

RESOLUTION NO. 069 Series of 2018

(Re: ACCREDITATION OF AZTECH SOLUTION INTERNATIONAL CORP. AS
TRANSPORTATION NETWORK COMPANY)

WHEREAS, pursuant to DOTr Department Order No. 2018-013 (Re: Authority of the Land Transportation Franchising and Regulatory Board (LTFRB) to regulate the Transport Network Companies (TNC) and Transportation Network Vehicles Service (TNVS)), LTFRB is empowered by law to promulgate, administer, enforce and monitor compliance of policies, laws and regulations of public land transportation services i.e. Transport Network Companies and Transportation Network Vehicle Service.

WHEREAS, pursuant to Memorandum Circular No. 2015-015-A (Re: Rules and Regulations to Govern the Accreditation of Transportation Network Companies) a Pre-Accreditation Committee was created to evaluate all applications for Transportation Network Company (TNC) accreditation filed before the LTFRB and recommend to the Board its approval and disapproval;

WHEREAS, on July 20, 2018, the Committee conducted its evaluation of the documents submitted by Aztech Solution International Corp.

WHEREAS, during the scheduled evaluation, the Committee found that Aztech Solution International Corp. has filed mere photocopies some of its supporting documents prescribed in the Memorandum Circular No. 2015-015-A, more particularly, described hereunder, to wit:

- SEC Certificate of Filing of Amended Articles of Incorporation;
- Amended Articles of Incorporation;
- SEC Certificate of Incorporation;
- By-Laws;
- Business Permit; and
- BIR Certificate of Registration

WHEREAS, the Committee found that Aztech Solution International Corp. has filed unsigned supporting documents prescribed in the Memorandum Circular No. 2015-015-A, more particularly, described hereunder, to wit:

- Complete description of Business Model;
- Process of Accrediting/Affiliating vehicles Transportation Network Vehicle Service (TNVS) vehicle;
- Process of Accrediting/Affiliating TNVS drivers;
- Terms of Service for Passengers;
- The Proposal Fare Rates and/or Service Charge;
- The Proposal for the Establishment of a Drivers' Training Program only for TNCs utilizing TNVS units; and

- Complaint Mechanism against vehicle owners or drivers

WHEREAS, the Committee found that the attachment Annex "G" Business Permit issued by the Quezon City local government submitted by the herein applicant has a date issued of July 26, 2016, hence, expired. Also, the Kind of Business indicated in the said permit is "Contractor – Marketing Services".

WHEREAS, the Committee observed that the attachment Annex "H" BIR Certificate of Registration dated 07/29/2005 indicates the Line of Business/Industry of the herein applicant as:

- 9309 OTHER SERVICE ACTIVITIES, N.E.C.

WHEREAS, the Committee observed that the in the fourth paragraph of the applicant's Terms of Use for Philippines SnappyCab Passengers, the applicant expressly declared that:

"THE COMPANY IS A TECHNOLOGY COMPANY THAT DOES NOT PROVIDE TRANSPORTATION SERVICES AND THE COMPANY IS NOT A TRANSPORTATION PROVIDER. IT IS UP TO THE THIRD PARTY TRANSPORTATION PROVIDERS TO OFFER TRANSPORTATION SERVICES TO YOU AND IT IS UP TO YOU TO ACCEPT SUCH TRANSPORTATION SERVICES. THE SERVICE OF THE COMPANY IS TO LINK WITH SUCH THIRD PARTY TRANSPORTATION PROVIDERS, BUT DOES NOT NOR IS IT INTENDED TO PROVIDE TRANSPORTATION SERVICES OR ANY ACT THAT CAN BE CONSTRUED IN ANY WAY AS AN ACT OF A TRANSPORTATION PROVIDER. THE COMPANY IS NOT RESPONSIBLE NOR LIABLE FOR THE ACTS AND/OR OMISSIONS OF ANY THIRD PARTY TRANSPORTATION PROVIDER AND/OR ANY TRANSPORTATION SERVICES PROVIDED TO YOU."

(emphasis ours.)

ALSO, in the fifth paragraph of the applicant's Terms and Conditions for SnappyCab Drivers, the applicant expressly declared that:

"THE COMPANY IS A TECHNOLOGY COMPANY THAT DOES NOT PROVIDE OR ENGAGE IN TRANSPORTATION SERVICES AND THE COMPANY IS NOT A TRANSPORTATION PROVIDER. THE SOFTWARE AND THE APPLICATION ARE INTENDED TO BE USED FOR FACILITATING YOU (AS A TRANSPORTATION PROVIDER) TO OFFER YOUR TRANSPORTATION SERVICES TO YOUR PASSENGER OR CUSTOMER. THE COMPANY IS NOT RESPONSIBLE OR LIABLE FOR THE ACTS AND/OR

OMISSIONS OF ANY SERVICES YOU PROVIDED TO YOUR PASSENGERS, AND FOR ANY ILLEGAL ACTION COMMITTED BY YOU. YOU SHALL, AT ALL TIME, NOT CLAIM OR CAUSE ANY PERSON TO MISUNDERSTAND THAT YOU ARE THE AGENT, EMPLOYEE OR STAFF OF THE COMPANY, AND THE SERVICES PROVIDED BY YOU IS NOT, IN ANYWAY, BE DEEMED AS SERVICES OF THE COMPANY."

