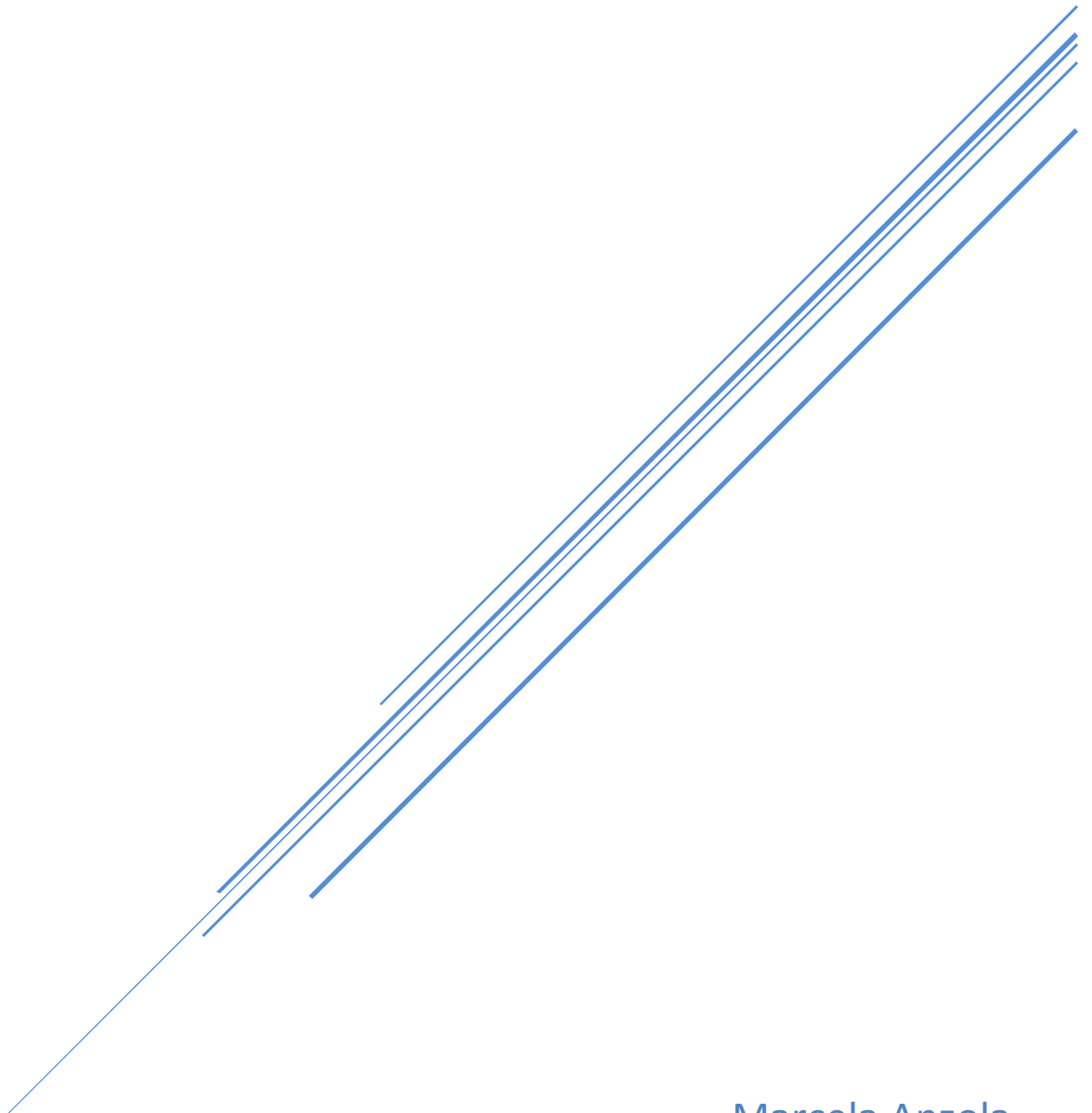


OMNIBUS LAW FOR PRIVATE SECTOR DEVELOPMENT IN SURINAME

DRAFT



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OMNIBUS FOR BUSINESS LAW: LEGAL EXPLANATORY NOTES

INTRODUCTION

The objective of this consultancy was to support the preparation and consultation process of a draft Omnibus Bill for improving investment climate in Suriname.

The time frame for this assignment was 20 working days, and included one (1) trip to Suriname. The work plan was prepared in accordance with the previous prepared white paper: “Framework for Private Sector Development”.

Over the course of this consultancy the following deliverables were submitted:

- a) a draft omnibus law to support a workshop discussion and first round of consultations
- b) a revised bill benefiting from the workshop discussion and first round of consultations
- c) a final draft with commentaries

The consultant conducted a two-day workshop with government officials and stakeholders.

