Borrowing from a Jewish Owned Bank

There is a bank that many business owners use to obtain mortgages and lines of credit. It was recently discovered that it is a privately owned bank and at least one of the board members is Jewish. There are many practical reasons why the business owners would like to continue to use this bank and the question is whether there is something that can be done to permit borrowing from this bank without violating the prohibition of *ribbis*.

In researching this *shealah* it was discovered that there is a federal regulation that a bank must keep 10% of the amount issued as loans and lines of credit in a segregated account. Accordingly, it was suggested that the bank create a structure wherein the Jew's money will remain in this segregated account that is not loaned to anyone and the loans will issued from the funds supplied by the gentile members of the board. Does such an approach work to avoid violating the prohibition of *ribbis* or not?

The issue of Jewish investors in banks was first addressed by R' Shlomo Ganzfried, the author of the Kitzur Shulchan Aruch[1]. He ruled clearly that when Jews are investors in the bank, it is prohibited for a Jew to borrow money with interest. The fact that the bank manager may be a gentile is irrelevant since it is the Jew's money that is being loaned to a Jew with interest. Therefore, it is prohibited to invest in a bank when it is likely that Jewish borrowers will borrow money with interest and, as well, it is prohibited for one to borrow from a bank that has Jewish investors[2].

Teshuvas Shoel U'Meishiv[3] wrote a letter to the Kitzur Shulchan Aruch, arguing that it is permitted for Jews to invest in a bank that will issue interest bearing loans, even though some of the borrowers are Jews and it is also permitted for a Jew to take out an interest-bearing loan from a bank that has Jewish investors. He presents two explanations why it is permitted.

AGENCY - שליחות

Practically, the interest-bearing loan is not issued from Jew to Jew. The Jewish borrower goes to the bank and deals with a gentile manager or employee. Such a circumstance

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[1] 65:28

[2] In instances in which the Jewish investors have only a minority share in the bank and do not have any controlling interest in the administration of the bank, the prohibition is not violated. See Mishnas Ribbis (מהדורה שניה שנת תשע"ח) Ch. 2 note 10. He references there the Bris Yehudah (30:[43]) who cites numerous authorities who are stringent about such matters. However, Teshuvos V'Hanhagos (2:421) and Igros Moshe (E.H. 1:7) are lenient.

[3] Mahadura Kama vol.3 *siman* 31.

was addressed by Rashi[4] and codified by the Rema[5]. The essence of this leniency is rooted in the principle אין שליח לדבר עבירה – there is no agency for a transgression. In other words, if Reuven sends Shimon to commit a transgression and Shimon violates that prohibition, Reuven is not accountable for that transgression. In this case it means that the gentile bank employee cannot serve as the Jewish lender's agent to issue an interest-bearing loan to another Jew. Therefore, it is permitted to invest in or borrow from such a bank since, based on this technicality, the loan is not between a Jewish lender and a Jewish borrower. The Shoel U'Meishiv then adds that even those who disagree with Rashi's lenient position would agree in this case because it is not clear that the interest the Jewish borrower pays will ever end up in the Jewish investor's pocket for the prohibition to have been violated[6].

The Maharam Shick[7] notes that the Rema, who codifies Rashi's application of אין שליח לדבר עבירה, also quotes the Maharik who limited Rashi's ruling to where the name of the Jewish lender is not recorded in the loan document. When the loan document records the name of the lender, it is clear that the bank employee is not acting as an agent for the lender, rather he is just processing paperwork between the Jewish lender and Jewish borrower and the prohibition of *ribbis* is violated. Therefore, since the bank is recorded as the lender and the bank includes Jewish investors, even Rashi and Rema would agree that it is prohibited[8].

Sefer Nesivos Shalom[9] notes that the Shoel U'Meishiv himself addresses this question and explains that the problem of the Jewish lender being recorded in the loan document does not apply to a bank. His reason is that since the loan document only mentions the

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[4] Teshuvos Rashi 177.

