

Technical Cooperation Document

I Basic project data

▪ Country/Region:	Barbados/CCB
▪ TC Name:	Capacity Building for Barbados in Alternative Dispute Resolution Systems
▪ TC Number:	BA-T1056
▪ Team Leader/Members:	Claudia Stevenson (IFD/CTI), Team Leader; Valarie Pilgrim, Kayla Grant, Blanca Torrico and Stefano Pereira (IFD/CTI); Louis-Francois Chretien (LEG/SGO)
▪ Indicate if: Operational Support, Client Support, or Research & Dissemination:	Client Support
▪ If Operational Support TC, give number and name of Operation Supported by the TC:	N/A
▪ Date of TC Abstract authorization:	May 8 th , 2018
▪ Beneficiary:	Barbados
▪ Executing Agency:	Inter-American Development Bank, through the Competitiveness and Innovation Division (IFD/CTI)
▪ Donors providing funding (amount and Fund's name):	IDB though the Compete Caribbean Partnership Facility (CCPF)
▪ IDB Funding Requested:	US\$ 200,000.00
▪ Local counterpart funding, if any:	US\$88,300.00
▪ Disbursement period:	24 months
▪ Required start date:	
▪ Types of consultants:	Individual Consultants
▪ Prepared by Unit:	Competitiveness & Innovation (IFD/CTI)
▪ Unit of Disbursement Responsibility:	Institutions for Development (IFD/IFD)
▪ Included in Country Strategy (y/n):	No
▪ TC included in CPD (y/n):	No
▪ Alignment to the Update to the Institutional Strategy 2010-2020:	Productivity and innovation, economic integration, gender equality and diversity, strengthening institutional capacity and the rule of law.

II Objectives and Justification

- 2.1 Substantial procedural delays affect the civil court system in Barbados, as well as the wider Caribbean. Commercial disputes usually involve lengthy, costly and arduous litigation, which affects both businesses and the investment climate of the countries. The World Bank's Doing Business Report 2017 ranks Barbados 117 out of 190 countries in the enforcement of contracts. In 2018, Barbados fell further in the enforcement of contracts ranking to 167, and the World Bank data shows that on average it takes 1,340 days to enforce contracts, of which trial and judgement accounts for up to approximately 1,020 days. This costs companies an average of 19.7% of the claim value, while the country scores only 6.5 out of 18 points on quality of the judicial processes index. While some member states of the Organisation of Eastern Caribbean States (OECS) may take significantly less time to litigate commercial disputes - Grenada 688 days, St. Lucia 645 days, Antigua and Barbuda 476 days, Dominica 681 days, SVG 681 days, and St. Kitts and Nevis 578 days; the costs associated with resolving these disputes far exceed the costs in Barbados -

Grenada 32.6%, St. Lucia 37.3%, Antigua and Barbuda 27.1%, Dominica 36%, SVG 30.3%, and St. Kitts and Nevis 26.6%.¹ In addition, none of these countries score above 11.5 on the judicial processes index.

