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Technology is changing our everyday lives at a faster rate every minute from artificial intelligence and medical advances in robotics to the upcoming self-driving cars. Every sector of our lives is being impacted, disrupted, and constantly altered by innovations, including our finances. In the developed markets, fintech, or financial technology, is the new and exciting area of product innovation for financial services. The innovations rely on the internet, blockchain technology, and the new and highly controversial digital currencies. Consequently, new digital platforms and mobile applications create new possibilities while being accessible to more people at a lower cost across borders.

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Facing this technological revolution, each country and market is taking a position. Some countries are welcoming the technological developments while others resist change. Several international agreements are already in place and new regulations in Latin America seem supportive enough to grant the financial advancements room to grow. Although the regulatory framework is not robust, it is highly probable that supportive laws would lead to the development and creation of a broader, deeper, and leaner credit market in Latin America.

I. INTRODUCTION

In the developed markets, fintech, blockchain, and cryptocurrencies are shaking the financial markets to the core. Cryptocurrencies are digital currencies allowing cross-national flow of funds without the restrictions of fiat currencies.[1] On the other hand, blockchain is the technology behind the cryptocurrencies as a digital ledger maintaining and storing complex databases and records of transactions made with the cryptocurrency.[2] Bitcoin, the most popular cryptocurrency in the market today,[3] and blockchain are some of the topics constantly being broadcasted and discussed in the news. Both the leaders in the existing financial markets and its corresponding regulatory agencies are catching up with the new technologies—breaking the status quo.[4]

Similarly, emerging economies are experimenting with new financial innovations because of the rapid and expansive spread of internet access worldwide.[5] Specifically, the Latin American region has begun to see payoffs in investments in the internet infrastructure where consumers, businesses, government agencies, health-care providers, and educational institutions use internet connections to access innovative cloud computing services.[6] This development is important because cloud computing enables users with an internet connection to affordably access a level of computing power that until recently was available only to companies with large IT budgets and in-house expertise.[7] With increased and wide-

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[1] *See generally* TOBIAS ADRIAN & TOMMASO MANCINI-GRIFFOLI, FINTECH NOTES: THE RISE OF DIGITAL MONEY 4 (International Monetary Fund, July 2019).

[2] *See id.* at 5.

[3] Prableen Bajpai, *The 10 Most Important Currencies Other Than Bitcoin*: INVESTOPEDIA (June 25, 2019), https://www.investopedia.com/tech/most-important-cryptocurrencies-other-than-bitcoin/ (last visited Oct. 22, 2019).

[4] *Id.*

[5] *See generally* PETER MELL & TIMOTHY GRANCE, NAT'L INST. OF STANDARDS & TECH., DEP'T OF COMMERCE, THE NIST DEFINITION OF CLOUD COMPUTING (PUB. NO. 800-145 2011), https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf.

[6] *Id.* "Cloud computing" can be defined as a model for convenient on-demand network access to computing resources that are in a shared pool and can be rapidly delivered with minimal management effort or service provider interaction.

[7] *See generally* ALEXA HUTH & JAMES CEBULA, U.S. COMPUT. EMERG. READINESS TEAM, THE BASICS OF CLOUD COMPUTING (Carnegie Mellon U. 2011), https://www.us-cert.gov/sites/default/files/publications/CloudComputingHuthCebula.pdf.

spread access to web services, the Latin American region can dive into a plethora of new economic growth in all sectors.

With technological advances, Latin American countries can promote credit market development at a faster rate at a lower cost.[8] Currently, the World Bank report portrays Latin America's business index as falling behind and challenged by many shortcomings, including the complexities of starting a business, getting credit, and resolving insolvencies.[9] Surely, advocacy in the regulatory space can highlight the benefits and promote fintech solutions. However, with the rapidly changing political landscape, Latin America is at an early stage where decisions by policymakers, stakeholders, business enterprises, and the general public would dictate whether to fully adopt these financial solutions to their lives. With a promoting regulatory infrastructure in place, local economies would experience growth due to the increased access and expansion of credit markets.

This article explores the current landscape and disruption caused by new technology in the financial markets within developed and emerging economies. Second, the article highlights the potential advantages of new tech developments to increase the credit markets in the region. Third, multiple countries in the jurisdiction are passing new and progressive laws designed to increase and incentivize foreign direct investment while expanding recent pro-innovation regulations. Fourth, startups can develop fintech in the local markets by operating locally while being financed with U.S. capital. Then, a survey of the region demonstrates some of the key benefits and challenges in registering a startup to operate as a financial institution funded with foreign capital, while highlighting the need and importance of a balanced regulation across the region. Lastly, the article explores potential applications of the New York Convention that can guarantee and offer security of arbitral awards for international investors.

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8 ANDRÉS CADENA ET AL., MCKINSEY GLOBAL INSTITUTE, WHERE WILL LATIN AMERICA'S GROWTH COME FROM? 2 (2017), https://www.mckinsey.com/~/media/mckinsey/featured%20insights/employment%20and%20growth/how%20to%20counter%20three%20threats%20to%20growth%20in%20latin%20america/mgi-discussion-paper-where-will-latin-americas-growth-come-from-april-2017.ashx.

9 *Id.* at 3.

II. TECH DISRUPTING THE DEVELOPED ECONOMIES

In the developed economies, the financial markets are no longer what they once were. With the last U.S. financial crisis after the real estate bubble burst in 2005, consumers in the developed and emerging world financial markets are taking a new approach to meet their financial needs. After a few years facing news taglines like "Too big to fail" or those about massive "Government bailouts," the trust on the markets has somewhat become lost . . . or in the most minimal sense, fundamentally changed.[10] With the innovations and feelings of lost faith in the system, people have begun taking matters in their own hands. For example, the "cypherpunk " is a subculture of people with new proposals and tech solutions to modern issues in the economy outside of the current system, including solutions to privacy and decentralized monetary transactions.[11] The cypherpunks have emerged with some refreshing and radical views about the independent creation of solutions and systems that are regulated by the users and the technology itself.[12] This movement even proposes solutions to the rising concern for privacy in the broad consumer use of tech advances:

> We must defend our own privacy if we expect to have any. We must come together and create systems which allow anonymous transactions to take place . . . . We the [c]ypherpunks are dedicated to building anonymous systems. We are defending our privacy with cryptography, with anonymous mail forwarding systems, with digital signatures, and with electronic money . . . . For privacy to be widespread it must be part of a social contract. People must come and together deploy these systems for the common good.[13]

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[10] William M. Isaac, *Too Big to Trust*, FORBES (July 21, 2010, 6:00 PM), https://www.forbes.com/2010/07/19/banks-trust-regulation-opinions-columnist-william-m-isaac.html#45d3392a7e3c (last visited Nov. 25, 2019).

[11] Eric Hughes, *A Cypherpunk's Manifesto*, ACTIVISM.NET (March 9, 1993), https://www.activism.net/cypherpunk/manifesto.html.

