

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

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

Answers to Questions

Dissolving a Company and the Refutation of Commercial Company of Joint Liability

To: Khalid Siddqi 'Aurtani

(Translated)

Assalam Alaikum Wa Rahmatullah Wa Barakatuh,

Dear Brother, Amir of Hizb ut Tahrir, May Allah protect you and look after you, and may He give you tawfeeq (success) to all that is good.

The first question: Is there a difference or contradiction between the following statements; or is there a deletion in the second statement and consideration made based on the meaning given in the first statement?

- First statement in *The Economic System in Islam* book in the chapter of "Dissolving a Company": *(It becomes void by the death of any partner or his becoming insane or if he was declared incompetent and put under guardianship, if it is a company consisting of two persons. Dissolution of the company by one of the two partners is valid because it is a permissible contract, which is annulled in the same way as deputation (Al-Wikala). If one of the partners dies leaving behind a mature inheritor, he has the option to continue with the company and his partner has to permit him to dispose (Tassarruf) in the company. However, he also has the option to demand dissolution of the company. If one of the partners demands dissolution of the company then the other partner must accept his request. If they were more than two partners, and one of them demanded the dissolution of the company and the rest were happy to continue with the company, then the existing company would be dissolved and renewed between the remaining partners.)*

- **The second statement in *The Economic System in Islam* book in the refutation of Commercial Company of Joint Liability and explaining its contradiction to the conditions of companies in Islam:**

(He has the right also to leave the company at any time he likes without the need for the approval of the other partners. In addition, the company is not dissolved by the death of any of the partners, or due to his incompetence, rather his partnership alone is dissolved, while the partnership of the other partners remains if the company is formed of more than two persons)

The second question:

In the refutation of Commercial Company of Joint Liability the following statement was made:

(If the partners agree to expand the company by either increasing their capital or by adding other partners to them, then they are free to do what they like)

Is the agreement to expand the company by increasing capital or adding other partners necessitates the dissolution of the existing company and the renewal of the partnership contract with a new contract or not?

The third question: the above statement stated:

(If one of the partners dies leaving behind a mature inheritor, he has the option to continue with the company and his partner has to permit him to dispose (Tassarruf) in the company, However, he also has the option to demand dissolution of the company)

What is the meaning of continuing with the company and what are his powers, especially what does it mean there is an inheritor to the speculator or there is an inheritor to the owner of the capital in the speculative (Mudharaba) company, and is it permissible to continue the company with the inheritor who is entrusted by the rest of the inheritors, or does it have to be terminated and a new contract is established, in case the partners wanted the continuity of the company?

May Allah Bless you, and Jazak Allah Khair

Answer:

Wa Alaikum Assalam Wa Rahamatullah Wa Barakatuh

All your three questions are regarding two subjects in the Economic System in Islam book:

The first is regarding the Chapter of "Dissolving a Company":

(The company contract is one of the contracts that are allowed by Shari'. It becomes void by the death of any partner or his becoming insane or if he was declared incompetent and put under guardianship, if it is a company consisting of two persons. Dissolution of the company by one of the two partners is valid because it is a permissible contract, which is annulled in the same way as deputation (Al-Wikala). If one of the partners dies leaving behind a mature inheritor, he has the option to continue with the company and his partner has to permit him to dispose (Tassarruf) in the company. However, he also has the option to demand dissolution of the company. If one of the partners demands dissolution of the company then the other partner must accept his request. If they were more than two partners, and one of them demanded the dissolution of the company and the rest were happy to continue with the company, then the existing company would be dissolved and renewed between the remaining partners. However, there is a difference between the Mudharaba Company and the other types of companies regarding the dissolution. In the Mudharaba Company, if the worker demanded the sale of the company and the Mudharib demanded division, then the demand of the worker will be accepted because his right is in the profit that will not be known except when selling. However, in the other types of company, if one partner demanded division and the other demanded sale of the company, the demand of division is accepted rather than that of sale) End quote

The second subject is regarding the chapter "Commercial Company of Joint Liability":

(This is a contract between two persons or more, in which they agree to trade together under a certain name. All its members bind themselves towards the debts of the company with all their wealth, with joint liability, and without any limit. Therefore, no partner of the company can concede his rights in the company to another person without the permission of the remaining partners. The company is dissolved by the death of any of the partners or by his incompetence, bankruptcy or insanity, unless there is an agreement that prevents this. The members of this company are liable jointly towards its commitments to others by fulfilling all the contractual commitments of the company, and their responsibility in this matter is unlimited. Every partner is held accountable to discharge all the debts of the company, not only from the property of the company but if necessary from his own property.