WHEREAS, pursuant to Section 1. Transportation Network Company (TNC) of the DOTr Department Order No. 2018-013, it stated thus:

"Section 1. Transportation Network Company (TNC) – Refers to a person or entity that provides pre-arranged transportation services for compensation using an internet-based technology application or digital platform technology to connect passengers with drivers using their personal vehicles."

WHEREAS, pursuant to Item I. Scope of Application of MC No. 2015-015-A, "A Transportation Network Company (TNC) as defined under Department Order No. 2015-011, shall mean as an "organization whether a corporation, partnership, or sole proprietor, that provides pre-arranged transportation services for compensation using and internet-based technology application or digital platform technology to connect passengers with drivers using their personal vehicles", **hence treated as a transport provider.**"

WHEREAS, the Committee observed that in the second and sixth paragraph of the applicant's Limitation of Liability in the Terms of Use for Philippines SnappyCab Passengers, the applicant expressly declared that:

[2nd paragraph]

"THE COMPANY SHALL NOT BE LIABLE FOR ANY INJURY TO YOUR PERSON OR LOSS OF LIFE OR PROPERTY OR DELAY OF YOUR JOURNEY FOR ANY REASON WHICH MAY INCLUDE BUT NOT LIMITED TO AN ACT OF GOD INCLUDING BUT NOT LIMITED TO NATURAL DISASTERS, TYPHOONS OR FLOOD, AN ACT OF WAR, CIVIL DISRUPTIONS OR STRIKES OR THE ANTICIPATION OF THE SAME, CRIMINAL ACTS OR OMISSIONS OF THIRD PARTIES, INDUSTRIAL ACTIONS, UNFORESEEABLE TRAFFIC CONDITIONS, SEIZURE UNDER LEGAL PROCESS, NATIONAL OR LOCAL DISRUPTIONS TO AIR, GROUND OR WATER TRANSPORTATION NETWORKS OR BREAKDOWN IN COMMUNICATION OR INFORMATION SYSTEMS."

[6th paragraph]

"THE COMPANY SHALL NOT BE LIABLE FOR ANY LOSSES OR DAMAGES, INCLUDING BUT NOT LIMITED TO ANY INJURY WHICH YOU MAY SUFFER, ANY DAMAGE OR LOSS TO PROPERTY OWNED BY OR IN YOUR POSSESSION, OR ANY INDIRECT LOSS AND DAMAGE,

RESULTING FROM THE THIRD PARTY TRANSPORTATION PROVIDERS' SERVICES, MATTERS RELATING TO THIRD PARTY TRANSPORTATION PROVIDERS, OR THE PROCESS OF TRANSPORTATION BY REASON OF YOU USING THE SERVICE IN YOUR CAPACITY AS A PASSENGER."

(emphasis ours.)

ALSO, in the first paragraph of the applicant's Terms and Conditions for SnappyCab Drivers, the applicant expressly declared that:

"ANY CLAIMS AGAINST THE COMPANY BY YOU SHALL IN ANY EVENT BE LIMITED TO THE AGGREGATE AMOUNT OF ALL AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN UTILISING THE SERVICE DURING THE EVENT GIVING RISE TO SUCH CLAIMS. IN NO EVENT SHALL THE COMPANY AND/OR ITS LICENSORS BE LIABLE TO YOU OR ANYONE FOR ANY DIRECT, INDIRECT, PUNITIVE, ECONOMIC, FUTURE SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OR LOSSES OF ANY TYPE OR KIND (INCLUDING PERSONAL INJURY, EMOTIONAL DISTRESS AND LOSS OF DATA, GOODS, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE). THE COMPANY AND/OR ITS LICENSORS SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INQUIRY WHICH MAY BE INCURRED BY OR CAUSED TO YOU OR TO ANY PERSON FOR WHOM YOU HAVE BOOKED THE SERVICE FOR, INCLUDING BUT NOT LIMITED TO LOSS, DAMAGE OR INQUIRY ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE, APPLICATION AND/OR THE SOFTWARE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, APPLICATION AND/OR THE SOFTWARE, ANY RELIANCE PLACED BY YOU ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY ADVERTISING, OR AS A RESULT OF ANY RELATIONSHIP OR TRANSACTION BETWEEN YOU AND ANY THIRD PARTY PROVIDER, ADVERTISER OR SPONSOR WHOSE ADVERTISING APPEARS ON THE WEBSITE OR IS REFERRED TO BY THE SERVICE, APPLICATION AND/OR THE SOFTWARE, EVEN IF THE COMPANY AND/OR ITS LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES."

(emphasis ours.)

WHEREAS, pursuant to Section 8. Liability of the DOTr Department Order No. 2018-013, it stated thus:

"Section 8. Liability – The TNCs and the TNVS, as public transport providers, shall observe the diligence required of common carriers in accordance with the New Civil Code."

