GRAMERCY FUNDS MANAGEMENT LLC,
GRAMERCY PERU HOLDINGS LLC,
GRAMERCY INVESTMENT ADVISORS LLC
AND
GRAMERCY ADVISORS, LLC
CLAIMANTS,

v.

THE REPUBLIC OF PERU,
RESPONDENT

Claimants' Notice of Intent to Commence Arbitration Under the United States – Peru Trade Promotion Agreement

February 1, 2016

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1. Pursuant to Article 10.16.2 of the United States – Peru Trade Promotion Agreement of 2006 ("TPA" or "Treaty"), Gramercy Funds Management LLC ("GFM"), Gramercy Investment Advisors LLC ("GIA"), Gramercy Advisors, LLC ("GA") and Gramercy Peru Holdings LLC ("GPH" and together with GFM, GIA and GA, "Gramercy" or "Claimants") hereby serve notice ("Notice") to the Republic of Peru ("Peru" or "Respondent") of Gramercy's intention to submit to international arbitration claims arising out of its investment in Peruvian agrarian reform bonds ("Land Bonds" or "Bonds").

I. PARTIES

2. GFM is a limited liability company organized under the laws of the State of Delaware, United States of America. It is an asset manager that principally invests in emerging markets, and has considerable experience investing in Latin America. GFM and its owners have often helped States find cooperative and mutually beneficial solutions to challenging situations.

3. GIA is a limited liability company organized under the laws of the State of Delaware, United States of America. GIA is a predecessor company to GFM and has the same beneficial owners.

4. GA is a limited liability company organized under the laws of the State of Delaware, United States of America. GA is a predecessor company to GFM and has the same beneficial owners.

5. GPH is a limited liability company organized under the laws of the State of Delaware, United States of America. GPH is the Gramercy entity that directly purchased and acquired title to the Land Bonds that Gramercy owns and controls. GPH has at all times been under the management and control of GFM or its predecessors.

6. Gramercy can be contacted at the following address:

Gramercy Funds Management LLC
Gramercy Peru Holdings LLC
Gramercy Investment Advisors LLC
Gramercy Advisors, LLC
c/o James P. Taylor
20 Dayton Avenue
Greenwich, CT 06830
United States of America

7. Peru is a Party to the Treaty. Pursuant to Annex 10-C of the Treaty, Peru shall be notified of claims arising under the Treaty at the following address:

Dirección General de Asuntos de Economía Internacional
Competencia e Inversión Privada
Ministerio de Economía y Finanzas
Jirón Lampa 277, piso 5
Lima, Perú

II. PRELIMINARY STATEMENT

8. This dispute arises out of Peru's efforts to evade paying its Land Bond debt and to render the Bonds valueless.

9. The Peruvian Government ("Government") issued the Land Bonds over forty years ago as compensation for land the Government had seized as part of a disastrous land redistribution scheme. Peru ultimately defaulted on the Land Bonds. However, in a landmark 2001 decision ("2001 CT Decision"), Peru's Constitutional Tribunal established that the Peruvian Constitution obligated the Government to pay them, and to do so at a value that is the contemporary equivalent of the value they had at the time they were issued. Throughout the next decade – during the time when Gramercy invested in the Land Bonds – the Constitutional Tribunal, the Peruvian Supreme Court, the Peruvian Congress and multiple Peruvian civil courts all acknowledged the validity of the Land Bond debt and confirmed that Peru had to pay it.

10. Despite this clear and uniform recognition for over a decade that Peru had to pay the Land Bond debt, in 2013 Peru took measures to ensure it would never have to do so. The Government attempted to manipulate a Constitutional Tribunal case in which certain bondholders sought enforcement of the 2001 CT Decision. That attempt was successful. Members of the Constitutional Tribunal abandoned a draft decision – two years in the making – that would have reaffirmed over a decade of jurisprudence, replaced that draft with a decision premised on an unsubstantiated and false factual assertion that the Government had not included in any pleading and that the bondholders seeking relief had never been given the opportunity to confront, and even used white-out to adulterate the original majority opinion to transform it into a purported dissent. In early 2014, relying on this dubious 2013 Constitutional Tribunal decision ("2013 CT Decision"), the Government promulgated Supreme Decrees 017-2014-EF and 019-2014-EF ("Supreme Decrees"). The Supreme Decrees purport to create a mechanism to finally pay the Land Bonds; in reality, they lay a series of traps and obstacles, and include a complex valuation equation that deprives the Land Bonds of substantially all their value.

