

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Series of Questions Addressed to Scholar Sheikh Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his Facebook Page (Fiqhi)

Answer to Question:

Conditions for the Validity of the Mudharaba Company

To: Khalil Al-Abasi
(Translated)

Question:

Assalamu Alaikum our honorable Sheikh,

I have a question about a partnership I entered with a man who has factories and supermarkets and I put in this company a sum of money to run it for me, but he has other partners who I have not seen, and they did not sit with me, except that the company owner told them that I put a sum of money with them. These people are capital partners only just like me, and the owner of the company is a body and capital partner and he is the owner of this company.

The question: is my partnership halal? Please explain to me this question and what I should do because some of the Shabab told me that this company is halal and others told me that it is not permissible by the Shara'. May Allah bless you.

Answer:

Wa Alaikum Assalam wa Rahmatullahi wa Barakatuh,

1- As for the Mudharaba Company (Joint Venture), it is permissible to have Mudharaba contract between the capital of one of the partners and the work of the other partner, as well as between the capital of one of the partners and the capital and work of the other partner. It is also permissible between the capital of more than one partner and the work of the body partner (Mudharib). It says in the book *The Economic System*: "One form of Mudharaba is where two properties (of two persons) enter into partnership with the body of one of them. So, if two persons had between them three thousand of something, one of them having two thousand and the other one thousand, and the owner of the two thousand permitted the other to dispose of the capital so that the profit is divided between them by halves, the company would be valid. The worker would be the owner of the one thousand of the items as a Mudharib to the owner of the two thousand and would also be his partner. Similarly, Mudharaba could be through the partnership of the capital of two persons and the body of a third person. All these are forms of the Mudharaba".

2- Among the conditions of its validity are as stated in *The Economic System*: "Mudharaba would not be valid until the property is given to the worker ('Amil) and he is given a free hand over it, because Mudharaba requires handing over the property to the Mudharib. In Mudharaba, the share of the worker must be defined, and the property used in the Mudharaba contract must be of a defined amount."

3- As you see from the conditions of the validity of Mudharaba that the money used in the Mudharaba contract must be of a defined amount, and the share of the effort partner of profit is clearly defined by the agreement of the partners. Accordingly, it is not permissible for the Mudharib to take money from one person and money from another and agree with each of them on profit without either of them knowing how much is the capital and whether the rest of the partners agree on the percentage of the profit or not. Therefore, what is mentioned in the question is not permissible, but the partners must meet and agree on the profit and agree on the capital clearly and in a well-defined way.

This is what I believe is the answer in this matter and Allah knows best, He is Most Wise.

Your brother,
Ata Bin Khalil Abu Al-Rashtah
6th Ramadan 1439 AH
22/05/2018 CE

The link to the answer from the Ameer's Facebook page:

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/818352275028512/?type=3&theater>

The link to the answer from the Ameer's Google Plus page

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/4Un9Yv8QkJc>