



## Bulletin July 2014

### Canada Small Business Financing Program



#### Liability of Sole Proprietors and Partners

A number of lenders have inquired whether they could limit a sole proprietor or partners' liability on their personal or non-business assets for a CSBFA loan.

This bulletin seeks to clarify the requirements and allowances within the CSBF Regulations pertaining to the personal liability of sole proprietors and partnership businesses with respect to personal or non-business assets, in various circumstances.

Under the CSBF Regulations, the liability of the borrower (sole proprietor, partnership or corporation) cannot be limited on any of the business assets of the borrower at the time the loan is approved (e.g. in the loan contract) nor during the realization on the assets of the business.

The lender may, however, limit the realization on the personal or non-business assets of the sole proprietor or partners if:

1. The lender and the borrower enter into an agreement to limit realization of personal assets : During the loan approval stage of a CSBF Program loan, the lender and the sole proprietor or partners may enter into an agreement that limits the realization on the personal or non-business assets of the sole proprietor or partners; or
2. The lender obtains judgment against the sole proprietor or partners: Once a loan defaults, a lender may take legal action against a sole proprietor or partners. The amount claimed in such an action must be for the outstanding amount of principal and interest on the loan. Once a judgment is obtained, the lender **may** limit the amount or percentage of the judgment it can realize on the personal or non-business assets of the sole proprietor or partners (paragraph 37(4)(a) of the CSBF Regulations). If the lender collects less than the amount of the judgment, a rationale needs to be provided to Industry Canada.
3. The lender and the borrower enter into a compromise settlement: Under paragraph 37(3) of the CSBF Regulations, once the CSBFA loan goes into default, lenders may, at any time, enter into a compromise settlement with the borrower. As indicated in [Item 22.4 of the CSBFP Guidelines](#), such a settlement may or may not include realizing on the personal or non-business assets of the sole proprietor or partners. The reasons and basis of the compromise settlement should be well documented.

Lenders should consult legal counsel for any questions on the legal feasibility or mechanism to limit realizations on personal or non-business assets of sole proprietors and partners.

