



**BRITISH AMERICAN
TOBACCO
KENYA**

**Code for Dealing in
Shares & Securities of
British American Tobacco Kenya plc.**



Code for Dealing in Shares & Securities of British American Tobacco Kenya plc.

Approver: Board of Directors, British American Tobacco Kenya plc.

Approval reference: Board Meeting Minute 25:17

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This Code sets out the requirements applicable to Insiders in relation to dealings in shares and securities of British American Tobacco Kenya plc..

SECTION I - INTRODUCTION

1. Part VI of the Capital Markets Act (Cap. 485A, Laws of Kenya) (the **Act**) obliges listed companies to require directors and certain other employees with inside information (the **Insiders**) to comply with the provisions of the Act and to take all proper and reasonable steps to secure their compliance. This document is the Code which has been adopted by British American Tobacco Kenya plc., being a company listed on the Nairobi Stock Exchange, in compliance with that requirement.
2. The provisions of Insider Trading as contained in the Act shall be incorporated into this Code to the extent that the content of such provisions are not otherwise explicitly addressed by the terms of this Code. In the event of any inconsistency between the Code and Part VI of the Act, the provisions of Part VI of the Act shall prevail. The extracts of the relevant provisions of the Act are attached to this Code for your further reference.
3. The purpose of this Code is to ensure that **Insiders** do not abuse, and do not place themselves under suspicion of abusing **Insider Information** that they may have or be thought to have, especially in periods leading up to an announcement of results. **Insiders** and **Insider Information** are expanded on further in Section II and III below respectively.

SECTION II - INSIDERS

4. The Act defines an Insider as a person in possession of Insider Information. The following persons are accordingly deemed to be **Insiders**:
 - a) All directors of British American Tobacco Kenya plc.;
 - b) Any employee (permanent or temporary) of British American Tobacco Kenya plc. who is privy to **Insider Information**;
 - c) Any consultant, advisor or service provider to British American Tobacco Kenya plc. who is privy to **Insider Information**;
 - d) Connected persons to the persons identified in paragraphs a, b and c above who are:-

- i. *Family Members*: the spouse or civil partner and children/stepchildren under 18 years old of such persons.
- ii. *Associated companies*: Any company in which such persons and any Connected Persons has or have an interest comprising at least 20% of the equity share capital or which carry 20% of the voting rights.
- iii. *Trustees*: a person acting in the capacity of such persons as trustee of:
 - any trust, the beneficiaries of which include such persons, his spouse or civil partner or any children or step-children of his, or a company with which such person is associated; or
 - a trust whose terms confer a power on the trustees that may be exercised for the benefit of such person, his spouse or civil partner, or any children or step-children of his, or a company with which he is associated.
 - *Trustees*: a person acting in the capacity of such persons as trustee of.
- iv. *Partnerships*: a person acting in the capacity of such persons as a partner
- v. Any relative of such a person, who, on the date of transaction in question, has shared the same household as that person for at least 12 months.
- vi. A company in which such a person or any person connected with such a person as identified above is a sole director and/or is a senior executive who has power to control and make management decisions affecting the future development and business prospects of that company.

SECTION III - INSIDER INFORMATION

5. The Act defines **Insider Information** as information which (i) relates to particular securities or to a particular issue of securities (for example, British American Tobacco Limited), (ii) has not been made public and (iii) if it were to be made public is likely to have a material effect on the price of the securities.

As such Insider Information, with respect to British American Tobacco Limited, means information of a precise nature which:

- a) is not generally available to the public;
- b) relates, directly or indirectly, to British American Tobacco Kenya plc. or to its shares or other financial instruments of British American Tobacco Kenya plc.; and
- c) would, if generally available, be likely to have a significant effect on the price of British American Tobacco Kenya plc. shares or other financial instruments or on the price of related investments.

Information would be likely to have a significant effect on price if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decision.

6. Insider Information may include, but is not limited to:
- a) Earnings or losses that are significantly higher or lower than generally expected by the capital markets;
 - b) A proposed or imminent merger, acquisition or divestiture of the company's or its investment.
 - c) A proposed or imminent public issue of the company's securities;
 - d) A proposed stock split or stock dividend;
 - e) Significant board and management changes;
 - f) Significant new innovations, technologies or intellectual properties.
 - g) Significant new regulatory approvals, agreements or business partnerships;
 - h) Imminent financial distress or bankruptcy of the company or its investments.
7. Other market abuses which are prohibited under the Act may include, but are not limited to:
- a) Market Manipulation;
 - b) False Trading and Market Rigging;
 - c) Fraudulently inducing trading in Securities;
 - d) Use of Manipulative Devices;
 - e) False or Misleading Statements inducing Securities Transactions.

These are set out in further detail in Section 32F to 32J of the Act (extracts attached).

