

In the matter of an arbitration under the UNCITRAL Arbitration Rules

between

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

*Claimants*

v.

**THE REPUBLIC OF PERU**

*Respondent*

---

---

**PROCEDURAL ORDER NO. 11**  
**POST-HEARING INSTRUCTIONS**

---

---

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

SECRETARY OF THE TRIBUNAL  
Ms. Marisa Planells-Valero

ASSISTANT TO THE PRESIDENT  
Ms. Krystle Baptista

Paris, 16 April 2020

**WHEREAS**

1. The Parties and the Arbitral Tribunal held the Hearing from 7 to 14 February 2020 (except on 9 February 2020), at the ICSID facilities in Washington, DC [the “**Hearing**”].
2. At the Hearing, Claimants’ executives disclosed that in 2017 a Gramercy related entity had acquired an interest [the “**2017 Purchase**”] in certain Peruvian Land Bonds [the “**Tranche 2 Bonds**”], a transaction separate from those at issue in this arbitration.
3. By the end of the Hearing the following issues remained open:
  - Respondent’s course of action regarding the Tranche 2 Bonds.
  - The Tribunal’s guidance to the Parties regarding the post-hearing briefs.
  - The post-hearing schedule.
4. On 21 February 2020 the Arbitral Tribunal sent a message to the Parties thanking them for their efforts to conduct a smooth hearing and informing them that it would issue its post-hearing guidance once it had more information on Respondent’s possible actions regarding the Tranche 2 Bonds.
5. On 2 March 2020 Respondent submitted a petition regarding the Tranche 2 Bonds and the post-hearing procedure [“**Respondent’s Petition**”]<sup>1</sup>.
6. On 24 March 2020 Claimants submitted their response to Respondent’s Petition [“**Claimants’ Answer**”<sup>2</sup>].
7. On 25 March 2020 Peru filed communication R-80, replying to Claimants’ Answer. On the same date, Claimants presented communication C-81, which was again answered by Respondent’s communication R-81.
8. The Arbitral Tribunal has deliberated on the Parties’ petitions and issues the following:

---

<sup>1</sup> R-78.

<sup>2</sup> C-80.

## PROCEDURAL ORDER NO. 11

9. This Procedural Order [“PO”] rules on Peru’s request that the Tribunal order the production of certain documents related to the Tranche 2 Bonds and establishes a post-hearing schedule. In this PO the Tribunal also provides guidance to the Parties regarding the post-hearing briefs.
10. The Tribunal will first explain the relief sought by the Parties (1.) and then Respondent’s (2.) and Claimants’ arguments (3.). The Tribunal’s will finally discuss each of the outstanding issues and render its decision (4.).

### 1. RELIEF SOUGHT BY THE PARTIES

11. In Respondent’s Petition, Peru requested the following relief:

“36. For the foregoing reasons, the Republic of Peru requests that Gramercy voluntarily produce any and all requested documents immediately. In the absence of cooperation, Peru requests that the Tribunal grant the following relief as a starting point to ameliorate the due process damage to Peru and the validity of this proceeding.

(1) Order Gramercy to produce immediately any and all documents responsive to Peru’s 14 original requests set forth in Annex A covering all post-2008 time periods and specifically including the Tranche 2 Bonds, without any of the qualifiers, limitations, or other efforts to narrow the scope of the requests which facilitated their obfuscation in the past.

(2) Order, in the alternative and at a bare minimum, Gramercy to promptly produce the following subset of documents (the relevance of which is detailed above and in Peru’s original document production requests), covering all post-2008 time periods and specifically including the Tranche 2 Bonds, without any of the qualifiers, limitations, or other efforts to narrow the scope of the requests which facilitated their obfuscation in the past.

- Request 1: Any and all contracts and other closing documents demonstrating each of Gramercy’s acquisitions of Agrarian Reform Bonds, including endorsed and notarized sales contracts, title documents, the Sentencia Juridicial de Expropiacion, side letters, and side agreements.
- Request 2: Any and all documents demonstrating any payment made in connection with each of Gramercy’s alleged Bond acquisitions, including wire transfers or other forms of payment from Gramercy to bondholders or other parties.
- Request 6: Documents between Gramercy and holders of Bonds (or third-party intermediaries) regarding Gramercy’s potential or actual acquisition of Bonds.
- Request 7: Documents regarding Gramercy’s alleged ownership and control of Agrarian Reform Bonds, including documents regarding

the funds in which the Bonds are held, and documents regarding direct or indirect ownership or control of the Bonds, including by predecessors, subsidiaries, affiliates, or any other individuals or entities.

