

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

DORALEH CONTAINER TERMINAL SA,

*Petitioner,*

v.

REPUBLIC OF DJIBOUTI,

*Respondent.*

Case No. 1:20-cv-02571-TFH

**THE REPUBLIC OF DJIBOUTI'S  
ANSWER AND AFFIRMATIVE DEFENSES**

Respondent the Republic of Djibouti (“Djibouti” or “the Republic”), by and through undersigned counsel, responds as follows to the Petition to Confirm Arbitration Awards filed by Petitioner Doraleh Container Terminal SA (“DCT”) on September 14, 2020.

**ANSWER**

The Republic denies all allegations in the Petition’s opening paragraph, including that the Petition was submitted by DCT and through representatives who have the authority and capacity to act on its behalf. The Republic denies all other allegations in the Petition—wherever they appear—other than the allegations expressly admitted below. The Republic responds to the Petition’s numbered paragraphs as follows:

1. The Republic admits that DCT is a joint venture company, initially established between Port de Djibouti SA (“PDSA”) and DP World Djibouti FZCO (“DP World”), under the laws of Djibouti, with an address at Port Autonome International De Djibouti, BP 2107, Republic of Djibouti. The Republic admits that DP World holds a 33.34% share interest in DCT. The Republic further states that the Republic of Djibouti is DCT’s majority shareholder. The Republic lacks knowledge or information sufficient to form a belief about other entities’ “purpose” in

creating DCT. The last sentence of Paragraph 1 states a legal conclusion, which requires no response. If a response is required, the Republic refers the Court to the joint venture agreement and DP World's articles of association, which speak for themselves. The Republic otherwise denies the allegations in Paragraph 1.

2. Footnote 1 to Paragraph 2 contains characterizations of DCT's purpose in pursuing arbitration against the Republic, and of legal positions that DCT has asserted in that arbitration, which require no response. If a response is required, the Republic refers the Court to DCT's claim in London Court of International Arbitration Case No. 183886, which speaks for itself, and the Republic otherwise denies any allegations in footnote 1. The Republic otherwise admits the allegations in Paragraph 2.

3. Admitted.

4. The Republic lacks knowledge or information sufficient to form a belief about what the Petition seeks. The Republic otherwise admits the allegations in Paragraph 4.

5. Denied.

6. Paragraph 6 purports to quote a federal statute, which speaks for itself. The Republic otherwise denies the allegations in Paragraph 6.

7. Paragraph 7 purports quote a federal statute, which speaks for itself. The Republic otherwise denies the allegations in Paragraph 7.

8. Paragraph 8 purports to quote a court decision, which speaks for itself. The Republic admits that the Awards were rendered in the United Kingdom, a New York Convention contracting state. The Republic otherwise denies the allegations in Paragraph 8.

9. Denied.

10. Admitted.

11. Admitted.

12. The Republic admits that, on December 18, 2006, the Djiboutian Parliament enacted a law ratifying a Concession Agreement dated October 30, 2006; that PDSA and DP World entered into a joint venture agreement with DP World on May 22, 2007; and that DCT entered into a Management Services Agreement with DP World on December 6, 2006. The Republic denies that the remaining allegations in Paragraph 12 accurately and completely characterize the Concession Agreement, the joint venture agreement, and the Management Services Agreement, which speak for themselves. The Republic otherwise denies the allegations in Paragraph 12.

13. Paragraph 13 states legal conclusions, which require no response. If a response is required, the Republic refers the Court to the Concession Agreement, which speaks for itself. The Republic otherwise denies the allegations in Paragraph 13.

14. The Republic denies that the allegations in Paragraph 14 accurately and completely characterize the Concession Agreement and the Management Services Agreement, which speak for themselves. The Republic otherwise lacks knowledge or information sufficient to form a belief about the remaining allegations in Paragraph 14.

