In the Arbitration under the Rules of the United Nations Commission on International Trade Law and the United States – Peru Trade Promotion Agreement

ICSID Case No. UNCT/18/2

GRAMERCY FUNDS MANAGEMENT LLC
AND
GRAMERCY PERU HOLDINGS LLC,

Claimants

— v. —

THE REPUBLIC OF PERU,

Respondent

CLAIMANTS' POST-HEARING BRIEF ON JURISDICTION

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ABBREVIATED TERMS

2001 CT Decision	**Doc. CE-11**, Constitutional Tribunal Decision dated March 15, 2001
2013 CT Order	**Doc. CE-17**, Constitutional Tribunal Order dated July 16, 2013
2014 Supreme Decrees	**Doc. CE-37**, Supreme Decree No. 17-2014-EF, January 17, 2014, and **Doc. CE-38**, Supreme Decree No. 19-2014-EF, January 21, 2014
ATPDEA	Andean Trade Promotion and Drug Eradication Act
BIT	bilateral investment treaty
Contracting Parties	Republic of Peru and the United States of America
CPI	consumer price index
CT	Constitutional Tribunal
DGETP	*Dirección General de Endeudamiento y Tesoro Público*
GFM	Gramercy Funds Management LLC
GPH	Gramercy Peru Holdings LLC
Gramercy	GFM and GPH
Land Bonds	Peruvian Agrarian Reform Bonds
MEF	Peru's Ministry of Economy and Finance
MFN	most favored nation
PARB	Peruvian Agrarian Reform Bond Company
Parties	Gramercy and the Republic of Peru
PHB	post-hearing brief
Treaty	**Doc. CE-139**, United States-Peru Trade Promotion Agreement of February 1, 2009
U.S. Submission	Submission of the United States of America, June 21, 2019
USTR	U.S. Trade Representative
VCLT	**Doc. CA-121**, Vienna Convention on the Law of Treaties of 1969

REFERENCED SUBMISSIONS

C-34	Third Amended Notice of Arbitration and Statement of Claim, July 13, 2018 ("***Statement of Claim***")
C-63	Statement of Reply and Answer to Objections [Corrected], May 21, 2019 ("***Reply***")
C-69	Claimants' Rejoinder to Peru's Objections to Jurisdiction, November 13, 2019 ("***Rejoinder on Jurisdiction***")
C-80	Claimants' Opposition to Peru's Petition, March 23, 2020 ("***Opposition***")
C-86	Claimants' Post-Hearing Brief on Merits and Remedies, July 1, 2020 ("***Gramercy's PHB1***")
CER-4	Amended Expert Report of Sebastian Edwards, July 13, 2018 ("***Edwards I***")
CER-7	First Expert Report of Amb. Peter Allgeier, May 21, 2019 ("***Allgeier I***")
CER-8	First Expert Report of Prof. Rodrigo Olivares-Caminal, May 21, 2019 ("***Olivares-Caminal I***")
CER-10	Expert Report of Alfredo Bullard, May 21, 2019 ("***Bullard Rep.***")
CER-11	Reply Expert Report of Amb. Peter Allgeier, November 13, 2019 ("***Allgeier II***")
CER-12	Reply Expert Report on Jurisdiction of Prof. Rodrigo Olivares-Caminal, November 13, 2019 ("***Olivares-Caminal II***")
CWS-3	Second Amended Witness Statement of Robert S. Koenigsberger, July 13, 2018 ("***Koenigsberger I***")
CWS-4	Reply Witness Statement of Robert S. Koenigsberger, May 21, 2019 ("***Koenigsberger II***")
CWS-6	Witness Statement of Robert Joannou, May 21, 2019 ("***Joannou***")
CWS-7	Witness Statement of Ms. G., May 14, 2019 ("***Ms. G.***")
CWS-10	Rebuttal Witness Statement of Robert S. Koenigsberger, November 13, 2019 ("***Koenigsberger III***")
H-1	Gramercy's Opening Presentation ("***Gramercy's Pres.***")
H-7	Presentation of Rodrigo Olivares-Caminal ("***Olivares-Caminal Pres.***")
H-8	Presentation of Sebastian Edwards ("***Edwards Pres.***")
H-9	Presentation of Alfredo Bullard ("***Bullard Pres.***")

R-34	Respondent's Statement of Defense, December 14, 2018 ("***Statement of Defense***")
R-65	Respondent's Statement of Rejoinder, September 13, 2019 ("***Rejoinder***")
R-85	Post-Hearing Brief on Jurisdiction of the Republic of Peru, July 1, 2020 ("***Peru's PHB1***")
RER-1	Opinion with Respect to Jurisdiction of Professor W. Michael Reisman, December 14, 2018 ("***Reisman I***")
RER-6	Supplemental Opinion with Respect to Jurisdiction of Professor W. Michael Reisman, September 6, 2019 ("***Reisman II***")
RWS-5	Witness Statement of Carlos Alberto Herrera Perret, September 13, 2019 ("***Herrera***")

CROSS-REFERENCES TO ANSWERS TO THE TRIBUNAL'S QUESTIONS

Question	Reference
Question from the Hearing	
Comment on *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Judgment, 2018 I.C.J. REP. 507 (October 1), ¶ 162.	Gramercy's PHB1, **C-86**, ¶ 32
Questions from Procedural Order No. 11	
"In the course of the Hearing, the Tribunal reiterated its interest in the following issues: [t]he number of outstanding bonds; and [a]ny calculations made by Peru of the budgetary impact that the different calculation methods would have on Peru's budget."	Gramercy's PHB1, **C-86**, ¶¶ 134-37
"When did Claimants initially conclude that Peru had breached the Treaty?"	¶¶ 60-62 below; *see also* Rejoinder on Jurisdiction, **C-69**, ¶¶ 170-81; Reply, **C-63**, ¶¶ 188-89; Koenigsberger III, **CWS-10**, § IV; Koenigsberger II, **CWS-4**, § II
"How do third parties invest in Gramercy's corporate structure? What is the legal title held by investors vis-à-vis Gramercy?"	¶ 40 below; *see also* Rejoinder on Jurisdiction, **C-69**, § II.A.2; Koenigsberger III, **CWS-10**, § III; Lanava I, **CWS-5**, § IV
"What was the factual background and the legal and financial justification of the 2017 Purchase?"	Gramercy's PHB1, **C-86**, ¶ 60; *see also* Opposition, **C-80**, ¶¶ 51-55
"Please explain in detail the amounts in cash or otherwise to which a participating bondholder is entitled. Does the State have discretion in establishing the amount to be paid or the payment methodology?"	Gramercy's PHB1, **C-86**, ¶¶ 87-93; *see also* Reply, **C-63**, § III.A.2(c)

Question	Reference
"What would have happened if Gramercy had submitted its Bonds to the Bondholder Process? What amount would Gramercy have received? Would the State have any discretion in paying Gramercy? Is Gramercy a speculative investor pursuant to art. 18(7) of RD 242/2017? What would be the consequences of such qualification?"	Gramercy's PHB1, **C-86**, ¶¶ 63-65, 93-96; *see also* Reply, **C-63**, § III.D; Statement of Claim, **C-34**, § V.C
"What court actions did Claimants file in Peru? What was the development of such court actions? Did Gramercy collect in the *Pomalca* case?"	Gramercy's PHB1, **C-86**, ¶¶ 98, 121; *see also* Reply, **C-63**, ¶ 484
"What are the legal consequences of the 'Sentencia Casación N° 11339-2016'?"	Gramercy's PHB1, **C-86**, ¶¶ 130-32
"What is the methodology used by Gramercy to value the bonds in its different annual financial statements?"	Gramercy's PHB1, **C-86**, ¶ 142; *see also* Reply, **C-63**, § IV.C.2(b); Joannou, **CWS-6**, § II
"Mr. Olivares Caminal submitted that the Land Bonds have been traded in a secondary market. Can the Parties explain the timing and conditions of such secondary market trades?"	¶ 16 below; *see also* Reply, **C-63**, ¶ 89; Olivares-Caminal I, **CER-8**, ¶ 79

I. INTRODUCTION

1. The very structure of Peru's post-hearing brief on jurisdiction ("***PHB***")—which turns both logic and Peru's prior briefs on their head—confirms what Gramercy already anticipated: Peru's principal objection is *not* that the Tribunal lacks jurisdiction, but that it would be somehow *abusive* for the Tribunal to exercise that jurisdiction. Disparaging Gramercy is all Peru can now muster because the hearing so robustly dismantled its objections.

2. Faced with the chorus of testimony from Vice-Min. Sotelo, Min. Castilla, Prof. Guidotti, Prof. Olivares-Caminal, Amb. Allgeier, and Mr. Herrera confirming that the Land Bonds are indeed "bonds" and "public debt" of the kind expressly listed in the Treaty, possess the characteristics of an investment the Treaty contemplates, and were deliberately not excluded from the Treaty's broad scope—consistent with the Contracting Parties' intentions—Peru has all but abandoned its claim that the Land Bonds are not "bonds," relegating it to a half-sentence with no citation.[1] Similarly, Peru's once-prominent arguments that Gramercy cannot qualify for protection because it is a "hedge fund speculator," that both GFM's and GPH's claims should be excluded for failure to submit a valid waiver, or that their claims are a time-barred "continuing course of conduct" are absent from Peru's PHB.

3. Yet Peru's abuse of process argument, now the centerpiece of its brief, cannot aid Peru in its attempt to evade its obligations to Land Bond holders. Stripped of Peru's by-now typical hyperbole, Peru's abuse of process theory boils down to its misguided merits argument that Gramercy's entitlement to the current value of the Land Bonds was "uncertain," and the nonsensical and misleading statement that Gramercy bought preexisting "claims." Peru thus spins one fiction on top of another to suggest that Gramercy's claims for Peru's Treaty breaches in 2013 and later are abusive because, in 2006, Gramercy invested in a right *to payment of the Land Bonds* that Peru had not satisfied. No amount of misrepresentation of the facts, or of Peru's breaches, or of the relevant legal principles can sustain this contrivance.

II. THE HEARING CONFIRMED THAT THE LAND BONDS ARE COVERED INVESTMENTS

4. It is no surprise that, after the hearing, what used to be Peru's principal's objection that the Land Bonds are not "bonds," "debt instruments" or "public debt" of the kind that possess the characteristics of an investment has been relegated to a subsidiary argument divorced from the actual testimony at the hearing. The fact is that not a single one of the many witnesses and experts endorsed Peru's claim that the Land Bonds fall outside the Treaty's deliberately broad and open-ended coverage of "every asset . . . that has the characteristics of an

[1] *Compare, e.g.*, Rejoinder, **R-65**, ¶¶ 2, 125, *with* Peru's PHB1, **R-85**, ¶ 90.

investment"—despite the fact that they are several of the specific forms of investment that the Treaty contemplates; that they amply satisfy all three of the Treaty's non-mandatory, noncumulative characteristics; that they were not expressly excluded as they would and should have been had that been the Contracting Parties' intent; that the Contracting Parties were well aware that U.S. investors had disputes with Peru arising out of the agrarian reform and could acquire Land Bonds and have disputes with Peru about them; that, after extensive negotiations, the *only* kind of public debt that the Contracting Parties concluded the Treaty would not cover is State-to-State loans; and that Treaty negotiations unfolded against the backdrop of landmark judgments from the CT and executive and legislative proposals for restructuring the agrarian reform debt.[2]

A. Peru's Attempt to Avoid Canons of Treaty Interpretation Did Not Survive the Hearing

5. The hearing confirmed that the Parties broadly agree on the interpretive approach: that the interpretation of the Treaty is a task belonging to the Tribunal alone, not any witnesses or experts;[3] that the Tribunal must of course do so consistent with the VCLT;[4] that the Treaty protects "every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment"; and that the Treaty identifies only three characteristics (commitment of capital or other resources, the expectation of gain or profit, and the assumption of risk), which are illustrative and are not mandatory or cumulative.[5] The Parties also agree that the Treaty's list of "[f]orms that an investment may take" is neither exhaustive nor *dispositive*—although as Amb. Allgeier testified, and a common sense reading of the text dictates, it is an indication that these assets do typically possess the characteristics of investments and are *presumptively* covered.[6]

6. Similarly, despite Peru's attempt to avoid the point, the

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2 *Compare* Peru's PHB1, **R-85**, § IV.C, *with* Tr. (1) 31-45 (Gramercy's opening), *and* Gramercy's Pres., **H-1**, pp. 7-31, *and* Tr. (4) 1318-30 (Allgeier), *and id*., 1479-88 (Olivares-Caminal), *and* Olivares-Caminal Pres., **H-7**, pp. 4-11. *See generally* Rejoinder, **C-69**, § II.B; Reply, **C-63**, § II.B; Allgeier II, **CER-11**, § III; Allgeier I, **CER-7**, § IV; Olivares-Caminal II, **CER-12**, § I; Olivares-Caminal I, **CER-8**, § II.

3 *See* Tr. (5) 1848-49 (Reisman); Gramercy's Letter to the Tribunal of December 20, 2019, **C-77**, pp. 3-4; **C-72**, Gramercy's Letter to the Tribunal of December 6, 2019, pp. 3-4; **C-52**, Gramercy's Letter to the Tribunal of May 21, 2019, p. 3; Tr. (3) 1120 (President) ("How the Treaty is interpreted is a legal issue, and it's an issue for the Tribunal.").

4 *See* Tr. (1) 309 (Peru's opening); Reply, **C-63**, ¶ 35.

5 *See* Treaty, **Doc. CE-139**, Art. 10.28; Tr. (1) 31 (Gramercy's opening); *id*., 314-16 (Peru's opening); *see also* Tr. (4) 1322 (Allgeier); Tr. (5) 1872 (Reisman).

6 *See* Peru's PHB1, **R-85**, ¶¶ 80-82; Tr. (1) 31-32 (Gramercy's opening); *id*., 313 (Peru's opening); Tr. (4) 1346-51 (Allgeier); Rejoinder on Jurisdiction, **C-69**, ¶¶ 59-61; Rejoinder, **R-65**, ¶ 130; Reply, **C-63**, ¶ 51; Statement of Defense, **R-34**, ¶ 201; *see also* U.S. Submission, ¶ 18.

Parties also agree that the Treaty adopts a "negative list" framework. Amb. Allgeier—who has nearly 30 years' experience as a trade negotiator and served as the Deputy U.S. Trade Representative responsible for supervising and approving all of the positions that U.S. negotiators took during the Treaty's negotiation—testified that the Treaty, like all treaties based on the U.S. Model BIT, reflects a negative list approach to coverage.[7] Contrary to Peru's attempt to fault Gramercy for invoking "U.S. laws and negotiating policies,"[8] Peru's own negotiating minutes and its negotiator Mr. Herrera both confirmed that the negative list was *Peru's own* policy for this Treaty—not a so-called "open list," as Peru suggested.[9] Accordingly, any exclusion from the Treaty's open-ended coverage had to be expressly stipulated in the Treaty, like the Contracting Parties did for example in footnotes 13 (expressly excluding State-to-State debt, but not the Land Bonds, from the Treaty's coverage of public debt and debt instruments) and 15 (expressly excluding "order[s] or judgment[s] entered in a judicial or administrative action"); or in Annexes I and II (which exclude coverage for many politically sensitive issues but *not* the Land Bonds or the agrarian reform law).[10]

7. The Parties also agree on the uncontroversial proposition that the subjective perspective of just one of the Contracting Parties is not dispositive of the circumstances of the Treaty's conclusion: "what is documented in the Agreement itself" prevails and its "coverage is defined in the text."[11] Far from "undermining" *Gramercy's* case, however, this consensus only contradicts *Peru's*: Prof. Reisman's and Mr. Herrera's attempts to interpret the Treaty based on the alleged U.S. understanding of "public debt" or the alleged Peruvian understanding of "bonds" is exactly the kind of reliance on "extra-textual subjectivities of one of the Contracting Parties" that international law prohibits.[12]

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7 *See* Tr. (4) 1319-23, 1351-53 (Allgeier); Tr. (3) 1116-18 (Herrera); Allgeier II, **CER-11**, ¶¶ 23-24; Allgeier I, **CER-7**, ¶¶ 14, 17, 25, 38, 41; *see also* Tr. (1) 32-33 (Gramercy's opening); Rejoinder on Jurisdiction, **C-69**, ¶¶ 54, 68, 112; Reply, **C-63**, ¶ 47, 100.

