VAN HUYSSTEENS
COMMERCIAL ATTORNEYS

DE NOVO

Mei 2016

“Success is finding satisfaction in giving a little more than you take”.
- Christopher Reeve

EVERY CHINESE WALL IS COVERED WITH A GRAPEVINE

The use of privileged information by an 'insider' for the purposes of gain (or to avoid a loss) at the expense of others is morally and legally reprehensible and therefore concepts of inside information, price-sensitive information, and insider trading are a number of the practices prohibited by the Financial Markets Act (“FMA”).

A company director, employee, adviser or even a journalist becomes an insider when he or she is made aware of a proposed transaction that could affect the price or value of a listed security.

Inside information is defined as specific or precise information, which has not been made public and which is obtained or learned as an insider. The FMA introduced five insider trading offences:

1. Dealing in securities for one's own account, while in possession of insider information;
2. Dealing in securities on behalf of another person, while in possession of inside information;
3. Dealing in securities for an insider;
4. Disclosing inside information to another person;
5. Encouraging or discoursing another person to deal in securities based upon inside information.

The regulator (the FSB) can choose to act on reports of alleged insider trading activity compiled by the Market Regulation Division of the JSE or tip-offs from other sources. Therefore, when publishing information in terms of the JSE Listings Requirements, it is important to note that issuers may not release the information before any price-sensitive information have been distributed to a broad audience published via SENS.

Law & Laughter

Joke: : How many lawyer jokes are there?
A: Only three. The rest are true stories.

NO SIGNATURE, NO OBLIGATION

In the recent case of GrainCo v M (20693/2014) 2016 ZASCA 42, the court was asked to decide whether an implied prohibition in a sale of business contract against the canvassing of customers bound anyone other than the parties to the agreement. The business was sold as a going concern and was inclusive of the goodwill of the business.

GrainCo entered into an amalgamation agreement in terms of which its business and goodwill was acquired by BKB. The agreement made provision for a comprehensive restraint of trade.

It restrained GrainCo and two employees of GrainCo (described herein as K and M) for a period of five years from conducting any activity that would cause prejudice to BKB.

Once the restraints of trade had expired K and M resigned from GrainCo, and opened a company (Company P) across the street from GainCo and in competition with CrainCo. Company P employed a large number of people who had either resigned from GrainCo or took voluntary retrenchment packages from GrainCo.

GrainCo lodged a court application to interdict K and M and alleged that K and M on behalf of Company P, canvassed, enticed and dealt with a long list of people and entities which were GrainCo's customers, and which conduct was in breach of the implied provisions contained in the amalgamation agreement.

The court held that the implied prohibition against canvassing customers was a term implied by law of contract for the sale of a business and could only find application to the persons that were parties to the amalgamation agreement (i.e. GrainCo and BKB). K and M were not parties to the sale and therefore not bound by an implied term of the agreement.

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