

**HOW LAWS  
FACILITATE  
OR IMPAIR  
BUSINESSES ?**

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## **HOW LAWS FACILITATE OR IMPAIR BUSINESSES?**

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### **INTRODUCTION**

The Brazilian Law is usually criticized by the difficulties it creates to business development, however, it is important to objectively analyze how such loss occurs.

There are two annually-published consolidated international studies supporting such analysis, the *GEM* (Global Entrepreneurship Monitor) <sup>1</sup> project, a global academic initiative and the *Doing Business*<sup>2</sup> project, developed by the World Bank.

The GEM Project began in 1999 aiming to understand the role of entrepreneurship all over the world, primarily focusing on the individual entrepreneur. Since 2000, the Brazilian Institute of Quality and Productivity (IBQP) has conducted research at a domestic level<sup>3</sup>, currently in partnership with SEBRAE and FGV.

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<sup>1</sup> Access GEM Project website: <http://www.gemconsortium.org/report>

<sup>2</sup> Available at: <http://portugues.doingbusiness.org/>

<sup>3</sup> The Brazilian researches of GEM Project may be accessed at: [https://www.sebrae.com.br/sites/PortalSebrae/estudos\\_researchs/research-gem-entrepreneurship-no-brasil-e-no-mundodestaque9,5ed713074c0a3410VgnVCM1000003b74010aRCRD](https://www.sebrae.com.br/sites/PortalSebrae/estudos_researchs/research-gem-entrepreneurship-no-brasil-e-no-mundodestaque9,5ed713074c0a3410VgnVCM1000003b74010aRCRD)



The 2015/2016 global research showed that 42% of adults see good opportunities in setting up a business, out of which one third fear failure.

The Doing Business project in turn, ever since 2005, has produced reports on laws and regulations which either facilitate or impair corporate activities all over the globe. In the 2017 document, 190 countries were reviewed; their performance was compared between June 2015 and June 2016.

Overall, the 2017 balance sheet evidences the huge disparities between developed and developing economies and between men and women. In 155 jurisdictions, women still lack the civil rights men are granted, due to which they receive lower support for business ventures.

Researchers who drafted the report acknowledge that increasing regulation of a market is not always the most appropriate measure, which could lead to undesirable cost increase for companies (especially startups). Amendments to effective laws must always try to balance the private sector needs and protection to consumers and other groups of interest.

### **HOW DOES THE BRAZILIAN LAW ENCOURAGES BUSINESSES?**

Experts interviewed by the GEM project in Brazil in 2015 considered that the existing government policies to encourage innovation (such as determination of SIMPLES, updated in 2016<sup>4</sup>) were some of the key factors in encouraging entrepreneurship in Brazil. However, the two factors which, in fact, leveraged such activity in the country were the entrepreneurial ability of Brazilians and the volume of information available on the subject in multimedia channels.

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<sup>4</sup> Supplementary Act No. 155/2016: [http://www.planalto.gov.br/ccivil\\_03/leis/LCP/Lcp155.htm](http://www.planalto.gov.br/ccivil_03/leis/LCP/Lcp155.htm)



Furthermore, the same research verified that the effective law is the main hindrance to entrepreneurship development in Brazil, as well as the lack of qualification in entrepreneurs and no financial resources.

Out of the 190 countries reviewed by *Doing Business* between 2015 and 2016, Brazil ranked 123<sup>rd</sup> in the countries whose regulatory environment facilitates business development, reviewing herein the cities of São Paulo and Rio de Janeiro. Bordering countries such as Colombia (53<sup>rd</sup>), Peru (54<sup>th</sup>), Argentina (116<sup>th</sup>) and Chile (57<sup>th</sup>), had better reviews. Although Brazil has gone through an economic crisis in 2016, this study is not considering the macroeconomic stability, or incidence of corruption in those places. Notwithstanding, the position of the country has been stable for years.

Even in a hostile legislative scenario, the GEM project verified that, this year, the total entrepreneurship rate in Brazil was 39.3%, at an increasing rate since 2011.

However, the same research shows that a great part of such growth was the result of the search for alternative sources of income due to the economic crisis faced by the country, which was not reviewed by the *Doing Business* report. Such conclusion is possible due to variation in the rate of new initial entrepreneurs<sup>5</sup> from 2014 to 2015 (especially, startup entrepreneurs<sup>6</sup>), greater than the variation in the rate of established entrepreneurs<sup>7</sup>. Notwithstanding, if in 2014 the major motivation for a business venture was due to some business opportunity (70%), in 2015, 43.5% of initial entrepreneurs were in such position because they needed to.