8 *Cf.* Peru's PHB1, **R-85**, ¶ 79.

9 *See, e.g.*, 13th Round of the Andean-U.S. FTA Negotiations, **Doc. CE-447**, p. 55. *Compare* Tr. (1) 312-13 (Peru's opening), *with* Tr. (4) 1321 (Allgeier), *and* Tr. (3) 1116-17 (Herrera).

10 *See* Tr. (1) 33 (Gramercy's opening); Tr. (4) 1319-23 (Allgeier); Reply, **C-63**, ¶ 48; Allgeier I, **CER-7**, ¶ 25.

11 Tr. (4) 1340 (Allgeier); Tr. (3) 1108-10 (Herrera); *see* Rejoinder on Jurisdiction, **C-69**, ¶ 115; Rejoinder, **R-65**, ¶ 153; **Doc. CA-233**, *Kappes et al. v. Guatemala*, ICSID Case No. ARB/18/43, Decision on the Preliminary Objection, March 13, 2020, ¶ 155 ("[A] single State's interpretation of a treaty, circulated for internal implementation purposes rather than as a negotiating document shared with other State Parties, does not qualify as 'preparatory work' of the treaty within the meaning of VCLT Article 32 . . . ." (citing **Doc. RA-88**, *Sempra* Award, ¶ 385)).

12 *See* Peru's PHB1, **R-85**, ¶ 53; Tr. (5) 1853-54, 1870-71 (Reisman); Tr. (3) 1110-12 (Herrera); *see also* Rejoinder on Jurisdiction, **C-69**, ¶ 114; **Doc. CA-80**, Arsanjani & Reisman, p. 602.

8. Ultimately, the hearing disproved Peru's unprincipled position on the only three areas of doctrinal disagreement.

9. *First*, Peru provided no basis, whether in principle or practice, for its suggestion that its own briefs should be dispositive just because they are allegedly "congruent" with the United States' non-disputing party submission.[13] Contrary to Peru's claim that Gramercy has "no response" to this attempted violence to the VCLT, Gramercy exhaustively responded in its Rejoinder on Jurisdiction, which Peru simply ignores.[14] Prof. Reisman's personal opinion that a respondent state's legal briefs can be evidence of a "subsequent agreement"—a proposition which figures nowhere in the VCLT framework, would be inconsistent with the Treaty's own provisions on interpretation and amendment, not a single investment treaty tribunal has accepted, and several have expressly rejected—cannot displace this Tribunal's analysis.[15] In any event, this doctrinal issue need not detain the Tribunal long: the U.S. Submission does not conclude that the Land Bonds are not investments, does not even purport to opine on the application of principles of treaty interpretation to the facts of this case, and even on Prof. Reisman's suggestion that it somehow constituted a "subsequent agreement between the parties regarding the interpretation of the treaty" under VCLT Article 31(3)(a) (as opposed to a subsequent *practice* under VCLT Article 31(3)(b)), it would still not be dispositive but could simply be "taken into account"—as the *Renco II* tribunal most recently held.[16]

10. *Second*, and likewise, Peru's claims that Prof. Reisman is "the sole expert in this proceeding qualified to interpret the Treaty" and that his "conclusions regarding . . . Gramercy's failure to meet its jurisdictional requirements remain unrebutted" are as inaccurate as they are misconceived.[17] As Prof. Reisman conceded on cross, it is not for him to make "conclusions" about factual matters, and the principles of Treaty interpretation are not "beyond the Tribunal's own expertise."[18] For the same reason, Peru cannot impugn Amb. Allgeier for

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13 *Cf.* Peru's PHB1, **R-85**, ¶¶ 7, 49-52, fn. 101; Tr. (1) 310 (Peru's opening). *But see* Rejoinder on Jurisdiction, **C-69**, ¶¶ 61-63.

14 *Compare* Peru's PHB1, **R-85**, ¶ 51, *with* Rejoinder on Jurisdiction, **C-69**, ¶¶ 61-63.

15 *See* Rejoinder on Jurisdiction, **C-69**, ¶¶ 61-63; Tr. (4) 1858-59 (Reisman); *cf.* **Doc. CA-121**, Art. 31(3)(a).

16 *See* Rejoinder on Jurisdiction, **C-69**, ¶¶ 61-63; **Doc. CA-235**, *The Renco Group, Inc. v. Peru II*, PCA Case No. 2019-46, Decision on Expedited Preliminary Objections, June 30, 2020, ¶ 234 (noting that any agreement between the Contracting Parties "on questions of interpretation is not binding on the Tribunal"); *cf.* **Doc. CA-121**, VCLT Art. 31(3)(a)-(b).

17 *Cf.* Peru's PHB1, **R-85**, ¶¶ 8, 54-59. *But see* Gramercy's Letter to the Tribunal of December 20, 2019, **C-77**, pp. 3-6.

18 *See* Tr. (5) 1848-51 (Reisman); *see also* Tribunal's Letter to the Parties of January 10, 2020, ¶ 2 ("[T]he Tribunal . . . will ultimately determine whether or to what extent [Prof. Reisman's] evidence is material, *i.e.* addressing issues and providing opinions on matters that are beyond the Tribunal's own expertise.").

appropriately taking instruction on legal issues or testifying about his perspective as the U.S. Deputy USTR in charge of the Treaty.[19]

11. *Finally*, the hearing confirmed that Peru's insistence on retrofitting the Treaty with the fourth *Salini* prong as "mandatory"—ostensibly because the Preamble of the entire Free Trade Agreement refers to "development," among many other objectives—is unprincipled and unsupported.[20] The tribunal in *Kappes v. Guatemala* recently rejected the very same argument by the same counsel team: "appeals to the object and purpose of the Treaty as a whole are not 'particularly helpful' in interpretation of the relevant provisions," and it "would be too facile" to advert to hortatory statements in the treaty's preamble as a "proverbial finger-on-the-scale"[21]—let alone a proverbial red pen to insert additional jurisdictional requirements entirely absent from the Treaty's plain text. The Treaty's three identified characteristics are not identical to the *Salini* criteria, but more importantly, they do not include the fourth element of contribution to the host State's development.[22] Had the Contracting Parties intended to incorporate that factor, they would have done so expressly—just as they addressed *Maffezini* in footnote 2.[23] Moreover, Peru and Prof. Reisman concede that tribunals have repeatedly rejected *Salini*'s fourth prong, refused to apply it in UNCITRAL cases and held it is not "mandatory" even in ICSID cases—including earlier this year in the most recent ICSID case to address bonds as investments.[24]

12. Additionally, the opinions presented in Prof. Reisman's written reports squarely contradict his academic writings, are based on sources whose authority and quality he could not defend, and were disavowed on cross-examination. For instance, Prof. Reisman confirmed that, contrary to his report, "*Salini*, in my [o]pinion, is not controlling law"; that "I've been critical of *Salini*, particularly when it's been moved to . . . UNCITRAL cases"; that his report urging the opposite relied exclusively on cases he considers "puzzling," "nominalistic," "incoherent," "strikingly state-central," "remarkably inconsistent," and "redolent of the long defunct NIEO"; that what his report said about *Salini* was, charitably put, an "overstatement"; and that in fact the entire discussion of *Salini* in his report was derivative of an effectively self-

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19 *Cf.* Peru's PHB1, **R-85**, ¶¶ 55-56; Tr. (4) 1333, 1337, 1341 (Allgeier).

20 *Compare* Peru's PHB1, **R-85**, ¶ 84, *with* Tr. (1) 38-39 (Gramercy's opening), *and* Rejoinder on Jurisdiction, **C-69**, ¶ 91, and Reply, **C-63**, ¶¶ 67, 78. *See also* Allgeier I, **CER-7**, ¶¶ 36, 51-57.

21 **Doc. CA-233**, *Kappes* Decision, ¶ 150.

22 *See* Rejoinder on Jurisdiction, **C-69**, ¶ 91; Reply, **C-63**, ¶¶ 67, 78; Allgeier I, **CER-7**, ¶¶ 36, 51-57.

23 Tr. (4) 1325, 1363-65 (Allgeier); *see also* Reply, **C-63**, ¶ 469.

24 *See* Tr. (5) 1889-90 (Reisman); *see also* **Doc. CA-230**, *Adamakopoulos et al. v. Cyprus*, ICSID Case No. ARB/15/49, Decision on Jurisdiction, February 7, 2020, ¶ 294 ("The Tribunal can only view the *Salini* test as subordinated to the applicable rules and principles of treaty interpretation, in particular the requirement to have regard of the ordinary meaning of the term 'investment.'").

published law student article written by a now junior intellectual property associate whom Prof. Reisman did not know and which, among its many questionable positions, espoused a theory of legitimacy by dint of repetition that Prof. Reisman himself has stridently opposed.[25]

13. Peru's attempt to rescue the sinking ship on redirect by suggesting that the cases on which Prof. Reisman had relied did not "contain language incorporating the Salini factors into the definition of 'investment'" is unavailing.[26] Neither Peru nor Prof. Reisman ever addressed the fact that tribunals have expressly rejected retrofitting the *Salini* test *even when* the applicable treaty defines an investment as requiring "characteristics of an investment" identical to the ones listed in this Treaty, as was the case in the recent *Seo v. Korea* decision.[27]

14. In fact, Prof. Reisman's cross-examination only confirmed Amb. Allgeier's testimony about how improper it would be to use select words in the Preamble to rewrite Article 10.28 to insert *Salini*'s fourth prong as a tacit but "mandatory" jurisdictional requirement.[28] Peru did not challenge Amb. Allgeier's testimony that the Preamble—which applies to all of the Treaty's 23 chapters, not just the one on investment—"was not drafted, nor is it understood, to be a legal filter applied to each and every article of this broad Free Trade Agreement," responds to a political "concern of Congress," and "is so general as to render it unsuitable as an objective metric for interpreting individual provisions of the Agreement."[29] Even Prof. Reisman admitted on cross that he had selectively quoted the Preamble and that one cannot use it to "arrive at a meaning that contradicts or displaces the clear meaning of the Treaty's text."[30] In response, Peru just cites itself.[31]

15. Peru's allegation that Gramercy relies on "a purely literal, out-of-context reading"[32] of the Treaty is thus not only wrong, but cannot mask the fact that *Peru*'s objections to material jurisdiction depend on inserting additional limitations on covered investments that the Treaty does not, and cannot be "interpreted" to, require.

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25 Tr. (5) 1874, 1878-79, 1882-83 (Reisman). *Compare* Reisman I, **RER-1**, ¶ 44 & fn. 34 (citing **Doc. RA-174**, Grabowski), *with* **Doc. CA-168 / RA-310**, Reisman & Vinnik, pp. 68-69, *and* **Doc. CA-80**, Arsanjani & Reisman, p. 598.

26 *Cf.* Tr. (5) 1889 (Reisman); Peru's PHB1, **R-85**, ¶¶ 84-85.

27 *See* Rejoinder on Jurisdiction, **C-69**, ¶¶ 91, 95-96; **Doc. CA-220**, *Seo* Award, ¶¶ 88, 134.

28 *See* Tr. (1) 39 (Gramercy's opening); Rejoinder on Jurisdiction, **C-69**, ¶ 91; Reply, **C-63**, ¶ 79; Allgeier I, **CER-7**, ¶¶ 51-57.

29 Tr. (4) 1324-25, 1369 (Allgeier); *see also* Allgeier II, **CER-11**, ¶¶ 8, 13-15; Allgeier I, **CER-7**, ¶ 53-56.

30 *See* Tr. (5) 1886-88 (Reisman).

31 *Cf.* Peru's PHB1, **R-85**, ¶ 93.

32 *Cf.* Peru's PHB1, **R-85**, ¶ 79.

B. Peru's Claims That the Land Bonds Are Not "Bonds," "Public Debt," or "Debt Instruments" Did Not Survive the Hearing

16. Peru's principal objection that the Land Bonds are not "bonds" has shrunk to just one paragraph in Peru's PHB—a retreat that cannot hide the extensive testimony confirming that the Land Bonds are a form of covered investment precisely because they are "bonds," "public debt," "*obligaciones*," and "debt instruments" within the ordinary meaning of those terms:[33]

- Prof. Olivares-Caminal, an expert in sovereign finance, testified that a bond is simply an instrument that acknowledges a debt obligation; the purpose for issuing a bond does not affect its nature; and the Land Bonds are "bonds" because they acknowledge a debt and are "public debt" because they were issued by a sovereign.[34] As he put it, "the Land Bonds may not share all the characteristics of modern or contemporary bonds, but that in no way alters their essence"—just as a 1969 Chevrolet Camaro is no less a car than a Tesla because it lacks an airbag.[35] Peru did not challenge his testimony that the Land Bonds are "*obligaciones*" and "debt instruments," or deny that, for a short time, they were also available to retail investors at the *mesa de negociación* of the Lima Stock Exchange, a mechanism for trading transferable securities.[36] And as Dr. Hundskopf agreed, they have been freely transferable *títulos de valor* since 1979.[37]
- Peru's purported expert on sovereign finance, Prof. Guidotti—who admitted that the distinctions that he drew between the Land Bonds and "global contemporary bonds" went nowhere and that his reasoning on the nature of the Land Bonds had *no* supporting sources—promptly conceded that the Land Bonds are, indeed, "bonds," and that they met his "expert" definition because they "specif[y] a number of payments over time, and these payments typically are associated with the principal and some interest that is manifested as coupons" and "acknowledge an obligation of the State of making a payment over time of compensation."[38]
- Vice-Min. Sotelo, who oversaw the MEF's treatment of the Land Bonds debt, admitted that the Land Bonds are an "internal domestic public debt" and an "*obligación*" of the State, and Min. Castilla

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33 *Compare* Peru's PHB1, **R-85**, ¶ 90, *with* Rejoinder, **R-65**, § III.D.1; Statement of Defense, **R-34**, ¶ 204. *See* Rejoinder on Jurisdiction, **C-69**, § II.B.1(a); Reply, **C-63**, § II.B.1.

34 Tr. (4) 1479-85 (Olivares-Caminal); Olivares-Caminal Pres., **H-7**, pp. 4-10; Olivares-Caminal II, **CER-12**, § I.A; Olivares-Caminal I, **CER-8**, § II.A-C.

35 Tr. (4) 1484 (Olivares-Caminal); Olivares-Caminal II, **CER-12**, ¶ 8.

36 Tr. (4) 1521-24 (Olivares-Caminal); Olivares-Caminal II, **CER-12**, § I; Olivares-Caminal I, **CER-8**, ¶ 79; Reply, **C-63**, ¶ 89.

37 Tr. (6) 2048 (Hundskopf); **Doc. CE-357**, 1979 Constitution of Peru, Art. 125; **Doc. RA-193**, Decree Law No. 22,749, November 1979, Art. 5.