- Request 8: Documents regarding the beneficial ownership or control by third parties of Agrarian Reform Bonds allegedly held by Gramercy, including individual investors, pension funds, and other institutional investors.
- Request 19: Gramercy documents assessing the Bonds as a potential or ongoing investment, including as to the governing legal framework, and prospects for payment, and documents demonstrating authorization decisions to proceed with Bond acquisitions.
- Request 21: Documents regarding Gramercy's valuations of the Bonds prior to, during, and after each of Gramercy's post-June 2008 Bond acquisitions, including spreadsheets, financial models, or other documents containing valuation data and calculations.

(3) Order a post-hearing phase with respect to remaining procedural matters that requires Gramercy to file first in order to avoid further prejudicial surprises, including guidance with respect to specific questions the Tribunal would like the Parties to address, with the following sequence: (a) Gramercy's production of documents; (b) Gramercy's Post-Hearing Brief; and finally, and (sic) (c) Peru's Post-Hearing Brief.

37. Such briefs should be a total of up to 50 pages (addressing hearing issues, including Tranche 2 Bonds, Tribunal questions, and cost submission) and attach no new documents, witness, or expert statements, other than the documents related to the new facts discussed herein. The Tribunal should then issue its award forthwith, and bring this abusive proceeding to a conclusion."

12. In communication R-80, Respondent reiterated its request that the Tribunal order Gramercy to produce any and all Tranche 2 documents responsive to the range of requests set out in Peru's original and post-hearing request, and to do so no later than 3 April 2020. As regards the post-hearing briefs and schedule, Peru modified its petition as follows:<sup>3</sup>

"Given the totality of the abusive circumstances, and to avoid further prejudice, Peru requests that the Tribunal share any questions that it may have for the Parties and establish the following post-hearing procedure:

(A) sequential post-hearing briefs of no more than 35 pages each, with Gramercy filing on 17 April and Peru filing on 15 May; OR

(B) a videoconference hearing on or about May 15, with Gramercy allotted 2.5 hours for argument in the afternoon and Peru allotted 2.5 hours for argument the following morning."

---

<sup>3</sup> R-80.

13. Claimants have requested the following relief:

“For the reasons stated above, Gramercy respectfully requests that the Tribunal:

- a. Deny the relief requested in paragraphs 36-37 of Peru’s Petition;
- b. In the alternative, and in lieu of any additional discovery, admit into the record redacted copies of: (1) the investment memorandum and (2) the purchase and sale agreement, relating to the 2017 purchase;
- c. Order a post-hearing procedural calendar consisting of simultaneous post-hearing briefs not exceeding 150 pages, followed by a two-day oral argument either in person or via videoconference; and
- d. Order Peru to pay Gramercy’s legal fees and expenses incurred in responding to Peru’s Petition.”

**2. RESPONDENT’S POSITION**

14. Peru makes three main arguments in its Petition:

- First, it alleges that Claimants hid the 2017 Purchase (i).
- Second, Respondent submits that such deal is relevant and material to the present proceedings (ii).
- Finally, the Republic avers that Claimants follow a pattern of concealment and disregard for due process (iii).

15. These three arguments – which are summarized in the following paragraphs – lead Respondent to request that the Tribunal order Claimants to produce:

- Any and all documents responsive to Peru’s 14 original requests<sup>4</sup>;
- Alternatively, and at a minimum, a subset of seven categories of documents covering the Tranche 2 Bonds<sup>5</sup>.

16. (i) Respondent explains that the testimony of Mr. Koenigsberger, Gramercy’s Founder and Chief Investment Officer, at the Hearing revealed that Gramercy acquired Land Bonds in 2017, at the same time it was pursuing a Treaty arbitration alleging that Peru had destroyed the value of the Bonds<sup>6</sup>.

---

<sup>4</sup> R-78, para. 36(1).

<sup>5</sup> R-78, para. 36(2).

<sup>6</sup> R-78, paras. 5-9.