WHEREAS, pursuant to Item VI. *Liability* of MC No. 2015-015-A, "The TNC shall exercise due diligence of a good father of a family in accrediting and supervising its drivers. The TNC shall be held liable for acts or omissions committed by its TNVS while online, except if the same is beyond the TNC's control."

WHEREAS, the Committee observed that in the Disclaimer of Warranties in the applicant's Terms and Conditions for SnappyCab Drivers, the applicant expressly declared that:

"THE COMPANY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES, APPLICATION AND/OR THE SOFTWARE. THE COMPANY DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE, APPLICATION AND/OR THE SOFTWARE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIALS PURCHASED OR OBTAINED BY YOU THROUGH THE APPLICATION WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS IN THE APPLICATION AND/OR THE SOFTWARE WILL BE CORRECTED, OR (F) THE APPLICATION OR THE SERVER(S) THAT MAKE THE APPLICATION AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR (G) THE APPLICATION AND/OR THE SOFTWARE TRACKS YOU OR THE VEHICLE USED BY THE TRANSPORTATION PROVIDER. THE SERVICE IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY EXCLUDED AND DISCLAIMED TO THE HIGHEST AND MAXIMUM EXTENT. THE COMPANY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE AS TO THE RELIABILITY, SAFETY, TIMELINESS, QUALITY, SUITABILITY OR AVAILABILITY OF ANY SERVICES, INCLUDING BUT NOT LIMITED TO THE THIRD PARTY TRANSPORTATION SERVICES OBTAINED BY OR FROM THIRD PARTIES THROUGH THE USE OF THE SERVICE, APPLICATION AND/OR SOFTWARE. YOU ACKNOWLEDGE AND AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE SERVICE, AND ANY THIRD PARTY SERVICES, INCLUDING BUT NOT LIMITED TO THE THIRD PARTY TRANSPORTATION SERVICES SOLELY AND ABSOLUTELY WITH

YOU AND YOU SHALL HAVE NO RECOURSE WHATSOEVER TO THE COMPANY."

(underscoring ours.)

WHEREAS, letter (n) of Item III. Other Requirements of MC No. 2015-015-A expressly requires a Complaint Mechanism against vehicle owners or drivers. The clauses in the applicant's Terms and Conditions for SnappyCab Drivers wherein Aztech Solution International Corp. shall not be responsible nor liable for the acts and/or omissions of any transportation provider and/or any transportation services and that the entire risk arising out of the use of the service and any third party services including third party transportation services remains solely and absolutely with the passenger without recourse to the applicant shall render the applicant's complaint mechanism entirely inutile or nugatory.

NOW THEREFORE, premises considered, the Committee resolves to DIRECT applicant Aztech Solution International Corp. to SUBMIT within ten (10) days from receipt of this Resolution the following requirement/s:

- a) Authenticated copies of the following documents pursuant to MC No. 2015-015-A:
 - SEC Certificate of Filing of Amended Articles of Incorporation;
 - Amended Articles of Incorporation;
 - SEC Certificate of Incorporation;
 - By-Laws;
 - Business Permit; and
 - BIR Certificate of Registration
- b) Signed and authenticated copies of the following documents pursuant to MC No. 2015-015-A:
 - Complete description of Business Model;
 - Process of Accrediting/Affiliating vehicles Transportation Network Vehicle Service (TNVS) vehicle;
 - Process of Accrediting/Affiliating TNVS drivers;
 - Terms of Service for Passengers;
 - The Proposal Fare Rates and/or Service Charge;
 - The Proposal for the Establishment of a Drivers' Training Program only for TNCs utilizing TNVS units; and
 - Complaint Mechanism against vehicle owners or drivers
- c) Authenticated copy of latest Business Permit duly issued by the local government where the applicant's principal place of business is located. Also, business should relate to public transportation services.

- d) Authenticated copy of BIR Certificate of Registration where the line of business should relate to public transportation services.

Applicant is further directed to SUBMIT within ten (10) days from receipt of this Resolution its revised Terms and Conditions incorporating the following statements:

- a) It acknowledges its nature as a Transport Provider;
- b) The TNC shall exercise due diligence of a good father of a family in accrediting and supervising its drivers. The TNC shall be held liable for acts or omissions committed by its TNVS while online, except if the same is beyond the TNC's control pursuant to the provisions of Memorandum Circular No. 2015-015-A and other pertinent rules and regulations.

Further, the applicant shall incorporate the complaint mechanism in its Terms of Service for Passengers providing the necessary details as it is the contract between the TNC and the riding public.

Failure to submit/comply within the period specified herein, the Committee shall be constrained to treat the same as a withdrawal of the application with forfeiture of any payments paid by the applicant to the LTRB.

APPROVED AND SIGNED by the undersigned Chairman and Members of the Pre-Accreditation Committee, this 08 day of August 2018 at Quezon City, Philippines.

ATTY. SAMUEL A. M. JARDIN

Chairman

ATTY. CARL SHA JEMIMAH F. MARBELLA

Member

ATTY. ZONA RUSSET M. TAMAYO

Member

NIDA P. QUIBIC

Member

JOEL J. BOLANO

Member