

TC ABSTRACT

I. Basic Project Data

▪ Country/Region:	REGIONAL/Regional
▪ TC Name:	Managing the Legal Defense of the State Against Patrimonial Claims: a government function to improve fiscal sustainability.
▪ TC Number:	RG-T3226
▪ Team Leader/Members:	MOSQUEIRA MEDINA, EDGARDO (IFD/ICS) Team Leader; KAUFMANN, JORGE (IFD/ICS) Alternate Team Leader; FITZPATRICK, SILVANA VALDIVIESO (IFD/ICS); MAHFOUZ, GIOVANNA L. (IFD/ICS)
▪ Taxonomy:	Client Support
▪ Number and name of operation supported by the TC:	N/A
▪ Date of TC Abstract:	30 Apr 2018
▪ Beneficiary:	All IDB borrowing countries
▪ Executing Agency:	INTER-AMERICAN DEVELOPMENT BANK
▪ IDB funding requested:	\$ 150,000.00
▪ Local counterpart funding:	\$ 0.00
▪ Disbursement period:	24 months
▪ Types of consultants:	Individuals
▪ Prepared by Unit:	Institutionl Capacity of State
▪ Unit of Disbursement Responsibility:	Institutions for Development
▪ TC included in Country Strategy (y/n):	No
▪ TC included in CPD (y/n):	No
▪ Alignment to the Update to the Institutional Strategy 2010-2020:	Institutional capacity and rule of law

II. Objective and Justification

- 2.1 The objective of this TC is to support the borrowing member countries in their efforts to strengthen the effectiveness of their systems of government legal defense against patrimonial claims, in order to control and manage potential fiscal risks and improve efficiency in the management of legal affairs. This objective will be achieved through: (a) deepening the analysis of governments' patrimonial contingencies originated in legal claims, in order to control and manage potential fiscal risks, as well as about good international practices on this topic, to provide solid evidence about the risks that the current institutional arrangements pose to fiscal sustainability; (b) strengthening the capacities of the Legal Defense of the State (LDoS) agencies to put in place methodologies to identify, assess and manage potential patrimonial risks originated in legal claims against the State, as well as to set prevention, alternative dispute resolution and judicial defense mechanisms; and (c) strengthening the organizational, functional and operation design of LDoS agencies.
- 2.2 High number of lawsuits against the State shows a poor and unpredictable legal environment which in turns affects negatively the business climate and the country risk perception. LDoS systems present a wide variety in quantity and denomination. The highest authorities of these systems are usually the procurator, general counsel or president of the defense council of the State, who have under them a unit that assumes directly the judicial representation in the claims issued or received by the State. LDoS is an important public function which its reform is yet to be implemented in the region; so that it becomes, in addition, of good quality, effective and efficient. Its inefficiencies are related to institutional weaknesses of the agencies responsible for the LDoS,

shortcomings in organization and coordination among the different areas in charge of the defense, the absence of unified criteria to face lawsuits and the low use of alternative resolution mechanisms. A study for LAC elaborated almost five years ago proposes a set of policies to improve the management of the “legal defense cycle”, including managerial arrangements for better control of fiscal contingencies, improved effectiveness of State Defense in the Courts, better identification and prevention of legal risks, efficiency and effectiveness in strategies and management of cases, and strengthen action to recover state assets. Despite the importance of these subjects, little has been done to determine in greater detail the size of the problem, to analyze the practices in other countries, and in addition, the most recent studies in this topic have information of more than five years old. Reforms in this area are necessary, and policy dialogue and exchange of experiences have proven to be powerful tools in practice to make aware policy makers on the need for reforms and to identify the key elements in the design of these reforms.

III. Description of Activities and Outputs

- 3.1 **Component 1: Lessons Learned from Strengthening Legal Defense of the State** throughout the legal defense cycle. will cover the whole legal defense cycle and finance: (i) A study of good practices of LDoS agencies across the world, considering implications on fiscal benefits (including cost savings), better contingent liabilities and fiscal risk management. The study will consider the cases of at least one extra-regional OECD country ; and Colombia and Chile, which are concluding programs of institutional strengthening with the Bank’s support; (ii) An applied analysis of the characteristics of the institutional arrangements of the LDoS available in selected countries of LAC (in addition to Colombia and Chile, where programs have been developed recently and whose lessons learned will be very useful, it would include countries with information available to the respect , such as Argentina, Brazil, Costa Rica, Mexico, Panama, Peru, and one Caribbean country); (iii) A brief prescriptive paper with recommendations of areas of institutional reform to enhance the legal defense cycle and strengthen LDoS agencies in the Region; and (iv) at least one dissemination activity of the paper, to stimulate policy dialogue and knowledge exchange.
- Component 2: Support for reforms on Legal Defense of the State Agencies in LAC** it will focus on the agencies and finance: (i) the preparation of in depth and comprehensive diagnostics (including institutional management capacities) on three LAC countries (including -at least one of the Caribe) that have shown a special interest in this topic, during the previous stages of execution of this TC; and (ii) their action plans for strengthening LDoS agencies, including strategic management and communication plans for their implementation, which should imply reductions of contingent liabilities and a better management of fiscal risks. These action plans will be carried out under strict collaboration with the LDoS agencies, which will allow their adequate customization and sense of ownership of them. It is expected to continue working with some of these countries in this area through the instruments that the Bank offers to support the Region countries.
- 3.2 **Component I: Lessons Learned from Strengthening Legal Defense of State Agencies.** It will cover the whole legal defense cycle and finance:
- 3.3 **Component II: Support for reforms on Legal Defense of State Agencies in LAC.** It will focus on the agencies and finance.

IV. Budget

Indicative Budget

Activity/Component	IDB/Fund Funding	Counterpart Funding	Total Funding
Lessons Learned from Strengthening Legal	\$ 70,000.00	\$ 0.00	\$ 70,000.00

Defense of State Agencies.			
Support for reforms on Legal Defense of State Agencies in LAC.	\$ 80,000.00	\$ 0.00	\$ 80,000.00

V. Executing Agency and Execution Structure

- 5.1 Inter-American Development Bank (IDB) Institutions for Development Sector through the Innovation in Citizens Services Division (IFD/ICS).
- 5.2 Inter-American Development Bank (IDB) through the Innovation in Citizens Services Division (IFD/ICS).

VI. Project Risks and Issues

- 6.1 Risk: (i) Lack of countries' interest, ownership of and commitment with the reforms. Mitigation: The team will verify the interest of the countries, documenting with at least letters from three countries the interest of these countries to participate in the main activities of the TC. Risk: (ii) Some of the activities are delayed due to the difficulty of identifying in the countries the institutions that assume or represent the role of LDoS agencies, or for the lack of coordination between main actors that participate in the legal defense cycle in each country. Mitigation: LDoS agencies and other relevant actors of the legal defense cycle are being identified.

VII. Environmental and Social Classification

- 7.1 The ESG classification for this operation is "undefined".