[5] Y.D. 160:16. Rema adds that this leniency should not be publicized in the presence of unlearned people (עם הארץ). Furthermore, although there are authorities who question this leniency, one may rely on it, when necessary

[6] This argument is based on a number of assumptions. One is the assumption that we can utilize the principle of *bereirah* and, as we will see below, this matter is heavily disputed. Secondly, the Shoel U'Meishiv seems to adopt the position that each partner's money is differentiated rather than pooled together and thus it could be argued that the Jewish investor never received any of the interest paid by the Jewish borrower. This point will also be addressed below.

[7] Y.D. 158

[8] Other authorities explain that according to Rashi, once we apply the principle of אין שליח לדבר עבירה, it turns out that there are two loans, one from the Jewish lender to the gentile middleman and a second loan from the gentile middleman to the Jewish borrower. This perspective certainly does not apply to bank loans. Even though there is a gentile employee between the Jewish lender and borrower, that bank employee does not accept upon himself the responsibilities of a borrower or the risk of a lender. As mentioned, he is performing מעשה קוף בעלמא – mindless processing of data and filling out paperwork and Rashi's position cannot be applied to this situation.

[9] 173:9:[34]

name of the bank and does not specify the name of the Jewish investors, it is not clear from the loan documents that one of the lenders is Jewish. The Nesivos Shalom explains that the Shoel U'Meishiv's answer assumes that the issue with having the name of the Jewish investor on the loan document is that it gives the appearance that there is an interest-bearing loan between two Jews. Accordingly, if the loan document only mentions the name of the bank rather than any of the Jewish investors, it should be permitted. However, there is an alternate explanation why recording the Jewish lender in the loan documents is problematic, even though there is a gentile bank employee serving as a middleman. The alternative explanation is that when the Jew is recorded as the lender of record, it is considered as though the loan is being issued directly from the Jewish lender to the Jewish borrower and the presence of the gentile in the middle is irrelevant. He is managing paperwork but isn't involved in the loan being issuedAccordingly, when the name of the bank is recorded as the lender, the Jewish investor's money is also being used for the loan and the fact that the Jewish lender's name is not mentioned explicitly is irrelevant since it is clear that his money was also used for this loan.

BEREIRAH - ברירה

A second basis for leniency is the principle of *bereirah*. *Bereirah* means retroactive clarification and involves a mixture that contains permitted and prohibited items. The principle states that when one takes something from the mixture, it is assumed that what was removed was the desired item. This could be removing the prohibited item from permitted items or removing a permitted item from prohibited items. In this context that would mean that the money that was issued for the loan belonged to the gentile investors rather than the Jewish investors and thus the prohibition of *ribbis* is not violated.

Although generally when a mixture contains a Biblically prohibited item, we do not utilize the principle of *bereirah*, nevertheless in this case it is permitted. The basis for this is a comment recorded in Tosafos in *Temurah* (30a *d.h. v'idach)*. Tosafos there explains that the principle of *bereirah* cannot be utilized when the prohibited item was distinct before it became intermingled and mixed with the permitted items. On the other hand, when the prohibited item becomes distinct after it was intermingled with permitted items, the principle of *bereirah* allows one to pull out an item and that item is assumed to be the prohibited item. An example of this is the case discussed in the *mishnah* in Temurah. Two brothers inherit some lambs and a dog. They decide that one brother, Reuven, will receive 10 lambs and the other brother, Shimon, will receive 9 lambs and

the dog. The division of their father's estate is comparable to selling the animals to one another and thus one of the lambs that belongs to Reuven who received only lambs, is prohibited for use as a *korban* due to the prohibition of מחיר כלב – an animal sold for a dog. That prohibited lamb was never distinct before it was intermingled with the other lambs and thus the principle of *bereirah* indicates that whichever lamb is set aside is the lamb that is disqualified for use as a *korban* because it is a מחיר כלב. Similarly, argues the Shoel U'Meishiv, since the money the investors pooled together never contained a distinct prohibition, since when the funds were pooled together it did not contain any prohibited funds, the principle of *bereirah* indicates that the money that is loaned to the Jewish borrower belonged to the gentile investors and the prohibition of *ribbis* is not violated.

There are a number of important points to ponder when considering this approach. One limitation noted by the Nesivos Shalom is that it is not permitted for the bank to issue loans to Jewish borrowers that exceed the amount of money that the gentile investors invested in the bank. For example, if the gentiles invested $50,000 and the Jews contributed $200,000, the bank may not issue a $100,000 loan to a Jew. The principle of *bereirah* only works for the amount of money that they gentiles invested but cannot exceed that amount[10].