He has to pay from his property what is left unpaid of the debts of the company after its property runs out. This company does not allow extension of the project. The company is formed from a few people, who trust each other and know each other well. The main element considered in this company is the personality of the partners, not by being people only but with regard to their standing and influence in the society.

This company structure is invalid, because the stated conditions disagree with the conditions of companies in Islam. For the divine rule (Hukm Shar'i) places no condition upon the partner except that he is allowed to dispose and the company should have the option of

expanding its activities. If the partners agree to expand the company by either increasing their capital or by adding other partners to them, then they are free to do what they like. The partner is also not responsible, personally, in the company except in proportion to his share in it. He has the right also to leave the company at any time he likes without the need for the approval of the other partners. In addition, the company is not dissolved by the death of any of the partners, or due to his incompetence, rather his partnership alone is dissolved, while the partnership of the other partners remains if the company is formed of more than two persons. These are the Shari'ah conditions. The conditions of the joint liability company as stated earlier differ, and even contradict with these divine conditions, thus making it an invalid company and it is not permitted by Shari' to associate with (or becoming a partner) in it.) End quote.

Here are the answers to your three questions:

Regarding your first question:

1- You did not specify where the contradiction lies in the two statements you quoted from the Economic System book! But maybe you mean that there is a contradiction between these statements; in the chapter of Dissolving the company:

(The company contract is one of the contracts that are allowed by Shari'. It becomes void by the death of any partner or his becoming insane or if he was declared incompetent and put under guardianship, if it is a company consisting of two persons. Dissolution of the company by one of the two partners is valid because it is a permissible contract, which is annulled in the same way as deputation (Al-Wikala).

And in the chapter of "Commercial Company of Joint Liability":

(the company is not dissolved by the death of any of the partners, or due to his incompetence, rather his partnership alone is dissolved, while the partnership of the other partners remains if the company is formed of more than two persons)

In the first statement, he mentioned that the company is void due to the death of one of the partners, and in the second statement he mentions that the company is not dissolved by the death of one of the partners, so how is that?

Taking a deeper look at both statements above, it becomes clear that there is no contradiction or difference between them, rather they are in agreement and harmony. This is because the first statement:

(The company contract is one of the contracts that are allowed by Shari'. It becomes void by the death of any partner or his becoming insane or if he was declared incompetent and put under guardianship, if it is a company consisting of two persons. Dissolution of the company by one of the two partners is valid because it is a permissible contract, which is annulled in the same way as deputation (Al-Wikala).

is talking about the company that is between two people; if one of them dies, then the company ends by his death, because the contract of the company is not perceived to be between less than two partners. If the contract was between two partners, and one of them dies then the company will no longer exist in the event of the death of one of the partners. This is clear.

As for the second statement:

(the company is not dissolved by the death of any of the partners, or due to his incompetence, rather his partnership alone is dissolved, while the partnership of the other partners remains if the company is formed of more than two persons)

It speaks of a company consisting of more than two partners, such as five or six partners. In this case, the death of one of the partners does not affect the existence of the company, so it remains because there are still four or five partners left. That is the reality of a company remains according to Shariah. And only the deceased's partnership with the company is dissolved, because of his death, because the contract of partnership does not remain with

his death. Therefore, the second term means that the partner's partnership invalidates alone, not the whole company because of the multiple partners. The first statement means the whole company is dissolved because it exists between the two partners only; therefore, there is no contradiction between the two statements.

That is if you see that the contradiction is in what we mentioned above, but if you see that the contraction lies in these two statements:

(If they were more than two partners, and one of them demanded the dissolution of the company and the rest were happy to continue with the company, then the existing company would be dissolved and renewed between the remaining partners).

And (the company is not dissolved by the death of any of the partners, or due to his incompetence, rather his partnership alone is dissolved, while the partnership of the other partners remains if the company is formed of more than two persons).