38 *See* Tr. (6) 2301-20 (Guidotti); Guidotti II, **RER-10**, ¶ 22.

similarly referred to them as "*obligaciones que tiene el Estado*."[39]

- Mr. Herrera, another career MEF employee, confirmed that the Land Bonds debt fell under the remit of Peru's "Public Debt" directorate ("***DGETP***").[40] His initial testimony that Peru allegedly understood the term "bonds" in the Treaty to only cover "contemporary sovereign bonds," to the exclusion of the Land Bonds—like Peru's principal defense that there is no evidence that the "Bonds themselves were ever discussed in the Treaty negotiations"—fell apart on his admission that this was only his *personal* interpretation of the *subjective* understanding of *one* of the negotiating teams of just *one* of the Contracting Parties, based on the *silence* of that State's own *internal* negotiation summaries, which admittedly does *not* determine this Treaty's coverage.[41]

17. Peru's attempts to instead seek refuge in Prof. Reisman's musings about what "in [his] view" is a "bond"—based on whether it has a "willing buyer" or "funds" the government—fare no better.[42] The Bonds in fact meet both of those tests. Beyond that, with all due respect to Prof. Reisman, he is not an expert in sovereign finance, so the Tribunal is not assisted by what he "would . . . have thought."[43] Indeed, Prof. Reisman's opinion, such as it is, on what he called "the common understanding of 'public debt' in the investment context" is derived *exclusively* from the mission statement of a now-defunct U.S. domestic agency, the executive summary of a working paper Peru falsely ascribed to the International Monetary Fund that surveys public debt over millennia, the caption to an open-source table prepared by the U.S.'s Central Intelligence Agency comparing levels of internal public debt to GDP, and a self-published blog post from an unknown author with no academic affiliation that had "popped up as [he] was working very late one night"—which Prof. Reisman confessed he could not explain or provide any reason for relying on, much less how it could possibly inform either the ordinary meaning of the term "public debt" or what the Contracting Parties had intended in drafting the Treaty years earlier; not a single one of these invalid and embarrassing sources in fact excludes the Land Bonds from being public debt; and Prof. Reisman conceded he improperly ignored Peru's perspective that they *were* "public debt."[44]

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39 Tr. (3) 905 (Sotelo); Tr. (Sp.) (3) 889; Tr. (Sp.) (4) 1311 (Castilla).

40 Tr. (3) 1126 (Herrera); *see also* **Doc. RA-258**, Law No. 28563, General Law on the National System of Indebtedness, June 23, 2005, Art. 13.

41 *Compare* Peru's PHB1, **R-85**, ¶ 99, *and* Herrera, **RWS-5**, ¶ 33, *with* Tr. (3) 1108-12, 1129-31 (admitting that Brady Bonds and "global contemporary bonds" are covered under the Treaty even though they, too, were not expressly mentioned in the negotiations).

42 *Cf.* Peru's PHB1, **R-85**, ¶ 90 (citing Tr. (5) 1890-91 (Reisman)).

43 *Cf.* Tr. (5) 1891 (Reisman).

44 *Cf.* Tr. (5) 1863-1866, 1890-91 (Reisman); Reisman I, **RER-1**, ¶¶ 29-30; Reisman II, **RER-6**, ¶¶ 36-37. *Compare* Tr. (5) 1870-71 (Reisman) (agreeing that it would be "misguided" to ignore Peru's perspective on the Treaty), *with* Tr. (3) 905 (Sotelo) (acknowledging that the Land Bonds are

18. Finally, Peru's single sentence to the effect that "jurisprudence on contemporary sovereign debt" supports its view again entirely ignores Gramercy's arguments on what those cases actually say—since they all found that government bonds *are* covered investments, except *Poštová*, in which the treaty was materially different.[45] Peru has notably abandoned its suggestion at the hearing that the Land Bonds are not covered because they are akin to promissory notes, presumably because they are self-evidently bonds and because that argument falls afoul of the *Fedax* decision.[46] Yet another recent decision that Peru omits adds to that chorus: the majority in *Adamakopoulos v. Cyprus* held that it had jurisdiction over Cypriot government bonds at issue in that case among other things because "[b]onds" are "a form of tradeable 'asset'" and that their purchase is "comprised by the ordinary meaning of the term 'investment.'"[47]

C. The Hearing Confirmed That Gramercy's Investment in the Land Bonds Involved a Commitment of Resources, the Expectation of Gain, and the Assumption of Risk

19. Peru's insistence that the Land Bonds—despite being "bonds" and "public debt"—do not sufficiently possess the "characteristics" of an investment cannot help its case.

20. *First*, Messrs. Koenigsberger, Lanava and Joannou all confirmed how Gramercy made a "commitment of capital or other resources."[48] As Mr. Lanava testified, money from GPH's investors—including GFM—was "capitalized" into GPH, which then purchased the Land Bonds.[49] Gramercy also committed "other resources": all three of Gramercy's witnesses described the extensive work that Gramercy did over 14 years to develop its investment thesis, raise capital, identify willing sellers, purchase and secure the Land Bond certificates, value the Land Bonds, collaborate with other bondholders, and make constructive proposals to Peru for a global debt swap.[50] Both GFM—which assumed the role of investment manager from its predecessor, Gramercy Investment Advisors LLC—and GPH also contributed know-how, contacts, expertise, and time to bring Gramercy's investment to fruition.[51] Ignoring both this testimony and Gramercy's Rejoinder on

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public debt), *and* Tr. (Sp.) (3) 1131-32 (Herrera) (same). *See also* Rejoinder on Jurisdiction, **C-69**, ¶¶ 78-79; Reply, **C-63**, ¶¶ 56-61.

45 *Cf.* Peru's PHB1, **R-85**, ¶ 91. *But see* Rejoinder on Jurisdiction, **C-69**, ¶¶ 70, 122-29; Reply, **C-63**, § II.B.4.

46 *Cf.* Tr. (1) 314 (Peru's opening); *see* Rejoinder on Jurisdiction, **C-69**, ¶ 126; Reply, **C-63**, ¶ 92.

47 **Doc. CA-230**, *Adamakopoulos* Decision, ¶ 293.

48 *Cf.* **Doc. CE-139**, Treaty, Art. 10.28.

49 Tr. (2) 720, 726 (Lanava).

50 *See generally* Koenigsberger III, **CWS-10**, §§ I, III; Koenigsberger II, **CWS-4**, §§ I, IV; Koenigsberger I, **CWS-3**, §§ III, IV; Lanava II, **CWS-5**, ¶¶ 5-10; Lanava I, **CWS-5**, §§ II, IV; Joannou, **CWS-6**, § II.

51 *See* Rejoinder on Jurisdiction, **C-69**, ¶ 32; Reply, **C-63**, ¶¶ 19-23.

Jurisdiction, Peru's PHB instead repeats its prior pleadings almost word-for-word, cites only to itself, ignores that the Treaty nowhere imposes a minimum threshold for the amount of the commitment, and misquotes the Treaty by swapping the actual language ("capital or *other resources*") for a phrase Peru seems to have invented ("capital or *other asset*").[52]

21. *Second*, Peru cannot rebut that Gramercy had an "expectation of gain or profit"—indeed, Peru's attempts to disparage Gramercy as a "speculator" almost prove the point.[53] Gramercy's witnesses confirmed that GPH will reap the rewards of any capitalization of the Land Bonds, and as Peru acknowledges, GFM stands to earn management and performance-based fees in its capacity as investment manager of GPH and other Gramercy entities that hold interests in GPH.[54] Peru's suggestion that the Bonds were only "contingent" liabilities or "expectative" rights was as short-lived as it was meritless.[55]

22. *Third*, for similar reasons, Gramercy assumed "risk" by purchasing the Land Bonds. As Mr. Herrera confirmed, the Treaty expressly says that the purchase of sovereign debt entails commercial risk, and Gramercy assumed non-commercial risk too: its opportunity costs in pursuing the Land Bonds investment, the risk to its reputation if the investment was not successful, and the risk of a loss of GFM's performance-based management fees.[56]

23. *Finally*, although legally irrelevant, the unchallenged evidence of Ms. G. and testimony from Mr. Koenigsberger, Prof. Olivares-Caminal, Prof. Guidotti and Mr. Herrera confirmed how Gramercy's Land Bond investment contributed to the Peruvian economy.

- Prof. Olivares-Caminal confirmed the microeconomic benefits of Gramercy's injection of US$33 million of new foreign capital into Peru's economy.[57] Peru again misquotes the only testimony it invokes: Prof. Olivares-Caminal testified that *although* US$33 million may be a "negligible figure . . . *relative to* [Peru's]

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52 *Cf.* Peru's PHB1, **R-85**, ¶ 89. *But see* Rejoinder on Jurisdiction, **C-69**, ¶ 86; **Doc. CA-220**, *Seo* Award, ¶ 106 (finding that an investment of US$300,000 was substantial enough to demonstrate a "commitment of capital" for the purpose of the similarly-worded Korea-U.S. FTA).

53 *Cf.* Rejoinder on Jurisdiction, **C-69**, ¶¶ 101-02; Reply, **C-63**, ¶ 70; Koenigsberger, **CWS-3**, ¶¶ 34-35.

54 *See* Tr. (2) 398-99 (Koenigsberger); *id.*, 772-76 (Lanava); Peru's PHB1, **R-85**, ¶ 38; *see also* Gramercy's PHB1, **C-86**, ¶ 146 (describing Gramercy's incentive to accurately value its Land Bonds).

55 *Compare, e.g.*, Tr. (6) 2311, 2314-15 (Guidotti), *with* (1) 316 (Peru's opening) (admitting that the Land Bonds are "past due"), *and* Tr. (6) 2014-15 (Hundskopf) (admitting that "it is no doubt an obligation of the state to pay the Land Bonds"), *and* Tr. (5) 1898-99 (Bullard), *and* Bullard Pres., **H-9**, p. 8. *See also* Gramercy's PHB1, **C-86**, ¶¶ 35-36.

56 *See also* Tr. (3) 1116 (Herrera); Rejoinder on Jurisdiction, **C-69**, ¶ 103; Reply, **C-63**, ¶¶ 72, 103

57 *See* Tr. (4) 1487 (Olivares-Caminal); Olivares-Caminal II, **CER-12**, ¶ 19; Olivares-Caminal I, **CER-8**, ¶ 78.

GDP"—a fact that would characterize almost any private investment under the Treaty—Gramercy *had* contributed to Peru's economy.[58]

- Ms. G.'s unchallenged testimony provides a first-hand illustration of Prof. Olivares-Caminal's testimony about the "multiplier effect" of that foreign direct investment.[59]
- Prof. Olivares-Caminal further described the benefits to Peru of creating a secondary market in which bondholders could exchange an illiquid asset for capital.[60]
- As Mr. Herrera and Prof. Olivares-Caminal confirmed, the Land Bonds enabled Peru to finance its revolutionary agrarian reform, whose explicit purpose was Peru's socio-economic development.[61]

24. The hearing also demonstrated the benefits of Gramercy's approach to its Land Bonds investment to the broader economy. Mr. Koenigsberger provided compelling testimony about how Gramercy's motivation in investing in the Land Bonds was to catalyze a global solution to the agrarian reform debt that benefitted Peru, as it had done for example for Nicaragua and Argentina: Gramercy's approach would allow Peru to achieve the "virtuous circle" of "[c]reditworthiness," "the end of the era of default for Perú," "better ratings than they might have had otherwise," and "Foreign Direct Investment;" he concluded: "[O]ne thing is for certain—I've been doing this 32 years—I can tell you in each one of these debt restructurings that we've been involved in, it's virtuous in nature. That when [States] resolve a liability that's outstanding, that there is a benefit that comes to them for doing that."[62] Gramercy's contemporaneous proposals to the Government explained the "mutual benefi[ts]" of the "global solution" that Gramercy sought to broker.[63] Prof. Olivares-Caminal confirmed the macroeconomic benefits to Peru of the kind of consensual, productive bond swap that Gramercy was offering, with evidence-based examples both from Gramercy's own track record and sovereign finance

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58 *Compare* Peru's PHB1, **R-85**, ¶ 89, *with* Tr. (4) 1532-33 (Olivares-Caminal).

59 *See* Ms. G., **CWS-7**, ¶ 22; *see also* Rejoinder on Jurisdiction, **C-69**, ¶ 84.

60 Tr. (1) 40 (Gramercy's opening); Tr. (4) 1487 (Olivares-Caminal); Olivares-Caminal Pres., **H-7**, p. 11; Rejoinder on Jurisdiction, **C-69**, ¶ 84; Reply, **C-63**, ¶ 89; Olivares-Caminal II, **CER-12**, ¶¶ 19, 23; Olivares-Caminal I, **CER-8**, ¶ 79.

61 **Doc. CE-1**, Decree Law No. 17716, Land Reform Act, June 24, 1969, Preamble & Art. 1; Tr. (3) 1085 (Herrera); Tr. (4) 1486, 1488 (Olivares-Caminal); Olivares-Caminal Pres., **H-7**, p. 11; Rejoinder on Jurisdiction, **C-69**, ¶ 77; Reply, **C-63**, ¶ 46.

62 *See* Tr. (2) 441, 612, 615, 625-26 (Koenigsberger); Koenigsberger I, **CWS-3**, § II; Koenigsberger II, **CWS-4**,§ III, ¶¶ 39, 48; Koenigsberger III, **CWS-10**, ¶¶ 12-19.

63 *See, e.g.*, **Doc. CE-185**, Letter from Gramercy to the President of the Council of Ministers and the MEF of December 31, 2013, pp. 1, 3; Tr. (2) 471 (Koenigsberger); *see also* Tr. (1) 25-27 (Gramercy's opening); Koenigsberger, **CWS-3**, ¶ 55.

generally.[64] The former head of Peru's investment promotion agency, Mr. Herrera, agreed that such swaps and restructurings are beneficial.[65]

25. This extensive testimony, which Peru simply ignores, confirms that Gramercy's investment not only possesses the characteristics of commitment of resources, expectation of gain, and risk that the Treaty expressly identifies, but also contributed to Peru's economy even under the inapplicable fourth prong of *Salini*.

D. Peru's Attempt to Ignore the Circumstances of the Treaty's Conclusion Did Not Survive the Hearing

26. Peru's attempt to preclude consideration of supplementary means of interpretation, including the circumstances of conclusion of the Treaty, fails in law because VCLT Article 32 allows consideration of such evidence "in order to *confirm* the meaning" resulting from Article 31.[66] And as a factual matter, the Contracting Parties' failure to exclude the Land Bonds from the Treaty's coverage was not an oversight (although even such an inadvertent omission would not exclude them as a legal matter), but rather the deliberate and considered outcome of extensive negotiations that included *all* forms of public debt, with the *sole* exception of State-to-State bilateral debt—even though, at the very same time, the Land Bonds and disputes between Peru and U.S. nationals about the agrarian reform were very much on the Contracting Parties' agenda.[67] Peru did not rebut and cannot minimize these facts.

27. *First*, Peru did not deny that disputes with U.S. investors arising out of the agrarian reform had arisen and could arise in the future, and yet it did not exclude the agrarian reform or its associated Land Bonds from the Treaty's coverage, as it did with other politically sensitive measures.[68] Contrary to Peru's assertion that "Gramercy's focus on unilateral U.S. requirements is irrelevant," in Amb. Allgeier's words, the "Land Reform was very connected with the negotiating process and, indeed, a determining factor in the success of the negotiations themselves"—he described it as a "proverbial Damocles sword over the enterprise," and the contemporaneous documents confirm his testimony that the "linkage between the investment disputes and the

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64 Tr. (4) 1487-90 (Olivares-Caminal); Olivares-Caminal Pres., **H-7**, p. 11; Olivares-Caminal II, **CER-12**, ¶ 23; Olivares-Caminal I, **CER-8**, ¶¶ 79-80, 90; *see also* Rejoinder on Jurisdiction, **C-69**, ¶ 85; Reply, **C-63**, ¶ 91; *see also* Koenigsberger III, **CWS-10**, ¶¶ 9-12.