The sources for this report are: a) the commentaries of stakeholders during the workshop; b) legal research carried out by the consultant.

Finally, I would like to express my sincere thanks to the Competitiveness Unit of Suriname and the Inter-American Development Bank for their support over the duration of this assignment. I also like to thank the private and public sector institutions whom I consulted and interviewed over the course of this consultancy.

BACKGROUND

Regardless of Suriname's apparent success, different assessments and rankings coincide in showing that the country's investment climate should improve to support sustainable development.

An overlapping of policies and laws coming from opposite economic models are affecting negatively Suriname's business climate. The tension between the current policy and the existing legislation results in the failure to achieve government goals. As a result of legislative lags and reluctance to enact new legislation, existing business legislation has become a bottleneck and a grave impediment to Suriname's economic progress.

Although the Government of Suriname has started to implement some policy measures to improve the business climate, there is a need for a single comprehensive strategy to encourage investment, innovation and entrepreneurship.

This strategy has to be based on a clear definition of the basic requirements for Suriname's competitiveness and it has to be focused primarily on the legal issues concerning the relations between government and individuals: business facilitation, protection of investors (national and foreign), protection of intellectual property rights, competition law and consumer protection. It is deemed that an Omnibus law that encompasses all these elements, would contribute to integrate and coordinate them in a comprehensive legal body and to facilitate business.

This paper focuses on the analysis and basic requirements to implement an Omnibus Law to improve business climate in Suriname. The first section analyses the omnibus law concept as a legislative tool. The second section defines the basic requirements of a proposal for the Omnibus Law. Finally, there are some commentaries concerning future actions and an Annex with the draft law.

1. OMNIBUS LAW: CONCEPTUAL APPROACH AND LEGISLATIVE PROCEDURE

1.1 CONCEPTUAL APPROACH FOR DRAFTING AN "OMNIBUS LAW"

Suriname's Development Plan and the competitiveness policy are based on an open economy model. However, existing laws and regulations were enacted under the economic paradigm of a closed economy, where state intervention through subsidies and protectionism played a central role.

This overlapping of policies and laws coming from opposite economic models affects negatively Suriname's business climate. The tension between the policy and the existing legislation results in the failure to achieve government goals. Since the government cannot guarantee an adequate and coherent institutional framework, the necessary trust between government and entrepreneurs – both local and foreigners – cannot be established. This suggests the need for substantial legislative reforms in order to accomplish the policy goals.

As the constituent elements of a sound business climate are not independent, the design of any strategy to improve Suriname's business climate requires to take a holistic approach that takes into account every interaction; every touch-point among those elements.

This holistic approach can be concretized through a comprehensive law that amends the existing legislation and disentangles the obstacles to improve Suriname's business climate. This can be reached through an omnibus law, a legislative instrument implemented in other countries facing similar situations.

"Omnibus Law" is a commonly used expression. In general the term Omnibus, derived from Latin, means "for everything". Omnibus in legal terms means to deal with or encompass many objectives at once. From the legislative perspective, an Omnibus Law contains more than one substantive matter or several minor matters that have been combined into one bill, and is accepted in a single vote by a legislature. An Omnibus Law has one basic principle or purpose which ties together all the proposed enactments and thereby renders the Law intelligible for parliamentary purposes¹

One of the most common reasons for introducing an Omnibus Law is to bring together in a single bill all the legislative amendments resulting from a policy decision to facilitate parliamentary debate.

¹ O'Brien, Audrey and others, House of Commons Procedure and Practice, 2nd Ed. (Ottawa: Editions Yvon Blais, 2009), page 724

In the United States examples of Omnibus Laws include trade and competitiveness bills, immigration bills, reconciliation bills, combined appropriations bills, and private relief and claims bills. Omnibus legislation is routinely used by the United States Congress to group together the annual budgets of all departments in an omnibus spending bill. In Canada it is not known exactly when the first omnibus bills appeared, but as may be seen from the introduction of a private bill to confirm two separate railway agreements, the practice seems to go back to 1888. A number of omnibus bills have been introduced and passed without any procedural objection to their form being made by Members.² One famous omnibus bill became the Criminal Law Amendment Act, 1968-69, a 126-page, 120-clause amendment to the Criminal Code of Canada, which dealt with issues as diverse as homosexuality, prostitution, abortion, gambling, gun control and drunk driving. In the Republic of Ireland the Second Amendment to the constitution was an omnibus constitutional law, enacted in 1941, that made many unrelated changes to the state's fundamental law. In Turkey examples of Omnibus laws include a labor law (2011) and a law to ban alcohol sales online (2011).