17. Peru contends that the testimony of Claimants' executives revealed that Gramercy has withheld documents regarding the Tranche 2 Bonds that are relevant and material to the present dispute<sup>7</sup>, as well as important facts such as the following<sup>8</sup>:
- Gramercy undertook additional due diligence with respect to the acquisition of Land bonds in 2017;
  - Gramercy considered the acquisition to the Tranche 2 Bonds to be a good investment;
  - Gramercy used funds from third parties and from its investors to acquire interests in the Tranche 2 Bonds;
  - Gramercy did not disclose its partners in the Tranche 2 Bonds deal;
  - Gramercy paid between USD 6 and 7 million for the Tranche 2 Bonds and a "tail [for] monetization" (around USD 50 million);
  - The Tranche 2 Bonds are not part of local court proceedings and were not submitted to the Bondholder Process.
18. On the basis of such evidence, Peru submits that Gramercy has in its possession, custody and control Tranche 2 Bonds documents which the Republic already requested in this proceeding<sup>9</sup>, and which are material and relevant to the present dispute<sup>10</sup>.
19. (ii) The Republic avers that the hidden 2017 Tranche 2 Bonds and corresponding documents are relevant and material to key issues of jurisdiction, merits and damages, and denies the argument that these bonds are irrelevant because Claimants are not relying on them in this case<sup>11</sup>.
20. As regards jurisdiction, Peru argues that the 2017 Purchase confirms three of their main arguments<sup>12</sup>:
- That Gramercy acquired claims to a pre-existing dispute;
  - That Claimants' Treaty claims are abusive; and
  - That Gramercy's conduct lowered the participation rates in the Bondholder Process.
21. As to the merits of the dispute, the Republic submits that the 2017 Purchase and Claimants executives' confirmation that Gramercy increased its valuation of the

---

<sup>7</sup> R-78, para. 7.

<sup>8</sup> R-78, para. 10.

<sup>9</sup> R-78, para. 12.

<sup>10</sup> R-78, para. 13.

<sup>11</sup> R-78, para. 14.

<sup>12</sup> R-78, para. 18.

Tranche 2 Bonds in its 2018 financial statements defeat the central premise of Claimants' case: that Peru's measures starting in July 2013 destroyed the value of the Land Bonds<sup>13</sup>.

22. Finally, as regards the quantum, the Republic alleges that Gramercy's acquisition of the Tranche 2 Bonds and the prices at which it purchased and valued the Tranche 2 Bonds may be relevant to the quantification of the damages of the Bonds at issue in this arbitration, including Gramercy's interpretation of the current value principle upon which Gramercy bases its more than USD 1.8 billion damages claim<sup>14</sup>.
23. (iii) Peru's final argument is that Gramercy has engaged in a pattern of concealment and disregard for due process:
  - First, Gramercy concealed material from the Tribunal, Peru and the United States Government, and selectively revealed pieces of its case over the years;
  - Second, Gramercy actively concealed the Tranche 2 Bonds from Peru and the Tribunal at various points in the proceedings<sup>15</sup>; in particular, the Republic alleges that in the document production process, Gramercy unilaterally circumscribed 14 of Peru's 25 requests that otherwise covered Tranche 2 Bonds in a manner that concealed the 2017 Purchase<sup>16</sup>;
  - Third, the Republic insists that with the concealment of facts and evidence Gramercy has undermined and abused the proceedings time and again<sup>17</sup>.

### **3. CLAIMANTS' POSITION**

24. Gramercy submits two main arguments in response to Peru's allegations:
  - First, it considers Peru's concealment accusations to be unfounded and hypocritical (i); and
  - Second, it avers that Peru fails to establish that the 2017 Purchase is relevant or material to the proceeding (ii).
25. (i) Claimants deny having engaged in a pattern of concealment<sup>18</sup> and instead allege that the Hearing confirmed that Peru has withheld material information. Gramercy alleges that Peru's concealment accusations rest on Peru's elastic standard of concealment which is incompatible with international arbitration practice<sup>19</sup>.

---

<sup>13</sup> R-78, para. 20.

<sup>14</sup> R-78, para. 22.

<sup>15</sup> R-78, paras. 24-25.

<sup>16</sup> R-78, para. 28.

<sup>17</sup> R-78, paras. 31-33.

<sup>18</sup> C-80, para. 13

<sup>19</sup> C-80, paras. 13-28.

