
In the matter of

**Gramercy Funds Management LLC
Gramercy Peru Holdings LLC**
Claimants

v.

The Republic of Peru
Respondent

Response of the Republic of Peru

6 September 2016



RUBIO LEGUÍA NORMAND
Lima

WHITE & CASE
Washington, D.C.

Response of the Republic of Peru

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Response of the Republic of Peru

1. The Republic of Peru (“Peru”) hereby submits its Response (“Response”) to the Second Amended Notice of Arbitration and Statement of Claim dated 5 August 2016 (“Second Amended Notice”) filed by Gramercy Funds Management LLC (“Gramercy Management”) and Gramercy Peru Holdings LLC (“Gramercy Holdings,” and together with Gramercy Management, “Gramercy”), with reference to the Peru-United States Trade Promotion Agreement (the “Treaty”) and the UNCITRAL Arbitration Rules (the “Rules”).

I. Introduction

2. The Republic of Peru is a reliable sovereign that is in good-standing on its global sovereign bonds, and is implementing a process for the historic and lawful resolution of Peruvian agrarian reform bonds, for the benefit of all legitimate bondholders. Instead of participating in this process, Gramercy attacks Peru and the system that it has put in place, in an effort to obtain increased returns to which it has no right. It is Gramercy, not Peru, that has violated the object, purpose and requirements of the Treaty.

- **A Fiscally Responsible Sovereign**

Peru is an economically stable and fiscally responsible sovereign. It is a trusted ally of United States, a favorable host State for lawful investment and a trusted issuer of contemporary sovereign bonds. Efforts by Gramercy to portray Peru as a defaulting sovereign are unfounded.

- **The Unique History of the Agrarian Reform and Land Bonds**

The agrarian reform bonds have unique historical origins dating back almost half a century to an era of agrarian reforms adopted across Latin America. Utterly different from contemporary sovereign bonds, these old bearer instruments are subject to Peruvian law and jurisdiction and many years ago were given as compensation for the expropriation of land in Peru, as suggested by Gramercy’s nickname for them: “Land Bonds.” After years of hyperinflation and economic problems, the status of the Bonds was uncertain, with only partial or never-adopted efforts at resolution.

- **The Speculative Acquisitions of a Lone Fund**

Beginning a decade ago, in the midst of uncertainty, Gramercy was the lone fund that elected to amass the Bonds, allegedly acquiring possible domestic law claims for over 9,700 Bonds. Gramercy now seeks US\$ 1.6 billion, but it has not revealed how much it paid for the Bonds and has only provided a copy of one of the Bonds it allegedly acquired – a lone bond with a history not revealed by Gramercy, uncovering ongoing local litigation proceedings, in violation of the Treaty.

- **The Legal Resolution and Bondholder Process**

After years of uncertainty, the legal status of the “Land Bonds” was settled three years ago by a resolution of the Constitutional Tribunal and subsequent rulings that remain fully in force. Further to that mandate, Peru has established, implemented and is advancing a process to pay legitimate bondholders. Peru already has authenticated over 10,000 bonds, more than the total number of Bonds that Gramercy claims to hold. It is unfortunate that Gramercy undermines the procedure for others in an effort to advance its own self-interest.

- **The Gramercy Attack Campaign**

Gramercy has mounted an attack campaign to harm Peru, aligning paid lobbyists, secondary ratings agencies, one-sided experts and public relations firms. Having failed to consult respectfully with Peru, Gramercy intentionally commenced an international arbitration just prior to Peru’s presidential election, in a vain attempt to intervene in the peaceful, democratic transition in the country. Gramercy’s desperate smear campaign reveals its uncertainty about its ability to trump Peru in actual Treaty proceedings, where aggravating conduct is impermissible.

- **Gramercy’s Procedural and Jurisdictional Uncertainties**

In its incessant media campaign, Gramercy has not revealed its dubious re-submission of an altered Notice of Intent, the resignation of the arbitrator that Gramercy initially appointed or its efforts to re-file its case which have affected procedural steps including the constitution of the arbitral tribunal. The proceeding suffers from grave jurisdictional deficiencies and a failure to respect critical Treaty requirements, including Gramercy’s simultaneous pursuit of local litigation proceedings and this Treaty proceeding. Also, Gramercy’s efforts to avoid the Spanish language and subject Peru to New York jurisdiction only reveal its misgivings about the Peruvian law instruments it allegedly chose to acquire.

- **Gramercy’s Dubious Claims and Calculations**

Despite its noisy demands, Gramercy already enjoys access to a bondholder process that encompasses the elements that Gramercy has stated it seeks: a verification procedure, a valuation methodology, a payment methodology, an implementation schedule and bondholder communications. Gramercy acquired potential claims at amounts that were deeply discounted due to their uncertain status. The Treaty was not in force and was not referenced in Gramercy’s contemporaneous due diligence memorandum. The Treaty does not provide for such speculative expropriation claims or demands for preferential, not equal, treatment. Nor does it provide for damages that are grossly misaligned with any reasonable expectations, such as the ever-evolving calculations which Gramercy has newly provided, and which Peru will address in due course in the context of this proceeding.

3. Investor-State dispute settlement is designed to channel disputes into a neutral procedure. Gramercy chose to launch a Treaty proceeding, but its case has been tainted by missteps from the start, such as its attack campaign; its failure to provide support for its claims; its disregard for procedure; its shifting positions and violations of the Treaty.

4. Among other things, it is noteworthy that Gramercy has filed not one but two Notices of Intent, and not one but three Notices of Arbitration. Specifically, Gramercy filed a “Notice

of Arbitration and Statement of Claim” dated 2 June 2016 (“Notice of Arbitration”) immediately prior to the presidential election in Peru. After Peru responded preliminarily on 5 July 2016, Gramercy then filed an “Amended Notice of Arbitration and Statement of Claim” dated 18 July 2016 (the “Amended Notice”),¹ without any procedural rationale, which Peru was diligently assessing for weeks. Gramercy then filed its Second Amended Notice on 5 August 2016, together with a transmittal letter stating that Gramercy “considers that, at the latest as of today’s date, all conditions have been met for the formation of an arbitration agreement between Gramercy and Peru and the claims set forth in the Notice have been properly submitted to arbitration.”²

5. Peru disagrees. The quantity of Gramercy’s submissions has undermined rather than assisted its case. For all of the reasons stated herein, and based on the scant evidence provided to date, Peru does not concede that all conditions for the formation of an arbitration agreement between Gramercy and Peru have been met, or that Gramercy has satisfied requirements necessary for jurisdictional, merits or other findings that would support this unfounded case.

6. For the avoidance of doubt, Peru does not elect to treat this Response as its Statement of Defense, and expressly continues to reserve all of its rights with regard to this matter.

II. Facts

A. A Fiscally Responsible Sovereign

7. The Republic of Peru has demonstrated over an extended period of time, over consecutive governments, through fat and lean years in the global economy, a commitment to macroeconomic stability and fiscal responsibility. This continues to be the case today, notwithstanding self-serving efforts by Gramercy to discredit and harm Peru, to the detriment of Peruvians, including holders of Agrarian Reform Bonds.

8. It was a hallmark moment for Peru and its people when the International Monetary Fund (“IMF”) and World Bank Group elected to hold their Annual Meetings in Lima in October of 2015, at a site containing the Museum of the Nation harboring Peruvian cultural patrimony and a gleaming new spire housing the Bank of the Nation.

9. Thousands of international officials arrived in Lima for the meetings. World Bank President Jim Yong Kim stated, “[t]his country is a far more prosperous and just society today than a generation ago. Over the past 10 years, Peru’s GDP has increased at an average rate of over 6 percent each year.”³ IMF Managing Director Christine Lagarde declared:

*Lima is the first Latin American city to host the Annual Meetings in almost 50 years. It has been a long time, but it also means that Peru is no longer the proverbial “country of the future” – it is the “country of the present.”*⁴

10. Since establishing a stable macroeconomic foundation in the 1990s, Peru has achieved average annual growth of over five percent since 1993, and 5.7 percent since 2002.⁵ Peru also consistently has been ranked among the freest economies in Latin America.⁶

11. Peru concurrently has earned a reputation for careful debt management and fiscal responsibility. Since resolving historical external debt issues in the 1990s, Peru has adopted a reliable approach to the management of external debt and achieved widespread praise for its reliability as an issuer of contemporary sovereign debt. Peru registered with the United States Securities and Exchange Commission (“SEC”) as an issuer of debt securities in 2002, and it subsequently has made more than a dozen global bond offerings, under the watchful eyes of underwriters, lawyers, ratings agencies and the global markets.

12. Peru achieved investment grade status in 2008, when the principal credit ratings agencies each determined that it had earned an upgrade – “Peru Rocket Takes Off,” declared *Latin Finance*.⁷ As Standard & Poor’s explained, the investment grade rating was “supported by the significant decline in Peru’s fiscal and external vulnerabilities within a context of high and diversifying sources of growth with low inflation and strengthening macroeconomic fundamentals.”⁸ These agencies have rated Peru as investment grade and its outlook as “stable.”⁹ As a recent example, Fitch recently affirmed Peru’s sovereign rating, highlighting that “Peru’s creditworthiness is underpinned by its established track record of macro policy credibility, consistency, and flexibility” and that “[s]uccessive Peruvian administrations have maintained credible economic policies.”¹⁰

13. When Peru issued global bonds last year, demand exceeded supply four times over.¹¹ The markets similarly have continued to demonstrate confidence in Peru, including in connection with an issuance earlier in 2016, when Peru completed a successful issuance of

global bonds.¹² The market responded favorably and the issuance yielded one billion Euros, reflecting the confidence of global markets in Peru and its stability and fiscal responsibility.

14. Since the governmental transition in Peru on 28 July 2016, Peruvian independence day, leading ratings agencies and the market have continued to demonstrate high confidence in Peru. Standard & Poor's affirmed Peru's investment grade rating on 10 August 2016 and confirmed that the outlook for Peru remained "stable."¹³ It stated that "ratings on the Republic of Peru reflect the country's track record of pragmatic and predictable policies and some progress on structural reforms over the past two decades through various political transitions."¹⁴ Markets similarly have confirmed their confidence in Peru, with strong demand for Peruvian sovereign bonds¹⁵ and a broad consensus that "Peru's creditworthiness remains sound."¹⁶

B. The Unique History of the Agrarian Reform Bonds

15. Agrarian reform bonds ("Agrarian Reform Bonds") are bearer instruments provided as compensation for land decades ago in Peru. They emerged as part of reforms adopted under Peruvian law almost half a century ago – long before the contemporary era of globalized macroeconomic policies, contemporary global bonds or contemporary investment treaties. The Agrarian Reform Bonds (1) arose under unique historical circumstances, (2) are readily distinguishable from contemporary global bonds and sovereign finance and (3) remained under a cloud of legal uncertainty until a few years ago.

1. Origins

16. The "Land Bonds," as Gramercy calls them, relate to payments for land, subject to local law and courts. They are the product of a unique era in Latin American history which is not and cannot be subject to claims in this contemporary Treaty proceeding. During the 1960s, with international encouragement, Latin American governments adopted "agrarian reforms" to reallocate the structure for landholdings and economic activity in the agrarian sector, as an element of modernization and economic growth with broader distribution of property-holding as a foundation. Implementation of agrarian reforms across the region was inconsistent and slow.¹⁷

17. Agrarian reform was also part of a broader range of economic issues of the era, including the relationships between states and investors. As 1969 approached, the government of Fernando Belaúnde Terry announced the resolution of an investor-state dispute with an American company related to the La Brea & Pariñas oil fields. At that time, contemporary investment protection treaties did not exist and Latin American states had announced a resounding "no" to a new World Bank-based system for investor-state dispute settlement, as a World Bank official seconded to the nascent International Centre for Settlement of Investment Disputes ("ICSID") explained in an article of the era.¹⁸ Absent an international legal framework for resolution of the dispute, the matter was resolved through negotiations that resulted in the payment of compensation by the state in a deeply-questioned deal which prompted widespread consternation when final details became public.

18. Promptly thereafter, and not unlike political developments of the era elsewhere, a military government assumed control of the country. Led by General Juan Francisco Velasco Alvarado, the new government expropriated La Brea & Pariñas and soon set about a broad reform of agrarian land-holdings through the expropriation of land. As summarized by a future State Department official, "Peru's expropriation of the International Petroleum

Company property in 1968 may turn out to have been the most important single event in U.S.-Latin American relations in the decade.”¹⁹ It became “a symbol of the crisis in relations between the United States and Latin America,” as the *New York Times* described in an article dated 28 February 1969²⁰ – unlike the exceptionally positive relationship that Peru and the United States have since shared for many years.

19. The new government promulgated the Law of Agrarian Reform, Decree Law No. 17716, on 14 June 1969, a day that was dubbed the Day of the Campesino.²¹ Other countries in the region adopted similar laws during that era, including Chile, and Venezuela.²² The Agrarian Reform Law established a legal framework for Peru’s agrarian reform through which the government would redistribute certain landholdings. The Agrarian Reform Law correspondingly authorized the Executive Power to issue the Agrarian Reform Bonds to compensate expropriated landholders.²³

20. Over more than a decade, Peru redistributed more than 8.2 million hectares of land to over 360,000 beneficiaries, and adopted multiple Supreme Decrees authorizing the issuance of Agrarian Reform Bonds.²⁴

2. Characteristics

21. Consistent with their unique place in history and their targeted purpose of compensating landowners, the Agrarian Reform Bonds had very particular characteristics. By law, the Agrarian Reform Bonds had characteristics that are utterly different from contemporary global bonds and sovereign finance:²⁵

- **Purpose:** Whereas contemporary global bonds are typically issued to raise capital for the sovereign, the Agrarian Reform Bonds were provided as compensation for land.
- **Marketing:** Whereas contemporary global bonds are marketed internationally, the Agrarian Reform Bonds were part of a domestic land reform program. Suffice it to say, Peru did not go on international road shows inviting foreign acquisition of Agrarian Reform Bonds.
- **Market Placement:** Whereas contemporary global bonds are listed on international exchanges to be globally traded, the Agrarian Reform Bonds were given to expropriated landowners, and were never listed on a stock exchange.
- **Denomination:** Whereas contemporary global bonds are often issued in foreign currency and otherwise structured to attract international purchasers, the Agrarian Reform Bonds were issued for in Soles Oro, the currency of Peru at the time.
- **Governing Law:** Whereas contemporary global bonds are often governed by foreign law, the Agrarian Reform Bonds are subject to Peruvian law.
- **Jurisdiction:** Whereas contemporary global bonds are often subject to foreign jurisdiction, the Agrarian Reform Bonds are subject to the jurisdiction of Peruvian courts.
- **Format:** Whereas contemporary global bonds are recorded electronically, the Agrarian Reform Bonds are bearer instruments, i.e., they are literally physical paper documents.

