

In the matter of an arbitration under the UNCITRAL Arbitration Rules

between

1. GRAMERCY FUNDS MANAGEMENT LLC
2. GRAMERCY PERU HOLDINGS LLC

Claimants

v.

THE REPUBLIC OF PERU

Respondent

TERMS OF APPOINTMENT

ARBITRAL TRIBUNAL
Juan Fernández-Armesto (Presiding Arbitrator)
Stephen L. Drymer
Brigitte Stern

SECRETARY OF THE TRIBUNAL
Marisa Planells-Valero

ASSISTANT TO THE PRESIDENT
Luis Fernando Rodríguez

May 22, 2018

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I. THE PARTIES

1. CLAIMANTS

1. The Claimants in this proceeding are Gramercy Funds Management LLC and Gramercy Peru Holdings LLC [**“Claimants”** or **“Gramercy”**], two limited liability companies organized under the laws of the State of Delaware (USA). Gramercy’s address¹ is the following:

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

2. Claimants are represented by the following counsel:

Mark W. Friedman
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Telephone: +1 212 909 6000
Email: mwfriedman@debevoise.com
GramercyLandBonds@debevoise.com

2. RESPONDENT

3. The Respondent is the Republic of Peru [**“Respondent”** or **“Peru”**]. Pursuant to Annex 10-C of the United States-Peru Free Trade Agreement signed on April 12, 2006 [the **“Treaty”**], the Respondent’s address in case of a dispute is the following:

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

4. Respondent is represented by the following counsel:

Jonathan C. Hamilton
White & Case LLP
701 Thirteenth Street N.W.
Washington, D.C. 20005
Telephone: +1 202 626 3600
Email: jhamilton@whitecase.com
equipoperu@whitecase.com
rampuero@mef.gob.pe

¹ C-5 (Second Amended Notice of Arbitration and Statement of Claim), para. 28.

mguerreroa@mef.gob.pe

5. Claimants and Respondent will collectively be referred to as the “**Parties**”.

II. THE ARBITRAL TRIBUNAL

1. CONSTITUTION OF THE ARBITRAL TRIBUNAL

6. On August 5, 2016, Claimants confirmed its appointment² as arbitrator of Mr. Drymer:

Mr. Stephen L. Drymer (sdrymer@woods.qc.ca)
Woods LLP
2000 McGill College Ave., Suite 1700,
Montreal, Québec H3A 3H3, Canada

7. On August 25, 2016, Respondent confirmed the appointment as arbitrator³ of Prof. Stern:

Prof. Brigitte Stern (brigitte.stern@jstern.org)
7, rue Pierre Nicole
Code A1672
75005, Paris, France

8. On February 12, 2018, the Secretary General of the International Centre for Settlement of Investment Disputes [“**ICSID**”], acting as appointing authority under Art. 10.19(3) US-Peru TPA, selected as Presiding Arbitrator (or President):

Juan Fernández-Armesto (jfa@jfarmesto.com)
Armesto & Asociados
General Pardiñas, 102, 8º izda.
28006 Madrid (Spain)

9. On February 13, 2018, Juan Fernández-Armesto accepted his appointment as Presiding Arbitrator.
10. Each arbitrator has provided a Statement of Independence and Availability.
11. By signing these Terms of Appointment, the Parties acknowledge that they agree to submit to this arbitration and expressly waive any objections they may have with respect to the constitution of the Tribunal based on available information.
12. All notifications arising in the course of the arbitration addressed to the Tribunal shall be made to the abovementioned addresses.

² Second Amended Notice, para. 233(f).

³ Letters from Peru to Gramercy, dated August 31, 2016.

