



**Business Environment: a comparison between Brazil and Friendly
Business Environments**

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CHAPTER I - INTRODUCTION

The role of the private sector in the global economy is the single largest fundamental pillar for achieving improved wellbeing of citizens. With globalization, a large number of countries have adopted a capitalist system, with their characteristics determined by region, population, resources, market and economical aspects. In order to maximize liberal activity in the environment where this activity will be performed, it is necessary to establish the correct conditions to create stability and growth.

The need to establish methods and patterns raises questions about how a friendly business environment is created. Is it only discipline, efficiency and capacity which give conditions for entrepreneurial success? Both questions are a typical situation of cause and relation that create a link between the role of the Government and the private sector, either connected by an enterprise, or just in the function of legislating. Furthermore, of course, this relationship is not a mandatory premise between the business environment and the prosperous enterprise. For instance, there are a considerable number of efficient and solid companies in countries with low standards of efficiency and development –sometimes even structured by the governments as “national champions”. However, when tendencies are analyzed under a macroeconomic view, the influence of the government roles, either in actions or absences, for the growth of the business activity is clear.

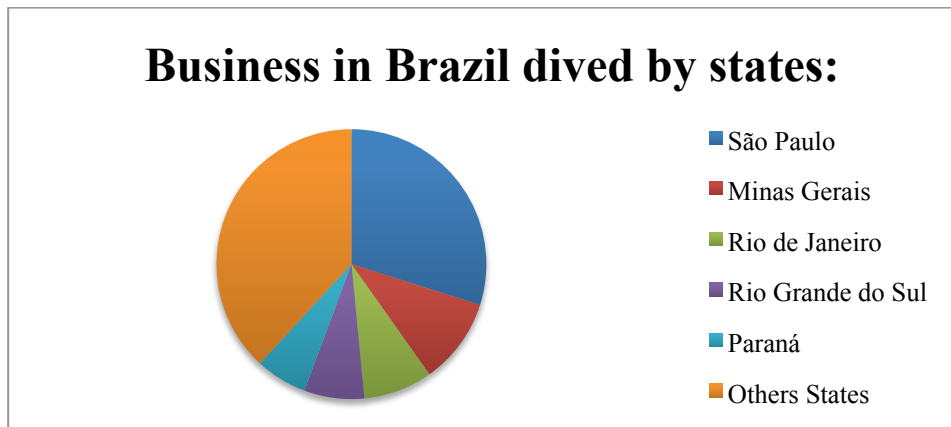
That research will show how Brazil may set up a better perspective for their potential and present entrepreneurs using a set of main indicators and a legal and economic methodology, compared with practices from both developed or developing countries. Moreover, this thesis will put some data in perspective in order to give a balanced analysis. Given Brazil’s size, of continental proportions, and the regional inequality of development, countries that are not commensurate with the dimensions or the population of Brazil would not give valuable comparisons. Nonetheless, there are still conclusions to be drawn from analysis of small countries, mainly in technological solutions that can help to reduce bureaucracy and inefficiency.

Hence, as a federation, Brazil has a few differences between member states. However, the main rights and competences such as civil, labor and civil procedural are federal competences. Civil law gives proper conditions to analyze the enforcement of contracts and

labor conditions under the Brazilian System. The tax regime is distributed across all three public spheres: Federal, State and Municipal. Therefore in the Brazilian Institute of Tributary Plan, (“IBPT”), 69.54 % is distributed to the Federal Treasury, 25.88% is given to the state level, and 4.58% of the budget is given to the Municipal level.

Budget equality does not exist across public levels; it is possible to find discrepancy between states as well. According to the IHBP, the 9 states of the Northeast of Brazil received 9.09% of the total Tax Budget in Brazil combined, while the Southeast Region received 69,54% of the total tax budget. These numbers show the inequality between states and, consequently, the balance of business activity between regions¹.

Business in Brazil Dived by States (Graph One)



Essentially, the economy is driven by five states, which together form almost three quarters of the number of companies in Brazil. The numbers of companies demonstrate not only the economic power of these states, but also, according to the Brazilian Institute of Geography and Statistics (IBGE), these five states consist of 64.9% of the National GDP². Despite Brazil’s and potential to be a rich and developed nation, excessive bureaucracy and the high costs combined with inefficient public administration leave the country with a

¹ RIO N, 'Estados Mais Ricos Ainda Concentram PIB, Mas Participação Cai, Diz IBGE' (*Folha de S.Paulo*, 2017) <<http://www1.folha.uol.com.br/mercado/2016/11/1836313-estados-mais-ricos-ainda-concentram-pib-mas-participacao-cai-diz-ibge.html>> accessed 27 March 2017. (Richest states still accumulate the biggest part of the GDP, however it is decreasing, Say IBGE)

² RIO N, 'Estados Mais Ricos Ainda Concentram PIB, Mas Participação Cai, Diz IBGE' (*Folha de S.Paulo*, 2017) <<http://www1.folha.uol.com.br/mercado/2016/11/1836313-estados-mais-ricos-ainda-concentram-pib-mas-participacao-cai-diz-ibge.shtml>> accessed 27 March 2017. (Richest states still accumulate the biggest part of the GDP, however it is decreasing, Say IBGE)

budgetary shortfall to allocate to business development projects, like infrastructure or industry.

In Brazil urban zones have grown rapaciously in detriment to the rural areas, which have been decreasing since 1940³. According to the Brazilian Institute of Geography and Statistics (IBGE), the rural population was almost 30 million in 2010, representing 15.65% of the total population. The urban population, meanwhile, has reached 160 million, representing 85.35% of the Brazilian population. Moreover, these numbers influence the size of a business sector. For instance, in the main cities of the country, service and commercial firms prevail, which the whole economy constitutes 48.50% and 39.09% of all commerce, respectively⁴.

Quantity of Business Divided by Sector (Graph Two)



Like many countries who declared independence during the 19th and 20th centuries, Brazil has industrial problems due to the lack of heavy investment and technology. These conditions create a relation of exploitation from developed countries, because less industrialized countries export raw materials, and seldom produce the same processed product at a higher price. Moreover, welfare and the economy are intrinsically related to the size of

³ 'Cerca De 30 Milhões De Pessoas Vivem No Campo Desde 1940, Diz IBGE' (Brasil, 2017) <<http://g1.globo.com/brasil/noticia/2010/11/cerca-de-30-milhoes-de-pessoas-vivem-no-campo-desde-1940-diz-ibge.html>> accessed 2 May 2017. “ Around 30 Millions of people live on rural zones since 2010, according IBGE”

⁴ 'Estatísticas' (Empresometro.com.br, 2017) <<https://www.empresometro.com.br/Home/Estatisticas>> accessed 5 April 2017.

Brazilian industry, which generates thousands of jobs goods.⁵. The rate of industrial transformation (VTI), which tries to establish a rate of crafted and industrialized products, clearly demonstrate a relation between welfare and economic prosperity with the strength of industries in a country.

Leaders of Industrial Transformation of Products in the World (percentage of the Global VTI)
(Table One)

Country	2005	2010	2014
United States	22,59	19.44	19.30
China	9,97	14.99	18.41
Japan	12.29	12.01	10.89
Germany	7.47	7.03	6.93
South Korea	3.11	3.79	4.01
United Kingdom	3.38	2.80	2.54
France	3.29	2.79	2.46
India	1.6	2.26	2.31
Mexico	1.94	1.79	1.81
Brazil	1.86	1.82	1.59
Canada	2.22	1.66	1.58
Spain	2.10	1.69	1.51
Russia	1.63	1.50	1.51
Turkey	1.12	1.20	1.30

Source: UNIDO

In 2014 the most developed countries represented 64% of the global VTI. Developing countries on the other hand represented 32%, among these; China represents almost 20%⁶, Therefore developing countries apart from China represented only 12% of the global VTI.

⁵ Eduardo de Freitas. "A Indústria Contemporânea no Brasil". "The contemporary industry in Brazil"

⁶ 'Análise IEDI – 31/07/2015 – Indústria – Brasil Na Indústria Mundial: 11ª Posição' (*Iedi.org.br*, 2017)
<http://www.iedi.org.br/artigos/top/analise/analise_iedi_20150731_industria.html> accessed 6 April 2017.
(Industry – Brazil In the Global Industry)

This lack of industry centers developing countries, like Brazil, and creates dependence that often deepens the inequalities between countries. Therefore countries must act creatively to overcome the lack of budget and high prices for imported products, and therefore find an efficient way to suppress the disparity through regulation and technological development.

This present research tries to focus on the necessity of a regulated environment to stimulate business in order to balance the market. In a neoliberal market, it has been proven that this situation suggests a high concentration of capital. This results in an overbalancing of the decision making to favor excessive profit to the detriment of unmitigated risk in the operation of the business. Moreover, public concerns which are, at first glance, responsibilities of the respective government can be transferred through regulation to the agents who unlock those conditions. Besides that, regulation can equalize the rights and duties of the whole economic chain, in different sectors and environments in the attempt to avoid harm or any type of illegality, for example in the creations of agencies who supervise service providers on behalf of the population.

Further, in research into new trends of regulation, which tries to create harmony between the public and the private sectors and how they interact. Different public administrations have different norms and principles to the private sector and, are often strict in hiring or making business in such a way that both parts of the private sector do. Hence, in order to avoid the active part of the crime, either the private party (corrupter) or the public agent in a passive way, or vice-versa. In several countries a regulatory framework that tries, in a positive action - with regulatory compliance, to diminish bad administration and political crimes for personal or commercial benefit.

Another key feature necessary to achieve a friendly business environment is the availability of general and unrestrained credit for the population. A country with selective credit lines either offered by the government through public banks, or commercial banks with segmented types of loans for business, should take steps further for the businessman, creating a virtuous cycle towards economic growth. Moreover, a global consensus has been reached over the necessity to stimulate the SME market to generate jobs and a prosperous business environment. Furthermore, in the research will demonstrate the necessity of new institutions to guarantee the main obligation (the loan) respecting and insuring the financial institution in case of insolvency.

The role of technology in optimizes and facilitates daily modern life in such a way that it is connected to every activity and aspect of life. Thus, when there are concerns around public administration and public services, at least in Brazil, it seems that a few processes still belong to the twentieth century. The majority of politicians or public agents in leadership positions see technology as a cost or something shallow that does not increase productivity. This present research will demonstrate how it is possible to align technology with public policies in order to provide a fruitful environment for business towards quality of work and open the doors for disruptive innovation. The pattern around the friendly business environment to stimulate tech systems for Fintechs or Regtechs must align willingness from those private agents with regulation to encourage those players to confront new practices, leaving comfort zones.