- 2.2 The ability to enforce contracts and resolve disputes is fundamental for markets to function properly and efficiently. Good contract enforcement practices enhance the predictability of commercial relationships and reduce uncertainty by assuring businesses and individuals that local courts will uphold their contractual rights efficiently. Weak contract enforcement slows down trade, investment, economic growth and inhibits innovation and entrepreneurship. The sluggish resolution of commercial disputes disproportionately affects SMEs. Intellectual property, employment conflicts and late payment issues are the most common disputes that SMEs encounter. In Barbados, as in the rest of the Caribbean, SMEs comprise one of the greatest economic assets. Micro and small enterprises comprise 92.2% of formal enterprises in the country, while medium enterprises (26 to 50 employees) account for 4.1% of enterprises. In addition, the majority of SMEs in the services-based economies of the Caribbean are women-owned. In Barbados, 47.7% of sole proprietorships are female owned, 82.6% of micro firms and 77.5% of service firms are owned by women.²
- 2.3 As such, in the Caribbean, firms, both large and small, rely more heavily on long-term, personalised relationships with their suppliers or consumers to avoid risk, thus potentially reducing the capacity of new innovative firms to enter the market. Banks are more conservative and reduce their financing for new investments. New business ventures without a record in the market find it harder to obtain finance and credit, in addition to the uncertainty in securing revenue. This particularly affects start-ups and small businesses.
- 2.4 Alternative Dispute Resolution (ADR) offers a solution to firms and in particular SMEs in this predicament. An umbrella term for a whole range of processes and techniques that help parties resolve disputes without going to court, ADR usually involves the assistance of a neutral third party. It is often less formal, cheaper and quicker than litigation. And in addition to being timely and cost-efficient, ADR is also confidential and offers a discreet and neutral setting for the resolution of disputes.
- 2.5 Arbitration, in particular, requires a positive legislative environment within which to function. Although the Barbados Arbitration Act (1958) and the Barbados International Commercial Arbitration Act (2007), as well as the territorial arbitration legislation in the OECS, provide for a relatively speedy dispute resolution process, the effectiveness of this process tends to be constrained by limitation of the Acts, as well as by factors relating to the nature of judicial proceedings in the region. For example, under both the BAA and the BICAA, the Arbitral Tribunal does not have the power to enforce its own arbitral award. Instead, enforcement is only possible by filing a separate application in either the High Court or the Court of Appeal, depending on the nature of the arbitration as either domestic or international. This in turn gives rise to delays at the execution stage, thereby somewhat defeating the purpose of invoking arbitration proceedings for speedy relief in the first place.
- 2.6 In 2004, the Bank's Multilateral Investment Fund (MIF/FOMIN) highlighted that ADR services were particularly important for smaller companies that are often unable to assume the costs of lengthy and uncertain legal procedures.³ In 2014, Compete

¹ World Bank, *Doing Business Report, 2018*.

² Barbados Small Business Association, *National Small Business Survey, 2016*

³ Multilateral Investment Fund (IDB), *Lessons from Innovation – Alternate Dispute Resolution, 2004*

Caribbean funded a “Feasibility Study for the establishment of an ADR Centre in Barbados” which concluded that there was unanimous support for the establishment of such a centre amongst various stakeholders in Barbados and the OECS region.⁴ A 2018 survey indicates that Barbadian and regional stakeholders continue to believe that an ADR Centre will provide more amicable resolution of disputes, protect privacy, help clear the backlog in the court system, improve the international business profile of the region, and be more affordable and timely, especially for SMEs.

- 2.7 In 2017, the Arbitration and Mediation Court of the Caribbean (AMCC) was established in Barbados. The AMCC is a not-for-profit organization, established to offer alternative methods of dispute resolution to assist in the swift, cost-effective resolution of commercial disputes, in Barbados and the wider Caribbean. While there are some ADR initiatives already in the region, the AMCC aims to fill existing gaps in services and expertise and reduce the cost of accessing arbitration and mediation services, thereby increasing SMEs access to such services. The Centre plans to specifically target SMEs through a number of low value/low cost schemes which would allow SMEs and individuals to access services more easily. It is designing simpler rules and procedures to apply to such cases and these will likely be launched in partnership with other associations or corporates. The Centre has been located in Barbados because Barbados meets many of the international ADR standards, such as the London Centenary Principles (established by the Chartered Institute of Arbitrators), better than most other jurisdictions in the region, including the OECS.
- 2.8 The objective of this Technical Cooperation (TC) is to improve the service delivery capacity of the Arbitration and Mediation Court of the Caribbean (AMCC) thereby increasing access to arbitration and mediation services by the private sector in Barbados, the member countries of the Organisation of Eastern Caribbean States, and the wider Caribbean.
- 2.9 Still a fledgling organization, AMCC is building the capacity required for service delivery and market positioning in terms of operating strategies, systems, skills, and inter-institutional linkages. Financial sustainability is a major challenge for not-for-profit or private sector initiated Centres as opposed to Centres located within the court system. As such, the assistance with strategy formulation will include the development of a financial sustainability strategy.
- 2.10 This TC is aligned with Goal 2 of the Government of Barbados’ Medium-Term Growth and Development Strategy 2013-2020, to facilitate broad based adjustments and reforms in the economy. More specifically it is in line with the Strategy’s objectives of enhancing business facilitation, enhancing international competitiveness, national productivity, efficiency and service excellence, developing the micro, small and medium sized business sector and entrepreneurship, and ensuring more modern and efficient public and private institutions.⁵ In addition, the TC is consistent with the IDB’s Update to the Institutional Strategy 2010-2020 as it addresses the challenges of (i) productivity and innovation and (ii) economic integration as it hampers both competitiveness and SME engagement in more sophisticated, higher value-added production. It is also aligned with the cross-cutting concerns of (i) gender equality and diversity, and (ii) strengthening institutional capacity and the rule of law.

