

State of the Union, Revisited

Adapted from a *shiur* by Rav Shmuel Honigwachs

A follow-up on credit unions and cooperatives.

Our recent article following the *kol korai* on credit unions (“State of the Union: May One Join PenFed or First Atlantic?”) prompted many questions from readers regarding other entities with similar structures to credit unions, particularly mutual whole life insurance companies.

A mutual company, also known as a cooperative, is one in which the customers or clients are also the owners. In the case of insurance, a mutual company is one owned by its policyholders, each of whom is therefore both insurer and insured.

In a traditional whole life insurance policy with a guaranteed return, the policyholder is guaranteed, as long as he continues to pay the premiums, a payout of the policy’s face value to his beneficiaries upon his death. In addition, a cash value accrues within the policy, and it is guaranteed to grow at a designated annual rate. A policyholder may borrow money from the insurance company against this cash value at low interest. Should he die having never paid back the loan, what he owes is deducted from the death benefit paid out to the beneficiary. If a policyholder chooses at any point to surrender his policy, he receives the accrued cash value less fees.

If credit unions are forbidden because the members are viewed as partners lending to each other with interest, readers asked, would a mutual life insurance company be viewed this way, too? And if so, would an insurance policy like this be forbidden, because the Jewish policyholder is giving money to the partnership, which includes other Jews, in exchange for the promise of a return with interest?

In my opinion, this is not a problem at all. Since, every policyholder receives equal treatment, none of them is lending to another. Were the company to go bankrupt, no policyholder would personally have to pay any other policyholder. The promised rate of return is nothing more than the company declaring that it is doing so well and on such strong financial footing that the cash value of each policyholder’s stake will certainly increase by that amount. I presented this argument to R’ Shlomo Miller and he concurred.

Another issue that was raised concerns the right of a policyholder to borrow money at interest from the company, using the cash value accumulated within his policy as collateral. Wouldn’t this present a *ribbis* problem? As a policyholder, isn’t my money

potentially
going to be loaned to other Jewish policyholders at interest?

I believe that this
is generally not a problem either, because this loan facility appears not to be a true loan but simply the right to partially cash out the policy with the opportunity to buy back in at a slightly higher rate (the “interest”). This is how literature from New York Life explains the feature. Presented with this literature, R’ Shlomo accepted this argument as well. Of course, it may be different with other insurers, so check with the company and a *posek*.

R’ Shlomo Miller on credit unions: an update

Corporations were created as a means to shield participants in a business venture from personal liability. It has shareholders, but shareholders are not owners. A corporation has its own identity and legal “personhood”; what the corporation does is not attributable to its shareholders or its employees personally. As Leon Metzger, adjunct Professor of Finance at NYU’s Stern School of Business, writes: “It is a myth that shareholders own corporations. Corporations own themselves. Shareholders, however, have certain rights.”

But the corporation doesn’t exist in Halacha. In Halacha, only people can own things. Given that the corporation exists under *dina d’malchusa*, how does Halacha treat it?

R’ Chaim Pinchas Scheinberg is reputed to have held that Halachically, what’s owned by a corporation is not viewed as having an owner at all. But most *poskim* rule that it is not logical to view the assets as ownerless, so the shareholders are considered the Halachic owners. *Talmidim* of R’ Aharon Kotler say in his name that a corporation with majority of non-Jewish shareholders is seen as non-Jewish for Halachic purposes like *ribbis*. R’ Shlomo Miller maintains that the case is somewhat akin to that of an animal descended from three *chaya* and one *behaima* “grandparents,” which the Pri Megadim rules is treated like a *chaya* in that its *chailev* is permitted to be eaten.

The original article explained R’ Moshe Feinstein’s view of corporate shareholders: A shareholder is not Halachically an owner unless he is a major owner with a real say in the operation of the company.

R’ Shlomo Miller doesn’t fully accept this view. However, he is concerned that perhaps a credit union is not legally viewed as an entity independent of its members in the same way as a corporation and is fundamentally just a partnership—which *is* a valid Halachic structure. And, if it is in fact a partnership, it is forbidden for a Jewish partner to lend or borrow at interest from a different Jewish partner. He feels that further research into the matter is necessary, including consultation with legal authorities, and that at present one may continue to make payments and take interest from a credit

union. However, because the issue is not settled, one should consult with his *posek*. Some authorities on secular law feel that the defining feature of a corporation is liability protection, which credit unions have, and that this would suggest they are more like corporations.

The credit union on the Lower East Side

A reader of the article called to say he had information about the credit union that was the subject of R' Moshe's *teshuva*, having discussed the matter with R' Moshe at the time, and that it was founded by Jewish socialists and had virtually all Jewish members.