To conclude, there are significant aspects either legal, based in public reforms or economic interventions possible. Each country has specific features, and in that respect it is impossible to identically copy, reproducing institutions from abroad, of developed countries and business friendly environments in Brazil or any other country. Hence, each institution brought to the research as a recommendation has characteristics, which could fit with the features of Brazil, and their own unique characteristics. Furthermore, in relation, the chance of importing institutions from foreign countries without respecting the peculiarities of any the country considerably increases the chances of low effectiveness of the policy, program or regulation.

1.1. Features use on the research

The main indicators in the research, at first glance, will aim to construct an approach to understanding obstacles to constitute, run and close a business in Brazil compared to practices in other countries in order to establish a comparison. Following this, an analysis of what can be brought to Brazil to improve the process, regulation, and consequently, bureaucracy of the business environment. With this data, it will be possible to suggest positive public policy for creation of new programs or procedures, which can innovate and disrupt old and inefficient business practices. The importance of SMEs in the global economy and regional development is another characteristic of the research.

This premise demonstrates the necessity of interaction between the state and the private sector in an economy. Furthermore, one of the fundamental premises of this research follows one strain of thought from Keynes; that in a capitalist system, the function of the government it is not solely the adjustment of economic policies. In this scenario, the government must regulate wealth and accumulation of capital, encompassing growth, employment, predictability and social equity⁷. In general, the necessity to pursue new means, according to how the country develops or to increasing this development is question that this research seeks to answer.

Narrowing the scope of the research into fundamental subjects, in order to be a friendly business environment a country requires: (i) legal and financial procedures to run a business and (ii) regulation and new technological institutions for business development (iii) the necessity of balancing creditor and debtor relations in order to stimulate supply of credit in the environment and (iv) regulatory compliance in creating a relationship between legislation and good governance in the business environment. With these indicators it is possible to ensure a reasoned comparison between the data, and demonstrate a potential benchmark between foreign countries and Brazil. However, given the complexity of the Brazilian federal system, it would be unfeasible to analyze every particularity between every municipality or state, for instance, the payment of fees or procedure of each Commercial Chamber in the 26 States of Brazil, often with a similar structure, but with minor differences between each one. Therefore, in the interest of parsimony, the analyses will focus on the main states, who retain the bulk of business and capital. These are São Paulo and Rio de Janeiro.

⁷ Keynes J, *The General Theory Of Employment, Interest And Money*, chapter 24 (90th edn, Macmillan 1936)

CHAPTER II - THE BUSINESS PROCEDURE

2.1. Firm Theory

The firm theory adopted by Brazil involves a classic dichotomy between the necessities not to distinguish the civil area from the commercial. Among other reasons, both areas mainly involve property. This mentality arose with the evolution of the legal firm. The main analysis in this subchapter will highlight the importance of the legal framework conforming to current circumstances and the evolution of the firm theory in many civil law systems, such as Brazil and Italy. With this compatibility of law and reality, companies will be more willing to receive fair treatment with the specific rights and duties.

The Napoleonic Civil Code, created following the bourgeois revolution had an objectivist bias; the mode of determining what business occurred through the act of the merchant⁸. This tradition created a gap between civil law and the commercial law, which does not exist in most countries with a civil legal system, such as the modern Brazilian, Italian and French systems. With an the objectivist position, it was necessary to determine by law every type of commercial behavior to be covered by the state, for obvious reasons this is different from today. Imagine how complex it would be in today to regulate every type of business classification in order to qualify as a legal business. How could a Fintech Start-up with disruptive technology obtain a line of credit with these barriers of the law? It is likely that the vast majority of financial institutions would not allow it. Because society changes, the law must follow these changes in a current and easily adaptable way.

It is undeniable that both areas come from private law, although limitation of liability is not reliable with this modality. Cesare Vivante, creator of firm theory, which was exactly replicated in The Brazilian Civil Code of 2002, determines businesses and firms in a broad way. “*In Verbis*”:

⁸ Fátima Andréa Kisil Mendes, 'O Direito Comercial Não Perdeu A Sua Autonomia' (*conjur.com.br*, 2009) <<http://www.conjur.com.br/2009-set-23/direito-comercial-inserido-codigo-civil-nao-perdeu-autonomia>> accessed 6 June 2017. . (The Commercial Law did not loose his autonomy)

“Article 966: an entrepreneur is considered to be engaged in a professionally organized economic activity for the production or circulation of goods or services.”

This evolutive analysis of the firm, demonstrates this change in perspective. The commercial perspective was abandoned for a new prism: The entrepreneur and entrepreneurship⁹. This new approach brings the possibility of registering the company as an individual entity and to clearly distinguish the entrepreneur or company's liability, therefore placing obligations on the commercial and civil subject.

This digression was necessary in order to understand the relation between the state and the individuals in the efforts to open a business and, throughout history, how a regulation which does not conform to the current necessities of the society may be ineffective, hindering all parts. The business environment does not grow properly and legally, and the State cannot collect taxes, for instance.

2.2. Opening a business in Brazil and abroad practices.

According to *Doing Business 2017*, the procedure to opening a business is an interaction between the company founders with external parties, such as governments, notaries, lawyers and even spouses, when required in some scenarios¹⁰. All of these bureaucratic regimes, necessary to formalize a business, are the initial steps for any entrepreneur to start a business. However, it is possible to identify huge disparities between countries. For instance, in Brazil, on average, opening a business takes around 80 days¹¹, with 13 different procedures in multiple public offices, mostly in the commercial chamber of the host state of the business. If the business operates in more than one State, registration is

⁹ Fátima Andréa Kisil Mendes, 'O Direito Comercial Não Perdeu A Sua Autonomia' (*conjur.com.br*, 2009) <<http://www.conjur.com.br/2009-set-23/direito-comercial-inserido-codigo-civil-nao-perdeu-autonomia>> accessed 6 June 2017. . (The Commercial Law did not loose his autonomy)

¹⁰ *Doing Business 2017: Equal Opportunity To All*, page 118 (14th edn, World Bank Group 2017)

¹¹ 'Starting A Business In Brazil - São Paulo - Doing Business - World Bank Group' (*Doingbusiness.org*, 2017) <<http://www.doingbusiness.org/data/exploreeconomies/s%C3%A3o-paulo/starting-a-business>> accessed 31 March 2017.

necessary in both States. The global average time to open a business is 20 days¹² and involves 7 different procedures¹³.

This disproportionate slowness reduces entrepreneurial desire, slows down the formal economy, stimulates the informal market and increases the price to open a business. Furthermore, one may think that meeting such stringent demands and creating multiple registrations gives the impression of an incorruptible procedure. The excessive bureaucracy of the business procedure, however, was created to make an accessory and potentially harmful service into an essential step. In the name of inspection it created unnecessary obstacles that give rise to corruption and creates difficulties to trade. The mechanism created to prevent fraud is the same that leaves the system vulnerable fraud and corruption.

Another potential solution is the creation of a singular and hybrid registration system which attends to all the necessities of the state, such as the payment of taxes and all public entities (Federal, State and municipality) or labor questions. In New Zealand it is possible to open a company just by accessing the website of the New Zealand Companies Office, which is connected to the Revenue Department. There it is possible to apply for the registration and pay the fee via internet banking. The full procedure does not take more than 1 day and collects sufficient information about the founders, structure of the company, employing licenses and taxes.¹⁴

Another struggle in Brazil is the capital requirement for a company. For instance, the Law provides that a limited liability company with only 1 shareholder (EIRELI), in the constitution phase, invests 100 minimum wages (approx. US\$ 30,000) to capitalize a the company.¹⁵ This unnecessary measure only stimulates entrepreneurship to simulate a company with no minimal capital requirement, like limited liability companies with other shareholders, most of often family members, with the minimum equity possible. These kinds of measure reflect the system as a whole, as it possible to see the legal nature of companies in Brazil in the graph below.

¹² 'Starting A Business - Doing Business - World Bank Group' (*Doingbusiness.org*, 2017) <<http://www.doingbusiness.org/data/exploretopics/starting-a-business>> accessed 30 March 2017

¹³ *Doing Business 2017: Equal Opportunity To All*, page 9 (14th edn, World Bank Group 2017).

¹⁴ 'Starting A Business In New Zealand - Doing Business - World Bank Group' (*Doingbusiness.org*, 2017) <<http://www.doingbusiness.org/data/exploreeconomies/new-zealand/starting-a-business>> accessed 31 March 2017.

¹⁵ Brazilian Federal Government; 'Federal Law 12.441 from Eleventh of July Of 2011' (2017).

Quantity of business in Brazil divided by the Legal Nature (Graph Three)



Source: Empresometro

The vast majority of business, without consider the small business corporation (other legal nature which will be analyzed forward), are made by Individual Businessman, with no distinction of liability between the individual and the entrepreneurship which only remove right, it is a clear proof of the excess of redundant institute who anyone takes advantage. However, that significant amount is a reflect of the facilities of the procedures to open an Individual Business, for instance, the possibility open in the internet and the lack of the necessity to fulfill bureaucracies that others business entities required.

As explained above, constitute a company in Brazil is not an integrated process and that difficulties create a huge informal market for companies which prefer follow the easiest path. The last time an empirical research was done, in 2003, around 10 million companies were not registered¹⁶, most of these companies located in rural zones, another problem that could be tackled with an online procedure.

The Portuguese colonial legacy in Brazil has left some deep roots in processes and habits; even long after the country's independence. For instance, in Brazil, in any type of contract, to recognize the effect "*erga omnes*" among all except the parties it is necessary to authenticate the signature in a notary. Therefore, it is one of the only countries in which the

¹⁶ 'Folha Online - Dinheiro - Quase Todas As Pequenas Empresas Brasileiras são Informais, Diz IBGE - 19/05/2005' (www1.folha.uol.com.br, 2017) (Almost all Brazilian Small Companies are not registered, according IBGE)

person (including the juridical entity) has to register in a notary to be able to carry out ordinary procedures both in private life and in professional aspects.

This cursed inheritance of procedures and administrative principles came from the Portuguese, while Brazil was a colony to support the donation of property to the crown as the primary beneficiaries¹⁷. However, it is not aligned with many principles of the Brazilian Civil Code, like the principle of good faith or veracity. Although this archaic procedure can avoid fraud, there are more innovative methods to check authenticity, which would not cost time and money, such as digital signatures in software based on biometric standards or a digital notary developed through a Blockchain System, like the one developed in Sweden through a public private partnership (PPP)¹⁸. Not to mention the environmental benefit, saving an enormous volume of waste paper.

2.3. Small and Medium Enterprises contributes to economy growth

The role of Small and Medium businesses in the vast majority of countries, including Brazil, is highly significant as a core element to increase employment and reduce poverty. In an analysis of the capitalist economic cycle and its functioning, based on the production lines, work, income and consumption, it is unavoidable to admit that business activity is the starting point of this loop. Therefore, any perspective of undertaking a business, no matter the size of it, will unleash that common process which will, directly or indirectly, affect other individuals around them.

