

2011年ACCA公司法和商法F4(双语)讲义：第十九章 PDF转换
可能丢失图片或格式，建议阅读原文

https://www.100test.com/kao_ti2020/645/2021_2022_2011_E5_B9_B4ACC_c52_645925.htm 19 Insider dealing 1 Introduction 1.1

“ Insider dealing is understood broadly to cover situations where a person buys or sells securities, when he, but not the other party to the transaction, is in possession of confidential information which affects the value of those securities ” (The Conduct of Company Directors 1977). 1.2 Insider dealing usually applies to individuals who have a connection with the company whose securities are to be dealt in eg. directors, employees, professional advisors but can also apply to a wide range of other individuals. 1.3 An example would be the company director who, aware that his company is about to announce far better interim results than predicted, buys shares in his company before the announcement. 2 The Criminal Justice Act 1993 2.1 The Act came into force in 1994 and replaced the old Companies Securities (Insider Dealing) Act of 1985. The 1993 Act reflects the European Insider Dealing Directive which harmonises Insider Dealing law throughout the European Union. 2.2 The Act makes insider dealing a criminal offence. 3 The offence 3.1 The Defendant was an Insider An insider is defined as: (a) a director, employee or shareholder of the issuer of the securities (b) anyone else who has access to the information through his employment, office or profession (c) anyone who obtains information (directly or indirectly) from either of the above. The ‘ insider ’ must be aware that the information comes from an inside source and that it is inside

information. 3.2 The Defendant had Inside Information Inside information is information which is ' price sensitive ', that is which: (a) has not yet been made public (b) if it was made public would be likely to have a significant effect on the price of any securities (c) is specific or precise (e.g. ' ... a take-over bid is about to be announced for X plc ... ' is specific, whereas a mere tip ' buy X plc ' would not be) (d) relates to particular securities or a particular issuer rather than to securities or issues generally. (In other words, information which suggests it is a good idea to sell X plc securities can be inside information but not information which would persuade the market to move out of equities generally and into gilts).

3.3 The Defendant either: (a) deals (buys or sells relevant securities) or (b) encourages another person to deal, or (c) discloses the information (except in the proper performance of the functions of his employment, office or profession).

3.4 The Securities involved are: Shares, debt securities, warrants, options, futures, depository receipts and contracts for differences dealt either on-exchange or off-exchange through a professional intermediary.

4 Defences 4.1 The Defences are that: (a) there was no expectation that the dealing would result in a profit or avoidance of loss. (b) reasonable belief that the information had been widely disclosed. (c) they would have dealt anyway even if the information had not been available. (d) they did not expect the person to whom they disclosed the information to deal, or they did expect them to deal, but not to make a profit or avoid a loss. (e) a Market Maker acting in good faith. (f) legitimate price stabilisation operations.

5 Penalties 5.1 On summary

conviction a fine of up to 100Test 下载频道开通，各类考试题目
直接下载。详细请访问 www.100test.com