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Gramercy Seeks Billions From Peru for 50 Year Old Bonds



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An UNCITRAL arbitration that we have been following here is heating up between Gramercy Funds Management LLC (Gramercy) and the Republic of Peru. Much like Elliot Management's fight against Argentina, the case against Peru pits a distressed debt fund against a sovereign state.

But Gramercy's case is fundamentally different from the open market bonds bought by Elliot in Argentina. Gramercy bought Peruvian Land Reform Bonds issued to local citizens when the country instituted a land reform program in the 1960s. After the world financial market's hyperinflation in the 1980s, Peru's currency – like those of much of the developing world – was devalued. Since then, Peru's economy has become robust and thriving, one of the fastest-growing in South America.

In 2001, Peru's Constitutional Tribunal required repayment of the Land Bonds at an updated value pegged to a consumer price index measure. But in 2013-2014, the same Tribunal and Supreme Decrees from the Government changed the payout methodology, pegging it to the U.S. dollar. So Gramercy now seeks more than US$1 billion from what it contends is an expropriation caused by this valuation change, basing its claim on a bilateral investment treaty (BIT) between Peru and the United States that came into force in 2009 (after Gramercy acquired the Land Bonds).

Peru, understandably, has many problems with Gramercy's arbitration. Unlike the Argentinian debt purchased on the open market by Elliot, Gramercy sits in a *sui generis* position. Because it is a U.S. entity, Gramercy argues that it can exploit the Peru-U.S. BIT to bring an action no domestic (i.e., Peruvian) bondholder can bring – basically allowing three international arbitrators to decide an entirely domestic dispute over the valuation of Peruvian Land Bonds issued locally for Peruvian property well before the BIT's effective date, almost 50 years ago.

Another problem is Gramercy's so-called investment. All Gramercy supposedly has done (we don't know for sure, because Gramercy hasn't offered up the specifics in its filings) is purchase the Land Bonds in Peru for some unknown price. Or, as Peru's filings to date state, Gramercy has "failed to demonstrate that they are legitimate 'investors' that have made lawful 'investments' eligible for protection under the Treaty." The worry is that Gramercy may have purchased the Land Bonds at a rock-bottom price, thus obtaining a potential club against the Peruvian government while simultaneously taking value from Peruvian citizens.

So far, Peru's new president seems unwilling to cave to Gramercy's demands. Peru calls out Gramercy's "attack campaign against Peru" and claims Gramercy "has made barely-veiled threats and public attacks seeking to tarnish the reputation of a respected State." Gramercy has retained former Senate Majority Leader Tom Daschle to lobby Congress, and Columbia Law Professor John C. Coffee Jr. to give highly questionable opinions about Peru's disclosures on its current international bonds. Gramercy's strategy seems to be an attempt to smear Peru's good reputation in the investor community as a means of pressuring Peru to settle before the doubtful merits of its claim are reached.

As we have said, Gramercy's use of ISDS is "a new form of investing, which is 'Let's make them poorer, and we'll get rich.'" The strategy, if successful, would be economically inefficient, antidemocratic and geopolitically dangerous. (Full disclosure: BakerHostetler previously represented Peru, including in a bond dispute brought by Elliot seeking payment for distressed bonds, and Mark Cymrot's wife's family holds Land Bonds issued in 1969.)

Gramercy's appointed arbitrator is Stephen L. Drymer, and Peru's appointed arbitrator is Professor Brigitte Stern. The president of the panel has not yet been selected. We're only at the opening stages of this dispute, so we will continue to monitor the arbitration as it progresses.