SASOL SHARES AND SHARES IN GENERAL

IN THE LIGHT OF THE SHARIAH

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QUESTION

Sasol Limited is selling to "Black People and Black Groups", shares which are described as *Sasol Inzalo Shares* and *Sasol Bee Shares.* Basically the problem with these shares appear to be the restrictive condition that once the shares have been bought, it may be sold to only Black people and Black groups. Is it permissible to deal in these types of shares?

A Muslim lawyer issued his 'fatwa' of permissibility on the following basis:
a) The purchaser of such shares "acquires a proportionate undivided share in the assets of Sasol".
b) The purchaser of the shares "is a partner, sharing pro rata in the profits and losses of the business carried on by Sasol".
c) "Invalid conditions are severed from the contract, without affecting the validity of sale itself".

What is the Ruling of the Shariah regarding Sasol shares?

ANSWER

Apart from the restrictive, corrupt and invalid conditions and terms of the share-business, the claim that the purchaser of such shares *"acquires a proportionate undivided share in the assets"* of the company (Sasol in this instance), and the claim that he *"is a partner, sharing pro rata in the profits and losses of the business",* are massive deceptions which the lawyer and others of his ilk intentionally perpetrate to hoodwink the unwary and the ignorant who do not have the haziest idea of this haraam share-business which is falsely, deceptively and sinfully projected and portrayed as a valid *Shirkat (Partnership)* enterprise condoned by the Shariah.

There is no resemblance whatsoever between a Shar'i *Shirkat* enterprise and the capitalist riba-baatil share-ventures. In fact, the capitalist company system is so widely divergent and alien to the Shariah that it prompted Hadhrat Mufti Mahmudul Hasan (rahmatullah alayh) to say in his Fatwa on this issue: *"In terms of the Shariah this (i.e. buying and selling of shares in a company) is not bay' (sale) nor ijaarah (leasing) nor shirkat (partnership) nor mudhaarabah (a type of partnership) nor qardh (loan) nor aariyah (lending) nor wadeeah (trust/amaanat). It is not in any category of Shar'i transaction. Never should anyone enter into such a dealing. And Allah Subhaanahu Wa Ta'ala knows best."*

The corruption of the share-business invented by the Riba-capitalists is of such a nature and degree that it cannot be classified into any Shar'i transaction even of a *baatil* type. For example, certain conditions will render a *Shirkat* or a *Mudhaarabah* or a *Muraabah,* etc. *faasid* or *baatil.* At least even such *baatil* (corrupt and invalid) transaction could be classified under some heading of the Shariah. But these haraam capitalist riba-share transactions are pure *baatil* which remain unclassified haraam from beginning to end – from A to Z. It cannot be reformed or corrected by the elimination of *faasid* (corrupt) conditions. Its *hurmat* and putridity are extreme, hence there is no categorization for it other than pure *baatil* and *haraam.*

The very first requisite in the Shariah for the validity of any transaction is the existence of at least two sane adult *Insaan* (human beings). A transaction between one sane adult human being and a minor is not valid, nor is it valid with an insane human being. To a greater degree applies the invalidity to a transaction between, say a human being and a stone or a human being and a donkey. Despite jinn being *mukallaf* and intelligent like *insaan*, a transaction between these two intelligent beings is not valid in the Shariah. The

imperative requisite for the validity of any transaction/contract is the existence of at least two intelligent (i.e. not insane) adult human beings.

If any system of worldly, secular or kufr law confers legality to a transaction 'contracted' between a human being and a fictitious donkey, for example, whom the law terms a legal entity or a legal 'person', such transaction is not valid in the Shariah. In the western capitalist riba system, a legal phantom has been created to be a legal transactor in a transaction/contract. The capitalist system describes its legal fiction as a 'legal person' or a legal entity'. It is best to confer the appellation 'legal donkey' to this deceptive fiction of the capitalist system. Throughout this discussion we shall refer to the legal entity with the 'honorific' appellation: *Legal Donkey.*

In the riba capitalist system the Legal Donkey has been conferred with exactly the same rights, powers and obligations as a full-blooded sane adult human being. There is, however, a fundamental difference between the legal donkey and the real living donkey. While the real donkey is a being consisting of flesh, blood and soul with the power to emit and transmit vociferous braying sounds, the legal donkey of the capitalist riba system is a scrap of paper – a legal document which the kuffaar law has elevated to the status of a living human being with contractual power and the right to assume obligations, become an owner and transmit ownership to others.

With regard to the legal donkey, the secular law proclaims it a *separate legal entity apart from its members who are described as shareholders. Upon registration the company (i.e. the legal donkey) acquires legal capacity. It is henceforth regarded as a juristic or legal person with all the legal powers of contracting of a real human being.*

The purpose of this legal fraud and chicanery is to *defraud* creditors in the event of the legal donkey perishing, i.e. in the event of the bankruptcy of the company if it is bereft of assets, *all* the creditors sink. They have no right to claim the assets of those people who are falsely and deceptively described as 'shareholders'. While according to the Shariah, all shareholders in a *Shirkat* are liable for the debts of the business, in terms of the riba capitalist system, 'shareholders' are not liable for the debts of the company which quack molvis and crank 'Islamic experts' with considerable skulduggery endeavour to trade as a Shar'i *Shirkat.*

Thus, firstly, when buying shares, whether it be Sasol Bee or Dee or Zee shares or any confounded shares on the stock market, the transaction is enacted with a legal donkey – the phantom and fiction of the riba capitalist system. The secular law having conferred legal status to this phantom, legalizes the transaction between a human being and a scrap of paper, that is, the company. The company has no real existence. It is a legal fiction. It has 'workers' termed directors, managers, etc. But, while these workers act as representatives of the legal donkey, they are not the owners of the company's assets nor of the 'shares' (the scraps of papers) they offer for sale. The 'sale' is between the buyer of the shares, who is a human being, and the company which is the legal donkey. On the basis of this primary aspect of corruption in the very nature of the contract, the Shariah throws it out into the dump of haraam. Without two sane, adult human beings, there is no deal in Islam.

