

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

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SPECIAL APPEARANCE  
and  
MOTION TO DISMISS<sup>1</sup>

Peabody Energy Corporation ("**Peabody**"), through undersigned counsel, by way of SPECIAL APPEARANCE, respectfully moves to dismiss the "**Petition**"<sup>2</sup> dated 9 May 2016 (as against Peabody):<sup>3</sup>

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<sup>1</sup> 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;

... .."

1. Peabody 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." At Peabody, we believe that energy is foundational to individuals and economies and that access to abundant, reliable and inexpensive energy is necessary to satisfy basic needs, improve living standards, reduce poverty and strengthen economies. Peabody is committed to its leadership role in providing safe, environmentally responsible, high-tech coal mining and power generation to meet the growing energy demands of both developing and industrialized nations so that the Philippines and other countries can deliver on the promises to their people for healthy and prosperous societies.

2. Central to Peabody's commitment to the communities it serves is our leadership in the advancement and deployment of low-carbon technologies to reduce greenhouse gas emissions associated with the use of the world's coal resources. Peabody continues to support the development of high efficiency, low emission power stations and investments in next generation carbon capture, use and storage technologies to promote the transition towards the ultimate goal of near zero emissions from coal-fueled power. Peabody's efforts to reduce our carbon footprint also include ongoing funding of research and participation in low-emission development projects around the world, active engagement in advancing public policy relating to energy and the environment, and our unwavering pursuit of energy conservation and greenhouse gas intensity reductions across our global operations.

3. Consequently, Peabody appreciates the opportunity to engage with the Honorable Commission on the subject matter of the Petition. However, Peabody is constrained to move for the dismissal of the Petition (as against Peabody).

4. Peabody is a foreign corporation that is not doing business, and hence is not registered, in the Philippines. It is a United States company incorporated in Delaware, USA and maintains its principal place of business in St. Louis, Missouri, USA. Thus, the Honorable Commission does not have, and cannot acquire, jurisdiction over Peabody.

4.1. In *Avon Insurance PLC British Reserve Insurance Co. Ltd. v. Court of Appeals* (G.R. No. 97642, 29 August 1997), the Supreme Court ruled that foreign corporations not doing business in the Philippines cannot be subject to state regulation, and that "to

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<sup>2</sup> 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. Peabody received the Petition on August 1, 2016.

<sup>3</sup> Peabody undertakes to submit the original authenticated copy of the attached

subject such corporation to the [Philippine] courts' jurisdiction would violate the essence of sovereignty." Thus:

"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)

5. Nor can the Honorable Commission acquire jurisdiction over Peabody on the ground that Peabody is doing business in the Philippines without a license.<sup>4</sup>

5.1. 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 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)

5.2. The Petition does not allege the fact that Peabody is doing business in the Philippines, much less "establish" such fact by "appropriate allegation".

5.3. In any event, Peabody does not conduct business activities and operations in the Philippines. Peabody likewise has no meaningful contacts, ties or relations to the Philippines that would support extending the Honorable Commission's authority to Peabody. There is thus no basis to "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" on Peabody's part.<sup>5</sup>

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<sup>5</sup> Section 3(d) of Republic Act No. 7042, otherwise known as the Foreign Investments Act of 1991, 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

6. Peabody is also precluded under the United States Bankruptcy Code from responding to the Honorable Commission's Order and the Petition, and from participating in the present proceeding.

6.1. In April 2016, after a year of unprecedented market challenges, Peabody and a number of its wholly-owned subsidiaries ("**Debtors**") sought protection under Chapter 11 of Title 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Missouri. Peabody's Chapter 11 cases are being jointly administered and are pending before the United States Bankruptcy Court under Consolidated Case Number 16-42529-399.

6.2. Pursuant to section 362(a) of the United States Bankruptcy Code, the filing of a petition for relief under the Bankruptcy Code operates as a stay, applicable to all entities, foreign and domestic, against certain actions against the Debtors or property of the Debtors, including "the commencement or continuation ... of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case."

7. Based on the foregoing, Peabody respectfully moves for the dismissal of the Petition (as against Peabody). This Special Appearance and Motion to Dismiss is without prejudice to any objections to the efficacy of service of process on Peabody or any other legal and other defenses Peabody 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 Peabody.

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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."

## PRAYER

WHEREFORE, it is respectfully prayed that the Honorable Commission dismiss the Petition as against Peabody for lack of jurisdiction.

Taguig City for Quezon City, 15 September 2016.

### **QUISUMBING TORRES**

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## 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 23 September 2016 at 2:00 p.m., or on any other date as may be set by the Honorable Commission.



MICHAEL T. MACAPAGAL

Copy Furnished:

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BY REG. MAIL/  
COURIER

### EXPLANATION

Due to distance, number of parties and lack of messengers, personal service on Atty. Grizelda Mayo-Anda is not practicable; thus, this pleading/motion/filing is served on Atty. Mayo-Anda by registered mail and courier.

  
MICHAEL T. MACAPAGAL

## VERIFICATION

I, Patricia S. Williams, after being duly sworn in accordance with law, state:

1. I am the duly authorized representative of Peabody Energy Corporation.
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 13 September 2016.

  
PATRICIA S. WILLIAMS