



International Colloquium on Microfinance

Brazilian Experience

Francisco Satiro (USP – Brazil)

1. EVOLUTION

1850 - Commercial Code

- French inspiration
- Traditional business models
- Partnerships and Corporation



Wall Street - 1850

1919 - Decree 3.708



Rio de Janeiro - 1919

“Sociedades por quotas de
Responsabilidade limitada
Limited Liability Company

- Only 18 sections
- Partner's limited liability
- Consideration for quotas in kind allowed (not services)
- No minimum capital requirements
- No pay up requirements

1919 - Decree 3.708

- Management - one designated officer or any partner
- Capital maintenance rule
- Contractual freedom
- Complimentary rules – Corporations (SA)
- Regular bureaucratic incorporation

1919 - Decree 3.708

2002 – New Civil Code

Italian inspiration
Unification Private Law
(commercial+ civil)



Brasilia (DF) - 2002

- New rules for LTDA
- Supermajority quorum for specific issues
- Annual General Meeting required
- Limitations on transferability of quotas
- Publications – official gazette

2002 – New Civil Code

- General rules applicable – traditional partnership
- Lack of important rules on shareholders conflict

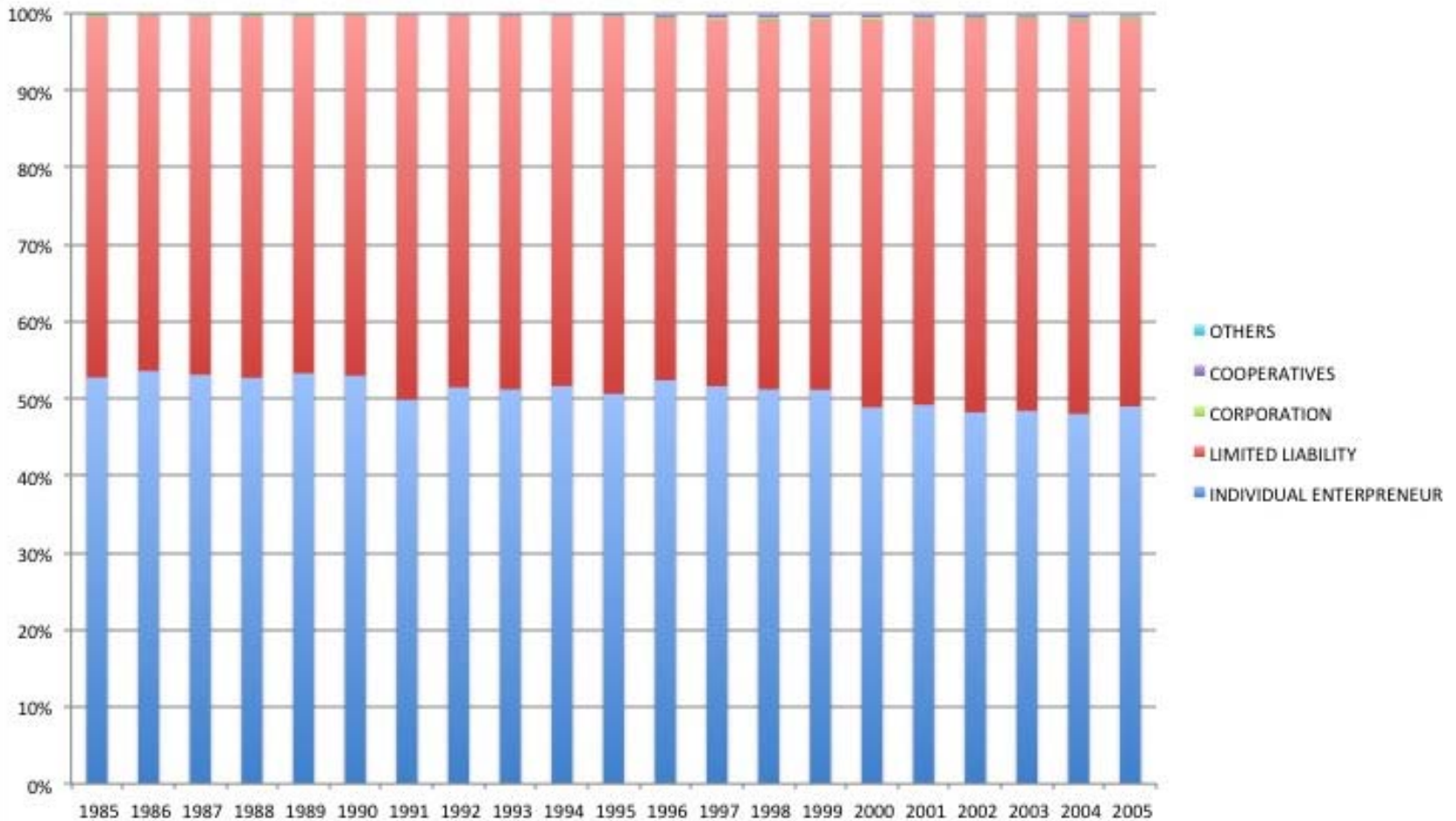
-Result: INSTABILITY

2002 – New Civil Code

CONSTITUIÇÃO DE EMPRESAS POR TIPO JURÍDICO - BRASIL - 1985-2005

YEARS	INDIVIDUAL ENTREPRENEUR	LIMITED LIABILITY	CORPORATION	COOPERATIVES
1985	168.045	148.994	1.140	363
1986	277.350	238.604	1.034	297
1987	222.847	195.451	857	319
1988	208.017	184.902	1.214	404
1989	240.807	209.206	1.251	437
1990	279.108	246.322	748	438
1991	248.590	248.689	611	447
1992	221.604	207.820	594	515
1993	254.608	240.981	697	757
1994	264.202	245.975	731	657
1995	263.011	254.581	829	879
1996	252.765	226.721	1.025	1.821
1997	275.106	254.029	1.290	2.386
1998	239.203	223.689	1.643	2.258
1999	244.185	229.162	1.422	2.330
2000	225.093	231.654	1.466	2.020
2001	241.487	245.398	1.243	2.344
2002	214.663	227.549	1.012	1.556
2003	228.597	240.530	1.273	1.503
2004	222.020	236.072	1.366	2.438
2005	240.306	246.722	1.800	1.297
TOTAL	5.031.614	4.783.051	23.246	25.466

Incorporations (1985-2005)



INCORPORATIONS (1985-2005)
BLUE – individual entrepreneurs
RED – Limited Liability Companies
GREEN – S/A (top)