Secondly, according to the Shariah, the shareholders in a valid Partnership *(Shirkat)* enterprise are answerable and liable for the debts. If the business flounders and lacks adequate assets to pay the debts, the partners (shareholders) have to pay from their pockets and own assets. There is no absolution from debt in the Shariah. The distinction of private and business assets does not exist in relation to

liability nor does the satanic and fraudulent haraam concept of limited liability exist in Islam.

Thirdly, the claim that the shareholders acquire a proportionate share in the assets of the legal donkey is a gross distortion of reality and of the facts which govern the birth and existence of the legal donkey. The only basis for this baseless claim is that in the event of the bankruptcy or dissolution of the company (the legal donkey), if there remain any surplus assets (which in practice is highly unlikely), then such assets will be distributed pro rata to those persons who had bought share certificates from the legal donkey.

This sole effect does not transform the buyers of share certificates into owners or proportionate owners of the assets of the company. The legal donkey while in existence remains the 'true' and legal owner of all the assets. No one has any right to demand his alleged 'undivided pro rata share' of the assets. In a Shar'i *Shirkat,* the consequence upon dissolution is entirely different. After payment of the liabilities, if there are any assets, each partner takes possession of his share of the tangible assets. At the end of every Zakaat year, each partner pays Zakaat on the value of his share of the tangible Zakaat assets. He does not pay Zakaat on a value or a fictitious value of scraps of paper. The value of the share certificates has no relationship with the tangible assets owned by the legal donkey. In fact, the buyers of shares do not have the haziest idea of the assets or the value of the assets of the company. They will not gain the faintest recognition of the assets of the company as long as they live. And, even if the experts and the semi-experts of this game of fraud and deception are able to gain an idea of the value of the assets, they are not in reality the owners. They have no say over the assets.

The attribute of *milkiyyat* (ownership) of the shareholders does not extend to the assets of the legal donkey. Their ownership is

restricted to the scraps of paper which change hands in an enormous conspiracy of gambling, crookery, forgery, deception, etc. It is nothing but a sale of papers which in the peculiar juxtaposition created for it by the kuffaar capitalist system have acquired value just as faeces, urine, blood, and a variety of filth and *najaasat* have acquired monetary value in the kuffaar systems of economics.

The mere contention of pro rata ownership in the assets in the highly unlikely event of the dissolution of the legal donkey, or even the legality of a pro rata claim should the fictitious donkey decompose and finally disintegrate, does not render the buyer of shares a current owner of the assets of the company. Future ownership, and that too a highly unlikely event, should not be understood as current ownership, that is, a man is presently the owner. For example, on the death of a man who is survived by three sons only, each one of them becomes a one third owner of the assets of the deceased. This ownership is a future event which will transpire only on the demise of the father.

It will be absurd to claim on the basis of their ownership status after the death of their father that the sons are currently the owners of their father's assets. Similarly, the pro rata ownership of the possessors of share certificates is a future event which hinges on the disintegration of the legal donkey or the dissolution/bankruptcy of the company. Just as the sons or any other heirs have no current ownership rights in a man's assets, so too do the members of a company have *absolutely* no ownership rights in the assets of the legal donkey. It is only a charlatan who is totally ignorant of this capitalist entity or a molvi who is prepared to barter away his Aakhirah who will opine ownership of the members despite understanding the reality of the *baatil* company concept.

Furthermore, ownership has real and legal consequences and effects. Neither does the 'shareholder' have any control, real or legal, over the assets of the legal donkey nor is his supposed 'pro rata share' of the tangible assets (the cash, stock, implements, equipment, vehicles, etc.) transferred to his heirs on his death. The obtainal of the share certificate by purchase is the final end of the entire episode. The member holding the certificate is entitled to only a riba dividend and the right to vote at certain meetings which the real 'bosses', the managers and directors convene.

Aggravating the noxious haraam capitalist compounded economic potion is that the right to declare a dividend (i.e. a riba payment) is not within the power or rights of the supposed 'owners' of the legal donkey's assets, viz., the members holding the riba certificates. The menial labourers of the legal donkey – the directors – declare the dividend which the charlatan 'Islamic experts' deceptively portray as 'profit'. Compounding this incongruous riba venture is the declaration of a dividend by the directors who by consensus of all capitalist experts are not the bosses/owners of the company's assets, according to their discretion irrespective of the dissatisfaction of the mass of members. Only in extreme cases of conspicuous fraud or dereliction can the members resort to legal action and apply to a court to constrain the directors to increase the dividend (riba) amount. But this is a costly, tedious and time-consuming process which conspicuously negates the claim of ownership of the members who are in an unholy embrace with the legal donkey.

What share of the nett profits should be passed on to the supposed 'owners' (the members) is decided by the directors, i.e. the workers who are in the employ of the legal donkey. Generally, 50% of the nett profits are transferred to what is termed the 'reserve fund'. Every move and decision are the effects of the manipulation of the directors. There is not a semblance or shadow of ownership manifestation in this whole haraam affair.

In diametric conflict with this haraam riba capitalist system of trade is the Islamic *Shirkat (Partnership)* enterprise. The partners are true owners who are the real owners of the tangible assets of the partnership business. There is no fiction in this Shar'i venture. If the partners decide to terminate the partnership, each one will take possession of his share of the tangible assets. Each partner's share diffuses every item compromising the assets of the partnership. If a partner dies, his share of the physical assets has to be incumbently transferred to his heirs. If the heirs decide to exchange the assets for cash, etc. it is entirely their decision. The *Shirkat* business cannot deny a resigning partner his share of the tangible assets nor can they deny his heirs of the share which they have inherited. There is no intervening legal fictitious ass to negate the real and Shar'i consequences of the ownership of the partners.

It should thus be abundantly clear that the alleged pro rata share which the law assigns to the members if and when the legal donkey disintegrates at the advent of bankruptcy, is a future, not a current existing event. While heirs inherit ownership of assets on the basis of family ties, members of a capitalist company 'inherit' ownership of assets in the event of the demise of the legal donkey. But in both cases, the ownership is a future development. Neither the heirs nor the members of a company are the current owners of the assets.

