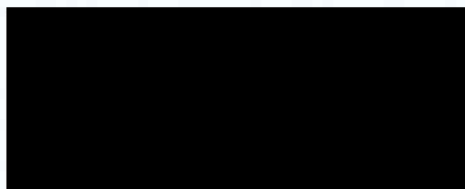


**NPM No. 102-2015**

13 October 2015



**Re: Death of Sole Proprietor**

Dear [REDACTED]

This refers to your letter, sent thru e-mail, requesting for opinion on the effect of the death of the sole proprietor during the implementation of an infrastructure project.

Unlike a corporation or partnership, 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>

As a general rule, the death of either the creditor or the debtor does not extinguish the obligation<sup>2</sup>. Obligations are transmissible to the heirs, *except when the transmission is prevented by the law, the stipulations of the parties, or the nature of the obligation*<sup>3</sup>. Only obligations that are personal or are *identified with the persons themselves* are extinguished by death<sup>4</sup>. Article 1726 provides:

When a piece of work has been entrusted to a person by reason of his personal qualifications, the contract is rescinded upon his death.

In *Javier Security Special Watchman Agency v. Shell Craft & Bulton Corporation*<sup>5</sup>, the Supreme Court held that a contract is not transmissible in nature when the special or personal qualification of the obligor constitutes one of the principal motives of the contract. Thus, the death of the sole proprietor resulted to the termination of the contract, and the other

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

<sup>2</sup> A. Tolentino, Commentaries and Jurisprudence On The Civil Code 272, Vol. IV (1991).

<sup>3</sup> *Ibid.* See also the Civil Code, Art. 1311, which states: "Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent."

<sup>4</sup> *Stronghold Insurance Company, Inc. v. Republic-Asahi Glass Corporation*, G.R. No. 147561, June 22, 2006.

<sup>5</sup> 117 Phil. 218, January 31, 1963

party can engage the services of another contractor.

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 procuring entity. Considering that the legal personality of the sole proprietor is the same as that of the sole proprietorship, the death of the sole proprietor causes the dissolution of the latter. Hence, its obligation under the contract is necessarily extinguished.

We hope this opinion issued by 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.

(sgd.)

**DENNIS S. SANTIAGO**  
*Executive Director V*

*skp*