

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:

Partnership in a Vehicle is partnership of Assets

To: Ali Ghaith Abou El Hassan

(Translated)

Question:

Bismillah ar-Rahman ar-Raheem,

Assalamu Alaikum... honorable Scholar Sheikh Ata Bin Khalil Abu Al-Rashtah, after greetings:

In the property company, if two people purchase a transport vehicle for profit purpose;

1. It is allowed for the partners to sell the vehicle, and the profit is distributed between them according to their agreement, and the loss is according to the ratio of their shares.

2. It is allowed for one of the partners to hire his partner's share to work on the vehicle.

3. It is allowed for the partners to hire a driver for them, and the profit is distributed between them according to the agreement, and the loss is according to the ratio of their shares. And the company then is the company of assets.

4. It is allowed for the two partners to agree on one of them to work on the vehicle, and the profit is distributed between them according to the agreement and the loss is according to the ratio of their shares. And the company then is the company of body and capital (Mudharaba).

5. It is allowed for the partners to agree that both work on the vehicle, on alternate days for example, and the profit is distributed between them according to their agreement and the loss is according to the ratio of their shares. And the company then is the company of assets.

6. But is it allowed for the two partners to hire one another to work on the vehicle for a defined amount, then distribute the profits between them after the deduction of the defined wage, and the expenses of the vehicle of fuel, damages, fines etc.?

If the answer is: (Yes), under which company this transaction falls?

In other words, is it permissible for a partner to be a partner with the body and an employee at the same time?

Note that he may be a partner with capital and an employee at the same time, like a worker employed in a grocery opened by his partner, the body (Mudharib).

Answer:

Wa Alaikum Assalam wa Rahmatullahi wa Barakatuh,

For the partnership in the vehicle, this falls under the companies of assets, and does not fall under the companies of contract, so it is not called Al-Mudharaba (two or more), and it is not called the company of Al-'Inan (equal), nor any type of company contracts because the subject of the company is the asset, namely the vehicle, not the effort. Therefore, it is allowed that one of the partners to be a driver of a vehicle and takes a wage in addition to his share of the profit, after deducting the wage, i.e., the profits are collected, the fare of the driver partner is paid, and the rest of the profit is distributed between the partners according to their agreement.

- Thus, some of the things that you mentioned are not accurate, you said:

(It is allowed for one of the partners to hire his partner's share to work on the vehicle.) This is inaccurate, because the word "hire his partner's share" is not a reality, for he is a partner in the vehicle and is employed as a driver, and it is not said that he hired his partner's share...

- And you said: (It is allowed for the two partners to agree on one of them to work on the vehicle, and the profit is distributed between them according to the agreement and the loss is according to the ratio of their shares. And the company then is the company of body and capital (Mudharaba)). And this is also wrong because the person working on the vehicle is an employee, and has a wage taken before the distribution of the profit, and the company remains the company of assets "Aa'yan" because the subject of the company is the work of the vehicle, thus the contract is based on it.

In conclusion, the partnership in the vehicle is a company of assets, and it is allowed for the company to hire a driver from non-partners to drive the vehicle, as well as it is permissible that one of the partners to work as a driver of the vehicle with a fixed wage deducted from the profits before distributing them...

Your brother,

Ata Bin Khalil Abu Al-Rashtah

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

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/617824591747949/?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/9CsnZThkSdD>

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

<https://twitter.com/ataabualrashtah/status/855065297451143168>