In a Shar'i *Shirkat* every partner is the *Wakeel* (Representative / Agent) of his partners. He has the right to contract on behalf of the joint-partnership business *(The Shirkat).* The attribute of *Wikaalat* being a *shart* (imperative condition) accompanying the partnership cannot be negated from the Shar'i concept. On the other hand, the members of a company – those who purchase share certificates from the legal donkey – are not the *Wukala* (agents/representatives) of the legal donkey (the company). They cannot act on behalf of:

(a) The legal donkey because this phantom is a separate legal 'person' with rights and obligations in terms of kuffaar capitalist law.
(b) The other 'shareholders' because these members are not partners in the conventional meaning according to the Shariah as well as according to the secular law of the land.

Neither the Shariah nor the secular law accepts 'shareholders' as partners of the company venture. It is therefore brazen chicanery to claim that the holders of share certificates are partners/owners of the assets of the legal ass.

The contention that according to the Shariah invalid conditions do not affect the validity of the partnership contract is baseless in relation to the legal donkey. Firstly, the company is not a *Shirkat.* The restrictive conditions are fundamental constituents or the blood and bones of the legal ass. Secondly, restrictive conditions introduced by the partners in a *Shar'i Shirkat* automatically have no effect. They simply roll off as water rolls of from a duck's tail without moistening the tail. *Faasid* (corrupt and invalid) conditions are not legally or morally enforceable in terms of the Shariah whereas every evil and *faasid* condition is legally enforceable in the law of the kuffaar. Thus, the claim of invalid conditions having no legality (i.e. Shar'i legality) and enforceability, and that such conditions are severed from the contract is ballyhoo and bunkum. In the current kuffaar dispensation where the Shariah has no operation, these *faasid* and *haraam* conditions have real existence and are essential constituents of the contract itself. The severance of corrupt conditions from the contract can be entertained in only a truly Shar'i state, i.e. a country governed by the Qur'aan and Sunnah.

In a country where there is no Shariah law operable, the encumbrance of *faasid* conditions will be considered to be integral to the contract/transaction, and on the basis of such corrupt clauses

and stipulations, the contract/transaction will be declared invalid, baatil and haraam.

WHAT ARE SHARES?

What is a 'share'? The charlatan self-styled 'experts' of Islamic Law, either because of deception or ignorance beguile the public with their false definitions and conceptions of the meaning of a share in a company. Charlatans in the Muslim community masquerading as 'islamic experts', with their farcical definitions for the capitalist term, *'share',* labour to beguile unwary Muslims and trick them into believing that a 'share' in a capitalist legal donkey company is synonymous with a Shar'i share in a Shar'i *Shirkat* enterprise. This deliberate falsehood is like forging 'permissibility' for pork with the argument that it is meat, and the Shariah allows the consumption of meat.

The company is an institution created by capitalism. The definition the capitalist authorities present is therefore viable and correct. Defining a 'share' in a company, Mercantile or Capitalist Law states:

"The term 'share' as such denotes that the holder thereof has a claim on part of the share capital of the company, and does not refer to a right of ownership in part of the net assets of the company. A share in a company is not a corporeal object but represents a complex of rights and duties.

The share certificate on the other hand is a tangible document evidencing the legal relationship existing between the company and the shareholder. In his capacity as a party to this legal relationship there accrues to the shareholder –

(i) rights, mainly the right to dividends when they have been declared and the right to participate in a distribution on liquidation: and

(ii) duties, mainly to honour the provisions of the articles, and

(iii) on the strength of his membership of the company, certain powers and rights such as the right to vote at meetings, to receive notices, etc."

Another authority of Mercantile or Capitalist law states: *"The ownership of the assets of the company are of course vested in the company qua legal person."* Another non-Muslim legal expert who is not encumbered with the insoluble imbroglio of treading two divergent paths simultaneously such as the quasi-molvis and quasi-legal 'experts' in our community, states:

"It is clear that shareholders or members of a company do not own the assets of the company nor do they have a pro rata share in the assets of the company….. All the assets belong to the company itself. The shareholder is by virtue of such shareholding entitled to certain rights and obliged to perform certain duties. From a layman's point of view the chief right of the shareholder is to claim a declared dividend from the company.

If a shareholder in a company sold to another person his shareholdings in the company represented by a share certificate, then the shareholder is selling his ***complex of rights and duties.*** *The shareholder does not have a pro rata share in the assets of the company.*

In the selling of shares the company does not sell any portion of its assets but merely sells a complex of rights and duties.

In the event of a company winding up its affairs, then any remaining assets after payment of all liabilities would be distributed pro rata amongst the shareholders. Such distribution of assets amongst the shareholders would be on the basis of the shareholders' right to participate in a distribution.

A declared dividend is a dividend which has been so declared for distribution by the directors of a company. Should the directors of a company decide not to declare any dividend then shareholders would not have any claim…….. To the extent that any profits of the

company are not declared for distribution, they remain the assets of the company."

The 'right to claim' regarding any remaining assets when the company is dissolved does not apply uniformly to all the 'shareholders'. There are preferred shareholders and ordinary shareholders. Islam does not recognize this division of partners in a *Shirkat.* Preferred shareholders have a prior right to claim dividends and even assets in the event of dissolution. These shareholders will first be paid, and if there remains anything, it will be for the ordinary shareholders. Preferred shareholders are paid fixed interest as well as dividends when declared. The right to claim is different from ownership, and should not be confused.

The legal courts of the land too have pronounced on these issues. One such legal ruling states:

"A share in a company is movable property, and it constitutes a personal right only. A shareholder has voting rights in respect of his shares and these he exercises at meetings of the company but he does not own any portion of the property or assets of the company; his interest is merely a right to have a share of the profits of the company when realised and divided amongst its members.

From these considerations it follows that if a debt is due to a company, or if the company has been injured, the company alone can sue for the money or claim damages for the injury, and that a shareholder cannot do so, even if he be the largest shareholder."

Explaining the company, *Mercantile Law,* states:

"When a company is registered it acquires legal personality, i.e. it becomes a legal subject and has legal capacity to act and to litigate.

It is said that shareholders "own" shares in the company. However, the shareholders or members of the company do not own the assets of the company nor do they have a pro rata share in the assets of the company because all the assets belong to the company itself. The position of a shareholder is that a complex of rights and duties called a "share" vests in his personal estate. An example of a right which

vests in the shareholder and which flows from the Act itself is the right to claim a declared dividend from the company."