2. ADMINISTRATIVE SERVICES

A. Administering Authority

13. ICSID shall act as Administering Authority in this arbitration, rendering full secretariat services as provided in this section. ICSID services will include, among others, the following:
- (a) ICSID shall maintain an archive of filings of correspondence and submissions.
 - (b) ICSID shall manage Party deposits to cover the costs of the arbitration, subject to the Tribunal's supervision.
 - (c) ICSID shall carry out all the tasks regarding transparency and publicity of these proceedings, in accordance with the Treaty and under the Tribunal's directions.
 - (d) Upon request, ICSID shall carry out administrative and logistical tasks on behalf of the Tribunal.
14. Work carried out by ICSID shall be billed annually in accordance with the ICSID Schedule of Fees in force at the time the fees are incurred. Currently, the annual fee for ICSID services is US\$ 42,000 (forty-two thousand dollars of the United States of America) Work carried out by ICSID shall be paid in the same manner as the Tribunal's fees and expenses.
15. The appointment of ICSID as Administering Authority shall not affect the legal place of arbitration, the geographical location of meetings or hearings, the applicable procedural rules, or other aspects of the arbitral proceedings, which shall remain subject to the Treaty, these Terms of Appointment, any agreement between the Parties, and any decisions by the Tribunal.

B. Secretary of the Tribunal

16. Ms. Marisa Planells-Valero, or other person as ICSID may notify the Tribunal and the Parties from time to time, will act as Secretary of the Tribunal in these proceedings.
17. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Marisa Planells-Valero
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-9273
Email: mplanellsvalero@worldbank.org

18. For local messenger deliveries, the contact details are:

ICSID
701 18th Street, N.W. 2nd Floor (“J Building”)
Washington, D.C. 20006
USA
Tel.: + 1 (202) 458-4567

19. ICSID and its officials are bound by the same confidentiality duties applicable to the Parties and the Tribunal in this arbitration.

C. Assistant to the President

20. With the consent of the Parties and his co-arbitrators, the Presiding Arbitrator appoints the following Assistant [the “Assistant”]:

Dr. Luis Fernando Rodríguez
Armesto & Asociados
General Pardiñas, 102
28006 Madrid
Spain
Tel.: +34 91 562 16 25
Fax: +34 91 515 91 45
Email: lfr@jfarmesto.com

21. The Assistant works for Armesto & Asociados, the same firm of arbitrators to which the Presiding Arbitrator belongs. Armesto & Asociados’ professional activity is limited to acting as arbitrators. The Parties received the Assistant’s *curriculum vitae* and declaration of independence and impartiality on April 30, 2018.
22. The Members of the Tribunal will personally make all decisions required to adjudicate the merits of the present dispute and all procedural issues. To personally fulfill its decision-making functions, the Presiding Arbitrator may draw on the help of the Assistant. The Assistant’s tasks will be performed upon the President’s specific instructions, under his direct supervision and responsibility, and will not release the Tribunal of any of its decision-making duties.
23. When instructed by the Presiding Arbitrator, the Assistant may perform the following tasks:
- Organize and maintain the President’s arbitral file;
 - Attend meetings, hearings and deliberations; take notes;
 - Summarize submissions, review evidence and authorities, conduct legal research, write notes or memoranda on factual and legal issues, prepare preliminary drafts of decisions or sections of awards under the specific instruction and continuous control and supervision of the President.

24. The Assistant shall be bound by the same duties of confidentiality, independence and impartiality as the members of the Tribunal.
25. The Presiding Arbitrator may remove the Assistant at his discretion. The Presiding Arbitrator will remove the Assistant if he ceases to work for Armesto & Asociados. The President may, subject to the Parties' agreement, appoint a substitute, by submitting to the Parties the substitute's *curriculum vitae* and declaration of independence and impartiality.