22. Professor Paul G. Mahoney highlighted the critical differences between contemporary sovereign bonds and the Agrarian Reform Bonds in a legal opinion for the Office of Public Debt of the Ministry of Economy and Finance during his tenure as the long-standing Dean of the University of Virginia School of Law, where he has also taught for more than 25 years with a focus on securities regulation, corporate finance and related issues, after leaving private practice in corporate and securities transactions, and clerking for Justice Thurgood Marshall of the U.S. Supreme Court.²⁶

3. Prior Uncertainties

23. The legal status of the Agrarian Reform Bonds remained under a cloud of uncertainty for many years. After using the Agrarian Reform Bonds as compensation, and even before they reached maturity, economic dislocation, inflation and currency changes rendered their face value effectively worthless. Inflation grew from 9.5% in 1973 to 67.7% in 1979, and from 163.4% in 1985 to 7,481.7% in 1990.²⁷ Peru also changed currencies in 1985 and 1990, replacing the Sol de Oro with the Inti (1 Inti = 1,000 Soles Oro), and the Inti with the Nuevo Sol (1 Nuevo Sol= 1,000,000 Inti).²⁸

24. Peru thereafter adopted wide-ranging reforms to reduce inflation, stabilize the economy and create a stable foundation for growth and development, as discussed further above. In this context, the Agrarian Development Bank, the entity previously in charge of paying the Bonds, was liquidated.²⁹

25. Over the following years, Bonds reached or were reaching the end of their tenor, prescription periods were running, and there was no agreement as to the proper method for determining the value of the Bonds. Peru considered both legislative and judicial solutions, without reaching a resolution. Among other things, Peru adopted various norms relating to the Bonds reflecting alternative concepts for determining their current value, including:

- Law No. 653 (1991) provided that “[t]he value of the expropriated lands will be paid at their market value and in cash.”³⁰
- Law No. 26207 (1993) repealed Law No. 653.³¹
- Law No. 26597 (1996) provided that the Bonds should be paid according to their nominal value plus interest at the rate for each Bond.³²
- Emergency Decree No. 088-2000 (2000) provided for the determination of the current value of the Bonds according to a dollarization method.³³

26. A partial but incomplete clarification emerged on 15 March 2001, when the Constitutional Tribunal issued a Sentence (“March 2001 Sentence”) whereby it ruled on the constitutionality of Law No. 26597, holding, among other things, that it was unconstitutional to value the Bonds according to their nominal value.³⁴ The March 2001 Sentence did not establish a procedure for payment or a method for calculating the value of the Bonds. This remained the prevailing ruling under Peruvian law for the next twelve years.

27. During the subsequent decade, uncertainties persisted. In a sentence issued on 2 August 2004, the Constitutional Tribunal upheld the constitutionality of Emergency Decree No. 088-2000, finding that the dollarization method was an appropriate method of determining the current value of the Bonds.³⁵ In addition, between 2001 and 2011, at least nine different bills were introduced to the Congress of Peru on the issue of the Bonds, of

which only two passed, and both were vetoed and, thus, did not become law. Further evidencing the persistent lack of a clear legal rule, these bills proposed a variety of methodologies to value the Bonds, including on the basis of nominal value, adjusted Consumer Price Index (“CPI”), CPI for the Lima Metropolitan area, and as dollarization.³⁶

C. The Resolution Of The Agrarian Reform Bonds

28. Years of longstanding legal uncertainty ended in 2013, when the Constitutional Tribunal issued a series of rulings for the resolution of the agrarian reform bonds for the benefit of bondholders. Specifically, the Constitutional Tribunal mandated an administrative process for bondholders and a method for determining the Bonds’ current value. Further to that mandate, Peru has established, implemented and is advancing a process to pay bondholders.

1. The Legal Resolution

a. The Constitutional Tribunal Resolution

29. Following years of litigation and uncertainty, on 16 July 2013, the Constitutional Tribunal, issued a Resolution (the “July 2013 Resolution”) that resolved uncertainties pending since the March 2001 Sentence, which had held that Peru was required to make payment of the Bonds at their current value, but which had not fixed the procedure or methodology for doing so.³⁷ Correspondingly, the July 2013 Resolution (i) mandated a process for paying bondholders and (ii) established parameters for the appropriate method for determining the current value of the Bonds.

30. Regarding the establishment of a process for bondholders, the Constitutional Tribunal mandated that Peru establish an administrative process, regulated by Supreme Decree, to pay holders of the Agrarian Reform Bonds. In particular, the July 2013 Resolution required procedures to verify the authenticity of the instruments and the identity of holders, calculate the current value of Bonds, and determine the form of payment, which potentially could be in cash, land, or bonds.³⁸

31. Regarding the methodology for calculating the current value of the Bonds, the Constitutional Tribunal recognized various alternatives, considering formulas on the basis of (i) dollarization, (ii) CPI, and (iii) indexing.³⁹ The Constitutional Tribunal rejected the CPI method because, among other things, it considered that CPI is not a realistic measure during periods of severe economic crisis, insofar as it “disconnects from the economic reality because it ceases to represent what economic entities consume or save.”⁴⁰

32. Ultimately, the Constitutional Tribunal held that the so-called “dollarization” method should be applied, concluding that it is the most appropriate for several reasons, including that the U.S. Dollar is safe-haven currency in times of hyperinflation,⁴¹ and the legal precedent of Urgency Decree No. 088-2000,⁴² as well as the potential budgetary impact of other methods that might make payment impracticable.⁴³

b. The Validity and Confirmation Of The Resolution

33. The July 2013 Resolution by the Constitutional Tribunal was and remains binding and applicable under Peruvian law. Nothing has changed this fact as a matter of law or otherwise.

34. The Constitutional Tribunal plainly had a difficult task in resolving the issue of the Agrarian Reform Bonds given the many years of legal uncertainty. In this context, and as is often the case in the United States and elsewhere, the vote was split. Three magistrates voted in favor of the final ruling (Magistrates Urviola, Eto Cruz, and Alvarez Miranda) and three against (Magistrates Vergara Gorelli, Mesia Ramirez and Calle Hayen). Mag. Urviola, as President of the Constitutional Tribunal, cast the deciding vote.⁴⁴

35. Gramercy states that the July 2013 Resolution was “tainted by forgery” involving liquid paper.⁴⁵ According to publicly available information, a magistrate decided to vote in favor of the Constitutional Tribunal’s final resolution,⁴⁶ and his signature on another draft was correspondingly removed by a clerk of the court, who is subject of a proceeding involving the Peruvian State as an aggrieved party.⁴⁷ The proceeding is ongoing. The magistrate has confirmed that his vote was properly counted in favor of the final ruling.⁴⁸

36. The Constitutional Tribunal has confirmed and clarified the July 2013 Resolution on several occasions:

- The Constitutional Tribunal issued a Resolution (the “August 2013 Resolution”) rejecting two petitions to revoke the July 2013 Resolution (*recurso de reposición*) filed by the Ministry of Economy and Finance and Congress. Among other things, the Constitutional Tribunal confirmed the allocation of votes in the prior decision.⁴⁹
- The Constitutional Tribunal also clarified the scope of the July 2013 Resolution for judicial proceedings, holding that the dollarization methodology for calculating the current value of the Bonds would apply going forward, but not in cases where there already had been a valuation with *res judicata* effect.⁵⁰
- The Constitutional Tribunal issued a resolution on 4 November 2013 clarified certain procedural matters.⁵¹

37. The Constitutional Tribunal has not overturned the July 2013 Resolution, and it remains valid and binding.

2. The Bondholder Process

38. Pursuant to applicable law, Peru has established, implemented, and is continuing to advance a process for the payment of legitimate holders of the Agrarian Reform Bonds (the “Bondholder Process”).⁵² The objective of Peru, and its Ministry of Economy and Finance (“MEF”), has been and is to carry out the July 2013 Resolution of the Constitutional Tribunal, in accordance with Peruvian law, and to make correspondingly reasonable payments to holders of authentic Agrarian Reform Bonds.

39. In compliance with the July 2013 Resolution, the MEF developed Supreme Decrees setting forth the regulations for the Bondholder Process. In reports dated 17 January 2014, the General Directorate of Indebtedness and the Treasury (“DGETP”) highlighted that this

was further to the mandate of the Constitutional Tribunal,⁵³ and MEF's Office of the General Counsel highlighted the "*carácter mandatorio*" of the July 2013 Resolution,⁵⁴ as well as the "binding and non-appealable nature of the judgments of the CT."⁵⁵

40. Accordingly, on 18 January 2014, Peru issued Supreme Decree 017-2014-EF approving the administrative regulations for the Bondholder Process, open to all holders of Agrarian Reform Bonds not involved in judicial proceedings on the Bonds. Annex 1 to Supreme Decree N° 017-2014-EF, and Supreme Decree N° 019-2014-EF, set out parameters for implementing the methodology contemplated by the Constitutional Tribunal. To date, however, this methodology has never been applied to any bondholders given the necessary threshold steps to authenticate and register the Bonds of participating bondholders, which are ongoing.

41. Further to the mandate of the Constitutional Tribunal, and the implementing Decrees, the Bondholder Process consists of distinct administrative procedures, including the following sequential steps:⁵⁶

- **Authentication:** Holders of Agrarian Reform Bonds may request a verification of the authenticity of their Bonds by an expert forensic analysis (*peritaje grafotécnico*). To this end, the Dirección Ejecutiva de Criminalística ("DEC") has established a laboratory with specialized optical equipment for authenticating Bonds.⁵⁷ This involves detailed analysis of the Bonds' physical and graphical characteristics (printing, signatures, numbering, borders and shields, etc.), as well as a comparison to authentic bonds of comparable series, denomination and date. If the DEC determines that an instrument is an authentic Agrarian Reform Bond, the bondholder is notified so that it may continue with the registration procedure. If the DEC determines that an instrument is not an authentic Agrarian Reform Bond, the Bond is returned to the bondholder.
- **Registration:** Holders of authentic Agrarian Reform Bonds may file a request to be registered as legitimate bondholders together with supporting documentation accrediting the bondholder's identity and acquisition of the Agrarian Reform Bonds. For example, in the case of Agrarian Reform Bonds acquired by purchase or assignment, the holder must submit a legalized copy of the purchase or assignment agreement. DGETP determines whether a bondholder qualifies as a legitimate bondholder or not, and issues a Directorial Resolution to that effect.
- **Actualization:** Registered bondholders may request that DGETP calculate the current value of their Bonds in accordance with the methodology mandated in the July 2013 Resolution. In accordance with the Constitutional Tribunal's methodology, DGETP determines the current value of the Bonds, and issues a Directorial Resolution to that effect.
- **Determination of Payment Method:** Supreme Decree 017-2014-EF provides that once the current value of their Agrarian Reform Bonds has been calculated, legitimate bondholders may select from a menu of options for receiving that the payment to be determined by the MEF. DGETP finalizes the Bondholder Process by issuing a Directorial Resolution that establishes the payment method and the timeline for payment.

42. Hundreds of bondholders have participated in the Bondholder Process, thousands of Bonds have been authenticated and bondholders are now advancing beyond the

authentication phase and the registration phase to the phase for actualization of the value of their bonds and designation of method of payment. Peru has been developing and implementing the next phase of the process as always anticipated. Participating bondholders are entitled to file requests for reconsideration or appeal after receiving any Directorial Resolution, in accordance with Peru's Law of Administrative Procedure.

D. The Gramercy Intervention

43. Gramercy Management and Gramercy Holdings intervened in the history of the Agrarian Reform Bonds beginning over a decade ago, years before the Treaty came into force. Ironically, although highly critical of Peru, Gramercy has been unwilling, or unable, to provide, explain, and provide basic evidence regarding its own prior and ongoing conduct related to (1) its alleged acquisition of Bonds, (2) its participation in local judicial proceedings, (3) its attack campaign against Peru and (4) its failure to consult respectfully before launching this proceeding immediately prior to the presidential election in Peru.

1. Alleged Acquisitions by a Lone Fund

44. "Gramercy is the only legal entity that acquired Land Bonds as an investment,"⁵⁸ according to its founder, who submitted an amended witness statement with the Second Amended Notice. The profoundly speculative nature of Gramercy's apparent decision to acquire Bonds is evident in an internal Gramercy memorandum from 2006, which emphasizes "the complexity surrounding the investment opportunity"⁵⁹ and correspondingly cites no other interested funds. It is thus little surprise that, a decade later, the international press has described Gramercy as "A Lone Hedge Fund," which seeks allies that "aren't biting."⁶⁰ Perhaps that is why Gramercy instead has chosen to pay for allies including smaller ratings agencies, experts, lobbyists and more.

45. The story of how this lone fund decided to gamble on a speculative scenario dates back over a decade. Specifically, Gramercy states that its mission is "to exploit distressed investment opportunities in emerging markets,"⁶¹ and that it acquired over 9,700 Agrarian Reform Bonds between 2006 and 2008.⁶² Gramercy today alleges that the "state of [Peruvian] law" was "abundantly clear"⁶³ when it acquired bonds. Indeed, Gramercy claims that its research at the time revealed a "clear legal rule" regarding the status of the Bonds and that payment would be "calculated using a Peruvian consumer price index, plus interest."⁶⁴ But the reality was different a decade ago, as underscored by the sole contemporaneous evidence of any due diligence by Gramercy, a plain-looking memorandum, with no corporate markings, dated 24 January 2006 (the "2006 Memorandum"):

- In its discussion of the "the complexity surrounding the investment opportunity," Gramercy's 2006 Memorandum highlighted that the Bonds "remain in arrears."⁶⁵
- It stated that obtaining a court judgment and payment could take 10 years, but that there could be "some form of resolution."⁶⁶
- It noted that "the process of transferring title and bonds is a bit complex," and underscores the importance of "first review[ing] the physical bonds."⁶⁷
- It referred to "draft legislation," and notes that the issue of the updating the debt to current value is "further complicating matters."⁶⁸

- It specified that there is a “discrepancy” as to the proper valuation method, stemming from the government’s use of an “alternative inflation index” rather than CPI.⁶⁹
- It indicated multiple alternative valuation scenario, with total valuations for *all* Bonds (not just those that Gramercy may have acquired) ranging from US\$650 million to US\$3 billion.⁷⁰ Gramercy today states that it holds 20 percent of the total Bonds, thus suggesting a range of US\$130 million to US\$650 million (though Gramercy in this arbitration seeks up to US\$1.6 billion).
- It indicates that bondholders from whom Gramercy considered sourcing Bonds were willing “to sell at a low price” or at “40%” or “50%” of what the 2006 Memorandum called the total claim.⁷¹
- It does not mention the Treaty, which was not in force until years later.

46. Notably absent from the 2006 Memorandum is any mention of the dollarization method in Emergency Decree No. 088-2000 or the August 2004 Sentence which upheld it.

47. Whatever the strengths or weaknesses of Gramercy’s research, the facts of its alleged acquisitions are shrouded in mystery, as Gramercy so far has failed to provide even basic substantiation for its allegations that it purchased Agrarian Reform Bonds, much less its manner of doing so. To date, the lone fund has revealed a lone bond.

48. Despite the Treaty and applicable rules, basic information and evidence related to Gramercy’s alleged bond acquisitions are still missing. Gramercy has not submitted all of its alleged bonds or the documents through which it supposedly acquired the bonds. As *The Economist* has reported, Gramercy “refuses to disclose how much it paid for the bonds.”⁷² Reuters similarly confirms that Gramercy “has not disclosed publicly how much it paid for each bond,” and that Gramercy “would not comment on Gramercy’s potential return.”⁷³ In summary, Gramercy has not provided evidence as to how much it paid, why those amounts were rational and not exaggerated in the first place, or revealed fundamental related evidence. However this proceeding unfolds in the future, Gramercy can never change its failure to provide such fundamental information during consultations or in its multiple attempts to start the case.

