

**NPM No. 077-2017**

29 December 2017

**MR. JOEL R. PANAGSAGAN**  
*VP – Marketing and External Relations*  
**SUPER TRADE MACHINERY GLOBAL, INC.**  
937 EDSA Philam, Quezon City, Metro Manila 1104

**Re: Separate Personality of Sole Proprietorship and Corporation; Joint Venture**

Dear Mr. Panagsagan:

This refers to your request for guidance on how your new corporation can use the track records of your sole proprietorship for participation in government procurement, and whether both entities may form a joint venture to participate in public bidding even if the President of Super Trade Enterprise (STE) and the Chief Executive Officer of Super Trade Machinery Global Inc. (STMGI) are one and the same person.

It is represented that you used to run a business under a sole proprietorship in 1982 named STE. In 2006, you decided to incorporate under the corporate name STMGI. Most of your historical sales, as a supplier in government procurement, were entered into under your sole proprietorship business. This notwithstanding, you would like to continue your business with the government and private sectors using STMGI being your new corporation. However, you cannot participate in public bidding with an Approved Budget for the Contract of PhP 10 million because of the limited sales track record of STMGI. Hence, this query.

**Separate Personalities of Sole Proprietorships and Corporations -**

In government procurement, a bidder is awarded with the contract based on its qualification and compliance with the legal, technical and financial requirements of the procurement project. The Single Largest Completed Contract of the sole proprietorship is personal to the proprietor and could neither be credited nor recognized in favor of a newly created corporation and its stockholders, even if the corporation is composed of the same officers operating the sole proprietorship. It is settled that a sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual and requires its proprietor or owner to secure licenses and permits, register its business name, and pay taxes to the national government.<sup>1</sup>

Hence, the track record of the sole proprietorship, whose owner became a director or officer of a newly formed corporation, in this case STMGI, cannot be used by the latter for

<sup>1</sup> *Excellent Quality Apparel v. Win Multi-Rich Builders*, G.R. No. 175048, February 10, 2009.

purposes of proving or showing the latter's legal, technical and financial capacity in a procurement opportunity.

On the other hand, basic in corporation law is the principle that a corporation has a separate personality distinct from its stockholders and from other corporations to which it may be connected.<sup>2</sup> Thus, the doctrine on separate personality applies between a sole proprietorship and a corporation, to which the track records or the completed contracts of the sole proprietorship cannot be used by the corporation.

### **Joint Venture between a Sole Proprietorship and a Corporation -**

As regards the issue on whether STE and STMGI may form a joint venture to participate in public bidding even if the President of STE and the Chief Executive Officer of STMGI are one and the same person, it is a well-settled doctrine that a corporation is vested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related.<sup>3</sup>

Since STE, a sole proprietorship, and STMGI, a corporation, have been organized as separate legal entities, it does not matter whether both business entities have the same officers because they have separate and distinct personalities for purposes of their legal existence. Thus, STE and STMGI may validly enter a joint venture agreement for purposes of competitive bidding provided that they possess all the required eligibilities under Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations.

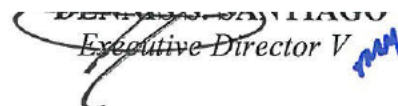
### **Summary -**

In sum, we wish to stress the following:

1. A corporation has a separate and distinct personality from those of its directors, officers and stockholders. As such, a new corporation cannot use the track record or completed contracts of the sole proprietorship owned by its director, officer or stockholder.
2. The sole proprietorship and the new corporation may validly enter a joint venture agreement for purposes of competitive bidding provided that they possess all the required eligibilities under RA 9184 and its 2016 IRR.

We hope 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 you have further questions, please do not hesitate to contact us.

Very truly yours,  
(sgd.)

  
Executive Director V

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<sup>2</sup> *Concept Builder's Inc. vs. NLRC*, 257 SCRA 149, 157 (1996).

<sup>3</sup> *Ever Electrical Manufacturing, Inc. and Vicente Go v. Samahang Manggagawa ng Electircal*, G.R. No. 194795, June 13, 2012.