[12] *Id.*

[13] *Id.*

Beyond the radical views of the cypherpunks, young entrepreneurs have been inspired too. People, with their tech skills, are beginning to reach fast and cheap solutions to inefficiencies within the current financial markets.[14] Although not everyone is adapting the new forms of technology, the solutions presented are shaking even the most established banks because of the cost reduction implications.[15] New technology is making financial services possible in places that traditional forms of banking could simply not reach due to the cost and lack of infrastructure.[16] Traditionally, developed economies have passed regulations to allow free acces to credit to promote increases to capital. This can be refferd to as "capital freedom," because it gives individuals the freedom to learn about credit and improvements to individual economic wellbeing.[17] Regulators ensure that firms and consumers are able to access credit and capital to meet their needs such that credit and economic activity can grow at a healthy rate.[18]

For example, financial regulation in the United States is primarily intended to achieve the following underlying policy outcomes: (a) market efficiency and integrity, where regulators ensure the markets operate in an effective and transparent way; (b) consumer and investor protection, where regulators can ensure all market participants are safe from fraud, discrimination, manipulation, theft or other exploitative or abusive practices; (c) illicit activity prevention, where regulators ensure that the financial system does not fund criminal and terrorist activity; and (d) taxpayer protection, where regulators "ensure that losses or failures in financial

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[14] *See generally* INTERNATIONAL FINANCE CORPORATION, DIGITAL FINANCIAL SERVICES: CHALLENGES AND OPPORTUNITIES FOR EMERGING MARKET BANKS (2017), https://www.ifc.org/wps/wcm/connect/067d6a0c-f1b5-4457-97aa-2982a7dfda69/EMCompass+Note+42+DFS+Challenges+updated.pdf?MOD=AJPERES&CVID=lTM-26u.

[15] *Id.*

[16] *Id.*

[17] *See generally* Matthew Kluchenek, Kim Prior & Michael Sefton, *Global Guide of Financial Markets and Regulations: United States*, BAKER MCKENZIE 428, 428-449 (2016), https://www.bakermckenzie.com/-/media/files/insight/publications/2016/07/guide_global_fsrguide_2017.pdf?la=en.

[18] *See generally id*.

markets do not result in federal government payouts or the assumption of liabilities that are ultimately borne by taxpayers."[19]

Operating within that framework, financial regulators worldwide have similar tasks that are carried in a diversity of ways by each nation. The regulatory goals will not change despite the new technological advances; therefore, the challenge is in applying the current legal standards to the new technology. Some of those steps are already happening in the U.S. markets.[20] Cryptocurrency, or digital currency, has been defined by legal experts as property: "[c]ryptocurrencies are digital assets designed to enable purchases, sales and other financial transactions in a secure and pseudonymous matter."[21] In other words, cryptocurrency operates as a means of exchange, as any other coin or currency would be use, while also gaining value based on the market's perception of its adoptability and widespread use.

Furthermore, cryptocurrency can be used to raise funds similar to a security. Cryptocurrencies can be exchanged for tokens (utility tokens), which can be issued to access the applications or technology under the project, or to get equity into the organization (equity tokens), which can be traded in open and secondary markets as well.[22] The Securities and Exchange Commission (SEC) views the engineering and product development of cryptocurrencies as "hallmarks" of a security or a "securities offering."[23] Currently, there are many funds being raised with underlying cryptocurrencies, or Initial Coin Offerings (ICOs), but few are registered with the SEC, leading to direct violations of the securities laws, in addition to state jurisdiction violations for companies that operate money transfers of crypto.[24]

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[19] *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework* 4 (Congressional Research Service, 2017).

[20] *See generally* Perrie M. Weiner, Christopher C. Paci & Kirby Hsu, *Cryptocurrencies and ICOs: An SEC enforcement perspective,* 23 No. 22 WESTLAW J. SEC. LITIG. & REG. 02 (March 1, 2018).

[21] PERRIE M. WEINER, CHRISTOPHER C. PACI & KIRBY HSU, *Cryptocurrencies and ICOs: An SEC enforcement perspective,* 23 No. 22 WESTLAW J. SEC. LITIG. & REG. 02, March 1, 2018, at 1.

[22] *Id.* at 2.

[23] *Id.*

[24] *Id.* at 4-5.

III. TECH DISRUPTING THE EMERGING MARKETS

In addition to easing international currency exchange and fund-raising, new small startups are creating solutions for big banks' problems and inefficiencies. In a recent article titled "Paris is the City of Fintech Love for Startups Seeking Hookups," Parisian and other European entrepreneurs pushed for low-cost payment solutions to steal global market share from banks in lieu of banking alternatives such as Alipay to M-Pesa which are already dominating China and Africa.[25] Alipay, created by Alibaba, is the biggest mobile payment platform, with 622 million users handling half of China's payment market.[26] Jacob de Geer, co-founder of Swedish payments company iZettle, a company that offers a cheaper alternative to card payments, which expanded in Europe and Mexico through Banco Santander, commented: "Banks will continue to acquire smaller and more nimble companies to add value to their products. They need to innovate to keep customers, and they'll continue going to fintech for that kind of innovation."[27] Supporting Geer's view, a recent report by KPMG recorded that fintech solutions as the competitive tools for banks' online consumption and transactions, where $8.2 billion was invested globally in 2017 in about 140 companies from more than thirty countries. This included robo-advisers to artificial intelligence-driven wealth management.[28]

However, banks acquiring these small startups and tech are not the only parties who can benefit. Startups and small businesses with online-based technology can launch and provide the same

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[25] Fabio Bnedetti-Valentini & Marie Mawad, *Paris is City of Fintech Love for Startups Seeking Hookups*, FINANCIAL POST (Feb. 2, 2018, 7:35 AM), https://business.financialpost.com/entrepreneur/fp-startups/paris-is-city-of-fintech-love-for-startups-seeking-hookups-1.

[26] Tom Griggs, *The Alipay Phenomenon and How It Works,* FINANCIAL TIMES (June 5, 2018), https://www.ft.com/video/96d2ca77-3cb8-405b-a1a0-1fb7f4b4f979.

[27] Fabio Benedetti-Valentini, Fintech Startups Parade In Paris In Hopes Of Luring Bank Deals, LIVE MINT (Jan 31, 2018, 05:40 PM) https://www.livemint.com/Money/vtZTNdfRbo7poXu9PD7aAN/Fintech-startups-parade-in-Paris-in-hopes-of-luring-bank-dea.html (last visited Nov. 25, 2019).

[28] *Id.*

services in a cost-efficient manner for undeveloped markets.[29] These tech startups can sell their technology. For instance, when PayPal was sold to the traditional and giant players in the credit and financial services markets. Alternatively, startups can begin to offer their services online in any of the Latin American countries alone, or in alliance with already established banks or companies in the financial sector.[30] Prior to entering a market such as Latin America, it is important to understand that the region has a mix of market regulations highly influenced by each country's government, in addition to many other challenges.[31] Political currents can either expand or hinder the growth of credit and capital markets, impacting directly each country's policies towards tech, innovation, and foreign investment.[32]

Although each country in Latin America has a unique history, economy, and regulation, the region shares some characteristics about its financial activities and economic development. At first, the region's main source of economic development was the exploitation of natural resources, which is recognized now as the end of the commodity-price boom.[33] Across the region, only the top percent of the population and corporations have legitimate access to the financial and credit markets.[34] Small and medium size busi-

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[29] Roy Kao, *How banks and fintechs can learn to be good partners,* FINANCIAL POST (Dec. 6, 2017 12:59 PM), https://business.financialpost.com/executive/leadership/how-banks-and-fintechs-can-learn-to-be-good-partners.

[30] *Fintech activity in Latin America spreads to 18 countries,* INTER-AMERICAN DEVELOPMENT BANK (Jan. 17, 2019), https://www.iadb.org/en/news/fintech-activity-latin-america-spreads-18-countries.