15. The Republic admits that, in 2014, Djibouti, the Djibouti Ports and Free Zones Authority, and PDSA commenced London Court of International Arbitration Case No. 142732, against DCT, DP World, and Dubai International. The Republic denies that the allegations in Paragraph 15 completely and accurately characterize the Republic's claims in that proceeding. The Republic admits that the Republic's then-counsel proposed, and the responding parties agreed, to determine the arbitration dispute by three arbitrators. The Republic otherwise denies the allegations in Paragraph 15.

16. The Republic admits that an arbitration hearing was conducted in the fall of 2016. Petitioner's characterization of that hearing as having been "in accordance with LCIA rules" states a legal conclusion, which requires no response. If a response is required, the Republic denies that characterization. The Republic denies that the allegations in Paragraph 16 completely and accurately characterize the First Award and the Second Partial Final Award, which speak for themselves. The Republic admits that it paid £7 million in costs under the Second Partial Final Award. The Republic otherwise denies the allegations in Paragraph 16.

17. The Republic denies that the allegations in Paragraph 17 completely and accurately characterize DCT's and DP World's counterclaims and refers the Court to those counterclaims, which speak for themselves. The Republic otherwise denies the allegations in Paragraph 17.

18. The Republic admits that an arbitration hearing on certain counterclaims took place on November 9, 2018, and that it was no longer represented by counsel in that proceeding at that time. The Republic otherwise denies the allegations in Paragraph 18.

19. The Republic denies that the allegations in Paragraph 19 completely and accurately characterize the 2017 Djiboutian law, which speaks for itself. The Republic admits that, in December 2017 and in accordance with that law, the Republic requested that DCT and DP World renegotiate the Concession Agreement. The Republic admits that, as of the Petition date, it had not renegotiated other strategic infrastructure contracts under that law. The Republic admits that, in February 2018, DCT and DP World issued a Notice of Dispute to the Republic as to the Concession Agreement, and thereafter commenced a second (and separate) arbitration proceeding under the Concession Agreement, London Court of International Arbitration Case No. 183886. The Republic otherwise denies the allegations in Paragraph 19.

20. The Republic admits that its President, in accordance with Djiboutian law, issued an executive decree terminating the Concession Agreement. The Republic admits that after terminating the Concession Agreement, it resumed control of the Terminal. The Republic admits that, in July 2018, PDSA terminated its joint venture agreement with DP World, and that such termination has been the subject of a third and separate arbitration proceeding, London Court of International Arbitration Case No. 184063. The Republic admits that, on July 31, 2018, the tribunal in the second arbitration issued a Partial Final Award. The Republic denies that the allegations in Paragraph 20 completely and accurately characterize that Partial Final Award, which speaks for itself. The Republic otherwise denies the allegations in Paragraph 20.

21. The Republic admits that, in September 2018, Djibouti applied to the Djibouti Court of First Instance in *ex parte* summary proceedings seeking the appointment of a provisional administrator for DCT. The Republic denies that the allegations in Paragraph 21 completely and accurately characterize that application. The Republic admits that the Djiboutian court appointed Ms. Chantal Tadoral as the provisional administrator in September 2018, and that on November 19, 2018, Tadoral, acting on behalf of DCT pursuant to her appointment, applied for a stay of the proceedings in London Court of International Arbitration Case No. 142732. The Republic otherwise denies the allegations in Paragraph 21. The Republic further states that DP World, purporting to act DCT's behalf, challenged Tadoral's appointment before the Djibouti Court of Appeal, which upheld the appointment. DP World, again purporting to act DCT's behalf, then petitioned the Supreme Court of Djibouti to review the appointment, but that petition was dismissed as untimely.

22. The Republic admits that, in January 2018, the tribunal received written submissions from counsel purporting to act on DCT's behalf, and from Tadoral. The Republic

further states that Tadoral's written submissions asserted that, due to her appointment as provisional administrator, DCT's purported counsel lacked authority to act on DCT's behalf in those proceedings. The Republic denies that the allegations in Paragraph 22 completely and accurately characterize the tribunal's Decision with Reasons on Application for a Stay, which speaks for itself. The Republic otherwise denies the allegations in Paragraph 22.

