

**REPUBLIC OF THE PHILIPPINES
COMMISSION ON HUMAN RIGHTS
DILIMAN, QUEZON CITY**

**IN RE: NATIONAL INQUIRY
ON THE IMPACT OF
CLIMATE CHANGE ON THE
HUMAN RIGHTS OF THE
FILIPINO PEOPLE.**

CHR-NI-2016-001

X-----X

**SPECIAL APPEARANCE
and
MOTION TO DISMISS¹**

Repsol, S.A. ("**Repsol**"), a company duly established under the laws of the Kingdom of Spain and Repsol Oil & Gas Canada Inc. (formerly Talisman Energy Inc.) ("**Repsol Oil & Gas**") a company duly established under the laws of Canada, through counsel, are constrained to make this *SPECIAL APPEARANCE* for the purpose of objecting to the Honorable Commission's jurisdiction over its person and moving to dismiss the Petitioners² Petition dated 9 May 2016³, as follows:⁴

¹ This Special Appearance and Motion to Dismiss is filed pursuant to Rule 7, Section 22 of the Omnibus Rules (defined below), in relation to Rule 16, Section 1 of the Rules of Court.

The Honorable Commission's "Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses, and the Provision of CHR Assistance," otherwise known as the Omnibus Rules of Procedure of the Commission on Human Rights ("**Omnibus Rules**"), state that "[I]n all matters of procedure not covered by the foregoing rules, the provisions of the Revised Rules of Court shall apply in a suppletory character" (Omnibus Rules, Rule 7, Section 22).

The Omnibus Rules do not set out a procedure for questions on or objections to the Honorable Commission's jurisdiction over the person of a respondent. Consequently, Rule 16, Section 1 of the Rules of Court, which provides the procedure for jurisdictional objections, is applicable. Rule 16, Section 1 states:

**"RULE 16
MOTION TO DISMISS**

Section 1. *Grounds.*—Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be filed on any of the following grounds:

- (a) That the court has no jurisdiction over the person of the defending party;

x x x."

² Greenpeach Southeast Asia (Philippines), Philippine Rural Reconstruction Movement (PRRM), Dakila (Philippine Collective for Modern Heroism), Sentro ng mga Nagkakaisa at Progresibong Mangagawa or SENTRO, Mother Earth Foundation, Ecowaste Coalition, NIUGAN or The Nagkakaisang Ugnayan ng mga Mangagawa at Mangagawag sa Niugan, Philippine Human Rights Information Center, Asia Pacific Movement

PREFATORY STATEMENT

Repsol recognizes the important work of the Commission and shares your stated vision for a Philippine society "equal in opportunity, living a life of dignity, and forever vigilant against abuses and oppression." Repsol is firmly committed to respecting human rights as set out in the United Nations "Protect, Respect and Remedy" framework and its Guiding Principles on Business and Human Rights. In particular, Repsol strives to be transparent and considers sustainability and energy accessibility as key components of its corporate strategy. Repsol is committed to providing sustainable and environmentally responsible energy to both developing and industrialized nations.

Central to Repsol's commitment to the communities it serves is taking a leadership role in the Oil and Gas sector on responding to climate change. Repsol's commitment to climate change is carried out at the highest level of the company and has been documented for years. Beginning in 2006, Repsol established a public GHG emissions reduction goal of 2.5 million metric tons of CO₂e for the 2006-2013 period. The Company far exceeded that goal set -- reaching a reduction of more than 3 million tons at the end of 2013. The company has set an additional target for the 2020 horizon of a further reduction of 1.9 million ton of CO₂e, using 2010 base line activity as a reference. In 2014 and 2015, Repsol drove actions which reduced CO₂e by 0.9 millions of tons.