III. NOTIFICATIONS AND COMMUNICATIONS

26. The Parties agree that their main submissions and all other notifications and communications between them or among the Tribunal, the Assistant, ICSID, and the Parties shall be transmitted by electronic mail to the email addresses indicated in Sections I and II *supra*.
27. The Parties agree that the periods of time agreed by them or fixed by the Tribunal shall start to run on the day following the date on which a notification or communication is made. If the first or last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall begin to run at the beginning of the first following business day or expire at the end of the first following business day. For the purpose of these proceedings, Saturdays and Sundays should be considered non-business days.
28. Any Party shall immediately notify in writing the other Party and the members of the Tribunal of any change in its contact address. Failing such notification and confirmation of receipt by the Presiding Arbitrator, all communications sent to the above addresses shall be deemed valid.

IV. ARBITRATION AGREEMENT

29. The Claimants instituted this arbitration under Chapter Ten ("Investment") of the Treaty and, in particular, its Articles 10.16 and 10.17.
30. Article 10.17 reads as follows:

"Article 10.17: Consent of Each Party to Arbitration.

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.
2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article II of the New York Convention for an “agreement in writing;” and

(c) Article I of the Inter-American Convention for an “agreement”.

31. Article 10.16 provides the following:

“Article 10.16: *Submission of a Claim to Arbitration*

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement;

and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement;

and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration (“notice of intent”). The notice shall specify:

- (a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;
- (b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;
- (c) the legal and factual basis for each claim; and
- (d) the relief sought and the approximate amount of damages claimed.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

- (a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;
- (b) under the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;
- (c) under the UNCITRAL Arbitration Rules; or
- (d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section when the claimant’s notice of or request for arbitration (“notice of arbitration”):

- (a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
- (b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;
- (c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent; or
- (d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

6. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator".

32. For the avoidance of doubt, the citation of certain provisions of the Treaty herein is without prejudice to other provisions of the Treaty.

V. SUMMARIES OF CLAIMS AND RELIEF SOUGHT

33. At the Tribunal's request⁴, each Party prepared a summary of its claims and relief sought. They are included below almost *verbatim*⁵.

34. The purpose of the summaries is to set out the general scope of the proceedings for the Arbitral Tribunal, without prejudice to any other or further allegations, arguments or contentions contained in the pleadings or submissions already filed, and in such submissions as will be made in the course of this arbitration.

35. No statement or omission in these summaries is to be interpreted as a waiver by the Parties of any issue of fact or law.

1. CLAIMANTS' CLAIMS AND RELIEF SOUGHT

1.1 FACTS

36. This dispute arises out of a series of measures taken by Peru that destroyed the value of Claimants' investment in Peruvian Agrarian Land Reform Bonds [**"Land Bonds"**], which are sovereign bonds issued by Peru beginning in 1969 as compensation for the wide-scale expropriation of agrarian land by Peru's leftist, unelected, military-controlled dictatorship.

37. Over the ensuing years, Peru's currency had been so devalued by inflation and currency redenominations that the Land Bonds had become worthless if accorded only their face value. Hence, it was a landmark event when in 2001, Peru's Constitutional Tribunal definitively rejected the Government's attempt to pay only nominal value [**"2001 CT Decision"**] by holding that a "basic sense of justice" required payment of the Land Bonds' current value. In the next several years leading up to Gramercy's investment, Peru's Constitutional Tribunal, its Supreme Court, its Congress, senior members of Peru's executive branch, and many others

⁴ A-2, para. 2.

⁵ C-11 and R-6, dated April 10, 2018.

all consistently affirmed that the correct method for updating the Land Bond debt to current value was to apply the Peruvian CPI, plus interest.