65 *See* Tr. (3) 1131 (Herrera).

66 *Compare* Peru's PHB1, **R-85**, ¶¶ 53, 95 (citing Reisman II, **RER-6**, ¶¶ 7-10), *with* **Doc. CA-121**, VCLT Art. 32); *see also* Tr. (1) 32-33 (Gramercy's opening); Rejoinder on Jurisdiction, **C-69**, § II.B.2; Reply, **C-63**, § II.B.2.

67 *See* Tr. (1) 43-44 (Gramercy's opening); Gramercy's Pres., **H-1**, p. 31; Allgeier I, **CER-7**, ¶ 25; Allgeier II, **CER-11**, ¶¶ 24-25.

68 *See* Rejoinder on Jurisdiction, **C-69**, ¶ 54; Reply, **C-63**, §§ II.B.1-3.

negotiations was an important political issue."[69] As Amb. Allgeier testified and Mr. Herrera conceded, Peru had committed to resolve outstanding disputes with U.S. investors as a precondition from ATPDEA trade preferences, including negotiation of the Treaty, which was only signed after they were resolved.[70] Mr. Herrera's statement and the documents confirm that the U.S. negotiators repeatedly stressed the importance of resolving the ATPDEA disputes, and he retracted his testimony to the contrary.[71] Similarly, Mr. Herrera's insistence that the LeTourneau dispute involved compensation for a road is beside the point: both the LeTourneau and Jaime Muro-Crousillat disputes involved claims of expropriation by U.S. nationals as a result of General Velasco's agrarian reform measures, and the Treaty negotiators were well aware of those existing disputes and yet did not exclude the Land Bonds from the Treaty's scope.[72] And since (as Mr. Herrera acknowledged) the Land Bonds were freely transferrable, Peru knew that disputes with U.S. bondholders could arise in the future—as indeed they have with Gramercy.[73]

28. *Second*, Peru conspicuously fails to address the extensive evidence—including Peru's own negotiation summaries and Amb. Allgeier and Mr. Herrera's testimony—that the broad coverage of *all* forms of public debt with the *sole* exception of State-to-State debt was not a matter of *U.S.* policy but an outcome *Peru* extensively negotiated for over 13 rounds.[74] Peru did not pose a single question on this issue to Amb. Allgeier. As for Mr. Herrera, he again contradicted his written statement by agreeing on the stand that the Andean countries had *conceded* their position that public debt should be categorically excluded and instead accepted the United States' proposal to include *all* forms of public debt, with the single exception of State-to-State debt,

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69 *See* Tr. (4) 1327-29 (Allgeier); *see also* Tr. (1) 43-44 (Gramercy's opening); Rejoinder on Jurisdiction, **C-69**, ¶ 117; Reply, **C-63**, ¶ 76; Allgeier II, **CER-11**, ¶ 21; Allgeier I, **CER-7**, § IV.C; *cf.* Peru's PHB1, **R-85**, ¶ 95.

70 *Compare* Herrera, **RWS-5**, ¶ 34, *with* Tr. (3) 1099-1100 (Herrera). *See* Tr. (4) 1326-27, 1329, 1370 (Allgeier); *see also* Gramercy's Pres., **H-1**, p. 31; Tr. (1) 43 (Gramercy's opening); Rejoinder on Jurisdiction, **C-69**, ¶¶ 117-20; Reply, **C-63**, ¶¶ 107-11; **Doc. CE-453**, State Department, Le Tourneau and GOP Reach Settlement After 35 Years, April 3, 2006, ¶¶ 1, 7.

71 *Compare* Tr. (3) 1095-96 (Herrera), *with id*., 1096-97. *See* Herrera, **RWS-5**, ¶ 14; **Doc. CE-439**, 10th Negotiation Round, p. 22.

72 *Cf.* Peru's PHB1, **R-85**, ¶ 97, Tr. (1) 311-12 (Peru's opening); Tr. (4) 1371 1374-77, 1381-83, 1384-1386 (Allgeier); Tr. (3) 1086-1100 (Herrera). *But see* Rejoinder on Jurisdiction, **C-69**, ¶¶ 119-20; Reply, **C-63**, ¶¶ 110-11; **Doc. CE-456**, Peru 2006 Report on Investment Disputes and Expropriation Claims, June 1, 2006, ¶ 11.

73 *See* Tr. (3) 1087-88 (Herrera).

74 *See* Tr. (3) 1122, 1126-27 (Herrera); Tr. (4) 1329-30 (Allgeier); Tr. (1) 32-35 (Gramercy's opening); Rejoinder on Jurisdiction, **C-69**, ¶¶ 110-16; Reply, **C-63**, § II.B.2(a), (c); Allgeier II, **CER-11**, ¶¶ 25-26; Allgeier I, **CER-7**, ¶¶ 41-44, 58.

together with Annex 10-F governing the procedure for related claims.[75] Mr. Herrera further acknowledged that this outcome "meets the guidelines proposed by the DGETP"—the very same Peruvian entity that was dealing with the Land Bonds debt.[76]

29. *Finally*, Peru similarly ignores the evidence that this extensive discussion about coverage of public debt and claims that could arise from it unfolded while Peru's highest courts were issuing multiple decisions reminding the Government that it had to pay the Land Bonds at their properly updated value and while the Government was preparing various reports and draft bills to create a global administrative process for paying this debt with the participation of the MEF and PROINVERSIÓN, which Mr. Herrera then led.[77]

30. The circumstances of the Treaty's conclusion, which Amb. Allgeier and Mr. Herrera confirmed in unison at the hearing, thus leave no doubt that the Treaty covers the Land Bonds.

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31. No conceivable interpretation of the Treaty could exclude the Land Bonds from qualifying as a covered investment on these facts—Peru's attempts to ignore the hearing testimony, rewrite the Treaty, and resuscitate the fourth prong of *Salini* notwithstanding.

E. Peru's Disingenuous and Meritless Authenticity Complaint Remains Unavailing

32. Finally, Peru's insistence that "questions remain" about the authenticity of Gramercy's Land Bonds remains false and disingenuous for reasons Gramercy has already explained.[78] In the three-and-a-half years since Gramercy sent Peru electronic copies of the front and back of its over 9,600 Land Bonds, Peru has identified only *one* anomaly related to *six* stray clipped coupons that Gramercy has already withdrawn from its claim.[79] This exceedingly minor and moot anomaly

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[75] *Compare* Herrera, **RWS-5** ¶ 29 ("[T]he Andean countries anticipated that they would be conceded their proposal to exclude from the definition [of investment] state and state enterprise debt."), *with* **Doc. CE-433**, 7th Negotiation Round, p. 35 (indicating "*posiciones que se concedarían*" by the Andean countries, which included the "*propuesta andina para excluir la definición de la deuda estatal y de empresas públicas*"). *See also* Tr. (3) 1126-27 (Herrera), Tr. (4) 1330-31 (Allgeier).

[76] Tr. (Sp.) (3) 1131-32 (Herrera); **Doc. CE-438**, 9th Negotiation Round, p. 26; *see also* Tr. (4) 1331 (Allgeier).

[77] *See* Gramercy's Pres., **H-1**, p. 31; Tr. (3) 1128 (Herrera); Tr. (4) 1375-77 (Allgeier); Rejoinder on Jurisdiction, **C-69**, ¶¶ 117-20; Reply, **C-63**, § II.B.2(b).

[78] *Cf.* Peru's PHB1, **R-85**, § IV.C.4. *But see* Tr. (1) 94 (Gramercy's opening); Gramercy's PHB1, **C-86**, ¶¶ 37-38; Opposition, **C-80**, ¶ 26.

[79] *See* Gramercy's Letter to the Tribunal of April 13, 2018, **C-12**, p. 2 (noting that Gramercy had produced electronic copies of its Land Bonds to Peru on February 21, 2017); Tr. (5) 1564-66 (Edwards); *cf.* Peru's PHB1, **R-85**,

accords with the data from the MEF's own Bondholder Process, which authenticated over *98.6%* of the properly submitted bonds, likely none of which had been subjected to the comprehensive due diligence that Gramercy and Peruvian professionals performed before Gramercy committed tens of millions of dollars to buy them.[80] In any event, any objection to the authenticity of a particular Land Bond or coupon would bear on quantum, not the Tribunal's subject-matter jurisdiction.

33. Moreover, the hearing only further undermined Peru's complaints. Contrary to Peru's insistence that the Tribunal has no subject-matter jurisdiction because Gramercy did not subject the Bonds to the very same Bondholder Process that Gramercy claims was a breach of the Treaty, as Mr. Koenigsberger testified, "if we were to produce [our Land Bonds] for verification, we were giving up all of our rights and agreeing to the conditions of that tender."[81] After repeated correspondence between the Parties, the Tribunal in fact established the following true authentication process in Procedural Order No. 1, which Peru never commented on in any of the drafts of that Procedural Order: "Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a Party, in which case the Tribunal will determine whether authentication is necessary."[82] Peru, however, chose not to raise any such specific objection. And contrary to Peru's counterfactual assertion that Gramercy did not "even make a serious proposal for any authentication process," the record is replete with letters from Gramercy to that effect, and Mr. Koenigsberger testified that not only had Gramercy "offered multiple times" to work with Peru, but "nothing would make us happier than to be able to give the Bonds to Peru and get receipt for it so that we don't have to pay for custody."[83] Gramercy reiterated those genuine offers at the hearing—repeatedly and in open session, not as an "eleventh-hour stunt" or in the hallway as Peru falsely claims—but Peru again refused.[84]

34. The only explanation for Peru's obstinacy is that Peru prefers to cling to its self-serving authenticity refrain rather than face the facts. Having forgone the opportunity to formally challenge the authenticity of Gramercy's Land Bonds in this arbitration pursuant to the process outlined in PO1, having rebuffed Gramercy's offer to establish "a pragmatic and efficient process for reviewing Gramercy's bonds," and having chosen instead to insist on the exclusivity of the very same flawed Process that forms the basis of Gramercy's claims in this arbitration,

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¶ 24; Tr. (2) 693-95 (Lanava); Letter from Prof. Sebastian Edwards to the Tribunal of August 31, 2020.

80 *See* Gramercy's PHB1, **C-86**, ¶¶ 37-38; Opposition, **C-80**, ¶ 26 & fn. 34; Lanava I, **CWS-5**, § II.

81 *Cf.* Peru's PHB1, **R-85**, ¶ 22; Tr. (2) 549 (Koenigsberger).

82 *See* Procedural Order No. 1, June 29, 2018, ¶ 44.

83 Tr. (2) 549 (Koenigsberger). *Compare* Peru's PHB1, **R-85**, ¶ 23, *with* Gramercy's Letter to the Tribunal of June 5, 2018, **C-24**, *and* Opposition, **C-80**, ¶ 26 (citing correspondence).

84 *Cf.* Tr. (1) 2164 (Peru's counsel).

Peru is bound by the presumption of validity that the Tribunal ordered.[85]

III. THE HEARING CONFIRMED THAT EACH OF GPH AND GFM IS A COVERED INVESTOR

35. Peru's principal objection to personal jurisdiction is now the redundant claim that Gramercy is not an investor because the Land Bonds are allegedly not investments.[86] Peru appears to have abandoned most of its earlier arguments about personal jurisdiction, retaining only its misconceived "active contribution" theory—which again ignores Gramercy's rebuttal as well as the testimony of Amb. Allgeier, Mr. Herrera, Prof. Reisman, and Messrs. Koenigsberger and Lanava. Instead, what Peru now hopes might stick is a belated attempt to deny benefits, but that cannot save Peru as it is both waived and meritless.

A. The Hearing Confirmed That GPH Owns, and GFM Controls, Gramercy's Land Bonds, Which Is All the Treaty Requires

36. Peru has never disputed that each claimant is "a national or an enterprise of a Party," and it now concedes that "GPH holds title to Bonds and GFM later inherited control of GPH."[87] Messrs. Lanava and Koenigsberger described GPH's Land Bond purchases and Gramercy's due diligence in making them, Prof. Bullard explained how those purchases validly transferred legal title, and Dr. Hundskopf unequivocally agreed.[88] As Mr. Koenigsberger explained, GPH has held the Land Bonds "since Day 1."[89] Messrs. Koenigsberger and Lanava further confirmed that GFM controls GPH, decides when and how to invest in the Land Bonds, what to do in the event of monetization, and when and whether to make distributions.[90] They both explained, without meaningful cross-examination, how GFM and GPH have worked in a "symbiotic" relationship to try to monetize the Land Bonds.[91]

37. Contrary to Peru's conclusory assertion that this "is not sufficient" as a legal matter, *either* title *or* control independently satisfies personal jurisdiction; the Treaty's plain terms require nothing more, and

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85 *See* Gramercy's Letter to the Tribunal of June 5, 2018, **C-24**, p. 1. *See* PO1 ¶ 44 ("Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a Party, in which case the Tribunal will determine whether authentication is necessary.").

86 *Cf.* Peru's PHB1, **R-85**, ¶¶ 102-03. *But see* Rejoinder on Jurisdiction, **C-86**, § II.A; Reply, **C-69**, § II.A.

87 *Cf.* Peru's PHB1, **R-85**, ¶ 102.

88 *See* Gramercy's PHB1, **C-86**, ¶¶ 35-36.

89 Tr. (2) 423-24 (Koenigsberger).

90 Tr. (2) 627-28 (Koenigsberger); *id.*, 721, 739, 743, 771-72 (Lanava); Koenigsberger III, **CWS-10**, § III; Koenigsberger II, **CWS-4**, ¶¶ 36-37; Lanava II, **CWS-11**, ¶¶ 5-7; Lanava I, **CWS-5**, § IV.

91 *See* Tr. (2) 720-21 (Lanava); *id.*, 628 (Koenigsberger).

Gramercy meets both.[92] Peru's suggestion that the most innocuous and ordinary aspects of Gramercy's fund structure nevertheless disqualify GPH and GFM from Treaty protection again ignores the Treaty's text, the applicable legal principles, and the facts.

38. *First*, Peru's reliance on its own pleadings to urge an alternative legal standard of an "investment involving its own contribution, at its own risk" entirely ignores Gramercy's comprehensive rebuttal.[93] In its deliberate ignorance of reality, Peru even repeats citations to cases that are not only inapposite but invalid, like *Clorox v. Venezuela*, which was annulled several months ago precisely for the defective reasoning on personal jurisdiction Peru invokes.[94] The Swiss Federal Tribunal's annulment on the grounds that the tribunal unduly imposed jurisdictional requirements that the treaty did not foresee is a cautionary tale, and Peru's omission of this decision is both regrettable and indicative of the weakness of its claim.

39. Similarly absent is any reference to testimony from Amb. Allgeier, Prof. Reisman, or Mr. Herrera in support of Peru's attempt to rewrite the Treaty's definition of "investor": no doubt because Mr. Herrera confirmed that the "through concrete action" language on which Peru pinned this theory concerns only the pre-investment phase, Peru did not challenge Amb. Allgeier's testimony that it has no effect on an investor like Gramercy who has *already made* an investment, and Prof. Reisman ultimately offered no opinion specific to personal jurisdiction, let alone endorse Peru's flawed theory.[95]

40. And even if some "active contribution" were the relevant standard, Peru again fails to explain why Gramercy would not meet it.

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92 *Compare* Peru's PHB1, **R-85**, ¶ 102, *with* **Doc. CE-139**, Treaty, Art. 10.28. *See* Rejoinder on Jurisdiction, **C-86**, § II.A; Reply, **C-69**, § II.A; Allgeier II, **CER-11**, § IV.

93 *Compare* Peru's PHB1, **R-85**, § IV.D.1, *with* Rejoinder on Jurisdiction, **C-86**, § II.A, *and* Allgeier II, **CER-11**, § IV.