[31] Diego Herrera, *Alternative Finance (Crowdfunding) Regulation in Latin America and the Caribbean: A Balancing Act,* 36 (Inter-American Developmental Bank, Discussion Paper No. IDB-DP-480, 2016), https://publications.iadb.org/publications/english/document/Alternative-Finance-(Crowdfunding)-Regulation-in-Latin-America-and-the-Caribbean-A-Balancing-Act.pdf. ("However, this business is still young, very complicated, and evolving fast. With this in mind, regulators have a huge responsibility in dealing with AF (alternative finance such as fintech) to strike a balance between requirements and enforcement on the one hand, and sustainable and responsible growth on the other.")

[32] *See generally* Glen Biglaiser & Karl R. DeRouen, *Economic Reforms and Inflows of Foreign Direct Investment in Latin America*, 41 LATIN AM. RES. REV. 51, 58 (2006).

[33] CADENA, *supra* note 8, at 7.

[34] *See id.* at 22.

nesses face difficulties in accessing credit while incurring high overhead costs.[35] In other words, the region lacks "financial depth" as well as breadth because "forty-eight percent of Latin Americans do not have access to [traditional] financial services . . . ."[36]

IV. FINTECH'S 'LEAN STRUCTURE' POTENTIAL TO FOSTER AND DEVELOP CREDIT MARKETS

The credit market in the region faces challenges because of its outdated infrastructure. Old and traditional recordkeeping practices are keeping the region outside of the major stream of technological data revolution.[37] With an outdated technology in the financial sector, any of the financial services become costly, difficult, and limited.[38] Recordkeeping is at the core of these challenges because old technology is expensive as well manual labor for accounting.[39] With technological advances that make recordkeeping automatic while being stored in digital means, financial institutions will be able to allocate resources in new product development and security of data. In short, fintech can increase the growth of credit markets in Latin America for current institutions and upcoming ones.[40]

The 'Lean Structure' Promise of Digital Finance

In lieu of so many challenges to access the credit markets, the promise of digital finance is key because it solves issues of lack of infrastructure. In Latin America, legal contracts and financial transactions are beginning to move towards electronic means of distribution,[41] but the internet is not robustly available to all of the

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35 *Id.*

36 *Id.*

37 *See generally* ROBERT W. Rust, II, *Banking on Blockchains: A Transformative Technology Reshaping Latin American and Caribbean Economies*, 50 U. MIAMI INTER-AM. L. REV. 461, 469 (2019).

38 *See generally id.*

39 *See generally id.*

40 *See generally id.*

41 Tom Groenfeldt, *Latin American Banks Were Slow to Go Digital But Now They're Moving Fast*, FORBES (Apr. 19, 2018, 11:35AM), https://www.forbes.com/sites/tomgroenfeldt/2018/04/19/latin-american-banks-were-slow-to-go-digital-but-now-theyre-moving-fast/#77921c186166.

population.[42] Most of the infrastructure is far from modern. In fact, the lack of infrastructure leads to no access to the formal banking system where some people resort "to takingtak[ing] out illegal loans connected to organized crime."[43] In other words, the lack of access to a formal banking infrastructure unintentionally leads to financing criminal organizations and terrorism.[44] A solution to this problem was presented by "Bancuadra," the 2016 winner of the Mayor Challenge Competition supported by Bloomberg Philanthropies, in Medellin, Colombia.[45] The innovation created a digital platform supported financially by neighbors who pooled their financial assets available to others for loans.[46] The borrower could take the funds online, accessible through different devices, and text messages ensure that each transaction was traceable and logged.[47]

Other than localized financial services development, the region's economy has the potential to expand across cities and within the entire region thanks to digital finance:

> Digital finance is a powerful way to overcome financial exclusion . . . . Research in 2016 found that digital financial services could boost GDP by [one point five] percent and[five] percent in Brazil and Mexico, respectively, by 2025. Moreover, [forty-six] million more Mexicans and [thirty-five] million Brazilians could obtain access to financial services through digital means . . . . Governments, banks,

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42 *See* Edwin Fernando Lopez & Laura Poveda, *State of Broadband in Latin America and the Caribbean 2017*, ECLAC (June 2018), https://repositorio.cepal.org/bitstream/handle/11362/43670/1/S1800532_en.pdf.

43 *Medillín: Enabling Neighborhood Loan Funds, Reducing Illegal Lending,* BLOOMBERG.ORG: BLOOMBERG PHILANTHROPIES, https://mayorschallenge.bloomberg.org/ideas/medellin/.

44 *Id.*

45 *Id.*

46 *Id.*

47 JARED WADE*, Bogotá and Medellín Win Bloomberg Mayors Challenge for Plans to Improve Student Commute and Reduce Predatory Lending*, FINANCE COLUMBIA (Dec. 14, 2016) https://www.financecolombia.com/bogota-medellin-win-bloomberg-mayors-challenge-plans-improve-student-commute-reduce-predatory-lending/ (last visited Nov. 25, 2019) ("These services operate on a digital platform accessible through multiple devices, and users are sent by text messages to ensure the traceability of transactions.").

> and corporations all have a part to play in ensuring that individuals and businesses obtain the financial services, including credit, that they need to make the most of their economic potential.[48]

Cost Savings Driven by M-Commerce

Fintech, blockchain, and other digital platforms for financial services can reduce financing costs considerably to retail and business customers as well. Instead of relying on governmental agencies or banks to invest in their current infrastructure, digital platforms can reduce administrative costs to virtually zero if a website alone provides all the infrastructure needed to offer financial services.[49] A key component of financial services e-commerce (electronic commerce), is m-commerce (mobile commerce). M-commerce is relevant because of its expansion and web access of internet through the mobile devices.[50] In fact, "[a]dvanced mobile technology will be globally ubiquitous by 2020 with [seventy] percent of people using smartphones and [ninety] percent covered by mobile broadband networks."[51] With more access, the global adoption, use, web coverage, and demand of mobile services could rise—specifically, e-commerce, financial services, and payments through mobile devices.

Argentina's Central Bank is a champion in digital innovation and progress in the financial sector. During the Summer of 2019, the government supported new technology in the banking industry

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48 CADENA, *supra* note 8, at 22.

49 *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2017-2022 White Paper,* (Feb.18, 2019), http://www.cisco.com /c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/ mobile-white-paper-c11-520862.pdf.

50 ANASTASIA Z, *What Is the Difference Between Ecommerce and Mcommerce?*, RUBY GARAGE (Apr. 30, 2018) https://rubygarage.org /blog/mcommerce-vs-ecommerce (last visited Nov. 25, 2019) ("Mcommerce implies the use of mobile devices. So people can do their business transactions anywhere they go as long as they can access the internet on their smartphones and can perform transactions with just a few taps on the screen.").