26. Instead, Claimants aver that the Hearing confirmed that Peru has failed to disclose the following information it promised to produce<sup>20</sup>:
- any estimates of the impact of the total land bond debt outstanding on Peru's budget prepared by Peru;
  - any estimates of the total land bond debt under different valuation methods; or
  - any documents, lists, or reports describing the total quantity of known land bonds outstanding.
27. (ii) Gramercy alleges that Peru has failed to show that the 2017 Purchase was relevant or material to the present proceedings<sup>21</sup> and considers that there is no justification for Peru's document production request<sup>22</sup>.
28. Claimants submit that Peru has failed to show that the 2017 Purchase has any impact on Peru's objections to jurisdiction or admissibility, because the claims at issue in this arbitration arise exclusively from the Land Bonds that GPH purchased between 2006 and 2008 and in this arbitration Claimants have not made any claim or requested any relief on the basis of the bonds acquired in 2017<sup>23</sup>. Also, the purchase by a different Gramercy entity of an indirect stake in a different set of land bonds a decade after the investment at issue in this arbitration is not an abuse and does not constitute evidence of any abuse of the treaty dispute mechanism<sup>24</sup>. Finally, Peru cannot shift blame for the failure of its own Bondholder Process<sup>25</sup>.
29. Gramercy alleges that the 2017 Purchase is likewise immaterial and irrelevant to the merits of its claims and it does not undermine its argument that measures starting in 2013 destroyed the value of the Bonds. To the contrary, if the 2017 Purchase has any relevance at all, it confirms some of the points Gramercy has made throughout the arbitration<sup>26</sup>.
30. Finally, Claimants aver that Peru's requested documents are irrelevant and immaterial to the remedies that Gramercy seeks for Peru's breaches. Gramercy is requesting the full intrinsic value of the Land Bonds — not their fair market value — and Peru only speculates that the prices at which it purchased and valued the Tranche 2 Bonds “may be relevant” to the quantification of the Tranche 1 Bonds, because it may be evidence of “market value”<sup>27</sup>. Claimants argue that, even assuming Peru's fair market value theory, Peru itself admits that the proper measure

---

<sup>20</sup> C-80, paras. 30-34.

<sup>21</sup> C-80, paras. 35 *et seq.*

<sup>22</sup> C-80, para. 7.

<sup>23</sup> C-80, para. 39.

<sup>24</sup> C-80, paras. 30-34.

<sup>25</sup> C-80, paras. 46-47.

<sup>26</sup> C-80, paras. 49-59.

<sup>27</sup> C-80, paras. 60-61.



of compensation should be calculated “the day before the alleged deprivation”. Thus, the 2017 Purchase would have no impact on such calculations<sup>28</sup>.

31. Nonetheless, if the Tribunal would find it helpful, and without prejudice to Gramercy’s objections about the irrelevance and immateriality of these documents, Gramercy is willing to submit into the record two documents, subject to appropriate redaction.<sup>29</sup>

#### **4. DISCUSSION AND DECISIONS**

32. The Arbitral Tribunal will briefly review the facts at issue (4.1). Then, it will go on to determine the merits of Respondent’s document production request (4.2) and will then establish a post-hearing schedule (4.3). Finally, it will provide appropriate guidance for the Parties’ post-hearing briefs (4.4).

##### **4.1 FACTS**

33. Gramercy has presented three main submissions in this arbitration: a Notice of Arbitration and Statement of Claim, a Statement of Reply and a Rejoinder on Jurisdiction. The first submission was amended three times, and the second was corrected once.

34. Gramercy first presented its Notice of Arbitration and Statement of Claim on 2 June 2016. In such submission, and in the two subsequent amendments filed in 2016, Claimants asserted that Gramercy had acquired the last of its Land Bonds in 2008:

“65. Gramercy acquired the last of its Land Bonds in 2008.”<sup>30</sup>

“37. From late 2006 into 2008, Gramercy, through GPH, bought over 9,700 Land Bonds from hundreds of individual bondholders.”<sup>31</sup>

35. Such statements were accurate in 2016.

36. In 2017, Gramercy related entities acquired a second tranche of Peruvian Land Bonds<sup>32</sup>, as was first acknowledged at the Hearing by Mr. Koenigsberger:

“Q. Does Gramercy or any affiliate of Gramercy hold any Land Bonds other than the Land Bonds that have been presented to this Tribunal?

