

NPM No. 040-2017

20 December 2017

MS. MYRA R. DOMINGO
Assistant Regional Director
NATIONAL FOOD AUTHORITY (NFA)
NATIONAL CAPITAL REGION
U.N. Avenue, Paco, Manila

Re: Change of Ownership of a Sole Proprietorship -

Dear Director Domingo:

This refers to your electronic mail (e-mail) requesting opinion relative to the requirement that a bidder must be engaged in business for a period of three (3) years:

1. Whether or not a prospective bidder, a sole proprietor, whose registered name was changed and the owner named is not the original owner, is qualified to bid; and
2. Whether or not a change in company name and the owner thereof may be considered a “new” company thus disqualifying it from joining the bidding.

Sole Proprietorship -

In an earlier opinion¹, we explained that registration with DTI is mandated under Act No. 3883, as amended, otherwise known as the Business Name Law. The primary purpose for requiring DTI registration is to provide protection to the public dealing with business establishments through disclosure of the identity and citizenship of the person owning and operating the business.² Registration of numerous Business Names is allowed for as long as there is no duplication of names. Act No. 3883 applies only to sole proprietorships or natural persons doing business or proposing to do business in the Philippines. Sole proprietorship, as defined by DTI, is “a business structure owned by an individual, who has full control/authority of its own and owns all the assets, personally owes, answers all liabilities or suffers all losses but enjoys all the profits to the exclusion of others”.

A sole proprietorship is the oldest, simplest, and most prevalent form of business enterprise. It is an unorganized business owned by one person. Thus, the sole proprietor is personally liable for all the debts and obligations of the business.³ Moreover, a sole proprietorship is neither a natural person nor a juridical person under Article 44⁴ of the Civil Code. The law merely recognizes the existence of a sole proprietorship as a form of business

¹ Non-Policy Matter Opinion No. 037-2011 dated 28 December 2011

² Section 1, DTI Department Administrative Order No. 10-08, series of 2010

³ *Excellent Quality Apparel vs. Win Multi Rich Builders*, G.R. No. 175048, February 10, 2009

⁴ Art. 44. The following are juridical persons:

(1) The State and its political subdivisions:

(2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;

(3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

organization conducted for profit and requires its proprietor or owner to secure licenses and permits, register its business name, and pay taxes to the national government.⁵

Change of Ownership of a Sole Proprietorship -

Unlike a corporation, a sole proprietorship does not possess any juridical personality separate and distinct from the personality of the owner of the enterprise and the personality of the persons acting in the name of such proprietorship.⁶

Accordingly, a subsequent change in the business name of the sole proprietorship will not change its status as such, and the fact that it does not have a separate personality from its owner. However, if it is the ownership of the sole proprietorship that changed, there is effectively a “new” sole proprietorship, following the principle that a sole proprietorship has no separate and distinct personality from its owner.

Availment of Track Record under a Newly Registered Business Name -

Following the same concept and principles in the treatment of sole proprietorship as enunciated in the abovementioned jurisprudence, track record gained by the owner of a sole proprietorship may be used by another enterprise of the same nature established and registered by the same owner. The rationale for this is that the business experience gained redounds, not to the sole proprietorship that has no juridical personality, but to the owner of the business itself.

However, in this case, it is not only the name of the sole proprietorship that was changed but also its owner. Thus, the business experience of the original sole proprietorship cannot be used by the “new” sole proprietorship as it has a totally new owner.

Summary -

Based on the foregoing, it is our considered view that a newly registered sole proprietorship may use the experience of another sole proprietorship owned by the same individual. Conversely, if the ownership of the sole proprietorship has changed, a new enterprise is established, thus the experience of the original sole proprietorship, owned by an individual, will not extend to the new enterprise that is owned by another individual.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director

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⁵ *Juasing Hardware vs. Mendoza*, 201 Phil. 369, 372-373 (1982)

⁶ *Perkin Elmer Singapore PTE Ltd vs. Dakila Trading Corporation*, G.R. No. 172242, 14 August 2007