51 Press Release, Ericsson Mobility Report: 70 percent of world's population using smartphones by 2020 (Jun. 03, 2015, 07:30 am) https://www.ericsson.com/en/press-releases/2015/6/ericsson-mobility-report-70-percent-of-worlds-population-using-smartphones-by-2020 (last visited nov. 25, 2019).

through new regulations.[52] The most recent advancement is the ECHEQ (electronic check). On July 1st, 2019, ECHEQ made its debut.[53] With it, consumers can both make and receive electronic checks, widening the possibility of electronic transactions in the country: transactions initiated from their online and mobile bank platforms.[54] The Central Bank of Argentina, or Banco Central de la República Argentina (the BCRA) released new laws to promote its innovation where all financial entities must receive deposits made through electronic checks.[55] Although the same entities are not currently forced to issue ECHEQs, such service is available to checking accounts and other accounts as transactions become more widely adopted.[56] Along with promoting the ECHEQ, the BCRA approved three supplemental regulations such as modifications to existing checking account regulations (A 6725), new laws for management and record keeping of new digital transactions (A 6727), and certificates to bring forth civil suits for ECHEQ (A 6727).[57] The BCRA's purpose with this innovation is to simplify banking operations, reduce operating costs, endorse without limits, and increase security and effectiveness while reducing rejection of checks.[58]

Current technological developments and low-cost digital infrastructure hopefully will continue to expand rapidly across the Latin American region. Recent new practices, such as branchless banking systems, "take advantage of increasingly ubiquitous real-time mobile communication networks to bring banking services into everyday retail stores, thereby alleviating the lack of banking infra-

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52 *El lunes entra en vigencia el cheque electrónico*, LA VOZ (June 28, 2019, 7:40 PM), https://www.lavoz.com.ar/negocios/lunes-entra-en-vigencia-cheque-electronico-lo-que-tenes-que-saber.

53 *Id.*

54 *Id.*

55 *Cheques Generados Por Medios Electrónicos. Su Reglamentación*, BANCO CENTRAL DE LA REPÚBLICA ARGENTINA (Jan. 10, 2018), http://www.bcra.gov.ar/Pdfs/comytexord/A6578.pdf.

56 *Id.*

57 *Id.*

58 *Entra en vigencia el cheque electrónico,* Banco Central de la República Argentina (June 28, 2018), http://www.bcra.gov.ar/Noticias/Cheque-electronico.asp.

structure" in communities that traditional banking cannot reach.[59] With new cost-efficient possibilities, the local economy can improve and offer new alternatives to new markets. The region already has many entrepreneurs who operate as unregistered businesses or economies.[60] These businesses are typically small and medium-sized entrepreneurial ventures.[61] With new and more improved digital tools for financing, these markets can grow and expand. Also, international funding can become more readily available to support startups or businesses that can begin to close the gap of technology and financial services.

Actually, startup development in Latin America currently includes financing venues commonly used by countries and corporations with interest in economic growth in the region.[62] Some of these venues include grants, contests and prizes, crowdfunding, coworking spaces, incubators, university technology transfer offices, foundries, and accelerators among others.[63] Such alternative financing provides the funds to people with new tech ideas that solve everyday system inefficiencies while providing the support to take those projects into a mass scale.[64] In addition, new tech in payment services and "payments through electronic and mobile channels have the potential to reduce costs by a third and reduce the leakage due to corruption."[65]

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[59] Ahmed Dermish et al., *Branchless and Mobile Banking Solutions for the Poor: A Survey of the Literature,* 6(4) INNOVATIONS 81 (2011).

[60] *See generally* Iratxe Gurpegui, *Latin American and Caribbean Competition Forum - Session I: Informal Economy in Latin America and the Caribbean: Implications for Competition Policy – Background Note*, OECD COMPETITION DIVISION (2018), https://one.oecd.org/document/DAF/COMP/LACF(2018)4/en/pdf.

[61] *Id* at 20.

[62] Julián A. Herman, *Start-up Development in Latin America: The Role of Venture Accelerators* (May 8, 2015) (unpublished M.S. thesis, Massachusetts Institute of Technology) (on file with the Sloan School of Management, Massachusetts Institute of Technology).

[63] *Id.*

[64] *See id.*

[65] Sunil Gupta, *The Mobile Banking and Payment Revolution,* EUR. FIN. REV. 6 (2013).

'Lean Financing' through Crowdfunding and Other Platforms

One growing method of financing in the Latin American and Caribbean (LAC) region is crowdfunding.[66] Crowdfunding is a popular and growing alternative to the formal banking system with substantial potential.[67]

However, in the region, policies or regulations that "encourage diverse and accessible financing" are infrequent, and the fintech regulatory agenda is "small or nonexistent . . . where such businesses already exist."[68] The market is growing organically because of the high demand in loan-based alternative finance, where business lending reached $105 million U.S. dollars between 2013 and 2015, while consumer lending experienced a 553 percent growth from 2014 to 2015, and high potential for equity-based alternative finance, only reaching two million U.S. dollars yet being "a great opportunity for the future, mainly for entrepreneurs who are creating innovative businesses."[69]

> In this regard, it is of vital importance to take a look at the size of the country markets in LAC. First in terms of volume, Chile is in first place with US$47.6 million, basically originated through loans-based AF. In second place is Brazil, with a more diverse market than Chile's, reaching US$24.2 million divided among consumer loans-based (US$9.6 million), reward-based (US$5.6 million), equity-based (US$1.7) and business loans-based AF (US$1.3 million) . . . . In third place is Mexico, with a volume of US$13.2 million and triple-digit growth for the 2013–15 period. Business loans-based AF (US$5.8 million) leads AF in Mexico, followed by rewards-based (US$3.6 million) and consumer loans-based AF (US$2.8 million).[70]

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66 *See* Diego Herrera, *supra note* 31.
67 *See generally id.*
68 *See id.*
69 *Id.*
70 *Id.*

Alternative finance, crowdfunding, and other platforms are presenting the solutions to an underserved credit market through startups. Argentina is again a champion in 2019 when the National Securities Commission (the CNV) introduced regulations for collective financing systems.[71] Crowdfunding is defined by the International Organization of Securities Commissions (the IOSC) as "a term that describes the financing of investment projects through small portions of capital belonging to a plurality of users through the internet."[72] Although crowdfunding was already popular in the country to raise funds for projects such as prototype development, the new law creates a legal fiction, Collective Financing Platform (PFC), with rights and obligations increasing more funding activities, greater depth of capital markets, market integrity, transparent transactions, and a more secure environment for investors.[73] Some of its key features include that PFCs must be registered corporations, have bylaws, a corporate purpose, a registered address, shareholder registration, approval by the CNV, a minimum net worth of two hundred-fifty thousand Pesos, direct communication channels between entrepreneurs and investors, and frequent publication of projects with clear break down of fees;[74] and limit each investor to five percent or twenty thousand Pesos net worth ownership on a project, among others.[75]

Similarly, Argentina's new legislation for microfinance is fostering entrepreneurship across the nation.[76] With the new regulatory project "Entrepreneurial Capital Support Law," the Senate and Congress wanted to favor the creation of startups and business development based on innovative ideas by overcoming bureaucratic

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[71] *See generally Productive Financing Law,* MARVAL O'FARRELL MAIRAL (May 10, 2018), https://www.marval.com/archive/a_newsletters/client_mkdok_10052018.html#en.

[72] *El Crowdfunding en Argentina ya tiene su reglamentación*, REPORTE FINTECH (Jan. 4, 2018) https://www.reportefintech.com/crowdfunding-argentina-ya-reglamentacion/.

[73] Law No. 717-E/2017, Jan. 3, 2018, [33783] B.O. 43 (Arg.).

[74] *Id.* § 24.

[75] *Id.* § 566.

