning an alleged offence under this Part, that there are circumstances suggesting that—

[\[GA\]](#)

(a) the relevant authority ought to use its powers

under this Part but has not done so, or

[\[GA\]](#)

(b) that a report ought to be made to the Director of Public Prosecutions under *subsection (1)*, but that the relevant authority concerned has not so reported,

[\[GA\]](#)

he may direct the relevant authority to use such powers or make such a report, and on a report being made accordingly, this *section* shall have effect as though the report had been made in pursuance of *subsection (1)*.

[\[GA\]](#)

(6) Where the Minister gives a direction under *subsection (5)*, the relevant authority concerned shall communicate the results of its investigations, or a copy of its report under *subsection (1)*, as the case may be, to the Minister.

[\[GA\]](#)

(7) A relevant authority of a recognised stock exchange shall not be liable in damages in respect of anything done or omitted to be done by the authority in connection with the exercise by it of its functions under this Part unless the act or omission complained of was done or omitted to be done in bad faith.

Companies Act, 1990

[GA] Co-operation with other authorities outside the State.

116.—(1) This *section* applies where a relevant authority of a recognised stock exchange receives a request for information from a similar authority in another Member State of the European Communities in relation to the exercise by the second-named authority of its functions under any enactment of the European Communities relating to unlawful dealing within the meaning of this Part, whether in the State or elsewhere.

[GA]

(2) The relevant authority concerned shall, in so far as it is reasonably able to do so, and making use of its powers under this Part where appropriate, obtain the information requested and shall, subject to the following provisions of this section, provide such information accordingly.

[GA]

(3) Where a relevant authority of a recognised stock exchange receives a request under *subsection (1)*, it shall advise the Minister who, on being satisfied as to any of the matters referred to in subsection (4), may direct the authority to refuse to provide all or part of the information requested.

[GA]

(4) The matters referred to in *subsection (3)* are that—

[GA]

(a) communication of the information requested might adversely affect the sovereignty, security or public policy of the State;

[GA]

(b) civil or criminal proceedings in the State have already been commenced against a person in respect of any acts in relation to which a request for information has been received under *subsection (1)*;

[GA]

(c) any person has been convicted in the State of a criminal offence in respect of any such acts.

Companies Act, 1990

- [\[GA\]](#) Authorised persons. **117.**—(1) In this section and *sections 118 and 121*, "authorised person" means a person approved by the Minister to be an authorised person for the purposes of this Part being—
- [\[GA\]](#) (a) the manager, however described, of a recognised stock exchange, or
- [\[GA\]](#) (b) a person nominated by a relevant authority of a recognised stock exchange.
- [\[GA\]](#) (2) Where an alleged offence under this Part is investigated by an authorised person, the relevant authorities of the recognised stock exchange concerned shall be under a general duty to ensure that potential conflicts of interest are avoided, as far as possible, on the part of any such authorised person.
- [\[GA\]](#) (3) For the purpose of obtaining any information necessary for the exercise by a relevant authority of such exchange of the function referred to in *section 115*, an authorised person may, on production of his authorisation if so required, require any person whom he or such relevant authority has reasonable cause to believe to have dealt in securities, or to have any information about such dealings, to give the authorised person any information which he may reasonably require in regard to—
- [\[GA\]](#) (a) the securities concerned,
- [\[GA\]](#) (b) the company which issued the securities,
- [\[GA\]](#) (c) his dealings in such securities, or
- [\[GA\]](#) (d) any other information the authorised person reasonably requires in relation to such securities or such dealings,
- [\[GA\]](#) and give him such access to and facilities for inspecting and taking copies of any documents relating to the matter as he reasonably requires.
- [\[GA\]](#) (4) Every document purporting to be a warrant or authorisation and to be signed or authenticated by or on behalf of a relevant authority shall be received in evidence and shall be deemed to be such warrant or authorisation without further proof until the contrary is shown.