### **Bureaucratic Obstacles**

According to the World Bank report, to incorporate a company in Brazil 11 different procedures are required which

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<sup>5</sup> 2014: 17.2%; 2015: 21%

<sup>6</sup> 2014: 3.7%; 2015: 6.7%

<sup>7</sup> 2014: 17.5%; 2015: 18.9%



take, in average, 80 days of the entrepreneur, at the cost of 5.2% of the annual income per person of a female in the country. In Colombia, 6 procedures are required, taking approximately 9 days at a cost of 7.5% of the annual income per person of a female. In Chile, 7 procedures are required taking in average 6 days and costing 0.7% of the annual income per person of a female.

A significant point of the GEM project in relation to the difficulty in formally incorporating a business in Brazil was the verification that only 21% of initial entrepreneurs in 2015 had some type of formal registration, such as CNPJ (Corporate Taxpayer Identification Number). Most entrepreneurs worried about formalizing their businesses were those whose product or service was innovative, or in case of significant generation of employment or revenue. Naturally, business regularization also goes through other legal issues, such as protection to intellectual property, labor and tax laws.

In 2016, the CLT was highly discussed, simplification thereof was even suggested by the GEM project and the government announced proposals for modifications in 2017<sup>8</sup>.

### **Tax matters**

The *Doing Business* report approaches the tax routine of companies during their second operating year. Brazil is in 181st position in the world ranking related to easy payment of taxes.

As noticed in the GEM project, the high tax burden and high complexity level of the national tax system increase the operating costs of national companies, causing them to be less competitive in the international scenario, while rendering the country less attractive to multinationals.

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<sup>8</sup> For further information, access: <http://www.ib.com.br/pais/noticias/2016/12/22/governo-anuncia-propostas-de-mudanca-da-legislacao-trabalhista/>



## Access to credit

Quite relevant for startups is access to credit in order to fund their development. *Doing Business* restricted its research to national limited liability companies, with up to 50 employees. A good position in such ranking means that the jurisdiction provides much information on credit, as well as consolidated rights, either to the borrower or to the creditors. The position of Brazil (101st) evidences transparent information, at the same levels as Colombia (2<sup>nd</sup>), but fewer legal warranties to creditors.

In fact, Act no. 12.414/2011<sup>9</sup>, providing for information and reference to databases to compose a credit background, positively collaborated in respect of access to information. In late 2016<sup>10</sup>, the federal government announced the transformation of the consumers' enrollment into compulsory (currently it depends on prior authorization), which might intensify the access.

As regards progresses in the legal protection to borrowers, the law which regulated the seed investor and the microcredit institutions in 2016<sup>11</sup> is a response by the Legislative Branch to the demand also verified by the GEM Project. The minority investors in turn are well protected by the Brazilian Law, since the country is in the 32<sup>nd</sup> position of the ranking concerning the topic in the *Doing Business* report.

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<sup>9</sup> Act no. 12.414/2011: [http://www.planalto.gov.br/ccivil\\_03/ Ato2011-2014/2011/Lei/L12414.htm](http://www.planalto.gov.br/ccivil_03/ Ato2011-2014/2011/Lei/L12414.htm)

<sup>10</sup> <http://www.valor.com.br/brasil/4809019/medida-para-cadastro-positivo-e-%3Fretorno%3F-proposta-original-de-2011>

<sup>11</sup> Supplementary Act no. 155/2016: [http://www.planalto.gov.br/ccivil\\_03/leis/LCP/Lcp155.htm](http://www.planalto.gov.br/ccivil_03/leis/LCP/Lcp155.htm)



## **Conflict Settlement**

Another key analysis of *Doing Business* is that related to the efficiency in settling commercial disputes in trial courts. In average, enforcement of an agreement by such means, in Brazil, takes 731 days and demands 20% of the claimed amount. Despite such scenario being considered as long and expensive, at the research ranking, in this specific topic, Brazil is in the 37<sup>th</sup> position among the 190 economies reviewed and this is one of the best positions in Latin America, only losing to Antigua and Barbuda (35<sup>th</sup>).

The New Civil Procedural Code (NCPC) collaborated with this result. However, duration of a dispute in Chile (56<sup>th</sup>), for instance, is in average 480 days at a cost of 28% of the claimed amount. The expectation is that in the coming years, the duration of a proceeding in Brazil will decrease in view of a greater compliance with the practices provided for in the NCPC.

## **CONCLUSION**

In common, both projects point to excessive bureaucracy when incorporating, operating and closing businesses in Brazil. The difficulty to pay taxes and the high expenses related to compliance with this obligation also receive relevance in the two publications.

Recognition is given to the fact that over the last years the Brazilian Law has significantly advanced and, in some aspects, may be seen as a support, nevertheless, the government policies remain as the greater hindrance to entrepreneurship in the country.