

THE 240TH SHARIAH ADVISORY COUNCIL OF THE SECURITIES COMMISSION MALAYSIA MEETING (25 JANUARY 2021)

REMOVAL OF CONDOM BUSINESS AND ITS RELATED BUSINESS ACTIVITIES BENCHMARK IN SHARIAH SCREENING METHODOLOGY FOR LISTED SECURITIES

INTRODUCTION

In determining the Shariah status of companies listed on Bursa Malaysia, the contribution of Shariah non-compliant activities to the Group revenue and Group profit before taxation of the companies will be computed and compared against the relevant business activity benchmarks including condom business and its related business activities.

In this regard, the issue of benchmark in relation to condom business and its related business activities has been discussed again in the Shariah Advisory Council of the Securities Commission Malaysia (SAC) meeting on whether these activities should be removed from the list of Shariah non-compliant activities since condom should be regarded as neutral and treated as medical device for medical prevention or health purposes and as contraception for family planning.



RESOLUTION

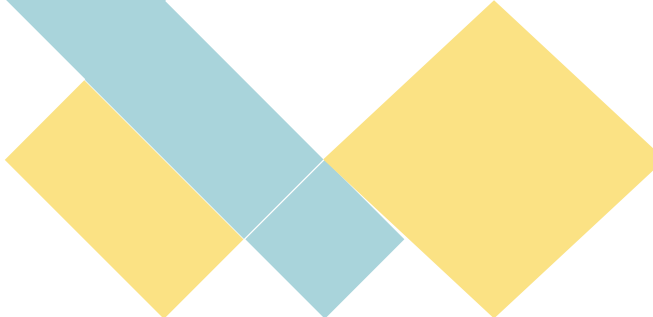
The SAC had, at its 240th meeting held on 25 January 2021 resolved that the benchmark for condom business and its related business activities in the Shariah screening methodology for listed securities is no longer applicable. This is because condom should be regarded as neutral and treated as medical device for medical prevention or health purposes and as contraception for family planning.

SHARIAH JUSTIFICATION

Shariah justifications for the SAC resolution above are as follows:

1 Condom is regarded as neutral

Condom and its production is regarded as neutral because it does not originally aim to be used for Shariah non-compliant purposes or activities and it initially does not give rise to any problem if used in a permissible way. In addition, it is a contraceptive method used for medical and health purposes such as to prevent from Sexually Transmitted Infections (**STI**) etc. Prevention of infectious diseases by using condom is in line with the teachings of Islam which encourages medical or preventive treatment for all diseases.



The neutrality of condom can be supported by the following Islamic legal maxim:¹

الأصل في الأشياء الإباحة حتى يدل الدليل على التحريم

Meaning: " *The original ruling for everything is permissibility unless there is evidence of its prohibition*".

Majority of the Muslim scholars argue that based on the above legal maxim anything that is silent by Shariah on its permissibility or prohibition should be considered as halal and thus permissible.²

By applying this legal maxim, condom is permissible under Shariah due to its status as being neutral as there is no express authority under Shariah which prohibits it.

Since condom is permissible, the condom-related business activities such as activities of sale, manufacturing and packaging of condom are also permissible. This is in line with the following Islamic legal maxim³:

الأصل في العقود والمعاملات الصحة حتى يقوم دليل على البطلان والتحريم

Meaning: " *The original ruling in contracts and mu`amalat is validity unless there is evidence that nullifies and prohibits it*".

¹ Al-Imam Jalal al-Din `Abd al-Rahman al-Suyuti, *al-Ashbah wa al-Nadzair fi Qowa`id wa Furu` Fiqhi al-Shafi`iyyah*, Dar al-Kutub al-`ilmiyyah, Beirut, Lebanon, 1983, p. 60.

² Muhammad Mustafa al-Zuhaili, *al-Qawa`id al-Fiqhiyyah Wa Tadbiquatuha Fi al-Madhahib al-Arba`ah*, Dar al-Fikr, Damascus, Syria, 2009, vol. 1, p. 190.

³ Ibn Qayyim al-Jawziyyah, *I`lam Al-Muwaqi`in `An Rabb al-`Alamin*, Dar Ibn al-Jawzi Li Al-Nashr wa Al-Tawzi', Jeddah, Kingdom of Saudi Arabia, 2002, vol. 3, p. 107-108.



2 Condom is treated as medical device for health purposes

Condom is treated as a medical device that is regulated by the Medical Device Authority under the Medical Device Act 2012 (MDA 2012) and the Medical Device Regulations 2012 (MDR 2012) for medical or health purposes. Based on the provisions of the MDR 2012⁴ and the MDA 2012⁵ respectively, condom is treated as a medical device and for medical prevention or health purposes such as prevention of the spread of STIs and other diseases such as Human Immunodeficiency Virus (**HIV**) and as contraception for family planning.

From Shariah perspective, its usage carries benefits to its users provided that the above purposes do not contravene with Shariah. Hence, it is permissible and is in line with the aforementioned Islamic legal maxim which provides that the original ruling for everything is permissible until there is evidence of its prohibition.

⁴ Rule 16 in Appendix 1 of the First Schedule of the MDR 2012 specifically classifies condom as an example of the medical devices used for contraception of the prevention of the transmission of Sexually Transmitted Infections (STIs) diseases, which are categorised in Class C. Class C refers to Moderate high risk level of medical device. This classification depends on the claims made by the manufacturer and on its intended use. Refer to *Guidance on the Rules of Classification for General Medical Devices* (MDA/GD/0009), First Edition, 2014, p. 7.

⁵ Condom acts as a contraceptive method which falls under the definition of "medical devices" in Section 2(a)(iv) of the MDA 2012. Furthermore, Section 5(1) of the MDA 2012 requires any medical device to be registered under the MDA 2012 before it can be imported, exported, or placed in the market. The MDA also facilitates any interested parties to search for registration of medical devices under the MDA 2012 at its accessible website which includes condom. Refer to Medical Device Authority, Registered Medical Device Search, website link: <https://mmdr.mda.gov.my/public/index.php>.