23. The Republic admits that a hearing was held in the London Arbitration on November 9, 2018, about the counterclaims, in which the Republic—then not represented by counsel in connection with the proceeding—did not participate. The Republic further admits that the London tribunal issued a Third Partial Final Award on March 29, 2019, and a Memorandum of Corrections on May 3, 2019. Paragraph 23 purports to summarize the Third Partial Final Award and the Memorandum of Corrections, which speak for themselves. The Republic otherwise denies the allegations in Paragraph 23.

24. The Republic admits that the London Arbitration tribunal issued a Fourth Partial Final Award on July 1, 2019. Paragraph 24 purports to summarize the Fourth Partial Final Award, which speaks for itself. The Republic otherwise denies the allegations in Paragraph 24.

25. Denied.

26. Admitted.

27. Denied.

28. Denied.

29. The Republic lacks sufficient knowledge and information to form a belief about whether or when DCT and DP World became aware of the existence of an April 10, 2019, petition filed in the Supreme Court of Djibouti. The remaining allegations in Paragraph 29 and footnote 3 state legal conclusions, which require no response. If a response is required, the Republic refers

the Court to Article V of the New York Convention and the petition described in footnote 3, which speak for themselves. The Republic otherwise denies the allegations in Paragraph 29.

30. The allegations in Paragraph 30 state legal conclusions, which require no response. If a response is required, the Republic refers the Court to decision cited in Paragraph 30, which speaks for itself. The Republic otherwise denies the allegations in Paragraph 30.

31. Admitted.

32. Denied.

33. Denied.

34. Denied. The Republic asserts that Petitioner is entitled to no relief.

35. Denied. The Republic asserts that Petitioner is entitled to no relief.

36. Denied. The Republic asserts that Petitioner is entitled to no relief.

37. Denied. The Republic asserts that Petitioner is entitled to no relief.

38. Denied. The Republic asserts that Petitioner is entitled to no relief.

### **AFFIRMATIVE DEFENSES**

Without prejudice to the denials above, and without assuming any burden that the Republic would not otherwise bear, the Republic asserts these defenses. Every defense incorporates and reasserts the statements and assertions made in supporting the other defenses.

#### **FIRST AFFIRMATIVE DEFENSE (Lack of Jurisdiction Due to Sovereign Immunity)**

As a foreign state, the Republic is immune from the jurisdiction of the courts of the United States. *See* 28 U.S.C. § 1604. No exception to that immunity applies here. *See id.* §§ 1605–1607. In particular, the Republic has not “waived its immunity either explicitly or by implication.” *Id.* § 1605(a)(1). And because neither the Concession Agreement nor the Awards is governed by the New York Convention, the exception under Section 1605(a)(6) does not apply either. *See id.*

§ 1605(a)(6). As such, the Court lacks subject matter jurisdiction over this action, *see id.* § 1330(a), and personal jurisdiction over the Republic, *see id.* § 1330(b)–(c).

**SECOND AFFIRMATIVE DEFENSE**  
**(Lack of Jurisdiction Under the Federal Arbitration Act)**

Neither the “arbitration agreement” nor any “arbitral award” at issue here is “arising out of a legal relationship . . . which is considered commercial.” 9 U.S.C. § 202. The Court thus lacks original jurisdiction to enforce the Awards. *See* 9 U.S.C. § 203.

**THIRD AFFIRMATIVE DEFENSE**  
**(Lack of Article III Standing)**

DCT—a corporation organized under the laws of Djibouti—did not file the Petition. When purported counsel for Petitioner filed the Petition, purportedly on behalf of DCT, Chantal Tadoral had been appointed by a Djiboutian court as DCT’s provisional administrator, pursuant to Djiboutian law. As DCT’s provisional administrator, only Tadoral had the legal capacity and authority to cause DCT to file the Petition. On information and belief, Tadoral did not do so. Rather, attorneys who had represented DCT in the London arbitration filed the Petition without Tadoral’s authorization. Those attorneys—who are purporting to act for DCT—cannot satisfy Article III’s standing requirements. As a result, the Court lacks jurisdiction over this action.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Lack of Capacity to Bring Action)**

DCT is organized under Djiboutian law. Under Djiboutian law, DCT, its purported counsel, or both lack the capacity to bring this action without the authorization of DCT’s provisional administrator, Chantal Tadoral. On information and belief, Tadoral did not authorize the Petition.