94 *Compare* Peru's PHB1, **R-85**, ¶ 102 & fn. 226 (citing the *KT Asia*, *Alapli*, and *Clorox* awards), *with* Rejoinder on Jurisdiction, **C-69**, ¶¶ 27-29 (addressing these cases), *and* **Doc. CA-237**, Swiss Federal Tribunal, Case No. 4A_306/2019, Decision of March 25, 2020, ¶ 3.4.2.7 (setting aside **Doc. RA-319**, *Clorox* Award) ("*Rien ne permet de déduire de la formule 'investis par des investisseurs' l'exigence d'un investissement actif devant impérativement avoir été effectué par l'investisseur lui-même en échange d'une contre-prestation. Bien au contraire, le TBI ne contient pas d'exigences allant au-delà de la détention par un investisseur d'une partie contractante d'actifs sur le territoire de l'autre partie contractante. Dès lors, le Tribunal arbitral ne peut être suivi lorsqu'il se fonde sur des conditions supplémentaires, dont il estime qu'elles ne sont pas remplies en l'espèce, pour se déclarer incompétent.*").

95 *See* 1325-26 (Allgeier); Rejoinder on Jurisdiction, **C-69**, ¶ 22; Allgeier II, **CER-11**, ¶¶ 28-30; Herrera, **RWS-5**, ¶ 19; Reisman II, **RER-6**, ¶ 40 (reducing his personal jurisdiction opinion to the statement that "[b]ecause the Bonds do not constitute an 'investment' under the Treaty, Gramercy cannot be an 'investor' under the Treaty"); Tr. (5) 1838-46 (Reisman) (not addressing personal jurisdiction during direct examination).

As Mr. Koenigsberger testified, "it's Gramercy, through the investment manager GFM, [that] is the only one that can make all the decisions relative to the Bonds, and it's a Gramercy vehicle [GPH] that owns the Bonds and has title, and, therefore, it's the only owner and the only one that can make ownership decisions."[96]

41. *Second*, the fact that GPH "acquired the Bonds with money raised entirely from third-party beneficiaries" does not dislodge GPH's ownership of the Land Bonds, or mean it did not "make" any investment.[97] Peru conceded at the hearing that no "origin of capital" requirement applies under this Treaty.[98] And as a factual matter, GPH *did* make a contribution "of its own" because, as Messrs. Koenigsberger and Lanava testified, the financing came from GPH's capitalization: Gramercy's clients subscribed to equity stakes in other Gramercy funds with interests in GPH, and these funds then equitized through capital contributions to GPH, which purchased the Land Bonds and has exclusively owned them ever since.[99] As Mr. Lanava put it, "once the equity capital from GEMF went into GPH [it] became GPH's money, and then GPH made an investment to purchase Land Bonds."[100]

42. Similarly inapt is Peru's suggestion that GPH never "held" the money it invested.[101] This is irrelevant to whether GPH owns the Land Bonds, but it is also false: Peru omits the operative part of Mr. Lanava's testimony with an ellipsis.[102] After Mr. Lanava agreed that "[i]t's safe to say that" GPH received money from its parent company when it needed it, he went on to clarify that the only time GPH had a zero balance was at the "very beginning when we set up the account," and that "*it wasn't as if* it was money in, money out, money in, money out. [GPH] had a running balance."[103]

43. *Third*, Peru's allegation that GPH has "no real economic interest" because "proceeds" from the Land Bonds will benefit what Peru calls "GPH's third-party beneficial owners" is likewise both legally inapposite and factually wrong.[104] Mr. Lanava confirmed that any monetization of the Land Bonds will flow exclusively to GPH, and that distributions from GPH to upstream beneficial owners are not

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96 Tr. (2) 627-28 (Koenigsberger); *see also* Koenigsberger III, **CWS-10**, § III; Koenigsberger II, **CWS-4**, ¶¶ 36-37.

97 *Cf.* Peru's PHB1, **R-85**, ¶ 103.

98 *See* Rejoinder on Jurisdiction, **C-69**, ¶¶ 36-37; *cf.* Tr. (1) 321, 358 (Peru's opening).

99 *See* Tr. (2) 423-424 (Koenigsberger); *id.*, 715, 718-19 (Lanava); Koenigsberger III, **CWS-10**, § III; Koenigsberger II, **CWS-4**, ¶¶ 36-37; *see also* Rejoinder on Jurisdiction, **C-69**, §§ II.1(c), II.2; Reply, **C-63**, § II.A; *cf.* Peru's PHB1, **R-85**, ¶ 29.

100 Tr. (2) 724-25 (Lanava); *see* ¶ 20 above.

101 *Cf.* Peru's PHB1, **C-86**, ¶ 28; Tr. (1) 361 (Peru's opening).

102 *Cf.* Peru's PHB1, **C-86**, ¶ 28.

103 Tr. (2) 726-27 (Lanava).

104 *Cf.* Peru's PHB1, C-85, ¶¶ 26, 103.

automatic.[105] As noted, Gramercy stands to gain management- and performance-based fees on its Land Bonds investment. And Peru still has no response to the point that merely because GPH and GFM have upstream investors and stakeholders does not mean they do not own or control the Land Bonds.[106] Gramercy, like any investment manager, sells equity interests in funds that, in turn, hold a portfolio of assets, some of which include entities with indirect interests in GPH.[107] Gramercy's clients' purchases of these interests do not displace GPH's exclusive legal title to 100% of Gramercy's Land Bonds or GFM's exclusive control of GPH. As Mr. Koenigsberger put it: "Gramercy is the only entity that owns and controls. The beneficial owners above don't have title. They don't have management. They can't move the Bonds. They can't extinguish the Bonds. They can't swap the Bonds. They can't insure the Bonds. All they can do is get a beneficial interest."[108]

44. *Fourth*, Peru likewise fails to explain the relevance of its assertion that GFM's role is to "manage GPH, not to acquire or hold Bonds."[109] As the Treaty expressly states, as Gramercy has explained at length, and as Peru simply ignores, *control* of the Bonds—including indirect control, and regardless of title or possession—is enough.[110]

45. *Finally*, Peru's unsupported claim that "Gramercy does not have standing" adds nothing to the arguments Peru previously made, which Gramercy already thoroughly rebutted.[111] Peru provides no legal basis—because there is none—for this additional "standing" requirement. Peru's argument is also based on a false premise: it is not true that Gramercy "bought a claim, using third-party funding," and then "sold . . . the beneficial ownership interest in that claim."[112] Gramercy's clients do not have a stake *in the Land Bonds themselves*; they are essentially shareholders of *the funds* that are invested, directly or indirectly, in *GPH*, and their contributions were capitalized.[113] Gramercy is not seeking damages for an investment over which it only holds a partial or *de minimis* interest: GPH bought the Land Bonds, GPH has at all times owned 100% of the Land Bonds, and GPH is the entity to whom any payment on the Land Bonds will flow.[114] Peru's complaint

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105 Tr. (2) 771-72 (Lanava) (discussing **CE-165**, GPH Amended Operating Agreement, December 31, 2011, Art. VIII).

106 *See* Rejoinder on Jurisdiction, **C-69**, ¶ 40.

107 *See* Tr. (2) 721, 739, 743 (Lanava); Lanava II, **CWS-11**, ¶¶ 5-7; Lanava I, **CWS-5**, § IV.

108 Tr. (2) 627-28 (Koenigsberger); *see also* Koenigsberger III, **CWS-10**, § III; Koenigsberger II, **CWS-4**, ¶¶ 36-37.

109 *Cf.* Peru's PHB1, **R-85**, ¶ 103.

110 *See* Rejoinder on Jurisdiction, **C-69**, ¶¶ 10-11; Reply, **C-63**, ¶¶ 11, 19-23.

111 *Compare* Peru's PHB1, **R-85**, ¶¶ 109-113, *with* Rejoinder, **R-65**, ¶¶ 106-114. *See also* Rejoinder on Jurisdiction, **C-69**, ¶¶ 44-49.

112 *Cf.* Peru's PHB1, **R-85**, ¶ 113.

113 *See* Rejoinder on Jurisdiction, **C-69**, ¶ 45.

114 *See* Tr. (2) 721, 739, 743 (Lanava); Lanava II, **CWS-11**, ¶¶ 5-7; Lanava I, **CWS-5**, § IV.

that GPH allegedly "engaged in no economic activity"[115] is similarly obscure, since the Treaty nowhere imposes an "economic activity" requirement.

46. In the end, all of Peru's disjointed complaints are little more than partially accurate observations about what an investment management firm actually does, with a gloss of Peru's disdain for Gramercy. But Peru's position that investment managers should not be allowed to benefit from the Treaty simply because of their business model has no basis in the Treaty's text, would be positively inconsistent with the Treaty's express coverage of sophisticated financial instruments and its separate chapter on financial services, and would disqualify any publicly traded company with shareholders from Treaty protection.[116]

B. Peru's Eleventh-Hour Denial of Benefits Objection Is Both Waived and Meritless

47. Unable to contest the clear evidence that GFM and GPH both qualify as protected investors, Peru belatedly purports to deny the Treaty's benefits to GPH.[117] This new objection is far too late. The Tribunal should dismiss it as untimely and as having been waived. Moreover, the objection is legally and factually groundless, and could not apply to GFM in any event.

48. Peru has waived this objection by failing to raise it "no later than in the statement of defence," as UNCITRAL Rule 23(2) and Procedural Order No. 1 expressly require and as tribunals, including one on which Prof. Reisman sat, have repeatedly confirmed.[118] That rule reflects the elementary due process requirement that Gramercy has the right to be heard—including the right to lead evidence to rebut the objection—which Gramercy can no longer do. Peru does not deny, or even address, this fatal Rule.

49. In addition to being waived, Peru's denial of benefits cannot apply to GPH. Despite Peru's mischaracterization of Mr. Lanava's testimony, the evidence does not establish either of the two cumulative requirements that GPH has "no substantial business

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115 Peru's PHB1, **R-85**, ¶ 113.

116 *See* **Doc. CE-139**, Treaty, Ch. 12; *see also* Rejoinder on Jurisdiction, **C-63**, § II.A.2; Reply, **C-63**, ¶¶ 27-30.

117 *Cf.* Peru's PHB1, **R-85**, § IV.D.2; Tr. (1) 329-30 (Peru's opening).

118 *See* **Doc. CE-174**, 2013 UNCITRAL Rules, Art. 23(2) ("A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence . . . ."); Procedural Order No. 1 ¶ 10 (ordering that Peru's Statement of Defense "shall set forth . . . any jurisdictional objection"); **Doc. CA-231**, *EMELEC v. Ecuador*, ICSID Case No. ARB/05/9, Award, June 2, 2009, ¶ 7 (noting that the "proper stage of the proceedings" for invoking any denial of benefits is "upon raising . . . jurisdictional objections"); **Doc. CA-232**, *Guaracachi et al. v. Bolivia*, PCA Case No. 2011-17, Award, January 31, 2014, ¶ 378; **Doc. CA-238**, *Ulysseas v. Ecuador*, Interim Award, September 28, 2010, ¶ 172; **Doc. CA-154**, *Pac Rim* Decision, ¶ 4.85.

activities" in the United States or that non-U.S. nationals "own or control" GPH.[119] *First*, contrary to Peru's claim that GPH's only business is "holding of the Bonds in the territory of Peru," Messrs. Koenigsberger and Lanava described in extensive, unchallenged testimony how GPH makes investment decisions and raises capital from its Connecticut headquarters: that is where all of the Gramercy employees who work on behalf of GPH are based, where they raise money for GPH, develop its investment strategy, authorize and initiate its transactions, and do its accounting.[120] These activities clearly exceed the threshold of activity required to overcome a denial of benefits objection.[121] *Second*, contrary to Peru's claim that GPH is "wholly-owned by non-U.S. entities," Mr. Lanava explained in unchallenged testimony that the vast majority of GPH's beneficial owners—[redacted]—are U.S. persons.[122] GFM, a U.S. entity, also exclusively controls GPH.[123] Denial of benefits clauses are intended to exclude from protection investors whose nationality is simply a "nationality of convenience."[124] This is simply not the case here: the fact that Gramercy's fund structure includes Cayman Island companies does not alter the fact that GPH is a company incorporated in the United States, operating from U.S. headquarters, capitalized with funds from the United States, controlled by U.S. persons, and of which other U.S. persons—primarily millions of U.S. pensioners—are the ultimate beneficial owners of the enterprise's economics. Peru's last-ditch denial of benefits

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119 *See* Rejoinder, **C-69**, ¶ 20; *cf*. **Doc. CE-139**, Treaty, Art. 10.12.

120 *Cf*. Peru's PHB1, **R-85**, ¶ 106. *But see* **Doc. CE-165**, GPH Amended Operating Agreement, December 31, 2011, Art. 1.3 (listing Connecticut as GPH's principal place of business); *see also* sources cited at fn. 50 above; Reply, **C-63**, ¶¶ 27, 28; Rejoinder on Jurisdiction, **C-69**, ¶¶ 20, 46.

121 *See, e.g.*, **Doc. CA-234**, *NextEra Energy Global Holdings B.V. et al. v. Spain*, ICSID Case No. ARB/4/11, Decision on Jurisdiction, Liability, and Quantum Principles, March 12, 2019, ¶ 260 ("[T]ribunals that have found [substantial business] activities to exist have been prepared to do so on the basis of a relatively small number of activities both in terms of quantity and quality."); **Doc. CA-229**, *9REN Holding S.a.r.l v. Spain*, ICSID Case No. ARB/15/15, Award, May 31, 2019, ¶ 182 ("The test of substantial business activities must take its colour from the nature of the business. Bricks and mortar are not of the essence of a holding company, which is typically pre- occupied with paperwork, board meetings, bank accounts and cheque books.").

122 Lanava I, **CWS-5**, ¶¶ 34-35; *see also* [redacted]).

123 *See* Reply, **C-63**, ¶ 23 (citing **Doc. CE-165**, Amended Operating Agreement of GPH, December 31, 2011, Art. 3.1).

124 **Doc. RA-91**, *Amto* Final Award, ¶ 69; *see also* **Doc. CA-89**, *Bridgestone* Decision, § VII.A(3) (finding that the denial of benefits clause was not intended to exclude companies "that maintain their central administration or principal place of business in the territory of, or have a real and continuous link with, the country where they are established").

argument thus cannot succeed.

IV. PERU FAILED TO REBUT THAT ALL OF GPH'S CLAIMS ARE TIMELY AND VALIDLY SUBMITTED

50. Peru's claim that "Peru never consented to arbitrate, and the claims must be dismissed" fails for the immediate reason that—as Peru has now squarely conceded—it has no waiver or time bar objection to GFM's claims at all.[125] Peru and Gramercy agree that GFM's claims were validly submitted on June 2, 2016, less than three years since the "July 16 prescription cut-off" that Peru misguidedly urges.[126]

51. Peru's arguments under Article 10.18 thus concern *only* GPH. But even for GPH, Peru's claims remain both wrong and inconsequential. GPH's June 2, 2016 waiver was valid, even Peru concedes that GPH validly submitted its claims at the latest by August 5, 2016, and Peru, the United States, and Gramercy all agree that even an imperfect waiver can effectively be cured before the Tribunal's constitution.[127] The only question then is not *whether* GPH submitted its claims, but *when*. That in turn only matters because Peru contends that the three-year time bar was triggered on July 16, 2013, merely as a result of the issuance of the 2013 CT Order. But as the documents show and Mr. Koenigsberger, Dr. Hundskopf, Min. Castilla, Vice-Min. Sotelo, and Peru's quantum experts (among others) confirmed at the hearing, GPH did not know, and could not have known, from the face of the 2013 CT Order that it, standing alone, constituted an unlawful expropriation (or indeed any other Treaty breach). And Peru does not deny that the relevant cut-off date is *after* August 5, 2013 for all of GPH's remaining claims, regarding Peru's measures subsequent to the CT Order and the MEF's clandestine interference in the CT Order. Thus, despite repeating the same misleading arguments from its briefs that Gramercy already rebutted, Peru's objections fail even taken at their highest.