Omnibus laws have also been a legislative option in those countries experiencing political and economic changes and have the need to update efficiently and in a comprehensive way the existing legislation. This was the case of the Philippines' Omnibus Investments Code of 1987 (Executive Order No. 226, as amended) and a similar approach was also discussed in Vietnam after its accession to the WTO (World Trade Organization)³ and also in other countries of the Eastern Europe and Asia.⁴

1.2 PROCEDURAL ISSUES

Although there is enough evidence to support the convenience of an Omnibus law encompassing competitiveness- related issues, Suriname's policy makers have to pay attention on two main issues: first, the compatibility of the existing legislative procedures with the omnibus law as a new way to legislate; and second, the extent and scope of the omnibus law.

Concerning the first issue, even though Suriname's procedural regulations to draft and enact laws do not include expressly the concept of the omnibus law, they do not exclude this possibility either. On the other hand, the possibility of promulgating a comprehensive law regulating a certain issue is totally in line with the constitutional powers of the National Assembly, as the highest state power organ and the sole legislative body. Without constitutional or legal prohibition, both the government and the National Assembly have the capacity to draft, approve and enact such a law.

² <http://www.parl.gc.ca/marleaumontpetit/DocumentViewer.aspx?Sec=Ch16&Seq=4&Language=E>

³ See for example: Manh, Ngo Duc. 2005, Omnibus Law-Making Technique and Its Application to the Works of the National Assembly. Published online in: http://siteresources.worldbank.org/INTRANETTRADE/Resources/WBI-Training/288464-1139428366112/Session3-NgoDucManh_OMNIBUS_LAW_E_new.pdf

⁴ See: World Bank, 2010, Investment Law Reform. Handbook for Development Practitioners.

With regard to the scope and extent of the proposed Omnibus Law it is necessary to ensure the coherence and consistency of the different elements to be included in the law.

Even though the omnibus law, by definition, encompasses different laws, it does not mean that any law can be part of it. Laws to be packed in an omnibus law have to be related to a significant extent. They shall be deemed to be related because they are necessary to achieve a defined and common objective, they should be like part of a family.

In the case of Suriname's omnibus proposal the point of contact among the different laws is the improvement of business climate in the country. As a result, only those laws that serve this goal are susceptible to be included there.

In this context, those laws concerning business facilitation, investors protection (both national and foreigners), intellectual property protection, competition and consumer protection, have been deemed as basic requirements for the improvement of business climate in Suriname.⁵

⁵ Different reports and analysis have pointed out the need of legislative amendments concerning these issues.

2. BASIC REQUIREMENTS AND SCOPE OF THE OMNIBUS LAW

The scope of the Suriname’s omnibus law proposal has been defined, as mentioned above, paying attention to those aspects that are deemed as basic requirements to improve Suriname’s business climate.

They have been grouped in four sub-groups that reflect different areas of the strategy designed to accomplish the competitiveness-related goals (four axes strategy): a) investment protection; b) intellectual property rights protection; c) competition law and consumer protection; and d) business facilitation. The architecture of the law is summarized in detail in figure 1.

Figure 1
Architecture of the Omnibus Law

Investments protection	Intellectual property rights <ul style="list-style-type: none">• Copyrights• Industrial Property• Traditional Knowledge
Competition and Consumer Protection	Business Facilitation <ul style="list-style-type: none">• Secured Transactions• Trade Registry• E-transactions• Administrative Principles and Procedures• Alternative Dispute Resolution

2.1 INVESTMENT LAW

Investment laws help to implement government policy on private investment (domestic or foreign) and they are also an important tool for supporting investment generation. Investment-related regulations can be centralized in a single law⁶ or can be regulated in different laws, they can also include foreign and national investors, or only foreign investors. It depends on the distinct policy needs of each country. There is no best practice in this area and there are valid arguments for each of these options. However, what really matters is that the investment law should not create different treatment standards for domestic and foreign investors.⁷

In Suriname it is particularly important to define first, if the investment-related regulations should be included in a single document and second, in case of a positive answer to the latter question, if the law should include both foreign and national investors. As a matter of fact, it is important to mention that investment-related regulations in Suriname have been traditionally centralized in a single document that has included both national and foreign investors (Investment Law, 2001).

However, this law focuses primarily on investment incentives (exemptions, tax holidays, reduction or exemptions of import duties for company assets, sales tax exemption and payroll tax deduction), and contains no specific provisions on the regime governing the admission and protection of foreign investments in Suriname.

