



Department of Budget and Management  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**TECHNICAL SUPPORT OFFICE**

**NPM No. 37-2011**

28 December 2011

**MR. CRESENCIO D. ARCENA**

*Proprietor/General Manager*

**BERLYN ENTERPRISES**

4<sup>th</sup> Floor, JLB Bldg.,

657 Ronquillo St., Quiapo, Manila

**Re: Availment of Track Record under a Newly Registered Business Name**

Dear Mr. Arcena:

We respond to your letter dated 24 October 2011 inquiring whether a new business can avail of the track record of an existing enterprise, owned by the one and the same person, under Republic Act (RA) 9184 and its Implementing Rules and Regulations (IRR).

As represented, you are the proprietor of Berlyn Enterprises and you intend to register a new business name with the Department of Trade and Industry (DTI). As owner of this new business, you want to know if you can avail of the track records of Berlyn Enterprises under the prevailing procurement law.

For your guidance, 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.<sup>1</sup> Moreover, 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".

As regards the nature of a sole proprietorship, a recent Supreme Court decision stated that 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.<sup>2</sup> Moreover, a sole proprietorship is neither a natural person nor a juridical person under Article 44<sup>3</sup> of the Civil

<sup>1</sup> Section 1, DTI Department Administrative Order No. 10-08, series of 2010

<sup>2</sup> Excellent Quality Apparel vs. Win Multi Rich Builders, G.R. No. 175048, February 10, 2009

<sup>3</sup> Art. 44. The following are juridical persons:

(1) The State and its political subdivisions;

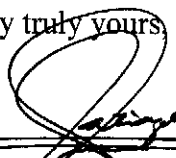

Code. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit. Likewise, a sole proprietorship does not possess any juridical personality separate and distinct from the personality of the owner of the enterprise and the personality of the persons acting in the name of such proprietorship.<sup>4</sup>

Following the same concept in the treatment of sole proprietorship based on prevailing jurisprudence, the 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.

In the same vein, however, we are of the view that the blacklisting of a sole proprietorship would apply to all other sole proprietorships established by the same owner, regardless of the nature of the business, as this is grounded on the prevailing legal concept that the sole proprietorships and the owner are one and the same, and have the same personality under the law.

Based on the foregoing, it is our considered view that a newly registered sole proprietorship may use the experience of another sole proprietorship with the same business owned by the same individual. Incidentally, if one of the sole proprietorships is blacklisted, such blacklisting will extend to all sole proprietorships owned by the same individual.

We hope our advice sufficiently addresses your concern. Should you have further questions, please do not hesitate to contact us.

Very truly yours,  
  
**DENNIS S. SANTIAGO**  
Executive Director III 

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(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.

<sup>4</sup> Perkin Elmer Singapore PTE Ltd vs. Dakila Trading Corporation, G.R. No. 172242, 14 August 2007