⁴ Compete Caribbean, *Feasibility Study for the Establishment of an Alternative Dispute Resolution Centre in Barbados, 2014*

⁵ The Economic Affairs Division Ministry of Finance and Economic Affairs, Government of Barbados, *Barbados’ Medium-Term Growth and Development Strategy 2013-2020*.

III Description of activities/components and budget

- 3.1 **Component 1: Business Strategy Formulation and Implementation (US\$154,000).** This component will finance (i) An updated feasibility study and financial sustainability strategy – consulting services will (a) update the 2014 feasibility study to include the findings from the 2018 stakeholder survey, as well as any additional data and information on the demand and supply of arbitration and mediation services in Barbados and the OECS, (b) devise a financial sustainability strategy for the AMCC for the next 5 years, based on existing operational and service documents. The AMCC has worked on deferred payment of rent, financial agreements and a schedule of fees for services which estimate financial sustainability in between 3-5 years. The estimates for cost recover are: arbitration – 20% (as the costs may be high but there is significant time saved by comparison); mediation – 40% (but can be significantly higher depending on when the mediation takes place – pre or post issue of case). This is based on international best practice but needs to be expertly elaborated. (ii) The development and implementation of a branding strategy and marketing and communications plan. The AMCC held a soft launch in December 2017 and developed an informational website in January 2018. Funds will be used to (a) engage the consulting services of a marketing specialist to develop an AMCC marketing and communications strategy for Barbados and the OECS region, including specific actions to increase SME's access to services, (b) implement the marketing and communications strategy over the life of the project. (iii) The upgrade of the AMCC website to a more functional client-centered portal, and (iv) Support to the formal launch of the AMCC with a conference that includes experts and regional stakeholders to discuss key issues affecting ADR in the region. The conference will include content specifically targeted to SMEs.
- 3.2 **Component 2: Training to Improve Service Delivery Capacity (US\$80,000).** This component is intended to build capacity in ADR around the region and increase the rosters of experts that the Centre can call on when required. The component will finance (i) the design and delivery of training in arbitration and mediation for panel development (i.e. developing a cadre of experts to deliver arbitration and mediation services) in Barbados and the OECS. At least 50% of these trainees will be women. (ii) the training of trainers, who will improve AMCC's capacity to deliver training, at more affordable rates across the region. This will in turn increase AMCC's revenue generation capacity. All training will be gender sensitive. Costs will include logistics and travel, international expert fees, and subsidies for participants.
- 3.3 **Component 3: Client Relationship Management System (US\$35,300).** The AMCC is currently using the Daylite system to manage its clients. A more robust client relationship management system which facilitates case filing and management is now required. This component will finance the acquisition and installation of a client relationship management system and associated hardware. The AMCC is in talks with APEX to utilise the Curia system which will cost US\$20,000. This is the same software used by the Caribbean Court of Justice. The Centre is negotiating payment over two years and will continue to subscribe to Daylite (US\$150/annum). As such the project is expected to finance up to US\$15,000 in hardware, and US\$5,000 towards Curia.
- 3.4 **Component 4: Institutional and Legal Framework (US\$15,000).** This component will use counterpart resources (more specifically the legal expertise within AMCC's leadership team) to work closely with the Government of Barbados for the introduction of the updated Arbitration Bill in Barbados Parliament. CARICOM is considering an