2. Local Proceedings and the Lone Bond

49. It is noteworthy that the lone bond that Gramercy has revealed (through a copy of the physical instrument) has been subject to an ongoing judicial proceeding in Peru to which Gramercy is a party. Based on preliminary information discovered by Peru, the storyline of the lone bond is as follows:

- **The Relevant Decree:** On 11 May 1971, Peru issued Supreme Decree No. 176-71-AG, which provided for the State’s acquisition of the “El Choloque” land, located near the city of Ferreñafe in the Department of Lambayeque, on Peru’s northern coast.⁷⁴
- **The Land:** On 13 September 1972, the Land Judge of the Department of Lambayeque issued a Resolution providing for bonds to be provided to the relevant landowner in exchange for titles to land.⁷⁵

- **The Compensatory Bearer Bonds:** As compensation for land, Peru provided fifteen bearer bonds to the relevant landowner on 28 November 1972, including Bond No. 008615, the lone bond Gramercy has shared to date.⁷⁶ Collectively, the fifteen bonds issued to the relevant landowner had a face value of 5,163,000.00 Soles Oro.⁷⁷
- **The Face Value:** Bond No. 008615 is dated 28 November 1972. It is a Class B bond, issued for 10.000,00 Soles Oro, with an interest rate of five percent, and a term of 25 years, resulting in coupon value of 16.500 Soles Oro.⁷⁸ It attached 25 coupons, one of which was redeemable each year on 28 November from 1973 until 1997.⁷⁹
- **The Clipped Coupons:** The Lone Bond's coupons for 1973 through 1984 were clipped.⁸⁰ The remaining unpaid facial amount is 5.200 Soles Oro.⁸¹
- **The Alleged Acquisition:** In November 2006, the relevant bondholder signed a contract with a representative of Gramercy Holdings to transfer ownership of Bond No. 008615, along with Bonds Nos. 002386 and 024447. Gramercy agreed to pay US\$ 38,500.00.⁸² The corresponding amount for Bond No. 008615 appears to be approximately US\$ 380.⁸³
- **The Local Proceeding:** In November 2012, Gramercy filed a request to determine the current value of Bond No. 008615 and 11 other Bonds as part of a judicial proceeding in Lambayeque.⁸⁴
- **Current Status:** As of 2 June 2016, Gramercy provided the lone bond in the present Treaty proceeding. At the same time, as of 20 June 2016, Gramercy Holdings continued to be listed as a party in the local proceeding.⁸⁵
- **Amount:** Gramercy alleges that the current value of the lone bond is approximately US\$ 16,000.⁸⁶ As Reuters has noted, after considering comments from Gramercy, "Gramercy stands to make a return of around 4,153% over the 10 years it has held the bond."⁸⁷ Gramercy notably refused to reveal the amount paid for the lone bond, although it now specifies the amount it seeks to recover; correspondingly, Gramercy refused to specify the amount it seeks to recover on the three bonds, even though the amount paid for the three bonds has now been revealed. Based on an initial analysis, applying Gramercy's own methodology to the three bonds for which Gramercy admits to having paid US\$ 38,500.00, Gramercy is now seeking approximately US\$ 1,600,000 for the three bonds, reflecting a return of approximately 4,100%.

50. In its Notice of Arbitration, Gramercy alleged that, with respect to the Bonds it allegedly acquired, it had been "prosecuting cases in courts across Peru."⁸⁸ To date, the evidence produced by Gramercy as to such proceedings is an Expert Report dated 14 August 2014 seeking to calculate the current value of 44 Bonds. The Notice of Arbitration does not indicate what portion of Gramercy's alleged holdings was part of such proceedings, much less whether such proceedings are ongoing.

51. To leave no doubt, Gramercy specified in its original Notice of Arbitration: "Gramercy is a party to hundreds of legal proceedings in Peru."⁸⁹ In its Second Amended Notice, however, Gramercy changed and rewrote its allegations, newly stating that "GPH became eligible to apply to become a party to these legal proceedings," and ultimately

“initiated applications in seven of these Peruvian local proceedings.”⁹⁰ It also alleged that “GPH submitted petitions to withdraw in all seven of those legal proceedings.”⁹¹ Gramercy has not substantiated its assertions nor has it indicated what bonds have been subject to these proceedings. According to a resolution of the Superior Court of Lambayeque, Gramercy Peru Holdings was withdrawn from the judicial proceeding in Lambayeque involving the lone bond on 10 August 2016,⁹² five days after Gramercy’s Second Amended Notice.

52. In addition to its apparent participation in myriad local judicial proceedings, Gramercy Holdings was a signatory to a petition to the Constitutional Tribunal challenging the July 2013 Resolution and the Bondholder Process. Specifically, the petition of 16 March 2015 requested, *inter alia*, that the Supreme Decrees be modified to a CPI methodology.⁹³ By a vote of 5-1, the Constitutional Tribunal rejected the petition. According to the Constitutional Tribunal, the petition was premature.⁹⁴

3. The Gramercy Attack Campaign against Peru

53. Gramercy has made barely-veiled threats and public attacks seeking to tarnish the reputation of a respected State. It was the international press that first called Gramercy’s conduct a campaign, emphasizing over many months that Gramercy is “waging a campaign to make Peru pay off,” (*Wall Street Journal*),⁹⁵ and “seeking to stir up a revolt,” and “add pressure on the government” (*Bloomberg*).⁹⁶

54. Peru consistently has invited and sought a respectful approach despite Gramercy’s negative campaign. As Peru commented to Gramercy earlier this year:

*If Gramercy’s intention is to manage consultations effectively, the aforementioned conduct is counterproductive; if Gramercy’s intention is to manage a dispute effectively, it is not doing so; if Gramercy has other intentions, it should divulge them.*⁹⁷

55. The Gramercy attack campaign has continued nonetheless. Indeed, a lobbying campaign was always part of Gramercy’s contemplated strategy. Even before it ever acquired any Bonds, Gramercy considered in 2006 (an election year in Peru) that a “potential strategy would be to lobby a congress representative to call for a vote between the elections in April and the inauguration at end of July,” to take advantage of a “this lame duck period” in Peru.⁹⁸

56. A decade later, Gramercy elevated its strategy to an international scale, targeting the 2016 election year in Peru. It has aligned diverse elements of the pressure practices that have become commonplace for such funds. A recent article in the Huffington Post focuses on “The Vultures’ Vultures: How a New Hedge Fund Strategy is Corrupting Washington,” citing “mercenary campaigns” by hedge funds: “What makes the hedge fund pressure campaign distinctive is the ambivalence, or even nihilism, that lies behind the public policy suggestions. Hedge funds want whatever policy outcome will make their leveraged bet pay off.... The same playbook applied to entire countries ... amplifies the threat exponentially.”⁹⁹

- i. **Lobbying:** Beginning in 2015, Gramercy enlisted multiple lobbyists in the United States in an effort to pressure Peru to disregard applicable law and bend to Gramercy’s demand for a preferential payout. Among other things:¹⁰⁰
 - Gramercy enlisted multiple Washington-based lobbyists including the Podesta Group, the Daschle Group (affiliated with Baker Donelson Bearman

Caldwell & Berkowitz) and, more recently, McClarty Associates, involving multiple individuals spanning those groups, at the least.

- To structure and shield this arrangement, Gramercy’s counsel retained the Podesta Group and the Daschle Group, which collectively disclosed income of over half a million dollars for 2015 and the first quarter of 2016 for work related to “international finance issues” and activities directed, collectively, at the U.S. Trade Representative, Senate, House of Representatives, Department of State and Department of Agriculture. The Embassy of Peru in Washington subsequently has been approached on this issue by staffers from the U.S. Trade Representative and House of Representatives.
 - The relevant lobbying disclosure forms only tell part of the story. The registration form for each firm lists Gramercy Funds Management LLC as an affiliated organization, but the other forms do not. Nor do the forms indicate all individuals involved in related activities such as press relations and attempts to lobby the Embassy of Peru to the United States. Among other examples, the Podesta Group states externally that it acts on behalf of a group called the Peruvian-American Bondholders for Justice (“PABJ”) and undertakes activities such as issuing press statements, contacting journalists and maintaining a web site.¹⁰¹
- ii. **Negative Ratings:** Later in 2015, apparently unable to enlist the big three ratings agencies, Gramercy obtained material with which to smear Peru with from less-regarded ratings agencies. Among other things, Gramercy turned to Egan Jones,¹⁰² a smaller ratings agency that follows an investor-pays rating model¹⁰³ and previously was banned from issuing official ratings on asset-backed and government securities as part of a settlement with US regulators who alleged it had mislead regulators and violated rules prohibiting conflicts of interest.¹⁰⁴ Egan-Jones, apparently paid by Gramercy, bases a key part of its analysis on a report by a self-interested “expert” and overlooks applicable legal and procedural issues.¹⁰⁵ Another investor-funded ratings agency publicly released ratings on Peru that were “solicited by an investor whose identity remains, and will be kept, unknown to the general public,”¹⁰⁶ and lists as its sole “[m]ain source” the Gramercy-connected web site www.bonosagrarios.pe.¹⁰⁷
- iii. **Negative Reports:** Early in 2016, Gramercy began to rely on reports from a law professor and an economics professor to cite the dubious ratings reports in unbalanced, negative reports which were timed for release just prior to Gramercy’s filing of “Notice of Intent.” It commissioned and publicly disseminated a legal opinion by Professor John C. Coffee (the “Coffee Opinion”), which inaccurately accuses Peru of violating U.S. securities law in connection with its issuance of global bonds.¹⁰⁸ As discussed in further detail below, this was a baseless attempt to pressure Peru. Gramercy also has submitted a report by Arturo Porzecanski, who (in contrast to prior comments about Peru¹⁰⁹) issued a paper critical of Peru relying on the Egan Jones assessment and the Coffee Opinion mere days before the submission of the Notice of Intent.¹¹⁰ On the day the Notice of Arbitration was submitted, Mr. Porzecanski moderated an event on the Bonds with the participation of Professor Coffee and a Gramercy representative, who distributed copies of Gramercy’s filing and other materials.¹¹¹

- iv. **Intervention in Bondholder Organizations:** Gramercy also has infiltrated and aligned the message of purportedly distinct bondholder organizations. The press has reported how Gramercy established the U.S.-based PABJ,¹¹² which issues press releases through one of the Gramercy lobbyists.¹¹³ Gramercy's erstwhile representative in Peru is now the spokesperson of ABDA.¹¹⁴ It is particularly telling that the press statements and web sites of these organizations amplify the Gramercy legal strategy, even pushing critiques of Peru that are both unrelated to the interests of Peruvian bondholders and could even harm them.¹¹⁵
- v. **Public Relations:** Over the past year, Gramercy has used all the elements of its attack machine to attempt to generate continuous negative press to damage Peru. Including during the 2015 annual World Bank and IMF meetings in Lima last October,¹¹⁶ and the World Bank and IMF 2016 Spring meetings in Washington, DC.¹¹⁷ Gramercy retained public relations firms ASC Advisors and Llorente & Cuenca, which have managed the issuance of diverse negative information into the press, together with Gramercy and other lobbyists and representatives.¹¹⁸ The press operation apparently even has extended to rewriting the well-known Wikipedia web site's entry on the Agrarian Reform Bonds, as a "PR firm hired to edit Wikipedia"¹¹⁹ used online identities established for purposes of deception (known as "sockpuppets")¹²⁰ including in the weeks that followed Gramercy's filing of its "Notice of Intent."¹²¹

4. The Attack on Peruvian Sovereign Finance

57. Having primed the attack machine against Peru, Gramercy put it into full operation in an effort to undermine Peru's sovereign finance and harm Peru and its people.

58. The Coffee Opinion accuses Peru of intentionally violating U.S. securities law by making material misstatements regarding the Agrarian Reform Bonds in connection with its 2014 and 2015 issuances of U.S. dollar- or Euro-denominated global bonds, and concludes that the SEC could sue or take other actions against Peru. It is hyperbolic. It relies on suspect sources. It too-conveniently tracks Gramercy's allegations. It is legally wrong. In fact, a Moody's analysis from December 2015 that explicitly took into account the Agrarian Reform Bonds reaffirmed Peru's investment grade rating.¹²²

59. It is undisputable that Peru already had made disclosures as to the Agrarian Reform bonds as part of its Global Bond issuances. As an example, in 2014 Peru disclosed:

*During 2010, there was an increase in the volume of administrative and judicial claims filed against Peru in connection with the payment of amounts due in respect of the bonds issued by Peru pursuant to the Agrarian Reform Law. In accordance with a resolution issued by the Peruvian Constitutional Court in 2013, the executive branch enacted a by-law regulating an administrative procedure through which the debt corresponding to the Agrarian bonds can be brought to present value.*¹²³

60. Peru has continued to make appropriate disclosures and the market conduct shows that the Coffee Opinion did not gain traction. Data reported by Bloomberg show that "Peru's foreign debt has returned 0.9 percent since Jan. 11, when John Coffee, the lawyer hired by

Gramercy, issued his opinion. That's compared with a 0.9 percent drop for notes from the rest of Latin America."¹²⁴

61. Moreover, for the avoidance of doubt following Gramercy's dissemination of the Coffee Opinion, and in addition to its routine and diligent work with external counsel and the careful oversight of lenders, other lawyers, rating agencies and market observers, the Peruvian Office of Public Debt obtained an independent report from Paul G. Mahoney, an expert in securities law and Dean of the University of Virginia School of Law.

62. In his opinion, Professor Mahoney explains that "Peru's use of local law and procedures for payment on the Agrarian Bond ... is not relevant to holders of the global bonds, which were issued under foreign law with Peru's consent to suit in foreign courts."¹²⁵ Professor Mahoney concludes that the Coffee Opinion is incorrect and fails to account for the key distinctions between the Agrarian Reform Bonds and contemporary sovereign bonds.¹²⁶ Some of his key conclusions are as follows:

1. The Global Bonds are distinct from the Agrarian Bonds. The Global Bonds are issued by Peru in the international markets in foreign currency, governed by foreign law, subject to the jurisdiction of foreign courts, and registered under the securities regulatory regime of the United States.

2. The Agrarian Bonds were not issued in respect of borrowed money, but as compensation to Peruvian citizens for takings of land. They are domestic obligations of Peru payable in local currency, governed by local law, and subject to local judicial jurisdiction and procedure.

3. Payment of the Agrarian bonds in accordance with their original terms is not possible because the currency in which they were denominated no longer exists. Peru has established an administrative procedure to process claims for payments on the Agrarian Bonds, in which Gramercy may participate. Gramercy and certain other holders of the Agrarian Bonds object to the procedure and the valuation method.

4. The U.S. securities laws impose civil liability on certain persons with respect to certain untrue statements and omissions contained in a registration statement or prospectus or made in connection with the purchase or sale of a security. In each case, the untrue statement or omission must be "material." Courts have interpreted a fact as "material" if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision.

5. Any failure to disclose the full particulars of the legal and valuation disputes regarding the Agrarian Bonds is not material to an investment in the Global Bonds. The information is not quantitatively material. Moody's Investors Service ("Moody's") has concluded that these disputes do not affect Peru's willingness or ability to pay either its Global Bonds or its other domestic debt. The information is also not qualitatively material to investors purchasing

Global Bonds. Unlike holders of the Agrarian Bonds, these investors have contracted around the risks of local currency, law, and jurisdiction. The disagreements between Peru and holders of the Agrarian Bonds accordingly involve issues that could not arise with respect to the Global Bonds. Information about a risk to which the Global Bond purchaser is not subject is not material.

6. The Coffee Opinion ignores these critical distinctions between the Agrarian Bonds and the Global Bonds. Its analogy to Argentina's disclosure practices ignores an important distinction between Argentina and Peru: Argentina defaulted on indebtedness for money borrowed in international markets, which would be material to investors in its subsequent global bond offerings.¹²⁷

63. Since the date of Gramercy's Notice of Arbitration, a Gramercy lobbyist issued inaccurate claims that Peru had "resisted multiple requests from the media to make Dean Mahoney's report publicly available."¹²⁸ It has newly emerged that a Gramercy lawyer has sought protected and privileged information from Peru including the Mahoney report by invoking transparency legislation, without revealing his affiliation with Gramercy or using his professional contact information. In addition, colleagues of Dean Mahoney at the University of Virginia were targeted with negative material.

