

IBAMA DECIDES THAT OWNERSHIP OF ENVIRONMENTAL LICENSING PROCESSES IS NOT SPECIFIC TO THE ENTREPRENEUR

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The Federal Attorney's Office of the Brazilian Institute for the Environment and Renewable Natural Resources – IBAMA, acknowledged on August 2, 2016, that a change in the ownership of environmental licensing processes is possible at any time, since the object of the licensing is the enterprise, the work, the establishment, or the activity, not the individual or legal entity that requests it. The agency's decision follows a theory that was already supported in legal scholarship and was practiced by environmental agencies throughout Brazil.

Based on provisions of the National Environmental Policy Law (Federal Law No. 6,938/1981), National Environment Council (CONAMA) Resolution No. 237/1997, and Complementary Law No. 140/2011, the decision issued by means of Opinion No. 82/2016/COJUD/PFE-IBAMA-SEDE/PGF/AGU allows the transfer of environmental licensing processes by making it clear that environmental licensing is not specific (*intuitu personae*) to the entrepreneur.

In view of this understanding, IBAMA has determined that the successor to the environmental licensing assumes all environmental obligations, "except for administrative sanctions, as these are personal in nature." The agency recognizes that it is impossible for the new holder of the licensing process to assume administrative sanctions applied in the past, which reinforces the subjective nature of administrative liability in environmental matters.

Although IBAMA recognizes the absence of environmental damage in the change of ownership of the license, the agency requires that there be no modification in the obligations or actions required of the entrepreneur, especially with respect to the conditions set in the environmental license.

In practice, environmental agencies have already been allowing changes in ownership of environmental licenses in, for example, cases of business acquisitions. To this end, the new entrepreneur must commit to complying with the conditions and other obligations assumed by the previous holder in the context of the environmental licensing process.

The process to change the ownership of licenses, which is sometimes bureaucratic, has been accepted by the competent environmental agencies for a long time. In certain states and municipalities, the issue is regulated by laws and/or internal rules of the competent agencies.

