1) Introduction

In the 25 years since 1990, the corporate law sector in Brazil has grown substantially. The number of firms has more than doubled, some firms have reached large size, and corporate structure and average firm size have increased. At the same time, some law firms have changed their methods of operation, recruitment, and management. Until 1990, the sector was small and largely focused on serving local clients; today it includes many large firms as well as numerous specialized “boutiques” serving both domestic and foreign corporations.

These developments are the result of a major shift in the Brazilian economy and resulting legal changes. In the 1990s, Brazil began to move away from the centralized, state-dominated, and closed economy model that had prevailed since the 1930s. Facing a financial crisis and a sluggish economy, the country sought to revive growth by...
opening to the world economy, attracting foreign investment, and privatizing many state-owned enterprises. These developments were accompanied by a legislative “boom” that created new areas of law designed to govern newly privatized sectors, attract foreign investment, and stimulate domestic investment. New regulation was passed and gave rise to a need for professionals able to perform in areas such as capital markets, infrastructure, telecommunications, energy, arbitration, competition, mergers and acquisitions.

The changing role of the state and the accompanying legislative boom, along with the increasing presence of national and multinational corporations and foreign investors in the Brazilian market, altered the structure of demand for legal services in the corporate sector. Domestic and foreign clients looked for expertise in the new areas of law. Business lawyers were in high demand by domestic and foreign corporations. Clients, especially foreign companies, looked not only for a high level of legal expertise but also for the kind of lawyering skills that prevail in global markets. People with international expertise and knowledge of global lawyering styles became more highly valued (ENGELMANN, 2011). As the sector grew, a “new model” of corporate law firm began to take shape. These firms tended to be larger, more internationalized, and more professionally managed than the typical traditional Brazilian firm of the pre-1990s era. The sector has become more competitive and firms have responded in a number of ways, including paying more attention to branding, offering international training for staff, searching for foreign clients, building alliances with global law firms, and upgrading firm management.

a) The research

To secure more data on these developments and other related changes in the sector, we studied the corporate law firms sector in Brazil. These firms are based mainly in the axis Rio de Janeiro-São Paulo and operate in several areas of corporate law.

2 According to Sida Liu, who analyzed the law market in China for the GLEE project, the elite law firms have some common features throughout the world: they usually employ a large number of lawyers, have multiple offices and branches in various national and international locations, and specialize in some key areas, and thus can be generalist or boutique firms. Four strands of analysis were conducted by the author in the empirical study: size (number of lawyers and law firms), practice areas (generalist vs. boutique); global reach (domestic vs. international) and management model (traditional vs. bureaucratic vs. LLP, which differ on the degree of how organized a career plan is, on the sophistication of the distribution of work, and to the limits imposed to partners’ liability).

3 The majority of the law firms observed in this study are based in São Paulo, followed by Rio de Janeiro, Belo Horizonte, Curitiba and Porto Alegre.
law, such as infrastructure, financial operations, commercial contracts and international trade\(^4\). We sought to understand the impact of globalization\(^5\) in the Brazilian corporate legal market using two major data sources: (i) a database we built from public sources, including publications and rankings which have objective information on business law firms; and (ii) interviews carried out with managing partners and founders of renowned firms, including firms with different levels of expertise and founding dates. The database includes 367 law firms that provide corporate legal services\(^6\). The interviews supplement this data and provide insights on how key actors see the transformation of the Brazilian corporate legal market that has resulted from the opening of the economy and globalization.

We conducted interviews with founding partners and/or managing partners of 13 corporate law firms that operate in São Paulo and in Rio de Janeiro. The interviews were conducted from a semi-structured script of questions involving: (a) the respondents’ professional career; (b) their perceptions of the impact caused by globalization in the profession and in the Brazilian legal market; (c) hiring models, promotion and careers in the firm; and (d) firm management models, organization and control.\(^7\)

b) General observations: tensions in a fast-changing sector

The rise of the corporate sector has created tension between an emerging model of professional organization and practice and traditions of the Brazilian legal profession including some regulations by the organized bar – the *Ordem dos Advogados do Brasil* (OAB). This has sometimes been manifested in a certain distance between what people say about how lawyers can and should operate and what is actually going on. Thus, while the Bar still imposes minimum fee schedules and prohibits advertisement, the new

\(^4\) For the purpose of building the research database, we followed the classification of legal areas used by the magazine *Análise Advocacia 500* and excluded the law firms that are dedicated exclusively to criminal, labor, of consumer rights and insurance.

\(^5\) For the purposes of this chapter, “globalization” is understood as a multifaceted phenomenon that is not restricted to economic integration. Adopting the view of Wilkins and Papa, there are three globalization processes which play a significant role in the globalization of legal services: economic globalization, globalization of knowledge, and globalization of governance. It was through these three lenses that these authors analyzed the legal profession in India (WILKINS and PAPA, 2012).

\(^6\) Our database was created based on the information available at four national and international rankings: *Análise Advocacia 500 Magazine* (2010 a 2013), Chambers Latin America (2011, 2013), Latin Lawyer (2013) and The Legal 500 (2013). Such rankings are based on data provided by the companies who are clients of the law firms. A database of 367 corporate law firms is structured from objective information as (i) total number of lawyers; (ii) the number of partners; (iii) year of establishment and (iv) headquarters.

\(^7\) Interviews were conducted between November 2013 and February 2014.
model corporate firms compete actively for business and have engaged in various methods to market their brands. Similarly, while the Bar has sought to impose restrictions on alliances between domestic and foreign law firms, the largest Brazilian law firms are inserted in global networks of international operations. Finally, while corporate law firms are not “companies” under Brazilian law, and the Bar prohibits law firms with “mercantile forms or characteristics”\(^8\), the new model of corporate law firms in fact operate like business entities as they respond to market demand and adopt corporate management technologies. The result of these tensions is that there is often a gap between rhetoric and reality in the corporate law sector, as well as the development of hybrid organizational forms as the new model law firms seek to adopt more sophisticated, professional and global forms and practices to Brazilian culture and market.\(^9\)

**2. Changes related to market growth and the impacts of globalization**

Estimations from the *Revista Análise Advocacia*\(^10\) indicate the existence of more than 30,000 law firms registered in Brazil. In numeric terms, the Brazilian legal market is the third largest in the world, surpassed solely by the United States and India.\(^11\) Overall, there are almost 900,000 lawyers in Brazil, almost half of them in Sao Paulo and Rio.\(^12\)

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\(^{8}\) Law firms in Brazil are not considered “companies” in its legal sense, based on OAB’s Provision n° 112/2006 and on Law n° 8.906 of July 4, 1994 – named Statute of Legal Practice of OAB, especially in article 16 (which prohibits the operation of law firms which present mercantile forms or characteristics).

\(^{9}\) For example, we found no attempt to exactly reproduce the American model in Brazilian law firms. Although the legal market in Brazil is no stranger to change and to the international context, we found that national law firms have adopted their own management system, with characteristics that are consistent with the Brazilian culture and regulation.

\(^{10}\) The *Análise Advocacia 500* is published annually in December since 2007, containing information and rankings that are drawn from the opinion of the legal directors of the largest companies in the country, which are included in the “Análise Editorial: The Largest Companies in Brazil”, who vote for up to three most admired law firms in each of the 12 areas of law encompassed by the publication. The votes are converted into points and sum up the total points for each office in all areas by selecting the law firms occupying the first 500 positions. From these data, the Magazine produces the general list of most admired firms and some lists of the most admired offices per area.

\(^{11}\) According to *Mapa da Advocacia brasileira 2014: Análise Advocacia 500*, p. 40. The first is from India, with 1,273,289 lawyers in 2011 (http://www.legallyindia.com/wiki/Lawyers_in_India_by_state). The following was the United States, with 1,268,011 lawyers, according to data from the American Bar Association, 2013 (http://www.americanbar.org/content/dam/aba/administrative/market_research/total_national_lawyer_counts_1878_2013.authcheckdam.pdf). And thirdly is Brazil, with 872,396 lawyers in January 2014 (http://www.oab.org.br/institucionalconselhofederal/quadroadvogados - this data is updated daily by the OAB’s Federal Council and was obtained in 01.07.2014).

\(^{12}\) In 2012, in São Paulo alone, there were 64 new law firm partnerships registered per month at the São Paulo office of the Brazilian Bar Association (OAB – SP). On July 1st, 2014, the number of lawyers
The corporate sector included in our data base includes 367 firms. Of them, 10 have more than 300 lawyers. The rest are small and medium size firms: most (90) having from 11 to 20 lawyers. In addition, there are 54 business law firms with up to 10 lawyers and another 54 that have from 21 to 30 lawyers.