E. The Treaty Consultations and Arbitration Process

64. With its campaign machine assembled, Gramercy set out to invent a negative record to justify its filing of a Treaty-based "Notice of Intent," and has continued to act with disregard for Treaty consultations and procedure by seeking to litigate in the media.

65. **Precursors:** Among other steps, Gramercy carried out its campaign in the United States.¹²⁹ The Daschle Group approached the Peruvian Embassy in Washington, DC over a period of months with respect to the Agrarian Reform Bonds, only disclosing in response to an Embassy query that it was acting for Gramercy. Concurrently, Gramercy sent a letter to the Embassy making scarcely veiled threats and asserting a deadline for the Embassy to respond to a one-sided recitation of arguments. Gramercy copied the letter to eighteen U.S. government officials, all of them within the scope of the lobbying filings that Gramercy-affiliated lobbyists had filed that year. The Embassy responded by suggesting that "Gramercy consider an approach that is truly constructive and respectful or Peru and its laws and procedures." In its next letter, Gramercy upped the ante and emphasized at the outset that the correspondence was being copied to numerous U.S. (and Peruvian) government officials, a list which had grown longer since the prior correspondence. The Embassy received this letter on 1 February 2016, and subsequently responded by way of a letter which Gramercy failed to submit.¹³⁰

66. **The Notice of Intent:** On 1 February 2016, having teed up the next step of its attack campaign, Gramercy submitted to Peru its preliminary "Notice of Intent" and loudly announced its complaint to the world.¹³¹ Peru responded with a respectful statement acknowledging and disagreeing with Gramercy's demands.¹³²

67. **Peru's Good Faith Consultations:** Given that Gramercy chose to trigger a Treaty-based dispute, Peru promptly invited and continuously engaged with Gramercy, seeking respectful consultations over a period of months, acting through the legally established

Special Commission that Represents the State in International Investment Disputes.¹³³ Peru received representatives of Gramercy,¹³⁴ communicated by telephone and in writing,¹³⁵ invited information on key issues and tabled a proposed agreement for consultations that would have given the parties additional time for consultations, all to no avail.¹³⁶

68. **Gramercy’s Conduct:** Notwithstanding Peru’s consultation efforts, Gramercy did not reciprocate:

- Gramercy did not consistently respect proper channels.¹³⁷
- Gramercy did not clarify its vague representations as to the Gramercy entities involved, the alleged acquisition of the Bonds, or the number and terms of the Bonds at issue, despite repeated requests.¹³⁸ Gramercy never provided a copy of a single Bond or showed any evidence of its holdings, suggesting it “might simply be distracting and overwhelming,”¹³⁹ (Even now Gramercy has shown only one, lone bond).
- In return for continuing consultations, Gramercy sought to impose an overbroad waiver of its rights as to “*any* applicable statute of limitations, laches and other possible time-bars and defenses,” as to “*any and all* disputes, claims or causes of action, *known or unknown*.” Despite allegedly having invested in Bonds subject to the law and jurisdiction of Peru, Gramercy insisted that the agreement should be subject to the law and jurisdiction of New York, and that the English should prevail.¹⁴⁰
- Gramercy threatened to publicize “serious allegations” about Peru and “specific individuals” that would “provide grist for the media mill for a long time” if Peru did not agree to the overbroad waiver of its rights, but, if Peru agreed, Gramercy said it was “open to refraining from taking other actions including affirmative steps to publicize the land bond issue.”¹⁴¹

69. **Troubling Incidents:** Gramercy followed through on threats against Peru, even as Peru continued to seek constructive dialogue. On 12 April 2016, Peru informed Gramercy that the scope of the draft agreement was excessive, and invited a new version. The very next morning, Gramercy informed Peru that they would be resuming their efforts to focus public attention on the Bonds.¹⁴² By that time, a Gramercy-paid lobbying firm had already begun sending missives to journalists to attend an event that the Peruvian Minister of Economy and Finance would be attending at the 2016 IMF/World Bank Group Spring Meetings in Washington, DC.¹⁴³ Even as Gramercy had an active and respectful channel of communications with the Peruvian State, including the Ministry of Economy and Finance, the flyer crudely announced “questions” for the Minister, and was handed among others, to IMF Managing Director Christine Lagarde (who rightly had spoken highly of Peru at the previous IMFA/World Bank Group meetings in Lima six months earlier, as discussed above). It also was aligned with negative statements targeting the President on a trip to the United Nations in New York.

70. **Peru’s Invitations for Respectful Conduct:** Peru repeatedly advised Gramercy that its conduct was counterproductive, and invited respect to advance the consultations. Among diverse other examples:

- “May I invite Gramercy to consider an approach that is truly constructive and respectful of Peru and its laws and procedures.”¹⁴⁴

- “Gramercy is encouraged to suspend its negative campaign and avail itself of [appropriate] channels.”¹⁴⁵
- “[W]e invite again your collaboration in the adoption of necessary measures to avoid the continuing aggravation of the circumstances and to facilitate an environment for friendly consultations.”¹⁴⁶
- “Regarding this unconstructive conduct, we invite you to continue with the management of our consultations.”¹⁴⁷
- “[W]e invite Gramercy to confirm the cease and desist of its campaign against Peru from now on.”¹⁴⁸
- “We invite you again, to confirm that Gramercy repudiates its questionable tactics and that it will participate consistently and respectfully in the friendly consultations.”¹⁴⁹

71. Gramercy never disavowed its campaign. Referring to the “free press,” Gramercy said its campaign “is a legitimate course of action to protect our rights.”¹⁵⁰ But as Peru informed Gramercy, “[t]his issue is unrelated to freedom of expression, but it is linked with an environment conducive to friendly consultations, as well as the unnecessary aggravation of the dispute.”¹⁵¹

72. **Gramercy’s Ultimatum:** After Gramercy continued pushing an overbroad tolling agreement, Peru proposed a “Consultation Agreement” providing for a five-month consultations period, during which the Treaty’s three year statute of limitations-type period would be suspended and the parties would refrain from aggravating the dispute.¹⁵² Gramercy refused and suddenly demanded that Peru obtain a “legal opinion from the Attorney General, or a decree from the President or the Council of Ministers” confirming the authority of a lawfully designated representative within two days.¹⁵³ Peru nonetheless continued to seek collaboration, offering yet another reasonable draft,¹⁵⁴ which Gramercy again rebuffed, this time even rejecting language that it previously had accepted, even including the name of the agreement.¹⁵⁵ Peru made an invitation to Gramercy to proceed without closing the door.¹⁵⁶ ..

73. Despite Peru’s ongoing efforts to consult, Gramercy presented its Notice of Arbitration on Thursday, 2 June 2016. The runoff Presidential elections in Peru were that weekend. Gramercy’s filing alleged no facts that required the filing to be undertaken at that time as a legal matter. Gramercy immediately issued a press release alleging selective default by Peru,¹⁵⁷ which they notably did not state in their simultaneous Notice of Arbitration. Gramercy’s counsel and related experts spoke at a pre-arranged event in New York, where Gramercy distributed copies of the “Notice of Arbitration.”¹⁵⁸

74. Gramercy’s negative campaign is ongoing and, whatever Peru states or does, appears likely to continue. Peru reserves the right to amplify its comments herein, and to provide further evidence if this proceeding advances.

75. **Gramercy’s Failed Launch of Its Treaty Proceeding:** Based on Gramercy’s conduct leading to its submission of 2 June 2016, Peru again requested that Gramercy respect the established channels and cease its attack campaign and aggravation of the circumstances.¹⁵⁹ Gramercy did not do so. As noted by the President of Peru, “[t]hey’ve hired lobbyists, they’re making a big fuss.”¹⁶⁰ Meanwhile, having noisily filed its 2 June submission just prior to the election, Gramercy then stealthily filed two subsequent submissions, its 18 July Amended Notice and its 5 August Second Amended Notice. Having

chosen to attempt to commence a Treaty proceeding, Gramercy has been slow to put aside its noisy approach and focus on the concrete steps involved in respecting the procedure under the Treaty.

III. Law

A. The Object and Purpose of the Treaty

76. The Treaty entered into force on 1 February 2009, after the alleged acquisition of Agrarian Reform Bonds by Gramercy entities, providing certain protections for lawful and legitimate investments and arbitration for disputes arising thereunder, subject to prerequisites and conditions. Focused on its own self-interests, Gramercy fails to take into account, or even address, the fundamental objectives that Peru and the United States resolved to achieve in concluding the Treaty, as stated in its Preamble, including, for instance, promoting “broad-based economic development,” ensuring a “predictable legal and commercial framework” for business and investment, agreeing that foreign investors are “not hereby accorded greater substantive rights with respect to investment protections than domestic investors” and preserving the ability to “safeguard the public welfare.” Such goals are in keeping with Peru’s development and the investment program established and maintained by Peru for over two decades.

77. In accordance with the universally accepted rule of treaty interpretation set forth in Article 31(1) of the Vienna Convention on the Law of Treaties, which Gramercy fails to take into account, or even address, these fundamental objectives are integral to interpreting the Treaty.¹⁶¹

B. Jurisdiction and Admissibility

78. Peru continues to reserve all its rights in connection with this matter, including its rights to raise jurisdictional and admissibility objections at the appropriate time. For the avoidance of any doubt, and in accordance with Article 21(1) of the UNCITRAL Arbitration Rules, Peru does not elect to treat this preliminary Response as Peru’s Statement of Defense. Peru will respond more fully to Gramercy’s claims in time. For present purposes, based on the limited available information, Peru’s concerns as to jurisdiction and admissibility include, without limitation, the issues set forth below.

1. Treaty conditions to Arbitration

79. The Treaty conditions the State’s consent to arbitrate on various prerequisites and procedural requirements. Unless these preconditions are met, the State has not consented to arbitrate and, accordingly, the Tribunal lacks jurisdiction.

80. Gramercy has not complied with Art. 10.18 of the Treaty, which states that “[n]o claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged.” Accordingly, Gramercy’s claims in the Second Amended Notice at least as to the July 2013 Resolution are time-barred under the Treaty.

81. Previously, in its Notice of Arbitration and over the course of diverse communications over time, Gramercy emphasized that the 2013 Resolution dated 16 July 2013 was the cornerstone of its claims. Specifically, in its Notice of Arbitration, Gramercy highlighted the 2013 Resolution as the principal treaty breach: “Peru’s Treaty Breaches ... *First*, in July 2013, the Constitutional Tribunal issued a new decision....”¹⁶² It similarly emphasized over time the importance of the date of 16 July 2013 with respect to issues of prescription, stating that “[t]he Government’s intentions [not to honor its obligation to pay the updated value of the Land Bonds] became apparent on July 16, 2013, the date the Constitutional Tribunal issued the 2013 CT Decision.”¹⁶³ Gramercy was aware of the potential implications of Article 10.18 with respect to the July 2013 Resolution and previously attempted to secure from Peru a broad waiver of rights related to this Article through a tolling agreement.¹⁶⁴ In fact, in the course of its communications with Peru related to this issue, Gramercy left no doubt that it considered that “time [was] running out” to file its claim.¹⁶⁵

82. In its Second Amended Notice, Gramercy expressly states and admits: “**Gramercy acquired knowledge of the 2013 CT Order’s existence on July 16, 2013**” (emphasis added) – an admission that is fatal to its claims related to the 2013 Resolution.¹⁶⁶ Gramercy then grafts onto its case a newly invented attempt to work around its admission by suggesting, for the first time and at odds with its many prior statements, that “it did not acquire constructive or actual knowledge of Peru’s breaches until after August 5, 2013.”¹⁶⁷ Because, per its filing, Gramercy’s claim was not submitted to arbitration until its Second Amended Notice, and because that Notice was filed more than three years after the issuance of the July 2013 Resolution that forms the basis for its claim, Gramercy’s claim violates the statute of limitations set forth in Article 10.18.1 and is time-barred.

2. “Investor” and “Investment” Requirements

83. The Treaty’s investment chapter protects only legitimate “investors” with lawful “investments,” as defined in the Treaty.¹⁶⁸ Investment tribunals have carefully analyzed whether alleged holders of bonds qualify as “investors” that have made “investments” protected under the applicable investment treaties and have rejected claims on this basis for lack of jurisdiction; one such tribunal recently dismissed on jurisdictional grounds a case related to contemporary sovereign bonds, and the instant case is far more questionable given the nature of the Bonds and Gramercy’s alleged acquisition.¹⁶⁹ Gramercy Funds and Gramercy Holdings have failed to demonstrate that they are legitimate “investors” that have made lawful “investments” eligible for protection under the Treaty.

84. The Treaty and the applicable procedural rules also require that “[a] copy of any contract or other legal instrument out of or in relation to which the dispute arises ... shall be annexed to the statement of claim.”¹⁷⁰ Due to a lack of disclosure by Gramercy, there is a persistent lack of clarity about the nature, acquisition, and ownership of the Bonds at issue. Among other things, Gramercy has submitted documentation for only one lone Bond out of 9,773 bearer bonds on which it bases its claims, despite prior requests by Peru and applicable Treaty and procedural requirements.

- **Bearer Bonds: The Lone Bond.** During consultations, Peru repeatedly brought to Gramercy’s attention its concerns regarding Gramercy’s non-compliance with Treaty requirements, lack of documentation and impact on Treaty consultations and proceedings, to no avail. Gramercy unilaterally determined that “providing such a large amount of information at this stage might simply be distracting and

overwhelming.” It not only did not provide a large amount of information, it failed to provide a copy of even a single bond it alleges it holds, and then provided with its Second Amended Notice only a copy of one lone Bond. Given that the instruments at issue are bearer bonds, proper authentication of the actual paper is of significant importance.

- **Ownership: Conflicting Allegations.** Gramercy’s Second Amended Notice states that Gramercy Holdings “directly purchased and acquired title to the Land Bonds” and “is the titleholder of Gramercy’s bonds, and therefore it directly owns 100% of the Land Bonds at issue in this arbitration,”¹⁷¹ and that Gramercy Holdings “has at all times been under the management and control of [Gramercy Funds] or its predecessors.”¹⁷² Gramercy has dropped as claimants two entities which were named in its two “Notices of Intent.”¹⁷³ Moreover, virtually contemporaneously with the filing of its initial “Notice of Intent,” Gramercy represented that the “Land Bonds” are in fact “beneficially owned by institutional investors.”¹⁷⁴ Gramercy has not provided documentation sufficient to explain or clarify these issues.
- **Price: No Information.** Gramercy states that “[f]rom late 2006 into 2008, Gramercy, through [Gramercy Holdings], bought over 9,700 Land Bonds from hundreds of individual bondholders.”¹⁷⁵ Gramercy also states that “[a]fter closing, the funds to purchase the Land Bonds were paid by Gramercy via wire transfer such that money was made available in Peru to Gramercy’s legal representatives who then tendered funds to bondholders.”¹⁷⁶ Gramercy has not explained how much it paid or to whom. Indeed, its own allegations suggest that Gramercy must be harboring, at a minimum, hundreds of undisclosed documents, whereas claimants in most investment disputes include with their claims clear information and documentation of the underlying contractual or other basis forming an alleged investment.¹⁷⁷ Again, Gramercy has not provided documentation sufficient to explain or clarify these issues.
- **Purchase: No Documentation.** Gramercy states that “to acquire the bonds Gramercy transacted with hundreds of bondholders, in many cases through face-to-face meetings in Peru. Once Gramercy and each bondholder agreed on the terms, they executed a written contract, and each selling bondholder then endorsed his or her Land Bonds to [Gramercy Holdings], and physically delivered the Land Bond certificates. All of these transactions took place in Peru.”¹⁷⁸ Gramercy also refers to wire transfers by which it allegedly made payments, as mentioned above. In response to an earlier request for clarification, Gramercy simply stated that it had acquired its bonds “through many individual transactions with Peruvian sellers.”¹⁷⁹ Gramercy attached none of the written contracts, or any other evidence of these acquisitions or related payments, to its Second Amended Notice.