Although, small and medium enterprises are a legal fiction, created by each country to regulate this niche, often countries make this distinction to establish a different regime to be more favorable compared to other businesses, and take small-scale entrepreneurship out of informality. There are considerable number definitions for SMEs; the first country to create this category, giving incentives to the small businesses was the United States with the *Small Business Act*, in 1953. Creating the *Small Business Administration* (SBA), which was updated in 2010 with the Small Business Jobs Act (Federal Law). This federal agency gives financial assistance and other types of programs¹⁹. The US Standards to be characterized as a small business differ according to the type of business. However, the two main criteria are: number of employees and turnover. Moreover, every type of business has a different threshold of quantity. For instance, almost all businesses in the agricultural sector cannot have a turnover larger than US\$ 750.000, meanwhile, in other sectors such as manufacturing, the standard is the number of employees, which accepts around 500 to 1500 employees.

17 Ediciones País, 'A Burocracia Afoga A Sociedade Civil Brasileira' (EL PAÍS, 2017)

<http://brasil.elpais.com/brasil/2014/01/07/sociedad/1389049905_067195.html> accessed 3 April 2017. (The Bureaucracy drawn the Brazilian Society)

18 Pete Rizzo and others, 'Sweden's Blockchain Land Registry To Begin Testing In March - Coindesk'

(CoinDesk, 2017) <<http://www.coindesk.com/swedens-blockchain-land-registry-begin-testing-march/>> accessed 3 April 2017.

The main provisions of the Small Business Job Act of 2010 is that it: “(i) establishes the creation of a US\$ 30 billion lending program for community banks with assets of less than US\$10 billion;(ii) Increases limits on how much money a company can borrow under various small business administration loan programs; (iii) Provides US\$12 billion in tax cuts, including a 100% exclusion of capital gains taxes on small business investments; (iv) allows for small businesses to carry back general business tax credits to offset the tax burden from the previous five years; (v) allows cell phone costs to be deducted or depreciated like other business property,(vi) allows business owners to deduct the cost of health insurance incurred during 2010 for themselves and family members in the calculation of their 2010 self-employment tax, (vii) creates the state small business credit initiative”²⁰

The main criticisms of the system are the fact that the SBA does not only help small businesses because the definition of “small business” is broad, and well-structured companies may take advantage of those benefits. The budget capacity of the SBA to support all small business, especially the smaller ones has become reduced.²¹ According *Cato Institute*, SBA subsidies, may be considered as corporate welfare for the financial sector. The research In Europe, the EU Recommendation 2003/361 defines SMEs. The main circumstances determining whether a business is an SME are: staff headcount and either turnover or balance sheet total²². There are 3 options of SME: Micro, small and medium sized, with turnover of less than 2, 10 and 50 million Euros, respectively. The benefits of these companies are the eligibility for support to Europeans Business Programmes created specifically for SMEs: research funding, competitiveness and innovation funding and other national support programmes which could be considered unfair government support (state-aid), but in SMEs are allowed²³

In Brazil, the provisions of SMEs first appear in the Federal Constitution of 1988, given predominance, in the opinion of the legislator. It is also possible to find provisions in the Civil Code and the specific Law of SMEs. The scope of SMEs is defined, mainly, by gross invoicing. According SEBRAE²⁴, a micro company is one that has gross invoicing

²⁰ 'Small Business Jobs Act Of 2010' (*En.wikipedia.org*, 2017)

<https://en.wikipedia.org/wiki/Small_Business_Jobs_Act_of_2010> accessed 2 June 2017.

²¹ 'Small Business Jobs Act Of 2010' (*En.wikipedia.org*, 2017)

<https://en.wikipedia.org/wiki/Small_Business_Jobs_Act_of_2010> accessed 2 June 2017.

²² 'What Is An SME? - Growth - European Commission' (*Growth*, 2017)

<http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en> accessed 13 March 2017.

²³ 'What Is An SME? - Growth - European Commission' (*Growth*, 2017)

<http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en> accessed 13 March 2017.

²⁴ ('Entenda As Diferenças Entre Microempresa, Pequena Empresa E MEI' (*sebrae.com.br*, 2017)

<<https://www.sebrae.com.br/sites/PortalSebrae/artigos/entenda-as-diferencas-entre-microempresa-pequena-empresa->. (undestand the difference between SMEs)

equal to or less than R\$ 360.000. (Approx. US\$110.000). Small companies have a gross invoicing between R\$. 360.000. (Approx. US\$110.000) and R\$ 3.600.000. (Approx. US\$1.100.000). However, these are federal guidelines, and each State can set their own standards, making it more flexible in order to stimulate the business environment in the region. The size of Brazil and the huge number of informal businesses demonstrate the necessity of another institution for autonomous workers and family farmers who work individually. It was for this that the individual micro entrepreneurship (MEI) was created. In order to be a “MEI”, gross invoicing cannot exceed R\$ 60.000 (Approx. US\$20.000) per year, and the activity must be in the Law of SME also.

Different to the United States and Europe, where the main scope for the regulation of SMEs is how entrepreneurs can have access to credit, which, in the majority are through debt finance in financial institutions. In Brazil, the main priority is to simplify the business procedure as a whole, creating the easiest path to open and maintain a business. For instance, to register an SME, the formalities are reduced, consequently, the time is shorter and the entire procedure can be done by the internet. Moreover, the small businesses may opt for an easier tax regime called (Simples) which encompasses eight classes of taxes into a unique tax payment slip. MEI businesses get further benefits, getting exemptions from five regular taxes. Even in the enforcement of contracts or potential litigation, SMEs are encouraged to choose specific tribunals, where previously there was a meeting with conciliators in order to reach an agreement.

Besides the difficulties to access credit in Brazil, even for SMEs, 93.7% of all businesses in Brazil are SME²⁵. A high number of these businesses are based on commerce and services. According to the OECD, to develop healthier economic growth countries should make up 70% to 90% of employees in this type of business²⁶. Although, SMEs have high market share in the Brazilian business model, the mortality rate is high too. Under this analysis it is possible to reach two different conclusions. Firstly, the obstacle to achieve credit with reasonable conditions is due to the lack of assets or assurances to mitigate risk for lenders and, consequently, the difficulty to spend with research and development in order to generate innovation. Secondly, the argument that SMEs are run inefficiently when compared with Multinational Companies, their difficulty in maintaining competition on prices due to lack of organized structures, costly production and the lack of resources for marketing campaigns.

On the other hand, SMEs have high capacity to adapt to new situations, and can transform their structure at lower cost and faster than big companies. Thus, with reduced bureaucracy, it is not necessary to have complexity in the process that costs time and money with protocols and massive changes to accountancy practices. Moreover, the main virtue that

²⁵ 'Empresômetro MPE - Estatísticas' (*Empresometro.cnc.org.br*, 2017)

<<http://empresometro.cnc.org.br/Estatisticas>> accessed 18 April 2017. (Empresometro Micro and Small business Statistic)

²⁶ 'New Approaches To SME And Entrepreneurship Financing | OECD READ Edition' (*OECD iLibrary*, 2017)

<http://www.keepeek.com/Digital-Asset-Management/oecd/finance-and-investment/new-approaches-to-sme-and-entrepreneurship-financing_9789264240957-en#.WOvC_VN95o4#page1> accessed May 2017.

SMEs have is a clear and uniform identity. Big companies often have a hard task incorporating the DNA of the company across all sectors.

CHAPTER III – REGULATION ON BUSINESS

3.1. The necessity of Regulation

Undertaking a business involves knowing your best attributes with self-reliance to create something innovative with value; requiring time, financial and social risk for the founders. With businessmen facing many difficulties and risks, in order to promote wealth and employment the state cannot become another obstacle to the entrepreneur. On the contrary, the state needs to stimulate innovation and productivity, as happens in countries such as Australia, Canada, Chile, Mexico and the United Kingdom. Governments can help businesses by raising the level of support for private research and development (R&D) and open a channel between the private sector and research centers (universities)²⁷.

On matters of the market, in the pure form, a significant number of buyers and sellers are producing goods and services of optimal quantity, trying to maximize prices. In this perfect market, externalities, on an *ex ante* analysis, for instance, restricts buyers or sellers to determining the optimum distribution of products or services.

Nonetheless, the “real market” is full of failures, such as imperfect competition, externalities, information asymmetries and incomplete markets. These failures, *ex post*, may be fixed by state intervention, such as public policy and regulation. In fact, there is a significant gap between the theoretical and real approach under this area. Regulation can help real markets work properly and more efficiently. This results in more competition and lower prices for the consumers.

In fact, clients often do not know about market prices and attributes of products they buy. For instance, understanding specific terms describing goods on pharmaceutical drugs or property mortgages. Consumer protection regulations may fix these failures, requiring sellers to adapt and facilitate the purchase, adapting the features and risk of the products.

Empirically, markets are frequently controlled by monopolies or oligopolies, which can restrict production and force consumers to pay artificially high prices. Hence, anti-trust regulations can break this power or avoid the concentration of supply in advance.

²⁷ OECD, 'Innovation For Development' (2017) <<http://www.oecd.org/innovation/inno/50586251.pdf>> accessed 6 June 2017.

Unregulated markets do not measure social cost. Unobstructed by public legal framework, a variety of economic activities may affect, direct or indirectly, environments they do not anticipate. For example: water and air pollution. Regulations must force suppliers to notice and resolve these kinds of negative externalities.

The argument that regulation is bad for companies is almost always wrong because, on a macro view, a bigger number of companies on the market will benefit from regulation, for public interest. Therefore, for any company to sell their products, it is necessary to gain the confidence of consumers, that their product will not damage the environment in which they live. Furthermore, Companies also benefit from straight and clear rules in the market. All actors must follow it without committing unfair practices, undercutting competitors. Although, in some markets regulation really damages companies, for instance, in the limitation of the charcoal-fired power plants in order to avoid air pollution, other companies will take advantage, such as wind and solar energy, for example²⁸.

Not all regulations have significant benefits or achieve their aims. Some of them are weakly or inadequately implemented; meanwhile others are very restrictive, like the regulation on the shared transport economy, such as Uber and Cabify in Brazil. Federal Senate is voting a proposed law (already approved in the Chamber of Deputies), which intends to tax earnings and require insurance for passengers. Until then, the public purpose is respected, the problem is the regulation also intends to require a paid license for each Uber driver in the municipality and increase significantly the price of the service to raise competition between taxis²⁹. Few authorities blame the applications for raising unemployment. These regulations were edited following a huge protest and secret lobbying from the taxi drivers union. These regulations stifle the supply of transport services with no apparent, altering the flexibility brought about by innovation and technology to return to the inefficient, costly and bureaucratic pattern.

