

Silent Partnership

Silent Partnership

Q1880. Is silent partnership in other than gold and silver currencies permissible?

A: There is no objection to a silent partnership being conducted in banknotes that are used nowadays. It is not permissible, though, to be conducted in merchandise.

Q1881. Is it all right to make use of a silent partnership contract in domains such as production, services, distribution, and trade? And are the contracts of present-day silent partnerships outside the commercial arena concluded under this definition, legal?

A: A silent partnership contract should be confined to investing the capital in trade, i.e. buying and selling only. Using it under this title in the domains of production, distribution, services, and others is not permissible.

However, there is no objection to resorting to other shar'ī contracts such as ju'alah and sulh.

Q1882. I took a sum of money from a friend of mine by way of a silent partnership. It was agreed that I would return the money with an extra amount added to it after a period of time. I gave part of this money to another friend who was in need of it. It was agreed with the latter that he would settle one-third of the mark up. Is this type of dealing legitimate?

A: Taking money from someone on condition that it would be paid back after a while with an extra amount added to it does not fall under the silent partnership type of contract. It is a ribā-bearing loan that is ḥarām. Taking the money as silent partnership does not amount to borrowing. The money will not become the property of the working partner. In other words it remains the property of the original owner. However, the working partner can still trade in it. They [the owner and the working partner] share the profits made in accordance with the partnership they agreed. The recipient of the money has no right to lend any of it to a third party, nor has he the right to give it to the others under a silent partnership deal unless it is done with the consent of the owner.

Q1883. What is the view on borrowing money under the title of "silent partnership" from people who charge between 4% and 5% monthly as a "profit" according to the contract?

A: Borrowing money in this way has nothing to do with silent partnership. Indeed, it is borrowing with ribā that is ḥarām. It will not become ḥalāl by deceptively giving it another name, although the loan contract is correct and the borrower becomes the owner of the money he borrowed.

Q1884. A person gave another a sum of money to trade in it on the condition that he pays the lender a monthly sum as profit and bear the loss. Is this kind of deal legitimate?

A: There is no harm in the agreement between the two parties if it is based on a proper and



shar‘ī silent partnership. Nor there is any harm in making a provision in the process that the working partner gives the owner a monthly portion of his proportional share of profit on account and bears the loss.

Q1885. I gave a person a sum of money to import a number of vehicles on condition that we equally share the profits arising from the sale. After a while, he gave me a sum of money, saying that it was my share of the profit. Is it permissible for me to take that money?

A: If you gave him the money by way of a silent partnership, he then bought the vehicles and sold them, and paid you your share of the profit, the money is yours by shar‘.

Q1886. A person deposited a sum of money with another person to trade in it on the condition that he would receive a sum of money on account. At the end of the year they agreed to prepare the profit and loss account of the business. If the owner of the money and his partner agreed to settle the profit and loss, is this acceptable?

A: There is no harm in the payment of money to the person if it was based on a proper and shar‘ī silent partnership deal, and the owner of the money took from the working partner monthly a portion of the profits on account so that the exact amount would be calculated later. Nor is there any harm in the partners’ settling their dues at the end of each year. Yet, should it take the form of a loan on the condition that the borrower would pay a monthly share of the profit to the lender, then they would make a settlement at the end of the year of what each of them owes the other, this indeed is a ribā-bearing loan that is ḥarām. Accordingly, the provision contained therein is void, although the loan contract is correct. Moreover, it shall not become ḥalāl for them because they agreed to settle their respective dues. Therefore, the lender has no right to receive any profit, neither is he obliged to bear any loss.

Q1887. A person took a sum of money from another by way of a silent partnership. It was agreed that the working partner takes two thirds of the profit and one third goes to the owner of the money. The working partner bought goods and sent them to his hometown. On the way, the goods were stolen. Who should bear the loss?

A: The loss of capital or trading money wholly or in part shall be borne by the owner provided that the working partner, or any other party, is not to blame for acting unjustly. However, it is defrayed by the profit unless it was agreed that the working partner bears the loss.

Q1888. Is it permissible to give or take money with the intention of trading and making profit that is to be shared between the two parties as they see fit, without this being described as ribā?

A: If giving or taking the money was done with the intention of trading by way of a loan, all the profit should go to the borrower. Any damage or loss should be borne by him too. The lender has a right to nothing apart from the compensation for the actual money he lent, i.e. he should not demand any share of the profit. Yet, if the money was given or taken by way of silent partnership, getting any returns thereof should be dependent on the materialization of a proper and legal contract between the two parties, in accordance with all required conditions. Among them is the agreement that each receives a certain percent of the profit. Otherwise, both the money [capital] and the profits made from trading with it

should go to the owner. The worker should receive compensation for his labor.

