

## **122622 - Is it permissible for the one who does business with someone else's wealth to take a monthly salary from the invested capital? And some of the conditions for doing that**

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### **the question**

In a mudarabah partnership, the profits are divided between the financier [investor] and the worker [the one who is running the business] according to the ratio agreed upon between them. My question is: is it permissible, according to Islamic teachings, for the two parties to agree that the worker is to be paid a fixed monthly salary in addition to his agreed-upon share of the profits?

### **Detailed answer**

Praise be to Allah.

Mudarabah is a partnership contract between the financier who provides the capital and the worker who runs the business with that capital. One of the conditions stipulated in order for this mudarabah to be valid is that the capital is not to be guaranteed, and the financier is not to be given a specific amount; rather he is entitled to a share of the profits according to what the two parties have agreed upon, and the worker who runs the business with that capital agrees to take in return for his work a percentage as agreed upon between him and the financier.

Hence the scholars are unanimously agreed that it is not permissible for him to take a fixed amount (salary) in return for his work, in addition to his share of the profits, because there may be no profit from the money invested except what he receives as a salary, in which case he will be the only one to gain some profits, to the exclusion of the financier. If he also contributed some capital to the project, then he may receive something in return for his work, if he does the work

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himself, and the same applies to his partner. This is what we say, and we do not know of anyone among the scholars who disagreed with that.

There follow some scholarly views discussing the conditions of mudarabah, highlighting the fact that what is mentioned in the question about the worker receiving a monthly salary is one of the things that invalidate this contract.

A. Shaykh Sayyid Sabiq (may Allah have mercy on him) said:

The following conditions are stipulated in the case of a mudarabah contract:

1. The capital should be in the form of currency [gold or silver coins, or cash]. If it is in the form of raw metal, jewellery or trade goods, then it is not valid. Ibn al-Mundhir said: All of those from whom we acquired knowledge are unanimously agreed that it is not permissible for any man to turn money owed to him by another man into capital for investment. End quote.
2. The amount of the capital should be known, so as to distinguish the capital that is invested in the business from the profits that will be shared between the two partners according to the agreement.
3. The profit should be shared between the worker and the financier according to a known ratio, such as half, one third, and one quarter, because the Prophet (blessings and peace of Allah be upon him) made a deal with the people of Khaybar that they would work the land in return for half of the yield.

Ibn al-Mundhir said: All of those from whom we acquired knowledge are unanimously agreed that the mudarabah contract becomes invalid if one or both of the partners sets aside for himself a known amount of dirhams. End quote.

The reason for that is that if it is stipulated that a specific amount should be given to one of them,

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the profit may turn out to be no more than this amount, in which case the one for whom it was stipulated will take it and the other will not receive anything, and this is contrary to the objective of the mudarabah partnership, in which the aim is that both parties should benefit.

4. The mudarabah contract should be free of restrictions. This means that the financiers should not restrict the worker to trading only in a specific country, or trading only in a specific product, or only doing business at certain times and not others, or only dealing with one particular person, and other such conditions, because stipulating restrictions often defeats the purpose of the contract, which is to make a profit. So there should be no such conditions, otherwise the mudarabah contract becomes invalid.

This is the view of Malik and ash-Shafa'i.

Abu Hanifah and Ahmad, on the other hand, did not stipulate this condition. They said: As the mudarabah contract is valid when it is free of restrictions, it is also valid when there are restrictions.

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It is not one of the conditions of a mudarabah contract to stipulate its duration, because it is a permissible contract that may be annulled at any time. It is also not one of its conditions that it must be between a Muslim and another Muslim; rather it is valid for it to be between a Muslim and a dhimmi [non-Muslim living under Muslim rule].

*Fiqh as-Sunnah* (3/205-207).

A. Al-Kasani al-Hanafi (may Allah have mercy on him) said, discussing the conditions of the mudarabah contract:

One of these conditions is that a percentage of the profit – one half or one third or one quarter –

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should be stipulated for both the worker and the financier. If they stipulate that a certain amount should be given, such as stipulating that one of them will have one hundred dirhams of the profits, or less, or more, and the rest should go to the other partner, that is not permissible and the mudarabah contract becomes invalid. That is because mudarabah is a type of partnership in which the partners share the profits, but this condition means that they will no longer be partners sharing the profits, because there is the possibility that the mudarabah project will not make more than this amount, in which case it will go to one of them and not the other, so it will no longer be a partnership and the deal will no longer be a mudarabah. The same applies if they stipulate that one of them should have half, or one third, plus one hundred dirhams or minus one hundred dirhams. This is not permissible, because mudarabah is a type of partnership in which the partners share the profits, but this condition means that they will no longer be partners sharing the profits, because there is the possibility that the mudarabah project will not make more than this amount, in which case it will go to one of them and not the other, so it will no longer be a partnership and the deal will no longer be a mudarabah.

*Bada'i' as-Sana'i'* (6/85, 86).

A. Ash-Shirazi ash-Shafa'i (may Allah have mercy on him) said:

It is not permissible for one of them to stipulate that he will receive a certain amount of the profit and the rest is to be shared between them, because the business may not produce that amount of profit, so he will no longer be entitled to anything, or it may not make any profit except that amount, in which case the rights of the other partner will be lost.

See: *al-Majmu' Sharh al-Muhadhdhab* (14/366).

Conclusion: it is not permissible for the worker who does business with the capital in a mudarabah project to have a fixed monthly salary; he is not entitled to anything except the share agreed upon between him and the financier.

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And Allah knows best.