A. Peru Failed to Rebut That GPH Validly Submitted Its Claims on June 2 and July 18, and Conceded It Did So by August 5, 2016 at the Latest

52. Despite Peru's resistance to saying so, there is no dispute between the Parties that GPH validly submitted its claims at the latest by August 5, 2016, and Peru's objections to the earlier waivers fail.

53. *First*, Peru now concedes that GPH validly submitted its claims at the latest by August 5, 2016, the U.S. Submission is in accord, and Peru has rightly abandoned the suggestion that GPH's waiver should depend on the pace of Peru's own courts' own internal administrative

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125 *Cf.* Peru's PHB1, **R-85**, ¶ 64.

126 *Cf.* Peru's PHB1, **R-85**, ¶ 75; Tr. (1) 308-09 (Peru's opening). *But see* Tr. (1) 49-53 (Gramercy's opening); Rejoinder on Jurisdiction, **C-69**, § II.C.2; Reply, **C-63**, § II.C.

127 U.S. Submission ¶ 17; Rejoinder, **R-65**, ¶ 84; Rejoinder on Jurisdiction, **C-69**, ¶ 139.

steps.[128]

54. *Second*, Peru likewise does not deny that GPH's July 18, 2016 unqualified waiver was formally valid, and it has never rebutted the fact that the local proceedings to which GPH was then a party did not affect the material validity of the waiver because they were not "with respect to *any measure alleged to constitute a breach* referred to in Article 10.16"—*i.e.*, the MEF's interference in the 2013 CT Order, the 2013 CT Resolutions, and the ensuing Supreme Decrees.[129] The petitions speak for themselves, Peru has never denied Gramercy's description of them, did not lead any evidence from the Peruvian legal experts, and—despite now impugning the credibility of Gramercy's contemporaneous statements—did not cross-examine Gramercy's witnesses either.[130] Instead, Peru now complains that the Land Bonds were "already burdened by a preexisting domestic dispute" or "rais[ed] a serious risk of double recovery," but this is both wrong and inapposite: Article 10.18.2 does not ask whether the proceedings relate to the same "dispute" but whether the proceedings concern the same "measure[s] alleged to constitute a breach" of the Treaty.[131] Peru's claim that the Treaty "should be interpreted broadly"—but that it is "rigid" and "strict" when it suits Peru—only reveals the artifice of Peru's position.[132]

55. *Finally*, beyond taking cover behind *Renco I* to argue that GPH's June 2, 2016 waiver "suffered the same fundamental flaw," Peru does not address the substance of Gramercy's arguments that the reasoning in *Renco I* is neither binding nor persuasive; at the hearing, Peru led no evidence on this point.[133] Perhaps more importantly, Peru also does not address the recently-published decision in the resubmitted proceeding in *Renco II*, which specifically addressed the effect of an allegedly defective waiver on the three-year time bar. Having found that Renco had not validly submitted its claims because it had failed to provide an unqualified waiver *before* the tribunal's constitution, the *Renco I* tribunal held that "justice would be served if Peru accepted that time stopped running for the purposes of Article 10.18(1) when Renco filed its Amended Notice of Arbitration," and warned that it would be an abuse of rights for Peru to object to any resubmitted claims as time-barred.[134] However, Peru—represented by the same lead counsel as in

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128 Tr. (1) 302 (Peru's opening); Peru's PHB1, **R-85**, ¶¶ 75-76 (acknowledging that GPH "satisf[ied] the formal component of the waiver" on July 18 and the material waiver by August 5); *accord* U.S. Submission ¶ 17; *see also* Rejoinder, **R-65**, ¶ 84; Rejoinder on Jurisdiction, **C-69**, § II.C.1(a).

129 *Cf.* **Doc. CE-139**, Treaty, Art. 10.18(2) (emphasis added); *see also* Gramercy's PHB1, **C-86**, ¶ 120; Rejoinder on Jurisdiction, **C-69**, ¶¶ 143-47.

130 *Cf.* Peru's PHB1, **R-85**, ¶ 77.

131 *Cf.* Peru's PHB1, **R-85**, ¶¶ 76-77. *But see* Rejoinder on Jurisdiction, **C-69**, ¶¶ 143-47.

132 *Compare* Peru's PHB1, **R-85**, ¶ 77, *with id.*, ¶¶ 66, 68, 78.

133 *Cf.* Peru's PHB1, **R-85**, ¶ 75. *See generally* Rejoinder on Jurisdiction, **C-69**, ¶¶ 135-37, 149; Reply, **C-63**, II.C.1(a).

134 **Doc. RA-146**, *Renco I* Partial Award, ¶ 188.

this case—did just that in *Renco II*.[135] Addressing the effect of the qualified waiver for purposes of the Treaty's three-year time bar, a majority of the *Renco II* tribunal (chaired by Judge Bruno Simma) held that even a defective waiver suspends the prescription period.[136] On that logic, June 2, 2016 is the relevant date for the timeliness of GPH's claims, *even if* the waiver submitted on that date were deemed imperfect.

56. Thus, the relevant date for the timeliness of GPH's claims is June 2, 2016; in the alternative July 18, 2016, and even on Peru's highest case, August 5, 2016; and, as explained below, GPH's claims are timely in all cases.

B. In All Cases, GPH's Claims Were Timely Submitted

57. Peru's time bar objection becomes relevant only if the Tribunal rejects *both* (*1*) Gramercy's showing that GPH validly submitted its claims on June 2, 2016 *and* (*2*) the *Renco II* tribunal's reasoning that a defective waiver still suspends the three-year time bar. Even in that remote eventuality, however, Peru does not deny that its time bar objection could only affect *one* of GPH's multiple bases for relief: that the July 16, 2013 CT Order was on its face an expropriation. It does not affect GPH's claims regarding the way in which the MEF procured the Order, the CT's shocking use of white-out and deliberate violation of its own rules, or the CT Resolutions, or the Supreme Decrees—all of which are independent breaches of multiple provisions of the Treaty. And even with respect to that single claim of expropriation, Peru's objection still fails because the hearing confirmed that GPH did not have, and could not have had, the requisite knowledge that a substantial deprivation of value arose from the mere fact that the 2013 CT Order was issued.

58. *First*, Peru acknowledges that Article 10.18.1 requires assessing GPH's "knowledge of *the breach alleged under Article 10.16.1* and knowledge that the claimant . . . has incurred loss or damage," but Peru still fails to make that breach-by-breach analysis.[137] In addition to expropriation, GPH's alleged breaches also include breaches of the minimum standard of treatment, MFN, and national treatment—alleged breaches which arise from later facts (the August and November 2013 CT Resolutions, the Supreme Decrees, and the Bondholder Process), or from facts that Peru does not deny only later came to light (the MEF's improper interference in obtaining the 2013 CT Order).[138] Even on Peru's highest case that GPH had not validly submitted its claims until August 5, 2016, those claims are still admissible. Peru's vague statement that it would be "impermissible" to "shift focus to these later cherry-

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135 *See* **Doc. CA-235**, *Renco II* Decision, ¶ 156.

136 **Doc. CA-235**, *Renco II* Decision, ¶ 249.

137 *Cf.* **Doc. CE-139**, Treaty, Art. 10.18.1 (emphasis added); Peru's PHB1, **R-85**, ¶ 68. *But see* Rejoinder on Jurisdiction, **C-69**, § II.C.2; Reply, **C-63**, § II.C.2.

138 *See, e.g.*, Gramercy's PHB1, **C-86**, § II; Tr. (1) 63-70 (Gramercy's opening); Rejoinder on Jurisdiction, **C-69**, ¶ 160; Reply, **C-63**, ¶¶ 187-98.

picked measures" is as obscure on its face as it is unsupported in law.[139] There is nothing "cherry-picked" about Peru's subsequent breaches of the Treaty, and Peru's inapt quotation from *Berkowitz*—which refers to the "most recent transgression in [a] series" of facts that constitute part and parcel of *the same breach*—has no application to this case.[140]

59. *Second*, Peru's objection fails even with respect to GPH's expropriation claim, because the substantial deprivation of GPH's investment—an element necessary for an expropriation breach to occur—did not arise until after the MEF issued its arbitrary, irrational, and value-destroying formulas through its 2014 Supreme Decrees. That is of course exactly what the 2013 CT Order said on its face—that the "Executive Branch, within six months from the issuance of this ruling, must issue a supreme decree governing the procedure for the registration, valuation, and payment of the land reform debt bonds."[141] Whether Gramercy had a "first appreciation of alleged loss on 16 July 2013," as Peru puts it, is simply not the question: there could not have been a *breach* consisting of expropriation until the substantial deprivation had in fact occurred. Peru continues to ignore the recent decisions in *Resolute Forest Products* and *Mobil Investments* to this effect.[142]

60. *Third*, Peru's mischaracterization of the hearing testimony does not establish the contrary. Without waiving privilege, Mr. Koenigsberger has repeatedly confirmed that Gramercy believed that any Treaty claim would have been premature before the MEF had issued the implementing decrees that the CT Order contemplated, and that Gramercy first concluded that it might have Treaty claims some time *after* Gramercy had analyzed those 2014 Supreme Decrees in depth.[143] Indeed, as Mr. Koenigsberger explained, even then, Gramercy believed there was foul play, but "felt that that wasn't the last word and that there was still more negotiations to be had."[144]

61. None of the conclusory statements and selective quotations of the record in Peru's PHB prove otherwise.

- Mr. Koenigsberger's testimony that the 2013 CT Order was "different from what we expected," in that Gramercy "expected . . . enforcement of current value" but "[w]hat came out of it was dollarization," does not establish that this "surprise" was an expropriation.[145] As Mr. Koenigsberger explained and the

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139 *Cf.* Peru's PHB, **R-85**, ¶ 73.

140 *See* Rejoinder on Jurisdiction, **C-69**, ¶¶ 186-88; Reply, **C-63**, ¶ 205.

141 **Doc. CE-17**, 2013 CT Order, "Has Resolved" Section, ¶ 3.

142 *Compare* Peru's PHB1, **R-85**, ¶ 71, *with* Rejoinder on Jurisdiction, **C-69**, ¶ 171, *and* Reply, **C-63**, ¶¶ 175-177 (citing **Doc. CA-170**, *Resolute Forest* Decision, ¶ 153; **Doc. CA-142**, *Mobil Investments* Decision, ¶ 154).

143 *See* Tr. (2) 587, 604, 631-32 (Koenigsberger); Koenigsberger III, **CWS-10**, ¶¶ 35-47; Koenigsberger II, **CWS-4**, ¶¶ 15-20; Koenigsberger I, **CWS-3**, ¶¶ 54-56.

144 Tr. (2) 571 (Koenigsberger).

145 *Cf.* Peru's PHB, ¶ 71.

contemporaneous documents show, Gramercy "had no idea what to make of the July 2013 ruling. There was more unknowns than knowns," including "[a]ll sorts of factors in terms of exchange rates, parity exchange rates, interest rates, coupon rates, also away from that, how that might compare to what you're able to do in the local courts because, still, you know, 2001, it's very clear that we have the right to look at all these voluntary things that come forward, but we also have a right to legal proceedings within Perú."[146]

- The fact that a single Gramercy employee wrote a hasty email with off-the-cuff speculation that the 2013 CT Order could represent a "significant haircut," but could not say if it was a "50% haircut more or less," or that the Executive had "wiggle room . . . to try to impose a confiscatory settlement," also does not establish that Gramercy appreciated it had already been expropriated.[147] Peru would no doubt agree that a potential impairment of 50% does not suffice to constitute an expropriation; a margin of maneuver to impose an unquantifiable haircut is not a substantial deprivation. In fact, these contemporaneous exchanges only corroborate Mr. Koenigsberger's testimony that Gramercy believed the impact of the CT Order would depend on how the Government chose to interpret it: they were "no more than complete speculation about what might end up being the case, depending on what the Government did next," because (as the email itself says) "[t]he devil is in the details of what the Government will do in the next six months to comply with this ruling" and Gramercy was not "going to have full answers until the government proposes a method to implement this ruling."[148] Peru did not cross-examine Mr. Koenigsberger on his testimony about these documents.

- The fact that Gramercy possesses a privileged document dated July 22, 2013, or that it sought legal advice from counsel "regarding Land Bonds valuation methods" in November 2013, does not establish that the content of this advice was that Gramercy had already been expropriated.[149] It could just as well have been the opposite.

- Similarly, the fact that Mr. Koenigsberger reserved Gramercy's rights in a December 2013 letter to Peru also does not prove that an expropriation had already occurred—especially since that letter was in fact another overture to Peru for a consensual resolution: Mr. Koenigsberger in fact stated that "a combination of factors has now created a historic opportunity for Perú to resolve this situation once and for all and to do so in a way that benefits all the Parties

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146 Tr. (2) 576, 630-31 (Koenigsberger); *see also* Koenigsberger III, **CWS-10**, ¶¶ 34-41; Koenigsberger II, **CWS-4**, ¶ 17; Koenigsberger I, **CWS-3**, ¶ 54; *cf.* Rejoinder on Jurisdiction, **C-69**, § II.C.2(b); Reply, C-63, ¶ 188.

147 *Cf.* Peru's PHB1, **R-85**, ¶ 71.

148 **Doc. CE-544**, Email from José Cerritelli to Robert Koenigsberger, July 16, 2013, p. [1].

149 *Cf.* Peru's PHB1, **R-85**, ¶ 71.

involved."[150] Even so, by December 2013 the CT had issued two more Resolutions that, among other things, foreclosed bondholders' right to obtain current value from the courts. Peru yet again did not cross-examine Mr. Koenigsberger about this letter.

62. Mr. Koenigsberger's testimony is not only convincing, consistent, and corroborated by the contemporaneous documents, but also confirmed by Peru's own conduct that Peru chooses to ignore. While Peru now argues that Gramercy should have known the precise meaning and effect of the 2013 CT Order just from reading it, neither the CT itself nor the MEF did so at the time.[151] The MEF was so confused by the Order that it petitioned the CT to clarify it; the CT agreed—issuing not one, but *two* further Resolutions supplementing its Order.[152] Even two years later, in 2015, the CT held that a challenge to the 2013 CT Order would be "premature" because the MEF had yet to implement the relevant formulas.[153] And the hearing illustrated how the 2013 CT Order was susceptible to multiple interpretations, several of which implied significant value: the MEF issued not one but *five* decrees, adopting not one but *three* different formulas, all purporting to give effect to the Order; Min. Castilla and Vice-Min. Sotelo could explain neither the formulas nor how they related to the 2013 CT Order; Prof. Edwards and Peru's quantum experts agreed that those various Decrees yielded vastly different values—including, under the February 2017 Decree, significant value exceeding Gramercy's claim in this arbitration; and as Dr. Hundskopf described, Peru's Supreme Court repeatedly interpreted the 2013 CT Order in a manner that implies that Gramercy's portfolio of Land Bonds was worth US$845 million as of May 31, 2018—an approach that Dr. Hundskopf testified was fully faithful to the 2013 CT Order.[154] Ultimately, as the hearing confirmed, the MEF Supreme Decrees did not even implement the 2013 CT Order in good faith, as they neither made good on the CT's directive to pay compensatory interest, nor even attempted to balance the bondholders' right to current value against Peru's fiscal sustainability.[155]

63. Thus, GPH neither had been expropriated by July 16, 2013, nor should have believed it had been; Peru's time bar objection is misconceived, meritless, and immaterial.