There is, however, a second more fundamental point to consider. The Shoel U'Meishiv presumes that the money that the investors contribute remains differentiated. If the gentile investor's money is distinct from the Jewish investor's money, one could argue that when Jewish borrowers take out a loan, the bank could use just the gentile's money.

This presumption, however, is not such a simple assumption. The Sema[11] quotes the Terumas HaDeshen[12] who addresses the case of Reuven who agreed to transport Shimon and Levi's money together with his own and some of the money became lost. The question was whether Reuven can assert that the lost money belonged to Shimon and Levi and his personal money remained intact or whether Reuven must share the loss together with the others. The Terumas HaDeshen concluded that when Reuven mixed the money together, all three people become, in a sense, partners and as such, the loss is shared equally between them. The Sema explains that when money is pooled together, the participating parties are not particular to receive back the specific money that they contributed; people just want to make sure that they receive back the value of

[10] An interesting point to consider is based on the fact that in the US banks may issue loans that exceed the value of their assets.
[11] 292:30. This same point was made by the Chasam Sofer Y.D. 236 and the Maharsham 1:20.
[12] 314

the money they contributed. As such, each party becomes a partner in each dollar according to the percentage of his investment. Accordingly, every dollar that is issued as a loan to a Jewish borrower is also partially Jewish owned and thus violates the prohibition of *ribbis*[13].

ADAITA D'NAFSHEI – אדעתא דנפשיה

The Maharit[14] discusses the permissibility of a Jew giving money to a non-Jew as an investment – עסקא and the profits and losses will be shared equally. If the non-Jew loans those funds to a Jew and collects interest on that loan, the Jewish investor may accept his share of those profits, even though they were generated by a loan using his money to a Jew. The reason is that once the Jewish investor gave the money to the non-Jew he relinquished his control over how those funds are used and the non-Jew has the discretion to use the money as he sees fit. At the point, if the non-Jew decides to loan those funds to a Jew and charge interest for that loan, he does so out of his own self-interest – אדעתא דנפשיה rather than on behalf of the Jewish investor. Although it is the Jewish investor's funds that are being loaned to another Jew with interest, it is permitted because the Jewish investor has no control over what is done with those funds[15].

The Erech Shai[16] writes that according to the Maharit this arrangement is permitted even if the Jewish investor gave the funds to the non-Jew for the purpose of loaning those funds and collecting interest on those loans, provided that he does not specify that the non-Jew loan those funds with interest to Jews. As long as it is not stipulated

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[13] The Maharam Shick suggests another rationale to permit a bank with Jewish ownership to issue interest-bearing loans to Jewish borrowers. He sees the bank as a separate corporate entity from the investors. He writes that investors essentially loan money to the "bank" and the "bank" loans money to borrowers. From this perspective, the Jewish investors are not loaning money directly to Jewish borrowers, the corporate entity of the bank issues the loans and thus the prohibition of *ribbis* is not violated. See, however, Teshuvas Maharshag vol. 1 Y.D. 3 where he analyzes the Maharam Shick's *teshuvah* and in incredibly respectful tones, strongly disagrees and rejects using many of the arguments, even as an auxillary factor to formulate a lenient position (סניף להתיר).

[14] Teshuvas Maharit 1:116

[15] Bris Yehudah 33:5 rules in accordance with the Maharit and in footnote 11 he notes that R' Akiva EIger 168:21 references this opinion.

[16] Erech Shai Y.D. 169:23 and see Teshuvas Maharshag vol. 1 Y.D. 3 ד״ה והנה where he expresses his opinion that the Erech Shai's criticism of the application of אדעתא דנפשיה to *hilchos ribbis* is correct and that when he initially read the Maharit he understood that there is no parallel between *ribbis* and Shabbos regarding this matter.

that the money is loaned to Jews and the non-Jew has the authority to loan the money to whomever he chooses, it is permitted.