3.2. Coalition between compliance and regulation in order to mitigate corruption and fraud.

A high quality regulatory framework is essential for every type of country in order to be a prosperous place to live, work and do business. It should also enable people, institutions and the environment to equally coexist. Therefore, politicians and regulators play a crucial role in achieving these solutions and, at the same time, stimulate innovation, efficiency and growth.

28 Michael Lipsky, 'Why Regulation Is Necessary And Proper For A Well-Functioning Democracy And Market Economy' (*scholarsstrategynetwork.org*, 2017) <<http://MichaelLipsky.com>> accessed 6 June 2017.

²⁹ Regulations | The Rio Times | Brazil News' (*Riotimesonline.com*, 2017)

The ability to embody strict compliance rules in order to increase efficiency, transparency and smoothness can be a reality for every business no matter the scope, sector or the size of the firm. However, creating this characteristic involves costs and training which may, at least at first glance, reduce the profit of companies. Therefore, in this scenario, governments are encouraging a transparent attitude and implementing legal security for private institutions in a safe business environment. Regulating gives benefits for companies implementing corporate governance and compliance rules in order to mitigate corruption. Hence, this incentive becomes a booster for companies in the structuring of many departments such as controllership, auditing, risk management etc.

One of the main things that compliance can tackle in the business sector is corruption, which can be destructive for the moral point of view or the economic indicators for any country. An estimate from the World Economic Forum indicates that the cost of corruption worldwide is US\$ 2.6 Trillion per year, which is equivalent to 5% of the Global GDP³⁰. This huge number forced politicians to inspect not just their peers, but also the businessmen who offer bribes or act with ethical deviation or act illegally for any type of benefit, like bid rigging for any type of contract with the government, for example. It is almost impossible to establish all the losses that embezzlement takes from companies, governments and civil society, seeing as there are numerous variables with intangible values, such as the loss of reputation with a potential investor, society, and foreign governments, creating a pessimistic scenario in all social strata. To overcome this reality, governments are willing to implement policies of regulation, which may interfere in the business environment and, consequently, the relation between the private and public spheres.

This research will demonstrate the provisions of significant regulation in Brazil, US and the UK in order develop secure and transparent business environments, helping to mitigate corruption. Of course, there is no perfect system for extinguishing corruption, but it is possible to create mechanisms that can contribute to detect, reduce and punish. The Foreign Corrupt Practices Act (FCPA), from US, and the oldest regulation from our analysis, enacted in 1977, is a regulatory framework aimed at criminalizing practices, not just the representatives of the legal entity, such as directors or presidents but also the legal entity of which those employees or owners are in charge and receiving benefits aligned with or on behalf of the company itself. This is different from the Brazilian Anti-Corruption Law

³⁰ 'Lei Anticorrupção Um Retrato Das Práticas De Compliance Na Era Da Empresa Limpa' (2017) 1 Delloite.(Regulation anticorruption a Picture of the good practices and compliance in the age of the clean company)

(Federal Law 12.846), in which the liability of the firm is objective (*strictu sensu* liability). In the United States it is necessary to prove the existence of methods undertaken with the intention of practicing corrupt acts to consider the firm guilty³¹.

The position of the US sustains that abusive and inconsistent practices and applies fines for the company if they were unaware of any “wrongdoing”.³² The position of this research sustains that it sounds naive to imagine that corruption, in a systemic way, might happen without the knowledge of the company. Furthermore, one of the requirements of FCPA to characterize a crime is the evil motive. This means: act with an unscrupulous behavior and nefarious interest, trying to evade authority. The US System permits a few acts that systems such as the Brazilian or the United Kingdom do not allow. For instance, under the aegis of FCPA, it is possible to admit, under the title of, “facilitating payments”, which is public expenses addressed to politicians of low level in order to stimulate “routine government actions”, commonly known as a few specific licenses³³. Moreover, another situation allowed only in the US System is the “bona fide expenditures”; which means, in particularly situations, when a company spends reasonably, in good faith, to public authorities (national or foreign) to demonstrate products or services. Therefore, in 1999, for instance, bona fide expenditures of the American company Metcalf & Eddy Inc. the following defense was not accepted:

“Therefore, Summarizing, they were prosecuted for paying a trip all included, in first class, to politicians of Egypt to the United States³⁴. Therefore only countries with more democratic maturity might be able to cope with this kind of discretion, otherwise they would be under the risk of a potential distortion of the dispositive, creating a typical case with bad regulation institutionalizing corruption. Brazil does not have this maturity as a democracy (compared to the United States), and that is clearly demonstrated by the Brazilian legislature’s decision for the objective liability regime (strict liability) in legal corruption provisions.

The effect of the FCPA exceeds the criminal area and also determines heavy fines for

³¹ Cristiana Fortini (Uma rápida comparação entre a Lei 12.846/13 e norte-americano foreign corrupt practices act (FCPA), 2015) (A comparison between the Law 12.846/13 and the north American foreign corrupt practices act (FCPA))”

³² Cristiana Fortini (Uma rápida comparação entre a Lei 12.846/13 e norte-americano foreign corrupt practices act (FCPA), 2015) (A comparison between the Law 12.846/13 and the north American foreign corrupt practices act (FCPA))”

³³ “ A comparison between the Law 12.846/13 and the north American foreign corrupt practices act (FCPA))”

³⁴ Cristiana Fortini (Uma rápida comparação entre a Lei 12.846/13 e norte-americano foreign corrupt practices act (FCPA), 2015) (A comparison between the Law 12.846/13 and the north American foreign corrupt practices act (FCPA))”

the companies and administrative penalties, not to mention the bad reputation for immoral conduct. The responsibility of prosecution, process and judgment, according the FCPA, are from the Department of Justice (DOJ), or the Securities Exchange Commission (SEC) if the company is listed. Not only national companies might be investigated but also international ones with activity in the United States. Moreover, foreign politicians who receive benefits from companies in the US can be investigated. An interesting and recent case that reflects the effects of FCPA beyond the US territory is with the Brazilian company Odebrecht. The construction company with their subsidiaries (Braskem) has been found guilty of having an institutional sector for bribes. All fines in sum, from American, Swiss and Brazilian authorities condemns Odebrecht to pay around US\$3.5 Billion; 20% of this value charged by the international authorities (US and Switzerland). Another emblematic case that created a new standard in business environment worldwide is the Siemens scandal. In 2008, The company acknowledged payments of bribery to high level of politicians³⁵, cartel involvement, accounting fraud and money laundering. Suddenly, one of the world's leading main corporations, with a clean reputation, confessed to all corrupt practices and made settlements with authorities from United States and Germany to pay US\$ 1.6 Billion. Not only the legal entity had to confess their crimes, but also the executives of the company. Therefore, Peter Loscher, the CEO of Siemens back in 2008, took this opportunity to offer a deal to their workers to confess who had committed crimes and, in exchange, promised a full amnesty, including legal help with defense³⁶. Nonetheless, the higher the corruption is inside a company, the more difficult it is to implement a strict compliance on it, not only for the cost of operation and implementation and running the compliance sector has to be calculated but also the change for the new framework has to be proportioned as well, since a lot of revenue could be derived from the proceeds of crime. Therefore, it is possible to say, in a particular business environment the projected growth after disclosures of illegal practices would be negative, although following the upheaval, the environment can enjoy an equal and healthy outcome, and become much more potentially prosperous.

In 1997 the international community represented, initially, by the Organization for Economic Co-operation and Development (OECD) enacted a convention against the corruption of public foreign employees in international commercial transactions.³⁷ All

³⁵ Bruce Watson (*The guardian*, 2013) <<https://www.theguardian.com/sustainable-business/siemens-solmssen-bribery-corruption>> accessed 3 June 2017.

³⁶ Júlia Merker, 'Siemens: Do Escandalo Ao Compliance' (Baguete, 2015)

³⁷ 'Corruption: Legal Framework' (UNODC- United Nation Office on Drugs and Crimes)

signatory countries from the OECD alongside Argentina, Bulgaria, Chile and Slovakia subscribed to the convention in order to criminalize corruption practices. Although it was not binding for Brazil because it was not been endorsed by the Federal Congress (the endorsement came in 2000³⁸). In other words, that was the first trend against corruption in the international community. Later, in 2003, the United Nations (UN) legislated in international legal framework on corruption with the convention against the corruption³⁹. Despite the fact that these international instruments did not have a compliance mechanism (only punishment and description of the corrupt act) they directly influenced the next two regulations in the analysis: UK bribery law and the Brazilian Federal Law 12.846 - popularly known as anti-corruption Law.

The UK Bribery Law (UKBA), it is considered one of the most severe pieces of anti corruption legislations.⁴⁰ Approved by the UK Parliament in 2010, the legislation remained July of 2011 in “*Vacatio legis*”, in other words, until then it was not enforceable, although it had already been declared. The main characteristic of the UKBA is the focus on prevention of corruption rather than determining and punishing only corporate illegal action. Nonetheless, the UKBA determines four types of crime in the corporate environment: (i) active corruption of public or private agents, (ii) passive corruption of public or private agents, (iii) corruption of foreign public agents and, (iv) failures of companies to prevent corruption. These types of crime demonstrated the double-edge sword of the corruption on the corporate environment. In other words, not only private agents initiate the approach to start an illegal personal advantage, but politicians also open illegal negotiations offering their public privilege in order to take a private (and illegal) advantage. Like the American regulations, the UKBA extends those effects beyond the territory of the United Kingdom, covering British Companies and their employees who commit crimes abroad.

The procedure of UKBA shall be determined by the severity of the conduct, in contrast with the United States, in which the main indicator on the FCPA is the evil motive (intention). That different approach on the procedural has a proportional bias, in other words, the procedure will vary according to the higher the damage to society, the nature of the act, the complexity of fraud. Nonetheless, all the procedures of the UKBA reflect convenience,

³⁸ Brazilian Federal Government; Decree 3.678 of Thirtieth of November of 2000 (2017).

³⁹ 'Corruption: Legal Framework' (UNODC- United Nation Office on Drugs and Crimes

⁴⁰ (Gestão Transparente) <<http://gestaotransparente.org/ukba-uk-bribery-act/>> accessed 3 June 2017. “Management of Transparency”

accessibility, and effectiveness⁴¹. Furthermore, another feature that makes the UKBA one of the most rigorous corruption regulations is the penalties.

The Serious Fraud Office (SFO) has the competency to investigate, prosecute and charge potential agents and the legal entity commanded by them. Hence, different areas of the law covers the penalties, that means a single illegal act is reflected in ramifications of different areas of the law, more specifically, the administrative, civil and criminal areas. The fine, unlike like the FCPA and The Brazilian Anti-corruption Law, does not have a legal limitation, which means the SFO may establish a fine without any legal barrier, only stipulating that they are commensurate with the damage caused by the company to society and the business advantage gained from the corruption, for example. The unlimited value of the fine not only for companies but for individuals also, gives more discretion to the authorities, increasing the duress for potential defendants.