**FIFTH AFFIRMATIVE DEFENSE  
(Lack of Authority to File Petition)**

The persons or entities who caused or directed the Petition to be filed—including but not limited to the attorneys who filed it and DCT’s former management—lack the authority to do so without the authorization from DCT’s provisional administrator, Chantal Tadoral. On information and belief, Tadoral did not authorize the Petition. These parties therefore lacked the authority to sue on DCT’s behalf.

**SIXTH AFFIRMATIVE DEFENSE  
(New York Convention Article V(1)(b): Improper Notice of Arbitration Proceedings; Party Otherwise Unable to Present Its Case)**

The procedures used to attempt to notify the Republic of certain arbitration proceedings were inconsistent with the arbitration rules, the Concession Agreement, and the United States’ requirements of due process. Some or all of the arbitration proceedings continued, moreover, after the Republic’s counsel had withdrawn and without affording the Republic a reasonable opportunity to retain new counsel to appear. As a result, the Republic “was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings” and “was otherwise unable to present [its] case.” N.Y. Convention Art. V(1)(b).

**SEVENTH AFFIRMATIVE DEFENSE  
(New York Convention Article V(2)(b): Enforcing Awards  
Would Be Contrary to U.S. Public Policy)**

It is the public policy of the United States to respect the sovereignty of foreign nations. The underlying awards for which the Petition seeks confirmation threaten the core of the Republic’s sovereignty. The Port of Djibouti implicates the Republic’s most vital sovereign interests, including the right to control its territory, its natural resources, and its ports. In addition, the Petition takes issue with Djiboutian acts of state, including decisions by Djibouti’s legislative, executive, and judicial branches. The Petition further asserts authority and capacity to seek relief

on behalf of DCT that is, on information and belief, contrary to a Djiboutian court's appointment, in accordance with Djiboutian law, of a provisional administrator to direct and manage DCT's affairs, such that granting the Petition would require interference in the internal affairs and acts of state of Djibouti. As a result, enforcing the Third Partial Final Award and the Fourth Partial Final Award would violate the United States' respect for the Republic's sovereignty, and thus would be contrary to the public policy of the United States. *See* N.Y. Convention Art. V(2)(b).

**RESERVATION OF OTHER AFFIRMATIVE DEFENSES**

The Republic currently lacks enough information to know whether it has affirmative defenses besides those asserted above. The Republic intends to rely on any defenses now available or that, through discovery or otherwise, might become available in this action. The Republic reserves its right to amend this Answer to assert those defenses.

Dated: November 22, 2021

Respectfully submitted,

*/s/ Matthew M. Madden*

Matthew M. Madden (D.C. Bar No. 991139)

Jason A. Shaffer (D.C. Bar No. 888314607)

ROBBINS, RUSSELL, ENGLERT, ORSECK &  
UNTEREINER LLP

2000 K Street NW, 4th Floor

Washington, D.C. 20006

Telephone: (202) 775-4500

Facsimile: (202) 775-4510

mmadden@robbinsrussell.com

*Counsel for the Republic of Djibouti,  
Respondent*

**CERTIFICATE OF SERVICE**

On November 22, 2021, I directed this document to be electronically filed with the Clerk of Court for the United States District Court for the District of Columbia by using the Court's CM/ECF system, which will send notification of this filing to all counsel of record.

Respectfully submitted,

/s/ Matthew M. Madden

Matthew M. Madden (D.C. Bar No. 991139)

Jason A. Shaffer (D.C. Bar No. 888314607)

ROBBINS, RUSSELL, ENGLERT, ORSECK &

UNTEREINER LLP

2000 K Street NW, 4th Floor

Washington, D.C. 20006

Telephone: (202) 775-4500

Facsimile: (202) 775-4510

mmadden@robbinsrussell.com

*Counsel for the Republic of Djibouti,  
Respondent*