11. Gramercy owns and controls approximately 10,000 individual Land Bonds, all of which it acquired prior to the 2013 CT Decision. Gramercy has attempted for several years to negotiate a consensual solution for payment of the Land Bonds – a

solution that would at last resolve this longstanding injustice, benefit all bondholders and have minimal impact on Peru's annual budget. Peru and its officials, including Peru's Ambassador to the United States, Luis Castilla, have repeatedly rebuffed Gramercy's overtures, including as recently as January 19, 2016.

12. Gramercy deeply regrets that the Government's actions have prompted Gramercy to send this Notice. Gramercy continues to desire an amicable resolution of the Parties' dispute. Failing such resolution, however, Gramercy will initiate an arbitration against Peru within the timeframe specified by the Treaty, asserting breaches of Articles 10.7 (expropriation), 10.5 (minimum standard of treatment) and 10.3 (national treatment).

III. FACTUAL BACKGROUND

A. Peru's Issuance of Land Bonds and Subsequent Default

13. Peru issued the Land Bonds as part of a compulsory redistribution of agrarian land (the "Land Reform" or "*Reforma Agraria*"). In 1969, the Government, then led by leftist dictator Juan Velasco Alvarado, promulgated the Land Reform Act. The Land Reform Act authorized the State to engage in wide-scale expropriations of land owned by wealthy and middle-class families, to be redistributed to rural laborers and small-scale farmers.[1] Between 1969 and 1979, the Government forcibly seized 15,826 parcels, comprising more than nine million hectares[2] – an area about the size of Portugal. Independent experts have conservatively estimated the current value of the expropriated land to be US$42.4 billion as of 2015.[3]

14. To compensate the disenfranchised landowners, the Government promised to pay for the expropriated land over time, with interest, by issuing and placing Land Bonds with annual interest rates of four to six percent and repayment terms from twenty to thirty years.[4] The Land Bonds purported to fulfill the Constitution's obligation to provide fair value for the expropriated property.[5] Through Article 175 of the Land Reform Act, the Government provided its "unreserved guarantee" to pay the Land Bonds.[6]

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1 **Ex. CE-01**, Decree Law N° 17716, Land Reform Act, Articles 1, 2, 3, 67 and 74.

2 **Ex. CE-02**, José Matos Mar and José Manuel Mejía, "La Reforma Agraria en el Perú," Instituto de Estudios Peruanos, 1980, p. 171.

3 *See* ABDA's application filed before the Constitutional Tribunal on March 16, 2015, para. 6, citing an expert report by Deloitte, available at: http://bonosagrarios.pe/wp-content/uploads/2015/03/Peticion-de-ABDA.pdf

4 **Ex. CE-01**, Decree Law N° 17716, Land Reform Act, Article 174.

5 **Ex. CE-03**, Political Constitution of Peru 1933, Article 29, as amended by Law N° 15242 of 1964. ("Property is inviolable. No person may be stripped of his property except … for reasons of public utility or common interest, legally established, and only after payment of the fair value.")

6 **Ex. CE-01**, Decree Law N° 17716, Land Reform Act, Article 175.

15. However, the Peruvian Government's mismanagement of the economy produced an economic crisis marked by severe hyperinflation and currency devaluation. Owing to the economic crisis, the Government twice changed currency in the span of six years – in 1985, from the *Sol de Oro* (the currency in which the Land Bonds were issued) to the *Inti*,[7] and in 1991, from the *Inti* to the *Nuevo Sol*.[8] Today, the nominal equivalent of one *Sol de Oro* is equal to 0.000000001 (one billionth) of a *Nuevo Sol* – now denominated simply as *Sol*.[9]

16. As the economy deteriorated in the 1980s, the Government began defaulting on payment of the Land Bonds despite its "unreserved guarantee." By the early 1990s, the Government ceased making any payments at all.[10]

B. Peru's Improved Investment Climate and Renewed Commitment to Honor the Land Bond Debt

17. Following the economic upheaval of the 1980s, the Peruvian Government adopted a series of measures to stabilize and liberalize Peru's economy. Among other steps, in the early 1990s the Government lowered trade barriers, lifted restrictions on capital flows, and opened the country to foreign investment.[11] In 1991, the Government enacted the Foreign Investment Promotion Law (Legislative Decree N°662) and the Framework Law for Private Investment Growth (Legislative Decree N°757). With the new 1993 Constitution, the Government also provided constitutional guarantees of non-discriminatory treatment to foreign investors and permitted foreign investment in a majority of economic sectors.

