

ANNEX II: TERMS OF REFERENCE

SUPPORT TO THE BAHAMAS TO PREPARE THE REGULATIONS SUPPORTING CERTAIN INTELLECTUAL PROPERTY LEGISLATION CONSISTENT WITH THE CARIFORUM-EU ECONOMIC PARTNERSHIP AGREEMENT

1. BACKGROUND INFORMATION	2
1.1. Partner country	2
1.2. Contracting Authority	2
1.3. Country background	2
1.4. Current situation in the sector	2
1.5. Related programmes and other donor activities	3
2. OBJECTIVE, PURPOSE & EXPECTED RESULTS	3
2.1. Overall objective	3
2.2. Purpose	3
2.3. Results to be achieved by the Contractor	4
3. ASSUMPTIONS & RISKS	4
3.1. Assumptions underlying the project	4
3.2. Risks	4
4. SCOPE OF THE WORK	4
4.1. General	4
4.2. Specific work	5
4.3. Project management	5
5. LOGISTICS AND TIMING	6
5.1. Location	6
5.2. Start date & Period of implementation of tasks	6
6. REQUIREMENTS	5
6.1. Staff	5
6.2. Office accommodation	6
6.3. Facilities to be provided by the Contractor	6
6.4. Equipment	6
7. REPORTS	6
7.1. Reporting requirements	6
7.2. Submission and approval of reports	8
8. MONITORING AND EVALUATION	7
8.1. Definition of indicators	7
8.2. Special requirements	7

1. BACKGROUND INFORMATION

1.1 Partner country

The Caribbean Forum of the Organisation of African, Caribbean and Pacific States (CARIFORUM).

1.2 Contracting Authority

The Caribbean Community Secretariat will be the Contracting Authority

1.3 Country background

The Caribbean Forum (CARIFORUM) refers to the Caribbean States which are parties to the Georgetown Agreement establishing the Group formerly known as the African, Caribbean and Pacific States, and now referred to as the Organisation of African, Caribbean and Pacific States. CARIFORUM is comprised of the following States: Antigua and Barbuda, The Bahamas, Barbados, Belize, Cuba, Dominica, The Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago. All CARIFORUM States with the exception of Cuba, are parties to an Economic Partnership Agreement concluded between themselves as one Party and the European Union (EU) and its Member States as the other Party.

The CARIFORUM-European Union Economic Partnership Agreement ('EPA') was signed in October 2008 and is currently being provisionally applied by the Parties since December 29, 2008. The EPA contains legally binding commitments in relation to the preferential trade between the Parties in goods, services and investment and trade related issues. It has been notified to the WTO as (a) a Free Trade Agreement (FTA) which is in compliance with the provisions of Article XXIV of the General Agreement on Tariffs and Trade (GATT) 1994 and (b) an Economic Integration Agreement (EIA) which is in compliance with the provisions of Article V of the General Agreement on Trade in Services (GATS).

The EPA is a tailor-made partnership to suit specific regional circumstances. It takes into account the socio-economic circumstances in the Caribbean, by offering asymmetric rights and obligations, specific safeguards, as well as, long transition periods for taking on commitments. *The CARIFORUM Directorate has the overall responsibility of coordinating the efforts of the contracting CARIFORUM States to implement the provisions of the EPA. Specifically, the Economic Partnership Agreement Unit of the Directorate, was established to facilitate the implementation of the EPA. This Consultancy will assist the Economic Partnership Agreement Unit in providing support to CARIFORUM States.*

1.4 Current situation in the sector

CARIFORUM States were required upon provisional application of the EPA, to amend or enact legislation where it did not exist to address their EPA obligations. Similarly, CARIFORUM were expected to make the necessary legislative interventions to be better positioned to take advantage of the benefits contemplated by the EPA.

The fact that the EPA has been signed does not automatically give its provisions the force of law domestically. The legal system of the overriding majority of CARIFORUM States is such that the EPA would not have force domestically unless there is legislative intervention by the law-making body of those States giving effect to its various provisions. Even where an international agreement is given the force of law domestically, there is yet the need to flesh out the provisions of the Agreement and discrete pieces of legislation may be necessary, either to build on existing legislation or to regulate the subject-matter for the first time.

A vast majority of the CARIFORUM States have singled out legislative drafting as an area in which support is needed to not only address CARIFORUM-EU EPA obligations, but also to

better situate the intended beneficiaries to take advantage of the benefits contemplated by the CARIFORUM-EU EPA.

The regulatory and policy changes required for EPA implementation in CARIFORUM countries are at varying degrees of completion. Years after the agreement was signed, no State has fully completed all the regulatory and policy changes required for implementation. The reason for this is clear. CARIFORUM States are struggling with the financial and human resource capacity required to undertake such a broad international legal agreement. Added to this, legislative requirements inevitably take time due to the usually lengthy process of passing legislations through the parliamentary process. In this regard, the consultancy targets the drafting of certain regulations or the amendment of such existing regulations to comply with the obligations of the Bahamas, with the CARIFORUM-EU EPA in the area of intellectual property rights.

