203106 - Salary for one who is a partner in a business on the basis of his expertise and work

the question

We are three programmers, and we want to enter into a partnership with an investor, to set up a company for developing computer systems. He is providing the capital and we are providing expertise and work.
Question 1: in whose name should the company be registered? Do we have any right to the capital after the contract is done?
Question 2: do we have the right to take a salary, in addition to our share of the profits? What if we limit our contribution to the company to our experience only, and not our work?
Question 3: do we have the right to stipulate that ownership of the programs produced belongs to us in full? As the profits in this project will come from renting out the programs and offering technical support, not from selling them.

Detailed answer

Praise be to Allah.

Firstly:

The contract mentioned is a mudaarabah (profit-sharing) contract, which is also called a loan-based contract. The way it is done is as follows: work is to be done by you and the money is to be provided by the investor, who is the owner of the capital.

Registration of the company should be done in all of your names, because you are all partners in it, and you are not just hired workers. But if the company is registered in all the names, then it is essential to define the nature of your partnership in it, lest any of the partners claim after that that

he owns anything of the capital that was put towards establishing the company.

If it is the case that you have registered it in the name of one of the partners only, then it is also essential to document the facts in such a manner as to avoid confusion in the event of a dispute, and so as to guarantee the rights of all parties.

All of this applies if what is meant by “registering the company” is registering commercial ownership or a trademark of the company.

But if what is meant by registration is registering ownership of the place or the land, and whatever furniture is there, then there is no reason why that should not all be registered in the name of the sponsor only; in fact this is the basic principle, so long as he paid for it from his own wealth.

Secondly:

The capital in a mudaarabah partnership belongs to its owner, the investor, and is to be returned to him in full before division of the profits. If there is a loss, then it is to be subtracted first from the profits, and then from the capital.

Ibn Qudaamah (may Allah have mercy on him) said:

The mudaarib (the partner) does not get any profit until the capital has been repaid in full. What this means is that he is not entitled to take anything of the profits until the capital has been returned to its owner, because what is meant by profit is what is surplus to the capital; whatever is not surplus is not profit. And we are not aware of any difference of opinion concerning this.

End quote from al-Mughni, 5/41

Thirdly:

With regard to your taking a salary in addition to whatever proportion of the profits you are entitled to according to the terms of the partnership, that is not permissible.

Ibn Qudaamah (may Allah have mercy on him) said:

It is not permissible to give any of the partners extra money. The reason for that is: if the share of one of the partners is set at a certain amount of money, or he is given money in addition to his share, such as if he stipulates that he should get his share and ten dirhams, the partnership is invalidated thereby.

Ibn al-Mundhir said: All of the scholars from whom we learned knowledge are unanimously agreed that an investment contract is rendered invalid if one of the partners or both of them stipulate that they should get a certain amount of money.

End quote from al-Mughni, 5/28

For more information, please see the answer to question no. 122622

Fourthly:

There is no reason why you should not enter into the partnership on the basis of your expertise and not your work – as you mentioned – so long as you have come to an agreement concerning that, because entering into a partnership on the basis of offering consultation and advice is in fact work, so long as this is stipulated from the outset when setting up the contract, so as to avoid any conflict or dispute later on, by defining this expertise and how the company will benefit from it, and to define the proportion of the profits that you will receive on the basis of this expertise.

Fifthly:

With regard to stipulating that ownership of the programs produced will belong entirely to you, this condition is not valid, because that is keeping a part of the profits for yourself, but what is required in the case of a company or partnership is that the profits should be shared out among all the partners.

An-Nawawi (may Allah have mercy on him) said:

If he says, “You or I will have a dirham, or one hundred dirhams, from the profits, and the rest will be shared equally between us,” then the investment loan is rendered invalid. The same applies if

he says, “Half of the profit less one dirham”; or if he stipulates that profit from a particular item will be his alone if he buys it with the capital, because he may not make a profit on it; or if he stipulates that he will be allowed to wear a garment or ride a mount (that is bought with the capital); or if he stipulates that profits on a particular product will be his alone.

End quote from Rawdat at-Taalibeen, 5/123

And Allah knows best.