

# JONES DAY

600 BRICKELL AVENUE • BRICKELL WORLD PLAZA • SUITE 3300 • MIAMI, FLORIDA 33131  
TELEPHONE: +1.305.714.9700 • FACSIMILE: +1.305.714.9799

DIRECT NUMBER: (305) 714-9717  
CCONCEPCION@JONESDAY.COM

21 December 2016

## VIA E-MAIL

Ms. Natalí Sequeira  
Team Leader/Legal Counsel  
International Centre for the Settlement of Investment Disputes  
1818 H Street, NW  
Washington, DC 20433  
United States of America  
nsequeira@worldbank.org

Re: **Omega Engineering LLC and Mr. Oscar Rivera v. The Republic of Panama  
Request for Arbitration (R20160060)**

Dear Ms. Sequeira:

We write in response to your letter dated 16 December 2016. In the paragraphs that follow, we will address your requests in the order in which they were made.

### *Item 1:*

Pursuant to Article 10.18.2(b) of the US-Panama Trade Promotion Agreement (the “TPA”),<sup>1</sup> Claimant Mr. Oscar Iván Rivera Rivera (“**Mr. Rivera**”) hereby submits—on his behalf and on behalf of Claimant Omega Engineering LLC—the required waiver.<sup>2</sup> Notwithstanding the waiver requirement of Article 10.18.2(b), and in accordance with Article 10.18.2(c), Claimants reserve their right to “initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose

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<sup>1</sup> United States – Panama Trade Promotion Agreement, signed on 28 June 2007; entered into force on 31 Oct. 2012 (the “TPA”) (CL-0003), art. 10.18.2(b) (requiring, in relevant part, that “the notice of arbitration is accompanied . . . by the claimant’s and the enterprise’s written waivers of any right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16”).

<sup>2</sup> Claimants’ Waiver dated 17 Dec. 2016 (Enclosure 1).

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of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration."<sup>3</sup> Accordingly, Claimants confirm that they have met all the requirements of Article 10.18.2(b) of the TPA.

*Item 2:*

Under Puerto Rico's Law No. 487 on General Corporations, the administration of an LLC is determined by the LLC's operating agreement.<sup>4</sup> Omega Engineering LLC's Operating Agreement names Mr. Rivera as the designated Manager of Omega Engineering LLC with the "power to do any and all acts necessary, convenient or incidental to or for the furtherance of the Company's purposes . . . including, but not limited to" (1) hiring legal services; and (2) executing any and all instruments and documents necessary to carry out the intent and purpose of the Operating Agreement.<sup>5</sup> Further, in 2015, an Amendment to the Operating Agreement was executed identifying Mr. Rivera as the sole owner and, therefore, the sole Member of Omega Engineering LLC, and naming him President and Chief Operating Officer.<sup>6</sup> Mr. Rivera also remained as the designated Manager of Omega Engineering LLC. In his capacity as Manager and sole Member, Mr. Rivera has the authority to retain counsel and execute any and all documents and instruments for this arbitration on behalf of Omega Engineering LLC, including authorizing the submission of the Request for Arbitration. Thus, the Operating Agreement and the Amendment, together with Exhibits C-0009 and C-0010, evidence that Omega Engineering LLC "has taken all necessary internal actions to authorize the request"<sup>7</sup> as required by ICSID Institution Rules 2(1)(f) and 2(2).

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<sup>3</sup> TPA (CL-0003), art. 10.18(c).

<sup>4</sup> See Puerto Rico's Law No. 485 on General Corporations dated 23 Sept. 2004 (Enclosure 2), art. 19.23 ("*Excepto que otra cosa se disponga en un CCRL, la administración de una CRL será responsabilidad de sus miembros en proporción a sus porcentajes u otro interés como miembros en las ganancias de la CRL propiedad de todos los miembros. Las decisiones se tomarán por los miembros que posean más del 50% de dicha proporción u otro interés en las ganancias. Disponiéndose, sin embargo, que si un contrato de compañía de responsabilidad limitada dispone para la administración, en todo o en parte, de la CRL por un administrador, la administración de la CRL, en la medida dispuesta, será responsabilidad del administrador que será seleccionado en la forma dispuesta en el CCRL.*").

<sup>5</sup> Operating Agreement of Omega Engineering LLC dated 2 Mar. 2009 (Enclosure 3), art. 7.01(b) and (g).

<sup>6</sup> Amendment to the Operating Agreement of Omega Engineering LLC dated 31 July 2015 (Enclosure 4), Preamble, arts. 1, 7.04(e), 3.

<sup>7</sup> ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (Institution Rules) dated Apr. 2006 (CL-0005), r. 2(1)(f); *see also id.*, r. 2(2). In any event, and for the avoidance of doubt, we enclose a Certificate of Resolution of Omega Engineering LLC's Board of Directors authorizing Mr. Rivera to retain counsel and execute any and all documents in relation to this arbitration. *See* Certificate of Resolution of the Board of Directors of Omega Engineering LLC dated 11 Mar. 2016 (Enclosure 5).

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Respectfully,

*Carlos F. Concepción*

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P.P.

*María I. Pradilla*

Enclosures (5)