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<td>N.I.</td>
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The following chart shows the rapid rise of the corporate sector in the 1990s after the economy was opened and privatization began. In the two decades starting in 1991 more firms were added (194) than had been created in the entire period since 1900 (136). Not only did the number of firms grow rapidly after 1991; there was an increase in the size of law firms driven in part by the emergence of new practice areas.

registered in Brazil was 872,396, of which 263,474 are lawyers registered in the São Paulo chapter (30.2%) and 137,694 are lawyers registered in the Rio de Janeiro chapter (15.78%), which together account for 45.98% of the total number of registered lawyers in the country, followed by the state of Minas Gerais (90,873 – 10.41% of the total) and Rio Grande do Sul (62,586 – 7.17% of the total). These four states account for 63.57% of all lawyers registered in Brazil (totaling 554,627 lawyers). The OAB’s Federal Council publishes and updates, on a daily basis, the total number of lawyers registered at the OAB’s regional chapters in Brazil.
By 2014, there were 39 law firms with over 100 lawyers. This represented a major transformation of the sector. Prior to the 1990s, the typical Brazilian law firm in the corporate sector was relatively small. A handful of lawyers joined together to form a firm. In many cases, they were led by a “notable”, a lawyer who had gained a reputation as one learned in the law. These legal notables combined intellectual and social capital built on family connections, academic positions, and publications of doctrinal texts. The firms were managed informally and developed clients through social contacts and the reputation of the leading partner. The practice would be focused on the area of the lead lawyer’s expertise. There were some exceptions particularly in that part of the sector that catered primarily to foreign corporations. There you could find larger firms offering a fuller range of services, more professional management, and emphasis on the firm’s brand, not just that of an individual notable.  

The privatization drive and other changes created whole new areas of law affecting business. Take, as an example, telecommunications. This sector had previously been a state monopoly but in the 1990s it was privatized and subjected to new forms of regulation including the creation of the regulatory agency called ANATEL. All of a sudden corporations were faced with a legal regime that had no precedent in the country. This created a big demand for lawyers who had both

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13 In some cases, these firms were founded by expatriates with experience in large law firms in the US who settled in Brazil or Brazilians with overseas experience. But even the largest of these firms in the pre-1990s period was small by today’s Brazilian standards. See Krishnan, Dias and Pence (2015),”Legal elites and the Shaping of Corporate Law Practice in Brazil: a Historical Study”.

14 For a detailed discussion of the transformation of telecoms market & regulation, see Trubek and Silva, in this volume.
knowledge of the new telecoms laws and international expertise. Similar things happened in other legal fields. As demand increased and the economy grew, mergers, spin-offs and associations between law firms occurred and new firms were created. The old “gentleman’s agreement” against poaching lawyers from other firms eroded as the market became more competitive.

While many firms grew substantially and began to resemble global full-service firms to one degree or another, these two decades also saw the rise of “boutique” firms claiming a high level of specialized expertise. According to the respondents, many firms refer to themselves as boutique firms in order to achieve greater prestige and to differentiate themselves from generalist law firms, which are sometimes associated with somewhat impersonal services. Thus, we noted that the boutique classification often serves as a strategy for raising the status of a particular office in the corporate law market, although the indiscriminate use of the term also reduces its value.

2) Challenges facing new model corporate law firms and their responses

By 2014 when we completed the research, the corporate law sector had grown substantially and taken on definitive shape. The traditional model of business law firm which dominated the sector until the 1980s had largely been replaced by larger, more professionalized and internationalized entities. In this section we provide a profile of the sector and an examination of the challenges it faces. We look at three primary issues: (1) the changed nature of the clients and the services they demand; (2) the impact of internationalization including the growing importance of international knowledge and contacts for domestic corporate firms and even the role played by a few foreign law

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15 In the study, we classified firms as either full service or boutique. This classification is also used in Liu, 2011, 2. In the Chinese corporate law market, Sida considers that alongside the generic offices and boutiques, there two other types: “In the case of Chinese Corporate Law Firms, at least four such types coexist: (1) global generalists, (2) elite boutiques, (3) Local coalitions, and (4) the nouveau riche. Global generalists refer to large full-service law firms with a substantial proportion of their business generated from cross-border transactions and international clients. Elite boutiques refer to smaller but no less prestigious boutique law firms that specialize in a few areas of practice such as initial public offerings (IPO), venture capital (VC) and private equity (PE), or commercial arbitration”. (LIU and WU 2014, 5). There are other ways of classifying law firms’ activities, such as the triple classification used in the ranking of Análise Advocacia 500, which considers the existence of three categories (full service, comprehensive and boutique). For this publication, the full service firm is one that has the capacity to serve the client without outsourcing any legal services. Comprehensive is classified as a firm able to meet clients’ demands in the key areas of law. And finally, boutiques are highly-specialized firms with work focused on a small number of areas. Given the difficulty in differentiating between the activities performed by full service firms and comprehensive firms, this paper uses a dual classification, which includes the generalist category (or full service) and the boutique category.
firms in Brazil; 3) the challenge of managing the new model law firm and the tension between its operational practices and Brazilian law and custom.

a) Corporate law encounters client demands for greater sophistication and new styles of lawyering

The changes in the corporate law market occurred in part due to changes in client profiles as restructured in-house legal departments created new expectations for service and new demands for expertise. The big business law firms find their clients among the larger domestic and foreign corporations operating in Brazil as well as foreign companies interested in entering the Brazilian market. In the last 20 years, there have been major changes in the role of in-house counsel in these corporations, including changes in the mix of legal services to be handled internally and those that are outsourced. These changes, occurring worldwide, are taking place in Brazil, and have affected the demand for the services of the country’s most prominent corporate law firms\(^\text{16}\).

The changing role of general counsel is a world-wide phenomenon. As far back as the 1980s, scholars identified a process in which legal departments in American companies grew in size and the heads of these offices became more important within the company (CHAYES and CHAYES, 1985). This led to changes in the type of service clients demanded from outside firms. Chayes and Chayes note:

“the status, organization, and business of the traditional elite law firm may be substantially altered in both substantive emphasis and in the nature of client base by the new prominence of corporate counsel” (CHAYES and CHAYES 1985, 278).

As this paper, David Wilkins (2012) argues that "the transformation of law firms is brought about by the transformation of the clientele."

This shift in the internal role of general counsel, and the corresponding shift in demands made on their outside law firms, is occurring in emerging economies like

\(^{16}\) For a detailed discussion of the changing role of in-house counsel in Brazil, see Oliveira and Ramos, in this volume.
Brazil, China and India as well as other countries. Our respondents provided detail on this trend in Brazil. In the words of one respondent:

“I think companies have changed a lot in general, because they have become globalized, because companies began to face global competition (...). In previous days (...) the internal legal department took care of simpler matters and if there was a more complex issue an outside law firm handled it; it was the holder of legal knowledge. Not today; you have a very qualified legal department in companies, the highest quality lawyers, and people with management expertise, expertise in administration, expertise in corporate culture (...). This sophistication of companies created a need for law firms to follow this trend.” (Partner Manager in a full service office, from 201 to 250 lawyers).

Our respondents highlighted the expansion and restructuring of corporate legal departments in the recent decade as they grew in size and in importance within the company. They also noted a change in the relationship between companies and outside firms: where this relationship used to be based largely on personal and long-lasting relationships between the general counsel of the corporation and the lawyers they hired, now it is more arms-length and transactional.

The result of these changes is that the clients are demanding much more sophisticated services from the outside law firms. As in-house offices become more sophisticated themselves, they demand similar qualities from the outside firms. One respondent expressed this graphically:

"A doctor who always has the same kind of patient, when the patient becomes more sophisticated, the doctor has to become more sophisticated as well, otherwise the patient will know more than the doctor does. If he really knows more than the doctor (...) he will certainly think whether to hire him or maybe about hiring someone smarter. Therefore, I think there is a revolution, this revolution in the world of law comes via legal departments of companies that have had a fascinating boost in quality.”(Partner Manager in a full service office based in Sao Paulo, 201 to 250 lawyers)

The transformation of the legal departments created new client expectations. The clients began to require the corporate law firms to provide short answers and do it quickly. They expected them to offer appropriate solutions to corporate problems

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17 For a discussion of these trends in India, see Wilkins, Khanna, and Trubek, The Indian Legal Profession in the Age of Globalization.
consistent with the company’s dynamics and core business. They also monitored costs and insisted on reasonable prices\textsuperscript{18}.

New client expectations required new kinds of lawyers and lawyering in the major corporate law firms. According to some respondents, in order to provide efficient solutions, lawyers can no longer prepare lengthy and wordy legal opinions, full of Latin terms as was once common in Brazilian firms. Today, they must have a detailed knowledge of the company's business, know how to analyze cost spreadsheets, be financially literate, foresee conflicts and analyze risks. One respondent noted:

"(...) Lawyers are no longer those guys sitting behind a desk writing a legal opinion in Latin. In order to become a businessman, attorneys have to sit down and understand the client's business, and suggest solutions. They have to know what is financial return, what is interest rate, what is economic viability; they participate in setting up the business with the client. They have to be a little bit of a financier and a businessman, a mixture of a businessman with legal training. (...)"