18. As a result of these economic reforms, the Peruvian economy improved dramatically. Peru has since been one of the fastest-growing economies in Latin America, quadrupling its GDP in the span of fourteen years.[12] Starting in the early 2000s, foreign direct investment increased exponentially, rising from US$2.579 billion in

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7 **Ex. CE-04**, Law N° 24064, Article 1: "As of February 1, 1985, the *Inti* is hereby established as the unit of currency in Peru (...)." Under this law, one *Inti* was equal to one thousand *Soles Oro*.

8 **Ex. CE-05**, Law N° 25295, Article 1: "The '*Nuevo Sol*' is hereby established as the unit of currency in Peru (...)." Under this law, one *Nuevo Sol* is equal to one million *Intis*.

9 **Ex. CE-06**, Central Reserve Bank of Peru, table of equivalencies, available at: http://www.bcrp.gob.pe/billetes-y-monedas/unidades-monetarias/tabla-de-equivalencias.html. As of December 15, 2015, the Peruvian national currency is denominated *Sol* as mandated by Law N°30381, without affecting the value of the currency *i.e.* one *Sol* equals one *Nuevo Sol*.

10 The Agrarian Bank, through which the coupon payments were made, was liquidated on May 6, 1992. *See* **Ex. CE-07**, Decree Law N° 25478.

11 2009 Investment Climate Statement – Peru, U.S. Department of State, at http://www.state.gov/e/eb/rls/othr/ics/2009/117241.htm.

12 Peru's GDP went from US$ 51 billion in 2000 to US$202.6 billion in 2014. *See* The World Bank, World Development Indicators, available at: http://wdi.worldbank.org/table/4.2.

2005 to US$12.24 billion in 2012, increasing more than 50% between 2006 and 2007 alone.[13]

19. During this period, Peru actively solicited foreign investment. In 2005, for example, Peru registered with the United States Securities and Exchange Commission ("SEC") three prospectus supplements for the offering of "dollar-denominated global bonds." *See* **Ex. CE-08**, Prospectus Supplement filed on January 31, 2005; **Ex. CE-09**, Prospectus Supplement filed on July 15, 2005; and **Ex. CE-10**, Prospectus Supplement filed on December 14, 2005. Peru also entered into numerous trade and investment agreements. These included 33 bilateral investment treaties. In 2006 Peru signed the TPA with the United States, and then ratified that Agreement so that it entered into force in 2009.[14]

20. Amid its economic boom and opening to foreign markets, Peru acknowledged its obligation to pay the Land Bonds. On March 15, 2001, the Peruvian Constitutional Tribunal issued the 2001 CT Decision, recognizing Peru's obligation not only to pay the Land Bonds, but to update their value in accordance with the valuation principle enshrined in Article 1236 of the Civil Code and Article 70 of the Constitution ("current value principle").[15] When properly applied, updating to current value eliminates hyperinflation's destructive effects. Subsequent actions affirmed Peru's obligation to pay the Land Bonds at their current value. For example, a 2006 report commissioned by Congress ("2006 Report") noted that the Government "could not constitutionally elude its obligation to pay the Land Reform debt" and deemed it "essential" to provide current value for the Land Bonds.[16] In 2011, Peru's Congress approved legislation requiring payment of the Land Bonds.[17]

21. The 2001 CT Decision did not specify the method for updating the Land Bonds to current value. At the time, however, the prevailing method was the Consumer Price Index, or "CPI," method. Peru's Supreme Court had twice confirmed that method when enforcing payment of Land Bonds – invoking the 2001 CT Decision – and lower courts employed CPI in multiple judgments.[18] The 2006 Report similarly recommended

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13 ProInversión, Foreign Direct Investment, at http://www.investinperu.pe/modulos/JER/PlantillaStandard.aspx?are=1&prf=0&jer=6037&sec=17O; OECD Investment Policy Review.

14 "Peru IIAs," at http://investmentpolicyhub.unctad.org/IIA/CountryOtherIias/165#iiaInnerMenu.

15 **Ex. CE-11**, Constitutional Tribunal, Decision, March 15, 2001.

16 **Ex. CE-12**, Opinion issued on Draft Laws N° 578/2001-CR, N° 7440/2002-CR, N° 8988/2003-CR, N° 10599/2003-CR N° 11459/2004-CR, and N° 11971/2004-CR, which proposes the "Legal Certainty for the Physical and Legal Restructuring of parcels affected by the Land Reform Process and Land Reform Debt Adjustment and Payment Act," p. 13.

17 **Ex. CE-13**, Patricia Velez and Terry Wade, "Peru's Congress approves bill to pay land bonds," Reuters, July 19, 2011.