Suriname's policy makers should evaluate the convenience to grant incentives and, if they decide to do it, they should consider whether to regulate them in an investment law. Indeed, although investment laws of many countries include incentive provisions, it is advisable to organize incentives through other pieces of legislation.

On the other hand, it is also important to evaluate the pros and cons of incentives. According to the World Bank,⁸ tax incentives are justified if they correct market inefficiencies or generate positive externalities. However, potential negative consequences from tax incentives include erosion of the tax base (tax revenue from investments that would have taken place even without tax incentives is lost), reduced efficiency, and increased welfare costs (tax burden is shifted to immobile tax bases such as labor). These undermine the tax system by increasing the tax burden on non-qualifying activities and encouraging rent-seeking activities. In these cases entrepreneurship is devoted to obtain and maintain subsidies rather than innovate and improve production.

⁶ France, Singapore, and the United States are interesting examples of countries that do not have an investment law and yet attract large levels of FDI

⁷ See: World Bank, 2010, Investment Law Reform. Handbook for Development Practitioners.

⁸ See: World Bank, 2010, Investment Law Reform. Handbook for Development Practitioners.

2.2 INTELLECTUAL PROPERTY RIGHTS (IPRS)

IPRs is an incentive to invest in research and development and leads to the creation of innovative products and processes.

The draft covers: a) patent and copyright laws, which give the owner exclusive right to exploit the innovation for a pre-determined period of time; and b) the protection of traditional knowledge, which encompasses the knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.⁹

While the proposal on patents and copyrights seek to amend existing outdated laws, the proposal regarding traditional knowledge intends to promote and develop a wholly new area in Suriname. The proposal is based on the idea that IPRs are not only a matter of concern to large firms and multinational enterprises with significant research and development programs, but also to small- and medium-sized enterprises, communities, organized groups and individuals.

In order to ensure an effective implementation of these amendments the draft includes the creation of an authority that shall regulate and enforce IPRs instruments. However, Suriname's policy makers shall have to take into account that the creation of an authority is not enough if it does not have the resources and political support to do the job properly. Criteria that might be considered shall include the status of the authority within the government structure and the institutional arrangements for insulating enforcement decision-makers from political pressures or influence.

2.3 COMPETITION LAW AND CONSUMER PROTECTION

The competition law's main objective is to prohibit agreements or practices that restrict free trading and competition between businesses. These include in particular the repression of cartels, the banning of abusive behavior by a firm dominating a market or the control of anti-competitive practices that tend to lead to such a dominant position. In order to reach this objective the draft include tools to supervise mergers and acquisitions, and to control anticompetitive agreements and the abuse of market dominance. Transactions that are considered a threat to the competitive process are prohibited altogether, or approved subject to "remedies" such as an obligation to divest part of the merged business or to offer licenses or access to facilities to enable other businesses to compete.

⁹ See: <http://www.wipo.int/tk/en/tk/>

The draft on consumer protection, in turn, includes several policy tools available to address marketplace problems. These range from those that focus on consumer empowerment (demand-side measures), such as enhancing the quality or type of information provided for products and ensuring that consumer contracts are not unfair, to those that focus on modifying firm behavior (supply side measures), such as mandating product standards or encouraging the development of codes of conduct.

As in the case of IPRs, an effective policy implementation requires also the existence of an independent authority with sufficient resources and political support to do the job properly. The draft includes a Competition and Consumer Protection Authority. It is intended to challenge vested interests, such as private firms with monopolistic positions in the market or state-owned firms that fall under the regulatory authority of other parts of the government.

It pays attention to the fact that Suriname's economy is characterized by a strong presence of public enterprises. Policy makers shall evaluate the need of a strong political commitment to support the activity of the Authority. In the absence of such commitment, efforts to promote fair competition are likely to fail.

2.4 BUSINESS FACILITATION

Business facilitation is defined as a set of transparent, non-discriminatory and predictable administrative procedures that apply to the lifetime of the entrepreneurial activity. These principles are concretized through the simplification of business-related procedures, harmonized requirements, the access to courts or other government-sponsored decision making and conflict resolution bodies, and the existence of alternative dispute resolution methods.

The Omnibus Law draft includes a set instruments that were identified by stakeholders and external consultants as basic requirements to improve business climate in Suriname. They can be briefly summarized as follows:

a) Secured Transactions

A secured transaction is a loan or a credit transaction in which the lender acquires a security interest in collateral owned by the borrower and is entitled to foreclose on or repossess the collateral in the event of the borrower's default. The terms of the relationship are governed by a contract, or security agreement.

The draft includes substantive rules that complement the civil code and a property registry. The proposal follows the Model Inter-American Law¹⁰. It is based on the principle of publicity and includes provisions on priority rules and enforcement. Regulations foster certainty and transparency of security rights in movable assets, which are key qualitative factors in establishing the suitability of these assets to serve as collateral for bank lending.