The demand that corporate law professionals understand business conditions, look ahead to the future, and offer quick and concrete solutions to business problems in real time, sometimes clashed with the training lawyers had received in Brazilian law schools. One respondent noted:

“… the main challenge for lawyers is to stop looking at the past and try to look forward, trying to keep up with their client. So in a sense you have to forget all that training you have had. Forget all the education you had that told you to look back at the way it was."(Founding Partner in a full service office, from 51 to 100 attorneys)

This was echoed by another who noted that the changes in legal culture can be traced back as far as the 1960s:

"[There is] a transition from the big name attorney office, classically trained, erudite, related to German and French models of knowledge, to a more American style, of good business of the negotiating activity. This [new] culture began to be structured in the 1960s, I think, it did not exist before this. Lawyers were litigators, or they had been a big name judge, or a famous teacher, and they were men whose names were recognized and respected in the Judicial Branch. But this preventive business law was beginning to exist.”

\textsuperscript{18} "I think you are expected to know each client's business extensively, and that is a little unreasonable, because when the customer pays a respectable fee, it is to be presumed that you know the client very well. (...) Therefore, in short, the client today expects more and pays less. "(Founding Partner in a full service office, from 151 to 200 lawyers)
While the seeds of this “new model lawyering” can be found as far back as the 1960s in a few specialized and elite firms, it took the legal boom and market opening of the 1990s, and the changing demands from domestic and foreign corporate clients, to spread this type of lawyering style to a larger segment of the bar.19

This shift in legal culture highlights the gap between the education lawyers received in Brazilian law schools and the demands they faced in the new post-1990s environment. As the chapter on training of global lawyers shows, Brazilian law schools have been notably slow to respond to these new needs.20 As a result, many firms have encouraged international experience and study abroad in order to prepare young lawyers for the demands they will face in the new model law firm21.

Moreover, the growth of the legal departments and the increased importance of the firm's legal director or general counsel has given them greater responsibility in establishing fees. Nowadays, legal directors at several companies have the autonomy to manage their own budget and, therefore, are more selective when hiring a law firm. The high cost of hiring impacts directly on the company’s budget22.

In addition to fees, companies' legal departments use other criteria when hiring outside law firms, such as the reputation and integrity of the firms and the expertise in the area in which the company operates. Another important criterion that helps explain why one particular firm is hired is the presence of a specific professional with extensive knowledge in the legal area for which they are being hired and with whom the client has established a strong relationship of trust (OLIVEIRA and RAMOS, in this volume).

b) New clients and internationalization of law firms

As more and more foreign investors and multinational corporations entered the Brazilian market, Brazilian corporations started investing abroad, and international

19 For an early effort to change Brazilian legal culture and the problems that effort it encountered, see Trubek (2011), Reforming Legal Education in Brazil: From the Ceped Experiment to the Law Schools at the Getulio Vargas Foundation.
20 See Cunha and Garcez, in this volume.
21 (...) Today, you hire a guy who goes to Harvard or any other [foreign] university, he is capable and even better prepared when he comes back with his mind open, understanding the things that are good for Brazil, and things that are not, what is good for the profession, and what is not, and in the end, knowing how to help the client.” (Founding Partner in a full service office, from 301 to 350 lawyers).
22 “What the client cannot have is a surprise at the end. Today the general counsel is not only a manager of external law firms, he has to be profitable for his company. He also has his own financial pressures” (Partner Manager in a full service office, from 201 to 250 lawyers); “In previous days the legal department of companies had no budget. Today, the legal director has a budget equal to that of all of his peers.” (Founding partner in a full service office, from 151 to 200 lawyers).
norms like TRIPS began to have more impact on Brazilian law. Domestic firms needed to develop the capacity to work with new legal issues and new client demands. One response was to increase the internationalization of the sector. To explore these developments, we looked at three areas: (i) the relationship between domestic Brazilian corporate law firms and foreign law firms, (ii) efforts to attract foreign clientele, and (iii) support given to lawyers to pursue educational training abroad (in LLM and similar courses) and/or operations in foreign law firms (internship or secondment).

(i) Domestic law firms enter international networks

Few domestic Brazilian law firms have branches abroad and there are no truly global Brazilian firms with a strong international presence. While a few have established formal ties with foreign firms, most Brazilian firms prefer to have much looser affiliations which can be used to form partnerships tied to specific projects or transactions. International connections are important, but most firms prefer to be part of global networks of independent law firm entities (such as the Lex Mundi and Interlex) aimed at networking and at mobilizing global experience rather than forming partnerships with one office or another. The majority of the respondents affirmed they were part of this type of non-exclusive alliance that guarantees the firm's independence. One respondent noted:

“We do not believe in associations. (...) since we have this extensive international experience, we are familiar with many law firms, so instead of forming an association in which you are tied to those people, we prefer to choose who we work with in every case.” (Founding Partner in a full service office, from 51 to 100 attorneys)

According to data from the 2012 of Análise Advocacia, of the 224 Brazilian law firm listed as the most prestigious, 70% said they would consider or have already sought some kind of “partnership” with a foreign law firm.\(^{23}\) If we look at the 65 firms that have consistently been ranked as “elite” by this survey, 55% claim to have assessed a proposal or admit to be actively pursuing a “partnership”.\(^{24}\) Based on what we learned from the interviews, we interpret this data as showing that firms are willing to have informal ties with foreign firms, not that they seek mergers or other formal relationships. Of the 13 firms we interviewed, none had a formal partnership with a


foreign firm. Many firms do not believe it is necessary to have an affiliated office abroad to attract foreign customers. The interviews showed that domestic firms that work with foreign law firms usually do so in accordance with demand and on a case by case basis. As one respondent noted:

“We have a very strong relationship with many foreign law firms, especially American ones, as well as European, German, Norwegian, but we do not have a specific partnership, we have always avoided that, (...) to be a partner with one, would actually close many doors for us. Therefore, it makes no sense for the office to have a relationship with just one office (...) In 2004, I think, we even had something like this, a partnership with a Chilean firm and an Argentine firm (...) but we realized in the end that it did not produce many results, there was no volume of exchange, or relationship, no cultural exchange, no business that made sense for you to focus on.” (Founding Partner in a full service office, from 201 to 250 lawyers).

Another respondent drew attention to the fact that currently the focus of Brazilian firms has been on the Brazilian market itself.25

(ii) Foreign law firms start to set up offices in Brazil

As the Brazilian economy opened and started growing in the late 1990s and early 2000s, foreign law firms began establishing themselves in Brazil.26 One Brazilian lawyer noted:

"Capital markets suddenly accelerated in Brazil [in the 2000s] and this caused a series of phenomena. First, the strengthening of Brazilian companies, capitalization of Brazilian companies, family businesses, suddenly turning into large companies, suddenly becoming the target of major acquisitions. But apart from all this, foreign law firms are looking at the Brazilian market and seeing the maturing of companies and saying: now I have a market to sell to (...). With this, we saw a massive influx since the 2000s (...) we have around 24 or 25 foreign law firms that are here, some have come and gone, but you still have over 20 offices that continue rendering services"(Partner manager in a full service office based in São Paulo, from 201 to 250 lawyers);

According to Analise Advocacia, the first foreign firms arrived 1997, when Linklaters (UK) and White & Case (United States) opened offices. In 1998, Clifford

25 “Since the country advanced, deals are here. (...) In 2005, 2006, Brazil began to get sexy. Therefore, what is a good client these days? The Brazilian client. Because Brazil has a lot more work than abroad. But do foreigners still pay more? Yes. Except that for each foreigner, you have five hundred Brazilians. In this sense, today, I cannot waste time going abroad to prospect with the number of Brazilian clients on the market. "(Founding Partner in a full service office, from 151 to 200 lawyers)
26 "Many of them [foreign law firms] operate in Brazil, they are practicing law, making money with a lot of people living here in São Paulo, Rio de Janeiro," (Founder Partner in a full service office, from 301 to 350 lawyers).
Chance (UK) opened a branch in São Paulo. Cuatrecasas, Gonçalves Pereira, a Spanish and Portuguese firm, opened a branch in São Paulo in 1999. The American firm Shearman & Sterling installed a branch in São Paulo in 2004. From 2007 to 2013, 18 additional foreign firms opened branches in Brazil.\(^{27}\) Of the 23 foreign law firms with branches in Brazil, 13 were founded in the United States, seven in the UK, one in Bermuda (Conyers Dill & Pearman's), one in Spain and Portugal and one, Hogan Lovells, is based in the United States and the United Kingdom. Of this total, 19 have opened branches only in São Paulo; two have branches only in Rio de Janeiro, one opened a branch in São Paulo, Rio de Janeiro and Vitoria and the other has a branch in São Paulo and Rio de Janeiro. Thus, in 2013, foreign law firms in Brazil totaled 23 in all.\(^{28}\)

