

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*

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**PROCEDURAL ORDER NO. 4**  
**(ON THIRD-PARTY SUBMISSIONS)**

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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  
Mr. Luis Fernando Rodríguez

Paris, July 25, 2018

**WHEREAS**

1. This arbitration arises between Gramercy Funds Management LLC and Gramercy Peru Holdings LLC [**“Gramercy”** or **“Claimants”**] and the Republic of Peru [**“Peru”** or **“Respondent”**] under the United States-Peru Free Trade Agreement signed on April 12, 2006 [the **“Treaty”**]. Claimants and Respondent shall be jointly referred to as the **Parties**.
2. On May 22, 2018, the Tribunal and the Parties executed the Terms of Appointment, and on June 29, 2018, the Tribunal issued Procedural Order No. 1 [**“PO 1”**].
3. In accordance with Art. 10.20(3) of the Treaty and para. 87 of the Terms of Appointment [**“ToA”**], the Tribunal has authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party. Each such submission shall identify the author and any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission<sup>1</sup>.
4. Article 10.20(2) of the Treaty and para. 72 of the PO 1 further acknowledge that the non-disputing Party to the Treaty may make oral and written submissions to the Tribunal regarding the interpretation of the Treaty.
5. In addition, para. 88 of the ToA and para. 74 of the PO 1 provide that the Tribunal shall establish in a procedural order, upon consultation with the Parties, the procedural arrangements for introducing these submissions into the record and for the Parties to react to them.
6. On July 9, 2018, the Tribunal circulated a draft PO 4 on these third-party submissions, inviting the Parties’ comments. Claimants submitted their comments on July 13, 2018<sup>2</sup>, and Respondent, on July 16, 2018<sup>3</sup>.
7. The following Procedural Order sets out the Tribunal’s decisions after consultation with the Parties.

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<sup>1</sup> See also para. 73 of the PO 1.

<sup>2</sup> C-36.

<sup>3</sup> R-32.

**PROCEDURAL ORDER NO. 4**

8. This Procedural Order sets out the deadlines and requirements for admitting *amicus curiae* submissions and submissions by the non-disputing Party to the Treaty [**“Third-Party Submissions”**].

**1. SUBMISSIONS BY THE NON-DISPUTING PARTY TO THE TREATY**

9. Under Art. 10.20(2) of the Treaty, the United States of America is the non-disputing Party, entitled to make oral and written submissions to the Tribunal regarding the interpretation of the Treaty.
10. Written submissions by the non-disputing Party, if any, shall be filed within the deadline for Art. 10.20(2) submissions set forth in the latest version of the Procedural Timetable, so that Claimants and Respondent may submit comments thereon at the time specified for their Statements of Rejoinder. Oral submissions by the non-disputing Party, based on its prior written submissions, shall take place during the Hearing, and be announced not later than the date of the Pre-Hearing Conference set forth in the Procedural Timetable.
11. The Tribunal’s Secretary will promptly notify the United States of America of this decision.

**2. AMICUS CURIAE SUBMISSIONS**

12. The Tribunal has authority to accept and consider *amicus curiae* submissions pursuant to Art. 10.20(3) of the Treaty. Applying its powers under Art. 17.1 of the UNCITRAL Arbitration Rules<sup>4</sup> and paras. 87 and 88 of the ToA, the Tribunal issues the following directions with regard to *amicus curiae* submissions.
13. An *amicus curiae* submission shall consist of two documents: a petition for admission, and the text of the proposed written submission. These documents must be filed within the deadline for *amici curiae* set out in the latest version of the Procedural Timetable. The documents shall be lodged with the Tribunal’s Secretary, in electronic format. The Secretary will promptly distribute the documents to the Tribunal and the Parties.
14. The petition for admission shall meet all the following requirements:
- be no more than 5 pages;
  - be submitted in English and Spanish;
  - identify the petitioner and its background;
  - identify the author or authors of the attached written submission;

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<sup>4</sup> Terms of Appointment, para. 62.

