

DORALEH CONTAINER TERMINAL CASE STUDY

WORLD BANK GROUP MULTILATERAL INVESTMENT GUARANTEE AGENCY

MIGA and Islamic Finance

DORALEH CONTAINER TERMINAL PROJECT, DJIBOUTI

Increased liquidity in Islamic financial markets, spurred by oil revenues in the Gulf region, is creating a growing demand for deals structured using Islamic finance. In order to satisfy this demand, traditional business tools need to be adapted to meet the relatively unique and complex needs of Islamic finance.

In 2007, MIGA was tapped to provide political risk insurance for a critical project in Djibouti that was being funded through an Islamic financing structure. An agency well known for meeting the needs of diverse investor groups in the face of changing market conditions, MIGA adapted its guarantee

products to make sure the developmentally sound deal could go through.

The main challenge faced by the agency was that the project's Islamic financing structure had payment obligations spread out across numerous agreements, while MIGA's guarantee coverage for third party lenders normally considers such obligations under a single loan agreement. MIGA structured its guarantee in a way that addressed the key risks that concerned the project financiers, while meeting the strict requirements governing the Islamic structure. This resulted in the agency's first-ever guarantee coverage of an investment supported by an Islamic financing structure.

investment into DCT and \$422 million in Islamic project financing—against the risks of currency transfer restriction, expropriation, breach of contract, and war and civil disturbance. The Islamic project financing comprised 99 percent of the amounts allocated for the principal portion of the financing, DCT's future rental obligation, capitalized future premium, and Islamic profit rate swap facility.

Overview of Financing Structure

The project financing was designed to reflect a "debt-type" profile to ensure compliance with Islamic jurisprudence or *Shariah* principles, while satisfying the commercial requirements of both DCT and the project financiers. The project financing was executed by combining the following key concepts of *Shariah*:

1. *Musharaka*—literally meaning "partnership," refers to an arrangement where two or more partners pool together resources (capital and contract rights) to jointly own assets or undertake a commercial venture.

Through the *Musharaka* Agreement, DCT and the project financiers agreed to procure assets for the project jointly and committed to making respective capital contributions representing the financing plan's debt and equity components.

The Doraleh Project

The Doraleh Container Terminal project involves the development, design, construction, management, operation, and maintenance of a new container port terminal in the city of Doraleh, Republic of Djibouti. It is being developed under a 30-year concession granted by the government of Djibouti to the main sponsors—DP World of the United Arab Emirates and Port Autonome International of Djibouti—via their joint-venture vehicle, the Doraleh Container Terminal S.A. (DCT). When completed, the terminal will have a total quay length of 2,000 meters and an annual handling capacity of 1.5 million 20-foot container equivalent units.

MIGA issued guarantees totaling \$427 million—\$5 million for DP World's equity

MIGA, a member of the World Bank Group, mitigates noncommercial risks by insuring investments against the risks of:

- Currency inconvertibility and transfer restrictions
- Expropriation
- War, civil disturbance, terrorism, and sabotage
- Breach of contract

MIGA provides dispute resolution services for guaranteed investments to prevent disputes from escalating.

MIGA also provides free online information on investment opportunities.





2. *Istisna'a*—refers to a contractual agreement for constructing or developing assets, allowing cash payment in advance and future delivery of the assets.

Through the *Istisna'a* Agreement, the partners appointed DCT as a procurer to construct the container terminal and ensure delivery of assets at the end of the construction period. Capital contributions under the *Musharaka* were paid to DCT, which in essence is equivalent to multiple drawdowns under a conventional lending arrangement.

3. *Ijara*—a mode of finance wherein the right to use an asset is leased by the owner (the lessor) to another party (the lessee) in exchange of rental payments.

The Forward Lease Agreement allowed the project financiers (the lessor) to

lease their co-ownership interest in the project to DCT (the lessee) in exchange of periodical rental payments linked to a floating benchmark. Given that the assets were under construction, the documentation allowed the project financiers to pay advance lease rentals during the construction period. After delivery and commencement of lease, the project financiers were to receive periodical lease rentals based on both floating and fixed rates, reflecting amortization of the loan.