We have not cited from advertising material prepared for laymen who do not understand the intricacies and complexities of this riba capitalist institution. Advertising brochures use the term 'share' loosely and incorrectly merely to give the laymen readers an idea of the method of operation of the stock market. Thus when an advertisement speaks of shareholders being the 'owners' of a company, it is a distortion of the factual, legal and true position. The fictitious legal donkey concept is beyond the understanding of ordinary people due to the absurdity of this capitalist institution, hence the need to utilize an analogy to make the ludicrous comprehensible and appear reasonable.

The experts of mercantile law have no ulterior agenda, hence they present the correct and factual meaning of a 'share' in a company. They are not encumbered with the unenviable and onerous task of striking a balance between capitalism and the Shariah or to circumvent Shar'i proscriptions, hence they state the reality. While a share in a company does not mean a proportionate right of ownership of the assets of the company, according to the Shariah it means just that. In a Shar'i Shirkat, a shareholder is a proportionate owner of the tangible assets of the business. In the Shariah a 'share' does not refer to a 'right to claim'. It refers to actual ownership of tangible assets. We have discussed this issue in greater detail in our book, *Shares, Unit Trusts and the Shariah.* Whoever requires a copy may write to us.

From the aforegoing explanations of the capitalist experts and authorities, it will be abundantly clear that:

a) The members of a company (the so-called shareholders) purchase a complexity of rights and duties. They do not purchase a share of the assets of the company which in terms of the law is the absolute 'owner' of the assets.

b) By virtue of having purchased the share certificate which is a tangible instrument of no value in terms of the Shariah, the member is entitled to a dividend *only* when the directors of the legal donkey decide to declare a dividend. If the directors do not declare a dividend, then normally the members (shareholders) have no claim to the profits of the legal ass.

The members (shareholders) have no control over the profits of the legal ass – the company. The directors decide when to declare a dividend or when the time is appropriate to give the shareholders a share of the profits. Furthermore, the directors decide how much of the nett profits should be distributed to the members, the alleged 'owners' of the legal donkey. In addition, the members have to accept whatever amount the directors offer for distribution. The directors decide what to do with the undeclared profits. The directors decide on the alienation of the profits and passing these to the 'ownership' of the legal donkey.

All these incongruities which firmly place the share-company beyond the trajectory of Shar'i *Shirkat* are enshrined in the articles and memorandum (i.e. the constitution), of the legal donkey, and constitute integral constituents of the very fundamental essence of this haraam capitalist system.

Whereas in a Shar'i Shirkat (Partnership), the whole of the nett profit belongs to the partners, and cannot be alienated from their ownership, a substantial amount – as high as 50% - of the nett profit in the share-trade is withheld – not distributed to the shareholders – alienated from their ownership, and transferred to the 'ownership' of the legal ass to form part of the assets of the company. Just this one *baatil* aspect refutes the contention that the share-business is a valid Islamic *Shirkat* enterprise. In fact, there are other haraam factors as well, each one by itself being adequate to negate the claim of *Shirkat.*

In a Shar'i *Shirkat*, the concept of 'dividend declaration' is absurd and *baatil.* All of the nett profit is compulsorily distributed to the partners pro rata. The pro rata division of profit is not restricted to a portion of the nett profit. It is related to the whole amount of the nett profit. Any sum set aside for any partner renders the Shirkat contract *baatil* (null and void). It is a corrupt condition which the *Shirkat* cannot tolerate, hence the invalidity of the contract itself.

In a *Shirkat,* division of profits is decided by the bosses – the partners – not by the workers. But in the haraam share-business, the workers (directors) have all the power of decision making. Even if the company shows a substantial profit, the directors have the right to refuse to declare a dividend. Sasol Ltd with regard to its Bee Shares will not distribute any profits for three years, and in the fourth year 'a dividend may be declared and paid".

On the basis of such foul conditions 'shares' (i.e. a complexity of rights and duties) are purchased. These conditions are inextricable from the contract. The buyer of the certificate buys with the full knowledge of the terms and conditions.

Every buyer of these confounded haraam shares understands what he is purchasing. None of the buyers is so stupid as to believe that he is buying a portion of the company's assets of which he does not have the haziest idea. He knows that the commodity which he buys is a right to acquire future profits whenever such profits are declared by the workers (directors) who despite being legally labourers of the legal donkey, are factually and really the bosses. The directors dictate the terms. The alleged owners of the company are bound by the terms of the articles, etc. which are the dictates of the legal donkey. This is hardly the state of *owners and bosses.*

c) Purchase of shares in a company entitles the buyer (who becomes a member by virtue of his purchase), in relation to ownership, to (i) current ownership of the certificate issued by the legal donkey, (ii) future ownership in a share of the profit if and when the directors

make such a declaration, and, (iii) in the event of dissolution of the company, a pro rata share of the remaining assets.

This pro rata share in the assets which are owned by the legal ass, applies to the future. It is not current ownership. The shareholders will own a pro rata share of the assets only in the event of liquidation or dissolution of the company. It is therefore grossly misleading and devious to peddle the idea that the holder of a share certificate is currently a pro rata owner of the donkey's assets.

d) The explicit negation of the member's ownership of the company's assets by the law, by the factual position, and by the legal and real consequences of the legal entity's ownership, irrespective of its fiction and invalidity according to the Shariah, refutes the contention of the quasi 'experts' of Islamic Law. The purchaser of a share certificate enters the deal fully understanding that he has no relationship with the assets of the ass. His primary concern is the acquisition of the riba dividend.

e) The negation of the ownership of the assets of members is not restricted to words or statements, but is practically effective. The members have absolutely no entitlement and power to acquire or utilize any of the assets of the company. But this freedom is fully enjoyed by the partners in a Shar'i *Shirkat.* While the workers in a *Shirkat* have no right of restraining the partners from utilization or acquisition of any of the assets of the partnership business, the workers (directors, managers, etc.) of a legal donkey company enjoy all the right and power to restrain the members from the assets, and even get them jailed for appropriation of any of the assets. While in a *Shirkat* the partners do not become criminals if they appropriate or use any of the assets of the partnership, the members (shareholders) are criminalized if they appropriate any of the assets of the legal donkey.

f) When a partner in a Shar'i *Shirkat* dies, his share of the tangible assets are transferred to his heirs and the partnership in relation to the deceased forthwith terminates with death. On the other hand, the death of a member of a company is of absolutely no significance. Dividends will perpetually flow to the holders of the share certificates. The question of termination of partnership simply does not develop in view of the fact that there had existed no partnership with the legal ass. The heirs of the deceased who held share certificates could be assigned to a madhouse should they claim a pro rata share of the company's assets in lieu of the certificates which they have inherited.