85. Peru raised concerns regarding the investor and investment requirements over the course of communications and correspondence dating back at least to February 2016. To date, even after submitting three notices of arbitration, Gramercy has not sufficiently explained or presented any additional responsive documentation, or clarified the many related doubts and uncertainties. Among other refusals to clarify and document its case, Gramercy states that the provision of documentation would be “both impractical and inefficient” or that it had provided this information to Peru “many years before the arbitration commenced.”¹⁸⁰ Now, Gramercy appears to be seeking to shift its burden of proof to Peru, positing that Peru is

somehow obliged to identify what evidence is sufficient, and states that Peru's concerns are "puzzling."¹⁸¹ There is nothing puzzling. Peru has raised multiple times its concerns about the lack of documentation related to Gramercy's alleged acquisitions and current holdings of these old bearer instruments for which Gramercy seeks exorbitant payments in this proceeding. While Gramercy is free with words, it remains lacking as to information and evidence.

3. Failure to Waive Local Litigation Proceedings

86. The Treaty conditions the State's consent to arbitrate on a well-established waiver requirement, which is designed to prevent claimants from pursuing local litigation proceedings in parallel with an investment arbitration. Specifically, the Treaty provides that a claimant must submit a written waiver "of any right to initiate or continue . . . any proceeding with respect to any measure alleged to constitute a breach."¹⁸² Even based on the limited information Gramercy has provided, Gramercy appears to have failed to fulfill a pre-condition to the consent of Peru to arbitrate under the Treaty.

87. Compliance with this waiver requirement has both a formal component and a material component.¹⁸³ A claimant's failure as to either requirement at the time of commencing arbitration or thereafter negates consent to arbitration under the Treaty.¹⁸⁴ The formal component requires the submission of a comprehensive written waiver of any right to initiate or continue any proceeding with respect to any measure alleged to constitute a breach of the Treaty, with certain limited exceptions.¹⁸⁵ The material component requires not initiating or continuing other proceedings with respect to any measure alleged to constitute a breach of the Treaty.¹⁸⁶

88. The Contracting Parties to the Treaty, Peru and the United States, have agreed on the importance of the waiver requirement:¹⁸⁷

- "The waiver provision is designed to avoid the need for a respondent to litigate concurrent and overlapping proceedings in multiple forums with respect to the same measure," among other things.
- "To determine whether a waiver complies with the requirements of Article 10.18 and thus may be considered effective, a tribunal must evaluate whether a claimant's waiver meets *both* the formal and material requirements."
- "[T]he waiver must be in writing and must be 'clear, explicit and categorical,'" and accompany the notice of arbitration.
- "[I]f all formal and material requirements are not met, the waiver shall be deemed ineffective and will not engage the respondent's consent to arbitration to the Agreement, and the tribunal will lack jurisdiction."
- "[A] tribunal itself cannot remedy an ineffective waiver," or "rely on a purported 'principle of severability.'"

89. The critical nature of the Treaty's waiver requirement was addressed in the first arbitration brought under the Treaty, *The Renco Group Inc. v. The Republic of Peru*. In that case, Peru diligently raised several timely objections, including, among others, that Renco had violated the Treaty's waiver requirement by qualifying its waiver with a reservation of rights and by continuing to pursue local proceedings in parallel with the international

arbitration.¹⁸⁸ Specifically, with respect to the formal requirement, Renco submitted a waiver that was qualified and failed to waive Renco's rights in the event Renco's claims in arbitration were dismissed on jurisdictional or admissibility grounds. Although Renco attempted to argue that Peru's objection was insignificant and frivolous,¹⁸⁹ the Tribunal disagreed. According to the Tribunal, "Renco's reservation of rights is not 'superfluous,' as Renco contends," and the defect "goes to the heart of the Tribunal's jurisdiction."¹⁹⁰ In a Partial Award issued on 15 July 2016, the tribunal dismissed Renco's claims for lack of jurisdiction.¹⁹¹

90. Gramercy has failed to meet the waiver requirement, and thus has failed to fulfill a pre-condition of Peru's consent to arbitrate. With respect to the formal component, Gramercy provided a waiver that was qualified and not comprehensive in its Notice of Arbitration.¹⁹² In light of the decision in the *Renco* case, Gramercy subsequently submitted its Second Amended Notice with a new, unqualified waiver.¹⁹³ With respect to the material component of the waiver requirement, while Gramercy has alleged an attempt to withdraw from certain proceedings, it has not demonstrated its timely withdrawal from all such proceedings or provided any documentary evidence to this effect. The Contracting Parties have observed that a tribunal lacks jurisdiction until claimants comply with both formal and material waiver requirements. A failure to meet the waiver requirement deprives the Tribunal of jurisdiction over Gramercy's claims.

C. Merits

91. Gramercy makes a speculative expropriation claim, for which it demands compensation in the amount of US\$ 1.6 billion, plus interest and costs. Gramercy, however, has failed to show that Peru in any way violated the Treaty.

1. Gramercy's Requests for Resolution

92. Gramercy set out its requests with respect to the Agrarian Reform Bonds in a letter to Peru during the Treaty consultation process – a letter which Gramercy did not reveal in its Second Amended Notice:¹⁹⁴

- i. **Verification Process:** Gramercy demands "a legitimate verification process that can swiftly identify authentic land bonds". As explained above, in conformity with the ruling of the Constitutional Tribunal, Peru already has established such a process for the benefit of participating bondholders. The Bondholder Process is working and Peru has authenticated over 10,000 Bonds, more than the total number of Bonds that Gramercy claims to hold. Gramercy has boycotted the Bondholder Process and has discouraged participation by others – including Peruvian bondholders who do not have access to this international proceeding – thus putting their opportunity to receive payment at risk.
- ii. **Valuation Methodology:** Gramercy demands "a formula to calculate the amount of payment on the land bonds which properly reflects their 'current value' as required under Peruvian law," noting that "Gramercy is open to a variety of potential formulas to calculate 'current value.'" Again, as explained above, in conformity with the ruling of the Constitutional Tribunal, Peru has been implementing a lawful methodology for the benefit of participating bondholders. Having boycotted the process, Gramercy has never tested the methodology under Peruvian law.

- iii. **Form of Payment:** Gramercy demands that Peru “pay the amounts due to bondholders in newly issued and marketable sovereign bonds containing terms similar to those Peru has offered in its recent bond issuances,” or “in cash.” Significantly, Gramercy is demanding a payment option that was not a feature of these bearer bonds, which were never sovereign global bonds and were never designed, marketed or issued as sovereign bonds. Gramercy is thus seeking an economic deal that it had no reason to expect, simply because that would be more profitable for Gramercy (and, ironically, as it continues to denigrate Peruvian global bonds in the press). In any event, as explained above, in conformity with the ruling of the Constitutional Tribunal, Peru has been developing options for the election of form of payment by participating bondholders.
- iv. **Schedule:** Gramercy demands that Peru “conclude the entire process by the fourth quarter of 2016.” Again, as explained above, in conformity with the ruling of the Constitutional Tribunal, Peru has been advancing the Bondholder Process on a first-come, first-served basis, and anticipates that the initial participants that have completed the authentication process will pass through the procedures for valuation and determination of form of payment in 2016.
- v. **Public Information:** Gramercy presumes “to assist Peru in presenting the benefits of this solution to the bondholder community and educating the marketplace and other interested parties on the successful resolution of the land bonds issue once and for all.” Again, finally, and as explained above, in conformity with the ruling of the Constitutional Tribunal, Peru has explained and disclosed the foregoing Bondholder Process to the bondholder community and the marketplace, and will continue to do so. Gramercy, a lone fund on the attack, suggests that it will advise on positive bondholder communications, but it is Gramercy that continues to carry out a negative campaign to undermine the process as part of a strategy to seek preferential treatment for itself at prejudice to Peru and Peruvian bondholders.

93. Peru invited Gramercy to stop its negative campaign and engage in material discussions of the foregoing issues, to no avail, as discussed further above. In any event, Peru rejects Gramercy’s claims and allegations contained in the Second Amended Notice in their entirety and reserves all of its rights to present any and all objections and defenses against these claims pursuant to the Treaty and applicable rules. As an initial step, Peru has the following preliminary observations on the claims Gramercy articulates, with meager substantiation, in its Second Amended Notice.

2. Gramercy’s Speculative Expropriation Claim and Demand for Preferential Treatment

94. The Treaty does not protect mere speculation. The fact that Gramercy is a lone fund that apparently chose to acquire thousands of old bearer bonds related to potential domestic claims for speculative aims does not entitle it to Treaty protections or come close to demonstrating a Treaty violation. Gramercy does not claim a direct expropriation, and the Treaty contains a special Annex setting forth elements that must be present for an indirect expropriation to fall within the Treaty’s protections. The Annex specifies, for example, that “the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred.”¹⁹⁵ The Annex also requires that the State’s action interfere with “distinct,

reasonable investment-backed expectations,”¹⁹⁶ which is lacking here. To the extent that instruments provided decades ago as compensation for land constitute might be considered public debt for Treaty purposes, the Treaty makes clear that public debt involves “commercial risk.”¹⁹⁷

95. Gramercy misguidedly predicates its claims for Expropriation and violation of the Minimum Standard of Treatment on its allegations that (i) in 2006 to 2008, it “invested in the Land Bonds with the reasonable expectation that the Agrarian Reform Bonds would be paid at current value calculated using CPI,” and (ii) in 2013 and 2014, “Peru abruptly reversed course” in this regard by using the dollarization method to calculate current value.¹⁹⁸ As Peru will demonstrate at the appropriate time, far from abruptly reversing course, there was a lack of clarity or certainty at the time of Gramercy’s alleged acquisitions of the instruments at issue, and in July 2013, Peru’s Constitutional Tribunal clearly mandated a procedure and fixed the methodology for calculating current value to resolve longstanding legal uncertainty with respect to the Agrarian Reform Bonds.

96. Against this background, Gramercy is wrong to allege that “there was a clear legal rule” in 2006-2008, pursuant to which payment was to be “calculated using a Peruvian consumer price index.” Gramercy thus could not have had any “reasonable expectation” in 2006-2008 that CPI rather than dollarization would be used to calculate payment on the bonds; nor did the 2013 Resolution or subsequent acts “eviscerate[] the legal framework under which Gramercy invested.”¹⁹⁹ Moreover, the 2013 Resolution and subsequent acts could not have expropriated Gramercy’s alleged investments in the Agrarian Reform Bonds, because they did not deprive Gramercy of all value in their alleged investments.

97. Gramercy also raises claims under Art. 10.3 of the Treaty, which provides that “[e]ach Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors.” Even assuming that Gramercy is an investor under the Treaty, which it is not, this claim ignores that Gramercy has been offered—and has refused—treatment equal to that given to Peruvian bondholders. Accordingly, Gramercy is demanding preferential treatment rather than equal treatment.

98. Gramercy further raises other unsubstantiated claims. Among other things, Gramercy alleges that the Constitutional Tribunal’s July 2013 Resolution constituted a denial of justice because it allegedly “was ‘improper and discreditable,’ and produce[d] ‘manifest injustice.’”²⁰⁰ As explained above, there is an ongoing proceeding that is considering the process by which the July 2013 Resolution was adopted. In light of the evidence available thus far, Gramercy has failed to show, among other things, how whatever irregularities it alleges affected the outcome of the proceeding.²⁰¹

99. Gramercy also alleges that the Bondholder Process established further to the July 2013 Resolution has denied it effective means to bring claims and enforce rights by barring “Gramercy’s ability to access the courts to obtain payment of the Land Bonds at current value.”²⁰² Gramercy, however, fails to mention that the Resolution expressly preserves the right to seek judicial review. The August 2013 Resolution, in fact, provides that it “does not prevent land reform bondholders from filing a judicial action in the event of arbitrariness in the course of the procedure before the Executive Branch.”²⁰³ Indeed, in a brief submitted to a Peruvian court in October 2014, Gramercy argued that the 2013 Resolutions lacked any binding effect on judicial proceedings brought by holders of the Agrarian Reform Bonds.²⁰⁴ By choosing to opt out of the process altogether, Gramercy has deprived itself of the opportunity to test the bondholder process and any subsequent judicial review.

100. Finally, Gramercy’s valuation of the Bonds continue to evolve. Peru will respond to Gramercy’s new arguments and calculations at the appropriate time in the procedure, and reserves all its rights accordingly.

D. Peru’s Counterclaims and Costs

101. Gramercy has been engaged in an ongoing attack campaign aimed at harming Peru, even after repeated requests that it desist and avoid aggravation of the circumstances. Peru reserves its rights to present counterclaims at the appropriate time in conformity with the Treaty and applicable rules, and to seek costs. It bears emphasis that, since adopting international arbitration as a component of other reforms in the 1990s, Peru has been a diligent and respectful participant in investment consultations and disputes. It is well-established that Peru has an exceptional track record in international arbitrations and has defeated claims worth billions of dollars and obtained decisions of over one hundred million dollars in its favor, as well as significant cost awards.²⁰⁵

IV. Procedure and Other Matters

A. Procedure

102. Gramercy alleges that it acquired Spanish-language instruments related to Peruvian land and subject to Peruvian law and jurisdiction. It then sought (as it did with its “tolling agreement”) the sole use of the English language, with a place of arbitration in New York, and it continues to seek a place of arbitration in the United States.²⁰⁶

103. Having chosen to commence a Treaty arbitration, it is incumbent on Gramercy to collaborate to put that procedure into place. Peru has consistently encouraged a focus on concrete procedural issues.²⁰⁷ In this context, Peru observes the following:

- *Arbitration agreement and legal instrument.* Gramercy has invoked the Treaty and the agreement to arbitrate contained in the Treaty. Peru reserves all rights to raise any and all comments, objections or defenses – including, without limitation, with respect to jurisdiction and admissibility – related to the legal instruments alleged to give rise to the dispute or to the alleged agreement to arbitrate.
- *Language.* The rules provide that the arbitral tribunal shall determine the language or languages of the proceeding subject to agreement by the Parties. Gramercy originally proposed English language proceedings. Peru’s defense requires that the proceeding be conducted in Spanish, the official language of Peru, and accordingly proposes bilingual proceedings in Spanish and English.
- *Place of arbitration.* The Treaty provides that parties may agree on the legal place of arbitration. Gramercy proposed that New York be established as the place of arbitration, then proposed Washington, DC. Peru has suggested a neutral seat of arbitration and proposed Mexico City.²⁰⁸
- *Contact Details.* Communications to Peru should be addressed to its counsel of record, and all communications should be served through counsel. The contact details for counsel are in the transmittal letter.