Under OAB’s Provision nº 91/2000, lawyers in a “foreign” firm (defined as one whose shares are held by foreigners) are only allowed to serve as “consultants” on foreign law. They cannot advise on Brazilian law or appear in court. Foreign nationals that work in foreign firms operating in Brazil are technically "foreign consultants"\(^{29}\), that is, they perform the practice of foreign law. All they need to do is register with OAB, proving that (i) they are qualified in the law they wish to practice (copy of practicing certificate); (ii) they have a residence visa in Brazil; (iii) their country gives a reciprocal treatment to the Brazilian lawyers (letter of reciprocity); (iv) they have good standing (letter of the foreign regulation authority and from three Brazilian Lawyers enrolled with the OAB in the state in which the lawyers intends to practice). Approved the registration, the lawyer will need to take an oath of respect to the Brazilian Federal Constitution and the ethical duty imposed on the practice of the profession. The license to practice consultancy on foreign law is valid for three years and is renewable for successive three-year terms.

\(^{27}\) Clyde & Co.; Mayer Brown; Proskauer Rose LLP; Allen & Overy; Conyers Dill & Pearman; Skadden, Arps, Slate, Meagher & Flom; Holman Fenwick Willian Consultants, Gibson Dunn & Crutcher; Simpson Thacher & Bartlett; Chadbourne & Parke; CMS Cameron Mckenna; DLA Piper; Milbank, Tweed, Hadley McCloy; Cleary Gottlieb Steen & Hamilton LLP; Davis Polk & Wardwell; Jones Day; and K & L Gates LLP, Hogan Lovells (According to OS ESTRANGEIROS: Análise Advocacia 500. São Paulo: Análise Editorial, 2013, p. 46).


\(^{29}\) Article 7 of OAB’s Provision nº 91/2000, created by OAB’s Federal Council, which states that foreign lawyers can act only as consultants on foreign law. That is, they cannot deal in any way with Brazilian law. For more information on internationalization of the Brazilian market and regulatory barriers, see paper from Almeida and Nassar, in this volume.
Such firms may hire Brazilian lawyers, but the Brazilian lawyers also must limit themselves to issues involving foreign law. In such cases, the Brazilian lawyer may not be registered as a practicing lawyer with the Bar even if he or she has graduated from Brazilian law school and passed the Bar Exam.  

Because none of these consultants, whether foreign nationals or Brazilians working in foreign firms, practice Brazilian law, they do not compete for clientele or operations that require the application and expertise of Brazilian law as they engage, although on Brazilian soil, only in legal services based on foreign law.

As for the distribution of work between the foreign firms who operate in Brazil (within the regulatory parameters of Provision nº 91/2000) and national law firms, some respondents understand that this distribution is clear and well outlined, while others disagree and believe that, in practice, foreign firms may end up taking over a substantial part of the job when working together with Brazilian law firms. One respondent complained:

"You know they are not allowed to compete, but they compete anyway. In fact, most of the foreign law firms working with Brazilian law do so, even if indirectly, some are more obvious, even open, others are bit more discreet, servicing only part of the process, and afterwards going to a Brazilian firm to give an opinion, but they did all the work, taking all the work possible for themselves because not all the work is necessarily law practice, it is the work that is behind the opinion. So they do all the work, charge by the hour and in the end are only ask for counsel. They really do get the bulk of the work."

(Founding Partner, in a full service office based in São Paulo, from 201 to 250 lawyers)

Here, once again, we can see that there may be a gap between theory and practice. Even though the regulatory body (in this case, OAB) establishes clear...
limitations regarding the operations of foreign firms in Brazil, nothing prevents these firms from doing a large part of the work and the strategic planning, thus accumulating most of the billable hours. Then the work is approved by the Brazilian partners, which merely sign petitions, issue legal opinions and act in the Courts, though they may not have been involved in the most important strategic decisions.

While most Brazilian law firms that work with foreign firms have chosen to do so on a case-by-case basis, a few have tried to establish alliances with foreign offices including law firms with offices in Brazil and others that did not have office in Brazil. This has led to complaints from other Brazilian firms who consider this unfair competition. The issue, part of a general concern by Brazilian corporate firms about competition from global law firms, has been taken up by the OAB and proposals were put forward for a detailed regulation that would outlaw every possible kind of relationship. After an extensive debate, the OAB decided not to issue new regulations but issued an opinion construing existing law. The opinion stated that the association between foreign law firms and Brazilian lawyers are lawful under *Provimento 91/2000* only if they are temporary and restricted to consultancy on foreign law. Any type of litigation by foreign lawyers or law firms is forbidden. Infringements made by Brazilian lawyers and foreigners admitted as “consultant on foreign law” are subject to the administrative jurisdiction of OAB; foreigners not admitted shall be criminally prosecuted for “illegal practice of lawyering” (ALMEIDA and NASSAR, this volume).

Some respondents express a more general concern about the entry of foreign law firms in Brazil. One respondent noted that foreign firms may have real advantages not enjoyed by domestic firms, no matter how sophisticated or internationalized they may be:

A fact of life is that foreign firms are already here, they are working, they are competing with us, so this is serious. And here are some implications. First of them: [these firms] are financed by international corporations. So they can remove a professional from a national office with relative ease because they have no concern if they’re spending too much there or not, because it has a global budget. Therefore, the first thing is the unfair and evidently illegal *funding*. But this is already the case. Besides this is the phenomenon of worldwide clients. The client, a bank is a worldwide client of an office. These guys come to Brazil and have a great chance of picking up their work here in Brazil. Of course this affects more M & A, capital markets etc., but I think it is a
serious phenomenon that we have to face "(Founding Partner, in a full service office, from 151 to 200 lawyers)

Another even suggested that as the foreign firms can afford to lose money while they get established, they could be guilty of a kind of “dumping.”

While the Brazilian corporate law market appears to be heavily protected by the OAB rules, there are loopholes that foreign firms can, and do, exploit. Even when they must work with local firms because the issue involves Brazilian law, nothing really stops the foreign firms from gaining the lion’s share of the revenue with local firms merely rubber-stamping documents prepared in the foreign office and handling court appearances.

(iii) Brazilian firms invest in international education and experience

Faced with increasing demands from their clients and competition from foreign law firms, domestic Brazilian law firms have started to invest heavily in international training and experience for their lawyers. Sida Liu points out that, in the twentieth century, the scale and intensity of lawyer mobility around the world has achieved unprecedentedly high levels, with a large number of attorneys seeking global legal training in foreign universities (mainly American and British) as well as looking for an

33 “I think today you have to look separately, you have some law firms that are still really practicing their own Homeland Law, which is what the Provision 91 allows, and others in which they go there, buys a Brazilian office, and tries or takes advantage of the fact that many of those Brazilian lawyers have a license from New York or London to practice law and says: no, these people are also foreign lawyers. (...) But you have some more aggressive law firms coming to Brazil, and taking ten lawyers from here, fifteen from there, twenty from there, offering higher salaries, which are totally incompatible with the Brazilian market because they have a strategic plan, and the strategic plan can involve saying: look, I'm going to lose money in Brazil for a year or two, but as I have a global platform I can support myself. So it's almost a dumping (...) I think that there are offices that practice Brazilian law, they are fighting me for the same domestic work.” (Partner Manager, in a full service office, from 201 to 250 lawyers).

34 In Sida's words, “Lawyers migrate across national and regional boundaries for two primary reasons: education and employment. On one hand, law schools in the United States and Britain attract a large number of lawyers and law students from all over the world, particularly through their LLM programs (SILVER, 2006, 2009, 2011). (...) The dominance of US legal education in training talent for the global economy is one of the most notable developments in recent decades. An LLM program, though sometimes lasting just nine months, leads not only to a law degree but also to a significant improvement in English language skills; most importantly, it also provides a path to a US license to practice, particularly the New York State Bar (SILVER, 2006). In countries such as China where lawyers must give up their local license to practice when joining a foreign law firm, the demand for the New York licenses is especially high. Even law students from second-tier law schools and lawyers specializing in ordinary litigation are actively seeking opportunities to pursue a JD or LLM degree. Such demands for global legal education and licensing have generated large-scale movements of temporary lawyers from emerging economies to the United States. In comparison, Britain has lost some of its attractiveness to foreign lawyers earlier unknown because of the lack of a licensing measure equivalent to the New York
internship or a job (secondment) in foreign firms, even though the 2008 financial crisis made these jobs increasingly scarce in North American firms.  