18 *See e.g.*, **Ex. CE-14**, Supreme Court, Constitutional and Social Law Chamber, CAS N° 1002-2005 of July 12, 2006, Sections 5 and 15; *see also* **Ex. CE-15**, Supreme Court, Constitutional and Social Law Chamber, CAS N° 1958-2009 of January 26, 2010, Foundation 4.

use of the CPI method, observing that the CPI is the "official factor applied by the State to update national accounts," and concluding that no government or private agency "has questioned the validity" of the CPI for such purposes.[19]

C. Gramercy's Investment in Land Bonds

22. It was during this period – after the Constitutional Tribunal and other Peruvian institutions had clearly established that the Land Bonds had to be paid at current value using the CPI method, and when Peru was actively encouraging foreign investment – that Gramercy invested in the Land Bonds.

23. Gramercy began purchasing Land Bonds at the end of 2006. Gramercy was permitted to do so by Decree Law N° 22749 of 1979, which expressly permits the free transferability of the Land Bonds.[20] Over the next several years, it acquired nearly 10,000 Land Bonds. The Land Bonds are physical bonds, with annual payment coupons attached. To acquire them, Gramercy had to negotiate the purchase and take physical custody of the Land Bonds from numerous Peruvian sellers who did not want to wait any longer to receive at least some value in respect of the previous land expropriations. All of these transactions took place in Peru, and all of the money Gramercy invested in the Land Bonds was paid into Peru.

D. The 2013 CT Decision

24. Over the past two and a half years, it has become clear that the Government does not intend to honor its obligation to pay the updated value of the Land Bonds.

25. The Government's intentions became apparent on July 16, 2013, the date the Constitutional Tribunal issued the 2013 CT Decision. In that ruling, the Constitutional Tribunal affirmed the Government's obligation to pay the Land Bonds' current value, but rejected the well established CPI method for updating the Land Bonds. Instead, the Constitutional Tribunal specified a so-called "dollarization" method. Under this method, the Government was directed to calculate the adjusted value of the Land Bonds by first indexing the existing obligations to the equivalent in U.S. dollars at a so-called "parity exchange rate," and second applying to that dollar-equivalent value the interest rate for United States Treasury Bonds.[21] The Constitutional Tribunal ordered that "within six months of this Ruling, the Executive Branch shall issue a supreme decree regulating the procedure for the registration, valuation and forms of payment of the land reform bond debt."[22]

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19 **Ex. CE-12**, p 14.

20 **Ex. CE-16**, Decree Law N° 22749, November 13, 1979, Article 5 ("The Land Reform Bonds shall be freely transferable.").

21 **Ex. CE-17**, Constitutional Tribunal of Peru, Ruling, July 16, 2013, Foundation 24.

22 *Id.* Dispositive section 3.

26. The Constitutional Tribunal rejected the CPI method on the purported basis that it would "cause severe impacts in the Republic's budget" and would potentially render payment of the debt "unfeasible."[23] This premise had no support in the record, was not part of the Government's formal pleadings, was not presented to the bondholder claimants so that they had an opportunity to confront it, and is manifestly incorrect. The Peruvian Ministry of Economy and Finance ("MEF") has acknowledged that it has conducted no analysis that would support this position,[24] and multiple experts have opined that Peru is able to support the debt, estimated at around US$5 billion using a CPI methodology.[25] Peru has a US$200 billion GDP, a significant fiscal surplus, low debt-to-GDP ratio, and favorable credit ratings that give it easy access to the U.S. and international capital markets.[26] Indeed, the international markets would surely be surprised to learn that Peru could not pay a US$5 billion bond obligation through the issuance of new bonds, given that Peru has long touted its economic success when selling billions of dollars of new bonds to raise capital from the U.S. and international markets.[27]

27. Moreover, the 2013 CT Decision was not only dubious on its face; it has now emerged that it was the product of a shockingly tainted process.

28. Just days after the 2013 CT Decision was issued, on July 22, 2013, Carlos Mesía, a Senior Peruvian Justice on the Constitutional Tribunal, sent a letter to Chief Justice Urviola, asserting that a "dissent" appended to the 2013 CT Decision and attributed to Justice Mesía was not in fact his dissent, and contained alterations to which he had not consented.[28] The dissent in question endorsed the CPI method for updating the Land Bonds' value.

29. The chain of events surrounding this decision, as corroborated by the testimony provided by Justice Mesía, is as extraordinary as it is incompatible with the rule of law and the independence of the judiciary. According to Justice Mesía, after two years of study and deliberation, by the beginning of July 2013 Justice Eto produced a draft decision upholding the bondholders' claim and requiring payment based on CPI.