The aforegoing elaboration will adequately illustrate that there is absolutely not even the slightest resemblance between the legal capitalist donkey company and the Islamic *Shirkat* enterprise. In the *Shirkat*, the partners are the bosses and have full control of the business and the assets. In a company, the so-called shareholders, i.e. the members, have no control and supervision over the business and the assets. In the Islamic *Shirkat* the workers are subordinate to the partners while in the capitalist company the directors and managers are the 'bosses' and the holders of share certificates are their subordinates.

In *Shirkat*, the partners do not purchase scraps of papers called share certificates to entitle them to receive future profits when and if declared by the workers. The partners purchase tangible stock – merchandise – with which they trade. But in a company, the members do not purchase tangible assets. The yield of the company from certificate sales will be expended as the donkey's workers (directors) determine.

SOME HARAAM CONSEQUENCES OF SASOL SHARES

Although there is no need for further elaboration to confirm the prohibition of Sasol Shares as well as the shares of every other company, the facts presented here are intended to show the violent

conflict of this alien company concept with the Shariah. Almost every move and step of the company venture are proscribed by the Shariah.

1) Sasol Bee shares are sold by the company to only Black persons. In addition to this self-imposed restriction, Sasol restricts the buyers from selling their personal shares to non-Blacks. While a person (not a fictitious donkey) is entitled to sell his products to anyone whom he wishes, he has no right to prevent the other person from selling to whomever he wishes. Thus, if A sold an item to B, he (A) cannot prevent B from selling his item to a non-Black or to anyone of his choice. This *faasid* condition is mandatory in the contract of the Bee shares and under no circumstances can it be severed.

2) Sasol will not pay dividends for the first three years despite making massive profits. Although these dividends are riba, it has been mentioned in the light of the claim that it is profit paid to partners in a partnership (which obviously it is not). A partner's pro rata share of the profit may not be withheld from him. This *faasid* condition is in the very essence of the contract, and the contention of severance is unreal, baseless and not applicable. It is an integral constituent of the contract itself, and not a loose condition which could be blown off.

3) A buyer becomes the owner of the commodity he has purchased. Once he has become the owner of the item, he cannot be forced to dispose of it by sale, gift or any other means. But Sasol will legally force a 'Black Group" or a Black person to sell their shares if they inherit some of the powers of a chameleon and cease to be Black.

4) When Sasol decides to legally force an owner of shares to sell his shares, the consequence will be: "You will be obliged to Sell (note the capital 'S' which Sasol uses for emphasis) all of your Sasol

Inzalo Ordinary Shares to the Public Facilitation Trust at 50% of the value of Sasol Inzalo Ordinary Shares as determined by Sasol…" This in fact is naked extortion in terms of the Shariah. A man cannot be forced to sell his property against his wishes. Aggravating the injustice is the extortionate fixation of the price by an outsider.

5) While the quasi experts of Islamic Law claim that it is permissible to buy Sasol shares, and gain 'profit' from this alleged 'partnership', Sasol threatens to repossess the 'profits' it has already paid to the so-called 'partners'. Thus, Sasol says: "Any dividends paid to you on the Sasol Inzalo Ordinary Shares while you were in breach will be deducted from the amount to be paid to you." By what rule and logic of the Shariah can a partner be penalized with reclaiming profits paid to him? And, who does the penalizing? The other so-called 'partners' or the legal donkey company? How do all these incongruities become compatible with a Shar'i *Shirkat*?

6) Among the benefits of participation, Sasol states: "The Funded Invitation will give you the opportunity to indirectly invest in Sasol Preferred Ordinary Shares with a preferred dividend that ranks ahead of any dividends declared and paid on Sasol Ordinary Shares."

Like all other companies, Sasol too has several classes of shares among which are 'Preferred Shares'. While all classes of shares yield riba, the capitalist system has its own definition for interest, hence it does not describe as interest the dividends paid on ordinary shares. But even according to capitalist law, fixed interest is paid on Preferred Shares. In addition to the interest which is paid on these shares, their holders are paid 'dividends' *"ahead of any dividends declared and paid on Sasol Ordinary Shares"*. The *juhhaal* 'experts' among Muslims contend that shareholders are partners who earn a pro rata share of the profits. But holders of Preferred Shares have a double advantage over the other alleged

'partners'. The first is that they are paid a fixed sum of interest. The second is that they earn dividends 'ahead' of the others. In other words, a substantial amount of the profits is set aside specifically for holders of Preferred Shares. By what standard of Shar'i logic and *daleel* do the *juhhaal* maintain that this shaitaani enterprise is a valid Islamic *Shirkat*? Preferred Shares represent a *baatil* condition in the very essence and nature of the contract. It automatically renders null and void even a valid Islamic *Shirkat*. In a *Shirkat* contract, a fixed sum allocated to a partner/s invalidates the partnership.

7) Explaining the disadvantages of Sasol shares, the company states: "You will not be able to sell your Sasol Inzalo Ordinary Shares during the Funded Invitation Minimum Investment Period of three years." A Shirkat may be terminated at any time according to the Shariah. Similarly, a partner may sell his share of the tangible assets of the partnership and end the partnership or withdraw from the partnership if it is constituted of more than two persons. Moreover, the alleged 'partnership' will not suffer in any way if a shareholder sells his certificates. A mere transference from one person to another of a scrap of paper occurs. The company has only to effect a change of name in its records when a shareholder sells his share certificates.

A quasi expert has also ventured the possibility that the selling of shares is a 'sale' of a commodity, not a partnership. Even on the basis of this stupid assumption, it is invalid and not permissible to prevent a person from selling his property for three years or for any period of time whatsoever.

8) Brazenly denying 'shareholders' their 'pro rata share of the profits', Sasol Ltd states:
"Dividends will not be declared by Sasol Inzalo for the first three years after the Effective Date." Does Islamic *Shirkat* permit the

workers in the business to deny the owners their profit for three years? Can the *Shirkat* contract subsist with this abomination inserted in its nature and essence? It is haraam compounded with haraam.