Notwithstanding the Erech Shai's application of the Maharit's ruling, he disagrees with the fundamental principle. He explains that the prohibition of *ribbis* has nothing to do with whether the non-Jew is acting for the benefit of the Jew or out of his own self-interest. The intent behind the action of the non-Jew is relevant in *hilchos Shabbos* where we differentiate whether the non-Jew performing *melachah* is motivated out of self-interest or whether he is performing the *melachah* to benefit a Jew. In contrast, the prohibition of *ribbis* revolves around whose money is loaned to a Jew with interest. Therefore, since the Jew's money is loaned to another Jew and interest is collected, the Biblical prohibition of *ribbis* is violated.

BITUL - ביטול

Another potential solution is cited in Sefer Bris Yehudah[17] in the name of Teshuvas Sha'arei Tzedek and Sefer Pnei Maivin that we can employ the principle of *bitul b'rov* – nullification in the majority. Although generally, the principle of *bitul b'rov* does not apply to monetary matters, Nesivos[18] writes that prohibited items that are connected to monetary matters can be nullified. He proves this principle from the *gemara* in Beitzah (38b) that dough made from Sorah's flour and Rivkah's salt follow's Sorah's *techun* and is not limited by Rivkah's *techum* even though at the outset of Yom Tov the salt belonged to her and was confined to her *techum*. Although the salt was Rivkah's commodity, when we address the permissibility of transporting the dough, we consider Rivkah's contribution to be nullified in the majority of Sorah's flour. The same principle can be applied to the money belonging to the Jewish investors. Although from a monetary perspective their funds cannot be nullified, as far as the prohibition of *ribbis* is concerned, those funds can be nullified and thus it is permitted to borrow money with interest from such a bank.

The Minchas Pitim[19] rejects the application of the Nesivos to cases of *ribbis*. The prohibition of taking items out of the *techum* is not a monetary *halacha* and thus we can separate the monetary component from the prohibition component. The prohibition of *ribbis*, on the other hand, is inherently a monetary prohibition and therefore just as it is prohibited to steal money from the bank (even according to the view that stealing from

[17] 30:16
[18] 289
[19] Y.D. 160

a gentile is not prohibited) because one would be stealing from a Jew, so too, it is prohibited to borrow money from this bank because it is funded by Jewish money.

The Nesivos Shalom[20], however, quotes a sefer, Divrei Dodim (add background to the sefer), which relates that when banks first opened in Europe and the question arose about borrowing from a bank that includes Jewish owners, R' Yisroel Salanter ruled that it is permitted for Jews to borrow with interest from such banks. The reason for his lenient position is that the Jewish money is nullified in the majority of gentile money in the bank. He further explained that although it is true that money cannot be nullified but the prohibition of *ribbis* is rooted in the *kedushas Yisroel* that is contained in the money and that sanctity could be nullified. Precedent for this is found in the *gemara Yevamos* (82) that when a piece of *chatas* meat becomes intermingled with non-sacred meat, the *chatas* meat is nullified, even though it is sacred funds (*mammon gavo'ah*).

One of authors of Sefer Divrei Dodim rejected this argument because *bitul* applies only when we are dealing with a prohibited object that becomes intermingled with permitted objects. The prohibition of *ribbis* is not related to objects (חפצא), it relates to the Jew (גברא) who is prohibited to borrow and lend money to another Jew with interest. The principle of *bitul* does not apply to such prohibitions[21].

The Nesivos Shalom[22] concludes that if it is stipulated from the outset that when a Jew borrows money the loan will be funded from the gentile investors, it is effective. This allowance applies even in a circumstance in which the Jew's money is not actually segregated in a separate account. Seemingly, putting the Jew's money in a segregated account to satisfy government regulations would constitute even stronger grounds for leniency.

There is, however, a practical difficulty with this approach that the Nesivos Shalom acknowledges which is avoided if the Jew's money is kept in a segregated account.