In Brazil, which has a legal limit to the fine, the owners of one of the world's biggest meat companies, JBS, following a huge corruption scandal, giving billion dollar bribes to several parties have been charged just US\$ 58 Millions⁴². The owners of JBS had also to disclose all information they had of the high political class, including the president. Therefore, that scenario has severely shaken the economic perspective, like a 10% decrease in the Sao Paulo Stock Market, Bovespa, and the high increase of the Dollar against the Real, the Brazilian. The same company, JBS, bought a huge number of Dollars with the benefit of inside information before the information was disclosed to the public. That kind of situation demonstrated the low level of punishment without any mechanism of connection between the fields of law that a corruption procedure may lead into another crime in a different sphere.

One of the most innovate things about the British approach is that it is not only directors and employees that can be punished in the criminal area, but also the legal entity itself. This model was not applicable until recently, however, a few important scholars of the criminal area, such as Claus Roxin claimed over 15 years ago how important it is to criminalize legal entities due the huge flow of money and economic criminalization⁴³. In Brazilian regulations it is possible to punish criminally, although it is important to mention the incompatibility of

⁴¹ (Gestão Transparente) <<http://gestaotransparente.org/ukba-uk-bribery-act/>> accessed 3 June 2017. "Management of Transparency"

⁴² Karina Trevizan (*Globo.com*, 2017) <<http://g1.globo.com/economia/negocios/noticia/jbs-diz-que-pagara-multa-de-r-225-milhoes-em-acordo-de-colaboracao-premiada.ghtml>> accessed 6 June 2017." JBS confirm the payment of R\$ 225 Million on fines in Plea Bargain deal"

⁴³ Guilherme Neder (*JusBrasil.com.br*, 2015) <<https://guilhermeneder.jusbrasil.com.br/artigos/254509914/a-responsabilidade-penal-do-empresario-nos-crimes-economicos>> accessed 6 June 2017.(The Criminal Liability of the businessman on the economic crimes)

the Brazilian Anticorruption Law with the Criminal Procedural Code, which may lead into a potentially unconstitutional situation. Also, due to exigency, both norms for any criminal procedure might be covered by the principles of the broad defense and the adversarial principle⁴⁴. The main criticism of legal professionals in Brazil of the Criminalization of Legal entities due to corruption is the fact that companies can be prosecuted and judged by an objective liability (*stricto sensu*). This means that is not necessary to prove the act of the company, just the finality of it and/or the compliance mechanism was not respected (provided by the law) to avoid these illegalities⁴⁵. Furthermore, in Administrative Law in the United Kingdom, it is possible to terminate the administrative contract, with no penalty clauses, in cases of corruption or illegality against the Public Administration. It is also possible to prohibit guilty companies from participating in new public bidding processes, as well.

One of the main characteristics of the Brazilian Anticorruption Regulation (Federal Law 12.486 of 2013), is the combination of administrative penalties, for instance the fines for the corporation and employees and a criminal procedure with court sanctions such as the restitution of the values obtained via corruption, suspension or interruption of activities of the company, termination of the company etc. In addition, the research maintains that there are more effective penalties with a precise scope for the corrupt agents, rather than penalties that can terminate companies because, from a general standpoint, this create unemployment and, consequently, a reduction of the economic growth. Furthermore, it is important to mention that both penalties, administrative and penal may be applied together according to the Brazilian legal framework.

Another unique feature of the Brazilian Anticorruption Regulation is the ability of the company under corruption charges, to reduce penalties using a mechanism similar to the US plea bargain, called an “*Acordo de leniência*” (leniency agreement). This Brazilian provision with its grounds in the Common Law system allows the accused, obligatorily a legal entity, to make an agreement with the prosecutor in order to diminish the penalties. In this, the defendant must confess all illegal practices and must collaborate with the prosecutors with evidence and statements in order to incriminate other criminals, politicians involved in the criminal collusion, for example. Another prerequisite is that the collaborating company must

⁴⁴ Pierpaolo Cruz Bottini (*Conjur*, 2014) <<http://www.conjur.com.br/2014-jul-08/direito-defesa-lei-anticorruptcao-lei-penal-encoberta>> accessed 2 April 2017. (Anti-Corruption regulation as a Procedural Criminal Law)

⁴⁵ Cristiana Fortini (Uma rápida comparação entre a Lei 12.846/13 e norte-americano foreign corrupt practices act (FCPA), 2015) “ A comparison between the Law 12.846/13 and the north American foreign corrupt practices act (FCPA)”

stop all illegal acts after starting the leniency agreement.

The three regulations are shown in the table below.

Features of Regulatory Compliance in United States (FCPA), United Kingdom (UK Bribery Act) and Brazil (Brazilian anticorruption Regulation) (Table Three)

	FCPA	UK Bribery Act	Brazilian Anticorruption regulation
Fines	Anticorruption Violation: maximum of US\$: 2 Million. Fraud on accounting: maximum of US\$25 Million In cases of public finance with corruptions: twice the value intended or obtained	Unlimited	Fine of 20% of the raw turnover or if it is not possible to access the turnover, maximum of US\$ 18 Million
Another Sanctions	Declaration of disreputable, monitoring, etc	Declaration of disreputable	Publication of condemnatory decision, suspension or interdiction of activities, etc.
Credit due program of compliance	Yes	Yes, but limited.	Yes, maximum reduction of 2/3 of the fines values and exclusion of alternatives penalties
Credit by voluntary report e collaboration	Yes	Yes, but limited.	Yes. (Maximum reduction of 2/3 from the value of the fines and exclusion of the alternative sanctions
Corruption of foreign public functionaries	Yes	Yes	Yes

Corruption of National public functionaries	No	Yes	Yes
Accounting devices and of internal control	Yes	No	
Another harmful acts	No	No	Yes, included several acts against the Public Administration(e.g fraud on bids)
Exception of payment for “facilitation”	Yes	No	No
Criminal Liability of the Legal entity	Yes	Yes	Yes, with several restrictions
Objective Liability(<i>stricto sensu</i>)	No	Yes, in cases which the company failure to prevent bribery	Yes

Another significant and pioneering regulation to avoid fraud in the corporate sphere is the Sarbanes-Oxley Act, popular know as SOX or the Public Company Accounting Reform and investor Protection Act. Enacted on July of 2002 with the intention of specifying clear rules of corporate governance and disclosure for corporations on the capital market, stopping the previous deceptive practices typical of these public corporations. This regulation cannot be excluded from this paper because it is a milestone regulation on the corporate environment of publicly traded companies with stocks in the United States, more precisely in the NASDAQ and the New York Stock Exchange (NYSE). In outline, the main provisions of the SOX are: (i) Public company accounting oversight board, (ii) Auditor independence, (iii) corporate responsibility, (iv) enhanced financial disclosure, (v) analyst conflicts of interest, (vi) commission resources and authority, (vii) studies and report, (viii) corporate and criminal fraud accountability, (ix) white collar crime penalty enhancement, (x) corporate tax returns and (xii) corporate fraud accountability.

Basically, all these provisions are structured for two finalities and relations that directly or indirectly affect the whole of society. Firstly, the need for healthy and balanced accountability for companies. A private relation between the strong and the weak sides of the

relationship. According to all new compliance rules of SOX, listed corporations must have clear mechanisms to enhance security for financial administration, accountability and the periodical disclosure of a range of information on the results from the company in order to increase transparency. For instance, SOX prescribes the creation of committees with independent members in charge of supervising activities and operations with full exemption⁴⁶. The scope of this finality is to protect not just the investor, but also to ensure the functioning of large corporations with thousands of employees, who are dependent on the directors who run the corporation. The necessity of the government stipulating the “(strict) rules of the games”, is clear, since these companies are the engine of the economy, giving a significant number of jobs not only in the United States, but all over the world, since hundreds of foreign companies are listed on the United States Stock Market.

The second main relation is the tax function, generally, the relationship between the state and the private corporate business in such a way as to reduce the chance of avoiding any debit from potential misleading or fraud due to the lack of the proper supervision on the turnover or any other tax condition of the company. The primary function of tax on a society is to supply the government with the resources to maintain public services. The second main function is extra fiscal, which the state interferes, with the prices and market conditions to increase the price of goods and services in a way to discourage consumers.

The SOX might have critics because the costs of introducing compliance in companies are high. According to a survey by Korn/Ferry international, SOX compliance cost Fortune 500 companies an average of US\$ 5.1 million in expenses in 2004⁴⁷. Moreover, a study by Foley and Lardner found that the Act increased the cost of listing a corporation on the stock market by 130%⁴⁸. However, it is questionable that this costs is excessive compared with mitigating the risks that can harm society by creating a recession or mass redundancy. All these mechanisms, however, are the best way to give conditions to parties with balance and, creating relations more harmonious and protected.

⁴⁶ 'Introducao À Lei Sarbanes-Oxley' (*Portal de Auditoria*, 2017) <<https://portaldeauditoria.com.br/introducao-lei-sarbanes-oxley-sox/>> accessed 6 June 2017.

⁴⁷ Ron Paul, Repeal Sarbanes-Oxley! , April 14, 2005

⁴⁸ 'Sarbanes–Oxley Act' (*Wikipedia*, 2017)

3.3. The benefits of the compliance sector aligned with Regtech for a business environment.

Since the financial crisis of 2008, legislators worldwide, mainly in the United States, increased regulations and standards for several segments of the corporate area, in the capital market and insurance market for instance. With all this new regulation meaningful parts of the corporate environment suffered a rift with the past, especially with the operation and accountability procedures. Thus, with new costs to mitigate the kind of risks not previously considered, either by a lack of profit for mitigation, or because excessive disclosures and/or procedures that can expose illegal schemes from directors of corporations.

In order to reduce the cost from these new practices, technology is a catalyst, used as a tool to improve time and quality of labor. Furthermore, these new costs are in accordance with this new strict business framework, creating a necessity to cut other costs in areas that can be disrupted by technology, such as in the Fintech market.

Moreover, Regtech can help specific areas such as compliance and reporting, with the expectation of improving monitoring systems and vigilance. Operations that used to be run by human labor with slowness, inefficiency and inaccuracy are being disrupted by Regtech startups, which give better, cheaper and more accurate solutions with software. Another big dilemma is the need to be aware of the fast pace of regulators in enacting new legislation and constantly changing the rules. Therefore, in fact it is something that brings legal uncertainty but happens constantly, often in developing countries, where the political risk is higher, and, consequently, they are unstable than developed countries.

Although compliance and internal control might be judged as a cost to corporations, it has been proven that leveraging compliance will increase stakeholder value through corporate compliance⁴⁹. In other words, directors are pressured either by regulators or shareholders to incorporate a compliance system in order to embed risk management into business in all possible functions of the business at the level of employees daily activities, which will help companies to address regulatory or internal control standardization.