SECTION IV - PROVISIONS APPLICABLE TO INSIDERS WHEN DEALING

8. Insiders must not Deal in any shares or securities of British American Tobacco Kenya plc. during Closed Periods or Prohibited Periods.

Deal or Dealing includes:-

- (i) any acquisition or disposal of, or agreement to acquire or dispose of any of the securities of British American Tobacco Kenya plc.;
- (ii) entering into a contract (including a contract for difference) the purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the price of any of the securities of British American Tobacco Kenya plc.;
- (iii) the grant, acceptance, acquisition, disposal, exercise or discharge of any option (whether for the call, or put or both) to acquire or dispose of any of the securities of British American Tobacco Kenya plc.;
- (iv) entering into, or terminating, assigning or novating any stock lending agreement in respect of the securities of British American Tobacco Kenya plc.;

- (v) using as security, or otherwise granting a charge, lien or other encumbrance over the securities of British American Tobacco Kenya plc.;
- (vi) any transaction, including a transfer for nil consideration, or the exercise of any power or discretion effecting a change of ownership of a beneficial interest in the securities of British American Tobacco Kenya plc.; or
- (vii) any other right or obligation, present or future, conditional or unconditional, to acquire or dispose of any securities of British American Tobacco Kenya plc.

Close Period means:-

- (i) the period of 60 days immediately preceding the preliminary announcement of British American Tobacco Kenya plc. annual results or, if shorter, the period from the end of the relevant financial year up to and including the time of announcement; and
- (ii) if British American Tobacco Kenya plc. reports on a half-yearly basis, the period of 60 days immediately preceding the publication of the half-yearly report or, if shorter, the period from the end of the relevant financial period up to and including the time of such publication; or
- (iii) if British American Tobacco Kenya plc. reports on a quarterly basis, the period of 30 days immediately preceding the announcement of the quarterly results or, if shorter, the period from the end of the relevant financial period up to and including the time of the announcement.

Prohibited Period means any period where there exists any matter which constitutes Inside Information in relation to British American Tobacco Kenya plc..

Open period means any period in which it is deemed Insiders do not possess any Insider Information in relation to British American Tobacco Kenya plc. as advised and published by the Head of LEX. During the Open Period, Insiders are permitted to Deal or engage in Dealing.

Note: In case of any doubt with respect to Open Period, Insiders are encouraged to consult with the Head of LEX when they are considering whether to Deal or engage in Dealing.

SECTION V - STATUTORY FRAMEWORK

- 9. Insider Dealing Legislation: Under the Act Insider Dealing, is a criminal offence.
- 10. Insiders should be conversant with the legal penalties associated with violation of insider trading laws. Penalties under the Act for a first offence include a fine (Kenya Shillings 2,500,000), imprisonment (2 years) and/or repayment of the gain made or loss avoided. Penalties for a subsequent offence are much higher.

11. Insiders should consult the Head of LEX in writing if unsure of whether their trading activities are likely to breach insider trading laws at any time.
12. Insiders should also consult the Head of LEX if required to disclose Insider Information to any legal authority or third party.
13. Insiders and all other employees should report any suspected violation of insider trading laws or this Code to the Head of LEX.

Part VI of the Capital Markets Act is replicated here for reference.

PART VI -INSIDER TRADING

- 32A. (1) This Part applies to listed securities, their derivatives and derivatives traded on any market regulated by the Authority.
- (2) For the purposes of this Part–
- (a) securities are “price-affected securities” in relation to inside information if the information is likely to, if made public, materially affect the price of the securities;
 - (b) information shall be treated as relating to an issuer of securities where it may affect the business prospects of the company;
 - (c) “insider” means a person in possession of inside information.
- 32B. (1) A person who deals in listed securities or their derivatives that are price-affected in relation to the information in his possession commits an offence of insider trading if that person–
- (a) encourages another person, whether or not that other person knows it, to deal in securities or their derivatives which are price-affected securities in relation to the information in the possession of the insider, knowing or having reasonable cause to believe that the trading would take place; or
 - (b) discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.
- (2) For the purposes of subsections (1) (a) and (b), a person deals in securities or their derivatives if, whether as principal or agent, sells, purchases, exchanges or subscribes for any listed securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of the right to sell, purchase, exchange or subscribe for any listed securities or their derivatives.
- (3) A contract shall not be void or unenforceable by reason only of the commission of an offence under this section.
- 32C. (1) For the purposes of this Part, "inside information" means information which –
- (a) relates to particular securities or to a particular issuer of securities;
 - (b) has not been made public; and
 - (c) if it were made public is likely to have a material effect on the price of the securities.