Here too, there is no contradiction between the two above underlined statements:

The first statement speaks about the company's dissolution of one of the partners. This affects the whole contract because the partners assign each other in the partnership contract. If one of them breaks the partnership contract, the whole contract has been affected because of the deputation (Wikala), because the one who asked the dissolution of the company has withdrawn his wikala from the other partners, and asked them to withdraw the power to assign that they gave him; that is, the existing wikala in the company has been disrupted, so the partners who intend to stay in the company need to renew the partnership contract.

The second statement refers to the death of one of the partners or to disable him (from financial activity). This is different from the dissolution because there is no dissolution by the deceased or of the person who is disabled. Rather, it is the end of their deputation due to death for the deceased, and prohibition of the one disabled (from financial activity), This has no effect on the deputation between the rest of the partners because it has not been disturbed by anything that affects it. Therefore, the rest of the partners remain and the company remains between them and does not need a renewal of the contract if the reason for the exit of one of the partners is death or disability of financial activity.

2- As for the second question, the expansion of the company is by one of two things:

A- By the increase of the capital of the partners or the capital of some partners in the company, and this does not require the dissolution of the existing partnership contract, because there is nothing that disrupts the existing partnership contract, so the contract remains between the members of the company. If they agree to increase the share of partners in the capital then their rates of profits is adjusted according to emergency changes in capital. This item shall be attached to the company's rules prior to the amendment of the partners' shares; that is, the approval of the existing company is necessary to increase the capital and the consequent redistribution of profits.

B- By the addition of new partners and this also does not require the dissolution of the existing partnership contract, because there is nothing that disrupts the existing partnership contract. So the contract remains between the members of the company. if they agree to the new partners, a contract between the existing company and the new partners is done according to the conditions and shares of profits. The shares of the old partners in capital are adjusted as well the adjustment of their profits in accordance with the emergency changes in the capital. The item shall be attached to the company's rules held prior to the incorporation of the new partners. That is, the approval of the existing company is necessary for the incorporation of new partners and the consequent amendment in profits, etc.

In conclusion, the existing company is not disrupted due to the increase of the company's capital or the inclusion of new partners as long as this is done with the approval of the existing partnership.

3- As for the third question, the answer is as follows:

The deceased partnership contract ends with his death because the partnership contract is a matter of power of deputation, and the deceased deputation (to give or take it) ends with his death. That is, if the deceased is the capital owner, then giving his deputation to the partner ends with his death and if the dead is an employee, for him to take deputation from the partner ends with his death. Thus the deceased partnership is dissolved and is invalid by his death whether he is the owner of the money or the employee in the company. It is not necessary after death to break the partnership of the deceased because it is dissolved naturally.

And by the death of the partner, the right in the company belongs to his inheritors, and they have the choice between two things:

A- Demand the division (of capital); that is, to return any of the capital to the owner of the capital as well as the profit he earned, and give the worker that profit that he earned according to the details shown in the books of jurisprudence.

B- To continue as partner in the company with the consent of the other partner, and the meaning of continuation in the company is that the partners agree, the partner not deceased with the inheritor of the deceased partner, to hold a partnership contract under the previous conditions in the company with the deceased, and that the inheritor takes the place of the deceased partner in the company: If the deceased is the owner of the capital, then the inheritor becomes the owner of the capital. If he is the only inheritor or he is nominated by the rest of the inheritors to represent them if they are many. If the deceased was an employee, the inheritor becomes an employee.

The living partner continues with his previous title before the death of the partner; that is, if he is the owner of capital, he remains the owner of capital. If he was an employee, he remains so. Note that the profit of the employee if the profits are calculated after the death of the deceased partner and then was added to the capital of the company, the employee will have a share in the capital; that is, he becomes the owner of capital and effort.

Of course, remaining in the company takes into account:

- The fact that the money of the company at the death of the partner is "nadan" as in the terminology of jurists i.e. be in dinars or dirham or money, then the new contract with the inheritor will be easy to write.

- If the money of the company or some of the offers of any goods, not money, then there are many fiqhi details on how to make the goods as "nadan", i.e. currency money, and about the dates of the goods, and regarding the continuation of the company in this case. These details are found in the books of jurisprudence for those who wanted to refer to them.

- Also to take into consideration the change that may occur in the shares of the partners in the capital if the profit of the owner of the capital was added from the previous company to the capital of the new company, or if the profit of the employee was added from the previous company to the capital of the new company.

I hope this answer is sufficient.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

28 Ramadan 1440 AH

2/6/2019 CE

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

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/p.1073897639473973/1073897639473973/?type=3&theater>