In addition to the above, the financing structure also entailed:

- A Purchase Undertaking, which allowed the project financiers to sell their co-ownership interest to DCT in case of a dissolution event (such as default or change in circumstances). The exercise price under this undertaking was an amount equal to the outstanding facil-

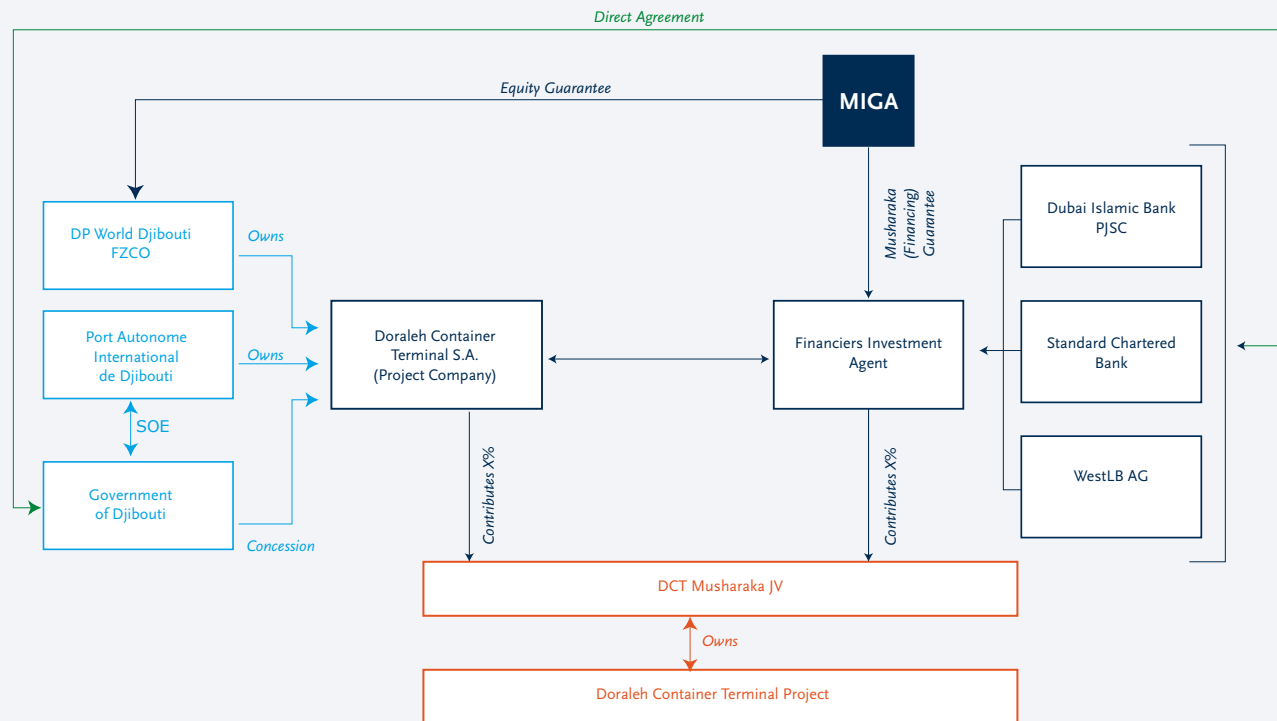
ity amount, any accrued and unpaid lease rentals and any other outstanding amount under the financing documents.

- DCT was also allowed to prepay the financing via a Sale Undertaking (i.e. call option), according to which it has a right to buy out its partner (the project financiers) in return for paying off its contribution in full (equivalent to the principal of the financing).

Key Adjustments to MIGA's Guarantee Contract

MIGA's non-shareholder loan contract contemplates coverage of scheduled payments of principal and interest under a single loan agreement. If the loan is accelerated by the lenders, MIGA still pays under the original schedule. To create a parallel obligation

Islamic Financing Structure for Doraleh Container Terminal Project





under Islamic financing, MIGA agreed to cover the following:

1. Advance rental and rental under the Forward Lease Agreement;
2. In the event that construction is not completed, the termination payment under the Istisna'a Agreement (but under the original lease schedule);
3. In the event that the Purchase Undertaking is exercised, DCT's payment obligation to purchase the assets from the project financiers (but under the original lease schedule);
4. In the event of an unwinding of the partnership and where none of the above amounts are payable, the amount owed by DCT as partner to the financiers under the Musharaka Agreement (but under the original lease schedule), which will only include the "profit" component to the extent

determined by a judge according to the Musharaka Agreement.

