

Do Partners Need a Heter Iska When One of Them Takes a Loan in His Name?

Rabbi Shmuel Honigwachs

Question: Two partners need capital for their business. Only one of them qualifies for a line of credit, so he takes a loan in his name on behalf of the partnership. Since the company will be paying interest on that loan, do the partners need a heter iska?

Answer: The Taz writes that when a partnership has one managing partner who takes out a loan from a non-Jew on behalf of the partnership, he is allowed to collect payments plus interest from the other partners. There is a discussion amongst the Poskim whether the Taz is only speaking about a case where the partner who took out the loan is only collecting from the profits of the business, or if he is also referring to a case where he intends to collect from the principal investment.

For example, if each partner puts \$100,000 into the business and one partner then takes out a loan for an additional \$100,000, with the interest on the loan ultimately equaling \$10,000, some Acharonim contend that the partner who took the loan would only be permitted to take any interest payments from the partnership if the business reaches a value of more than \$300,000, since anything beyond this total would be profit. In such a case, he could take the interest payment from the profits of the business. If the business is valued at less than \$310,000, the partner would not be able to collect the difference from the principal investment. If they remain at \$300,000 or less, he would have to forfeit the interest payment altogether since the business has no profits.

Although it is not 100% clear, it seems that this is the opinion of the Shulchan Aruch Harav.

Other Acharonim state clearly that the partner who took out the loan would be able to recoup his loan from the principal of the business even if there are no profits to collect from, as long as the partner is using funds from the business to repay the loan.