2011 - EIRELI

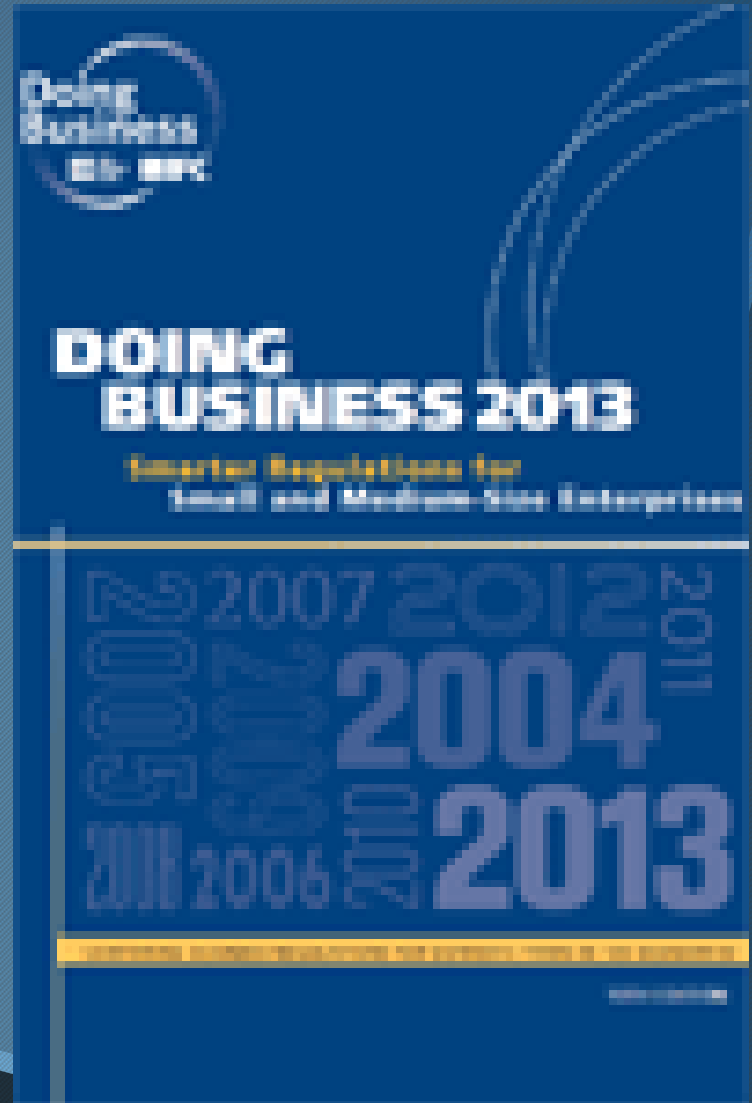


São Paulo - 2011

Individual limited liability
Enterprise (Law 12.441)
French and Portuguese
inspiration

- Minimum capital: US\$ 32.000
- Only for individuals (?)
- Limited liability
- Separation of personal/business assets
- Defined as a new legal entity - not a sole partner company.

2011 - EIRELI



Doing Business 2013

TABLE 1.1 Rankings on the ease of doing business

Rank	Economy	DB2013 reforms	Rank	Economy	DB2013 reforms	Rank	Economy	DB2013 reforms
1	Singapore	0	63	Antigua and Barbuda	0	125	Honduras	0
2	Hong Kong SAR, China	0	64	Ghana	0	126	Bosnia and Herzegovina	2
3	New Zealand	1	65	Czech Republic	3	127	Ethiopia	1
4	United States	0	66	Bulgaria	1	128	Indonesia	1
5	Denmark	1	67	Azerbaijan	0	129	Bangladesh	1
6	Norway	2	68	Dominica	1	130	Brazil	1
7	United Kingdom	1	69	Trinidad and Tobago	2	131	Nigeria	0
8	Korea, Rep.	4	70	Kyrgyz Republic	0	132	India	1
9	Georgia	6	71	Turkey	2	133	Cambodia	1
10	Australia	1	72	Romania	2	134	Tanzania	1
11	Finland	0	73	Italy	2	135	West Bank and Gaza	1
12	Malaysia	2	74	Seychelles	0	136	Lesotho	2
13	Sweden	0	75	St. Vincent and the Grenadines	0	137	Ukraine	3
14	Iceland	0	76	Mongolia	3	138	Philippines	0
15	Ireland	2	77	Bahamas, The	0	139	Ecuador	0
16	Taiwan, China	2	78	Greece	3	140	Sierra Leone	2
17	Canada	1	79	Brunei Darussalam	2	141	Tajikistan	1
18	Thailand	2	80	Vanuatu	0	142	Madagascar	1
19	Mauritius	2	81	Sri Lanka	4	143	Sudan	0
20	Germany	2	82	Kuwait	0	144	Syrian Arab Republic	1
21	Estonia	0	83	Moldova	2	145	Iran, Islamic Rep.	1
22	Saudi Arabia	2	84	Croatia	1	146	Mozambique	0
23	Macedonia, FYR	1	85	Albania	2	147	Gambia, The	0
24	Japan	1	86	Serbia	3	148	Bhutan	0
25	Latvia	0	87	Namibia	1	149	Liberia	3
26	United Arab Emirates	3	88	Barbados	0	150	Micronesia, Fed. Sts.	0
27	Lithuania	2	89	Uruguay	2	151	Mali	1
28	Switzerland	0	90	Jamaica	2	152	Algeria	1
29	Austria	0	91	China	2	153	Burkina Faso	0
30	Portugal	3	92	Solomon Islands	0	154	Uzbekistan	4
31	Netherlands	4	93	Guatemala	1	155	Bolivia	0
32	Armenia	2	94	Zambia	1	156	Togo	1
33	Belgium	0	95	Maldives	0	157	Malawi	1
34	France	0	96	St. Kitts and Nevis	0	158	Comoros	2
35	Slovenia	3	97	Morocco	1	159	Burundi	4
36	Cyprus	1	98	Kazakhstan	2	160	San Tomé and Príncipe	0