Repsol has the most significant presence on the Climate Disclosure Leadership Index of the Global Initiative for Sustainability Ratings. In 2015, Repsol obtained the highest score in carbon management reporting disclosure and had one of the Oil and Gas sector's highest performance ratings (B). Repsol is fully aware that energy and carbon must be managed optimally to achieve operational excellence. Consequently Repsol's strategy seeks initiatives that reduce energy intensity over the entire life cycle of its products which leads to lower greenhouse gas emissions. Repsol works to promote a low carbon strategy throughout all of its activities and in all countries in which it operates, from the extraction and transformation of oil process to the sale of products. For example, in June 2015 Repsol joined the Oil and Gas Climate Initiative (OGCI), an industry-driven initiative that aims to catalyze action on climate change. Repsol's CEO will lead the commitment to share best practices and technology solutions between members of the Initiative in order to coordinate its actions and strengthen its investments, thereby accelerating solutions to climate change. And recently,

Alliance of Human Rights Advocates (PAHRA), 350.org East Asia, and Philippine Movement for Climate Justice

³ Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change.

⁴ Repsol and Repsol Oil & Gas undertake to submit the original authenticated copy of the attached Verification in due course.

on June 2016, Repsol has signed an accession agreement to support the 'Climate and Clean Air Coalition – Oil & Gas Methane Partnership' of United Nations Environment Programme (UNEP) and the World Bank's 'Zero Routine Flaring by 2030' initiatives.

The ambitious agreement reached by the United Nations climate change conference (COP21) in Paris has set the world an enormous challenge. This will require a new thinking and consistent action across industry, consumers and governments. To realize this aim, Repsol is pulling together its collective resources – financial, human and organizational – to do what it can to ensure the Paris Agreement is implemented. In this sense, Repsol adhered to the Paris Pledge for Action4 document in which non-governmental players commit to comply with the objectives signed in the Paris Agreement. Repsol believes it is part of the solution, as a key player that can tackle the twin mission of providing more energy with lower greenhouse gas emissions.

GROUNDS FOR DISMISSAL AND DISCUSSION

1. At the outset, it is hereby manifested that (a) the undersigned counsels have no authority to receive summons or other processes on behalf of Repsol / Repsol Oil & Gas; and (b) by filing this Special Appearance and Motion to Dismiss, Repsol / Repsol Oil & Gas are not submitting to the jurisdiction of the Honorable Office.

2. Repsol is a foreign corporation incorporated in Spain, with principal address at Calle Méndez Álvaro 44, 28045 Madrid, Spain. Repsol Oil & Gas is also a foreign corporation incorporated in Canada.

Repsol / Repsol Oil & Gas are not doing / transacting, and has never done / transacted, business in the Philippines. Thus, it is respectfully submitted that the Honorable Commission does not have, and cannot acquire, jurisdiction over Repsol / Repsol Oil & Gas.

2.1. A foreign corporation which is doing or transacting business in the Philippines is one which: [i] is registered with and licensed to do business in the Philippines by the Securities and Exchange Commission ("SEC"); [ii] does business in the Philippines without a license; or [iii] has no license to do business but is being sued on an isolated transaction (Agpalo, Handbook on Civil Procedure, 2001 ed., p. 194).

2.2. Section 3(d) of Republic Act No. 7042, otherwise known as the Foreign Investments Act of 1991 ("FIA"), defines the term "doing business" as follows:

"d) The phrase 'doing business' shall include soliciting orders, service contracts, opening offices, whether called 'liaison'

offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: Provided, however, That the phrase 'doing business' shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account."

2.3. In *B. Van Zuiden Bros., Ltd. v. GTVL Manufacturing Industries Inc.* (G.R. No. 147905, 28 May 2007, 523 SCRA 233), the Supreme Court ruled that "an essential condition to be considered as 'doing business' in the Philippines is the actual performance of specific commercial acts within the territory of the Philippines", thus:

"As earlier stated, the series of transactions between petitioner and respondent transpired and were consummated in Hong Kong. We also find no single activity which petitioner performed here in the Philippines pursuant to its purpose and object as a business organization. Moreover, petitioner's desire to do business within the Philippines is not discernible from the allegations of the complaint or from its attachments. Therefore, there is no basis for ruling that petitioner is doing business in the Philippines.

In *Eriks*, respondent therein alleged the existence of a distributorship agreement between him and the foreign corporation. If duly established, such distributorship agreement could support respondent's claim that petitioner was indeed doing business in the Philippines. Here, there is no such or similar agreement between petitioner and respondent.

