

Series of Answers by the Ameer of Hizb ut Tahrir, Eminent Scholar Ata Bin Khalil Abu Al-Rashtah to his Facebook Fiqhi Page

Answer to Question

The Constituent Assembly of Joint-Stock Companies

To: Hamzeh Shihadeh

(Translated)

Question:

Assalam Alaikum Wa Rahmatullah Wa Barakatuh

May you be in best health and wellbeing. I have a question about Joint-Stock companies:

Why do we not consider the constituent assembly of Joint-Stock companies as an offer and acceptance?

Answer:

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuh

Share companies are funds companies, i.e. they represent the money of the participants and not their persons, and the constituent assembly also represents money and not people, so whoever has two shares has two votes, and whoever has ten shares has ten votes, and so on. The joint stock company is a funds company, and this does not take place in Islam, the presence of a physical partner (*badan*) is a fundamental pillar of the company according to corporate contracts in Islam, and money alone does not create a contract. Accordingly, the constituent assembly in joint-stock companies represents funds, i.e., it is one party and does not create a contract, and therefore there is no offer and acceptance.

It is mentioned in the *Economic System in Islam* book, p. 162-168 (Arabic version) (p. 178-184 English version), about Joint-Stock (Share) Companies in detail, and I will mention some points from it:

[This is the stock company and it is a void company in Shari'. It is one of the transactions that a Muslim is not allowed to participate in. The reason of its invalidity and the prohibition of associating with it, appear clearly from the following points:

The definition of company in Islam is as follows: it is a contract between two or more persons, in which they agree to carry out financial work with the intention of gaining profit. It is thus a contract between two or more persons.

They then draw up a document, which represents the constitution of the company. This document is then signed by everyone who wishes to enter into the partnership, the signature being considered as an acceptance. Once a person does this, he is then considered as a founder and a partner. In other words his partnership is established once he put his signature or when the subscription period comes to an end. In this process, the absence of two sides that conclude the contract is evident, and nor there is an offer and acceptance. Instead, there is one party who agrees on the conditions, and by its acceptance becomes a partner. It can be seen that the joint stock company is not an agreement between two parties; rather it is an agreement of one party on certain conditions. Thinkers on the Capitalist economy and Western law say that the commitment in this type of company is a type of disposition by individual will.

The contract of the joint stock company by the individual will is invalid (Batil) in Shari' because a contract in Shari' is the linking of an offer originating from one of the contractors with the acceptance of the other contractor in a way that reveals its effect in the issue over which the contract is concluded. This does not occur in the contract of the share stock company as no agreement between two or more persons occurs in the contract.

In addition to this, it is necessary that the body (Badan) which is the disposing person exists in the company in Islam. What is meant by the body (Badan) in the company, in trading (selling), hiring and the other contracts is the disposing person, not the physical body or effort. So, the existence of the body is an essential element in establishing the company. If the body did not exist, the company could not have been established. The share stock company has no body (Badan) at all, and in fact it intentionally removes the personal element from the company. The contract of the share stock company is a contract between properties only. The personal factor does not exist as the properties alone and not their owners are associated with each other; In other words, the funds associate with each other without the existence of a body. The absence of an associating body means the company is not established and it is invalid in view of the Shari'. Shari' dictates that the body is the disposer of the property, and the disposal of the property depends upon it alone. If the body does not exist, then distribution cannot exist.

The people who own the capital are the ones who directly agree on the subscription of the funds, and they elect the board of directors who carry out the work in the company. However, this still does not mean that there is a body in the company, for their agreement is upon making the fund as a partner rather than themselves as partners. So the funds and not its owner is the partner. With regard to their election of the board of directors, this does not mean that the board is their deputies. Rather their funds have been represented by deputies (i.e. the board) selected by them, and no deputation was made on their own behalf. The evidence for this is that the shareholder has votes equal to his shares, so the person who has one share would have one vote or one deputy. The person who has one thousand shares would have one thousand votes; that is one thousand deputies. So the deputation is on behalf of the funds and not the person. This indicates that the element of the body is missing from the company, which is composed of the element of funds only.

The contract of the share stock company is thus invalid. It is invalid, because it was not established as a company, as defined by Islam] **End Quote.**

You can refer for more on the topic from the book, *The Economic System in Islam*, chapter of Joint-Stock Company (Share Companies).

I hope that this is enough to invalidate Share Companies, and Allah is All-Knowing and Most Wise.

Your Brother,

Ata Bin Khalil Abu Al-Rashtah

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

<https://www.facebook.com/HT.AtaabuAlrashtah/posts/737546704599368>