Rank	Economy	DB2013 reforms
125	Honduras	0
126	Bosnia and Herzegovina	2
127	Ethiopia	1
128	Indonesia	1
129	Bangladesh	1
130	Brazil	1
131	Nigeria	0
132	India	1
133	Cambodia	1

BRAZIL

Ease of doing business (rank)	130
Starting a business (rank)	121
Procedures (number)	13
Time (days)	119
Cost (% of income per capita)	4.8
Minimum capital (% of income per capita)	0.0

2. REFORMIST MOVEMENT

Proposal 1 – New Commercial Code

Whole new Commercial
Code
Includes general rules for
contracts, entrepreneurs and
all company forms – partly
excepting SA



Prof. Fabio Ulhoa Coelho - Author

- New rules about LTDA
- No quorum requirements
- Better solution for exclusion
- Acceptance of electronic documents and certification
- Temporary judicial supervisor –
- Articles of Association may define that quotas are not seizable by shareholders creditors
- Appraisal rights
- Shareholders exclusion rules

Proposal 1 – New Commercial Code

Proposal 2 – Brazilian SAs



Authors

Profs. Walfrido Warde Junior
Rodrigo Monteiro de Castro

Amendment of one section
(s.194) of SA statute
Sub-species of closed
corporation

- Capital cap: US\$ 24.000.000
- Sole holder allowed
- Internet notices and disclosure allowed
- Remote voting
- Non proportional dividends allowed
- appraisal rights
- shareholders exclusion rules

**Proposal 2 –
Brazilian SAS**

Proposal 3 – Old LTDA revial Project



Authors

Prof. Arnaldo Wald

Jorge Lobo

Old project (90's)
well accepted by
academic and professional
communities
Based on 19's Decree's
improvement

**Proposal 4 –
Adoption of SAS
model law**



UNCITRAL

**4. QUESTIONS
ARISING FROM
MODEL LAW
PROPOSAL³**

- Crossroad: Codification x Small systems communication
- Labor and Tax liabilities are part of respective statutes – Company law will not change them
- Permanent resident who will represent the foreign investor in Brazilian companies or obtaining a permanent resident visa

i. General issues

- Bureaucratic incorporation – States autonomy for commercial Mercantile Registry – IRS, municipalities, Agencies
- Piercing of corporate veil – it is provided by other statutes: Civil code provision and also consumer, environmental, etc.

i. General issues

- Waist of present doctrine and precedents

- Instability from completely new system

i. General issues

- Importing non-typical domestic institutions may bring some new problems of interpretation. E.g.: (s. 12) – Trust is not a common institution for all civil law countries.

- Easiest way to incorporate/register may lead to “fake” or “straw” companies (paradox)

ii. Specific issues

- 2 years for payment of firm's subscribed capital
- Conflict resolution – mandatory arbitration (s.39)
- System (technical requirements)
- defense of parochial interests (e.g. notary public)

ii. Specific issues

- Special rights to the shareholder shall be described on the back of the certificate (there are no certificates in Brazil anymore – booking system).

- Shares consideration (subscription payment) in services (conflicts with the present social capital maintenance rule – no dividends distribution if “total assets - liabilities \leq social capital”

ii. Specific issues

- Facilitates international mergers & acquisition (although SAS is intended to be used by SME)
- Predictable structure facilitate lender's analysis
- Previously known standard structures will facilitate reduction of cross border transactions costs

iii. Model Law advantages

Thank you

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