38. From 2006 to 2008, Claimants Gramercy Funds Management LLC [**“GFM”**] and Gramercy Peru Holdings LLC [**“GPH,”** and collectively, **“Gramercy”**] invested in over 9,700 Land Bonds. During this time period, Gramercy acquired the physical bonds, which required face-to-face meetings in Peru. The physical delivery of the Land Bonds occurred in Peru, all of the money that Gramercy invested in the Land Bonds was paid into Peru, and the Land Bonds are still located in Peru.
39. When Gramercy acquired the Land Bonds, it did so with the legitimate expectation that Peru would responsibly honor its debt. At the time, Peru had recovered from years of economic mismanagement, characterized by instability and severe inflation. It boasted strong growth and sound fiscal management. And it actively sought foreign investment, including by passing investment protection laws, settling all of its other defaulted debt with international creditors, floating new SEC-registered bonds to international markets, and entering into investment treaties, including the United States-Peru Trade Promotion Agreement underpinning this arbitration. Gramercy saw the acquisition of the Land Bonds as an investment in Peru and in its continued development.
40. Gramercy’s decision to invest in the Land Bonds was also premised on Peru’s stated commitment to honor its obligation to pay the Land Bond debt at current value. Prior to Gramercy’s investment, Peru had specifically made clear that despite the Government’s long default in paying the Land Bonds, they remained sovereign obligations that had to be paid at so-called “current value” calculated by using the Peruvian Consumer Price Index [**“CPI”**].
41. By the end of 2006, when Gramercy began investing in the Land Bonds, it was thus abundantly clear that Peruvian law established that the Land Bonds were to be paid at current value, that CPI was the correct method for calculating current value, that bondholders could access Peruvian courts in order to vindicate their rights to payment of the Land Bonds’ current value, and that the government could not impose a mandatory payment mechanism that offered less than current value, or prevented the bondholders from seeking current value in courts.
42. On July 16, 2013, the Constitutional Tribunal issued a new decision, which reaffirmed that the Land Bond debt must be paid in accordance with the current value principle [**“2013 CT Order”**]. However, the 2013 CT Order also contained several puzzling elements. *First*, it inaccurately and without apparent evidentiary support declared that updating the value of the Land Bonds using the CPI method would generate “serious impacts” on Peru’s budget, to the point of making repayment “impracticable”. *Second*, on the basis of this unsupported conclusion, it set out parameters for determining current value that were not based on CPI, in a clear departure from prior practice. In particular, the 2013 CT Order instructed the Peruvian Government to establish a methodology and procedure to calculate current value according to a “dollarization” method. The 2013 CT Order itself did not specify precisely what the Government would offer according to this method –this had to wait until the Government issued Supreme Decrees setting forth the actual

payment methodology, as discussed below. The Constitutional Tribunal also issued two resolutions, on August 8, 2013 and November 4, 2013 [collectively, “**2013 Resolutions**”], which, among others, clarified that the payment process established by the Government would be mandatory and exclusive.

43. The 2013 CT Order took on an entirely different aspect only much later, when events came to light that cast serious doubt on the legitimacy of the decision. In the course of a scandal that first broke in the Peruvian press in January 2015, Gramercy learned that, in fact, the 2013 CT Order was marred by procedural irregularities, including using white-out to transform an intended majority opinion favoring bondholders into a forged dissent. These events are currently the subject of criminal proceedings in Peru.
44. Following the 2013 CT Order, on January 17 and 21, 2014; February 28, 2017; and August 19 and 26, 2017; the Peruvian Government issued a series of arbitrary Supreme Decrees [“**Supreme Decrees**”] that purport to calculate current value of the Land Bonds pursuant to the 2013 CT Order, but in fact deprive bondholders of virtually all the value of their investments using economically irrational valuation formulas, and establish unfair mandatory procedures for bondholders. Among other problems, the Supreme Decrees impose an exclusive verification and payment process that is a series of traps designed to further delay payment; reserve the right to make no payment at the Peruvian Government’s discretion; and require bondholders to waive rights in advance as the price of simply seeking to participate in the process. Even worse, the Supreme Decrees contain mathematical formulas with fundamental errors that make them nonsensical and consistently produce values that are far less than one percent of CPI value.
45. Prior to the commencement of the arbitration, Gramercy repeatedly sought amicable resolution of its claims for payment of the Land Bonds, but the Government refused or did not respond to Gramercy’s requests for substantive discussions. Following the Government’s refusal to engage in meaningful talks, on February 1, 2016, Gramercy served a Notice of Intent to Commence Arbitration pursuant to Article 10.16.2 of the Treaty. Thereafter, Gramercy continued to reach out to the Government, with no success in resolving the dispute, and thus formally commenced the arbitration.