For the Brazilian lawyers we interviewed, international training is considered essential for career advancement and firms offer incentives for attorneys to complete a Master’s program (LLM) in foreign universities. One respondent suggested that foreign LLMs are becoming the new standard for most lawyers in the corporate law sector and internships are also highly valued:

“I think the LLM is also becoming something of a standard for us, as well as English. In the old days it was: Oh, you speak English? Today, it is: what do you speak besides English? Very soon it will be: what do you speak besides English and Spanish? Because you have to really have more experience, more skills. So I think that today, especially in certain business areas, an International Master’s degree is vital, to have an experience abroad, if you can combine, reconcile, you study, then you go to work in a foreign firm as well, I think it will give you very good background from a personal, educational, and professional point of view.” (Managing Partner, works in a full service office, from 201 to 250 lawyers)

This trend is apparent with many firms publicizing the fact that their lawyers have academic and professional experience abroad. Some have internal committees and funding programs aimed at lawyers who are interested in specializing and improving their knowledge in institutions and firms abroad. A Master’s degree abroad, previously seen as taking away valuable hours of a dedicated professional from the firm, has turned into a pre-requisite in a complex and globalized world.
Finally, in the wake of the demands of a globalized world, the legal services sector in Brazil, especially in the area of corporate law, requires staff to be fluent in foreign languages. This appeared in many of the conversations with respondents who highlighted the fact that speaking a second language is a minimum requirement for lawyers in their firms\(^\text{38}\).

c) **As Brazilian firms grow in size and complexity, they encounter the need to establish management policies and practices.**

The last two decades have brought about a revolution in the management and governance of Brazilian most prominent corporate law firms. As these firms grew in size and coped with demands for greater sophistication and internationalization, they outgrew the informal management methods of the past and sought to create new structures, systems, and policies. To some degree they were influenced by global models but they also responded to local customs and regulations affecting the Brazilian market. In this area, as in others, the process of rapid change and the tension between market pressures and organizational imperatives on the one hand, and traditional understandings and regulatory norms on the other, has created something of a gap between rhetoric and reality.

In this section we look at developments in five substantive areas: governance and managerial control, branding, career paths, remuneration, and technology. We also take up the debate about the classification of new model corporate law firms under Brazilian law and the tension between the way these firms operate and the legal structure controlling them.

(i) **Creating new management and governance structures**

To ensure effective operation, sustainability, and efficient delivery of services, some Brazilian firms have embraced management and established managerial controls and governance systems. We use “management” in the broadest sense, encompassing a

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\(^{38}\) “Speaking other languages is vital. Here in the office, four languages are spoken: English, German is the second, Spanish and French. Therefore, here we work using these four languages, it is highly valued, I mean, the education (...) it is crucial for us. (...) It is not only knowing the language, I mean, we are less interested in a lawyer who speaks French than in a lawyer who speaks French and has lived and worked in France, because he or she understands the culture, and he or she can do this translation. (...) So knowing the culture, their way of thinking the legal system is very important”(Founding Partner, in a full service office, from 51 to 100 attorneys); “Here in the office everyone speaks at least two languages, all lawyers are fluent in two languages, everyone has international education” (Manager Partner, works in a full service office, from 250 to 300 lawyers).
firm’s objective and operations (DI MICELI, 2010, 62), strategies for achieving them, and internal control. For law firms, it includes defining objectives, creating and consolidating the strategy of its brand, creating innovative products, employing new technologies, keeping track of operations, and developing strategic planning and internal policies.

While there may be some concern about the implementation of management models in Brazilian firms, under the argument that legal services risk being industrialized, the establishment of minimum governance and management standards eventually reached today’s law firm structures. Such parameters reflect the quality of the services required and provided by full service and by boutiques.

The pursuit for quality in customer service, reducing costs without compromising the efficiency of services, using technological innovations (such as management of deadlines and lawsuits’ procedures being controlled by software) are often aimed at meeting the expectations of clients that are increasingly more sophisticated and sometimes global. To meet these demands, law firms started by bringing in specialized management consultants. This led to major changes in structure and operation.

While all Brazilian business law firms have sought to professionalize management and governance, there is no single model. Larger firms tend to have a well-defined governance structure, with their own organically-formed frameworks (management committees, executive boards, coordinating areas, managers etc.) in

39 To understand the term management as ex ante planning and adjusting the plan to meet the company’s objectives and mission, see Antonio Zoratto Sanvicente (1979, 249). For management as an act performed by those to whom decision-making powers are assigned (by means of different hierarchical levels) see H. Igor Ansoff (1977, 4). For a bibliography specialized in aspects of law firm management, see Mayson (2007).

40 According to the 2011 edition of the magazine Análise Advocacia 500, pg. 18

41 Proper management of an organization includes several actions, such as: (i) transparent, swift and efficient communication with customers, (ii) career planning and internal controls aimed at implementing meritocratic criteria for advancement; (iii) controlling the time spent by each employee in procedures to assess the professional and the quality of the services provided, (iv) setting up appropriate procedures and decision-making instances that suit the size and complexity of the firm, among others.

42 "We hired a consultant to assess how our finance system and information technology was doing, and from there we created our branding and label with a company as well." (managing partner, operates in a full service office, with 201-250 lawyers); "[The consultant was hired there] about eight years ago, or so, and continues there today, doing research among lawyers, partners, staff attorneys, clients, office staff, on satisfaction, the level of satisfaction or dissatisfaction" (founding partner, operates in a full service office, from 251 to 300 lawyers); "And then he hired [name of consultancy], ( ... ), focused only on law firms. Actually, he was supposed to set up the governance plan for the office." (Managing partner, operates in a full service office, from 351 to 400 lawyers).
addition to managing partners and staff employees whose duties include administration (especially human and financial resources - billing and accounting). In smaller law firms, on the other hand, there may not be a professional governance structure or an organized administrative framework (e.g. no specialized professionals in areas such as human resources and information technology). Often in these small firms the managing partner decides everything, from hiring personnel to managing administrative costs.\textsuperscript{43}

The most prestigious firms tend to have managing partners who are lawyers. They also have a manager, usually a non-lawyer. Of the 200 most prestigious law firms in the country, two out of every three have a manager who is not a lawyer.\textsuperscript{44} However, the role of these managers varies. In about half the firms, the manager participates in the decision-making process. But in others the manager only performs administrative and controller-specific duties (ATTUY and STYCHNICKI 2011, 21). Thus, many professional managers in a Brazilian law firm have a limited role and do not always effectively take part in the directives and decisions made by partners.\textsuperscript{45}

There is no single management model or administrative system followed by all law firms. However, there are common denominators among medium and large sized firms. One widely followed model is a governance body for management of each practice area plus an overall firm governance system that can include a Steering Committee, a Board and a General Assembly. The founding partner of a large (301-350 lawyer) firm noted:

"Each sector has a boss which we call a department head. These department heads are on a steering committee, which is led by a CEO. So the CEO and department heads are responsible for taking care of the day-to-day business in the office. (...) Alongside the steering committee is the office’s council, they consist of nine people elected for a term of two years. The council is the...

\textsuperscript{43} According to \textit{Análise Advocacia} 500, 2011 edition.
\textsuperscript{44} According to data from the 2011 edition of the \textit{Revista Análise Advocacia}.
\textsuperscript{45} We have an administrator who takes care of administration, and he is an engineer (...). And he looks after the day-to-day administration, but not the management, management is a legal matter, and he is not a lawyer” (Founding Partner, operates full service office, from 51 to 100 attorneys); "[we have an administrator] assessing the implementation of our strategy in order to revise the plan from time to time. And in the meantime, he helps us in some administrative aspects. (...) Since the beginning we have had a general manager who is a business administrator (...) who also takes care of most of the administration, most of the day-to-day stuff, crunching the numbers. Today, he is one of the key persons here in terms of managing the office.” (founding partner, operates in a full service office, from 201 to 250 lawyers);
"There is an Executive Committee of three, of whom two are partners and one is not a lawyer, I mean he is a professional, he was a CFO in the market, a corporate professional.” (Managing Partner, in a full service office, from 201 to 250 lawyers).
supreme body, which decides the office's strategic issues and approves the budget (...) the council deals more with the general office policies as if they were shareholders in the business. The general assembly is held to approve the office's financial statements and appoint new partners or remove partners. It has never happened, but it also has the ability to remove partners." (Founding partner, in a full service office, from 301 to 350 lawyers).

