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# ACCEPTANCE OF UNITS UNDER LEASE/LEASE TO OWN AS AUTHORIZED UNITS (AMENDING PAR. 17 OF MEMORANDUM CIRCULAR NO. 2011-004)

*MEMORANDUM CIRCULAR NO. 2018-015, July 16, 2018*

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Adopted: 13 July 2018
Date Filed: 16 July 2018

WHEREAS, under Section 13 (b) of the Public Service Law, the definition of the term "public service" includes not only those who owns but also those who manage and control public utilities, thus:

> "(b) The term "public service" includes every person that now or hereafter may own, operate, manage or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, sub-way motor vehicle, either for freight or passenger, or both with or without fixed route and whether may be its classification, freight or carrier service of any class, express service, steamboat or steamship lines, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine railways, marine repair shop, [warehouse] wharf or dock, ice plant, ice refrigeration plant, canal, irrigation system, gas, electric light, heat and power water supply and power, petroleum, sewerage system, wire or wireless communication system, wire or wireless broadcasting stations and other similar public services xxx" (Emphasis ours.)

WHEREAS, under paragraph (c) of the same Section, the definition of the word "person" includes lessees and all other persons who may own, possess, operate public utilities, to wit:

> "(c) The word "person" includes every individual, co-partnership, joint-stock company or corporation, whether domestic or foreign, their lessees, trustees, or receivers as well as any municipality, province, city, government-owned or controlled corporation, or agency of the Government of the Philippines, and whatever other persons or entities that may own or possess or operate public services." (Emphasis ours.)

WHEREAS, the Supreme Court declared in the case of Tatad vs. Garcia under G.R. No. 114222 dated April 6, 1995:

> "The right to operate a public utility may exist independently and separately from the ownership of the facilities thereof. One can own said facilities without operating them as a public utility, or conversely, one may operate a public utility without owning the facilities used to serve the public. The devotion of property to serve the public may be done by the owner or by the person in control thereof who may not be necessarily be the owner thereof.
>
> This dichotomy between the operation of a public utility and the ownership of the facilities used to serve the public can be very well appreciated when we consider the transportation industry. Enfranchised airlines and shipping companies may lease their aircraft and vessels instead of owning them themselves."

WHEREAS, in keeping with Commonwealth Act No. 146 or the Public Service Law and existing jurisprudence, the Board deems it necessary to amend Par. 17 of Memorandum Circular No. 2011-004 which prohibits leased

vehicles for franchise applications;

WHEREFORE, premises considered, the Board hereby AMENDS par. 17 of Memorandum Circular No. 2011-004 and units under lease/lease to own shall be now ACCEPTED by the Board as authorized units provided the applicant shall execute an Affidavit of Undertaking stating, among other conditions, to the effect that:

a. That the applicant has complied and secured all necessary government clearances/permits to legally operate transportation business, and is fully responsible and accountable in complying with the said requirements;
b. That the applicant shall be fully responsible for any and all expenses, such as but not limited to financing costs, taxes and licenses and for any and all procedures, such as but not limited to securing requirements for road worthiness and road safety, in making the unit/ s legally operational;
c. That the applicant acknowledges to have full knowledge of pertinent laws and regulations covering the operations of the service;
d. That the applicant acknowledges that the unit/ s being applied for a CPC is/are under lease/rental contract and the name of the lessor;
e. That the applicant shall submit the Official Receipt (OR) and the Certificate of Registration (CR) of the aforementioned unit/s indicating the name of the lessor and the name of the lessee in the format: “Lessor” leased to “Lessee”;
f. That the applicant shall be responsible for any and all obligations and damages that may be incurred in the event of any untoward incident involving the unit/ s being applied for CPC, and/ or in case of violation of any government laws, policies, rules and regulations;

g. That the applicant shall indemnify the lessor, its employees and agents and render them harmless from any and all claims, actions, suits, proceeding costs, expenses, damages and liabilities, including attorney’s fees arising out of from any untoward incident involving the unit/s.
h. The applicant shall not use or allow the unit/s to be used for any illegal purpose;

All other issuances or parts thereof inconsistent herewith are hereby modified, amended, or superseded accordingly.

This Memorandum Circular shall take effect immediately following its publication in a newspaper of general circulation and the filing of three (3) copies hereof with the UP Law Center pursuant to Presidential Memorandum Circular No. 11, dated
09 October 1992.

SO ORDERED. 13 July 2018
Quezon City, Philippines,

**(SGD) ATTY. MARTIN B. DELGRA III**

Chairman

(SGD) ENGR. RONALDO E. CORPUS
Board Member

(SGD) ATTY. AILEEN LOURDES A. LIZADA
Board Member

Attested by:

(SGD) ATTY. SAMUEL A.M. JARDIN


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