1.2 CLAIMS

46. Gramercy alleges that the series of measures taken by Peru, including but not limited to the 2013 CT Order, the 2013 Resolutions, and the 2014 and 2017 Supreme Decrees, taken alone or together, destroy the value of its investment and violate Peru’s obligations under the Treaty.
47. *First*, by establishing an exclusive and deceptive payment process that purports to pay the Land Bonds while actually stripping them of their value, Peru has committed an indirect expropriation of Gramercy’s investment in breach of Article 10.7 of the Treaty, which prohibits Peru from “expropriate[ing] or nationaliz[ing] a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (‘expropriation’), except: (a) for a public purpose,

in a non-discriminatory manner; (c) on payment of prompt, adequate, and effective compensation; and (d) in accordance with due process of law and Article 10.5". Annex 10-B defines an indirect expropriation to occur when "an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure," and specifies that a determination of whether a taking happened requires "a case-by-case, fact-based inquiry that considers, among other factors": (i) "the economic impact of the government action"; (ii) the extent of the action's interference with "distinct, reasonable investment-backed expectations"; and (iii) "the character of the government action".

48. *Second*, by engaging in arbitrary and unjust conduct in contravention of basic notions of due process and Gramercy's legitimate expectations, including conduct that constituted a denial of justice, Peru has breached its obligation to afford the minimum standard of treatment under Article 10.5 of the Treaty. Article 10.5 requires Peru to, among others, "accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security". Appendix 10-A clarifies the State Parties' understanding of "customary international law" as referring to "all customary international law principles that protect the economic rights and interests of aliens".
49. *Third*, by placing the only known foreign legal entity that owns Land Bonds last in line for payment, Peru has breached violated Article 10.3 of the Treaty, entitled "National Treatment". Article 10.3 requires, in relevant part, Peru to accord to "investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory".
50. *Fourth*, by creating an exclusive administrative method that denies Gramercy the ability to seek recourse Peruvian courts, and which itself does not provide an effective forum for Gramercy to assert claims or enforce its rights, Peru has denied Gramercy effective means to enforce its rights, in breach of the Treaty's most-favored-nation ["**MFN**"] clause set forth in Article 10.4. This Article requires Peru to grant treatment no less favorable to U.S. investors than that it accords to other foreign investors. It is well-established that investors may use MFN clauses to import more favorable substantive provisions, including effective means provisions, from other investment treaties entered into by the state, and the Peru-Italy Treaty on the Promotion and Protection of Investments of 1994 contains such a provision.

1.3 REQUEST FOR RELIEF

51. In paragraph 236 of its Second Amended Notice of Arbitration and Statement of Claim dated August 5, 2016, Gramercy requests an award granting the following relief:
 - a) Declaring that Peru has:

- i. unlawfully expropriated Gramercy's investment in breach of Article 10.7 of the Treaty;
 - ii. failed to accord the minimum standard of treatment to Gramercy's investment in breach of its obligations under Article 10.5 of the Treaty;
 - iii. subjected Gramercy to treatment that was less favorable than the treatment granted to its own investors in breach of its obligations under Article 10.3 of the Treaty; and
 - iv. denied Gramercy effective means in subjecting Gramercy to treatment that was less favorable than the treatment granted to investors of other nations in breach of its obligations under Article 10.4 of the Treaty.
- b) Ordering Peru to pay Gramercy the value of the Land Bonds that is the contemporary equivalent of the Bonds' value at the time they were issued, which is approximately US \$1.6 billion as of April 30, 2016 and will be further updated as of the date of the award;
 - c) Ordering Peru to pay all the costs of the arbitration, as well as pay Gramercy's professional fees and expenses;
 - d) Ordering Peru to pay interest at commercial, annually compounding rates on the above amounts from the date of the award until full payment is received; and
 - e) Ordering any other such relief as the Tribunal may deem appropriate.

