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Insider Trading In Turkey

The base of the stock market business relies on the law of supply and demand. The application of this law of supply and demand is based on the natural buy or sell behaviors of the investors. In order to provide a natural buy or sell environment, none of the investors should have any access to the confidential information of the companies registered in stock market. Insider trading is the use of confidential information about a business gained through employment in a company or a stock brokerage, to buy and/or sell stocks and bonds based on the private knowledge and to provide benefit or prevent loss for oneself or for the third parties in this way.¹

Insider trading had not been determined as a crime until the occurrence of certain events in the history. First attempts to overcome insider trading activities have been in England in 17th century. In 1696 the Board of Trade took some precautions over the stock transactions. However most effective actions taken on the uprising danger came in the United States. The United States government put the Securities and Exchange Act into action and established the Securities and Exchange Commission to provide the enforcement of it.

In order to understand the insider trading phenomenon better we may take the biggest amounted case in the history as an instance. Dennis Levine was an investment banker in the United States. Due to his position in the investment system he could have the intelligence about the companies to be purchased by bigger companies. Depending on this intelligence, he bought the purchased companies stocks at lower prices before the purchase and sold them later at higher prices after the purchase took place. In this way he raised 12,6 million dollars. Consequently he was sentenced with prison because of his illegal actions.²

With an amendment on the Turkish Capital Market Law, Insider trading was defined as a crime under Turkish law for the first time. Article 47/1-a of the Turkish Capital Market Law reads "*Insider trading is the use of the information, which may affect the value of investment instruments and that is not serviced to public yet; in order to make profit or prevent loss for oneself or for the third parties and by this way damaging the equality of opportunity of the investors*". According to this article, to define an activity as an insider trading crime;

1. The information subject to the criminal activity should not be known by the public yet and this information should have the power to increase or decrease the value of the investment instrument. In this respect this information may be related to stock issuers (their loss or profit, reserves funds, projects, integrating with other corporations...etc.), capital market or the country's political decisions, as well.
2. Person, who has this information, should make his decision of buying or selling his/her investment instruments according to the information and by this way he/she is to make benefit for herself/himself or the third parties.
3. The use of information has to cause damage on the equality of the opportunity of the investors and by this way the offender should make profit or prevent loss.

People who are to breach this law may be;

1. Managers, auditors, members or the executive officers of the board of directors and other employers of the issuers, capital market associations or other enterprises affiliated to or dominating above.
2. Officials who may have aforementioned information as a result of the implementation of their duties.
3. People who may have this kind of information directly or indirectly as a result of their contacts with the above.

Insider trading is sometimes considered like one of the most popular kind of crimes concerning capital markets which is defined as 'Manipulation'. However there are certain differences between these two crimes. Firstly; manipulation results with a change on the value of the investment instrument, whereas insider trading just uses information about the value and never affects the value itself. Secondly, for the occurrence of the manipulation crime, existence of the intention is sufficient. However in the latter occurrence of the offense depends on the presence of a concrete benefit on the assets of the offender. The last difference is about the information object to the crimes. Manipulator uses false information with the intent of creating an artificial market environment, while insider trader is concerned with the true intelligence.

The hardest point of the insider trading crime is the provability. Even though there are sample cases in other countries, there are not so many examples in Turkey. The Capital Markets Board, which is in charge for the supervision of the capital markets in order to prevent illegal activities in the market, made 406 criminal complaints since 2002. Merely 4 of these were about the insider trading.³ Considering the increasing numbers of investors in Turkish Stock Markets, it is hard to conclude that insider trading is not very much committed in Turkey. To our opinion it is obvious that there are some loopholes or there is a lack of effective supervision of the Board over the markets.

In an era which makes us witness to breathtaking developments on information technologies, it gets easier for a malicious person to have the information he needs to breach the law. In this respect to overcome the rising problem of unequal market conditions for the investors and especially the insider trading activities, there should be more strict regulations and sanctions. Moreover these sanctions are to be applied in fast processing judicial bodies.

Footnotes

1. <http://dictionary.law.com/Default.aspx?selected=983>; 25.01.2010

2. <http://www.borsamania.net/forum/index.php?topic=9081.0>; 25.01.2010

3. <http://borsamagdurlari.blogcu.com/Bilgilendirme+Notlari>, 28.01.2010