9) The audacity of the *Baatil* goes further and says: "Sasol Inzalo may declare a dividend if there is sufficient cash available……." In other words, the effective denial of profits is for a period of three years. In the fourth year, distributing the profit to the owners is left to the discretion of the workers or to the legal donkey or whatever epithet is suitable for this fiction. Right from the very inception, the perception of 'no profit' is created, and 'shareholders' invest with the understanding that there will be no profit for three years, and maybe for longer. This provision invalidates the contract, i.e. if it had been a valid Shar'i *Shirkat* contract.

10) Regarding its assets, Sasol states: "Sasol Inzalo's *only* asset is its investment in FundCo Ordinary Shares. FundCo's only asset is its investment in Sasol Preferred Ordinary Shares." The density of the haze of deception and confusion is intensified by this rigmarole of riba-shares. The only asset is riba contracts. Preferred Shares are shares on which interest is paid. These are shares which have several haraam advantages over the other haraam Ordinary Shares. They draw interest, prior dividend and greater security. The priority aspect applies also in case of the dissolution of the company. Holders of Preferred Shares, in addition to being assured of their interest, acquire a pro rata share of the assets of the dissolved company before the other shareholders. Haraam piled on haraam is the outstanding feature of the haraam 'partnership' which the deviates seek to halaalize.

11) Partners in a *Shirkat* are allowed to pledge any of their assets as security. However, the 'workers' of the supposed Sasol 'shirkat' deny their 'bosses' (the shareholders) this right. Hence, Sasol states:

"No, you may not use your Sasol Inzalo Ordinary Shares as security."

12) Sasol is inextricably intertwined with all the major riba banks, insurance and other financial institutions. All these banks and financial insurance are primarily and even exclusively institutions of Riba. Sasol lists all the riba banks in its prospectus.

13) In its prospectus, Sasol presents a detailed description of its riba Preferred Shares which are classified into several classes, all of which are interest based according to Sasol. All preferred shares of all companies are riba instruments.

14) Reflect on the following provision of this amazing so-called 'partnership' venture:
"Sasol Inzalo will provide a limited guarantee to each of the A and B Preference Shareholders in terms of which it guarantees the punctual payment and performance by FundCo of all its payment obligations to the Preference Shareholders. The liability under the guarantee……." See Sasol's prospectus for full details of this haraam provision.

Preferred Shareholders are also 'partners' of the supposed 'partnership' venture. Now who in this 'partnership' guarantees these 'partners' payment of their investment, their fixed interest, and their prior right to dividends? Is it possible in an Islamic *Shirkat* for the workers or for some partners to guarantee the investment and the profit and interest on the investment of other partners? And is it valid in a *Shirkat* to eliminate the risk factor from the investment of some partners while the other partners are exposed to the risks of the business? Is it valid in a *Shirkat* to pay interest to some partners on their capital investment? Is it valid in a *Shirkat* to insert in the contract that some partners will receive profit before

other partners, and if after some partners (i.e. the preferred ones) have received their agreed share, the profit is depleted, then the other partners are deprived? Is it valid in a *Shirkat* that some partners (the preferred ones) while participating in profits and enjoying a prior and a guaranteed status, are exempted from the pro rata share of loss in the event the business sustains a loss?

The abomination of these foul stipulations is too conspicuous to need further comment. Only quasi 'experts' who are in fact *juhhaal,* would venture this embodiment of haraam and baatil to be a *Shirkat* enterprise compliant with the Shariah.

The aforegoing 14 haraam and baatil provisions have been taken at random from Sasol's advertisement brochure. The entire system of Sasol Shares is cluttered with a plethora of haraam and baatil terms, stipulations and conditions. Mention of these baatil and faasid conditions have been made merely to illustrate the total *fasaad and hurmat* of Sasol Shares, and this applies to *all shares* – the shares of every other company.

It should also be understood that even if all of these *faasid* terms could be severed, dealing in shares remains haraam on the grounds of the primary basis which is explained in this booklet. The share business is simply NOT a Shar'i *Shirkat*. The 'shareholders' are not partners in the conventional Shar'i meaning. A share does not represent a pro rata share of the company's assets. The assets remain the property of the legal fictitious donkey. Payment is made for the right to claim future dividends (riba) if and when the bosses (directors) declare a dividend.

All share companies deal in haraam insurance and riba. Riba is most certainly inextricable from the essence and fabric of the share-business. This capitalist riba institution is not as simple as the quasi 'expert' views it. It is not a partnership simply encumbered by some

faasid conditions which could be severed at will from the contract. The very contract is rotten and odious to the core. Every *faasid*, *baatil* and *haraam* term and stipulation clings to the body and soul of the share-contract like a leech sucking blood from a body into which it has embedded itself.

The *juhhaal* who advertise themselves as Islamic 'experts' display their gross ignorance by viewing 'restrictive conditions' in a vacuum – in isolation of the contract. They fail to understand that firstly, the very contract is *baatil* having not the slightest affinity or resemblance with an Islamic *Shrikat,* and secondly, the 'restrictive conditions' are constituents of the very essence of the haraam baatil contract, and not extraneous factors which could be severed. And, if on assumption the conditions are extraneous, they cannot be legally and practically severed. They constitute integral ingredients of the contract.

These *juhhaal* 'experts' flaunting their *jahl* cast a blind eye to the riba in which these companies wallow. They do so intentionally to hoodwink unwary Muslims. They remain ominously silent regarding the different classes of shares which every company deal with. While all shares are haraam on the basis of the riba dividends which they entitle the holder to, the riba (interest) related to preferred shares, debentures, etc. are openly confirmed by the companies themselves since riba is integral to such shares, hence the 'preferred' status.

Muslims who deal in these haraam shares are expected to have some understanding. It is at least simple to understand that the capitalist companies are operated by non-Muslim entrepreneurs, and the mainstay of their operations is interest. They are heavily involved with banks, insurance companies and financial institutions whose blood and breath are riba. *All* their dealings are corrupt,

usurious and haraam. But the greed for money has induced Muslims to deliberately draw a veil over their intelligence in an attempt to smother their agitating Imaani conscience. Warning us, the Qur'aan Majeed says:

"O People of Imaan! Waive what remains (for you) of riba if indeed you are Mu'mineen. And, if you do not do so, then take notice of war from Allah and His Rasool."