B. Arbitrator Resignation and Constitution of the Tribunal

104. The Treaty provides that the arbitral tribunal shall be composed of three arbitrators, one appointed by each party and the presiding arbitrator appointed by agreement of the parties.²⁰⁹ Further to the Treaty, claimants must provide the name of their appointed arbitrator with the notice of arbitration.²¹⁰

105. Gramercy initially appointed the Honorable Charles N. Brower as its party-appointed arbitrator in its 2 June 2016 Notice of Arbitration.²¹¹ Gramercy did not provide any disclosure statement as contemplated by the applicable rules. After Peru requested any such disclosures, the arbitrator appointed by Gramercy resigned.²¹² Gramercy subsequently appointed Stephen L. Drymer of Canada as its party-appointed arbitrator on 27 June 2016.

106. On 18 July 2016, in its Amended Notice, Gramercy again appointed Mr. Drymer.²¹³ On 25 July 2016 Peru appointed Dr. Brigitte Stern. On 5 August 2016, in its Second Amended Notice, Gramercy confirmed its appointment of Mr. Drymer.²¹⁴ On 31 August 2016, Peru confirmed its appointment of Dr. Brigitte Stern.²¹⁵ Peru has sought and continues to seek collaboration from Gramercy with regard to the designation of the President.²¹⁶

C. Transparency and Non-Aggravation

107. The Treaty sets forth transparency requirements at Article 10.21. In that provision, Peru and the United States agreed that tribunals would conduct hearings open to the public and that the disputing party would promptly transmit to non-disputing parties and make available to the public certain documents from the proceeding.²¹⁷ As it has demonstrated in prior proceedings, Peru calls for transparent proceedings and clear transparency rules, in keeping with the object and purpose of the Treaty. Peru is publishing materials in accordance with Article 10.21 of the Treaty.

108. International tribunals have marked a line between transparency that provides for public knowledge of investor-State disputes, and party conduct that unnecessarily aggravates a dispute, taking into account factors such as public interest, privacy protections, judicial efficiency and due process considerations. As one tribunal has explained, there is a careful balance between “the need for transparency in treaty proceedings such as these,” and “the need to protect the procedural integrity of the arbitration.”²¹⁸ Aspects of procedural integrity include the interest to “preserve the Tribunal’s mission and mandate to determine finally the issues between the parties,” “preserve the proper functioning of the dispute settlement procedure,” “minimise the scope for any external pressure on any party, witness, expert or other participant in the process,” and “avoid ‘trial by media.’”²¹⁹

109. Accordingly, parties to investment disputes have a duty to refrain from aggravating or exacerbating the dispute.²²⁰ This duty reflects “the good and fair practical rule, according to which both parties to a legal dispute should refrain, in their own interest, to do anything that could aggravate or exacerbate the same, thus rendering its solution possibly more difficult.”²²¹ This rule serves to “preserve and promote a relationship of trust and confidence between the parties; ensure the orderly unfolding of the arbitration process.”²²²

110. In the presence of negative media campaigns and efforts to litigate investment disputes in the press, tribunals have ordered parties to desist from engaging in inappropriate public statements that aggravate the dispute.²²³ Relevant to negative media campaigns and improper disclosure, “[i]t is self-evident that the prosecution of a dispute in the media or in other public fora, or the uneven reporting and disclosure of documents or other parts of the

record in parallel with a pending arbitration, may aggravate or exacerbate the dispute and may impact upon the integrity of the procedure.”²²⁴ Most recently, an investment arbitration tribunal specified that public discussion should not be “used as an instrument to antagonise any party, exacerbate the parties’ differences, aggravate the dispute, disrupt the proceedings or unduly pressure any party.”²²⁵

111. The present proceeding not only has involved a negative media campaign: Gramercy constructed the proceeding on the foundation of an attack campaign, even emphasizing its plan to “provide grist for the media mill for a long time.” Gramercy continued its attack campaign even as Peru repeatedly invited a respectful approach. Gramercy continued even after it elected to file a “Notice of Intent” purportedly to channel this matter into a Treaty proceeding. And Gramercy has continued even after intentionally filing a “Notice of Arbitration” virtually on the eve of Peru’s presidential election. Wherever one might draw the line between transparency and aggravation of the dispute, Gramercy has crossed it.

112. Investor-State dispute settlement is designed to channel investment disputes into a procedural mechanism that removes such disputes from international relations and politics, so that issues may be decided in a neutral forum. Gramercy, however, has tainted this proceeding from the start. Peru expressly and fully continues to reserve all of its rights in this regard.

V. Request for Relief

113. For all the reasons set forth above, and for the reasons Peru will articulate and expand upon at the appropriate time in accordance with the Treaty and applicable rules, Peru respectfully requests that the Tribunal:

- Dismiss Gramercy's claims in their entirety;
- Award Peru damages in an amount to fully compensate Peru for losses in an amount to be determined in these proceedings;
- Award Peru pre-award and post-award interest;
- Award Peru all costs incurred in connection with this proceeding; and
- Award Peru such further and other relief as the Tribunal may deem appropriate.

Respectfully submitted,



RUBIO LEGUÍA NORMAND

Lima

WHITE & CASE

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Counsel to the Republic of Peru

6 September 2016

Notes

¹ Peru did not present a Response pursuant to the UNCITRAL Rules with respect to the Amended Notice given the receipt of the Second Amended Notice.

² See Letter from Gramercy to Peru, 5 August 2016 (R-59).

³ Jim Yong Kim, *The Lessons of Carabayllo: Making Tough Choices*, World Bank Group/IMF Annual Meetings, 9 October 2015, available at <http://www.worldbank.org/en/news/speech/2015/10/09/speech-by-world-bank-group-president-jim-yong-kim-the-lessons-of-carabayllo-making-tough-choices>.

⁴ Christine Lagarde, *Brothers and Sisters, There is Much to Do*, International Monetary Fund, 9 October 2015, available at <https://www.imf.org/external/np/speeches/2015/100915.htm>.

⁵ *Gross Domestic Product (Annual percent change)*, Central Reserve Bank of Peru, 2016, available at <http://www.bcrp.gob.pe/statistics/annual-tables.html>.

⁶ See *2016 Index of Economic Freedom, Peru*, The Heritage Foundation, 2016, available at <http://www.heritage.org/index/country/peru>.

⁷ *Peru Rocket Takes Off*, LatinFinance, 28 February 2008 (R-1); see also, e.g., Naomi Mapstone, *Peru welcomes investment grade rating*, Financial Times, 3 April 2008 (R-2); Walter T. Molano, *Peru Investment Grade: Finally!*, Latin Trade, 21 July 2008 (R-3).

⁸ See *Standard & Poor's assigns investment grade to Peru on decline in fiscal and external vulnerabilities*, Andina, 14 July 2008, available at <http://www.andina.com.pe/agencia/noticia-standard-poors-assigns-investment-grade-to-peru-on-decline-in-fiscal-and-external-vulnerabilities-184491.aspx>; see also *Fitch Upgrades Peru to 'BBB-'; Outlook Stable*, Fitch Ratings, 2 April 2008 (R-4); *Rating Action: Moody's Upgrades Peru's foreign-currency ratings*, Moody's Investor Service, 19 August 2008 (R-5).

⁹ *Fitch Affirms Peru's FC IDR at 'BBB+'; Outlook Stable*, Fitch Ratings, 23 March 2016 (R-6); *Moody's upgrades Peru's rating from A3 to Baa2; outlook stable*, Moody's Investor Service, 2 July 2014 (R-7); *Peru Foreign Currency Ratings Affirmed at 'BBB+/A-2'; Outlook Remains Stable*, Standard & Poor's, 28 August 2015 (R-8).

¹⁰ *Fitch Affirms Peru's FC IDR at 'BBB+'; Outlook Stable*, Fitch Ratings, 23 March 2016 (R-6).

¹¹ *Peru successfully placed bonds with demand four times greater than supply*, Gestión, 18 August 2015, available at <http://www.andina.com.pe/agencia/noticia-standard-poors-assigns-investment-grade-to-peru-on-decline-in-fiscal-and-external-vulnerabilities-184491.aspx>.

¹² See *Preliminary Prospectus Supplement Filed Pursuant to Rule 424(b)(5)*, Republic of Peru, 25 February 2016, available at <https://www.sec.gov/Archives/edgar/data/77694/000119312516476149/d147643d424b5.htm>; *Peru realizes successful issuance of 14-year Global Bonds for € 1 billion in International Capital Markets*, Ministry of Economy and Finance, 23 February 2016, available at http://www.mef.gob.pe/index.php?option=com_content&view=article&id=4313&Itemid=101958&language=es.

¹³ *Republic of Peru Foreign Currency Ratings Affirmed at 'BBB+/A-2'; Outlook Remains Stable*, S&P Global Ratings, 10 August 2016 (R-60).

- ¹⁴ *Republic of Peru Foreign Currency Ratings Affirmed at 'BBB+/A-2'; Outlook Remains Stable*, Standard & Poor's Global Ratings, 10 August 2016 (R-60).
- ¹⁵ *Brexit drives demand for Peruvian sovereign bonds in international market*, Andina, 10 August 2016, available at: <http://www.andina.com.pe/Ingles/noticia-brexit-drives-demand-for-peruvian-sovereign-bonds-in-international-market-625490.aspx>.
- ¹⁶ *Global Economics: Executive Briefing: Peru*, Scotiabank, August 2016 (R-69).
- ¹⁷ Frances M. Foland, *Agrarian Reform in Latin America*, Foreign Affairs, 1969, at 1 (R-11).
- ¹⁸ Paul C. Szasz, *The Investment Disputes Convention and Latin America*, 11 VA. J. INT'L L. 259 (1971) (R-40).
- ¹⁹ William D. Rogers, *United States Investment in Latin America: A Critical Appraisal*, 11 VA. J. INT'L L. 246, 247 (1971) (R-41).
- ²⁰ Malcome W. Browne, *The Oil at Talara: Symbol of the U.S. Peruvian Dispute*, New York Times, 28 February 1969 (R-9); see also Paul L. Montgomery, *Peru Seizing All International Petroleum Assets*, New York Times, 7 February 1969 (R-10).
- ²¹ Law Decree No. 17716, 14 June 1969, Final Disposition.
- ²² Frances M. Foland, *Agrarian Reform in Latin America*, Foreign Affairs, October 1969 (R-11).
- ²³ Law Decree No. 17716, 14 June 1969, Arts. 173-181.
- ²⁴ See *The process of agrarian reform*, Ministry of Agriculture and Irrigation, available at <http://minagri.gob.pe/portal/objetivos/70-marco-legal/titulacion-agraria-en-el-peru/413-el-proceso-de-reforma-agraria>; Supreme Decrees Nos. 145-69-EF/CP, 20 September 1969; 137-70-EF/CP, 3 July 1970; 189-70-EF, 5 August 1970; 129-71-EF, 12 October 1971; 325-72-EF, 26 December 1972; 121-73-EF, 19 June 1973; 038-75-EF, 18 March 1975; y 266-82-EFC, 10 September 1982.
- ²⁵ See, e.g., Law Decree No. 17716, 14 June 1969, Arts. 173-181; Law Decree No. 17716; *Government of Peru: FAQ on Peru's Bonos de la Deuda Agraria*, Moody's, 18 December 2015 (R-12).
- ²⁶ Legal Opinion of Paul G. Mahoney, 2016 ("Mahoney") (R-13).
- ²⁷ *Annual Tables, Inflation (Annual Average percent change)*, Central Reserve Bank of Peru, available at <http://www.bcrp.gob.pe/statistics/annual-tables.html>.
- ²⁸ *Table of Equivalencias*, Central Reserve Bank of Peru, available at <http://www.bcrp.gob.pe/billetes-y-monedas/unidades-monetarias/tabla-de-equivalencias.html>.
- ²⁹ Decree Law N° 25478, 6 May 1992, Art 1.
- ³⁰ Legislative Decree No. 653. 30 July 1991, Art. 15, Fourth Transitory Disposition.
- ³¹ Law No. 26207, 9 July 1993, Art. 3.
- ³² Law No. 26597, 22 April 1996, Art. 2.
- ³³ Emergency Decree No, 088-2000, 9 October 2000, Art.5.
- ³⁴ Constitutional Tribunal Sentence in Record No. 022-96-I/TC, 15 March 2001.

- ³⁵ Constitutional Tribunal Sentence in Record No. 0009-2004-AI/TC, 2 August 2004, ¶ 11.
- ³⁶ *See* Bills No. 578 / 2001-CR, 31 August 2001; 7440 / 2002-CR, 27 June 2003; 8988 / 2003-CR, 3 November 2003; 10599 / 2003 / CR, 18 May 2004; 11459 / 2004-CR, 24 August 2004; 11971 / 2004-CR, November 2004; 456 / 1006, 2 October 2006; 3272 / 2008, 2008; 3293 / 2008-CR, 21 May 2009.
- ³⁷ Constitutional Tribunal Sentence in Record No. 022-96-I/TC, 16 July 2013, ¶ 17.
- ³⁸ July 2013 Resolution ¶¶ 27-29.
- ³⁹ July 2013 Resolution ¶ 21.
- ⁴⁰ July 2013 Resolution ¶ 23.
- ⁴¹ July 2013 Resolution ¶ 22.
- ⁴² July 2013 Resolution ¶ 25.
- ⁴³ July 2013 Resolution ¶ 25.
- ⁴⁴ July 2013 Resolution, Report.
- ⁴⁵ Second Amended Notice ¶ 11.
- ⁴⁶ Constitutional Tribunal Resolution in Record No. 00022-1996-PI/TC, 8 August 2013, ¶ 7.
- ⁴⁷ Criminal Claim against Oscar Diaz in Record No. 119-2015, 12th Criminal Prosecutor of Lima, 20 November 2015 (R-14).
- ⁴⁸ Testimony of Gerardo Eto Cruz in Record No. 119-2015, 28 August 2015, ¶ 22 (CE-28).
- ⁴⁹ August 2013 Resolution ¶ 7.
- ⁵⁰ August 2013 Resolution ¶ 3.
- ⁵¹ Constitutional Tribunal Resolution in Record No. 0002-1996-PI/TC, 4 November 2013, ¶¶ 2-4, 8.
- ⁵² *See* Supreme Decree No. 017-2014-EF, 17 January 2014, as modified by Supreme Decree No. 019-2014-EF, 21 January 2014.
- ⁵³ Report No. 014-2014-EF/52.04, Office of Public Debt of the Ministry of Economy and Finance, 17 January 2014, ¶¶ 13-14 (R-15).
- ⁵⁴ Report No. 055-2014-EF/42.01, Office of Public Debt of the Ministry of Economy and Finance, 17 January 2014, ¶¶ 3.3 (R-16).
- ⁵⁵ Report No. 055-2014-EF/42.01, Ministry of Economy and Finance, 17 January 2014, ¶¶ 3.8 (R-16).
- ⁵⁶ *See* Supreme Decree No. 017-2014-EF, 17 January 2014, as modified by Supreme Decree No. 019-2014-EF, 21 January 2014.
- ⁵⁷ Report No. 098-2015-EF/52.04, Office of Public Debt of the Ministry of Economy and Finance, 07 July 2015, ¶¶ 4-7 (R-17).
- ⁵⁸ Amended Witness Statement of Robert S. Koenigsberger (“Amended Koenigsberger”) ¶ 38.

⁵⁹ Memorandum from David Herzberg to Robert Koenigsberger (“2006 Memorandum”), at 1 (CE-114).