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23 *Id.* Foundation 25.

24 **Ex. CE-18**, Ministry of Economy and Finance, Memorandum N° 447-2014-EF/52.04 of October 15, 2014.

25 **Ex. CE-19**, Benavides et al. Expert Report, February 15, 2015, p. 1. *See also* **Ex. CE-20**, Standard & Poor's, Supplementary Analysis: Republic of Peru, September 30, 2015, p. 12 (citing an estimate of the Land Reform debt at US$ 4 billion); **Ex. CE-21**, Moody's Investors Service, FAQs on Peru's Bonos de la Deuda Agraria, December 18, 2015; **Ex. CE-22**, Egan-Jones Ratings Company, Egan-Jones Assigns A First-time Rating of "BB" To The Republic Of Peru's International Bonds, November 17, 2015, p. 7 (citing former Minister Benavides' estimate of US$ 5.1 billion).

26 **Ex. CE-23**, Lyubov Pronina, Peru Sells First Euro Bond in Decade as Funding Costs Fall, Bloomberg, October 27, 2015.

27 *See e.g.* Agencia de Promoción de la Inversión Privada – Perú (Proinversión), description of the Peruvian economy, available at: http://www.investinperu.pe/modulos/JER/PlantillaStandard.aspx?are=0&prf=0&jer=5651&sec=1.

28 **Ex. CE-24**, Letter from Carlos Mesia sent to Oscar Urviola, July 22, 2013, p. 1.

The six Constitutional Tribunal members discussed the draft in conference on Monday, July 8, 2013, and a majority of them endorsed it. In particular, four justices agreed to join the opinion – Justices Eto, Mesía, Alvarez and Urviola, with signature blocks for each appearing on the draft, and Justices Eto and Mesía signing the draft immediately.[29]

30. However, the news of that decision must have been leaked to President Humala or those close to him. Just one day later, on Tuesday, July 9, 2013, President Humala publicly warned the Constitutional Tribunal to "abstain from issuing rulings on sensitive topics . . . . such as, for example, the land reform bonds."[30] Two days later, on Thursday, July 11, 2013, an emissary of President Humala, Eduardo Roy Gates, made an after-hours visit to Chief Justice Urviola.[31]

31. Everything changed after that visit. The following Tuesday, July 16, 2013, Chief Justice Urviola suddenly offered a new decision, one that rejected CPI in favor of dollarization. Chief Justice Urviola instructed Justice Eto to sign the new draft and falsely present it to the other Justices as though Justice Eto had been its author.[32] Justice Mesía was stunned by this last minute about face. He refused to sign the new decision and demanded that Chief Justice Urviola afford him at least forty-eight hours to review the new draft and write his dissent, as the Constitutional Tribunal's internal rules required. However, Chief Justice Urviola did not allow Justice Mesía the time he was legally entitled to receive.[33] Instead, that afternoon someone used significant amounts of white-out and a typewriter to transform what had been the original majority opinion endorsing CPI into what purported to be Justice Mesía's dissent – erasing Justice Eto's signature and the signature blocks for Justices Urviola and Alvarez.

32. On the basis of Justice Mesía's forged "dissent," Chief Justice Urviola considered that there was a 3-3 "tie" at the Constitutional Tribunal, entitling him to cast a tie-breaking vote, thereby giving the new decision the four votes required to make it effective. The Constitutional Tribunal then issued the new "majority" decision along with Justice Mesía's "dissent." According to Justice Calle, however, the 2013 CT Decision was issued without a majority, because the three dissenting Justices each espoused a different position (including Justice Mesía's forged dissent).[34] Therefore,

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29 **Ex. CE-25**, Institute of Legal Medicine and Forensic Sciences, expert report No. 12439 - 12454/2015, paras. 7-8, p. 5.

30 **Ex. CE-26**, "Ollanta Humala pidió al TC 'abstenerse a dar fallos en temas sensibles,'" El Comercio, July 9, 2013, p. 1.

31 **Ex. CE-27**, Register of visitors to the Constitutional Tribunal, July 11, 2013, p. 2. At the time, Mr. Gates was a legal adviser to President Humala.

32 **Ex. CE-28**, Statement to the Prosecutor's Office of Gerardo Eto Cruz, August 28, 2015, question 6.

33 **Ex. CE-29**, Statement to the Prosecutor's Office of Carlos Fernando Mesía Ramírez, questions 4, 6, 7, 9-12.