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[20] Ibid. 40 ד"ה והראוני וד"ה ועיין

[21] The Nesivos Shalom Ibid. 40 ד"ה ועיין in the brackets points out that money that is held in partnership (שותפות) is not the same as money that is intermingled (תערובת). A mixture occurs when there are separate and distinct items, e.g., kosher and non-kosher, korban mean and nonsacred meat, that become intermingled so that one can no longer identify which item is permitted and which item is prohibited. The principle of *bitul* tells us that once the items become intermingled, the minority is nullified in the majority. A partnership works according to a different set of rules. In a partnership, each partner owns a percentage of each item or each all of the business's assets. When Reuven and Shimon create a partnership by each contributing $50,000, we do not say that Reuven's $50,000 and Shimon's $50,000 became intermingled. Rather they convey ownership to one another and each one now owns half of each dollar. See there for an explanation as to how *bitul* works in the case of dough that was made from two different people's ingredients.

[22] Ibid. 37 ד"ה ומעתה

Borrowing from a Jewish Owned Bank

Once we assume that when the partnership is formed all of the investors become partners in all of the money, how do the gentiles acquire the Jew's percentage of these funds so that loans issued to the Jewish borrowers belongs exclusively to the gentiles[23]? Absent some sort of *kinyan* each dollar would retain Jewish ownership and the prohibition of *ribbis* would apply. This concern, however, does not apply when the Jew's money is kept in a segregated account. Since the Jew's funds do not mix with the gentile's funds, there is no concern for the *kinyan* needed to give the gentile's exclusive rights on the money that is loaned to Jewish borrowers.

The resolution to the Nesivos Shalom's concern raises afundamental difficulty with this approach. If the Jewish investors' money is segregated into a separate account and is not loaned to borrowers, whether Jewish or not, how does the Jewish investor earn a share of the interest collected for loans that the bank issues? A partner who risks his money when a loan is issued earns a portion of those profits but how does someone earn a share of the profits if his funds are secure in an account and never at risk? By segregating the Jewish investor's funds, it effectively removes them from the partnership of lenders. This approach successfully protects the Jewish investors and borrowers from violating the prohibition of *ribbis* but seemingly is so successful that the Jewish investors have no right to any of the profits earned from any loans because their money is never loaned to borrowers.

If earning a share of the profits was the extent of this concern, it would not constitute a major impediment. Partners can share their profits with whomever they wish. A person can make a *halachically* binding and enforceable commitment to give someone a gift. Therefore, if the gentile partners want to share their profits with the Jewish investors because the Jewish investors facilitate their ability to issue interest-bearing loans by putting money into a segregated account, there is no issue or reason for concern.

The greater difficulty is that undoubtedly, the Jewish investors are expected to share in any losses that may arise from delinquent borrowers. When a partnership is formulated, unless otherwise stipulated, the partners will share in all the profits, as well as all of the losses. If the Jewish investors place their money in a segregated account so that their money is never loaned to any borrowers, whether Jewish or gentile, why are they obligated to share in losses that result from uncollected loans? Even if they want to

[23] Along the same lines he asks how the partners acquired rights in one another's funds when the partnership was originally founded. If all the money is placed in one pouch one my argue that the *kinyan* is *kinyan chatzer* but if the funds are collected in a way a *kinyan chatzer* would prove ineffective, what is the *kinyan* that transfers ownership to one another?

voluntarily share in those losses, they would have to write a check to the gentile investors to cover that loss since their money remains intact in the segregated account[24].

KINYAN PEIROS – קנין פירות

The Chavas Daas[25] references the Mishnah LaMelech[26] who discusses the status of *kinyan peiros*. *Kinyan peiros* refers to the right that a person has to a share of profits, even though he does not own any principal. If someone acquired *kinyan peiros* can the money that generates his share of the *peiros* – profits be loaned with *ribbis*? The Mishnah LaMelech writes that the matter revolves around the debate as to whether a *kinyan peiros* constitutes ownership of the object it is linked to or not – *kinyan peiros k'kinyan haguf dami*. Accordingly, if *halacha* follows the opinion that maintains that a *kinyan peiros* is not the same as a *kinyan haguf* – ownership of the item itself, it would be permitted for the money to be issued as an interest-bearing loan to a Jew, since it is not the Jew's money that was issued as a loan being that he only owns the *peiros* but not the actually money.