Q1889. Since banking transactions cannot be considered a true silent partnership because the bank does not bear a share of any loss, should the money received by the depositors as profit for their money be considered *ḥalāl*?

A: The bank may not be party to sharing the loss arising from money it has made available to businessmen by way of a silent partnership. Yet, this should not necessarily mean that such a partnership is invalid. Nor should it mean that the partnership contract is merely nominal and formal. There is no legal barrier to the owner, or his agent, stipulating, within the framework of the contract, that the working partner bears the damage and loss of the money owner. Therefore, the silent partnership espoused by the bank, as the agent of the depositors, is ruled sound and the profits made thereof, that go to the money owners, are *ḥalāl* unless it is proved that the transaction was nominal and invalid for a reason.

Q1890. I gave a sum of money to a jeweler to invest in buying and selling. Since the jeweler always makes a profit, i.e. without a loss, is it permissible for me to demand from him the payment of a certain amount of money by way of profit? If this proves problematic, is it permissible for me to take some items of jewelry instead of the profit? Should there still be a problem; can the payment of the profit be made to me through an intermediary? And finally should it still be problematic, can the payment of the money be made to me by way of a present?

A: For the silent partnership to be operative, the determination of the share of profit due to the money owner and the working partner should be made by any ratio, such as one third, one fourth, one half, etc. In other words, the partnership shall not be sound if it is entered into on the basis of the monthly payment of a certain amount of money to the owner as a profit of the capital he provided, irrespective of whether the monthly amount is paid in cash or in goods. Whether the owner received the amount of money directly or through an intermediary is immaterial. The same goes for the receipt of a certain amount of money as a share of the profit or by way of a present from the working partner in return for trading with the owner's money. However, there is no objection to stipulating that the owner may receive monthly a portion of the profit on account, after it is made, so that the exact amount is calculated at the end of duration of the silent partnership.

Q1891. A person collected a sum of money from different people with the intention of trading with it and giving them proportionate shares of the profit. What is the view on such a deal?

A: There is no harm in that provided that combined their money for trading with the permission of the owners.

Q1892. Is it correct to stipulate in a binding contract that the working partner pays the provider of the money a certain amount of money each month as his share of the profit and to make *muṣālahah* as to the difference between this amount and the actual proportionate share of money owner in the profit? In other words, is it permissible to include, in a binding contract, a condition that goes against the provisions of a silent partnership?

A: There is no objection to that if the condition is to make *muṣālahah* over the owner's proportionate share of the profit, after it is made, in return for a certain amount of money payable to him each month. Yet, should the condition be to determine the owner's share of the profit as the monthly amount, this runs contrary to the nature of the silent partnership and is, therefore, invalid.



Q1893. A businessman received a sum of money from another as part of the capital of a silent partnership. It was agreed that the recipient gives the provider of the money a particular percentage of the profit. The businessman added the received amount to his existing capital and carried on doing business with the combined funds. However, at the outset he knew that it would be difficult to determine the monthly ratio of the profit the added amount could make. Thus, both the parties agreed to do *muṣālaḥah* over any decrease/ increase in the amount. Is the silent partnership contract legally sound?

A: The inability to determine the amount of the monthly profit that could be made from the invested capital should not affect the validity of the silent partnership contract provided that it fulfils all the other conditions that are necessary for its validity. So, there is no objection to that if the two parties agreed on investing the money by way of a silent partnership according to the legal framework and then agreed to make *muṣālaḥah* regarding dividing the made profit, i.e. after they gained the profit, the capital owner agrees to exchange his share of the profit for a certain amount of money in a *ṣulḥ* contract.

Q1894. A person gave another a sum of money to be invested in a silent partnership. It was agreed that a third party stood as a surety. If the man entrusted with the money disappears, has the provider of the money the right to demand compensation from the surety?

A: There is no objection to requiring a surety for the funds provided for a silent partnership, as the question goes. Should the working partner run away with the money that has been provided as capital for the partnership, or should he willfully and unjustly damage it, the money owner has the right to demand compensation from the surety.

Q1895. A worker who was entrusted with the money of several people by way of investment in a silent partnership lent a sum of money, either from the pooled funds or from that which belongs to a particular person, without the permission of the owner/s. Can he be considered un-trustworthy by virtue of having an unwarranted free hand in the money at his disposal?

A: His trustworthiness can turn into dishonesty if he gave a loan to another person without the permission of the owner. He should then indemnify the loan, in case it is not repaid. However, he should still be considered trustworthy insofar as the rest of the funds are concerned; unless it is proved that he has acted unjustly.