34 "Las Cosas Como Son," Interview of Justice Calle, December 20, 2015, available at: https://acceso360.imedia.pe/llorenteycuenca/es-PE/?mod=TrackingAVPlayer&task=openAV&companyNewsId=29190924&mediaType=2&sig=130bc3bb73aa2480024c954d720e47a32c2e04d25e051344ac7f2790810d73f5.

there was no "tie," and Justice Urviola was not authorized to exercise a tie-breaking vote.[35]

33. While these events may sound unbelievable, they have been largely corroborated by subsequent events. For his part, Justice Urviola admitted in a televised interview defending that decision that he had been in contact and even coordinated with the MEF in the course of issuing the 2013 CT Decision.[36] Then, in March 2015, an individual bondholder filed a criminal complaint against the Court Secretary to the Constitutional Tribunal, alleging falsification of court documents in connection with Justice Mesía's dissent.[37] Justice Mesía later joined in the complaint.[38] Multiple sources substantiate the allegations in the complaint and Justice Mesía's recounting of events, including the sworn testimony of two other Constitutional Tribunal justices.[39] A forensic report prepared by the Institute of Legal Medicine and Forensic Sciences confirms that white-out was used to alter the original draft.[40] The report contains multiple images of the "dissent," showing it to be literally splattered with white-out.

34. The foregoing events led Lima prosecutors to charge the Court Secretary to the Constitutional Tribunal, Oscar Diaz, with falsification of court documents in December 2015.[41] On January 6, 2016, a Peruvian judge ruled that there was sufficient evidence on the record against Mr. Diaz to merit the initiation of formal criminal proceedings overseen by the judiciary.[42]

E. The 2014 Supreme Decrees

35. In January 2014, it became clear that the 2013 CT Decision was part of a broader strategy by the Government to evade its obligation to pay the fair value of the Land Bonds. At that time, the MEF, led by then-Minister and current Ambassador to the U.S., Luis Castilla, issued the Supreme Decrees. The Supreme Decrees purported to implement the 2013 CT Decision.[43] In reality, the Supreme Decrees take advantage of

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35 *Id.*

36 Interview available at: https://www.youtube.com/watch?v=tTTF9CDr45M.

37 **Ex. CE-30**, Criminal complaint of Augusto Pretel, March 30, 2015.

38 **Ex. CE-31**, Motion of Carlos Mesía before the 12th Prosecutor of Lima, October 23, 2015.

39 **Ex. CE-28**, Statement to the Prosecutor's Office of Gerardo Eto Cruz, August 28, 2015, questions 6 and 7; **Ex. CE-32**, Statement to the Prosecutor's Office of Ernesto Julio Álvarez Miranda, August 12, 2015, question 15; **Ex. CE-33**, "¡Escándalo por sentencia adulterada en el TC!," Diario Exitosa, June 25, 2015, p. 3.

40 **Ex. CE-25**, Institute of Legal Medicine and Forensic Sciences, expert report No. 12439 - 12454/2015, pp. 27-29.

41 *See* **Ex. CE-34**, "Ministerio Público denuncia adulteración de resolución del TC sobre bonos de la deuda agraria," Gestión, December 8, 2015.

42 *See* **Ex. CE-35**, "PJ investiga a relator del TC por falsificación de documentos," El Comercio, January 7, 2016. *See also* **Ex. CE-36**, Transcript of the hearing on charges filed against Oscar Diaz, January 6, 2016.

43 **Ex. CE-37**, Supreme Decree N° 17-2014-EF; **Ex. CE-38**, Supreme Decree N° 19-2014-EF.

the value depressing aspects of the 2013 CT Decision, but also go much further, resulting in the near-total destruction of the value of the Land Bonds, even in contravention of other aspects of the 2013 CT Decision.

36. The Supreme Decrees, endorsed by Minister Castilla and other officials, are pernicious and even deceitful. They purport to fulfill the Constitutional Tribunal's mandate to pay current value and not only nominal value, when in fact they do just the opposite.

37. The Supreme Decrees calculate the updated principal amount due on each Land Bond by a mathematical formula. The formula looks complex and its implications can be understood only by making a series of calculations. After making such calculations, it becomes clear that the Supreme Decrees use a flawed and artificially high "parity exchange rate" that amplifies, rather than eliminates, the effects of hyperinflation. In this way, the Bonds' face value is translated into a very low amount of U.S. dollars, equivalent to less than one percent of the updated value under CPI. The Supreme Decrees then apply to the incorrectly restated principal amount a significantly lower interest rate than that stated in the Land Bonds. Instead of applying a four to six percent interest rate and repayment terms from twenty to thirty years, the Supreme Decrees apply the interest rate for U.S. Treasury bills (also known as T-bills) of just one-year duration, which is less than one percent. The practical result is to reduce the worth of the Land Bonds to less than half of one percent of the value under the CPI method (i.e., a 99.5% reduction from current value).