The events described in 2, 3 and 4 above were referred to as "Early Termination Events."

All references to "interest" in the contract, including interest owed to MIGA for late premium, etc., were replaced with "late payments," which would be donated to charitable foundations.

Project's Development Impact

Djibouti's economy is dependent on port-related services. Agriculture and industry are largely undeveloped. Development and expansion of port infrastructure is an important pillar of the World Bank Group's country assistance strategy for Djibouti.

The Doraleh Container Terminal project is considered vital to the country's economic

growth. By improving container facilities in Djibouti, the project is expected to increase port traffic and open up new opportunities for investment and growth, including breaking the country's reliance on Ethiopia's trade and attracting other African countries to use the port as a gateway. A state-of-the-art container terminal could establish Djibouti as a gateway for the Common Market for Eastern and Southern Africa (COMESA) members, and in light of trade flows through that part of the world, promote regional integration through trade development.

This is MIGA's first project in Djibouti, which became a member in 2007. By supporting this project, MIGA is helping Djibouti take advantage of a growing volume of trade and strengthen its position as the gateway to the African hinterland. MIGA's participation in the deal played an important role in mitigating perceived political risks for the financiers of the project, enabling project sponsors to raise the financing needed to get the project going.

Structure of Islamic Profit Rate Swap Facility

1. Project Company "sells" commodities (Murabaha basis) to Swap Bank, payable on a pre-agreed date, and yielding a "fixed" profit return.

2. Project Company "buys" commodities (Murabaha basis) from Swap Bank, payable on a pre-agreed date, and yielding a "floating" profit return.



3. Profit rate risk is hedged for Project Company by matching rental payment obligations with inflows from floating Murabaha investment

MIGA's Value

MIGA provides a unique umbrella of deterrence against political risks and can offer comfort to clients by improving projects' risk-return profiles.

Investment Protection and Prompt Claims Payment

- **Deterring harmful actions.** MIGA's relationship with shareholder governments provides additional leverage in protecting investments.
- **Resolving disputes.** As an honest broker, MIGA intervenes at the first sign of trouble to resolve potential investment disputes before they reach claim status, helping to maintain investments and keep revenues flowing.
- **Ensuring prompt claims payment.** If a dispute cannot be resolved, MIGA ensures that valid claims are paid promptly.

Improving Financial Terms and Conditions for Investors/Lenders

- **Accessing funding.** MIGA guarantees help investors obtain project finance from banks.
- **Lowering borrowing costs.** MIGA guaranteed loans may help reduce the cost of capital.
- **Increasing tenors.** MIGA can provide insurance coverage for up to 15 years (in some cases 20), thereby increasing the tenor of loans available to investors.
- **Helping to structure project financing.** MIGA also ensures that risks are allocated properly.

Country, Social and Environmental Expertise

- Providing extensive country knowledge. MIGA applies the World Bank Group's decades of experience, global reach,

and knowledge of developing countries to each transaction.

- Offering environmental and social expertise. MIGA helps investors and lenders ensure that projects comply with what are considered to be the world's best social and environmental safeguards.

Types of Coverage Offered

Transfer restriction coverage protects against losses arising from an investor's inability to convert local currency into foreign exchange for transfer outside the host country. The coverage also insures against excessive foreign exchange delays caused by the host government's actions.

Expropriation coverage offers protection against loss of the insured investment as a result of acts by the host government that may reduce or eliminate ownership or control of the insured investment. This policy also covers partial losses and "creeping expropriation," a series of acts with an expropriatory effect.

War, civil disturbance, terrorism, and sabotage coverage protects against loss due to the destruction, disappearance, or physical damage to tangible assets caused by politically motivated violence. It also extends to events that result in the total inability of the project enterprise to conduct operations essential to its overall financial viability.

Breach of contract coverage protects against losses arising from the host government's non-payment of an arbitral award in favor of the investor, due to the government's breach or repudiation of a covered contractual agreement with the investor.

Partnerships

MIGA works with the following key partners in the Middle East and North Africa region to better support inward and outbound investments:

- The World Bank and IFC
- Jordan Loan Guarantee Corporation (JLGC)
- Inter-Arab Investment Guarantee Corporation (IAIGC)
- Islamic Corporation for the Insurance of Investment and Export Credit (ICIEC)
- Islamic Development Bank (IDB), Saudi Arabia

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