2. **PERU'S CLAIMS AND RELIEF SOUGHT**

52. The Republic of Peru is a fiscally responsible sovereign that has implemented 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.
53. *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. After years of hyperinflation and economic problems, the status of the Bonds was uncertain, with only partial or never-adopted efforts at resolution.
54. *The Speculative Acquisitions of a Lone Fund.* 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 plus interest.

55. *The Legal Resolution and Bondholder Process.* After years of uncertainty, the legal status of the “Land Bonds” was settled 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.
56. *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. Gramercy’s desperate smear campaign reveals its uncertainty about its ability to trump Peru in actual Treaty proceedings, where aggravating conduct is impermissible.
57. *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.
58. *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. The Treaty does not provide for speculative expropriation claims, nor does it provide for damages that are grossly misaligned with any reasonable expectations.
59. *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.
60. 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.

VI. APPLICABLE RULES

1. APPLICABLE SUBSTANTIVE RULES

61. The Tribunal shall decide the issues in dispute in accordance with the Treaty and applicable rules of international law⁶.

2. APPLICABLE PROCEDURAL RULES

62. The 2013 UNCITRAL Arbitration Rules [“**UNCITRAL Rules**”] shall govern this arbitration, except to the extent modified by the Treaty⁷.
63. The Tribunal may consider but is not bound by the IBA Rules on the Taking of Evidence in International Arbitration (2010) and the IBA Guidelines on Party Representation in International Arbitration (2013).
64. In order to ensure effective case management, the Arbitral Tribunal, after consulting with the Parties, may adopt such procedural measures as it considers appropriate.

VII. PROCEDURAL TIMETABLE

65. The arbitration shall be conducted in accordance with the Procedural Timetable established by the Arbitral Tribunal in a procedural order.
66. The Tribunal may modify such Procedural Timetable at any time, after consultation with the Parties.

VIII. LANGUAGE

67. The Parties agree that the languages of the proceedings shall be English and Spanish. The precise rules on the use of these languages shall be established in a procedural order, upon consultation with the Parties.

IX. PLACE OF THE ARBITRATION

68. After receiving the Parties’ positions on the matter, the Tribunal shall establish the place of arbitration in a separate order and in accordance with Arts. 10.20(1) and 10.16(3) of the Treaty.

⁶ Article 10.22 (“Governing Law”) of the Treaty.

⁷ Article 10.16.5 of the Treaty.

X. TRANSPARENCY

69. In accordance with Article 10.21 of the Treaty, ICSID shall maintain a record of the procedural details for the proceeding on its website and publish the documents set forth in Article 10.21(1) of the Treaty, including these Terms of Appointment:
- (a) the notice of intent;
 - (b) the notice of arbitration;
 - (c) pleadings, memorials, and briefs submitted to the Tribunal by a disputing party and any written submissions submitted pursuant to Article 10.20.2 and 10.20.3 and Article 10.25 of the Treaty;
 - (d) minutes or transcripts of hearings of the Tribunal, where available; and
 - (e) orders, awards, and decisions of the Tribunal.
70. The Tribunal shall establish in a separate order, upon consultation with the Parties, the specific rules on transparency governing these proceedings.

XI. QUORUM AND DECISIONS OF THE TRIBUNAL

71. All members of the Tribunal shall be necessary to constitute a quorum for all hearings and all meetings of the Tribunal, without prejudice to the Parties agreeing otherwise.
72. Decisions of the Tribunal shall be made by a majority of the arbitrators. In questions of procedure, the Presiding Arbitrator may decide alone, when authorized by the Tribunal and subject to revision by the Tribunal. The Presiding Arbitrator may execute procedural orders and other documents on behalf of the Arbitral Tribunal. The Presiding Arbitrator shall also be authorized to modify any time limit, especially in case of urgency.
73. Any award shall be signed by the Tribunal in the required number of counterparts.