UNCITRAL approved arbitration bill which was drafted by the IMPACT Justice Program. The bill addresses the main limitations of the existing legislation. The AMCC is supporting this bill, rather than duplicating it and will endeavour to introduce it as a private members' bill in Parliament following the general elections in Barbados, legally due by end May 2018. As all CARICOM countries are anticipated to adopt similar legislation, the passage of this bill would offer uniformity with OECS and other CARICOM countries. The AMCC is monitoring progress in other OECS jurisdictions and will support as and when needed. This component will also use counterpart resources to establish a regional network with ADR associations in the region including the BVI Arbitration Centre, the Jamaica International Arbitration Centre, the Trinidad and Tobago Dispute Resolution Centre and the Chamber of Conciliation and Arbitration in Haiti. Additionally, the AMCC will establish collaborative MOUs with other international centres including: the International Chamber of Commerce, Paris; the London Court of International Arbitration, London; the International Centre for Dispute Resolution, New York; the International Centre for the Settlement of Invest Disputes, Washington DC; the Royal Institute of Chartered Architects, London; the Centre for Effective Dispute Resolution, London; the Singapore International Arbitration Centre; and the Hong Kong International Arbitration Centre. These MOUs will facilitate access to knowledge, capacity building opportunities and markets.

3.5 **Component 5: Coordination, and Monitoring and Evaluation (US\$4,000).** AMCC's Director General will work closely with Compete Caribbean FCU's on the execution of the project including monitoring and evaluating progress towards achieving planned results. AMCC will also use the baseline data generated by the feasibility study, and AMCC's planned and actual service delivery levels to monitor and evaluate and report on its performance in terms of level of services delivered to businesses (disaggregated by size, gender of owner, etc.) and AMCC's progress towards financial sustainability targets. Compete will provide a template for status reports to the AMCC for this activity that will include pertinent information needed to update Convergence, including progress on components, sustainability and innovation and stories from the field.

3.6 The total estimated cost of the project is US\$288,300 of which US\$200,000 will be financed by the Compete Caribbean Partnership Facility.

Indicative Budget (in US\$)

Activity/Component	Description	IDB/CCPF Funding	Counterpart funding (In-kind)	Total Funding
Component 1: Business Strategy Formulation and Implementation	(i) An updated feasibility study and financial sustainability strategy	25,000	2,000	27,000
	(ii) The development and implementation of a branding strategy and marketing and communications plan	45,000	7,000	52,000
	(iii) The upgrade of the AMCC website	20,000	5,000	25,000
	(iv) Support to the formal launch of the AMCC	35,000	15,000	50,000
Sub-total Component 1		125,000	29,000	154,000
Component 2: Training to Improve Service Delivery Capacity	(i) The design and delivery of training in arbitration and mediation for panel development	35,000	15,000	50,000
	(ii) The training of trainers for the AMCC	20,000	10,000	30,000

Activity/Component	Description	IDB/CCPF Funding	Counterpart funding (In-kind)	Total Funding
Sub-total Component 2		55,000	25,000	80,000
Component 3: Client Relationship Management System	(i)Purchase of the Curia System for case filing and client management and hardware to support (up to US15,000 in hardware and \$5,000 to Curia) total cost of Curia is 20,000. And continued Daylite at \$150/annum	20,000	15,300	35,300
Sub-total Component 3		20,000	15,300	35,300
Component 4: Institutional and Legal Framework	(i) Introduction of updated Arbitration Bill to Parliament	0	5,000	5,000
	(ii)Establishment of MOUs with International Centres and a regional network	0	10,000	10,000
Sub-total Component 4		0	15,000	15,000
Component 5: Coordination, Monitoring and Evaluation	(i)Monitoring and evaluation of project progress	0	4,000	4,000
Sub-total Component 5		0	4,000	4,000
TOTAL		200,000	88,300	288,300