1.5 Related programmes and other donor activities

- CARTFUND Project GA 134/Reg. Establishment of a Unit in the CARICOM Secretariat to facilitate Implementation of the CARIFORUM-EU EPA (GA 134/Reg.) under which Model Bills treating with Entry and Temporary Stay of EU Service Suppliers; International Maritime Transport; Telecommunications Services and Interconnection related to Telecommunication Services were prepared.
- 11th EDF Support the Bahamas to review legislation for consistency with the CARIFORUM-EU Economic Partnership Agreement and relevant WTO provisions in the areas of antidumping, intellectual property, competition, temporary entry, sanitary and phytosanitary measures, trade support and standards and foreign investment.

2. OBJECTIVE, PURPOSE & EXPECTED RESULTS

2.1 Overall objective

The overall objective of the Project is to provide the Bahamas with legal drafting support to address select provisions of the CARIFORUM-EU Economic Partnership Agreement (EPA) in domestic law.

The specific objective is to contribute to the effective implementation of the CARIFORUM-EU Economic Partnership Agreement.

2.2 Purpose

The purpose of this contract is to support the Bahamas in the drafting of certain regulations, or the amendment of such existing regulations, to comply with the obligations of the Bahamas, under the CARIFORUM-EU EPA in the area of intellectual property rights.

2.3 Results to be achieved by the Contractor

- Draft regulations or amended existing regulations for certain pieces of intellectual property legislation of the Bahamas, ensuring their consistency with the CARIFORUM-EU EPA. The list of the main pieces of legislation for the amendment/drafting of regulations consistent with the CARIFORUM-EU EPA in intellectual property rights are:
 - Geographical Indications,
 - New Plant Varieties; and
 - Layout Design (Topographies) of Integrated Circuits

3. ASSUMPTIONS & RISKS

3.1 Assumptions underlying the project

- There is a suitable Consultant to undertake the work.

3.2 Risks

- The Consultant is unable to submit deliverables in a timely manner.
- Feedback from the Bahamas is not provided in a timely manner.

4. SCOPE OF THE WORK

4.1 General

4.1.1. Description of the assignment

The scope of work for the assignment is understood to cover all activities necessary to accomplish the stated Result of the Assignment, whether or not a specific activity is cited in these terms of reference. In that regard, the Consultant will review the relevant draft legislation and Acts of the Bahamas in the given areas of intellectual property rights to determine the consistency with CARIFORUM-EU EPA and for each piece of legislation draft or amend regulations for the implementation of this legislation.

4.1.2. Geographical area to be covered

The CARIFORUM Region: The Bahamas.

4.1.3. Target group

The Bahamas.

4.2 Specific work

The consultant will –

- (i) Hold a virtual briefing with EPA Implementation Unit of the CARICOM Secretariat on the objective, activities, expected outputs and any other issues related to the execution of the assignment that require clarification. Within **seven (7) days** of the initial briefing meeting with the CARICOM Secretariat, submit an inception report summarizing the consultant's understanding of the assignment and including a schedule for the implementation of the assignment.
- (ii) Review the CARIFORUM-EU EPA to appreciate the requirements of the provisions relating to the specific intellectual property rights.
- (iii) Liaise with representatives of the Bahamas to determine the available capacities of the Bahamas to implement the relevant obligations.
- (iv) Review relevant draft legislation/Acts of the Bahamas in the specified area of intellectual property rights to determine the consistency with CARIFORUM-EU EPA and amend/draft regulations for their implementation in accordance with the required obligations of the CARIFORUM EU EPA and the capacity of the Bahamas. The main pieces of draft or enacted legislation for review are in the areas of:
 - Geographical Indications,
 - New Plant Varieties; and
 - Layout Design (Topographies) of Integrated Circuits

- (v) Prepare and Submit a Draft Final Report, identifying legislation addressed, its compliance with the CARIFORUM EU EPA obligations and providing the draft regulations required.
- (vi) Participate in virtual consultations with the Bahamas on the Draft Final Report, including presenting the Draft Final Report and receiving and recording comments.
- (vii) Prepare and submit a Final Report to the EPA Implementation Unit of the CARICOM Secretariat and the Bahamas as the case may be, addressing the comments and incorporating the agreed modifications from the consultations.

4.3 Project management

4.3.1 Responsible body

The EPA Implementation Unit of the CARIFORUM Directorate will be responsible for managing the project.

4.3.2 Management structure

The **Director General** of the CARIFORUM Directorate will have oversight responsibilities for the Project. The Senior Coordinator for Intellectual Property Science and Technology Issues from the CARICOM Single Market and Trade Directorate will be the Project Manager, assisted in the day-to-day administration of the Project by staff of EPA Implementation Unit.

4.3.3 Facilities to be provided by the Contracting Authority and/or other parties

Not applicable.