V. PERU'S MISCHARACTERIZATION OF GRAMERCY'S

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[150] *Compare* Peru's PHB, **R-85**, ¶ 72, *with* **Doc. CE-185**, Letter from Robert Koenigsberger to Peru, December 31, 2013, p. 2. *See also* Tr. (1) 55-56 (Gramercy's opening); Rejoinder on Jurisdiction, **C-69**, ¶¶ 161, 199; Koenigsberger III, **CWS-10**, ¶ 43; Koenigsberger I, **CWS-3**, ¶ 55.

[151] *Cf.* Peru's PHB1, **R-86**, ¶¶ 69-73.

[152] *See* **Doc. CE-180**, August 2013 CT Resolution, Preamble; **Doc. CE-183**, November 2013 CT Resolution, Preamble.

[153] **Doc. CE-40**, CT Writ, April 7, 2015, "Foundations" Section, ¶ 8; *see also* Rejoinder on Jurisdiction, **C-69**, ¶ 175; Reply, **C-63**, ¶ 189; Statement of Claim, **C-34**, ¶ 17.

[154] *See* Gramercy's PHB1, **C-85**, § II.C.1 & ¶ 133.

[155] *See* Gramercy's PHB1, **C-85**, ¶¶ 62, 73-77.

CLAIMS AND THE TREATY'S TEXT CANNOT DEFEAT THE TRIBUNAL'S TEMPORAL JURISDICTION

64. Peru's objection that the principle of non-retroactivity deprives the Tribunal of temporal jurisdiction over breaches occurring *several years after* the Treaty's entry into force likewise fails.[156]

65. *First*, contrary to Peru's assertion that Gramercy "pretend[s] that its claims suddenly materialized" with the 2013 CT Order, Gramercy's claims have always concerned that tainted Order, the 2013 CT Resolutions, and the MEF's subsequent Supreme Decrees.[157] These are the "measures adopted or maintained by a Party" that breach the Treaty, and the Treaty applies to them because they occurred several years *after* its entry into force.[158] Peru cannot avoid this self-evident conclusion by claiming that the Land Bonds are "old physical instruments provided decades ago" or "were not paid opportunely"; Gramercy does not claim that any of the pre-2009 facts Peru invokes—such as the agrarian reform program, hyperinflation, Peru's default on the Land Bonds, or the CT's 2001 affirmation that Peru must pay the Land Bonds' current value—are Treaty breaches.[159] Similarly irrelevant is Prof. Reisman's personal opinion on what is a "highly fact-specific" inquiry, especially when he has either misunderstood, or been misinformed about, the nature of Gramercy's claims.[160]

66. *Second*, Peru's assertion that the Tribunal lacks temporal jurisdiction over its post-Treaty breaches because they "are deeply rooted in pre-Treaty acts or facts" is also wrong and nonsensical.[161] It has no basis in this Treaty's text, which does not define temporal jurisdiction by the sameness of disputes but by the occurrence of measures, acts, and facts.[162] It flies in the face of the well-accepted principle that facts that predate the Treaty's entry into force can be taken into account as a factual predicate for subsequent conduct that is claimed to be a breach, and do not deprive the tribunal of temporal jurisdiction over that later conduct.[163] And yet again, it has absurd implications: it would deprive this Treaty's express coverage of preexisting investments of all meaning, and would deprive tribunals of temporal jurisdiction over post-treaty

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156 *Cf.* Peru's PHB1, **R-85**, § IV.B.1. *But see* Tr. (1) 56-57 (Gramercy's opening); Rejoinder on Jurisdiction, **C-69**, § II.D; Reply, **C-63**, § II.D.

157 *Cf.* Peru's PHB1, **R-85**, ¶ 66.

158 *Cf.* **Doc. CE-139**, Treaty, Arts. 10.1.1, 10.16.1.(a)(i)(A) (emphasis added).

159 *Cf.* Peru's PHB1, **R-85**, ¶¶ 12-13, 39, 66.

160 *Compare* Peru's PHB1, **R-85**, ¶ 66, *with* Tr. (5) 1849 (Reisman) (agreeing that "[f]actual matters . . . are . . . within the scope of the mandate of this distinguished Tribunal"). *See also* **Doc. RA-150**, *Berkowitz* Interim Award, ¶¶ 166-67 (observing that temporal jurisdiction determinations are "heavily fact-specific" and "turn on their facts").

161 *Cf.* Peru's PHB1, **R-85**, ¶ 65; Tr. (1) 294-95 (Peru's opening).

162 *Cf.* **Doc. CE-139**, Treaty, Art. 10.1.3.

163 *See* Rejoinder on Jurisdiction, **C-69**, ¶ 185; **Doc. CA-34**, *Mondev* Award, ¶ 69; **Doc. CA-133**, *MCI* Award, ¶ 93; *see also* **Doc. RA-150**, *Berkowitz* Interim Award, ¶ 163.

expropriations of preexisting concessions, or post-treaty frustrations of legitimate expectations arising from pre-treaty assurances.

67. Misquoting *Berkowitz* again does not cure these flaws, as Gramercy already explained, as Peru continues to ignore, and as the *Renco II* tribunal has since unequivocally confirmed in a decision Peru again omits from its brief.[164] Rejecting the exact same argument from Peru, made in the same terms and through the same counsel, the *Renco II* tribunal held that it "does not understand the tribunal in *Berkowitz* to purport to modify or supplement the applicable test for non-retroactivity of treaties, notwithstanding its frequent use of the apposite but imprecise phrase 'deeply rooted'"; instead, "the principle is that . . . the allegedly wrongful conduct postdating the entry into force of the Treaty must 'constitute *an actionable breach in its own right*' when evaluated *in the light of all circumstances, including acts and facts that predate* the entry into force of the Treaty."[165]

68. That is plainly the case here; indeed, Peru no longer disputes that the post-2013 measures that form the basis of Gramercy's claims are independently actionable.[166] And contrary to Peru's unsupported assertion, Gramercy has *not* "recognized" that the 2013 CT Order "was inextricably intertwined" with the 2001 CT Decision; it was not the *2001 CT Decision* that breached the Treaty, but Peru's unlawful repudiation of it more than a decade later.[167]

69. There is therefore no legal or factual basis whatsoever for Peru's argument that claims arising from breaches in 2013 and later violate the non-retroactivity of a Treaty that came into force on February 1, 2009.

VI. PERU'S MISCHARACTERIZATIONS OF THE LAW AND THE FACTS FAIL TO PROVE THAT GRAMERCY ABUSED ITS RIGHT TO ARBITRATION

70. Peru now candidly acknowledges that its principal objection is that Gramercy allegedly abused its right to arbitration.[168] But reiterating this objection does not improve it. At the hearing, Peru was unable to refute Mr. Koenigsberger's compelling testimony, confirmed by the contemporaneous record, that Gramercy invested in the Land Bonds because Peru's highest courts had unequivocally confirmed that they entitled Gramercy to be paid their current value, plus interest, and because Gramercy believed it could use its expertise to catalyze a consensual, global, and mutually-beneficial resolution of the entire Land Bonds debt—a result that history shows, and Prof. Olivares-Caminal and

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164 *Compare* Peru's PHB1, **R-85**, ¶¶ 65-66, *with* Rejoinder on Jurisdiction, **C-69**, ¶¶ 186-89 (discussing **Doc. RA-150**, *Berkowitz* Interim Award), *and* **Doc. CA-235**, *Renco II* Decision, ¶ 145.

165 **Doc. CA-235**, *Renco II* Decision, ¶¶ 145-46 (emphasis added).

166 *Compare* Tr. (1) 297-99 (Peru's opening), *with* Peru's PHB1, **R-85**, ¶ 67.

167 *Cf.* Peru's PHB1, **R-86**, ¶ 66; Gramercy's PHB1, **C-86**, §§ II.B-C.

168 *Cf.* Peru's PHB1, **R-86**, § IV.A.

Peru's witness Mr. Herrera all independently confirmed, would have benefited Peru and its people.

71. It hardly need be said that the MEF's clandestine interference in the 2013 CT Order, and the arbitrary, non-transparent, discriminatory, and confiscatory way it set about destroying Gramercy's right to current value under cover of that Order, had neither occurred, nor already caused the damages of which Gramercy now complains, nor given rise to an international dispute between Gramercy and Peru, nor were remotely, reasonably, or otherwise foreseeable in 2006, when Gramercy began investing in Peru—*ten years* before Gramercy commenced arbitration as a last resort, after Peru repeatedly rebuffed Gramercy's overtures under disingenuous pretexts that Vice-Min. Sotelo had to disavow on the stand.[169] There is, therefore, no abuse of process.

72. Peru's argument that Gramercy is nevertheless not entitled to exercise rights it plainly has because it allegedly "bought claims in a domestic Peruvian dispute that . . . had persisted for decades" and was acting "in essence, like a third-party funder" is simply false.[170] Peru ignores the testimony and documentary evidence that the word "claims" in contemporaneous documents refers to *the Land Bonds themselves*. Its allegation that there was a "domestic dispute" appears to hinge on the idea that Peru had not yet paid the Land Bonds that Gramercy bought. And Peru's novel claim that the dispute before this Tribunal—which arose from conduct that occurred only in 2013 and later—was "foreseeable" in 2006 deliberately ignores the basis for Gramercy's claims and has nonsensical implications. In short, none of Peru's misleading assertions meets the high threshold required for it to establish that Gramercy has committed an abuse of process.

A. Gramercy Did Not Buy Treaty "Claims" to "Internationalize" a "Preexisting Domestic Dispute"

73. Peru's allegation that the hearing confirmed that Gramercy "acquired claims in a preexisting domestic dispute over Agrarian Reform Bonds" is wrong on all counts.[171] The "preexisting dispute" Peru appears to have in mind is merely that Gramercy acquired a legal entitlement for Peru to pay current value, which Peru had not satisfied. In other words, the abuse according to Peru is simply that Gramercy bought Land Bonds with unclipped coupons—a fatal misconception that does not make an abuse of process.

74. *First*, what Peru calls Gramercy's purchase of "claims" is just Gramercy's purchase *of the Land Bonds*—as Gramercy already explained at the hearing, as the documents show, and as Mr. Koenigsberger testified:

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169 *See* Gramercy's PHB1, **C-86**, ¶ 39; Rejoinder on Jurisdiction, **C-69**, § II.E; Reply, **C-63**, § II.E.

170 *Cf.* Peru's PHB1, **R-85**, ¶¶ 60, 62; Tr. (1) 328 (Peru's opening).

171 *Cf.* Peru's PHB1, **R-85**, ¶¶ 12-19.

> Q: What were the claims that you had in mind? I mean, how did you think of that word at that time?
>
> A: Bonds. That we invested in the underlying Bonds.[172]

75. The point is equally obvious from the documents. Despite Peru taking single words out of their sentence and context, all the documents Peru invokes use "claims" as a synonym for Bonds:

- Gramercy's due diligence checklist records Gramercy's goal to "make sure we purchase claims that are authentic, which the government will recognize *as valid and authentic*, and that *will get paid*" and defend its "rights as claim holders, *creditors*";[173]
- Gramercy's 2008 talking points on its Land Bonds investment state that the "Unpaid Agrarian Bonds Remain an Outstanding Debt," refer to CT rulings that "reaffirmed the validity *of the agrarian reform bonds*, and established that the government is obligated to pay *these claims at their inflation adjusted value*, not at the inflation eroded face value of the bonds," describe "the legal process to verify and document *the claims* [as] time consuming and relatively costly" because it "involves gathering all original documents that evidence the validity *of the bonds*," and express interest in "continuing to source in Peru to build a large enough position that the gov't *can use as an anchor bloc to negotiate a restructuring solution*";[174] and
- [redacted][175]

76. Peru's contention that Gramercy "valued the acquisition as a claim in its financial statements," citing only to its own experts' direct presentation, is similarly misleading.[176] As Mr. Joannou explained, Gramercy calculated the Land Bonds' fair market value in its financial statements by first estimating the Land Bonds' intrinsic value and then applying a steep discount rate.[177] In reality, *none* of Gramercy's financial statements refer to the Land Bonds as litigation "claims" of the kind Peru insinuates would be abusive.[178]

77. Gramercy thus bought "claims" against Peru only in the sense that the Land Bonds gave it an undisputed *claim to payment by*

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172 Tr. (2) 624 (Koenigsberger); *see also* Reply, **C-63**, ¶ 212; *cf., e.g.*, Peru's PHB, **R-85**, ¶ 5 (referring to "Bond claims").

173 **Doc. R-1095**, Check List of Items to Cover in Our Due Diligence.

174 **Doc. CE-731**, Email from Jose Cerritelli to Rodd Kaufman *et al*. of May 23, 2008, ¶¶ 4, 6, 10, 11.

175 [redacted].

176 Peru's PHB1, **R-85**, ¶ 18 & fn. 19.

177 Tr. (2) 844-46, 880-85 (Joannou); *see also* Joannou, **CWS-6**, ¶¶ 11, 14, 17.

178 [redacted], [Confidential].

Peru, and Peru's argument that this is abusive has absurd implications. On Peru's logic, claims for expropriation of a domestic law-governed concession or the kind of "contemporary" sovereign bond Peru admits is covered by the Treaty would be abusive if the State expropriated before it had performed the contract or honored the bond.

78. *Second*, what Peru calls the "preexisting domestic dispute" about the Land Bonds is just the fact that Peru had not paid the Bonds' current value by the time Gramercy invested in them. Peru thus claims that it is abusive for Gramercy to invoke the Treaty because, at the time it invested, Gramercy knew that the nominal values of the Land Bonds were "worthless" due to hyperinflation and that there were "various local litigations" about "how much, if anything, should be paid for the Bonds"—but the "litigations" Peru cites are the CT's holdings that it was *unconstitutional* to pay that "worthless" nominal value, and establishing that the Bonds *must be paid* at their current value, plus interest on that updated amount.[179] The fact that Gramercy "placed considerable emphasis in both argument and testimony" on the 2001 CT Decision does not show that Gramercy bought *a preexisting Treaty claim*, but confirms it diligently invested in a valid *debt instrument* that Gramercy correctly determined had significant value under Peruvian law.[180] And Peru again repeats that Gramercy bought only an "expectative right," based on Dr. Hundskopf's offhand comment on direct that the Bonds were a "gamble" or "an option"—ignoring that Dr. Hundskopf in fact *withdrew* those comments in response to the President's question, and confirmed there was "no doubt" Peru had to honor the Land Bonds.[181]

79. Peru's claim that Mr. Koenigsberger's testimony that the Land Bonds were "distressed" assets confirms Gramercy's abusive intent to invest in "a dispute over Bond valuation and payment" similarly ignores and misrepresents what he actually said: Mr. Koenigsberger testified that Gramercy uses the term "distressed" to refer to an asset that is trading at a price that is "below its true inherent value."[182] Contrary to Peru's suggestion, it "doesn't necessarily mean default."[183] Gramercy's business consists in identifying *why* the asset in question is "trad[ing] below its inherent value," for example because "there's no organization of creditors, there's no advocacy group, or whatever it may be," and Gramercy's "strategy would be to introduce that catalyst to change the element of distress."[184] That fits precisely with how Gramercy saw the Land Bonds opportunity here: there was no "dispute" about their "inherent value," and there was an opportunity to resolve the impasse consensually by working with the Government on a productive bond

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179 *Cf.* Peru's PHB1, **R-85**, ¶¶ 13, 19.

180 *Cf.* Peru's PHB1, **R-85**, ¶ 19.

181 *Compare* Peru's PHB1, **R-85**, ¶ 17, *with* Tr. (6) 2014-16 (Hundskopf). *See also* Gramercy's PHB1, **C-86**, ¶¶ 35-36.

