

Answer to Question

The Company in Islam is Not a Corporate Body

To Abu Rashed

(Translated)

Question:

Our honourable Sheikh, Assalam alaikum wa rahmatullahi wa barkatuh. I leave between your hands some questions in the hope that they will be answered. May Allah reward you on our behalf and grant victory and empowerment under your hands. He is All-Hearing and All-Responding.

1) Companies, factories and trademarks

We know that companies in Islam must have the body in them. If a company is established for the purpose of establishing a factory that produces, for example, electrical or electronic devices, and this company and its factory become a well-known trademark in the market, then it happens that the owners of the company want to sell it:

a) Is there such a thing in Islam as “the market value of the company” apart from the issue of shares in capitalism?

b) Does the trademark have a value to assess when the factory is sold?

c) Does the trademark belong to the factory or the company, i.e. if the company remained and sold one of its factories or a production line for one of its devices, what is considered in estimating the price?

d) In the event of the company being dissolved, what happens to the trademark?

e) The company’s factory has exports and imports, and it may have debts owed to suppliers of raw materials, for example, and it has money owed by traders for different terms. Is it necessary to “zero” debts and receivables before selling, knowing that this is a continuous process all the time as long as there is production?

f) What about the employees and their contracts with the company when selling the factory?

2) Service companies

There are companies whose creation does not require a large capital, as they provide services, for example, a software company, which is based on an idea, so it makes one or more programs or applications and sells it in the market, and this application (which is just software codes that perform a certain function) and this application becomes a large number of users. Consequently, this company may have a large market value accordingly. When the application is sold to another party (another company), it sells the idea and the consequent lines of code so that it does not have the right to use it after the sale, so it produces the same (i.e. the idea). An example of this is an application that calculates the path of the car from one place to another and chooses the best roads and the time of arrival, etc. How is this reality dealt with in Islam?

Answer:

Walaikum Assalam wa rahmatullahi wa barkatuh

First of all, May Allah bless you for your kind prayers for us, and we pray for you with all goodness.

First: Before answering your many questions, I would like to point out that companies in Islam are different from companies in the capitalist system, so the company is legally (a contract between two or more, in which they agree to do a financial business, with the intention of profit).

The company in Islam is not a corporate body that the actions are obtained from in this capacity, otherwise these actions would be invalid according to Shariah. Rather, it is a specific entity in which a manager is required, and we have clarified this matter in the book, *The Economic System*, when researching joint stock companies and their invalidity, so we stated:

“The company is a contract over the disposal of property. Thus, the increase of the property by using a company is an increase of ownership. Increasing ownership is one of the disposals allowed by Shariah. All the Shariah disposals are verbal disposals which originate from a person and not from a property. The increase of the ownership must result from the one who can dispose, that is, from a person and from property...

The actions which originate from the company in its corporate body are therefore invalid in the view of Shar'a. This is because the disposal should originate from a certain person and this person should be one of those who has the right of disposal...

These actions are only accepted in Shar'a from a person who has the competence to dispose and is mature and sane, with a discerning mind. Any action that does not originate in this sense is invalid from the viewpoint of the Shar'a. Entrusting the disposal to a corporate personality is thus not allowed, rather it be referred to a human being who has the competence of action...] **End of quote.**

In other words, the company's business and activities in Islam are inseparable from the company itself and the partners, so the company cannot be something and its activities and actions are something else. But some of the questions you have asked show that they are affected by the practical reality of Western companies, where some of their activities may be separate from them, so the company has a corporate personality separated from its factories, for example...This is an unimaginable matter in the company according to Sharia. Rather, the company is inseparable in Shar'a from the partners, especially the body partner, and it is not separated from its business and activities because the company's contract is based on these actions and activities...