Some firms have a Board of Directors which takes care of strategic issues and acts parallel to the administrative committees that are focused on more specific issues such as Information Technology (IT) and Human Resources (HR). 46 One respondent described the system in a large, full-service firm:

“We have a Board of Directors consisting of seven partners, who have a term of two years which may be renewed. We try to renew the Council partially while others stay in longer, to ensure a certain historical continuity as well as a continuity of vision. Therefore, people can be re-elected, and it is good that some of them be reelected, as has been occurring. We have a Steering Committee consisting of three partners and three professionals, one in the IT field and another in HR and administration, and another in the financial area, and on the Managing Committee you have a managing partner (...) The 55 partners elect the board members, and the Council elects a managing partner. And the managing partner chooses the Steering Committee." (Partner Manager, in a full service office, from 201 to 250 lawyers)

Another model identified in the interviews is one that revolves solely around the figure of the managing partner.

(ii) Establishing the brand of the law firm

The reputation of the traditional Brazilian firm was based on the reputation of one or more senior partners. But the rise of the corporate sector, and the growth of numerous law firms with hundreds of lawyers, created a new challenge. These firms could no longer rely on the reputation of one or more notable lawyers and had to create a corporate brand. But they faced restrictions due to the OAB’s banning of "advertising" and restrictions on the marketing activities of law firms. Because of these restrictions,

46 “Our model is that there must be an election every two years, the mandate of who is in the administration is of two years, for the council and for the board of directors. They are elected by the partners and, once on the board, you have a strategic discussion for the office. We have a five year strategic plan, (...) at the macro level it is discussed every five years, it is hard work, and then every year you make small course corrections, because you are subject to the market, to what happens, in the end, the firm is not an island. (...)With written governance, a functioning strategic plan approved, then the council thinks about strategy within those parameters, they cannot deviate completely from what the strategic plan proposed, or even more so to the executive board's proposals, which has a slightly lower realm of influence with respect to strategy (...).” (Partner manager, in a full service office, from 201 to 250 lawyers)
they were limited to strengthening the firms’ brand by disseminating the excellence of service and by the exposure of their professionals in the media and in the market, thus demonstrating their expertise.

Among the strategies implemented by firms considered the most prestigious in Análise Advocacia 500, experts emphasized market positioning and brand building strategies as well as the long-term vision for the brand, but only 44% of the law firms reported having a marketing director and only 36% said they had a human resources director. The same report indicates that the 65 law firms which make up the sample of the most prestigious in all the years surveyed know how to nurture their brands. Among the firms which are in the second, third or fourth generation of ownership, an overwhelming 87% chose to keep the name of the founding partners on the door (SECCO, 2012, 27).

Even though the practice of law depends on the professional’s level of excellence, many of the respondents, particularly in larger law firms, stated that the firms possess image-making policies through strategies of brand building and brand strengthening that stress the firm, not the partners. The main intention of these firms is not to become hostages of its members for attracting clientele, besides protecting the firm against hostile split-offs.

(iii) Establishing a career path and recruiting lawyers

As for strategies to retain professionals and for career advancement, one of the main career plans used by the firms interviewed contemplates elements from the "lockstep" system. This model establishes a series of requirements for a lawyer to become a partner, and periodic evaluations to determine remuneration and bonuses.

When asked whether there was a formal career plan or a policy on "when and how" lawyers are promoted, evaluated and become partners, most of the managing partners interviewed answered affirmatively, although responses varied according to the size and the particular characteristics of each office, especially the degree of professional management. While systems vary, there is great stress on selecting lawyers for their professional skills. It is believed that this is due to the fact that firms have begun to organize and see themselves as macrostructures detached from any one individual. It seems that they prefer to spread a positive image of general excellence in
the marketplace, in an attempt to establish a strong brand, instead of just counting on attracting clients via partner or associate attributes.\textsuperscript{47}

In older and larger law firms, career paths tend to be formal, more or less flexible, based on evaluation systems and various criteria, some more subjective than others.\textsuperscript{48} Some respondents said they also have rules that prevent people from the same family being partners, which require that one of the spouses (usually women) leave the office in the event of marriage between lawyers when one of them becomes a partner of the law firm. Firms do take account of a lawyer’s ability to attract clients, but this usually is only considered at the promotion to partner stage and when selecting partners for newly formed firms not yet established in the market. As the interviews showed, while traditional Brazilian lawyers gained prestige from academic positions, and some partners in today’s firm have university positions, academic affiliation is not an important factor in career decisions being made by the corporate firms.

Firms not only pay close attention to professional qualification in determining lawyer remuneration and promotion: they also seek to maintain their lawyers’ expertise by continuing education and other means. Some require mandatory retirement because they think that it is needed to ensure that the team has up-to-date knowledge and skills.\textsuperscript{49} 

\textsuperscript{47} “In the end, you have to reinforce the brand and not a partner. This is the objective criteria that any organized office has to have, strengthening the brand, and from there forth the brand will build the clientele. It is not a partner that will build clientele” (Founding Partner, in a full service office, from 351 to 400 lawyers);

\textsuperscript{48} “Becoming partner ... is the deliberation of the partners which analyzes the lawyer’s employee profile until that moment, and then the partners establish what those requirements are. It is usually client satisfaction, office representation capacity, working capacity, performance as a lawyer, ability to lead, group work capacity (...)” (Founding Partner, works in a full service office, from 251 to 300 lawyers); “(...) Therefore, this evaluation system evaluates twenty-many characteristics, with different weights, and then you have grades at the end (...) and who receives the vote of two thirds of the partners becomes partner.” (Founding Partner, works in a full service office, from 51 to 100 lawyers). “This evaluation (...) has what we call adherence to values. This adherence to values must be understood not as an adherence to values in the sense of purely ethical value, moral, these things, but the office values ”(Partner Manager, acts in office full service, from 251 to 300 lawyers); “Basically, what we are looking for are people who are more aligned with the goals of society, that we think will be good partners in the broad sense, not only in the financial sense.” (Partner Manager, acts in a full service office, from 351 to 400 lawyers).

\textsuperscript{49} “After a lawyer is made partner, he reaches his maturity as a partner after 15 years of partnership, and our rule is that at 65 you need to return your quotas. Either you retire as a partner, and then only if the firm wishes you continue working, but you go back to being just a lawyer with lower payment.” (Partner Manager, in a full service office, from 201 to 250 lawyers); “We felt the need, because our expiry date was already arriving. People’s minds change over time. Therefore, the firm needs some updating, needs to modernize, we cannot stop in time. Then we saw several examples of firms that closed down because the founders and older partners wanted to stay there.” (Founding Partner, in a full service office, from 301 to 350 lawyers).
In reference to lawyer recruitment, most Brazilian firms do not act in accordance with an outlined business plan. Instead, they wait for a demand to appear before starting to look for new lawyers. In the United States, the main strategy for large firms is to seek out talents directly from the law schools, via job fairs. The planning of Brazilian firms still does not compare to this structure, but many have realized that it is necessary to change the way they search for new talent.

A tendency that caught our attention is that the firms we interviewed favor the search for interns as the main way to attract new talent, and less frequently hire recent law school graduates. The aim, according to some respondents, is to provide quality training for trainees in order to maintain them as future professionals in the office. Thus law students get training in the firm during law school, and the firms tend prefer to hire from among their interns, with hiring of other recent graduates or experienced professionals their second choice.

(iv) Compensation and job structure

As there is no standardized model of management in the law firms, the interviews did not allow us to identify a single remuneration model. All of the law firms analyzed had similar hierarchical categories (partner, associate – senior, mid-level and junior - and trainee), but possessed important variations in the distribution between partners and associates and in the existence or not of lawyers who are salaried contract employees governed by the CLT system (Consolidation of Labor Laws).

Only two of the respondents claimed to use a structure in which all associates and trainees are under CLT, being partners only those who actually had capital shares and voting power. Others mentioned the existence of different categories of members,

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50 Some Brazilian firms began to participate in LLM Job Fairs in the US, such as the fairs organized by the New York University (http://www.law.nyu.edu/sites/default/files/upload_documents/Job%20Search%20Handbook.pdf) and Columbia University (http://web.law.columbia.edu/career-services/employers/recruiting/interview-programs/llm-interview-program), both held in New York City, where Brazilians firms are present and are on the list of prospective employers. In this same vein, only at the undergraduate level, the FGV School of Law in São Paulo organizes a fair of internships for student placement in professional internships and bringing firms closer to students and future professionals, including the presentation of the innovations and specializations introduced in the training of future attorneys at FGV DIREITO SP. For more information on the FGV internship fair, see http://direitogv.fgv.br/feira-estagios. Accessed in 01/07/2014.

51 Everyone here is hired under the CLT (as an employee), except for the partners.(...) It is not only a CLT firm, the office is very paternalistic, they have private pensions, that we put R$1 for every R$1 that the
such as junior partners and service partners. Some lawyers may also be added as partners into the Firm’s Bylaws for only tax planning purposes, but do not have voting rights or partner status.