[76] *See generally* LOIC COMOLLI & NICOLE ETCHART, SOCIAL ENTERPRISE IN EMERGING MARKET COUNTRIES: NO FREE RIDE 27-28 (Palgrave Macmilla, 2013).

barriers and lack of financial support.[77] The law defines entrepreneurship as "any activity with or without profit in the Argentine Republic by a new legal entity or whose incorporation date does not exceed seven years."[78] A key innovative feature is the creation of a new legal entity called Simplified Joint-Stock Company, (SAS),[79] allowing a single partner ability to own a bank account, issue shares with the same rights at different prices,[80] digital powers to sign and keep records, and minimum capital requirements as two basic salaries.[81] Other features of the legal project include public crowdfunding, "seed fund" or zero-rate loans for innovative new projects, and access to capital through a Trust Fund for the Development of Entrepreneurial Capital (FONDCE);[82] FONDCE is a public fund mixed with private capital to finance small and medium businesses.[83] With such advancements, Argentina is taking advantage of the new technological developments by promoting financial markets development with regulations to ensure integrity while fostering innovation.

With such a fast-growing credit market demand in the region, the lack of competitors creates a competitive advantage. While large companies invest resources into new technology, smaller startups can be faster and leaner in the race to develop new financial instruments. Moving forward, the credit markets can be expanded by opening a financial startup in Latin America that offers a lean structurrelying on digital finance through mobile or other tech available.[84] Alternatively, the startup itself or some established organization can receive foreign direct investments to raise

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77 Law No. 717-E/2017, Preamble.

78 Law No. 27349, Apr. 12, 2017 [33604] B.O. 1 (Arg.) art. 2, http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/273567/norma.htm.

79 *Id.* § 33.

80 *Id.* § 47.

81 *Id.* §§ 33, 44.

82 *Id.* § 63.

83 *Id.*

84 *See generally* Nathan Lustig, *Latin America's Fintech Surge: 4 Lessons for Silicon Valley,* CRUNCHBASE: CRUNCHBASE BLOG (June 24, 2019), https://about.crunchbase.com/blog/latin-americas-fintech-surge-4-lessons-for-silicon-valley/.

the capital available in the region focused on the goal of a rich, diverse, and sustainable credit market.[85]

V. FINANCING A FINTECH STARTUP THROUGH FOREIGN DIRECT INVESTMENTS WILL INCREASE THE CREDIT MARKETS IN LATAM

During the last decade, strategies promoting global investment have changed and increased dramatically thanks to the widespread liberalization of economic policy in foreign direct investment (FDI) within the Latin American region.[86] With the increase of FDI in growing or emerging industries, the boost of the emerging country's economy has translated to greater access to financing, along with technology spillovers.[87] To promote and protect foreigners' investments, many countries have become parties to bilateral investment treaties (BITs) and double taxation treaties (DTTs).[88] With the countries' consent to treaties, the investors gained a greater sense of certainty and protections by international law.[89] The investment treaties define a contractual relationship between states that would rise above the challenges posed by poor or insufficient confidence in the country's governance as well as corruption while the DTTs create some certainty in the tax treatment for U.S. companies investing in Latin America.[90]

Consequently, a unified model combining economic reform and good governance is a key component to attract foreign invest-

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85 *See generally id.*

86 *See* Kevin P. Gallagher & Melissa B.L. Birch, *Do Investment Agreements Attract Investment? Evidence from Latin America*, in THE EFFECTS OF TREATIES ON FOREIGN DIRECT INVESTMENT: BILATERAL INVESTMENT TREATIES, DOUBLE TAXATION TREATIES, AND INVESTMENT FLOWS 295 (Karl P. Sauvant & Lisa E. Sachs eds., 2009).

87 *Id.*

88 *Id.* at 295-96.

89 *See generally* Deborah l. Swenson, *Why Do Developing Countries Sign BITs?,* THE EFFECTS OF TREATIES ON FOREIGN DIRECT INV.: BILATERAL INV. TREATIES, DOUBLE TAXATION TREATIES, AND INV. FLOWS 437 (Karl P. Sauvant & Lisa E. Sachs eds., 2009).

90 Eric Neumayer, *Do Double Taxation Treaties Increase Foreign Direct Investment To Developing Countries?*
THE EFFECTS OF TREATIES ON FOREIGN DIRECT INV.: BILATERAL INV. TREATIES, DOUBLE TAXATION TREATIES, AND INV. FLOWS 659, 661 (Karl P. Sauvant & Lisa E. Sachs eds., 2009).

ment.[91] When preparing fiscal policy, a country would need to take into account the general determinants in a foreign investor's decision to invest.[92] Some of those factors include a sizeable domestic market, resource endowments, infrastructure facilities, macroeconomic stability, political stability, institutional transparency, and a stable and transparent policy framework towards FDI.[93] A study found that government stability, business law, risk conditions, and lack of crime were the most favorable interests for foreign investors yielding policy and markets conditions most attractive in Chile, followed by Mexico, Brazil, and Colombia.[94]

In 2018, the United Nations released a report calling the governments in the Latin American and the Caribbean region to incentivize quality investments compatible with sustainable development.[95] The statement was clear in its message: "It's not simply about creating the conditions for foreign capital to enter, it's about attracting investments that become sources of technological, productive and employment-related overflow, and that are oriented toward sustained, inclusive and sustainable economic growth . . . ."[96] Consequently, some countries have reacted with new regulations.[97] Some countries in Latin America are passing legislative bills and taking actions to promote some of the financial tech innovations.[98] Each country's laws in the region vary widely, but some similarities include new regulations and creating of infra-

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[91] Glen Biglaiser & Karl R. DeRouen Jr., *Economic Reforms and Inflows of Foreign Direct Investment in Latin America*, 41(1) LATIN AM. RES. REV. 51, 58 (2006).

[92] Hugo A. Hurtado, *Is Latin American Taxation Policy Appropriate for Promoting Foreign Direct Investment in the Region?*, 31 NW. J. OF INT'L L. & BUS. 313, 318 (2011).

[93] *Id.* at 318-20.

[94] *Id.* at 321.

[95] *Foreign Direct Investment in Latin America and the Caribbean Falls for the Third Straight Year in 2017, Totaling $161.673 Billion Dollars*, STATE NEWS SERVICE (July 5, 2018), http://link.galegroup.com/apps/doc/A545499101/AONE?u=miami_richter&sid=AONE&xid=15a2246f.

[96] *Id.*

[97] P. Berkmen, et al., *Fintech in Latin America and the Caribbean: Stocktaking* 5 (IMF Working Paper, March 26, 2019), available online at https://www.imf.org/en/Publications/WP/Issues/2019/03/26/Fintech-in-Latin-America-and-the-Caribbean-Stocktaking-46677.

[98] *Id.* at 5-6.

structure for innovative tech solutions entering its markets to achieve a faster economic growth in the new age of information.[99] Yet, the leaders should be careful to consider policies that align with their long-term goals by making changes that are industry-specific.

A controversial yet forward-thinking example is Venezuela's legal adoption and creation of the cryptocurrency, *Petro*, on December 8, 2017.[100] Under Decree 3.196, Venezuela allowed the use of crypto-asset, or the *Petro*, a "virtual currency" to exchange goods and services as well as operate as a guarantee against one barrel of oil in the international commodity markets.[101] Shortly after the announcement, the Trump Administration quickly banned the use of *Petro* by American citizens, inferring that the Venezuelan's adoption was an attempt to skirt U.S. sanctions.[102] In fact, President Trump declared all U.S. transactions with any Venezuelan virtual-currency, coins, or tokens illegal;[103]President Trump extended the prohibition to all U.S. persons and companies subject to U.S. jurisdiction.[104]

Venezuela is at the forefront, adapting the tech developments through its policymaking including its Supreme Court, or Tribunal Supremo de Justicia, decision No. 1112 or Maria Elena Matos., where The Tribunal found the *Petro* to be an appropriate unit (standard measurement to express the price of goods and services, debts, and other economic measures) to indemnify in cases where it found damages, or "daño moral."[105] Similarly, Ecuador attempt-

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99 *Id.*

100 *El Petro Es Independencia*, GOBIERNO BOLIVARIANO DE VENEZUELA, MINISTERIO DEL PODER POPULAR PARA LA COMUNICACIÓN E INFORMACIÓN 1, 2-3 (May 1, 2018) (Venez.), http://minci.gob.ve/wp-content/uploads/2018/01/EL-PETRO-ES-INDEPENDENCIA.pdf.