A. Yes, we do. [...]

Q. So, apart from what Gramercy has disclosed to this Tribunal, Gramercy holds more Land Bonds; is that correct?

---

<sup>28</sup> C-80, para. 62.

<sup>29</sup> C-80, para. 65. *See* paras. 51-52 below.

<sup>30</sup> Notice of Arbitration and Statement of Claim of 2 June 2016, 18 July 2016 and 5 August 2016, para. 65.

<sup>31</sup> Witness Statement of Mr. Mr. Koenigsberger of 2 June 2016, para. 37.

<sup>32</sup> HT day 2, 497-499.

A. That's correct. [...]

Q. Okay. And when were those Land Bonds acquired?

A. I believe in 2017.

Q. So, in 2017 while this Arbitration was pending, Gramercy acquired additional Land Bonds; is that correct?

A. The way that we acquired them--we talked about the three different versions. There was an acquisition where someone wanted to keep interest in it but also have us contribute some cash to them. So, it was like that middle option that we talked about before. [...]

Q. Okay. And so Gramercy thought that it would be a good investment decision in the first quarter of 2017 to acquire additional Peruvian Land Bonds?

A. Yes.”

37. Claimants presented their Third Amended Notice of Arbitration and Statement of Claim on 13 July 2018, more than a year after the 2017 Purchase. Yet Claimants continued to affirm that:

“68. Gramercy acquired the last of its Land Bonds in 2008.”<sup>33</sup>

38. During the document production exercise carried out in the first quarter of 2019, Respondent requested documents relying on Claimants' allegations that they had acquired bonds from 2006 to 2008. Claimants, on the other hand, volunteered documents responsive to at least half of Respondent's requests. However, Claimants specified in most of their volunteering statements that the documents would be related to the “bonds at issues in this arbitration”.

39. In their Statement of Reply of 21 May 2019, Claimants reiterated that Gramercy's last Land Bond purchase happened in 2008<sup>34</sup>:

“The simple and compelling fact is that from the CT 2001 Decision through the time of Gramercy's last Land Bond purchase in 2008, Peru has not identified ....”

40. Only at the Hearing, in February 2020, did the Arbitral Tribunal learn about the 2017 Purchase of the Tranche 2 Bonds.

#### **4.2 DOCUMENT PRODUCTION**

41. Respondent has requested that the Tribunal order the production of:

---

<sup>33</sup> Third Amended Notice of Arbitration and Statement of Claim of 13 July 2013, para. 68.

<sup>34</sup> Corrected Statement of Reply of 21 May 2019, para. 322.

- Any and all documents responsive to Peru’s 14 original requests<sup>35</sup>;
  - Alternatively, and at a minimum, a subset of seven categories of documents covering the Tranche 2 Bonds, which are identical to seven of its original requests<sup>36</sup>.
42. On the other side, Claimants are willing to submit into the record, subject to appropriate redaction:
- (1) the investment memorandum, which is a contemporaneous internal document presented to the GFM investment committee with respect to the 2017 Purchase, and
  - (2) the 2017 Purchase and sale agreement documenting the acquisition by a Gramercy affiliate (other than GFM and GPH) of the Tranche 2 Bonds.<sup>37</sup>

Peru’s main petition

43. Peru is asking the Arbitral Tribunal to reassess 14 (out of 25) of Peru’s document production requests. The Tribunal cannot entertain such claim. Claimants have submitted no claim related to the Tranche 2 Bonds or the 2017 Purchase and *prima facie* these events are not sufficiently relevant to the dispute as to warrant that the document production exercise, which the Parties and the Tribunal carried out and finalized in 2019, be repeated.
44. Peru’s document production requests were analysed in detail and on a case-by-case basis in Annex B to PO 6. Most of the requests (9 out of the 14) that Peru asks the Tribunal to re-decide were dismissed for lack of relevance or materiality to the outcome of the dispute, a ruling that is not modified by the 2017 Purchase and/or the existence of the Tranche 2 Bonds. The rest (5 out of 14) – although found relevant – were significantly narrowed down by the Tribunal to the appropriate *scope* and *dates*. The 2017 Purchase does not warrant a re-definition of the overbroad petitions made by Respondent in the original request.
45. The Tribunal however notes that Request 19 was not narrowed down by the Arbitral Tribunal to the 2005-2008 period. In fact, when analysing this Request, the Tribunal:
- took note that Claimants had undertaken to produce “certain non-privileged responsive documents assessing the Bonds as a potential investment during the acquisition period (2006-2008), to the extent such documents exist, are in Gramercy’s possession, and may be located following a reasonable search”;
  - Ordered that allegations of privilege be governed by PO 3; and

---

<sup>35</sup> R-78, para. 36(1).