The proposal includes also the establishment of an efficient, publicly accessible security rights central registry. This registry serves the critical purpose of maintaining a reasonable degree of standardization of the security documentation to ensure fairness in enforcement.

b) Trade Registry

The omnibus draft includes a trade register of enterprises, legal entities and trusts. The main goal of this registry is to promote the rule of law and provide general information about the composition of enterprises, legal entities and trusts. It would be in charge of the chamber of commerce.

c) e- Transactions

An electronic transaction is the sale or purchase of goods or services, whether between businesses, households, individuals, governments, and other public or private organizations, conducted over computer-mediated networks.¹¹

The proposal on e-transactions seeks to create a platform not only to facilitate business and government transactions, but also to protect consumers.

d) Administrative principles and procedures

Entrepreneurs need to know what the rules of the game are and require some assurance that those rules will not change once they have started a business. The proposal is based on three principles, as follows:

- **Duty of care and balancing of interests.** When preparing a decision an administrative authority shall collect the necessary information concerning the relevant facts and the interests to be considered. It shall not use its power to make a decision for a purpose other than that for which it was conferred and it shall consider the interests directly affected by a decision, subject to any limitations following from a provision of law or the nature of the power to be exercised. The

¹⁰ http://www.oas.org/dil/cidip-vi-securedtransactions_eng.htm

¹¹ <https://stats.oecd.org/glossary/detail.asp?ID=758>

adverse consequences of a decision for one or more interested parties may not be disproportionate to the objects to be served by the decision.

- **Stating reasons.** A decision must be based on sound reasons. These must be stated when the decision is notified. Where possible, the provision of law on which the decision is based shall also be stated. If due to the urgency of the matter, it is impossible to state the reasons for a decision when it is notified, the administrative authority shall supply them within a precise time limit.
- **Time limits for individual decisions.** In the case of an individual decision the administrative authority shall make the decision as soon as possible and within a precise time limit. The draft includes a penalty in case of failure to give a timely decision.

The proposal includes also the procedure for individual decisions, and regulates objections and appeals.

The omnibus draft includes also the creation of a specialized court of appeals. It is a special administrative court which rules on disputes in the area of economic administrative law, such as competition law, consumer protection, intellectual property rights, and other related issues. The court follows the model of the Netherlands and the United Kingdom.

e) Alternative Disputes Resolution

Many disputes can be resolved without litigation through alternative dispute resolution (ADR) processes, such as mediation, facilitation, and arbitration.

The draft provides options for settling disagreements between transacting parties at a reasonable cost: mediation, arbitration and conciliation. It includes also the establishment of a specialized center to solve business-related disputes. The Center provides neutral ADR processes that offer opportunities for early, party-driven, efficient, and fair conflict resolution.

3. FUTURE ACTIONS

TABLE 1. OMNIBUS LAW: FUTURE ACTIONS			
THEME	MAIN ISSUES	NEXT STEPS	MINISTRY
1. Omnibus Law	Legislative procedure Define scope and content of the law	Supportive document: Omnibus law-making technique Steering Committee	Justice
2. Investment	Define: a) Is it necessary a chapter on investments? b) Should the chapter include both foreign and nationals investors? c) Should incentives be included in the omnibus law?	Supportive document and Public policy paper concerning incentives	Finance / Central Bank
3. Intellectual property rights	Review traditional knowledge's chapter Define the structure of the IPRs Authority	Supportive documents: Traditional Knowledge IPRs Authority	Justice
4. Competition Law	Define if competition law should be included in the OL	Policy decision	Trade and Industry
5. Consumer Protection	Define if Consumer Protection should be included in the OL	Policy decision	Trade and Industry
6. Secured Transactions	Define the structure of the Registry	Support the creation of the registry: software and training	Justice
8. Licenses ¹²	Define the scope and extent of the law Decide on the implementation of Classification Registry for Economic activities (CPC or ISIC	Policy Decision	Trade and Industry
9. Trade Registry	Decide on the implementation of Classification Registry for Economic activities (CPC or ISIC)	Policy decision	Trade and Industry / Chamber of Commerce
10. e- Transactions		Definitive draft	
11. Administrative principles and procedures	Establishment of the Court of Appeals for Trade and Industry	Define structure and organization of the court Training of judges	Justice
12. Alternative Disputes Resolution	Establishment of the Center for ADR	Define structure and organization of the center Training of arbiters and mediators	Justice

¹² Licenses are not included in the existing draft.

ANNEX- DRAFT LAW