38. But the Supreme Decrees do not stop there. They grant the Government unbridled discretion to delay payment of the Land Bonds through a process envisioned to take up to ten years – during which the Bonds bear no interest – at the end of which the Government reserves the right to choose any form of payment – which could include new interest free bonds – or to refuse to pay altogether. Additionally, the Supreme Decrees provide an order of priority for the payment of the Land Bonds, mandating that companies that bought Land Bonds with "speculative ends" – which presumably is meant to describe Gramercy – are to be repaid, if at all, after all other bondholders. Finally, the Supreme Decrees impose on bondholders a significant burden merely to participate in a process with no guarantee of payment: the waiver in advance of all rights and claims under the Land Bonds.[44] Even those bondholders with pending court proceedings in which no ruling has been issued are bound by the updating formula set forth in the Supreme Decrees.[45]

39. The Supreme Decrees are thus a scheme to make the Land Bond debt vanish without payment. Peru has been so desperate to wish away the Land Bond debt

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[44] **Ex. CE-37**, Supreme Decree N° 17-2014-EF, Articles 4, 17, 19 and Final Supplemental Provisions N° 1 and 2.

[45] *Id.* Final Supplemental Provision N° 2.

that it has even made misleading statements and omissions about them in its prospectuses and prospectus supplements filed with the SEC as recently as 2014 and 2015.[46]

F. The Constitutional Tribunal's Rejection of Efforts to Set Aside the Supreme Decrees

40. Unsurprisingly, efforts in Peru to challenge the Supreme Decrees have been unsuccessful. On March 16, 2015, the Land Reform Bondholders' Association ("ABDA") filed an application to set aside the Supreme Decrees as contrary to the 2001 and 2013 CT Decisions. ABDA is the largest association of land bondholders in Peru, with over 340 members. In addition, 101 individual bondholder members, including Gramercy, expressly endorsed ABDA's application. That application described in detail how the Supreme Decrees in reality offered only nominal value and not current value, and provided substantial expert evidence to support ABDA's claim.

41. Just three weeks later, an unusually short period of time, and without even receiving an official or on-the-record rebuttal from the Peruvian Government, the Constitutional Tribunal refused to hear ABDA's application, summarily dismissing it for lack of standing and on the basis that the application was "premature." In one paragraph, the Constitutional Tribunal opined that ABDA – an organization whose sole purpose is to represent bondholders – had not demonstrated its "social representativeness" and thus could not intervene as an interested third party.[47]

IV. PERU'S BREACH OF ITS TREATY OBLIGATIONS

42. Peru's machinations to evade paying its Land Bond debt flout fairness, due process and the rule of law. Responsible States do not try to make US$5 billion of public debt – itself compensation for the expropriation of approximately US$42.4 billion of land – simply vanish by politically motivated court decisions adulterated with white-out, and by executive decrees that falsely promise to pay the debt but in reality wipe it out.

43. Whatever else might be said about these measures, including their validity or invalidity under Peruvian law, they violate Peru's international law obligations to Gramercy under the TPA: (*i*) not to expropriate Gramercy's investment (Article 10.7); (*ii*) to accord Gramercy's investment the minimum standard of treatment (Article 10.5); and (*iii*) to accord treatment no less favorable than that accorded to its own investors (Article 10.3).

44. Gramercy's investment is covered by the TPA and disputes relating to Gramercy's investment must accordingly be resolved pursuant to international law, as

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[46] **Ex. CE-39**, John C. Coffee, Jr., Legal Opinion to GFM, January 11, 2016, pp. 1-2.

[47] **Ex. CE-40**, Constitutional Tribunal, April 7, 2015 Writ, Foundation 6.

mandated by the TPA (Article 10.22). The TPA applies to "measures adopted or maintained by a Party relating to: (a) investors of another Party; [and] (b) covered investments . . ." (Article 10.1). The TPA defines investors of another Party to include "an enterprise of a Party, that attempts through concrete action to make, is making, or has made an investment in the territory of another Party" (Article 10.28). The TPA defines "investment" as "every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment," expressly stipulates that "bonds" qualify as covered investments (*id.*), and specifies that it protects investments "in existence as of the date of entry into force of [the TPA]" as well as those made after entry into force (Article 1.3). All Claimants are enterprises of the United States of America, a Party to the TPA, and own or control Land Bonds, which are a form of investment in the territory of Peru.