⁶⁰ John Quigley and Ben Bartenstein, *A Lone Hedge Fund Seeks Allies in \$5.1 Billion Peru Bond Dispute*, Bloomberg, 2 February 2016, available at <http://www.bloomberg.com/news/articles/2016-02-02/a-lone-hedge-fund-seeks-allies-in-5-1-billion-peru-bond-dispute>; *Gramercy seeks allies against Peru but does not appear to get any*, El Comercio, 4 February 2016 available at <http://elcomercio.pe/economia/peru/estadounidense-gramercy-busca-aliados-disputa-peru-noticia-1876265>.

⁶¹ *Overview*, Gramercy Funds Management, 3 July 2016 available at <http://www.gramercy.com/Overview.aspx>.

⁶² Second Amended Notice ¶¶ 60, 61, 65.

⁶³ Second Amended Notice ¶ 59 (citing Expert Report of Delia Revoredo Marsano De Mur ¶ 28).

⁶⁴ Amended Koenigsberger ¶ 33.

⁶⁵ 2006 Memorandum, at 1 (CE-114).

⁶⁶ 2006 Memorandum, at 2 (CE-114).

⁶⁷ 2006 Memorandum, at 2 (CE-114).

⁶⁸ 2006 Memorandum, at 4 (CE-114).

⁶⁹ 2006 Memorandum, at 3 (CE-114).

⁷⁰ 2006 Memorandum, at 4 (CE-114).

⁷¹ 2006 Memorandum, at 5 (CE-114).

⁷² *See Let’s sue the conquistadors*, The Economist, 16 July 2016 (R-61).

⁷³ Davide Scigliuzzo, *Contentious Peru bond could pay off handsomely for Gramercy fund*, Reuters, 8 July 2016, available at <http://www.reuters.com/article/peru-bonds-gramercy-idUSL1N19T0SK>.

⁷⁴ *See* Supreme Decree No. 176-71-AG, 11 May 1971.

⁷⁵ *See* Resolution No. 25, dated 13 September 1972 (Annex 2 Contract for the Assignment of Rights, 15 November 2006) (R-18).

⁷⁶ Bond No. 008615 (CE-120).

⁷⁷ *See* Resolution No. 25, dated 13 September 1972 (Annex 2 Contract for the Assignment of Rights, 15 November 2006) (R-18).

⁷⁸ Bond No. 008615 (CE-120).

⁷⁹ Bond No. 008615 (CE-120).

⁸⁰ Bond No. 008615 (CE-120).

⁸¹ Bond No. 008615 (CE-120).

- ⁸² See Contract for the Assignment of Rights, Art. 2, 15 November 2006 (R-18).
- ⁸³ On 15 November 2006, Gramercy signed a Contract for the Assignment of Rights, pursuant to which it acquired three bonds for a total of US\$ 38,500.00. The total unpaid facial value in Soles Oro of these bonds was 525,720 Soles Oro. The lone bond accounts for 5,200 Soles Oro. Thus, the lone bond represents 0.989 percent of the total value of the three bonds. Applying this percentage to Gramercy's purchase price of US\$ 38,500.00 shows Gramercy's purchase price of the lone bond to be approximately US\$ 380.00.
- ⁸⁴ Petition by Gramercy Peru Holdings LLC before Third Civil Court of Lambayeque in Record No. 026-197, 14 November 2012 (R-19).
- ⁸⁵ See Record Report in Third Civil Court of Lambayeque in Record No. 026-1973, 22 March 2016 (R-20).
- ⁸⁶ Applying his CPI method, Professor Edwards calculated that the value of the lone bond at the time of his report was 53,106 Soles or approximately US\$ 16,000.
- ⁸⁷ Davide Scigliuzzo, *Contentious Peru bond could pay off handsomely for Gramercy fund*, Reuters, 8 July 2016 available at <http://www.reuters.com/article/peru-bonds-gramercy-idUSL1N19T0SK>.
- ⁸⁸ Notice of Arbitration ¶ 209; see also Koenigsberger ¶ 42 (stating that Gramercy "became a party to hundreds of legal proceedings in Peru seeking judgments compelling payment").
- ⁸⁹ Notice of Arbitration ¶ 136; Koenigsberger ¶ 42.
- ⁹⁰ Second Amended Notice ¶ 136; Amended Koenigsberger ¶ 42.
- ⁹¹ Second Amended Notice ¶ 136; Amended Koenigsberger ¶ 42.
- ⁹² Resolution No. 10 in Third Civil Court of Lambayeque in Record No. 026-1973, 10 August 2016 (R-70).
- ⁹³ ABDA Petition in Record No. 0022-1996-PI/TC, 16 March 2015, at 1-2 (CE-199).
- ⁹⁴ Constitutional Tribunal Decision in Record No. 0022-1996-PI/TC, 7 April 2015 (CE-40).
- ⁹⁵ Matt Wirz, *Hedge Fund Challenges Peru on Land Bonds*, The Wall Street Journal, 15 January 2016 available at <http://www.wsj.com/articles/hedge-fund-challenges-peru-on-land-bonds-1452853981>.
- ⁹⁶ John Quigley and Ben Bartenstein, *A Lone Hedge Fund Seeks Allies in \$5.1 Billion Peru Bond Dispute*, Bloomberg, 2 February 2016 available at <http://www.bloomberg.com/news/articles/2016-02-02/a-lone-hedge-fund-seeks-allies-in-5-1-billion-peru-bond-dispute>.
- ⁹⁷ Letter from Peru to Gramercy, 25 April 2016 (R-51).
- ⁹⁸ 2006 Memorandum, at 3 (CE-114).
- ⁹⁹ Ryan Grim and Paul Blumenthal, *The Vultures' Vultures: How a New Hedge Fund Strategy is Corrupting Washington*, Huffington Post, 13 May 2016, available at www.huffingtonpost.com/entry/vulture-fund-lobbying_us_57350001e4b077d4d6f2a374.
- ¹⁰⁰ Lobbying Registration, LD-1, House Identification 311100508 and Senate Identification 31680, 17 June 2015 (R-21); Lobbying Report, LD-2, House Identification 31110508 and Senate Identification 31680-1007565, 20 July 2015 (R-22); Lobbying Report, LD-2, House Identification 31110508 and

Senate Identification 31680-1007565, 20 October 2015 (R-23); Lobbying Registration, LD-1, House Identification 308730279 and Senate Identification 5153, 23 October 2015 (R-24); Lobbying Report, LD-2, House Identification 308730279 and Senate Identification 5153-1006043, 20 January 2016 (R-25); Lobbying Report, LD-2, House Identification 308730279 and Senate Identification 5153-1006043, 20 January 2016 (R-26); Lobbying Report, LD-2, House Identification 308730279 and Senate Identification 5153-1006043, 19 April 2016 (R-27); Lobbying Report, LD-2, House Identification 31110508 and Senate Identification 31680-1007565, 20 January 2016 (R-28); Lobbying Report, LD-2, House Identification 31110508 and Senate Identification 31680-1007565, 20 April 2016 (R-29).

¹⁰¹ See, e.g., *PABJ Calls on Peru to Make Dean Mahoney's Report Publicly Available*, PR Newswire, 14 June 2016, available at <http://www.prnewswire.com/news-releases/pabj-calls-on-peru-to-make-dean-mahoneys-report-publicly-available-300284509.html>.

¹⁰² See Second Amended Notice ¶ 143; *Egan-Jones Assigns A First-time Rating Of "BB" To The Republic Of Peru's International Bonds*, Egan-Jones Ratings Company, 17 November 2015 (CE-22).

¹⁰³ *Federal Reserve & Academic Studies*, Egan-Jones Ratings Company, visited July 2016, available at <https://www.egan-jones.com/studies>.

¹⁰⁴ *Egan-Jones Is Given SEC Ratings Ban*, The Financial Times, 22 January 2013 (R-30).

¹⁰⁵ See, e.g., *Sovereign Rating Analysis: Republic of Peru*, Egan Jones, at 6-7 (CE-22).

¹⁰⁶ *Peruvian Agrarian Bonds*, HR Ratings, 27 October 2016 (R-31).

¹⁰⁷ *Peruvian Agrarian Bonds*, HR Ratings, 27 October 2016 (R-31).

¹⁰⁸ See Legal Opinion of Professor John C. Coffee, 11 January 2016; John Quigley and Ben Bartenstein, *A Lone Hedge Fund Seeks Allies in \$5.1 Billion Peru Bond Dispute*, Bloomberg, 2 February 2016, available at <http://www.bloomberg.com/news/articles/2016-02-02/a-lone-hedge-fund-seeks-allies-in-5-1-billion-peru-bond-dispute>.

¹⁰⁹ *For Uruguay, it is convenient to stay as far as possible away from Argentina*, El Observador, 2 September 2014 (“We highlight countries that took advantage of the favorable situation and carried out necessary structural reforms and sound macroeconomic policies: Colombia , Chile and Peru They have also been slowed by lower prices for its exports but do not suffer from major macroeconomic imbalances or vulnerabilities. These . . . are the South American countries with the best economic prospects , even in a scenario of turbulence for the eventual rise in interest rates in the US and increased risk aversion by foreign investors.”), available at <http://www.elobservador.com.uy/uruguay-le-conviene-tomar-la-mayor-distancia-posible-argentina-n286905>.

¹¹⁰ Arturo C. Porzecanski, *Peru's Selective Default: A Stain on Its Creditworthiness*, 28 January 2016, at 12–13 (CE-219).

¹¹¹ *Home: Markets: Peru*, EMTA, available at <http://www.emta.org/template.aspx?id=5022>.

¹¹² See *Hedge fund pressures Peru to pay defaulted agrarian bonds*, Peru Reports, 13 October 2015, available at <http://perureports.com/2015/10/13/hedge-fund-pressure-peru-to-pay-agrarian-bonds/>.

¹¹³ *PABJ Calls on Peru to Make Dean Mahoney's Report Publicly Available*, PR Newswire, 14 June 2016, available at <http://www.prnewswire.com/news-releases/pabj-calls-on-peru-to-make-dean-mahoneys-report-publicly-available-300284509.html>.

¹¹⁴ *Know What Is Happening With The Agrarian Bonds in Peru*, America Economía, 5 April 2016 (“[A]ccording to Mario Seoane, spokesperson of the *Asociación de Bonistas de la Deuda Agraria* (ABDA)), available at <http://www.americaeconomia.com/economia-mercados/finanzas/sepa-que-pasa-con-los-bonos-agrarios-en-el-peru>. Indeed, Gramercy authorized the transfer of its files to Mr. Seoane. See Correo electrónico de Jose Cerritelli to Frank Boyle, 7 August 2009 (R-32).

¹¹⁵ See, e.g., *Peru Sold \$3 billion of Debt in 2015 Based Upon “Materially Misleading” Prospectuses*, Business Wire, 19 June 2016 (repeating Coffee’s assertions about “discrimination against foreign creditors and creditors who purchased in the secondary market” in statements by ABDA), available at <http://www.businesswire.com/news/home/20160119006358/en/Peru-Sold-3-billion-Debt-2015-Based>.

¹¹⁶ See *US Hedge Fund Threatens Peru With Law Suit Over Debt*, BBC, 9 October 2015, available at <http://www.bbc.com/news/business-34492745>.

¹¹⁷ See *Flyers*, PABJ, 16 April 2016 (R-33).

¹¹⁸ *US Fund Notifies Intent Peru arbitration Agrarian Bonds*, RPP Noticias, 2 February 2016 (“The notice shows that ‘Gramercy is willing to enforce their international rights and be liable to Peru by the deplorable conduct that the government has demonstrated to the case of the Bonds of Agrarian Reform’ said the lawyer through a statement agency Llorente & Cuenca in Lima.”), available at <http://rpp.pe/economia/economia/fondo-de-eeuu-noticia-934816>.

¹¹⁹ *Sockpuppet Investigation, Sherlock400*, Wikipedia (R-34).

¹²⁰ *Sockpuppet*, Wikipedia (Internet) (R-35).

¹²¹ On 5 April 2016, Wikipedia determined through a review process that a user called “PagoJusto” was a suspected “sockpuppet.” PagoJusto edited Wikipedia’s page on “Agrarian Reform Bonds” on approximately ten distinct occasions. PagoJusto’s edits after Gramercy’s first Notice included the addition that the “State has for decades evaded its constitutional obligation to pay fair value for the expropriated land,” and that “[h]istory thus establishes a pattern of Government mistreatment of the bondholders’ rights.” PagoJusto’s edits included the addition of a section on the Coffee Opinion, without mentioning that it was commissioned by Gramercy. Another “sockpuppet” user, ChicaPeruana, was also found to be hiding its true location, and the only edit ever made by ChicaPeruana is to the Wikipedia page on a Managing Director of Gramercy Funds Management. *Sockpuppet Investigation, Sherlock400*, Wikipedia (R-34); *Agrarian Bonds in Peru: Revision History*, Wikipedia (R-36).

¹²² *Government of Peru, FAQ on Peru’s Bonos de la Deuda Agraria*, Moody’s, 18 December 2015 (R-12).

¹²³ Prospectus Supplement, Republic of Peru, 3 November 2014, at 24, available at <https://www.sec.gov/Archives/edgar/data/77694/000119312514394002/d813311d424b2.htm>; Prospectus Supplement, Republic of Peru, 20 March 2015, at 24, available at <https://www.sec.gov/Archives/edgar/data/77694/000119312514394002/d813311d424b2.htm>.

¹²⁴ John Quigley and Ben Bartenstein, *A Lone Hedge Fund Seeks Allies in \$5.1 Billion Peru Bond Dispute*, Bloomberg, 2 February 2016, available at <http://www.bloomberg.com/news/articles/2016-02-02/a-lone-hedge-fund-seeks-allies-in-5-1-billion-peru-bond-dispute>.

¹²⁵ Mahoney at 13 (R-13).

¹²⁶ Mahoney, at 4-5, 9-10 (R-13).

¹²⁷ Mahoney, at 4-5 (R-13).

¹²⁸ *PABJ Calls on Peru to Make Dean Mahoney's Report Publicly Available*, PR Newswire, 14 June 2016, available at <http://www.prnewswire.com/news-releases/pabj-calls-on-peru-to-make-dean-mahoneys-report-publicly-available-300284509.html>.

¹²⁹ Gramercy asserts that it was “rebuffed” by Peru and refers to a supposed meeting with the Minister of Economy and Finance in May 2015. Second Amended Notice ¶ 112. In fact, the supposed “meeting” was a Gramercy representative approaching the Minister at an event in New York.

¹³⁰ Letter from Peru to Gramercy, 18 February 2016 (R-45).

¹³¹ Gramercy Funds Management, *Gramercy Funds Management Files US \$1.6 Billion Claim against Peru for Violations of the U.S.-Peru Trade Promotion Agreement*, PR Newswire, dated 2 June 2016, available at <http://www.prnewswire.com/news-releases/gramercy-funds-management-files-us-16-billion-claim-against-peru-for-violations-of-the-us-peru-trade-promotion-agreement-300278875.html>.

¹³² *Peru advances Agrarian Reform Bonds Payment Process and Acknowledges Dispute Notice*, dated 2 June 2016, available at https://www.mef.gob.pe/index.php?option=com_content&view=article&id=4475%3Aperu-advances-agrarian-reform-bonds-payment-process-and-acknowledges-dispute-notice&catid=100%3Anotas-de-prensa-y-comunicados&Itemid=100148&lang=es.

¹³³ Law Establishing the State’s Coordination and Response System in International Investment Disputes, Law No. 28933, 14 December 2006.

¹³⁴ The Special Commission and Gramercy first met on 1 March 2016 at the offices of the Special Commission. See Letter from Peru to Gramercy, No. 036-2016-EF/CE-36 dated 22 March 2016 (R-46). Peru will not address the subject matter of this meeting, as it was subject to an agreement between the Parties that it be without prejudice.