We disagree with the Court of Appeals' ruling that the proponents to the transaction determine whether a foreign corporation is doing business in the Philippines, regardless of the place of delivery or place where the transaction took place. To accede to such theory makes it possible to classify, for instance, a series of transactions between a Filipino in the United States and an American company based in the United States as "doing business in the Philippines," even when these transactions are negotiated and consummated only within the United States.

An exporter in one country may export its products to many foreign importing countries without performing in the importing

countries specific commercial acts that would constitute doing business in the importing countries. The mere act of exporting from one's own country, without doing any specific commercial act within the territory of the importing country, cannot be deemed as doing business in the importing country. The importing country does not acquire jurisdiction over the foreign exporter who has not performed any specific commercial act within the territory of the importing country. Without jurisdiction over the foreign exporter, the importing country cannot compel the foreign exporter to secure a license to do business in the importing country.

Otherwise, Philippine exporters, by the mere act alone of exporting their products, could be considered by the importing countries to be doing business in those countries. This will require Philippine exporters to secure a business license in every foreign country where they usually export their products, even if they do not perform any specific commercial act within the territory of such importing countries. Such a legal concept will have a deleterious effect not only on Philippine exports, but also on global trade.

To be doing or 'transacting business in the Philippines' for purposes of Section 133 of the Corporation Code, the foreign corporation must actually transact business in the Philippines, that is, perform specific business transactions within the Philippine territory on a continuing basis in its own name and for its own account. Actual transaction of business within the Philippine territory is an essential requisite for the Philippines to acquire jurisdiction over a foreign corporation and thus require the foreign corporation to secure a Philippine business license. If a foreign corporation does not transact such kind of business in the Philippines, even if it exports its products to the Philippines, the Philippines has no jurisdiction to require such foreign corporation to secure a Philippine business license.

Considering that petitioner is not doing business in the Philippines, it does not need a license in order to initiate and maintain a collection suit against respondent for the unpaid balance of respondent's purchases." (Emphasis and underscoring supplied)

2.4. In this case, Repsol / Repsol Oil & Gas: (a) are not registered with the SEC or licensed to do business in the Philippines by the SEC; (b) have no presence, office or representative in the Philippines; (c) do not do business or perform specific commercial acts within the territory of the Philippines; and (d) have not performed any of the acts that would constitute "doing business" under Section 3(d) of the FIA. Thus, Repsol / Repsol Oil & Gas are clearly outside the jurisdiction of Philippine courts and the Honorable Commission. As the Supreme Court ruled in *Avon Insurance PLC British Reserve Insurance Co. Ltd. v. Court of Appeals* (G.R. No. 97642, 29 August 1997):

"A foreign corporation, is one which owes its existence to the laws of another state, and generally, has no legal existence

within the state in which it is foreign. In *Marshall Wells Co. vs. Elser*, it was held that corporations have no legal status beyond the bounds of the sovereignty by which they are created. Nevertheless, it is widely accepted that foreign corporations are, by reason of state comity, allowed to transact business in other states and to sue in the courts of such *fora*. In the Philippines foreign corporations are allowed such privileges, subject to certain restrictions, arising from the state's sovereign right of regulation.

Before a foreign corporation can transact business in the country, it must first obtain a license to transact business here and secure the proper authorizations under existing law.

If a foreign corporation engages in business activities without the necessary requirements, it opens itself to court actions against it, but it shall not be allowed to maintain or intervene in an action, suit or proceeding for its own account in any court or tribunal or agency in the Philippines.

The purpose of the law in requiring that foreign corporations doing business in the country be licensed to do so, is to subject the foreign corporations doing business in the Philippines to the jurisdiction of the courts, otherwise, a foreign corporation illegally doing business here because of its refusal or neglect to obtain the required license and authority to do business may successfully though unfairly plead such neglect or illegal act so as to avoid service and thereby impugn the jurisdiction of the local courts.