101 *Id.* at 2-3.

102 Lesley Wroughton, *U.S. warns investors over Venzuela's 'petro' cryptocurrency,* REUTERS (Jan. 16, 2018).

103 Executive Order on Taking Additional Steps to Address the Situation in Venezuela, THE WHITE HOUSE (MAR. 19, 2018).

104 *Trump Bans US Use of Venezuelan Cryptocurrencies*, THE GUARDIAN (Mar. 19, 2018, 3:51 PM), https://www.theguardian.com/us-news/2018/mar/19/trump-venezuela-petro-cryptocurrency-ban-order.

105 *TSJ Adopta el Petro para Indemnizaciones por Daño Moral: ¿Una Illusión?* [*TSJ Adopts the Petro for Compensation for Moral Damages: An illusion?*], ACCESO A LA JUSTICIA (Nov. 8, 2018) (Venez.), https://

ed to stay ahead by prohibiting external cryptocurrencies and adopting its own.[106] The Electronic Money System (the "SDE") was created in 2015 in Ecuador with mandatory use imposed in all public institutions and in private banking.[107] However, since its inception, the "digital currency" of Ecuador has not been properly launched or been widely used.[108]

Unlike Venezuela and Ecuador, other countries have opted for a protective approach against virtual currency, including Bolivia and Colombia. In Bolivia, the Central Bank of Bolivia (the "BCB") prohibited the use of coins not issued or regulated by States, countries, or economic zones—a determination that includes electronic payment orders in currencies and denominations not authorized by the Issuing Entity in the national payment system through Board Resolution No. 044/2014 issued on May 6.[109] The resolution made Bolivia the first country in Latin America to institutionalize the illegality of virtual currencies.[110] Whereas in Colombia, the financial regulator established that the national currency, the Peso, which is the unique instrument for payment of legal tender.[111] Bitcoin, the most popular cryptocurrency at the moment, is implicitly illegal through Colombia's Law 31 of 1992.[112] The regulation also prohibited financial institutions from receiving payments in cryptocurrency or virtual currencies.[113]

Although the digital currencies have not gained wide approval in the region, other regulations are inviting and fostering tech development in the financial industries, such as mobile and branchless banking. Specifically, Colombia recently passed supportive

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www.accesoalajusticia.org/tsj-adopta-el-petro-para-indemnizaciones-por-dano-moral-una-ilusion/.

[106] *The World's First Central Bank Electronic Money Has Come – And Gone: 2014-2018*, SEEK ALPHA (Mar. 29, 2018), https://seekingalpha.com/article/4159982-worlds-first-central-bank-electronic-money-come-gone-ecuador-2014minus-2018.

[107] *Id.*

[108] *Id.*

[109] RESOLUCION DE DIRECTORIO NO. 044/2014, Mayo 6, 2014, BANCO CENTRAL DE BOLIVIA (Bolivia).

[110] *Id.*

[111] L. 31/92, Dec. 31, 1992, BANCO DE LA REPÚBLICA (Colom.).

[112] *Id.*

[113] *Id.*

mobile banking law reforms to provide banking services to the lowest income population.[114] Under Decree 4590 of 2008, Congress in coalition with the Presidential administration created an instrument called "electronic savings account," which are easily managed with cards, mobile phones, or ATMs at no cost.[115] Although only one semi-public bank offers the new savings account, many customers now obtain government subsidies through such accounts.[116] Also, the government is promoting branchless banking, or mobile microfinance, to increase access to financial services through non-bank correspondents ("NBCs").[117] In 2006, Decree 2233 created NBCs, granting financial institutions authority for "commercial businesses to provide financial services on their behalf."[118]

The NBCs reached underserved clients closer to their regional locations by providing the forms and documents to access a specific service while performing "Know-Your-Customer" procedures and transmit electronic information.[119]

Similarly, capital markets and expansion of finance with its alternative forms have started making leeway in Chile.[120] With indicators of the large potential, local governments are beginning to notice how Alternative Finance can solve its capital and credit market needs.[121] Chile's government issued the "Productivity, Innovation and Growth Agenda" listing an explicit support towards "emerging financial products" including Crowdfunding.[122] In fact, Chile is one of the "most rapidly growing markets" within the region.[123] Furthermore, the country even issued and guaranteed securities backed by the public development bank, which "in turn have

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114 Daniel Mauricio Alarcón Lozano & Matteo Mandrile, *A New Agent Model For Branchless Banking In Colombia,* INTERNATIONAL DEV. LAW ORG. 1, 4, http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.845.9835&rep=rep1&type=pdf.

115 *Id.* at 8.

116 *Id.* at 9.

117 *Id.* at 4.

118 *Id.* at 7.

119 *Id.* at 7-8.

120 See Diego Herrera, supra note 31 at 2.

121 *See generally id*.

122 *Id.* at 16.

123 *Id.*

been used by loan-based A[lternative] F[inance] platforms to secure loans."[124] In short, every country in Latin America is attempting to foster further development of their financial systems through policy measures, even if each is progressing at a different rate.[125]

VI. OPENING & FUNDING A FINTECH STARTUP IN LATAM

With policy reform across the region creating regulatory framework for crowdfunding, a person or company can invest and capitalize on fintech opportunities through Foreign Direct Investment (FDI) in different forms.[126] One, opening a startup that could obtain a license to offer financial services relying on fintech.[127] Two, complete financing of a local startup through FDI.[128] Like any business, the fintech would need to be a legitimate and registered business in its country of operation that is subject to the regulatory oversight. However, neither Argentina, Brazil, or Chile have fintech specific regulations in place, however each country has made "key regulator y developments" that pertain to the fintech industry: In Argentina, "[i]n November 2016, Entrepreneurship Act was enacted to regulate equity crowdfunding and create legal faculties for the National Securities Commission to rule and provide oversight on activities";[129] in Brazil, "[o]n April 26, 2018, the

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[124] *Id.*

[125] *Id.*

[126] *See generally Latin America's emerging sectors: A closer look at fintech and renewable energy*, THE ECONOMIST 9 (Feb. 19, 2018), https://perspectives.eiu.com/sites/default/files/EIU-DCCI%20Latam%20emerging%20sectors%2019th%20Feb%202018%20WEB.pdf; *See also* Biz Latin Hub, *Are Colombia and Mexico becoming LatAm fintech hubs?* BNAMERICAS (Apr. 22, 2019), https://www.bnamericas.com/en/features/are-colombia-and-mexico-becoming-latam-fintech-hubs.

[127] *See generally Latin America's emerging sectors: A closer look at fintech and renewable energy*, THE ECONOMIST 9 (Feb. 19, 2018), available online at https://perspectives.eiu.com/sites/default/files/EIU-DCCI%20Latam%20emerging%20sectors%2019th%20Feb%202018%20WEB.pdf.

[128] *See generally* Ariel Patschiki, *Fintech Is Transforming Latin America's Financial Sector. Here's How.* BRINK NEWS (Feb. 12, 2019), https://www.brinknews.com/fintech-is-transforming-latin-americas-financial-sector-heres-how/.