¹³⁵ Letter from Peru to Gramercy, No. 022-2016-EF/CE.36, 15 February 2016 (R-44); Letter from Peru to Gramercy, No. 036-2016-EF/CE.36, 22 March 2016 (R-46); Letter from Gramercy to Peru, 28 March 2016 (R-47); Letter from Peru to Gramercy, No. 041-2016-EF/CE.36, 12 April 2016 (R-48); Letter from Peru to Gramercy, No. 042-2016-EF/CE.36, 14 April 2016 (R-49); Letter from Gramercy to Peru, 18 April 2016 (R-50); Letter from Peru to Gramercy, No. 045-2016-EF/CE.36, 25 April 2016 (R-51); Letter from Peru to Gramercy, No. 055-2016-EF/CE.36, 27 May 2016 (R-52); Letter from Gramercy to Peru, 30 May 2016 (R-53); Letter from Peru to Gramercy, No. 57-2016-EF/CE.36, 31 May 2016 (R-54); Letter from Peru to Gramercy, No. 060-2016-EF/CE.36, 1 June 2016 (R-55); Letter from Gramercy to Peru, 2 June 2016 (R-57).

¹³⁶ See Letter from Peru to Gramercy, No. 022-2016-EF/CE-36, 15 February 2016 (R-44).

¹³⁷ Despite being informed that the proper channel was the Special Commission, Gramercy and its representatives continued seeking alternative contacts in Lima, and the Embassy.

¹³⁸ See, e.g., Letters from Peru to Gramercy, 22 March 2016 (R-46); 25 April 2016 (R-51).

¹³⁹ Letter from Gramercy to Peru, 28 March 2016 (R-47).

¹⁴⁰ See Letter from Peru to Gramercy, No. 036-2016-EF/CE.36, 22 March 2016 (R-46).

¹⁴¹ See Letter from Gramercy to Peru, 28 March 2016 (R-47).

¹⁴² Peru continues to reserve the right to produce the entire record of communications related to consultations between the Parties in the context of the Treaty proceeding.

¹⁴³ APJ had previously tweeted the flyers. *See Flyers*, PABJ, Twitter Feed, 13 April 2016 (R-37).

¹⁴⁴ Letter from Ambassador of Peru to Gramercy, 19 January 2016 (R-43)

¹⁴⁵ Letter from Peru to Gramercy, 18 February 2016 (concluding its correspondence by communicating with Gramercy, in light of “the disrespectful and inaccurate content of the prior correspondence, and inviting “an approach that is truly constructive and respectful,” including through use of proper channels for communications for treaty-based disputes.”) (R-45).

¹⁴⁶ Letter from Peru to Gramercy, No. 036-2016-EF/CE.36, 22 March 2016 (R-46).

¹⁴⁷ Letter from Peru to Gramercy, No. 036-2016-EF/CE.36, 22 March 2016 (R-46).

¹⁴⁸ Letter from Peru to Gramercy, No. 042-2016-EF/CE.36, 14 April 2016 (R-49).

¹⁴⁹ Letter from Peru to Gramercy, No. 045-2016-EF/CE.36, 25 April 2016 (R-51).

¹⁵⁰ Letter from Gramercy to Peru, 28 March 2016 (R-47).

¹⁵¹ Letter from Peru to Gramercy, No. 045-2016-EF/CE.36, 25 April 2016 (R-51); *see also Reflejos del Nuevo MEF*, *Caretas* 14 July 2016 (R-63) (Minister of Economy and Finance explaining that in Peru; “No operamos bajo amenazas.”).

¹⁵² Letter from Peru to Gramercy, No. 055-2016-EF/CE.36, 27 May 2016 (R-52).

¹⁵³ Letter from Gramercy to Peru, 30 May 2016 (R-53).

¹⁵⁴ Letter from Peru to Gramercy, No. 57-2016-EF/CE.36, 31 May 2016 (R-54).

¹⁵⁵ Letter from Gramercy to Peru, 1 June 2016 (R-56).

¹⁵⁶ Letter from Peru to Gramercy, 1 June 2016 (R-55).

¹⁵⁷ *Gramercy Funds Management Files US \$1.6 Billion Claim against Peru for Violations of the U.S.-Peru Trade Promotion Agreement*, PR Newswire, 2 June 2016, available at <http://www.prnewswire.com/news-releases/gramercy-funds-management-files-us-16-billion-claim-against-peru-for-violations-of-the-us-peru-trade-promotion-agreement-300278875.html>.

¹⁵⁸ Home: Markets: Peru, EMTA, available at <http://www.emta.org/template.aspx?id=5022>.

¹⁵⁹ *See* Letter from Peru to Gramercy, 2 June 2016 (R-57).

¹⁶⁰ Katie Llanos-Small, *Peru’s PPK: ‘I don’t think we owe [Gramercy] anything’ – Exclusive*, *Latin Finance*, 22 August 2016 (R-62).

¹⁶¹ *See* Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331, Art. 31(1) (“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”); *id.*, Art. 31(2) (“The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes”).

¹⁶² Notice of Arbitration § I.B.

¹⁶³ Claimants' "Notice of Intent to Commence Arbitration Under the United States – Peru Trade Promotion Agreement dated February 1, 2016, ¶¶ 24-25.

¹⁶⁴ See Letter from Gramercy to Peru dated 28 March 2016, Draft Tolling Agreement ("WHEREAS, a dispute between Gramercy and Peru has arisen concerning certain alleged actions and conduct, events or circumstances (collectively, the "Actions") related or in connection with Gramercy's position in bonds issued by Peru pursuant to Decree Law N° 17716, also known as the Land Reform Act (hereinafter the "Land Reform Bonds"), including but not limited to the July 16, 2013 Ruling by Peru's Constitutional Tribunal issued in File No 00022-1996-PI/TC and the Ministry of Economy and Finance's Supreme Decrees 017-2014-EF and 019-2014-EF.") (R-47).

¹⁶⁵ See Letter from Gramercy to Peru, 17 May 2016 (R-64).

¹⁶⁶ Second Amended Notice ¶ 233(c).

¹⁶⁷ Second Amended Notice ¶ 233(c).

¹⁶⁸ Treaty, Art. 10.28.

¹⁶⁹ See, e.g., *Poštová banka, a.s. and Istrokapital SE v. Hellenic Republic*, ICSID Case No. ARB/13/8, Award, 9 April 2015.

¹⁷⁰ UNCITRAL Arbitration Rules, Art. 20(3).

¹⁷¹ Second Amended Notice ¶¶ 26, 118; see Notice of Intent ¶ 5.

¹⁷² Second Amended Notice ¶¶ 27, 118; see Notice of Intent ¶ 5.

¹⁷³ Notice of Intent ¶¶ 1, 3-4; Amended Notice of Intent ¶¶ 1, 3-4.

¹⁷⁴ Letter from Gramercy to Peru, 29 January 2016 (R-43).

¹⁷⁵ Amended Koenigsberger ¶ 37; Second Amended Notice ¶¶ 60, 65, 122; see also Notice of Intent ¶ 23.

¹⁷⁶ Amended Koenigsberger ¶ 41.

¹⁷⁷ See, e.g., *Perenco Ecuador Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador*, ICSID Case No. ARB/08/6, Decision on Jurisdiction, 30 June 2011, ¶ 97 (noting that "[w]here an investment is owned and/or controlled by the investor/claimant through a series of corporations, typically the claimant will adduce evidence as to how it owns or controls such investment"); *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Government of Mongolia*, UNCITRAL, Award on Jurisdiction and Liability, 28 April 2011, ¶ 22 (stating that a claimant requesting arbitration on the basis of a BIT bears the "burden of proof to demonstrate that their investment is protected" under the treaty); *CCL v. Republic of Kazakhstan, SCC Case No. 122/2001*, Jurisdictional Award, 1 January 2003, ¶ 82 (stating that "it must be a procedural requirement that a Claimant party, requesting arbitration on the basis of the Treaty, provides the necessary information and evidence concerning the circumstances of ownership and control, directly or indirectly . . . at all relevant times").

¹⁷⁸ Second Amended Notice ¶¶ 61, 119; Amended Koenigsberger ¶¶ 36-41; see also Notice of Intent ¶ 23.

¹⁷⁹ Letter from Gramercy to Peru, 28 March 2016 (R-47).

¹⁸⁰ See Letter from Gramercy to Peru, 15 July 2016 (R-65).

¹⁸¹ See Letter from Gramercy to Peru, 24 August 2016 (R-66).

¹⁸² Treaty, Art. 10.18.2(b).

¹⁸³ See, e.g., *Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. The Republic of El Salvador*, ICSID Case No. ARB/09/17, Award, 14 March 2011, ¶ 84 (explaining that the waiver requirement in the DR-CAFTA “requires Claimants to file a formal ‘written waiver’, and then materially ensure that no other legal proceedings are ‘initiated’ or ‘continued’”).

¹⁸⁴ See, e.g., *Detroit International Bridge Company v. Canada*, PCA Case No. 2012-25, Award on Jurisdiction, 2 April 2015, ¶ 321 (asserting that “the Tribunal does not consider that the submission of such documents could retroactively validate several months of proceedings during which the Tribunal wholly lacked jurisdiction but had some kind of potential existence that might have been realized if it had acquired jurisdiction at some subsequent date.”).

¹⁸⁵ See, e.g., *Waste Management Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/98/2, Award, 2 June 2000, ¶¶ 18, 20 (concluding that “[w]hatever the case, any waiver must be clear, explicit and categorical,” and the tribunal’s task, therefore, is to “ascertain whether [the claimant] did indeed submit the waiver in accordance with the formalities envisaged.”).

¹⁸⁶ See, e.g., *Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. The Republic of El Salvador*, ICSID Case No. ARB/09/17, Award, 14 March 2011, ¶ 80 (observing that “a waiver must be more than just words; it must accomplish its intended effect.”).

¹⁸⁷ *The Renco Group, Inc. v. Republic of Peru*, ICSID Case No. UNCT/13/1, Respondent’s Submission, 23 October 2015.

¹⁸⁸ *The Renco Group, Inc. v. Republic of Peru*, ICSID Case No. UNCT/13/1, Respondent’s Memorial on Waiver, 10 July 2015, §§ II, III.

¹⁸⁹ Media Alert, *The Renco Group Responds to ICSID Ruling*, The Renco Group, Inc., available at http://www.rencogroup.net/companymessages_07182016.php.

¹⁹⁰ *The Renco Group, Inc. v. Republic of Peru*, ICSID Case No. UNCT/13/1, Partial Award on Jurisdiction, 15 July 2016, ¶¶ 118, 138.

¹⁹¹ *The Renco Group, Inc. v. Republic of Peru*, ICSID Case No. UNCT/13/1, Partial Award on Jurisdiction, 15 July 2016, § VII.

¹⁹² See Notice of Arbitration ¶ 233(h).

¹⁹³ Second Amended Notice ¶ 233.

¹⁹⁴ Letter from Gramercy to Peru, 28 March 2016, at 4-5 (R-47). Similarly, Gramercy did not reveal this letter in either of its subsequent filings.

¹⁹⁵ Treaty, Annex 10-B ¶ 3(a)(i).

¹⁹⁶ Treaty, Annex 10-B ¶ 3(a)(ii).

¹⁹⁷ Treaty, Annex 10-F ¶ 1.

- ¹⁹⁸ Second Amended Notice ¶ 124.
- ¹⁹⁹ Second Amended Notice ¶ 137.
- ²⁰⁰ Second Amended Notice ¶ 184.
- ²⁰¹ *See supra*, § II.C.
- ²⁰² Second Amended Notice ¶¶ 211-212.
- ²⁰³ Constitutional Tribunal Resolution in Record No. 00022-1996-PI/TC, 8 August 2013, ¶ 16.
- ²⁰⁴ Petition by Gramercy Peru Holdings LLC before Third Civil Court of Lambayeque in Record No. 026-1973, 14 October 2014 (R-38).
- ²⁰⁵ *See* Alfredo Bullard, *When things are done well*, El Comercio, 21 February 2015 (“If the Peruvian State was a law firm, it would be one of the most effective litigators with the most positive results in history.”) (R-39).
- ²⁰⁶ *See* Letter from Gramercy to Peru, 24 August 2016 (R-66).
- ²⁰⁷ *See* Letter from Peru to Gramercy, 31 August 2016 (R-67).
- ²⁰⁸ *See* Letter from Gramercy to Peru, 24 August 2016 (R-66); Letter from Peru to Gramercy, 31 August 2016 (R-67).
- ²⁰⁹ Treaty, Art. 10.19.
- ²¹⁰ Treaty, Art. 10.16.6(a).
- ²¹¹ Notice of Arbitration ¶ 233(f).
- ²¹² Letter from Arbitrator to Peru and Gramercy, 27 June 2016 (“At the time of that appointment I was advised by Debevoise & Plimpton that neither that firm nor the Claimants were aware of what counsel might have been, or might be, engaged outside of the Government of The Republic of Peru to represent it in the above-referenced arbitration. Upon learning subsequent to service of the Claimants’ Notice of Arbitration and Statement of Claim, however, that White & Case LLP was appointed to represent The Republic of Peru, I concluded that I should follow the policy I have always implemented since retiring at the end of 2000 as a partner in that firm of declining to sit as arbitrator in any arbitration in which that firm would be acting as counsel.”) (R-58).
- ²¹³ Amended Notice ¶ 233(f).
- ²¹⁴ Second Amended Notice ¶ 233(f).
- ²¹⁵ *See* Letters from Peru to Gramercy, 31 August 2016 (R-67), (R-68).
- ²¹⁶ *See* Letter from Peru to Gramercy, 31 August 2016 (R-67).
- ²¹⁷ Treaty, Art. 10.21.
- ²¹⁸ *Biwater Gauff v. Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3, 29 September 2006, ¶ 112.
- ²¹⁹ *Biwater Gauff v. Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3, 29 September 2006, ¶ 135.

²²⁰ *Id.* Arbitral tribunals have recognized that the right to non-aggravation of the dispute is a self-standing procedural right. See *Teinver v. Argentina*, Decision on Provisional Measures, ICSID Case No. ARB/09/1, April 8, 2016, ¶ 198; *Burlington v. Ecuador*, ICSID Case No. ARB/08/5, Procedural Order No. 1, 29 June 2009, ¶ 60; *Quiborax v. Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures, 26 February 2010, ¶ 117.

²²¹ *Amco Asia Corp. v. Republic of Indonesia*, Decision on Request for Provisional Measures, ICSID Case No. ARB/81/1, 9 December 1983.

²²² *Biwater Gauff v. Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3, 29 Sept. 2006, ¶ 135.

²²³ *United Utilities (Tallinn) B.V. v. Republic of Estonia*, ICSID Case No. ARB/14/24; *Teinver v. Argentina*, Decision on Provisional Measures, ICSID Case No. ARB/09/1, April 8, 2016, ¶ 210; see also *Amco Asia Corp. v. Republic of Indonesia*, Decision on Request for Provisional Measures, ICSID Case No. ARB/81/1, 9 December 1983.

²²⁴ *Biwater Gauff v. Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3, 29 September 2006, ¶ 136; see also *Victor Pey Casado v. Chile*, Decision, ICSID Case No. ICSID/ARB/98/2, 8 May 2002, ¶¶ 73-77.

²²⁵ *United Utilities (Tallinn) B.V. v. Republic of Estonia*, ICSID Case No. ARB/14/24, Decision on Respondent's Application for Provisional Measures, 12 May 2016, ¶ 114.