With regard to the distribution of quotas for partners and the allocation of voting rights among partners, there was also no model adopted uniformly. However, most respondents adopted the system of one vote per partner.

The proportion of variable and fixed remuneration of partners and associates did not follow a standardized system. Most firms interviewed, however, adopted a model in which most of the early career attorneys’ remuneration was based on a fixed salary, with a variable fraction or bonus increasing as they progress towards partnership. As to distribution of the variable remuneration among partners, the respondents mentioned several different criteria, many of which were based on the stage in their career plan and on their productivity. Attracting clients as a relevant factor in distributing variable employee contributes. There is an extensive health insurance plan extended to the family of which the firm pays 100%.”

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52 You come in as an intern, then you become a lawyer, you may spend six years in this position, then you become a junior partner, then you are included in the articles of association, at this point you have differentiated payment, but you still do not have a vote, which is a main feature. Six years as an attorney, maybe four years as a junior partner, then you are elected to active partner, a voter. “(Managing Partner, in a full service office, from 201 to 250 lawyers)” The only difference in being a full partner from those others [service partners] is the right to vote, a full vote, and they earn a residual [profit from the firm]. The others [service partners] do not receive the residual profit and the right to vote is limited. So we say, these [service partners] are not really partners as they do not have a vote, they have no political power, but are partners in practice. They receive results, they receive everything accordingly. However, they are paid according to this variation” (Managing Partner, in a full service office, from 51 to 100 attorneys)

53 “Each partner has a vote”. “(Founding Partner, in a full service office, from 201 to 250 lawyers); “A specialized consultant in the area of organizing and restructuring firms was hired. Nowadays each partner has a quota and a vote” (Founding Partner, in a full service office, from 251 to 300 lawyers); “All votes are equal and the president of the General Assembly, who is the partner who brings in the most revenue, has the power of veto. (Founding Partner, in full service, from 151 to 200 lawyers)

54 “It varies a lot, but I would say this: in large law firms, the variable remuneration of lawyers who are not partners is tied to the number of hours they work. This is the big matter. For those who become partners, it is a mixture of hours with a fixed percentage of participation.” (Managing Partner, in a boutique office of up to 10 lawyers); “We have always had a culture of variable remuneration. That is to say, fixed but variable. Up to a certain level, especially junior lawyers, they only have fixed remuneration and once they become “full lawyer” they receive a combination of fixed and variable payments” (Managing Partner, in a full service office, from 251 to 300 lawyers)

55 “Here we have a very aggressive remuneration system. We distribute one-third of our profits annually to non-partners. And it depends a bit on your assessment and a bit on where you are in your career path.” (Founding Partner, in a full service office, from 151 to 200 lawyers); “The different strata of partners are paid in accordance with productivity and contribution in terms of work (...) at the moment of paying bonus we take in to account these contributions of productivity and other work that was performed” (Managing Partner, in a boutique office, from 51 to 100 lawyers)
remuneration among partners was mentioned in only one interview\textsuperscript{56}. It shows a changing pattern in law firms regarding the importance of attracting the new client: in the past, the attraction of clients used to be crucial to increase the partners’ bonus, but now the fee for attracting clients is not the main part of the partners’ remuneration.

\textbf{(v) Firms adopt information technology to improve management and relations with clients}

Technology was once seen primarily as a support tool to help make actual legal work more efficient (MAYSON, 2007, 5) by facilitating court filings, drafting routine documents and procedural motions through the current electronic procedure in Brazilian courts.\textsuperscript{57} Now it is used to help manage the firm itself and firms are investing in IT for administrative purposes.\textsuperscript{58} It is estimated that about 4,000 firms have implemented some sort of management software in Brazil. In the group of the 200 most prestigious law firms from Andlise Advocacia 500, 2011 edition, almost all of them reported having a lawsuit management system. (ATTUY and STYCHNICKI, 2011, 24-25) However, only a few law firms work with integrated management systems that cross reference financial data, customer profiles, and hours worked to provide a complete performance overview of the firm. Of this select group, a small portion can already produce performance indicators that contribute to strategic business planning.

In fact, some respondents stressed how much the technological advances have changed the way law is practiced in Brazil. In other words, there is a positive perception concerning the use of technology, acknowledging this instrument as one of the pillars for the proper functioning of the firm.\textsuperscript{59} One said:

\textsuperscript{56} “We have client credit, when the partner brings in a client he receives a percentage of that client's billings. But all of this is summed up into his account to see how much he will receive in the end. It is one of his remuneration components” (Managing Partner, in a boutique office, from 51 to 100 attorneys)

\textsuperscript{57} After a few timid legislative changes, Law n. 11.419 of December 19, 2006 was put into effect, which contains general rules on the adoption of electronic media for the practice of procedural acts. This legislation has created several different techniques and tools to enable the practice, transmission, communication and storage of procedural steps in the electronic environment. There are new developments that were put in place almost immediately and others that will take time to be adopted by the majority of the courts for technical and budgetary reasons (SICA 2012, 72).

\textsuperscript{58} Among the 65 most prestigious law firms since 2007, almost 80% of them have an IT director in their staff. And, among the recommended practices for Brazilian firms, especially for those with more than 50 lawyers, this practice most definitely puts investments in information technology as a means of obtaining performance indicators and integrated data analysis (SECCO and ATTUY STYCHNICKI 2012, 22)

\textsuperscript{59} “How do you become more efficient using that information that you create and you use repeatedly? No one makes a contract from scratch every time you go to make a purchase or a petition (...) This is another aspect, and it always comes back to IT. The firm invests in IT with no restrictions Our knowledge
“How do you reinvent your business? Law firms at the forefront were reinvented to be more comparable to American firms, London firms, Spanish firms etc., which is the path to truly becoming a heavy weight competitor, in a much more aggressive, fragmented market. This really is something that only the large firms can achieve because small firms do not have the muscle to do all of this. It takes constant upgrades, access to technical resources, and efficient IT personnel behind it all.”(Managing Partner, in a full service office, from 201 to 250 lawyers)

Technology also impacted on the relationship between lawyers and their clients. The dynamics of communication between these players has changed radically in the recent decades. The adoption of the email as a primary communication tool forced many lawyers to adapt themselves to a new method of communicating, including being prepared to answer emails succinctly and quickly. For some respondents, the use technologies as a way to facilitate lawyers and client interaction is an important feature of the globalization of the Brazilian market. One lawyer commented:

"[In the old days] Communication was very difficult; you would not make international telephone calls. International phone calls were very expensive, you conducted correspondence via telex; fax did not exist, there was none of that. The things that are already extinct did not even exist then. Then you would work with no computer, you worked with typewriters, it was a much harder and much slower world. (...) The client would send you a letter asking questions and you answered with a letter solving questions. In all of last year, I did not sign any letters. We only communicate by email, telegraphically, quickly, today is a world with a completely different dynamic. (...) We had lawyers who relearned how to work.” (Founding partner, in a full service office, from 51 to 100 attorneys).

(vi) To be or not to be a “company”: Brazilian law firm regulation and market realities.

There is a fundamental contradiction between the legal structure governing Brazilian law firms and the realities they face in today’s marketplace. Put simply, while

management, which is also based on a computer system where you store everything that is created in the office, each document is stored, and is indexed, and then when you need to look for a document you search for the type and you can find it. (....)

60 “Communication was very difficult; you would not make international telephone calls. International phone calls were very expensive, you conducted correspondence via telex; fax did not exist, there was none of that. The things that are already extinct did not even exist then. Then you would work with no computer, you worked with typewriters, it was a much harder and much slower world. (...) The client would send you a letter asking questions and you answered with a letter solving questions. In all of last year, I did not sign any letters. We only communicate by email, telegraphically, quickly, today is a world with a completely different dynamic. (...) We had lawyers who relearned how to work.” (Founding partner, in a full service office, from 51 to 100 attorneys).
the law says that the firms cannot be considered a corporation, the market demands that they do. However, despite the legal structures, the firms have found ways to meet market demands.

Brazilian law recognizes two types of business organizations: mercantile entities or companies (such as corporations and limited liability partnerships) and simple societies. Companies can be entrepreneurial and have a business element; simple societies are not supposed to do either except in very specific circumstances. The law separates intellectual, scientific, literary or artistic professions from activities of a business nature thus excluding lawyers, artists and doctors from the category of "company", and requiring they employ the form of "simple partnership". The law does, however, allow certain professionals to operate as a company: doctors in a clinic or artists in a gallery can use the company form and thus operate entrepreneurially and use business methods.