[129] P. Berkmen, et al., *supra* note 97 at 24 tbl.1.

Central Bank of Brazil established a new regulatory framework that allows Fintech firms to provide direct credit services (e.g. P2P), without intermediary banks[,]"[130] "through an electronic platform;[131] and in Chile, "[a] review of the regulatory framework is under consideration. Reportedly, authorities are considering new specific regulations on cryptocurrency and crowdfunding platforms."[132]

In Argentina, a fintech startup is regulated by the Argentine Central Bank (Banco Centralde la República Argentina or ACB) and can be financed through FDI.[133] The startup would need to abide by Argentine's laws and statutes. The ACB regulates, reviews, and authorizes any entity's registration as per the Financial Entities Law No. 21,526 (FEL).[134] Other functions of the ACB are to authorize the registration of foreign banks.[135] A key advantage to opening a financial startup in Argentina is the equal treatment of national and foreign capital without restrictions on the nationality of the investors interested in the local financial industry.[136] The capital markets are regulated by the Securities Commission (Comisión Nacional de Valores or ASC) through FEL No. 21,526 and Charter Law No. 24,144, with the objective to regulate all entities providing financial services as well as to promote monetary and financial stability and development, respectively.[137] Financing a startup with foreign funds is allowed. However, a local startup would require registration and licensing authorized by ACB prior to solicitation of funds.[138] If the rounds of financing are happening

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[130] *Id*.

[131] *Fintech Laws and Regulations 2019*, ICLG (Oct. 05, 2019) https://iclg.com/practice-areas/fintech-laws-and-regulations/brazil (last visited Nov. 26, 2019).

[132] P. Berkmen, et al., *supra* note 97 at 24 tbl.1.

[133] Gabriel Gomez-Giglio & Francisco J. Fernández-Rostello, *Argentina*, *in* GLOBAL FINANCIAL SERVICES REGULATORY GUIDE 3-9 (Baker McKenzie ed., 2017).

[134] *Id.* at 4.

[135] *Id.*

[136] *Id.* at 3.

[137] *Id.*

[138] *Id.* at 5.

on a regular basis, then the entity would need to establish a local presence by a subsidiary or branch.[139]

In Brazil, a fintech startup would surely face an easier process for licensing and would have virtually no limitations with FDI investment.[140] According to Central Bank´s ruling No. 3,683/2013, most entities that offer financial services require registration, including financial institutions and payment institutions, but "the Central Bank of Brazil is currently working on regulation that would facilitate licensing procedures."[141] Some of the information that an entity must disclose include "the percentage of intended foreign capital participation," relevance to the Brazilian economy, description of legal entity domiciled abroad if applicable, rating of foreign company or economic group the new entity belongs to, listing of authorized supervisors, and all other information that the Brazilian government would be interested in regarding foreign participation.[142] Upon approval further documentation and a formal process of registration must be met to begin operations such as submission of drafts of the entity's act of incorporation and a business plan among others.[143]

Historically, Brazil has strict rules for inflow of foreign capital, but with Presidential decree No. 9,544, Brazil unlocked FDI in credit fintech firms allowing control up to one-hundred percent of ownership by foreign capital in direct-credit and peer-to-peer lending firms.[144] The financial system is controlled by three agencies, the National Monetary Council ("CMN"), the Central Bank of Brazil ("Central Bank"), and the National Bank for Economic and

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[139] *Id.*

[140] Sergio Tauhata, *Decreto Destrava Investimento Externo Em 'Fintech' De Crédito (Decree Unlocks Foreign Investment In Credit 'Fintech')*, VALOR (Oct. 31, 2018, 5:00 AM) https://valor.globo.com/financas/noticia/2018/10/31/decreto-destrava-investimento-externo-em-fintech-de-credito.ghtml (citing presidential decree 9,544/18).

[141] P. Berkmen, et al., *supra* note 97 at 9.

[142] Jose Augusto Martins, *Brazil*, *in* GLOBAL FINANCIAL SERVICES REGULATORY GUIDE 52, 60-61 (Baker McKenzie ed., 2017).

[143] *Id.* at 62.

[144] *See generally id.* at 52-63; *see also Foreigners get green light to control up to 100% of credit fintechs,* VALOR (Oct. 31, 2018, 12:00AM), https://www.valor.com.br/international/brief/5960199/foreigners-get-green-light-control-100-credit-fintechs.

Social Development ("BNDES").[145] Under Law No. 4,595/1964, the Central Bank implements monetary policies as well as exercises control over foreign investments and inflow and outflow of capital.[146] Essentially, this law grants only licensed financial institutions (including a Fintech startup) the ability to perform banking and finance activities such as collection, intermediation, and investment of its funds or others, including custody of third parties' assets.[147]

In Chile, a startup would require less burdensome processes to register in addition to a seemless and progressive FDI regulatory landscape inviting development.[148] The Superintendency of Banks and Financial Institutions (SBIF) oversees and authorizes operations for banking and financial institutions in Chile.[149] Most of the regulations are issued by SBIF in addition to all institutions being subjected to the Consumer Protection Law (Law No. 19,496) and the Data Privacy Law (Law No. 19,628).[150] The Banking A ct does not forbid foreign banks not licensed in Chile from granting loans to specific clients so long as those institutions do not engage in receiving funds from the general public.[151] According to Article 33 of the Banking Act, foreign banks require prior authorization to establish offices in Chile where the offices can act as business agents to promote its services.[152] However, these offices cannot perform more traditional activities reserved only for banks in Chile.

Even though there is a high minimum paid-up capital requirement of approximately thirty million American dollars, Chile's foreign investment policy has little discrimination towards foreign investors–guaranteeing access to formal foreign exchange market and moderate corporate tax.[153] Also, Chile has established "The Innovation Policy Platform" to encourage investment focused on

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145 Jose Augusto Martins, *supra* note 142 at 52.

146 *Id.*

147 *Id.* at 54.

148 *See generally S*ebastian Vivanco, *Chile*, *in* GLOBAL FINANCIAL SERVICES REGULATORY GUIDE 74-77 (Baker McKenzie ed., 2017).

149 *Id.* at 74.

150 *Id.*

151 *Id.* at 75.

152 *Id.*

153 *Id.* at 76.

the 2014-18 Growth, Innovation and Productive Agency (GIPA) to "strengthen innovation."[154] Similarly, the government created InvestChile, a new agency created to promote foreign investment and assist overseas owners.[155] The agency and policies include the exportable technological services among the target sectors. In 2016, the investment law No. 20.848 exempts investment with a minimums of five million American dollars from VAT tax on imported goods, and investors can lock in a ten-year effective income rate of 44.45% for investments of at least USD fifty million American dollars.[156]

"Emerging fintech firms are providing digital financial services, including savings and credit products, to millions of people without access to formal financial services." [157] Such progress has been accomplished thanks to policy reforms fostering the regulatory framework and allowing foreign investment therefore, laws that protect the interest of such investors and guarantee the fairness in resolving financial and legal issues are equally important. One of the most important features is a fair and consistent system to retrieve losses as a foreign company in local territory; the region is covered with controversy about investment protection and international dispute resolution, although it is embracing international arbitration more openly.[158] The enforcement of property rights influences FDI because parties interested in investing abroad argue for the importance of protecting privately held assets from arbitrary appropriation as part of a positive governance infrastruc-

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[154] *Chile*, THE INNOVATION POLICY PLATFORM, http://www.innovationpolicyplatform.org/www.innovationpolicyplatform.org/content/chile/index-2.html?country=7783 (last visited Nov. 25, 2019) ("the new government's 2014-18 Growth, Innovation and Productive Agenda (GIPA) will help to strengthen innovation as a key driver for growth.").