(Surah Baqarah, aayat 278)

Rasulullah (sallallahu alayhi wasallam) said that riba is a conglomeration of more than 70 major sins, the lightest of which is like committing adultery with your own mother.

THE QUESTION

The greater part of our discussion is not necessary for the ruling to the question. The question which has been posed is simply: *"Is it permissible according to the Shariah to subscribe for Sasol Bee ordinary shares?"*

THE ANSWER

The simple and straightforward answer is: No, it is not permissible. The impermissibility is on account of the fact that in the share business the transaction is between a document called 'the company' and a human being who purchases a 'share' which is not representative of an ownership share of the tangible assets of the company. The Shariah does not recognize the capitalist concept of a legal entity or a juridical person. The Shariah does not permit a transaction between a human being and a fictitious entity which kuffaar law elevate to the level of a human being in relation to contractual capacity, the assumption of rights and obligations.

This answer is adequate for the prohibition of dealing in shares. The rest of our discussion is dilatory, discussing other aspects which the charlatan 'experts' present as a smokescreen to detract from the

reality of the inceptional invalidity of the transaction itself, apart from the corrupt restrictive conditions. These are superfluous issues which are presented by the charlatans in a vacuum.

The issue of *faasid* conditions has reality only where a contract exists in terms of the Shariah. But in the absence of a valid transaction/contract, the peripheral issue of corrupt conditions and their severance is meaningless and a smokescreen created to befuddle unintelligent and ignorant persons.

QUESTION

The following has been asserted in the argument for the permissibility of Sasol Bee shares: "In any event, a restrictive condition (not affecting the essence of profit and loss sharing) found to be invalid is severed from the contract of shirkah itself, the contract in such remaining valid."

ANSWER

We have already touched on the issue of severance of invalid conditions. Further, the averment above is highly misleading and deceptive. It is a deliberate attempt to pull wool over the eyes of unsuspecting and ignorant people. In the context of Sasol shares as well as the shares of every other company without a single exception, who will effect the severance, and is such severance possible and legal? After purchasing the confounded riba shares is it feasible to contend that the shareholder or the legal donkey will sever the corrupt conditions?

The issue of severance of invalid conditions is a deception. The corrupt conditions with which the legal donkeys encumber their baatil contracts are legally enforceable and under no circumstances

is it possible to sever them from the contract. And, even if we should momentarily assume that severance is possible, the contract remains baatil in view of the fact that the Shariah does not recognize any deal between a human being and a fictitious donkey given 'human' status by kuffaar law.

On the assumption that the legal donkey miraculously becomes a sane, adult human being, then too the contract will remain baatil and haraam because the corruption exists in the very fundamental nature of the contract. It affects "the essence of profit and loss sharing". A condition which alienates an amount from the profit, denying it to some partners and confirming it for other partners renders the contract invalid and haraam. In the legal donkey company ventures, not all the nett profits are distributed to the shareholders. A substantial amount, up to 50% of the nett profits, is set aside and transferred to the ownership of the legal ass and retained in its 'reserve account'. The dividend which is declared is not in relation to the total nett profits yielded by the company. Even in a valid *Shar'i Shirkat*, this setting aside of an amount from the nett profit and denying it to the partners invalidates the contract from the very inception. It is not such a condition which comes within the purview of 'severance'.

Sight should not be lost of the inceptional invalidity of the contract due to the legal fictitious donkey being one of the transactors. Hence, all arguments which ignore this primary incongruity should be severed from the discussion. The primary incongruity is adequate for the *hurmat* and invalidity of the contract.

QUESTION

It has also been claimed: "On the assumption that the transaction *(i.e. the Sasol Bee shares transaction),* embodied in

the contract is a sale, then in such event the restrictive conditions are permissible…"

ANSWER

This claimant dwells in a valley of confusion. About such souls who wander aimlessly in confusion and deception, the Qur'aan Majeed says: "They are neither here nor there. They (dwell) in doubt between these (opposites)." While he avers and concludes that Sasol Bee shares are valid Shirkat contracts, he veers and vacillates in confusion by assuming that the transaction could perhaps be a 'sale' *(Bay')*. His contention about restrictive conditions in this regard is baseless. *Faasid* conditions are never permissible. A condition which is not *faasid* is acceptable and does not invalidate the sale. But a condition which is *faasid* creates *fasaad* (corruption) in the transaction which is then classified as a riba deal.

Besides this, the assumption of Sasol Bee shares being a sale is blatantly stupid and exposes the *jahaalat* of the contender. An assumption is valid if it has some semblance of reality. Should we assume that this stupid assumption has substance, then too, a sale with a fictitious ass is not valid in the Shariah. The primary basis for negating all types of transactions with a company remains. Any deal, be it of whatever classification, with a fictitious ass is never valid in the Shariah. The talk of severance of invalid conditions is diversionary, deceptive and bunkum spawned by professionals in the art of chicanery and hog-swill. The severance issue does not develop in the absence of a contract/transaction.

In terms of the Shariah. There is absolutely no need to even consider the 'restrictive' conditions, whether permissible or not, in view of the invalidity of the primary contract/transaction.

THE EFFECTS OF ENTRAPMENT IN SHARES

If perchance a Muslim has been lured into the trap of participating in the haraam share trade, how does he extricate himself from the morass, and what are the effects in relation to his invested money, the money he gains by selling the shares, the dividends and Zakaat payment.

1) Purchasing Shares

The riba-shares are purchased from two sources: (a) Directly from the legal donkey (the company), or (b) From persons who are in possession of such shares. If the purchase was from the legal donkey, the purchaser may accept the dividends until he has reclaimed the amount he had invested in the riba-enterprise. After he has managed to withdraw the amount he had so invested, all extra dividends should be compulsorily diverted to charity without niyyat of thawaab. All such dividends are riba.

If the shares were purchased from a source other than the legal donkey, these may not be resold to anyone nor will it be permissible to utilize the dividends to offset the amount one has paid to the other source for the shares. Whatever dividend is received should be compulsorily contributed to charity without niyyat of thawaab. In this case, the initial investment is lost. As long as the legal ass exists, dividends will have to be given to charity.