The application to our case is as follows. By depositing their share of the money into the segregated account the Jewish investors earn a share of the bank's profits, *kinyan peiros*. The permissibility of this structure pivots on whether *kinyan peiros* is equivalent to *kinyan haguf*. If *kinyan peiros* is on the same footing as *kinyan haguf*, this structure would be prohibited because the Jew is considered a partner in the funds that are issued as a loan due to his *kinyan peiros*. However, if we adopt the position that *kinyan peiros* is not the same as *kinyan haguf* the structure would be permitted because the *kinyan peiros* does not give the Jewish investors any share in the money that is issued as a loan.

[27]The Chavas Daas forcefully disagrees with this analysis. He explains that although the Mishnah LaMelech's analysis of the debate concerning *kinyan peiros* can be applied, in

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[24] Interestingly, according to the Maharam Shick this point would not be an issue. If we accept the premise that the bank is a separate corporate entity, the money the Jewish investors place in the segregated account is loaned to the bank and the bank owes that amount of money back to those investors. If the Jewish investors agree to share in losses, the amount the bank owes them decreases and whenever they withdraw from their partnership in the bank, they will be owed a lesser amount. However, if we reject the principle that the bank is corporate entity independent of the individual investors, we are left struggling to figure out how the Jewish investor whose money is a segregated amount shares in losses.

[25] 160:10 עוד כתב המשל"מ בשם מוהריי"ט. See also the Pischei Teshuvah 160:12 and R' Akiva Eiger to 160:16 where a similar concept is discussed and they follow the same line of reasoning.

[26] Hilchos Malveh 4:14.

[27] 160:10. See Chelkas Binyomin Biurim 168:21 ד"ה מופקדים ביד where he references the Erech Shai Y.D. 169:23 who writes that if a husband issues an interest-bearing loan with *nichsei melog* propertry (property

other contexts, when it comes to the prohibition of *ribbis*, it does not apply. The reason is that *kinyan peiros* in as asset that may be used to generate income. Since *kinyan peiros* has monetary value, that value qualifies as כספך, as the Jew's asset. If that asset is loaned to another Jew *ribbis* cannot be collected from that loan. This is explicitly included in the Torah's prohibition when it writes מכל דבר אשר ישך. The Chavas Daas emphasizes his position when he writes that loaning an object of value for *ribbis*, regardless of what that object is, whether money, objects or even a *kinyan peiros*, constitutes *ribbis ketzutzah*, meaning it is a Biblical violation of *ribbis*. Once the Chavas Daas categorizes *kinyan peiros* as Biblically prohibited, the options to utilize leniences quickly dissipate as one must adopy a stringent approach to potential Biblical violations.

ARVUS – PERSONAL GUARANTEE

One of the reasons this question is so difficult is that the bank often requires a personal guarantee. If the loan was issued to the corporate entity, one could rely on Rav Moshe Feinstein's opinion[28] that loans to corporate entities are not subject to the prohibition of *ribbis*. The reason is that a loan, by definition, includes personal responsibility to repay the loan – a *shibud*. When a loan is issued to a corporate entity, nobody bears personal responsibility to repay the loan and thus is not subject to the prohibition of *ribbis*.

Banks are often hesitant to issue loans when no one is personally liable and to protect their interests, will require someone, most often the owner or owners to personally guarantee the loan. Once the bank mandates that one of the owners personally guarantees the loan, Rav Moshe's corporate leniency no longer applies, and the regular prohibitions apply.

Although the bank's requirement to have someone give a personal guarantee is what creates the issue, it may also lay the groundwork for a solution. If Reuven and Shimon are friends and are each interested in borrowing money from the same bank, if the bank is willing, each one can be the guarantor of the other's loan. Reuven, who is not a partner in Shimon's business will guarantee Shimon's loan. Similarly, Shimon, who is not a partner in Reuven's business will guarantee Reuven's loan. To determine whether

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that a married woman owns but her husband has the right to the *peiros* – profits - generated by that property) his wife is considered the lender rather than the husband since title to that asset belongs to her. On the other hand, the Chelkas Binyomin (Biurim 160:16 ד״ה סומך) cites Rav Moshe Feinstein (Dibros Moshe: Bava Metzia, Hearah 14) who writes that when a husband loans his wife's *nichsei melog* he is the lender and the one who has

[28] Igros Moshe Y.D. 2:63. Cf. Minchas Yitzchok 1:3 and 4:16 and Bris Yehudah 7:[66].

this approach can be utilized, some background concerning guaranteeing loans is necessary.