- [\[GA\]](#) (5) An authorised person, or any person on whom he has made a requirement under this section, may apply to the court for a declaration under this section.
- [\[GA\]](#) (6) The court, having heard such evidence as may be adduced and any representations that may be made by the authorised person and a person referred to in *subsection (5)*, may at its discretion declare—
- [\[GA\]](#) (a) that the exigencies of the common good do not warrant the exercise by the authorised person of the powers conferred on him by this section, or
- [\[GA\]](#) (b) that the exigencies of the common good do so warrant.
- [\[GA\]](#) (7) Where the court makes a declaration under *subsection (6) (a)*, the authorised person shall, as soon as may be, withdraw the relevant requirement under this section.
- [\[GA\]](#) (8) Where the court makes a declaration under *subsection (6) (b)*, the person on whom the requirement was imposed shall, as soon as may be, furnish the required information to the authorised person.
- [\[GA\]](#) (9) Where, in contravention of *subsection (8)*, a person refuses, or fails within a reasonable time, to comply with a requirement of an authorised person, the authorised person may certify the refusal under his hand to the court, and the court may, after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of court.

Companies Act, 1990

[\[GA\]](#) Obligation of professional secrecy.

118.—(1) Information obtained by any of the following persons by virtue of the exercise by a recognised stock exchange of its functions under this Part shall not be disclosed except in accordance with law, namely—

[\[GA\]](#)

(a) a relevant authority of the exchange,

[\[GA\]](#)

(b) an authorised person, or

[\[GA\]](#)

(c) any person employed or formerly employed by the exchange.

[\[GA\]](#)

(2) *Subsection (1)* shall not prevent a relevant authority of a recognised stock exchange from disclosing any information to the Minister, whether pursuant to a request under *section 115 (5)* or otherwise, or to a similar authority in another Member State of the European Communities.

[\[GA\]](#)

(3) Any person who contravenes *subsection (1)* shall be guilty of an offence.

Companies Act, 1990

[\[GA\]](#) Extension of
Council Directive
79/279/EEC.

119.—The provisions of Schedule C.5 (a) of Council Directive 79/279/EEC of 5 March 1979³ co-ordinating the conditions for the admission of securities to official stock exchange listing, as given effect by the European Communities (Stock Exchange) Regulations, 1984 ([S.I. No. 282 of 1984](#)), shall also apply to securities within the meaning of *section 107*.

*OJ No. L66, 16.3.1979, p.21.

Companies Act, 1990

- [\[GA\]](#) Annual report of recognised stock exchange. **120.**—(1) An annual report shall be presented to the Minister on behalf of every recognised stock exchange on the exercise of the functions of the relevant authorities of the exchange concerned under this Part and, in particular, the report shall include—
- [\[GA\]](#) (a) the number of written complaints received concerning possible contraventions of this Part,
- [\[GA\]](#) (b) the number of reports made to the Director of Public Prosecutions under this Part,
- [\[GA\]](#) (c) the number of instances in which, following the exercise of powers by authorised persons under this Part, reports were not made to the Director of Public Prosecutions, and
- [\[GA\]](#) (d) such other information as may be prescribed.
- [\[GA\]](#) (2) A copy of the report referred to in *subsection (1)* shall, subject to *subsection (3)*, be laid before each House of the Oireachtas.
- [\[GA\]](#) (3) If the Minister, after consultation with a relevant authority of the recognised stock exchange concerned, is of the opinion that the disclosure of any information contained in the report referred to in *subsection (1)* would materially injure or unfairly prejudice the legitimate interests of any person, or that otherwise there is good reason for not divulging any part of such a report, he may lay the report under *subsection (2)* with that information or that part omitted.
-

Companies Act, 1990

[GA] Power of Minister to make supplementary regulations.

121.—(1) If, in any respect, any difficulty arises in bringing any provision of this Part into operation or in relation to the operation of any such provision, the Minister may by regulations do anything which appears to him to be necessary or expedient for removing that difficulty, for bringing the provision into operation, or for securing or facilitating its operation, and any such regulations may modify any provision of this Part so far as may be necessary or expedient for carrying such provision into effect for the purposes aforesaid.

[GA]

(2) Without prejudice to the generality of *subsection (1)*, where the Minister considers it necessary or expedient to do so for the proper and effective administration of *sections 115 and 117*, he may make such regulations as he thinks appropriate in relation to—

[GA]

(a) the powers of authorised persons, or

[GA]

(b) the matters in respect of which, or the persons from whom, authorised persons may require information under this Part.

[GA]

(3) Every regulation made by the Minister under this *section* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.