2) Dividends

The dividends which the legal donkey pays are riba. The sale of the share certificate is in lieu of future dividends. It is a haraam sale of money for money between a fictitious entity and a human being. From every angle it is putridly obnoxious and haraam. Dividends for a restricted amount could be accepted for one's own use in only one situation as explained in No. 1, above. Besides this, all dividends are haraam riba which have to be incumbently eliminated from one's possession.

3) Zakaat

Donkey-shares are not tangible assets. There is no Zakaat on such shares regardless of their market-value.

AND ALLAH KNOWS BEST

OBNOXIOUS CONSTITUENTS OF SASOL BEE SHARES

Shares in all types and classes of capitalist companies are obnoxious. These legal donkeys are fundamentally riba institutions dealing in a variety of *baatil, faasid* and *haraam* transactions and contracts. Numerous haraam constituents form integral parts of the actual transaction/contract.

Muslim charlatan 'experts' who labour to present these capitalist trade practices as being in compliance with the Shariah, present extremely misleading and deceptive discussion on a basis of nomenclature which is devoid of Shar'i substance. For example, they will cite as their basis the word, 'share', and from this point proceed to beguile people with the idea that the possessor of a share is a shareholder who is a partner in a partnership venture, and the Shariah terms such ventures as 'shirkat'. Another example of such chicanery and deception is the severance contention in relation to corrupt / invalid conditions. While a *shart* (condition) is extraneous to the Shirkat contract in terms of the Shariah, the restriction in the capitalist share-venture owned by the legal donkey is not in the category of *shuroot* (conditions). The restrictions are in the very essence and are integral constituents of the fundamental nature of the contract.

They further, attempt to conceal the plethora of haraam in which these companies indulge. They hoodwink ignorant and unwary Muslims with stunts such as: *"The company trades in only halaal products. It does not trade in liquor, haraam meat, nor invests in*

gambling, etc." While such devious stupidities may befuddle and mislead stupid people, men of intelligence who understand these gimmicks are not hoodwinked and entrapped. Abstention from trading in liquor and pork is not the only requisite for permissibility of investments in a business. If the nature of the contract/transaction is in conflict with the Shariah, investment will be haraam irrespective of the halaal products in which the company trades.

Thus, if all the profit of the company is acquired from lawful trade in which all the products are halaal, but the contract between the parties is *baatil*, then the profit will likewise be haraam. If, for example, an investor is paid 5% of his capital investment, such payment will not be halaal profit regardless of it being paid from the halaal profits which the company acquired from its halaal trade. The 5% will be riba. Interest paid from halaal money is not halaal.

All these kuffaar companies, including all Muslim-owned public companies are seeped in haraam. Interest and insurance are practices which are inseparable from these ventures legally owned by fictitious donkeys or juridical fictitious persons. Some of the obnoxious practices which render these companies and investment with them haraam are as follows:

- A substantial or very large amount of the nett profits are concealed from investors, the so-called shareholders. Such profits are transferred into reserve accounts. There is great expertise among the directors in the art of siphoning such company profits from the donkey into their personal pockets.
- The withholding of nett profits from the shareholders is an act integral to the actual contract. With regard to the dividends on Sasol Bee shares, it is declared in the document of the company: "No dividends will be paid for three years after the Effective Date. From year 4 after the Effective Date, a dividend of up to 5% of the preferred dividend declared and paid on the Sasol Preferred Ordinary Shares may be declared and paid."

- Preventing a holder of 'shares' from selling his shares whenever and to whomever he wishes.
- Repossessing the shares and paying a price determined by Sasol. In this way the holder is penalized if he sells his own property to a non-Black.

SUMMARY

1) A company is not a *Shirkat* (Islamic Partnership).
2) A 'share' in a company represents a complexity of rights and duties, not a share in the assets of the legal fictitious ass.
3) The amount paid for shares is for the purchase of rights, mainly the right to claim dividends and to vote at meetings.
4) Shareholders do not own a pro rata share in the assets of the company.
5) By law, the company or the legal fictitious donkey is the sole owner of the assets.
6) Even the dividend is not genuinely pro rata. There are different categories of shareholders with greater and prior right on the riba-profits of the donkey.
7) Money paid directly to the company for shares may be reclaimed by way of the dividends. After the amount 'invested' has been reclaimed, all dividends received, being riba, should be incumbently given as Sadqah without niyyat of thawaab.
8) Money paid to a seller of shares other than the company itself, is lost. Such money may not be reclaimed with the dividends. In this case all the dividends should be contributed to Sadqah.
9) Buying and selling shares are Haraam.
10) Zakaat is not payable on shares.

"AND UPON US IS ONLY TO DELIVER THE CLEAR MESSAGE"

RIBA AND SADQAH

Allah Ta'ala says in the Qur'aan Majeed: "Whatever (money) you give from riba so as to increase the wealth of people, it does not increase by Allah. And, whatever you give of Zakaat (Sadqah in general) to gain the Pleasure of Allah, they (such givers) are the ones who multiply (their rewards in the Aakhirah and their wealth on earth)."

RIBA IS DESTROYED

Allah Ta'ala says in the Qur'aan Majeed: "He increases Sadaqaat and destroys riba."

ALL PARTICIPANTS ARE ACCURSED

Rasulullah (sallallahu alayhi wasallam) said: "The devourer of riba, the giver of riba, the writer of riba, and the one who witnesses riba are all equal (in the sin of this vice)."

THE VAPOURS OF RIBA

Rasulullah (sallallahu alayhi wasallam) said: "There will dawn an age on people when no one will remain without consuming riba, and if anyone does not devour riba, at least the vapours of riba will blemish him."

WORSE THAN 36 ACTS OF ADULTERY

Rasulullah (sallallahu alayhi wasallam) said: "Knowingly consuming one dirham of riba is worse than 36 acts of zina."

THE FIRE IS MORE ENTITLED

Rasulullah (sallallahu alayhi wasallam) said: "The Fire (of Jahannum) is more entitled to a person who nourishes his body with haraam."

FEAR OF RIBA

Hadhrat Umar Bin Khattaab (radhiyallahu anhu) said: "We (i.e. the Sahaabah) would abstain from nine tenths of halaal (trade transactions) for fear of indulgence in riba."