Introduction

The laws of Ribbis apply to a Jewish business, just as they apply to an individual. A business may not borrow or lend for Ribbis just as an individual may not do so. Thus, all of the laws which have been outlined in the earlier chapters apply here as well. In this chapter we will deal with issues that are unique to business partners.

A. Businesses Which Are Owned by Jewish Partners

Personal Loan

1. Personal Loans: Two Jewish partners may take a joint loan from a bank (or from a non-Jewish individual), and agree to pay Ribbis. However, when this is done, each partner may only be liable for half the loan.[1] The loan agreement may not hold them jointly responsible for the entire loan.[2]

2. One partner may not serve as a cosigner for the other partner's portion of the loan. Since the lender may choose to collect from the cosigner, the partner is, in effect, responsible for the entire loan.

1. This assumes that they are equal partners. If one partner owns 60% of the business, he would have to be liable for 60% of the loan, while his partner would only be liable for the remaining 40%. Similarly, if there were three equal partners, each would only be liable for one third of the loan. (The reason for this is explained in the note which follows.)

2. *Chavos Daas* 170:1, *S.A. Harav* §64, *Ben Ish Chai* to *Eikev* §13, *Mishnas Ribbis* 16:1; cf. *Darkei Teshuvah* 170:9.

When a business receives a loan, each of the partners is technically receiving a portion of that money. Since the money is being invested in the business, each partner's share in the borrowed money is equal to his share in the business. (This is why each partner's share in the liability must be equal to his share in the business.)

Thus, when two partners take a joint loan from a bank, each has actually borrowed only half the money. Still, the terms of a joint loan typically hold each partner liable for the entire loan. Since each of them is also responsible for his friend's portion of the loan, they are actually serving as guarantors for each other. Jews are prohibited from serving as guarantors for a Ribbis loan (Y.D. 170:1), except as outlined in the note which follows.

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However, if the agreement requires the lender to pursue the borrower in court first, one partner may cosign for the other.[3]

Business Loan

3. A Jewish business may take a loan from a non-Jewish source and agree to pay Ribbis. However, this is permitted only if the partners do not issue personal guarantees for the loan.[4]

Individual Loan

4. If one of the partners takes a personal loan and invests the funds in the business, he may not use business funds to pay interest on the loan. Only the principal may be repaid by the business.[5]

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3. A Jew is permitted to serve as a guarantor when the terms of the loan require the lender to pursue the borrower before requesting payment from the guarantor (Y.D. 170:1). (This type of guarantor is known as an *areiv stam* — see Introduction to Chapter 15 for an explanation of the different categories of guarantor.) Today, the terms of a routine cosigner agreement permit the lender to pursue the cosigner, without first taking the borrower to court. This is prohibited. (This type of guarantor is known as an *areiv kablan*.)

It should be noted that one opinion in *Shulchan Aruch* (ibid.) permits a Jew to serve as cosigner (even as an *areiv kablan*) for another Jew's loan, despite the fact that the non-Jewish lender will collect Ribbis. We have followed the opinion of virtually all poskim (including *Shach*, *Taz*, *Chochmas Adam*, *S.A. Harav* and *Kitzur Shulchan Aruch*) who prohibit this. Still, the fact that there is a more lenient opinion is significant because this may be taken into account when making halachic determinations in more complex situations (as in Paragraph 5, below).

A notable exception: *Maharam Shick* 160 and *Avnei Nezer* Y.D. 197 defend the practice of those who rely on the lenient opinion. While this may serve as a source to justify the common practice of partners who do take joint loans (particularly when the loans are actually repaid from the business, and not by the individuals; see *Darkei Teshuvah* 177:9), it is clearly contrary to the opinion of virtually all poskim. See, for example, *Minchas Elazar* 2:33, who expresses amazement at the lenient view of *Maharam Shick* and stresses that one should not rely on this view even in case of need. Therefore, partners who must take loans in this manner should satisfy both opinions by using a Heter Iska, as explained below, Paragraph 7.

4. When a loan is backed by a personal guarantee, it has the status of a personal loan. We have already seen that one partner may not guarantee the other partner's portion.

However, if the agreement does not permit the lender to collect from the guarantors unless he first pursues the business (in court) for payment, the partners are permitted to personally guarantee the entire loan (*Mishnas Ribbis* 16:n3, quoting the author of *Bris Yehudah*).

5. In this case, one partner has taken a personal loan and then lent the funds to the business. Although he is obligated to pay Ribbis to the non-Jewish lender, he is

5. An exception to this prohibition: Sometimes, a business has two owners, but only one is an active partner who manages the business. In this situation, the managing partner is permitted to take a personal loan from a non-Jew for use in the business, and to repay it, with interest, from business funds.[6]

There is a dispute regarding the extent of this leniency. Some poskim permit the borrower to pay the interest from any business funds, even if this means drawing on capital.[7] Other poskim hold that the borrower may pay the interest only from profits which are generated *after the loan is received.*[8]

6. Another option is for one of the partners to take a loan, but to pay the interest using business funds, *at the time that the loan is received.*

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prohibited from charging Ribbis to the Jewish company which borrowed the funds from him. (Although a lender is permitted to charge his borrower for expenses which were incurred due to the loan, this does not apply to interest expenses — see Chapter 5, Paragraph 5.)

6. *Taz* 170:3. *Taz* explains that when a managing partner takes funds from a non-Jew for use in the business, this is considered an investment rather than a loan because the non-Jew's moneys are being used to generate profits for the business. Thus, when interest is paid to the lender, it is considered a business expense, not interest, and is permitted.

The role of an investing ('silent') partner is only to contribute funds to the partnership. Any expense he incurs is not considered a business expense. Thus, if he were to borrow money from a non-Jew, it is considered a loan, which he has taken in order to satisfy his obligation to the partnership. This is permitted only when the loan is extended privately to the investing partner (and the business carries no liability for it) and the interest is paid by him.

S.A. Harav §64 adds that this is also permitted when both partners are active in the business. They may take a joint loan, provided that interest will be paid only from the profits of the business.

7. *Divrei Chayim* C.M. 29 permits this because he views the interest payments as a business expense. *Maharsham* (7:45 and 63) also rules that this is permitted, but for a different reason. *Maharsham* maintains that when the managing partner commits to a loan, he has the authority to sign for the silent partner as well. The partner is therefore bound by his commitment. Contemporary poskim question whether the managing partner truly has this kind of authority.

It should be noted that these poskim concede that if the business were to lose all its funds, the partner could not be obligated to repay the loan from his personal funds. However, if he desires to pay the debt from his own moneys, he may do so. If the second partner (who did not take the loan) wishes to pay the entire debt, it is not clear if this would be permitted (*Mishnas Ribbis* 16:n5).

8. *Chochmas Adam* 132:8, *S.A. Harav* §64. See also *Bris Yehudah* 6:n71. *Chavos Daas* 170:1 also permits this (based on different reasoning). See *Bris Yehudah* 6:n60.

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