[155] *About Us*, INVESTCHILE, https://investchile.gob.cl.

[156] *New Foreign Investment Regime, Law 20.848,* INVESTCHILE 1, 3, 5, https://investchile.gob.cl/wp-content/uploads/2017/03/NEW-FOREIGN-INVESTMENT-REGIME.pdf.

[157] P. Berkmen, et al., *supra* note 97 at 8.

[158] M. Belén Olmos Giupponi, *The Protection of Foreign Direct Investment in Latin America: Where Do We Stand on International Arbitration?,* 32(2) J. OF INT'L ARB. 113, 113 (2015).

ture.[159] The New York Convention and Bilateral treaties among countries provide those assurances.[160]

VII. CURRENT ENFORCEMENT VENUES TO REDUCE RISK OF FOREIGN INVESTMENTS

The New York Convention (the "Convention") resulted in a treaty among many countries. The Convention is a recognition and enforcement of foreign arbitral awards and referrals by a court to arbitration—a key instrument in international arbitration.[161] Most of the countries in Latin America are part of the New York Convention. For example, Argentina signed the Convention in August 26,1958 and ratified it on March 14, 1989.[162] Brazil ratified and signed it in June 7, 2002,[163] while Chile ratified it on September 4, 1975.[164] In fact, Chile turned into an attractive arbitration venue when the country enacted the UNCITRAL Model Law in 2004.[165] Within it and in addition to the fast growth and development of arbitration, arbitration awards are recognized and respected by local tribunals.[166] The basic principles of the Convention are the recognition and enforcement of arbitral awards and the general obligation of contracting states to recognize such awards as binding and enforce them according to Article III of the Convention.[167]

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159 Steven Globerman & Daniel Shapiro, *Global Foreign Direct Investment Flows: The Role of Governance Infrastructure,* 30(11) WORLD DEV. 1899, 1901 (2002).

160 *See generally* M. Belén Olmos Giupponi, *supra* note 158.

161 NEW YORK ARBITRATION CONVENTION, http://www.newyorkconvention.org/.

162 *Contracting States*, NEW YORK ARBITRATION CONVENTION, http://www.newyorkconvention.org/countries.

163 *Id.*

164 *Id.*

165 *See generally* Pablo L. Cibié, *Enforcement of Arbitration Awards in Latin America: The Current Progress and Setbacks,* 22 LAW & BUS. REV. AM. 93, 99 (2016).

166 *Id.* at 93.

167 *Article III*, New York Convention Guide, http://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=10&menu=619&opac_view=-1 (last visited Nov. 25, 2019) ("Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the

For enforcement of a foreign award, the party should supply the court both (a) the arbitral award, made in another state or a non-domestic arbitral award, and (b) the arbitration agreement as per Article IV.[168]

The flourishing of local arbitration and the increasing tendency of pro-arbitration interpretation by Latin American Courts of the New York Convention are some advantages available to foreign investors.[169] Particularly, courts in Colombia, Chile, and Brazil have shown some vested interest and "shared inclination to restrict the scope of public policy exception in Article V(2)(b) of the New York Convention only to cases where international arbitration awards contradict the most fundamental principles of the enforcement forum's legal system, excluding mere inconsistencies from mandatory norms of domestic law."[170] The New York Convention creates uniformity because it provides a standard for enforcing an arbitral award specifically with "respect to enforcing any such award in one contracting state that is issued in another contracting state."[171] Thanks to the Convention, many countries in Latin America "offer a consistent and generally reliable model for enforcing arbitration awards . . . [a]s a result, arbitral awards in these jurisdictions are typically widely recognized and enforceable."[172]

Not all Latin American countries have been so enthusiastic about the growth of international arbitration. For example, Argentinian courts widely recognize the award-debtor's right to resist the enforcement of an international award on a broad public policy basis.[173] In the Cartellone case, the Argentinian Federal Supreme

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rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles.").

168 *Article IV*, New York Convention Guide, http://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=10&menu=620&opac_view=-1 (last visited Nov. 25, 2019).

169 Cibié, *supra* note 165, at 93.

170 *Id.*

171 Purvin N. Patel, *Enforcement of Arbitral Awards in Latin America,* SQUIRE PATTON BOGGS (Dec. 20, 2016), https://media.squirepattonboggs.com/pdf/construction/Newsletter-Edition-1/LatAm-and-Carribean/LatAm-CC.pdf.

172 *Id.*

173 IBA Subcommittee on Recognition and Enforcement of Arbitral Awards, Report on the Public Policy Exception in the New York Convention (Oct. 2015),

Court concluded the parties "could always request the annulment of an award containing unconstitutional, illegal or unreasonable decisions, and therefore they could not have waived their right to appeal an arbitral award that was in contradiction with public policy."[174] The Court decided that an arbitral award granting compounded interests imposed an excessive burden on the award-debtor incompatible with Argentinian policy.[175] In addition to the jurisdictions that vacate the awards, each country has adopted or created specific procedural rules that must be followed thoroughly to enforce an arbitral award.[176] Therefore, parties need to complete careful research about the interpretation and application of the arbitral award when selecting the location of the arbitration since some "jurisdictions are more 'pro-enforcement' than others."[177] Specifically, a few jurisdictions, like Mexico, have vacated arbitral awards.[178] Therefore, a startup would be required to seek counsel prior to drafting an arbitration clause and choosing an arbitration forum on its financial offerings and agreements.

VII. CONCLUSION

Technology disrupts the status quo. Through innovation, the standards are challenged, and new possibilities rise in some completely unexpected places. With the rise of cryptocurrencies and its backbone of technology or blockchain, financial services systems are fundamentally changing in both developed and emerging economies. Fintech now offers new solutions that large infrastructure used to sustain. Today, fintech and its expressions promise a "lean structure" where transactions are processed entirely through the internet and via digital devices. The widespread use of mobiles worldwide creates endless opportunities for mobile banking. Un-

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available online at https://www.ibanet.org/LPD/Dispute_Resolution_Section/Arbitration/Recogntn_Enfrcemnt_Arbitl_Awrd/publicpolicy15.aspx.

[174] Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 81/6/2004, "José Cartellone Construcciones Civiles S.A. c. Hidroeléctrica Norpatagónica o Hidronor S.A.," La Ley [L.L.] (2004-E-266) (Arg.).

[175] *Id.* at 7.

[176] Patel, *supra* note 171.

[177] *Id.*

[178] *Corporación Mexicana De Mantenimiento Integral, S. De R.L. De C.V. v. Pemex-Exploración Y Producción*, 832 F.3d 92, 97 (2d Cir. 2016).

derstanding the lack of infrastructure and depth of financial services in emerging countries, the new tech can be an opportunity to develop robust credit market in the region. Currently, many countries are creating progressive laws to foster innovation and invite foreign investment while allowing alternative methods of financing to grow within their jurisdictions. A fintech startup that brings technology would require registration and authorization to begin operations locally, while being subjected to different restrictions to bring foreign capital to support its operations. As the technology makes its way into the region, public policy is the main tool to create certainty for startups; laws that are clear, flexible, and increasingly transparent would help gain faster development of credit markets in Latin America.