- identify any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission, as indicated in the Treaty;<sup>5</sup>
  - disclose any affiliation with the Parties or their counsel;
  - specify the interest the petitioner or the authors have in the outcome of this arbitration proceeding;
  - identify the issues of fact or law addressed in the written submission and why the petitioner can bring perspective or insight distinct from the Parties; and
  - identify any material dealings prior to or during this proceeding between the petitioner and the author and the Parties or their counsel.
15. The proposed written submission shall be attached to and filed simultaneously with the petition. It shall also be made in English and Spanish, have a length of no more than 20 pages (including exhibits), and express the opinion of its author on any issue related to this arbitration.
16. The Parties will have an opportunity to comment on the admissibility of any *amicus curiae* petition within the deadline established in the Procedural Timetable. The Tribunal shall rule on the admissibility of any petition by the deadline set forth in the Procedural Timetable.
17. The Parties will have the opportunity to submit, at the time specified for their Statements of Rejoinder, comments to any *amicus curiae* submission that the Tribunal has admitted.
18. The Tribunal may, but is not obliged, to consider the *amicus curiae* submissions in its awards and decisions.

**3. AMENDMENT OF THE PROCEDURAL TIMETABLE**

19. An amended Procedural Timetable is attached as Annex A to this Procedural Order.

[signed]

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Prof. Juan Fernández-Armesto  
Presiding Arbitrator

Place of Arbitration: Paris, France  
Date: July 25, 2018

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<sup>5</sup> See Art. 10.20(3) of the Treaty.

**PROCEDURAL ORDER NO. 1 – ANNEX I**

**Procedural Timetable**

<b>Procedural action</b>	<b>Party required to act</b>	<b>Deadline</b>
Statement of Claim	Claimants	July 13, 2018
Statement of Defense (including any counterclaims and/or objections)	Respondent	December 14, 2018 (+ 5 months)
<b>Document Production (if requested)</b>		
DPS Request	Both Parties	January 11, 2019 (+1 month aprox.)
DPS Response	Both Parties	February 1, 2019 (+3 weeks)
Production of non-contested Documents	Both Parties	February 8, 2019 (+1 week)
DPS Response to Objections	Both Parties	February 8, 2019 (+1 week)
Submission of the final DPS schedule	Both Parties	February 15, 2019 (+1 week)
Decision on DPS	Tribunal	March 8, 2019 (+3 weeks)
Production of contested Documents and Affidavits	Both Parties	March 22, 2019 (+2 weeks)
<b>Statement of Reply (and Answer to any counterclaims and/or objections)</b>		
Statement of Reply (and Answer to any counterclaims and/or objections)	Claimants	May 14, 2019 (+5 months after the St. Defense)
Deadline for non-disputing Party submissions under Art. 10.20(2) of the Treaty	United States of America	June 14, 2019 (At any time during the arbitration, but not later than one month after the Claimants' Statement of Reply)

Deadline for any <i>amicus curiae</i> submissions under Arts. 10.20(3) of the Treaty	<i>Amicus curiae</i> petitioners	June 14, 2019 (At any time during the arbitration, but not later than one month after the Claimants' Statement of Reply)
Comments on admissibility of petitions to submit <i>amicus curiae</i>	Both Parties	June 28, 2019 (+2 weeks)
Decision on admissibility of <i>amicus curiae</i> petitions	Tribunal	July 19, 2019 (+3 weeks)
Statement of Rejoinder (and Reply to any counterclaims and/or objections)	Respondent	August 30, 2019 (+3.5 months)
Claimants' Rejoinder on any counterclaims and/or objections	Claimants	October 30, 2019 (+2 months)
Notification of witnesses to be called to the Hearing	Both Parties	6 weeks before the hearing approx. (TBD)
Pre-Hearing Conference (and deadline for the non-disputing Party to announce oral submissions under Art. 10.20(2) of the Treaty)	Both Parties (and United States of America)	5 weeks before the hearing. (TBD)
Hearing	All	February 10–14, 2020 (one-week duration)
Post-Hearing Submissions	Both Parties	TBD at the end of the Hearing
Statement on costs	Both Parties	TBD at the end of the Hearing

Date: July 25, 2018