IV Executing agency and Execution Structure

- 4.1 The Compete Caribbean Partnership Facility (CCPF), approved under GN-2851, was jointly designed with donors to be a Bank Executed Program, through the CCPF's Facility Coordination Unit (FCU) established in COF Barbados. The Bank has demonstrated its ability to coordinate and motivate action across diverse stakeholders at both the national and regional levels. The execution of this TC will be carried out by the Bank through the Competitiveness and Innovation Division (IFD/CTI) in coordination with FCU. Project output indicators will be monitored following the Monitoring and Evaluation (M&E) framework of the CCPF. The project will be executed in coordination with AMCC.
- 4.2 The execution and disbursement period will be 24 months and the UDR will be IFD. The activities to be executed are included in the Procurement Plan (Annex III) and will be contracted in accordance with Bank policies as follows: (a) AM-650 for Individual consultants; (b) GN-2765-1 and Guidelines OP-1155-4 for Consulting Firms for services of an intellectual nature and; (c) The procurement of consulting services different from consultants will be carried out by IDB in accordance with Corporate Procurement Policy (GN-2303-20).

V Project Risks and Issues

- 5.1 The major risks to achieving the planned results of the project are (a) lower than expected demand for arbitration and mediation services outside of Barbados limiting AMCC's revenue generation capacity and financial sustainability; and (b) delays in introducing the revised Arbitration bill, due either to the usually packed legislative agenda or government's preoccupation with establishing an agenda after the

2018 elections, thus limiting the capacity of AMCC to reduce the time and cost associated with enforcing contracts⁶.

- 5.2 The project includes the updating of the 2014 feasibility study and development of a sustainability strategy which will provide AMCC with more accurate revenue projections and will allow it to choose a business model that matches projected operating costs and revenue. AMCC also enjoys strong support from the private sector associations and influential leaders who lobby the government on any actions important to the success of AMCC. In addition, while the passage of the legislation will facilitate more efficient Arbitration, the work of the Centre is not reliant on this legislation and therefore the project is not reliant on the passage of the legislation.
- 5.3 AMCC's leadership team, comprising professionals with significant experience relevant to the project, will provide technical expertise and make a significant in-kind contribution to the project. To minimize the risk of delays, FCU will monitor the availability of members of the leadership team and the extent to which they are providing these inputs in a timely manner.

VI Exceptions to Bank Policy

- 6.1 No exception to Bank Policy is required for this TC.

VII Environmental and Social Strategy

- 7.1 Given the nature of the program, there are no associated environmental or social risks. Based on the Environment and Safeguards Compliance Policy (OP-703) this operation is classified as "C" (See [Safeguard Policy Filter Report](#) and [Screening Form](#)).

Required Annexes:

- Annex I: [Letter of Request from the client](#)
- Annex II: [Results Matrix](#)
- Annex III: [Terms of Reference](#)
- Annex IV: [Procurement Plan](#)

⁶ General elections are constitutionally due in Barbados by May 2018.

CAPACITY BUILDING FOR BARBADOS IN ALTERNATIVE DISPUTE RESOLUTION SYSTEMS

BA-T1056

CERTIFICATION

I hereby certify that this operation was approved for financing under the **Compete Caribbean Partnership Facility (CCP)** through a communication dated May 8, 2018 and signed by Goro Mutsuura (ORP/GCM). Also, I certify that resources from said fund are available for up to **US\$200,000** in order to finance the activities described and budgeted in this document. This certification reserves resource for the referenced project for a period of four (4) calendar months counted from the date of eligibility from the funding source. If the project is not approved by the IDB within that period, the reserve of resources will be cancelled, except in the case a new certification is granted. The commitment and disbursement of these resources shall be made only by the Bank in US dollars. The same currency shall be used to stipulate the remuneration and payments to consultants, except in the case of local consultants working in their own borrowing member country who shall have their remuneration defined and paid in the currency of such country. No resources of the Fund shall be made available to cover amounts greater than the amount certified herein above for the implementation of this operation. Amounts greater than the certified amount may arise from commitments on contracts denominated in a currency other than the Fund currency, resulting in currency exchange rate differences, represent a risk that will not be absorbed by the Fund.

Certified by:

<u>Original Signed</u>	<u>05/30/2018</u>
_____ Sonia M. Rivera Chief Grants and Co-Financing Management Unit ORP/GCM	_____ Date

Approved by:

<u>Original Signed</u>	<u>06/04/2018</u>
_____ Gonzalo Rivas Division Chief Competitiveness and Innovation Division IFD/CTI	_____ Date