<sup>36</sup> R-78, para. 36(2).

<sup>37</sup> C-80, para. 65.

- Finally, decided that “[a]s for the rest of the request submitted by Respondent, it meets R1, R2, and R3 and is PARTIALLY GRANTED as narrowed down by the Tribunal: Claimants must produce Gramercy documents assessing the Bonds as a potential investment, including as to the governing legal framework” [Emphasis added].

46. If Claimants, under the (erroneous) assumption that Tranche 2 Bonds were not covered by Request 19, have failed to comply with the Tribunal’s order in respect of such request, Claimants should do so, within the time period established in para. 53 *infra*.

Peru’s alternative request

47. Respondent’s alternative document production request must also be dismissed.
48. The Republic seeks the production of seven categories of documents covering the totality of the post-2008 period, without any qualifiers, limitations or efforts to narrow the scope of the requests.
49. These seven categories of documents are identical to seven of Peru’s original requests, five of which were rejected by the Tribunal, because they were considered irrelevant or immaterial to the outcome of the case. The Tribunal’s original decision make the requests equally irrelevant as regards the Tranche 2 Bonds (for which no claim is made by Gramercy).
50. As regards the other two categories, the only one that the Tribunal did not narrow down to the 2005-2008 period was Request 19, which has already been addressed by the Tribunal in para. 46 *supra*.

Claimants’ document production offer

51. As stated above, Claimants are willing to submit into the record, subject to appropriate redaction, two documents:
- (1) the investment memorandum presented to the GFM investment committee with respect to the 2017 purchase, and
  - (2) the 2017 purchase and sale agreement documenting the acquisition by a Gramercy affiliate of the Tranche 2 Bonds.
52. Gramercy submits that on the face of these documents alone, without any need for further witness testimony or burdensome disclosure, the Tribunal will be able to fully understand the terms of the acquisition, the context in which it was made, and the role that the February 2017 Supreme Decree had in motivating the transaction.
53. The Arbitral Tribunal takes note of Claimants’ willingness to produce the two documents and orders the submission into the record of the following categories of

documents, subject to appropriate but limited redactions<sup>38</sup>, **on or before Thursday, 30 April 2020**:

- the investment memorandum, and any other internal document presented to the Gramercy investment committee, with respect to the 2017 Purchase, and any other internal document prepared by Gramercy and/or any of its affiliates to justify the 2017 Purchase, and
- any agreement entered into between Gramercy and/or any of its affiliates and the sellers regarding the 2017 Purchase.

\*\*\*

54. In summary, the Arbitral Tribunal orders Claimants to produce, subject to appropriate but limited redactions<sup>39</sup>, **on or before Thursday, 30 April 2020**:

- the investment memorandum of the 2017 Purchase,
- any other internal document presented to Gramercy's investment committee, with respect to the 2017 Purchase,
- any other internal document prepared by Gramercy and/or any of its affiliates to justify the 2017 Purchase,
- any agreement entered into between Gramercy and/or any of its affiliates and the sellers regarding the 2017 Purchase, and
- As per Request 19: Gramercy's documents assessing the 2017 Tranche 2 Bonds as a potential or ongoing investment, including as to the governing legal framework.

#### **4.3 POST-HEARING SCHEDULE**

55. Peru initially requested that the Tribunal order one round of post-hearing briefs, with Gramercy to file first and Peru providing the final reply<sup>40</sup>. Such briefs should be 50 pages long and attach no new documents, witness or expert statements, other than the documents related to the new facts discussed therein<sup>41</sup>. In communication R-80, Respondent modified its petition to the following:<sup>42</sup>

---

<sup>38</sup> The Arbitral Tribunal reminds Claimants that strict rules should apply to any redactions, in order to avoid hiding any information that might be relevant, i.e. the nationality of the sellers, the price of the transactions, etc.