5 LOGISTICS AND TIMING

5.1 Location

The project will be executed from the home base of the Contractor. The operational base for CARIFORUM is Georgetown, Guyana. The Consultant will maintain on-going contact, by electronic communication with the designated officer within the Secretariat with responsibility for the management of the project.

5.2 Start date & Period of implementation of tasks

The intended start date is **July 2025** and the period of implementation of the contract will be **four (4) months** from this date. Please see Articles 19.1 and 19.2 of the Special Conditions for the actual start date and period of implementation.

6 REQUIREMENTS

6.1 Staff

Note that civil servants and other staff of the public administration of the partner country, or of international/regional organisations based in the country, shall only be approved to work as experts if well justified. The justification should be submitted with the tender and shall include information on the added value the expert will bring as well as proof that the expert is seconded or on personal leave.

6.1.1 Key experts

All experts who have a crucial role in implementing the contract are referred to as key experts. The profiles of the key experts for this contract are as follows:

Key expert 1: Team Leader -

Qualifications and skills

- (i) A Bachelor of Laws Degree from a reputable University.
- (ii) Certified training in the area of legislative drafting
- (iii) Excellent written and oral communication skills in English

General professional experience

- (iv) Attorney-at-law with at least ten (10) years of experience.
- (v) At least five (5) years' experience in Legislative Drafting.
- (vi) Practical experience in undertaking consultative activities involving the review of legislation of CARIFORUM States.

Specific professional experience

- (vii) Experience working with the CARIFORUM-EU EPA
- (viii) Experience in the interpretation and analysis of treaties and identification of issues related to the specific interests of developing countries
- (ix) Experience working with the laws of the Bahamas would be an asset
- (x) Experience with International Trade Law will be an asset.

6.1.2 Other experts, support staff & backstopping

The costs for backstopping and support staff, as needed, must be included in the tenderer's financial offer.

6.2 Office accommodation

Office accommodation for each expert working on the contract is to be provided by the Contractor.

6.3 Facilities to be provided by the Contractor

The Contractor shall ensure that experts are adequately supported and equipped. In particular, it must ensure that there is sufficient administrative, secretarial and interpreting provision to enable experts to concentrate on their primary responsibilities. It must also transfer funds as necessary to support their work under the contract and to ensure that its employees are paid regularly and in a timely fashion.

6.4 Equipment

No equipment is to be purchased on behalf of the Contracting Authority / partner country as part of this service contract or transferred to the Contracting Authority / partner country at the end of this contract. Any equipment related to this contract which is to be acquired by the partner country must be purchased by means of a separate supply tender procedure. The Contracting Authority will provide the Contractor with copies of/access to the pieces of legislation in Attachment I.

7 REPORTS

7.1 Reporting requirements

The Contractor will submit the following reports in English electronically:

- **Inception Report-** of maximum 10 pages to be produced within seven (7) working days after the Inception meeting. In the report the Contractor shall summarize the consultant's understanding of the assignment including a schedule for the implementation of the assignment. This report will also capture agreed timelines, approach and any potential changes to project design that are discussed at the Inception meeting. The Contractor should proceed with the work unless the Contracting Authority sends comments on the inception report within one week of presentation of the inception report.
- **Draft Final Report** providing the results of the review of relevant legislation of the Bahamas in the specified area of intellectual property rights to determine the consistency with CARIFORUM-EU EPA and for each piece of draft legislation or Act, the regulations required for their implementation in accordance with the CARIFORUM-EU EPA. The Draft Final Report shall be submitted no later than **one month** before the end of the period of implementation of tasks; and
- **Final Report** with the same specifications as the draft final report, incorporating any comments received from the parties on the Draft Final Report. The deadline for sending the final report is ten (10) days after receipt of comments on the draft final report. The report shall contain a sufficiently detailed description of the recommendations to support an informed decision by the Bahamas. The detailed analyses underpinning the recommendations may be presented in annexes to the main report. The final report must be provided along with the corresponding invoice.

7.2 Submission and approval of reports

The report referred to above must be submitted to the Project Manager identified in the contract. The Project Manager or the designated Officer is responsible for approving the Reports. Support in reviewing the Reports will be provided by the National EPA Coordinator of the Bahamas and the EPA Implementation Unit of the CARIFORUM Directorate.

8 MONITORING AND EVALUATION

8.1 Definition of indicators

At the level of the contract of which this Terms of Reference forms an integral part, the briefings and reports shall be the basis on which the performance is monitored and evaluated. Their timely delivery and quality will be monitored closely by the EPA Unit of the CARIFORUM Directorate.

The following criteria shall be used to assess the performance of the Contractor:

- **Quality of output documents:** The quality of output documents shall be judged by their clarity and the depth to which they comprehensively cover the subject.
- **Format:** These reports shall be completed in the standard formats used by the EU.
- **Meeting of deadlines** for outputs.

8.2 Special requirements

None foreseen.