The same danger does not exist among foreign corporations that are indubitably not doing business in the Philippines. Indeed, if a foreign corporation does not do business here, there would be no reason for it to be subject to the State's regulation. As we observed, in so far as the State is concerned, such foreign corporation has no legal existence. Therefore, to subject such corporation to the courts' jurisdiction would violate the essence of sovereignty." (Underscoring added)

3. More, it is respectfully submitted that the Honorable Commission cannot acquire jurisdiction over Repsol / Repsol Oil & Gas on the ground that Repsol / Repsol Oil & Gas are doing business in the Philippines without a license.⁵

3.1. It is well settled that for a Philippine court or agency to acquire jurisdiction over a foreign corporation doing business in the Philippines without a license, the fact that the foreign corporation is "doing business" in the Philippines must be "established by appropriate allegations" in the complaint or initiatory pleading, thus:

In *French Oil Mill Machinery Co., Inc. vs. Court of Appeals*, we had occasion to rule that it is not enough to merely allege in the complaint that a defendant foreign corporation is

⁵ Corporation Code, Section 133.

doing business. For purposes of the rule on summons, the fact of doing business must first be "established by appropriate allegations in the complaint" and the court in determining such fact need not go beyond the allegations therein.

The allegations in the amended complaint subject of the present cases did not sufficiently show the fact of HSBC TRUSTEE's doing business in the Philippines. It does not appear at all that HSBC TRUSTEE had performed any act which would give the general public the impression that it had been engaging, or intends to engage in its ordinary and usual business undertakings in the country. Absent from the amended complaint is an allegation that HSBC TRUSTEE had performed any act in the country that would place it within the sphere of the court's jurisdiction.

We have held that a general allegation, standing alone, that a party is doing business in the Philippines does not make it so; a conclusion of fact or law cannot be derived from the unsubstantiated assertions of parties notwithstanding the demands of convenience or dispatch in legal actions, otherwise, the Court would be guilty of sorcery; extracting substance out of nothingness." (*Hongkong and Shanghai Banking Corporation Limited v. Catalan*, G.R. No. 159590, 18 October 2004)

3.2. In this case, there is absolutely nothing in the Petition which alleges, much less shows, that Repsol / Repsol Oil & Gas are doing or transacting business in the Philippines -- clearly because Repsol / Repsol Oil & Gas are not doing or transacting business in the Philippines.

3.3. Thus, jurisdiction cannot be obtained over Repsol / Repsol Oil & Gas on the ground that Repsol / Repsol Oil & Gas are doing business in the Philippines without a license.

4. Based on the foregoing, Repsol / Repsol Oil & Gas respectfully move for the dismissal of the Petition (as against Repsol / Repsol Oil & Gas). This Special Appearance and Motion to Dismiss is without prejudice to any objections to the efficacy of service of process on Repsol / Repsol Oil & Gas or any other legal and other defenses Repsol / Repsol Oil & Gas may assert in response to the Honorable Commission's Order dated 21 July 2016 or the Petition (including, in particular, jurisdictional objections and defenses to address the allegations in pages 8 to 15 of the Petition), should the Honorable Commission consider itself as having jurisdiction over Repsol / Repsol Oil & Gas.

PRAYER

WHEREFORE, it is respectfully prayed that the Honorable Commission dismiss the Petition as against Repsol and Repsol Oil & Gas for lack of jurisdiction.

Taguig City for Quezon City, 22 September 2016.

QUISUMBING TORRES

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MCLE Compliance No. V-0020141; 04/25/16

And by:


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And by:


CAMILLE BIANCA M. GATMAITAN

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PTR No. A-2794718; 01/06/16; Taguig City

MCLE Compliance No. V-0020153; 04/25/16

NOTICE OF HEARING

The Commission on Human Rights
and to all parties appearing hereunder:

Greetings:

Please take notice that the foregoing Motion will be submitted for the consideration and approval of the Honorable Commission on 30 September 2016 at 8:30 a.m., or on any other date as may be set by the Honorable Commission.


CAMILLE BIANCA M. GATMAITAN

Copy Furnished:

Atty. Zeldania DT Soriano
Co-Counsel / Co- Legal Representative
for Petitioners
Greenpeace Southeast Asia (Philippines)
Rooms 301-302 JGS Building
No. 30 Sct. Tuason, Brgy. Laging Handa
Diliman, Quezon City 1103

BY REG.MAIL

Atty. Grizelda Mayo-Anda
Co-Counsel / Co- Legal Representative
for Petitioners
Environmental Legal Assistance Center
Carlos Sayang Compound, Mitra Road
Brgy. Sta. Monica, Puerto Princesa City, Palawan

BY REG. MAIL/
COURIER

EXPLANATION

Due to distance, number of parties and lack of messengers, personal filing and service on the other parties are not practicable; thus, this pleading/motion/filing is filed with the Honorable Commission and served on the other parties by registered mail. Advance copies of this Motion will also be sent by courier.