32D. (1) For the purposes of section 32C, information is made public if –

- (a) it is published in accordance with the rules of a securities exchange for the purpose of informing investors and their professional advisers;
- (b) it is contained in records which by virtue of any law are open to inspection by the public;
- (c) it can readily be acquired by those likely to deal in any securities –
 - (i) to which the information relates; or
 - (ii) of an issuer to which the information relates; or
- (d) it is derived from information which has been made public.

(2) Information may be treated as having been made public even though the information –

- (a) can be acquired by persons exercising diligence or expertise;
- (b) is communicated to a section of the public;
- (c) can be acquired by observation;
- (d) is communicated on the payment of a fee; or
- (e) is published outside Kenya.

32E. A person who contravenes the provisions of section 32B commits an offence and is liable on conviction –

(a) on a first offence, in the case of –

- (i) an individual, to a fine not exceeding two million five hundred thousand shillings or to imprisonment for a term of two years and payment of the amount of the gain made or loss avoided; and
- (ii) a company, to a fine of up to five million shillings and payment of the amount of the gain made or loss avoided;

(b) on any subsequent offence, in the case of –

- (i) an individual, to a fine not exceeding five million shillings or to an imprisonment for seven years and payment of twice the amount of the gain made or loss avoided ; and

- (ii) a company, to a fine not exceeding ten million shillings and payment of twice the amount of the gain made or loss avoided.

32F. (1) A person who enters into or carries out, directly or indirectly, two or more transactions in the securities of a company, or in other listed securities, which by themselves or in conjunction with any other transaction –

- (a) increase, or are likely to increase the price with the intention of inducing another person to purchase, or subscribe for, or to refrain from selling securities issued by the same company or a related company, or such other listed securities;
- (b) reduce, or are likely to reduce, the price with the intention of inducing another person to sell, or to refrain from purchasing, securities issued by the same company or a related company, or such other listed securities; or
- (c) stabilize, or are likely to stabilize, the price with the intention of inducing another person to sell, purchase, or subscribe for, or to refrain from selling, purchasing or subscribing for, securities issued by the same company or by a related company, or such other listed securities commits an offence.

- (2) For the purposes of this section, “securities” includes exchange traded derivatives contracts, and options on exchange-traded derivative contracts, in connection with securities.

32G. (1) A person who creates or does anything which is intended or likely to create a false or misleading impression –

- (a) of active trading in securities on the securities market of a securities exchange; or
- (b) with respect to the market for, or the price for dealings in, securities traded on the securities market of a securities exchange; commits an offence.

- (2) Without prejudice to the generality of subsection (1), a false or misleading impression of active trading in securities is created for the purpose of this section if a person –

- (a) enters into or carries out, directly or indirectly, any transaction for the sale or purchase of securities which does not involve a change in the beneficial ownership of the securities, or offers to do so; or
- (b) offers to sell securities at a price which is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to buy the same or substantially the same, number of securities.

32H. A person who induces or attempts to induce another person to subscribe for, sell or purchase securities by–

- (a) making or publishing any statement, promise or forecast that is false, misleading or deceptive;
 - (b) concealing any material facts;
 - (c) making or publishing any statement, promise or forecast which is misleading, false or deceptive; or
 - (d) recording or storing in, or by means of, any mechanical, electrical or other device, information that is false or misleading; 91 commits an offence.
- 32I. A person who, directly or indirectly, in connection with any transaction with any other person involving the subscription, purchase or sale of securities –
- (a) uses any device, scheme or artifice to defraud the other person; or
 - (b) engages in any act, practice or course of business which is fraudulent, deceptive, or likely to defraud or deceive that other person; or
 - (c) makes any false statement in relation to a matter or omits to state a material fact that is necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading; commits an offence.
- 32J. A person who, directly or indirectly, for the purpose of inducing the subscription for, sale or purchase of securities by another person of any company, or of any other listed securities, or to maintain, increase, reduce or stabilize the price of such securities, makes with respect to the securities –
- (a) any statement which is, at the time and in light of the circumstances in which it is made, false or misleading with respect to any material fact and which that person knows or reasonably ought to know is false or misleading; or
 - (b) any statement which is, by reason of the omission of a material fact, rendered false or misleading and which that person knows or ought to know is rendered false or misleading by reason of omission of that fact; commits an offence.
- 32K. (1) A person who is convicted of an offence under this Part shall, in addition to the penalty imposed for committing the offence, be liable to an action by a person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss concerned.
- (2) Nothing in subsection (1) shall be construed to limit or diminish any civil liability which any person may incur under any other Act or law.

32L. A person who contravenes the provisions of this Part commits an offence and is liable on conviction in the case of—

- (a) an individual, to a fine not exceeding five million shillings or to imprisonment for a term of two years and payment of twice the amount of the gain made or loss avoided;
- (b) a company, to a fine not exceeding ten million shillings and payment of twice the amount of the gain made or loss avoided.

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