XII. EXCLUSION OF LIABILITY

74. In accordance with Art. 16 UNCITRAL Rules, save for intentional wrongdoing, the Parties waive, to the fullest extent permitted under the applicable law, any claim against the Arbitrators, the Assistant, ICSID, and any person appointed by the Arbitral Tribunal based on any act or omission in connection with this arbitration.

XIII. REMUNERATION

75. The Parties and the Tribunal undertake to manage the proceedings in a cost-efficient way, avoiding unnecessary delay or expense.
76. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
77. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
78. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
79. Under the current Schedule of Fees, each Tribunal Member receives:
 - (a) US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or pro rata; and
 - (b) subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
80. The Assistant to the President shall be paid by the President for his work. He will be reimbursed by the parties for his reasonable travel and transportation expenses only.

XIV. MANAGEMENT OF THE PARTIES' DEPOSITS

81. Pursuant to Article 43 of the UNCITRAL Rules, the Tribunal may request that the Parties deposit an equal amount as an advance for the costs referred to in Article 40(2)(a), (b) and (c) of those Rules.
82. Payment by the Parties of this deposit shall be without prejudice to the final decision of the Tribunal as to the allocation of such costs pursuant to Article 42 of the UNCITRAL Rules.
83. The Tribunal may request supplementary deposits from the Parties as reasonably and justifiably required. Such requests will be accompanied by an interim statement of account providing details of the direct costs of the proceeding, including the global fees and expenses of all arbitrators.
84. At the conclusion of the proceeding, the Tribunal shall render an accounting to the Parties of the deposits received and return any balance to the Parties.

XV. VAT

85. To the extent that Value Added Tax [“VAT”] (or any other indirect tax) may be due on the Arbitrators’ fees under the applicable tax rules, the Parties undertake to pay such VAT at the prevailing rate upon submission of an invoice addressed to them by the Arbitrators or the Assistant.
86. Upon an invitation by the Tribunal, the Parties shall, as soon as reasonably practicable, pay an advance on the VAT amount which is likely to be due.

XVI. AMICUS CURIAE SUBMISSIONS

87. In accordance with Art. 10.20(3) of the Treaty, the Tribunal shall have the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party. Each submission shall identify the author and any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission.
88. The Tribunal shall establish in a procedural order, upon consultation with the Parties, the procedure for filing *amicus curiae* submissions.

XVII. REPRESENTATIONS

89. The persons acting on behalf of Claimants and Respondent represent to the other party and to the Tribunal that they are duly authorized to sign these Terms of Appointment on behalf of the entities which they represent, and that these Terms of Appointment are hereby validly adopted by such entities.
90. Each party to these Terms of Appointment will formalize its consent by signing the appropriate signature page, and forwarding a scanned copy of the Terms of Appointment to the Presiding Arbitrator.
91. A document, incorporating all signatures, and duly certified by the Presiding Arbitrator or the President’s Assistant, will be sent to all the signatories and shall for all purposes represent a valid and enforceable original of this agreement.

Signed as of May 22, 2018.

CLAIMANTS

1. GRAMERCY FUNDS MANAGEMENT LLC

2. GRAMERCY PERU HOLDINGS LLC

[signed]

Name of representative: _____

Title: _____

Date and description of power of attorney: _____

RESPONDENT

THE REPUBLIC OF PERU

[signed]

Name of representative: _____

Title: _____

Date and description of power of attorney: _____

THE ARBITRAL TRIBUNAL

[signed]

Juan Fernández-Armesto
Presiding Arbitrator

Date:

[signed]

Stephen L. Drymer
Co-Arbitrator

Date:

[signed]

Brigitte Stern
Co-Arbitrator

Date: