

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. 8**  
**(CONFIDENTIALITY ORDER)**

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

SECRETARY OF THE TRIBUNAL  
Ms. Luisa Fernanda Torres

ASSISTANT TO THE PRESIDENT  
Dr. Luis Fernando Rodríguez

Paris, June 7, 2019

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## **PROCEDURAL BACKGROUND**

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 [**“ToFA”**], and on June 29, 2018, the Tribunal issued Procedural Order No. 1 [**“PO 1”**].
3. On July 12, 2018, the Tribunal issued Procedural Order No. 3 [**“PO 3”**], setting the rules on the production of documents. Attached to PO 3 were the document production schedules (Annex I), a template for a privilege log (Annex II), and template affidavits (Annexes III and IV).
4. The document production phase started on January 11, 2019, when the Parties simultaneously submitted their Document Production Schedules [**“DPS”**], in accordance with the Procedural Timetable.
5. Following the Parties’ exchanges, on March 8, 2019, the Tribunal issued Procedural Order No. 6 [**“PO 6”**], ruling on each Party’s document production requests.
6. Shortly thereafter, an incident arose between the Parties involving the confidential nature of certain documents whose production had been ordered by the Tribunal. Claimants and Peru made a number of submissions on this issue<sup>1</sup>.
7. On April 9, 2019, the Parties and the Tribunal held a conference call to address this matter. At the Tribunal’s directions, Claimants filed a further submission on April 16, 2019, and Peru, on April 24, 2019, summarizing their positions and making their final requests<sup>2</sup>.
8. On May 10, 2019, the Tribunal issued Procedural Order No. 7 [**“PO 7”**], finding that the documents at issue are confidential and that the Tribunal and the Parties must keep them so and use them only in connection with this arbitration<sup>3</sup>. Based on this decision, the Tribunal invited the Parties to confer and enter, by May 31, 2019, into a confidentiality agreement for the production of the disputed documents<sup>4</sup>.

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<sup>1</sup> C-43, R-41, C-44, R-42, R-43, C-45 and R-44.

<sup>2</sup> C-46 and R-45.

<sup>3</sup> PO 7, paras. 34 and 35.

<sup>4</sup> PO 7, paras. 36 and 37.

9. Since the Parties were unable to reach an agreement, each Party submitted a draft of the confidentiality order it would like the Tribunal to issue, together with a short explanation in support of the wording suggested<sup>5</sup>: Claimants did so on June 3, 2019<sup>6</sup>, and Respondent on June 5, 2019<sup>7</sup>.
10. Therefore, having received the Parties' positions on the matter, the Tribunal hereby issues the following:

### **PROCEDURAL ORDER No. 8**

11. This Order governs the use of Confidential Documents in this arbitration.
12. "**Confidential Documents**" means documents that have been declared expressly so by the Tribunal or documents that include protected information under para. 70 of PO1 and Art. 10.21(4) of the Treaty.

#### **1. USE OF CONFIDENTIAL DOCUMENTS**

13. The Parties and the Permitted Individuals (as defined hereinafter) shall use Confidential Documents solely for the purpose of this arbitration and in accordance with the terms of this Order. The Parties and the Permitted Individuals shall not disclose Confidential Documents, nor the information contained therein, to any third person. Confidential Documents submitted by a Party shall be destroyed by the other Parties and the Permitted Individuals upon the termination of this arbitration. These obligations shall continue indefinitely.
14. As an exception, disclosure is permitted to the extent required to fulfil a legal duty or to enforce or challenge an award *in bona fide* legal proceedings before a state court or other judicial authority. Before any disclosure, the other Party and the Tribunal (if still in office) shall be informed.
15. If a Party files with the Tribunal confidential or protected information included in any Confidential Document, the rules established in paras. 66 to 71 of the Procedural Order No. 1 will apply, together with any further directions from the Tribunal.

#### **2. PERMITTED INDIVIDUALS**

16. As an exception, a Party may disclose Confidential Documents to the following persons exclusively [**"Permitted Individuals"**]:
  - counsel of record in this arbitration;
  - the Special Commission and any other State official responsible for supervising Peru's defense of this arbitration; and

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<sup>5</sup> See also R-52 and R-53.

<sup>6</sup> C-55 and C-56.

<sup>7</sup> R-54.

- current and future witnesses and experts testifying in this arbitration, as well as individuals who assist in the preparation of such testimonies.

**3. CONDITIONS FOR DISCLOSURE TO PERMITTED INDIVIDUALS**

17. Any disclosure of the Confidential Documents to a Permitted Individual is subject to the following conditions:
- Confidential Documents shall be disclosed to any Permitted Individual only to the extent necessary and relevant for such individual to carry out his or her role in this arbitration;
  - Any Party shall not share the Confidential Documents with any Permitted Individual, including potential witnesses or experts, unless and until that individual provides an express undertaking to be bound by this Confidentiality Order;
  - Each Party shall keep a register of Permitted Individuals and provide the other, at its request, with copies of the signed undertakings.

**4. IDENTIFICATION OF CONFIDENTIAL DOCUMENTS**

18. The Parties will identify Confidential Documents by clearly marking each page with the words “Confidential Information, Unauthorized Disclosure Prohibited” or some variation thereof.

**5. AMENDMENT OF THIS ORDER**

19. Upon consultation with the Parties and for good cause, the Arbitral Tribunal may at any time amend this Confidentiality Order.

On behalf of the Arbitral Tribunal,

\_\_\_\_\_[Signed]\_\_\_\_\_  
Juan Fernández-Armesto  
Presiding Arbitrator  
Date: June 7, 2019