CAMILLE BIANCA M. GATMAITAN


VERIFICATION

I, Luis Casado Padilla, after being duly sworn in accordance with law, state:

1. I am the duly authorized representative of Repsol, S.A. and Repsol Oil & Gas Canada, Inc. (formerly Talisman Energy Inc.).

2. I have read the foregoing Special Appearance and Motion to Dismiss. I attest that the allegations contained therein are true and correct of my own personal knowledge and/or based on authentic records.

IN WITNESS WHEREOF, I have hereunto set my hand on 22 September 2016.



A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right, positioned above a solid horizontal line.

Luis Casado Padilla
Director of Safety, Environment & Sustainability
REPSOL, S.A.

AFFIDAVIT OF SERVICE

I, HERMES CONVICTO, with office address at 12th Floor, Net One Center, 26th Street, corner 3rd Avenue, Crescent Park West, Bonifacio Global City, Taguig, Metro Manila, after being sworn in accordance with law, hereby depose and state:

That on 22 September 2016, I served a copy of the following pleading:

**SPECIAL APPEARANCE
and
MOTION TO DISMISS**

in Commission on Human Rights, Diliman, Quezon City, entitled "In Re: National Inquiry on the Impact of Climate Change on the Human Rights of the Filipino People", CHR-NI-2016-001, by registered mail, pursuant to Sections 3, 5, 7 and 13, Rule 13 of the Rules of Court., by depositing them with the post office, in a sealed envelope, plainly addressed to the party or his attorney at his office/residence with postage fully prepaid, as evidenced by the registry receipts, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered.

That the addresses are the following:

Atty. Zeldania DT Soriano
Co-Counsel / Co- Legal Representative
for Petitioners
Greenpeace Southeast Asia (Philippines)
Rooms 301-302 JGS Building
No. 30 Sct. Tuason, Brgy. Laging Handa
Diliman, Quezon City 1103

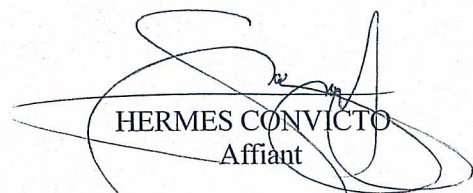
BY REG. MAIL

Atty. Grizelda Mayo-Anda
Co-Counsel / Co- Legal Representative
for Petitioners
Environmental Legal Assistance Center
Carlos Sayang Compound, Mitra Road
Brgy. Sta. Monica, Puerto Princesa City, Palawan

BY REG. MAIL/ COURIER

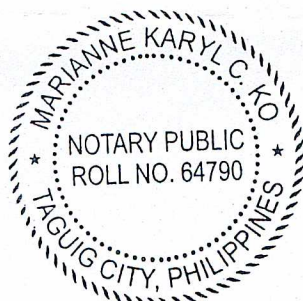
That on 22 September 2016 the pleading itself mentioned above is being filed with the Honorable Commission and served on the other parties by registered mail. Advance copies of this Motion will also be sent by courier.


Taguig, Metro Manila, 22 September 2016.


HERMES CONVICTO
Affiant

SUBSCRIBED AND SWORN to before me by Hermes Convicto, is personally known to me to be the same person who presented the foregoing instrument and signed the instrument in my presence, this 22nd September 2016, at Taguig City, Philippines, affiant exhibiting to me his SSS ID No. 033-0347271-4.

Doc. No. 60 ;
Page No. 13 ;
Book No. 1 ;
Series of 2016.




MARIANNE KARYL S. KO
Notary Public for Taguig City
Appointment No. 52 until 31 December 2017
12th Floor, Net One Center, 26th St. corner 3rd Ave.
Crescent Park West, Bonifacio Global City, Taguig
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PTR No. A-2798383/01-6-16/Taguig City
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