182 *Compare* Peru's PHB1, **R-85**, ¶¶ 16, 61, *with* Tr. (2) 433 (Koenigsberger).

183 Tr. (2) 434 (Koenigsberger).

184 Tr. (2) 434 (Koenigsberger).

swap, as Gramercy had done and continues to do with several other countries. As Mr. Koenigsberger put it on cross-examination:

> I don't think there was a dispute at the time. I think it was indisputable that the Land Bonds obligation was real. It was valid. It was transferable. And it had to be paid under current value. There was no dispute. The only thing that was outstanding is how was that going to come about, and there was a notion of, like we've done in many other places, sit down, *mano a mano*, principal to principal, and try and figure out a way to implement some sort of Bond swap.[185]

80. Thus, the "abuse" Peru alleges is just another disguise for its misguided liability defense that Gramercy's right to current value under the Land Bonds was allegedly "uncertain," which all the witnesses and experts already debunked.[186]

81. *Finally*, Peru completely ignores the extensive evidence of Gramercy's real reasons for investing in Peru, which Mr. Koenigsberger convincingly confirmed at the hearing.[187] To echo the language of the *Phoenix Action* tribunal on which Peru itself so heavily relies, there is no evidence whatsoever that Gramercy's investment was made "solely for the purpose of getting involved with international legal activity," or that the "unique goal of the 'investment' was to transform a pre-existing domestic dispute into an international dispute subject to ICSID arbitration."[188]

82. To the contrary, the hearing confirmed that Gramercy did *not* purchase the Land Bonds in order to bring a Treaty claim for damages it had already suffered, but rather because it had investigated the legal regime in Peru affirming that the Land Bonds had to be paid at their current value, because it believed that Gramercy was uniquely placed to help the Government fulfill its stated goal of paying the Land Bonds debt, and because it expected that if those efforts failed it could still go to Peruvian courts to realize its entitlement to current value.

83. Mr. Koenigsberger testified that Gramercy's decision to invest was influenced by its experience with sovereign debt restructurings in other jurisdictions, and was "attracted" by Peru's "reform story," which suggested the Government would be receptive to efforts to restructure the Land Bonds debt—just as it had been to efforts

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185 Tr. (2) 471 (Koenigsberger).

186 *Compare* Peru's PHB1, **R-85**, ¶ 5, *with* Gramercy's PHB1, **C-86**, § II.2.

187 *See* Tr. (2) Tr. (2) 378-91, 473-75, 477-78, 608-11, 618-20 (Koenigsberger); Koenigsberger III, **CWS-10**, ¶¶ 2-8, 43-44, 47; Koenigsberger II, **CWS-4**, ¶¶ 34-35, Koenigsberger I, **CWS-3**, ¶¶ 11-19, 34-35, 42-47, 70; *see also* Gramercy's PHB1, C-86, § II.A.2; Tr. (1) 55-63 (Gramercy's opening); Rejoinder on Jurisdiction, **C-69**, ¶¶ 197-201; Reply, **C-63**, ¶¶ 211-14.

188 *Cf.* Peru's PHB1, **R-85**, ¶ 60.

to restructure its other historical debts.[189] In contrast to holdouts like Elliott, Gramercy's "preferred route" to monetization was "engaging in a dialogue, whether that be with the Legislative or Executive branches of Government to try and implement some sort of solution around the Land Bonds,"[190] an approach that Gramercy has taken in successfully brokering a consensual breakthrough of Argentina's debt restructuring. Gramercy's goal was to "understand what the problem is and try and aggregate . . . a group of creditors to be able to implement a solution," which would give the Government "certainty of execution" by "getting Bondholders on the same page."[191] Mr. Koenigsberger's unique career—which started with working for a former Peruvian finance minister—and his experience with many sovereign debt restructurings to this day made Gramercy perfectly suited for this objective.[192]

84. The contemporaneous record corroborates Mr. Koenigsberger's compelling testimony. Gramercy made "at least three overtures via intermediaries to try and resolve [the debt] on a reverse inquiry basis," participated with other bondholders in discussions convened by the legislature to consider a possible debt swap bill, and submitted various presentations and letters to the Government with proposals for a productive bond swap.[193] The purchase of additional bonds by other Gramercy affiliates in 2017—after the February 2017 Supreme Decree that could be interpreted to provide real value, and in the context of a new administration whose finance minister had publicly expressed a desire to finally resolve the Land Bonds debt—is further proof of Gramercy's belief that it could still catalyze a global solution: as Mr. Koenigsberger explained, "the larger the critical mass, the higher probability of being able to convince the obligor that they would be successful in moving ahead."[194]

85. Even today, Gramercy is still extending its hand to Peru to reach a consensual resolution. As Mr. Koenigsberger explained, "resolution would make us happy": "to be able to resolve this and get consideration that could either be held for a very long period of time and collected as it performs or sold onto the market to other Bondholders, or used to attract Foreign Direct investment into the country . . . that would be satisfactory."[195] Mr. Koenigsberger testified that he is profoundly disappointed that Gramercy has been forced to file for arbitration instead of being able to do what it does best: develop creative, consensual, and mutually-beneficial solutions.[196] Rather than reaching a resolution that

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189 Tr. (2) 444 (Koenigsberger); *id*., 610-11.

190 Tr. (2) 470 (Koenigsberger).

191 Tr. (2) 470, 612 (Koenigsberger).

192 Koenigsberger I, **CWS-3**, § I.

193 *See* Tr. (1) 27-28, 59-61 (Gramercy's Opening); Tr. (2) 541, 561, 615 (Koenigsberger); Gramercy's PHB1, **C-86**, ¶ 40 & fn. 94.

194 Tr. (2) 643-51 (Koenigsberger); *see also* Opposition, **C-80**, ¶ 45.

195 Tr. (2) 455-56 (Koenigsberger); *see also id*., 590-01, 594, 604-05, 653-56; Tr. (1) 149-50 (Gramercy's opening); Koenigsberger III, **CWS-10**, ¶ 48.

196 *See* Tr. (2) 471, 655 (Koenigsberger); Koenigsberger III, **CWS-10**, ¶¶ 2-3; Koenigsberger II, **CWS-4**, ¶¶ 33-35; Koenigsberger I, **CWS-3**, ¶¶ 16-19.

benefits Peru and its thousands of bondholders, Gramercy finds itself "unfortunately here" in arbitration, where it is forced to seek "what we are entitled to instead of what we could have achieved in good faith."[197]

86. In fact, far from intending to "leverage Treaty claims," Mr. Koenigsberger testified that, if it were not successful in its primary goal of resolving the whole debt, Gramercy believed it could still go to Peruvian courts to get payment of current value plus interest for its own Land Bonds.[198] Gramercy took over and participated in court actions for a subset of its Land Bonds only after its conciliation proceedings with the Government failed.[199] Peru has never denied the absurdity of its argument that Gramercy's awareness of the Treaty—which is of course intended to induce investment—proves that resorting to it is abusive.[200]

87. Peru's only response to the extensive evidence of Gramercy's reasons for investing appears to be that Gramercy did not "in fact play any cooperative or productive role," but that complaint—more germane to the inapplicable fourth *Salini* prong—is both false and irrelevant to whether Gramercy is entitled to enforce its right to arbitrate.[201] The fact that Peru unlawfully prevented Gramercy from realizing its goals does not mean Gramercy is abusing the Treaty mechanism by submitting those unlawful acts to this Tribunal.

88. Similarly false and inapt is Peru's assertion that Prof. Reisman "ratified his conclusion" that Gramercy had abused the Treaty and Gramercy "chose not to cross-examine him" about it.[202] In fact, Prof. Reisman admitted on cross-examination that factual matters such as Gramercy's investment strategy and motives for investing in Peru (*i.e.*, the necessary predicates for Peru's abuse of process claim) are outside the proper scope of his "expert" opinion, and that he had addressed issues and provided opinions on matters that are within the Tribunal's own expertise and competence.[203] His personal opinion on whether the incomplete facts he has been instructed to assume constitute an abuse of right can have no weight whatsoever—more so where he is evidently mistaken about the basis for Gramercy's claims, which is *not* the mere fact that the Land Bonds were "in defunct," but that Peru wiped out Gramercy's entitlement to that payment through arbitrary, confiscatory, discriminatory, and non-transparent breaches of the Treaty long after Gramercy invested.[204]

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197 Tr. (2) 594 (Koenigsberger).

198 *Compare* Peru's PHB1, **R-85**, ¶¶ 61, *with* Gramercy's PHB1, **C-86**, ¶ 33.

199 *See* Rejoinder on Jurisdiction, **C-69**, ¶ 198.

200 *Cf.* Rejoinder on Jurisdiction, **C-69**, ¶¶ 202-04; Reply, **C-63**, ¶ 216.

201 *Cf.* Peru's PHB1, **R-85**, ¶ 61. *But see* ¶¶ 23-24 above.

202 *Cf.* Peru's PHB1, **R-85**, ¶ 61.

203 *See* sources cited in fn. 160 above.

204 *Cf.* Tr. (5) 1843-44 (Reisman).

B. Gramercy's Dispute with Peru after the 2013 CT Order and 2014 Supreme Decrees Was Not "Foreseeable" in 2006

89. Again evidently inspired by the Tribunal's questions at the hearing, Peru also claims for the first time in its PHB that Gramercy's claims are inadmissible because the breaches of which Gramercy complains were "foreseeable" at the time it invested.[205] Peru's attempt to dilute the legal standard for an abuse of process is unavailing, but Peru's claim fails on either standard because it has no factual basis whatsoever.

90. As an initial matter, Peru's suggestion that it need show only a "reasonable foreseeability . . . of a measure that could lead to a dispute" to establish an abuse of process cannot be accepted.[206] Abuse of process must be a high and exceptional standard, a necessity that "results from the seriousness of a charge of bad faith amounting to abuse of process," as well as from the fact that it is an extratextual tool in the hands of tribunals that amounts to depriving investors of access to a neutral forum that the Contracting Parties intended them to have.[207] Peru accepted as much when, less than three weeks before submitting its PHB in this case, it argued (through the same counsel) in *Renco II* that abuse of process is "subject to a very high threshold . . . it's very, very rarely applied."[208] And although the reformulation of the standard that Prof. Reisman proffered on direct does not accurately reflect the cases, even he acknowledges that it would be subject to a "high threshold" consisting of "near *certainty*."[209]

91. Accordingly, as the *Pac Rim* tribunal reasoned, an abuse of process only arises when the relevant party "can see an actual dispute or can foresee a *specific future dispute* as a *very high probability* and not merely as a possible controversy."[210] Yet in its briefs, including its PHB, Peru continues to rely on the articulation in *Phoenix Action* that the investment be made "solely for the purpose of getting involved with international legal activity," or that the "unique goal of the 'investment' was to transform a pre-existing domestic dispute into an international dispute subject to ICSID arbitration."[211]

92. In any event, even Peru's attempt to lower the bar to only a "reasonable prospect" cannot help it because the 2013 and later conduct giving rise to the dispute in this arbitration simply was not

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205 *See, e.g.*, Peru's PHB1, **R-85**, ¶ 62.

206 Tr. (1) 357 (Peru's opening).

207 **Doc. RA-98**, *Chevron* Award, ¶ 143; *see also* Tr. (1) 58 (Gramercy's opening); Rejoinder on Jurisdiction, **C-69**, ¶ 195; Reply, **C-63**, ¶ 209.

208 **Doc. CA-236**, *Renco II* Hearing on Preliminary Objections, Tr. (1) 62.

209 Tr. (5) 1842-43 (Reisman) (noting that an abuse of process requires a "high threshold"—"reasonable" or "near certainty"—"that changes are made in the structure or the design of an investment in order to take advantage of an investment treaty").

210 **Doc. CA-154**, *Pac Rim* Decision, ¶ 2.99 (emphasis added).

211 Peru's PHB1, **R-85**, ¶ 60.

"foreseeable"—whether reasonably, very probably, certainly, or otherwise—in 2006 when Gramercy invested. Peru's claim that it was foreseeable that "Peru would implement further measures with respect to valuation and payment of the Bonds" cannot establish that Gramercy could have foreseen that those measures would take the form of the Treaty breaches for which Gramercy claims here.[212] To the contrary, as Mr. Koenigsberger testified at the hearing—and the contemporaneous documentary record confirms—Gramercy believed that the measures Peru would take would be to fairly *resolve the debt*. Gramercy's contemporaneous due diligence confirmed that Peru's highest courts had repeatedly affirmed Peru's obligation to pay the current value of the debt, courts at all levels were consistently ordering payment of this CPI-updated current value plus interest, the legislature had proposed an administrative framework for paying this value, and Peru had a track record of fiscal responsibility and a recent history of successful debt restructurings.[213]

93. The single sentence Peru devotes to the issue cites to no evidence at all, because there is none: there is no evidence in the extensive record that it was foreseeable in 2006-2008 that, seven years after Gramercy's investment and more than ten years after the seminal 2001 CT Decision, Peru would erase the uniformly accepted right to CPI-updating plus interest; that the MEF would mislead the CT and secretly intervene to turn a dissent into a majority opinion through white-out and forgeries; that Peru would subsequently foreclose access to the courts or impose mandatory dollarization, which its highest court had affirmed would be unconstitutional if mandatory; or that the MEF would adopt five arbitrary and value-destroying formulas that no one can explain and that amount to mathematical impossibilities, that it would do so in violation of basic rules of validity of administrative decisions, or that it would then impose those formulas on bondholders through a byzantine Bondholder Process that discriminates against Gramercy alone and is a tragic "joke."

94. The mess that preceded and followed the 2013 CT Order dispels any notion that it could have been foreseen many years earlier.[214] Just days before issuing the 2013 CT Order, a majority of the CT had agreed on a decision that would have *affirmed*, rather than overturned, the legal framework on which Gramercy relied in making its investment. The decision that was ultimately issued was so incoherent and surprising that even the MEF itself petitioned the CT to clarify it, and the CT then issued not one but *two* further Resolutions. The CT even found the bondholder association's later challenge to the 2013 CT Order "premature" on the basis that the MEF had not yet implemented the Order. Several CT justices dissented from both the original CT Order and subsequent decisions about it. The MEF then issued no fewer than five Supreme Decrees purporting to implement the Order in a near dozen different ways, which Peru's witnesses and experts were at a complete

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212 *Cf.* Peru's PHB1, **R-85**, ¶ 62.

213 *See* sources cited in fn. 187 above.

214 *See generally* Gramercy's PHB1, **C-86**, § II.

loss to explain. Not even Peru's expert on international claims processes could explain the outcome to which Bondholder Process would lead, and as an understatement, Min. Castilla himself found it "disappointing." Peru's Treaty breaches were evidently not foreseeable even by Peru in 2006, let alone by Gramercy.

95. That Peru's principal objection has become the exceptional and exacting one of abuse of process, and that it resorts to such ignorance and misrepresentation of the record in order to make it, is a fitting end. Peru's jurisdictional objections are both meritless and disingenuous, and should be dismissed with costs.

VII. RELIEF REQUESTED

96. Gramercy respectfully requests that the Tribunal:

a. Dismiss Peru's objections to jurisdiction and admissibility;

b. Declare that it has jurisdiction over Gramercy's claims and that such claims are admissible;

c. Proceed to consider Gramercy's claims on the merits;

d. Order Peru to pay all the costs of the arbitration, as well as to pay Gramercy's professional fees and expenses; and

e. Order any other such relief as the Tribunal may deem appropriate.

97. Gramercy reserves its right under the UNCITRAL Arbitration Rules to modify its prayer for relief at any time in the course of the proceeding if the circumstances of the case so require.

Respectfully submitted,

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