

[MEMORANDUM CIRCULAR NO. 2018-015, July 16, 2018]

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

*Adopted: 13 July 2018
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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