<sup>39</sup> The Arbitral Tribunal reminds Claimants that strict rules should apply to any redactions, in order to avoid hiding any information that might be relevant, i.e. the nationality of the sellers, the price of the transactions, etc.

<sup>40</sup> R-78, para. 34.

<sup>41</sup> R-78, para. 37.

<sup>42</sup> R-80.

“(A) sequential post-hearing briefs of no more than 35 pages each, with Gramercy filing on 17 April and Peru filing on 15 May; OR

(B) a videoconference hearing on or about May 15, with Gramercy allotted 2.5 hours for argument in the afternoon and Peru allotted 2.5 hours for argument the following morning.”

56. Claimants, on the other hand, request a simultaneous exchange of post-hearing briefs limited to 150 pages; and at an appropriate time thereafter, two days for oral argument either in person or via videoconference<sup>43</sup>.
57. Given the complexity of the case and the length of the Hearing, as well as the Tribunal’s interest in being properly briefed, the Arbitral Tribunal adopts the following post-hearing schedule:
- sequential post-hearing briefs limited to 100 pages (total)<sup>44</sup> with Claimants speaking first on Merits and Quantum and Respondent speaking first on Jurisdiction;
  - initial post-hearing briefs ought to be presented simultaneously on **1 July 2020**, or given the current pandemic, on an appropriate date agreed by the Parties;
  - reply post-hearing briefs ought to be presented simultaneously on **15 August 2020**, or given the current pandemic, on an appropriate date agreed by the Parties; plus
  - a two-day oral argument at a place or by means to be determined by the Tribunal taking into account the prevailing circumstances and after consultation with the Parties.
58. The Arbitral Tribunal offers the following dates for the post-hearing oral arguments:
- 17-18 November 2020
  - 18-19 November 2020
  - 26-27 November 2020
59. The Parties are kindly requested to state their preferences regarding the dates set forth in the preceding paragraph by **Tuesday, 21 April 2020**.
60. In addition, the Arbitral Tribunal would be grateful if the Parties could submit with their post-hearing briefs:

---

<sup>43</sup> C-80, paras. 83-90, 92(c).

<sup>44</sup> Each party can distribute the number of pages between their initial and reply submissions as they please, as long as they do not exceed 100 pages between the two submissions.

- a consolidated list of all exhibits submitted in numerical order; and
- a list of all factual exhibits in chronological order.

#### **4.4 POST-HEARING GUIDANCE**

61. The post-hearing briefs should contain a general evaluation of the evidence presented during the Hearing – not a general restatement of each Party’s position and arguments. The Parties are also welcomed to explain their views on the implications of the evidence from the Hearing.
62. In the course of the Hearing, the Tribunal reiterated its interest in the following issues<sup>45</sup>:
  - The number of outstanding bonds; and
  - Any calculations made by Peru of the budgetary impact that the different calculation methods would have on Peru’s budget.
63. In addition, in its post-hearing deliberations, the Tribunal has identified certain specific questions, which the Parties may wish to address in their post-hearing briefs:
  - When did Claimants initially conclude that Peru had breached the Treaty?
  - How do third parties invest in Gramercy’s corporate structure? What is the legal title held by investors vis-à-vis Gramercy?
  - What was the factual background and the legal and financial justification of the 2017 Purchase?
  - As regards the MEF’s Bondholder Process:
    - o 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?
    - o 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?
  - What court actions did Claimants file in Peru? What was the development of such court actions? Did Gramercy collect in the *Pomalca* case?

---

<sup>45</sup> HT Day 7, 2563:2-18.

- What are the legal consequences of the “Sentencia Casación N° 11339-2016”<sup>46</sup> ?
- What is the methodology used by Gramercy to value the bonds in its different annual financial statements?<sup>47</sup>
- Mr. Olivares Caminal submitted that the Land Bonds have been traded in a secondary market<sup>48</sup>. Can the Parties explain the timing and conditions of such secondary market trades?

On behalf of the Arbitral Tribunal,

[signed]

---

Juan Fernández-Armesto  
Presiding Arbitrator

Place of Arbitration: Paris, France  
Date: 16 April 2020

---

<sup>46</sup> RA-394.

<sup>47</sup> See, e.g. C-80, para. 50 and HT Day 2, 871:21-872:10.

<sup>48</sup> HT Day 4, 1521:11-1528.