45. Gramercy accordingly hereby gives notice that, pursuant to Article 10.16, it intends to commence an international arbitration against Peru seeking redress for Peru's violations of Gramercy's Treaty rights. As compensation for the harm resulting from these violations, Gramercy will seek damages in excess of US$ 1.3 billion.

A. Breach of Article 10.7: Expropriation

46. By establishing an exclusive payment process that deprives the Land Bonds of all or substantially all their value, Peru has expropriated Gramercy's property in breach of Article 10.7 of the Treaty. Article 10.7(1) of the Treaty provides as follows:

> No Party may expropriate or nationalize a covered investment either directly or indirectly[48] through measures equivalent to expropriation or nationalization ("expropriation"), except: (a) for a public purpose; (b) in a non-discriminatory manner; (c) on payment of prompt, adequate, and effective compensation; and (d) in accordance with due process of law and Article 10.5 [Minimum Standard of Treatment].

47. The Supreme Decrees – standing alone or taken together with the tainted 2013 CT Decision – virtually extinguish the value of Gramercy's investment. Although Gramercy owns or controls more than US$1.3 billion worth of Land Bonds, under the Supreme Decrees, Gramercy could at most receive US$ 1,956,332 – less than half of one percent of the Land Bonds' true CPI value – and might receive nothing at all. Moreover, the payment process they set forth is exclusive, stripping bondholders of their right to continue pursuing relief in the Peruvian courts under CPI, leaving bondholders with no choice but to submit to their draconian terms. They thus constitute a direct expropriation or measures equivalent to expropriation.

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[48] Annex 10-B to the Treaty elaborates on the Parties' shared understanding in respect of conduct constituting an indirect expropriation.

48. Peru has not satisfied any – much less all – of the Treaty's conditions for a permitted expropriation. Peru's evasion of its debt has no legitimate public purpose, was implemented in a discriminatory manner, was not promulgated in accordance with due process and Peru's Article 10.5 obligations and of course has not been accompanied by payment of anything remotely resembling prompt, adequate and effective compensation. To the contrary, the measures' very objective was to *deprive* bondholders of compensation for an earlier expropriation.

B. Breach of Article 10.5: Minimum Standard of Treatment

49. By its conduct, Peru has breached Article 10.5 of the Treaty. Article 10.5 provides, in pertinent part:

> 1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.
>
> 2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide: (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the legal systems of the world; and (b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

50. Regardless of how the standard set forth in Article 10.5 of the Treaty is construed, the measures Peru has taken either individually or collectively plainly fall below that standard. Among other things: the Supreme Decrees require bondholders to waive all rights to seek relief in other fora – a measure that is unprecedented in any debt restructuring – imposing an exclusive payment scheme that deprives bondholders of their rights to enforce the Bonds under CPI in Peruvian courts; the Supreme Decrees falsely profess to pay current value of the Land Bonds, when in fact they deprive the Bonds of substantially all of their value; and the 2013 CT Decision Peru cites to justify the Supreme Decrees does not actually provide any justification for many value-destroying elements of the Supreme Decrees, and moreover the 2013 CT Decision was itself arbitrary, and was tainted by political interference and gross procedural irregularity, including the use of white-out to forge an official court record. Such State conduct violates the international law minimum standard of treatment, is unfair and inequitable, is

contrary to Gramercy's legitimate expectations, amounts to a denial of justice, and otherwise breaches Article 10.5.

C. Breach of Article 10.3: National Treatment

51. By placing legal entities with "speculative ends" last in line for payment of the Land Bonds, Peru has violated Article 10.3 of the Treaty. That Article provides, in pertinent part:

> 1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
>
> 2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

52. To Gramercy's knowledge, only Gramercy falls within the description of the bondholders appearing last in the order of priority for payment set forth by the Supreme Decrees. The fact that Gramercy would be given the lowest priority in the payment order constitutes a treatment less favorable than that accorded to comparable domestic investors or investments.

* * *

53. Gramercy sends this notice reluctantly. Gramercy has at all times preferred an amicable solution for the Land Bonds, and continues to do so. Gramercy remains ready to meet with Government representatives to explore solutions.

54. However, should the Parties prove unable to find an amicable, mutually-agreeable solution to the dispute during the Treaty waiting period, Gramercy intends to initiate arbitration against Peru, alleging breaches of Articles 10.3, 10.5 and 10.7 of the Treaty.

55. Gramercy reserves its right to amend or supplement this Notice, the requested relief and the amount claimed.

Respectfully,

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