In a disorganized company, the risk management tends to be separate from central business operations and employees. The consequences for risk accountability are often within

⁴⁹ Thomas Fox (*FCPA compliance & ethics*, 2015) <<http://fcpacompliancereport.com/2015/08/georgia-on-my-mind-how-does-compliance-enhance-shareholder-value/>> accessed 6 June 2017.

the risk management function, leaving businesses, functions and risk management completely separated and each small segment (inside the compliance department) “doing their own thing” with regard to risk analysis, monitoring and investigation⁵⁰. However, when the risk is identified and managed within these business activities the whole sector can benefit from Regtech Software that can connect all segments of compliance, driving the possibility of allocating the management of risk in the same individual or department responsible for mitigating or facing the risk in their work. This technology increases the business awareness of risk and aggregate risk positions, with the potential to improve decision making in businesses and functions⁵¹

Furthermore, as Regtech is embedded into the routine practice of companies, the process of risk management is becoming integrated activity. In other words, it is possible to embody discipline and coordination not just in the compliance sector to manage risk but the whole companies can have access to their own risk activity and can manage it themselves. A meritocratic system can be instated in accordance with performance-related goals for risk management, cost and growth. For example, a financial institution acquiring another bank can lead to new risk management challenges in imposing their standard governance practices. In order to establish a new line of products for the bank, such as a new line of credit, or align the financial institutions with regulatory compliance, specific regtech software can be used to optimize the procedure of supervision or, like in the example, to develop a program to manage the risk on the new line of credit.

The activities that a Regtech can incorporate are diverse, such as: (i) accessing the whole range of risk the financial institution faces, including strategic, operational and the credit itself; (ii) specify a risk management and risk governance program and the required controls, (iii) reporting and risk infrastructure; (iv) access capital needs and capital management requirements and capabilities; (v) increasing and operationalizing the risk governance model at the level of decision making and procedures in the business.

In broad terms, according to Deloitte, Regtech is the next explosion following Fintech. The priorities of Regtech are structured in 4 principles: agility, speed, integration and

⁵⁰ Lory Kehoe, David Dalton and Sean Smith
<<https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/FinancialServices/ie-regtech-pdf.pdf>> accessed 6 June 2017.

⁵¹ Lory Kehoe, David Dalton and Sean Smith
<<https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/FinancialServices/ie-regtech-pdf.pdf>> accessed 6 June 2017.

analytics. Agility in connecting data sets can dissociated and organized through ETL (extract, transfer load) technologies⁵². Speed is being associated with the disruptive effect on the labor required. Integration allows the user to unite all the processes and data in a single platform. Analytics, according to reports from Deloitte, “uses analytic tools to intelligently mine existing big data, data sets and unlock their true potential e.g. using the same data for multiple purposes”⁵³

As previously mentioned, the value of the Regtech in a corporation is that it achieves higher productivity and transparency. That is to say, the use of analytics data transforms this sector, however, this kind of information needs to be well interpreted to be valuable for decisions and actions based upon it. Regtech is a tool that can organize properly, transforming analytics and consumable information.⁵⁴ Banks in Europe spend €55 billion on information technology. Only €9 Billions was spent in this time on new systems.⁵⁵ In other words, investment was misguided because “ The balance was used to bolt-on more systems to the antiquated existing technologies and simply keep the old technology going”⁵⁶.

Good examples of successful Regtech in the business environment include Silverfinch (creates connectivity between asset managers and insures data utility in a secure and controlled environment through a fund), KYC3 (customer, counterpart, risk management and competitive intelligence solutions), AssetLogic (which aggregates all fund management data into a single source to make compliance, marketing, data governance and relationship with service providers more efficient).

⁵² Lory Kehoe, David Dalton and Sean Smith

<<https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/FinancialServices/ie-regtech-pdf.pdf>> accessed 6 June 2017.

⁵³ Lory Kehoe, David Dalton and Sean Smith

<<https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/FinancialServices/ie-regtech-pdf.pdf>> accessed 6 June 2017.

⁵⁴ Lory Kehoe, David Dalton and Sean Smith

<<https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/FinancialServices/ie-regtech-pdf.pdf>> accessed 6 June 2017.

⁵⁵ Lory Kehoe, David Dalton and Sean Smith

<<https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/FinancialServices/ie-regtech-pdf.pdf>> accessed 6 June 2017.

⁵⁶ Lory Kehoe, David Dalton and Sean Smith

<<https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/FinancialServices/ie-regtech-pdf.pdf>> accessed 6 June 2017.

CHAPTER IV – THE IMPORTANCE OF CREDIT IN ORDER TO BE A FRIENDLY BUSINESS ENVIRONMENT.

4.1. Institute which can expand the access of credit: integrated secured transactions system

The role of credit is important in a business environment. Not just as a booster for businesses starting out, optimizing or maintaining a business; but also as a stimulus for consumers to satisfy their needs and spend money, creating a virtuous circle towards economic growth.

Even with all the evolution of the corporate and financial area, there remains two main methods to finance a project: Debt or equity. Both have their advantages and disadvantages. It is necessary to evaluate the situation more precisely in each country, respecting local legislation and market conditions. Although the way loan money is similar across the world, it is possible to analyze practices that can expand access to credit.

In order to open access to credit without increasing the risk of default, the operations must encourage the lenders to borrow and, simultaneously, remain financially feasible to borrowers. In this scenario, secured transactions have a significant impact on credit operation⁵⁷. This strategy requires a modern and effective secured transaction system to increase the credibility for borrowers. The most traditional component of an effective secured transaction system is a guarantee over assets (nonpossessor security interest) where a debtor is permitted to continue operating, having the possession of the secured asset for the benefit of the business.⁵⁸ Besides the ordinary pledge, other equivalent guarantees have arisen as an

⁵⁷ A World Bank Group Report, 'Doing Business: Equal Opportunity To All' (World Bank Group 2017) <<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf>> accessed 6 June 2017.

http://www.ifc.org/wps/wcm/connect/Industry_EXT_Content/IFC_External_Corporate_Site/Industries/Financial+Markets/Financial+Infrastructure/Collateral+Registries/

⁵⁸ A World Bank Group Report, 'Doing Business: Equal Opportunity To All' (World Bank Group 2017) <<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf>> accessed 6 June 2017.

attempt to raise business capital.⁵⁹ For instance, with financial leasing, a business can use the leased asset in exchange for the payment. Nonetheless, if this debt is not recorded, future lenders would not understand the meaning of the business standing and who has priority over its assets, mainly if the business goes into default.⁶⁰ The need for a registry of assets, in situation of well-run collateral is essential for the efficient operation of financial institutions to satisfy their credit⁶¹

Updates to regulation on governing secured transactions has occurred worldwide, in order to benefit creditors and businesses equally. With a similar agenda, the aim of these regulations to cover all varieties of lending contracts using movable assets as collateral can expand the scope of assets available to secure repayment of a loan.⁶² It is unquestionable that the effect of using movable assets as collateral improves credit and, consequently, raises funds for business. Furthermore, there are often institutions where the borrowers retain use of the collateral in order to develop the business; fiduciary transfer of title, financial lease, assignment of receivables and retention of titles sales, for example.⁶³ One of the benefits of these practices is the possibility of permitting a loan not just for the traditional bank financing and credit, but also through financial lease agreements.⁶⁴ This development it is essential for businesses because firms can control budgets better, restricting cash flow and stimulating potential growth. If the regulations are not clear about registry of movable assets as collateral, however lenders may be in front of a “lien competition” which increases risk and, consequently, the price of the credit.

A centralized collateral registry, encompassing all the secured transactions in the national territory, giving specific support with movable assets is crucial because it fulfills

⁵⁹ A World Bank Group Report, 'Doing Business: Equal Opportunity To All' (World Bank Group 2017) <<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf>> accessed 6 June 2017.

⁶⁰ A World Bank Group Report, 'Doing Business: Equal Opportunity To All' (World Bank Group 2017) <<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf>> accessed 6 June 2017.

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⁶² 'Collateral Registries' (IFC, 2017)

<http://www.ifc.org/wps/wcm/connect/Industry_EXT_Content/IFC_External_Corporate_Site/Industries/Financial+Markets/Financial+Infrastructure/Collateral+Registries/> accessed 6 June 2017.

⁶³ A World Bank Group Report, 'Doing Business: Equal Opportunity To All' (World Bank Group 2017) <<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf>> accessed 6 June 2017.

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three key functions, according Alvarez de la Campa⁶⁵:

“Specifically, three conditions are required for banks to be able to accept movable assets as collateral: the creation of security interest, the perfection of security interest, and the enforcement of security interest. The movable collateral registry is a necessary component as it allows for the “perfection” of security interest. “

The system needs to be public and transparent, identifying all types of movable assets secured clearly, related parties and open to potential amendments. Moreover, it is important to access and register collateral assets online with a simple registration,⁶⁶ not involving formal documents as requisites of the previous and main obligations, for example in a loan agreement. In order to avoid unnecessary bureaucracy and high fees, the register may just have important information of the collateral, like identifiers of the parties, description of the collateral asset, and the amount of capital secured.

Empirical analyses in several countries demonstrated an increase of credit following a collateral registry. For instance, according to the International Finance Corporation (IFC), after Colombia enacted the Secured Transaction Law in 2013, enforcement of the collateral assets to a registration, after 3 months more loans were registered than in the previous 30 years; over 16,000 loans registered to a value of US\$ 6 Billion. Legal reforms made in China in 2007 created a centralized online registry for accounts receivables and leasing, with generated more than US\$ 6 trillion in financing with receivables, 60% to SMEs. Further examples of developing the factoring and leasing industries include Vietnam’s implementation of a new centralized online registry in 2012; over 200,000 loans have been registered to more than 100,000 SMEs generating a volume of US\$ 2.5 Billion in credit.

Although, a modern integrated secured systems may reduce information asymmetries, banks need to become more willing to lend funds even with a potential lack of interest in movable assets as collateral, due to the absence of this practice (movable asset lending) creating a specific sector developing this potentially profitable segment. Regulation may

⁶⁵ Inessa Love, María Soledad Martínez Pería and Sandeep Singh, 'Collateral Registries For Movable Assets: Does Their Introduction Spur Firms' Access To Bank Financing?' (2015) 49 Journal of Financial Services Research. Pages: 3-4

⁶⁶ A World Bank Group Report, 'Doing Business: Equal Opportunity To All' (World Bank Group 2017) <<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf>> accessed 6 June 2017.

redress some externalities, although even with the best system of secured transactions financial institutions need to first be willing to give credit.