There are three types of guarantor agreements, *areiv stam, areiv kablan* and *areiv shluf dotz*.

> ***Areiv stam*** – Lit., an ordinary guarantor. In this form, the lender must first attempt to collect from the borrower. In the event that the borrower is unwilling or unable to make payments, the lender can turn to the *areiv stam* for payment.
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> ***Areiv kablan*** – Lit., a guarantor who accepts additional responsibility. In this form, the lender may choose whether to demand payment from the borrower or the guarantor. Each one is equally responsible to repay the loan. Even if the borrower has the means to repay the loan, the lender may first approach the guarantor, if he chooses.
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> ***Areiv shlof dotz*** – Lit., a guarantor who removes the debt from the borrower and places it on himself. In this form, the lender collects the debt from the guarantor and the borrower is not even obligated to repay the lender, even if the lenders requests payment and the borrower has the funds to repay the loan. Since the *areiv shlof dotz* effectively replaces the borrower, the *halachos* of *ribbis* that normally apply to the borrower, apply to this *areiv*.

Halacha obviously differentiates between loans between Jews and a loan that involves a non-Jew. Although in this case all the parties are Jewish, the bank, the borrower and guarantor, nevertheless, following Rav Moshe we are going to approach things from the perspective of one who guarantees a loan between a Jew and a non-Jew. Since Rav Moshe maintains that a corporation that borrows money is not subject to the prohibition of *ribbis*, it should be comparable to one who guarantees a loan that a Jew issues to a non-Jew. We will briefly summarize the *halachos* that apply when a Jew guarantees a non-Jew's loan.

> ***Areiv stam*** **–** It is permitted for a Jew to guarantee a loan between a Jew and a non-Jew since a Jewish lender may charge interest to a non-Jewish borrower. If the borrower is not able to repay the loan, the Jewish guarantor will pay the entire debt, principal and interest, and the borrower becomes obligated to repay the guarantor[29].
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> ***Areiv kablan*** **and** ***Areiv shlof dotz*** **–** It is prohibited for one to serve as an *areiv kablan* or an *areiv shlof dotz* since in both of these circumstances the guarantor is

[29] Rema Y.D. 170:2

essentially one of the borrowers or perhaps the primary borrower and thus the prohibition of *ribbis* applies[30]. Furthermore, since even the *areiv kablan's* obligation begins immediately and grows as interest accrues, that increasing debt constitutes *ribbis* between Jews.

If we apply these *halachos* to our case, it will mean that it is permitted for Shimon to guarantee Reuven's corporate loan, provided that he is no more than an *areiv stam*. In other words, the bank must understand that their first address for collection is Reuven's corporation and only if Reuven's corporation is unable to repay the loan, is it permitted for them to turn to Shimon for repayment.

If, however, the bank insists on treating Shimon as a co-borrower, thereby allowing them to collect from Shimon or Reuven's corporation equally and may initially approach either one for collection of the debt, it is prohibited.

There are a couple of exceptions to the above rules that, could prove helpful. One exception is that one may serve as an *areiv kablan* or an *areiv shlof dotz* if that guarantee is limited to the principal amount of the loan and does not include a guarantee of the interest. Alternatively, one may guarantee the interest that accrues provided that he is not responsible for the principal[31]. It is important to note, however, that this leniency is limited to where the *areiv* guarantees a fixed amount of interest. Alternatively, it is permitted when the interest increases monthly, provided that the guarantor is responsible for a limited duration of time. It is prohibited for the *areiv* to guarantee increasing interest for the duration of the loan[32].

Another potential exception is that if the non-Jewish borrower puts up enough collateral to cover both the principal and interest, a Jew may serve as an *areiv kablan* for that loan. This leniency may not be applicable in this instance since if Reuven's corporation had sufficient assets to put up as collateral, the bank would likely not require someone else to guarantee the loan, but there could be instances where this may prove helpful.

[30] Shulchan Aruch Y.D. 170:2, Taz 4
[31] Rema Y.D. 170:2
[32] Taz Y.D. 170:6 in the name of the Levush