Second, the answers to your questions:

1- The company in Islam by its name and the name that is known by is neither sold nor bought, but it can be liquidated by the agreement of the partners in the Shar'i manner, and its material assets and profits are divided among the partners according to the amount of their participation, and then the company ends, i.e. its existence ceases, not that it be sold to another party, and the company remains in its name and in its capacity, but rather it is taken over by those who bought it! So, the company has no material value in itself, because the company is (a contract between two or more, in which they agree to carry out a financial act, with the intention of profit), i.e. the company in Islam is partnership and subscription, and not that corporate body separated from its owners as it is in some of its forms in the capitalist system...As for what is bought and sold, it is possible in the Shar'i for the company's property to be buildings, machinery, location and quality of production, and so on, which the seller and buyer agree on... If the sale is made, the old company and its owners have ended and become a new company with new owners...

2- What you call “the market value of the company” or the factory if it is related to what is permissible in Sharia, such as the commercial logo, trademark, reputation, customers and other matters that make the factory or company a value more than the value of the assets of the factory or company. In this case, these factors can be taken into account in evaluating the factory when selling it, or evaluating the company when one of the partners wants to leave it in order to estimate his entitlements... But if it is due to impermissible matters such as intellectual property and the like, it is not permissible to look at it at the evaluation mentioned above.

3- If a company has a commercial logo or a trademark that it adopts in the products of one of its factories, and it does not have the name of the company on it, but only the factory, it may, if it wants to sell that factory, sell the commercial logo and trademark according to the factory, but if the commercial logo and trademark have the name of the company being sold, it ends with the sale of the company.

4- The trademark, as we mentioned, expresses the entity producing the commodity, and its value is derived from the quality of the commodity and from the reputation obtained by the

producer of the commodity in the market, etc. If the company producing the commodity is dissolved and production ends, the trademark will become void according to the dissolution of the company. It is not right for anyone to impersonate it for himself because it is not for him... But if one of the partners wants to leave the company, the value of the trademark can be taken into account when evaluating the company's assets, in order to give the dissenting partner his right in the company.

5- As for your question: The factory affiliated with the company has exports and imports, and it may have debts owed to suppliers of raw materials, for example, and it has money owed by merchants for different terms. Is it necessary to “zero” the debts and receivables before selling, knowing that this is a continuous process all the time as long as there is production?, the factory in Islam is not separate from the company, rather it is its work or it is one of its works, and the one on which the debt is due is not the factory because the factory is not an independent entity, rather it is only work and material activity. The one who owes the debt to others and who has the debt to others is the company that the factory was its work or was one of its business. If the factory is sold, then what is sold is the construction, production tools and what is attached to them, but the rights owed by the company and the rights of the company must be liquidated by the company with the relevant authorities away from the issue of selling the factory, so it is not allowed according to Shar'a to sell the factory with its debts and dues, as it happens in the capitalist system.

6- With regard to your question: What about the employees and their contracts with the company when the factory is sold?, the contracts of these wage-earners are with the company because the factory is not a managing entity, rather it is only the work of the company or it is one of its business. If the company sells the factory in which they work, then their work in the factory ends when their place ends with the sale of the factory. Here, the company can entrust them with other work in other areas of the company's business while maintaining their lease contracts until their expiration, and it can pay them their wages for the rest of the lease period without occupying them, and it can, in agreement with them, terminate their contracts with them so that the new owner of the factory establishes new contracts with them. If he deems it appropriate for him by virtue of the experience of these wage-earners... All of that is left to the parties' agreement... However, the lease contracts of these hired servants remain valid with the company until the expiry of their term, as lease contracts in Islam are necessary and must be specified for a specific period and expire at the end of that period if not renewed.

7- With regard to your question about software and application companies, programs and applications are products that have a benefit, so it is allowed according to Shar'a to sell them, i.e. it is permissible for a company that has developed a program or application to sell to another party the origin of the program or application so that it gives it the relevant information and codes. In this case, the first company that sold the program or application is not allowed according to Shar'a to keep using this program or application as long as it has sold it and its origin, i.e. it sold the idea on which the application is based and committed itself in the sales contract not to use it.

I hope that these answers are sufficient, and Allah is All-Knowing and Most Wise.

Your Brother,

Ata Bin Khalil Abu Al-Rashtah

28 Rabii' al-Awwal 1444 AH

24/10/2022 CE

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

<https://www.facebook.com/HT.AtaabuAlrashtah/posts/670688434618529>