4.2. Fintech Companies as an alternative (and good) path to achieve a finance.

The way in which societies interact with objects or others has changed hugely over the last decade. Technology emerges as a key-determining factor of the behavior of a society and how they interact in almost all conditions. Companies are also changing their modus operandi, and how they communicate with clients and with financial institutions are no different. For instance, Banks, are investing heavily in technology to disrupt old practices in order to offer better experiences to clients. However, as established and old structured organizations, banks have well sedimented practices embedded in their services, which intrinsically implies strict procedures to minimize their risk. Usually, this procedure, involves rules based in objective terms that cannot be changed according to the agreement. Hence, all these practices create barriers for players to achieve financing to solve liquidity issues in their enterprises.

With the problem detected CONS, entrepreneurs found an interesting niche to invest effort and technology. Fintech companies arose with the aim of offering simple financial services to a forgotten niche and set forth a different, customized and decentralized service. With a new business model, fintech companies, show a new and alternative scenario that can offer the same services as financial institutions but with an approach based on simplicity and technology. Services such as current accounts, debit and credit cards, personal and business loans, payments, investment and insurance are no longer monopolized by old financial institutions.

Alongside new and positive experiences, Fintech startups, usually offer cheaper products and services, than the traditional banks with an inexpensive structure, often based on cloud storage technology. This significantly reduces the fixed costs and overheads, creating a new structure able to perform better and cheaper than large institutions.

With this new scenario, large banks are aware of the danger of Fintechs on their market. Goldman Sachs, estimate that Fintech companies can take up 20% of the financial market in

the future.⁶⁷ A report by PwC, interviewing 176 CEOs in 62 countries revealed that 81% of them think that the speed of change caused by technology may threaten the growth of their companies.⁶⁸ With these developments, banks are supporting the Fintech market, entering it as investors with joint ventures and other types of partnership. For instance, Citi Group launched a project called Citi Ventures in the US, Germany, Singapore Brazil and Spain an innovative arm of the company, committed to investing in accelerating Fintech companies, which creates good synergy with Citi Bank⁶⁹; JP Morgan developed a Centre for Financial Service Innovation (CFSI) and allocated US\$ 30 million to supporting Fintech startups based mainly on lending⁷⁰; Barclays also invested around US\$ 150 Million into a fund with the aim of accelerating Fintech startups, able to offer innovative digital products to their platform.⁷¹ Of all types of products and services offer by financial institutions and Fintech companies, 19% is destined to financing and lending.⁷²

Fintech startups may not arise with only the scope of disruptive practices for banks, but also can work integrating with them. Various Fintech startups, in all segments, function as business enablers, creating relationships and indicating clients for several banking services. This integrated work may increase the chance of finding the right loan for the individual customer. Therefore, it is obviously this kind of service increases the efficiency of financial sector.

A few government already realize the important of Fintech to a friendly business environment and have been increasing their role in promoting this tendency. Much of this occurs because this changes inexorable, creating a new way of society operating and interacting in order to solve government questions. For instance, a Fintech company, which optimizes credit for SMEs, will stimulate the creation of jobs and economic growth; an online bank platform can reduces traffic in a metropolitan region by eliminating the need to visit a branch. These are just two significant examples of how Fintech can tackle public issues in the

⁶⁷ Mariana Desiderio, 'Conheça As Fintechs, As Startups Que Desafiam Os Bancos' (*Exame.com.br*, 2017) <<http://exame.abril.com.br/pme/conheca-as-fintechs-as-startups-que-desafiam-os-bancos/>> accessed 6 June 2017. ("Meet the Fintech, startups who are challenging the Banks")

⁶⁸ <http://www1.folha.uol.com.br/mercado/2016/05/1776139-banqueiros-temem-avanco-de-start-ups-e-aumento-da-regulacao-financeira.shtml>

⁶⁹ Citi Ventures' (*Citi.com/ventures/about.html*) <<http://www.citi.com/ventures/about.html>> accessed 6 June 2017.

⁷⁰ Jeff Desjardins, 'How Fintech Is Digitally Disrupting the Financial World' (*Visual Capitalist*, 2016) <<http://www.visualcapitalist.com/how-fintech-digitally-disrupting-financial-world/>> accessed 6 June 2017.

⁷¹ Jeff Desjardins, 'How Fintech Is Digitally Disrupting the Financial World' (*Visual Capitalist*, 2016) <<http://www.visualcapitalist.com/how-fintech-digitally-disrupting-financial-world/>> accessed 6 June 2017.

⁷² Jeff Desjardins, 'How Fintech Is Digitally Disrupting the Financial World' (*Visual Capitalist*, 2016) <<http://www.visualcapitalist.com/how-fintech-digitally-disrupting-financial-world/>> accessed 6 June 2017.

interest of governments.

It is possible to characterize the government's role in supporting Fintech in two main categories: actions and omissions. Countries interested in Fintech development usually act in both scenarios.

Action means positive measures in order to promote Fintech. Direct investment in startups, creation of specific departments, structuring regulations and giving access to research and development are typical examples. For instance, the United Kingdom spent £860 million on the National Cyber Security Program to protect and promote UK online business⁷³; the United States, tripled investment in accelerators and incubators in 2016 in order to help startups connect with partners⁷⁴; Singapore launched a specific channel, which offers full financing or co-investment financing specific for Fintech Startups and incubators⁷⁵; Hong Kong allocated €250 million in a technological fund created to match funding with venture capital tech startups in the region.

Omissions are tax subsidies, which imply exoneration from the government payroll. They stimulate and enable the business to prosper quickly. For instance, Australia, Germany, the Netherlands and Ireland follow this policy.⁷⁶

In Brazil, despite the positive opportunities for increasing the Fintech Market, such as a high proportion of the population without bank accounts and the widespread use of smartphones, the government does not have any role either in action or omissions. Nonetheless, there are a significant number of financial institutions stimulating the Fintech Market.

An interesting and pioneering path that Fintech Market opened for financing business is loan funds through the shared economy, also known as "P2P lending (peer to peer Lending). Potential investors, ordinary people interested in investing their resources, use the Fintech platform to lend to any interested party. One of the main advantages of this business model of fintechs is the possibility of achieving funds easily through an Internet platform and, often the interest rates are competitive or lower than the interest rates of bank loans. This happens

⁷³ Jeff Desjardins, 'How Fintech Is Digitally Disrupting the Financial World' (*Visual Capitalist*, 2016) <<http://www.visualcapitalist.com/how-fintech-digitally-disrupting-financial-world/>> accessed 6 June 2017.

⁷⁴ Jeff Desjardins, 'How Fintech Is Digitally Disrupting the Financial World' (*Visual Capitalist*, 2016) <<http://www.visualcapitalist.com/how-fintech-digitally-disrupting-financial-world/>> accessed 6 June 2017.

⁷⁵ Jeff Desjardins, 'How Fintech Is Digitally Disrupting the Financial World' (*Visual Capitalist*, 2016) <<http://www.visualcapitalist.com/how-fintech-digitally-disrupting-financial-world/>> accessed 6 June 2017.

⁷⁶ Jeff Desjardins, 'How Fintech Is Digitally Disrupting the Financial World' (*Visual Capitalist*, 2016) <<http://www.visualcapitalist.com/how-fintech-digitally-disrupting-financial-world/>> accessed 6 June 2017.

because Fintech companies usually have simple structures with reduced costs and fewer employees, which, consequently, enables them to offer cheaper prices to customers. The disadvantages are that the values of the loans are usually reduced, narrowing the service, at least at first, into a specific market; financing SMEs. Moreover, the creation of this segment not only allows the relation between debtor and lender, but also an investment in equity through crowdfunding. The creation of exchange SMEs market is already a reality and has increased quickly. According to BBVA and Nesta Foundation, 14% of new loans to micro companies in the UK, in 2015 was offered by an informal “stock exchange”. The same takes place in Portugal, at a Fintech Company call Raize, which has already obtained more than €5.5 million in loans for SMEs, with more than 10 thousand investors.⁷⁷ Furthermore, research from Deloitte predicts that in the next decade, 15% to 20% of the market share of lending market for SMEs will be P2P lending in Australia.⁷⁸

The main advantages of the peer to peer financing is the decentralization of institutional intermediaries, such as banks or other financial institutions, which leads to the necessity of using self-executable smart contracts based on codes to establish the agreement of borrowers and investors. Therefore, both characteristics make the P2P business perfectly “Blockchainable” creating good synergy either with a private blockchain for startups or a public blockchain, with no intermediary at all. This may generate better processes, more economical, quick and, at least with the current technology, impossible to defraud. The modus operandi of peer-to-peer lending platforms will use blockchain, it will depend on how significant and popular the technology concepts become and, ultimately, whether the disruptors eventually want to disrupt themselves.

4.3. Cost of borrowed money: the reason of the basic interest rate in Brazil

It is impossible to decouple the clear relation between the development of a financial system of a particular country and their good conditions of credit, social welfare and business. Nonetheless, in Brazil, the situation of credit availability, especially in regular business, is still far from ideal for its economic standards of a developing country. Individual consumers

⁷⁷ 'O “Mercado De Capitais” Para PME Existe E Já Tem Mais De 10 Mil Investidores' (*eco.pt*, 2017) <<https://eco.pt/2017/04/06/o-mercado-de-capitais-para-pme-existe-e-ja-tem-mais-de-10-mil-investidores/>> accessed 6 June 2017. (“The Capital Market” of SMEs already exist and have more than 10 thousands investors)

⁷⁸ Deloitte, 'Fintech – Disrupting the Way We Bank' (Deloitte 2015).

and legal entities still pay among the highest interest rates on earth, according to the World Bank. This is one of the main reasons that Brazil does not stimulate a business friendly environment; increasing the numbers of SMEs, unlocking long term prosperity for economic actors is the basic interest rate, set by the Brazilian Central Bank. This economic measure is designed to control inflation. If the interest rate drops significant levels, the population attains easy credit and therefore spends more. That increases the demand and pressures the suppliers to meet this increase.

There are two main signs that Brazil has a unique relation with its basic interest rate: the interest rate of regular debtors (private-commercial relation) and the spread between the interest of bank loans and the interest of treasury bonds. In both situations, Brazil is the only developing country, with middle income with the biggest interest in the world.

Real interest rate in the World (Table Four)

Country	2011	2012	2013	2014
Brazil	32.8%	26.7%	18.6%	23.5%
Uganda	16.2%	4.5%	18.4%	18.8%
China	-1.5%	3.5%	3.7%	4.7%
India	3.5%	2.8%	3.8%	7.0%
Russia	-6.4%	1.5%	4.2%	3.7%
South Africa	2.2%	3.1%	2.4%	3.1%

(Source: The World Bank)

The table above shows the real interest rate, not adjusted for inflation, from the BRICS and a comparison between Brazil and Uganda – which is still lower than Brazil. This analysis it is not precise because the terms and conditions between each loan may vary from country to country, however, it can still be significant for a perception of business environment. Basic interest rate (“SELIC”), is stipulated by the Central Bank, it is currently 12,25%⁷⁹. It is

⁷⁹ <https://www.bcb.gov.br/Pec/Copom/Port/taxaSelic.asp>

therefore, the fault of the political economic measures that raise the price of Treasury Bonds and, consequently, public debt due to high indexation with external elements, such as currency and Treasury Bonds.⁸⁰

In the following table we can see the difference between the real interest from banks and the basic interest rate in less economically developed countries, Brazil and a few developed Countries:

Table of Basic Interest Rate (Table Five)

Country	2011	2012	2013	2014
Malawi	17.2%	18%	16.5%	23% ⁶
Brazil	32.2%	28.6%	18.4%	20.5%
Angola	11.8%	13.2%	12.7%	12.9%
Guiana	12%	12.1%	12.2%	11.3%
Italia	1.8%	3.3%	4.3%	4.4%
United States (US)	3.2%	3.2%	3.2%	3.2%
United Kingdom (UK)	1.8%	3.3%	4.3%	4.4%

Source: World Bank

There is clearly no country with the potential and economic profile with the same interest rates as Brazil. Nonetheless, the question that arises from this is: Why is the interest rate so high in Brazil? Clearly this is not an easy issue to answer; on the contrary, the situation involves multiples elements and decisions, not always made by the same players. The interest rates are high due to a combination of decisions taken by the Central Bank, the direction of credit lines, dubious behavior of commercial banks and the inefficiency of the legal system.

⁸⁰ Leonardo Palhuca, 'Quem É O Vilão Da Dívida Pública' (*terraçoeeconomico.com.br*, 2015) <<http://terraçoeeconomico.com.br/quem-e-o-vilao-da-divida-publica2>> accessed 6 June 2017.(Who Is the Villain of the Public Debt)

The Brazilian Central Bank as a financial institution takes extreme care with the consistency of the banking system, in others words, with liquidity and therefore with the leverage of financial institutions and exchange reserves. The Central Bank heavily regulates the local financial system in order to avoid any beginning of (liquidity) crisis, in fact even with the financial crisis in 2008, Brazil did not suffer a strong shock: in 2009 GDP growth rate shrank of 0.2%⁸¹ and, in 2010, achieved one of the highest increases in GDP: 7.5%⁸². This was very different to many countries in Europe, such as Italy and Greece, which had to activate assistance mechanisms to save their financial system⁸³. The Brazilian system is solid, but this causes other problems, such as the social cost. The retail banks have an significant discretionary power as the main source of loans: the prompt mandatory deposit. From a macroeconomic point of view, the money multiplier, which is the procedure where banks offer and create credit in a modern economy. For instance, banks using the money from clients to lend money to potential consumers of credit. This money goes back to the financial institution, which it then lends again, creating a virtuous cycle “multiplying” the (same) money. Care must be taken in order to avoid extreme leverage, and consequently, bankruptcy, creating a financial crisis. Financial regulations stipulate mechanism that protects the system, and one of these main controls is the mandatory deposit (Central Bank reserve requirements). This mechanism forces the bank to allocate an extra amount of the loan to the Central Bank, without any remuneration. In the United States, for instance, the law stipulates the mandatory deposit between 7% and 22%⁸⁴, In Brazil; however, the mandatory reserve is 45% of the prompt deposit.⁸⁵ Moreover, any daily delay must be compensated with a fine of 4% more per year applied to the basic interest rate. There is therefore tight control of the financial system which, consequently, narrows and makes loans more expensive.

According a research from the Central Bank, in 2017, four commercial banks (Caixa, Banco do Brasil, Bradesco and Itau) concentrated 79% of the credit market in Brazil. This high concentration leads to an oligopoly; prices can be increased artificially, simultaneously, the efficiency of the service is reduced. Another important factor with this concentration is to limit the entrance opportunities for new players in the market, in order to determine the level

⁸¹ Fabricia Peixoto, 'PIB Do Brasil Cai 0,2% Em 2009, Mas Cresce 2% No 4º Trimestre' (*BBC*, 2010) <http://www.bbc.com/portuguese/noticias/2010/03/100311_pibbrasil_fbdt.shtml> accessed 6 June 2017. (GDP drops 0.2% in 2009 but increase 2% in the fourth trimester)

⁸² Economia Brasileira Cresce 7.5% Em 2010, Afirma IBGE' (*G1*, 2011)

⁸³ Entenda A Crise Global Dos Mercados (*BBC*, 2017) (“Comprehend the Market Global Crisis”)

⁸⁴ Depósito Compulsório' (*Wikipedia*, 2017)

<https://pt.wikipedia.org/wiki/Dep%C3%B3sito_compuls%C3%B3rio> accessed 6 June 2017. (Prompt Deposit)

⁸⁵ Banco Central do Brasil, 'Depósitos Compulsórios' (Central Bank of Brazil 2017)

<[http://www.bcb.gov.br/conteudo/home-ptbr/FAQs/FAQ%2012-\(Prompt Deposit\)](http://www.bcb.gov.br/conteudo/home-ptbr/FAQs/FAQ%2012-(Prompt%20Deposit))>

of efficiency in the market⁸⁶. In Brazil, for instance, the insertion of new players is remote, because the regulation is overcautious in such a way that even established banks like HSBC, one of the biggest commercial banks in the world, decided to leave the local market⁸⁷. Therefore, commercial banks enjoy ability to take advantage one of the highest spreads in the world.

Another significant issue debtor relations. In Brazil, lenders cannot pursue a debtor in court after 5 years due to expiration of the debt, according to Article 206 of the Civil Code. 2002. The Consumer Code of 1990, in article 43, § 1º, is explicit in not allowing any debtor over 5 years on the credit bureau⁸⁸ list, even if the debt is not paid. These credit reporting agencies, who maintain debtor registration in order to correct asymmetric information do not strong instruments with which to coerce debtors. For banks it is difficult to distinguish good and bad clients. This increases the risk and the price of loans for all potential creditors. In The United States if a debtor does not repay a debt, they enter the list of the credit-reporting agency, until the obligation is satisfied.

The slowness of the courts in Brazil may increase the price of loans, as a last resort. A sentence in the first instance in the courts of Brazil took, on average, 4 years and 4 months, on average.

To conclude, the legal framework of Brazil protects institutions heavily but at the same time, increases interest rates from financial institutions. These same financial regulations create a typical oligopoly, restricting the insertion of new players with substantial barriers, credit rating agencies have strong regulatory issues to diminish the asymmetry of information with debtors. Brazil does, however, have a strong and safe financial regulatory system, it is not at all innovative, and it is expensive.

⁸⁶ 'Banking Competition' (*Worldbank.org*, 2017)

<<http://www.worldbank.org/en/publication/gfdr/background/banking-competition>> accessed 6 June 2017.

⁸⁷ 'HSBC Completes Brazilian Sales' (*FT.com*, 2017) <<https://www.ft.com/content/8f99695e-e116-38a3-bd36-25a7862cb13f>> accessed 6 June 2017.

⁸⁸ 'Quanto Tempo O Nome Fica Cadastrado No SPC, SERASA E SCPC?' (*Sosconsumidor.com.br*, 2017) <http://www.sosconsumidor.com.br/faq_det-2,29,11,cadastrados-credito-quanto-tempo-nome-fica-cadastrado-no-spc-e-serasa.html> accessed 6 June 2017. (How much time each name are register on SPC, SERASA AND SCPC?)

CHAPTER V – CONCLUSION.

The context of the Business environment in Brazil is best summed up by the economic recession that persists over the past two years⁸⁹, allied with the political crisis, which has left the country with an uncertain future. It is not possible to predict whether politicians are willing to prioritize business regulations moving towards more of a global context, searching for disruption or improving new business practices. Therefore the status quo offers security, something already established with existing corporatism. Moreover, Brazil suffers from bad government administration, with a gradual detriment on social security, which currently represents 8.1% of GDP and is gradually increasing annually⁹⁰; not to mention tax collection which several analysts classified as grave⁹¹, either by the recession and regular enhancement of public expenses above inflation.

In this unstable scenario, firstly, in public administration that seeks a better relation with the business community, blocking foreign capital. It is clear that the government wants to unlock conditions for economic growth, solving social wellbeing with economic growth, therefore ending the tax collection issue rather than changing the regulation of business procedures and allowing easier access to credit SMEs, for instance. Furthermore, if the context is not attractive for the Government still are many solutions that can be done by private entities in order to improve their condition. However, the new path does not need to be invented to promote better conditions for business. As it possible to see, many of Brazil's problems have already been faced by other countries, although often in smaller dimensions. Much of what has happened in business friendly environments might be applicable in Brazil. Hence, in this context it is not necessary to invent a new institute to be revolutionize the sector, importing good practices is sufficient.

As it possible to see, research method involves multiples fields of law and economy. Supported by wide quantitative literature, it is possible to determine that a massive

⁸⁹ 'PIB Do Brasil Cai 7,2% Em Dois Anos, Pior Recessão Desde 1948.' (*Valor.com.br*, 2017)
<<http://www.valor.com.br/brasil/4890366/pib-do-brasil-cai-72-em-dois-anos-pior-recessao-desde-1948>>
accessed 6 June 2017. (GDP drop 7.2%, in two years, the worst recession since 1948)

⁹⁰ 'Guardia: Situação Da Previdência É Insustentável E Reforma Não Pode Ser Adiada' (*em.com.br*, 2017)
<http://www.em.com.br/app/noticia/economia/2017/03/06/internas_economia,851986/guardia-situacao-da-previdencia-e-insustentavel-e-reforma-nao-pode-se.shtml> accessed 7 June 2017.

⁹¹ 'Guardia: Situação Da Previdência É Insustentável E Reforma Não Pode Ser Adiada' (*em.com.br*, 2017)
<http://www.em.com.br/app/noticia/economia/2017/03/06/internas_economia,851986/guardia-situacao-da-previdencia-e-insustentavel-e-reforma-nao-pode-se.shtml> accessed 7 June 2017.

bureaucracy that generates jobs and excessive legal security but severely impedes innovation and disruption blocks the business environment in Brazil. It seems impossible to estimate the loss of potential opportunities, which are strangled by the slowness and inefficiency of the Brazilian business system as a whole. The same happens in the banking system, where the excess of safeguards and requirements prevent the facilitation of accessible lines of credit due to restraint of liquidity on the market. Therefore, monetary policy might make sense for countries that are increasing significantly like China, India and Indonesia and, as a result, use this kind of monetary policy to control inflation. However, in conditions of recession, like Brazil, this rigid banking system almost does not positively affect the control of inflation, on the contrary, it increases stagnation.

As the research demonstrates, countries who are introducing innovation and technology, consequently, assimilate new market trends and are taking advantage of a prosperous welfare environment. The question of when Brazil will realize this and rely on their business sector for this tendency is a question with imponderable variables, involving many parts. Hence, it is possible to affirm that many of the policies that have been shown here will arrive in Brazil sooner or later.

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