That option, however, is not open to law firms due to the rules of the OAB. Article 16 of the Law regulating law firms (OAB Statute) forbids partnerships between lawyers which present “commercial characteristics or structures”. According to the

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61 Article 982 of the Brazilian Civil Code: "Excluding the exceptions mentioned, a partnership is considered a company when its objective is to carry out business activities subject to registration (Article 967); and others will be considered simple partnerships.” The Brazilian law firms are formed and regulated according to (i) articles 15 to 17 of Law nº 8.906 of July 4, 1994 (Law on the "Statute of Legal Practice and the Brazilian Bar Association – OAB"); (ii) articles 37 to 43 of the General Regulations of the Brazilian Bar Association – OAB and (iii) Provision nº 112/2006 of the Federal Council of the Brazilian Bar Association – OAB.

62 According to legal doctrine, these entities not established for the practice of medicine or law, but are societies of means, constituted to facilitate the professional practice of partners or persons entitled to both, "Even law firms, whose record is made exclusively in OAB (...) is not set up to perform the legal profession, but for guiding performance and income earned in the provision of their lawyers’ legal services (...) In any case, all partnerships related to the performance of a liberal profession have the peculiarity of not exercising the activity for which the license is required; they are societies aimed at means, formed to facilitate the professional practice of members or persons entitled to both (...)” (GONÇALVES NETO, 46-47)

63 “Examples of simple societies: cooperatives (Civil Code, article 982, sole paragraph), certain companies engaged in the agricultural and pastoral activity (not including agricultural industries, because the activity of transforming, proper of industries, already gives them the business company condition) and law firms (sole paragraph of art. 966 of the Civil Code combined with art. 15 of Law nº 8.906/94).” (See CAMPINHO, 430).

64 Article 966 of the Brazilian Civil Code: "A businessperson is one who is engaged professionally in economic activity organized to produce or circulate goods or services. Sole Paragraph: A businessperson is not one who exerts an intellectual, scientific, literary or artistic profession even with the help of assistants or employees, unless the profession constitutes an element of a company."

65 Article 16. The following are not allowed to register, nor may they operate: law firms that are commercial in form or characteristics, which adopt a DBA name, which undertake activities foreign to the practice of law, which include a partner not registered as a lawyer or completely prohibited from
same statute, law firms are also prohibited from registration in the Civil Registry of Legal Entities and in the Board of Trade, but are required to register solely before OAB’s Sectional Council, which generates specific forms for entities providing legal services. Thus, the law clearly indicated that law firms cannot be established as entrepreneurial and, therefore, are exclusively established under the same category as the simple societies, under the special category "law firm". In this case, partners assume unlimited financial liability for the firm’s debts (CAMPINHO, 2013).

This legal structure seems to be at odds with the understanding many corporate lawyers have of the sector: Several respondents were especially vivid. A Managing Partner in a large full service firm said:

"It is a business. No doubt. (...) And what if you do not face it as a business? You have a company, with its specificity, with its needs, our shareholders are at the same time workers, because partners are always working. Therefore, you become a shareholder and you continue working and being assessed on your work. (...) But you have to manage, today we have 650 people, it is not a small number. (...) But you have to adapt to modern times, to efficiency, to servicing clients with efficiency for the client to see that you cost less and do more, and still keep everyone in-house happy. It is a company, there is no doubt.” (Partner Manager in a full service office, from 201 to 250 lawyers)

This view was echoed by others:

"With the increase in [the] market, professionalizing firms, they have become companies, nowadays the major firms are companies where you earn a salary, the guy makes a profit, and when you become partner, you have to have a certain performance, and bring in a certain amount of money. This is no longer a partnership, it is a capitalist business with results and everything else “(founding partner in a full service office, from 51 to 100 lawyers)

On the other hand, some respondents stated emphatically that law firms cannot be compared to companies due to the importance of the intellectual capital of a firm and practicing law. §1. The business name shall have the name of at least one lawyer responsible for the partnership and may be of a deceased partner, given that such a possibility was established in the original charter. §2. The licensing of a partner to perform an activity that is incompatible with the practice of law on a temporary basis shall be recorded in the partnership registration, and shall not change its charter. §3. It is forbidden to register before public notaries and boards of trade companies that include legal services, among other activities.

66 Regarding the transformation of attorney partnerships (the transformation of a company type is a legal institution that allows a business to maintain its identity while changing its form or type of partnership), the OAB/SP Commission on Law Partnerships already issued an opinion stating that transformation is only possible if the law firm “abandons its identity as a legal office to be registered as a company
the unlimited liability of the partners\textsuperscript{67}. One respondent further justified this position by emphasizing the culture of rendering legal services as a means of achieving justice.

The fact that legislation does not consider law firms in Brazil as "companies", however, does not mean that organic control structures cannot be created to ensure that firms are not mismanaged. In this sense, many respondents stated that despite not being companies in the legal sense, they possess structures which in fact make them work like business organizations.

The legal form imposed on Brazilian firms does have certain important features that affect their operations and structures. Unlike what occurs in other countries, all firms have the same accountability set-up.\textsuperscript{68} Partners’ liability in law firms is personal, subsidiary and unlimited\textsuperscript{69}, which causes many law firms to take out insurance for this liability. This is an important difference between law firms and companies which have limited liability. As for damages caused to clients by acts or omissions in the practice of law, the law firm also responds unlimitedly. Lawyers, in turn, are subsidiary\textsuperscript{70} and unlimitedly liable for such damages and may also be subject to disciplinary liability\textsuperscript{71}.

Other features arising from the peculiar corporate structure contribute to the perpetuation of the current model. The association type used by law firms, as it is not a

\textsuperscript{67} I think there is a fundamental limit there, I think it is and will always be a partnership of people because capital is irrelevant. If a law firm wished to be successful, it cannot accept or allow an investment partner. Partners must be people who genuinely work and contribute with the business. There is no capital in the monetary sense of the thing, there is the intellectual capital that each partner brings. And I think this is a significant difference between a company and a law firm". (Partner Manager in a full service office, from 351 to 400 lawyers).

\textsuperscript{68} Sida Liu, when describing the American reality, says: "... In the age of globalization, limited liability partnership (LLP) have become a popular new model of law firm management, in which one partner is not liable for another partner's misconduct or negligence, in order to control the risks of global mergers and expansion. While the international offices of large Anglo-American firms usually adopt the LLP model, most elite domestic law firms in emerging economies still use the traditional or bureaucratic models"(Elite Law Firms in Emerging Economies, GLEE Project Topic Paper, p.2).

\textsuperscript{69} There is no specific rule that limits the liability of partners with respects to the debts of the company. The art.17 just sets down the rule that for damage caused to clients by lawyers in the exercise of the activity. These respond, alongside the firm, subsidiary and unlimitedly, besides being subject to disciplinary responsibility. Therefore, because the Law Firm is a kind of simple Society, it is subject to the article 1023 of the Civil Code that determines the following: "Art. 1023. If the company's property does not cover its debts, partners are accountable for the surplus, in the proportion of their participation in social losses, except if there is a concurrent liability clause.".

\textsuperscript{70} In this sense, the law firm itself is fully responsible for damages. However, if it can not handle it, the lawyers are responsible for recovering the damages.

\textsuperscript{71} Sida Liu describes the American reality likewise: "The distinct feature of elite corporate law firms from small traditional ones is the way the firm is managed" (2014, 2).
business, is subject to a differentiated system of Tax on Services (ISS)\textsuperscript{72}, and it does not allow the firm to go bankrupt\textsuperscript{73} with partners fully liable for its debts (because they are not safeguarded by the liability limitation of other corporate types used by companies, such as "limited liability companies" and "joint-stock companies").

Given this regulatory environment, we found some mismatch between speech and law, on the one hand, and office practices, on the other. Despite the fact that they cannot establish themselves as “companies” under Brazilian laws, the firms have been able to respond to market demands with an enterprise-level organization. For example, as the law firms move to create a brand for the firm, old distinctions built into the original company \textit{versus} partnership dichotomy are left behind. While there used to be distinctions between a firm’s intellectual capital, which had to come from the individual lawyers, and the capital of the partnership, and while it used to be that only companies could reply on a corporate brand while partnerships were limited build their reputation on the names of individuals, now a more complex reality is taking hold with firms building firm level brands unrelated to individual names or reputations. Thus, the fact that law firms are not business partnerships, according to the law, has not prevented them from behaving increasingly more like “companies”.

5. Conclusions and challenges for the near future: where we are and where we are going

This study has aimed to provide an overview of the corporate law sector in Brazil and its main characteristics, examining how it has transformed itself in order to adapt to the new opportunities and challenges brought by globalization and the economic liberalization that began in the 1990s. The expansion of corporate law firms and the change in the profile of services provided helped transform a closed and parochial legal market into one that is more competitive and sophisticated and in which the practice of law is more responsive to international standards.

\textsuperscript{72} Law firms pay ISS on an annual fixed amount calculated considering the number of professionals working in the partnership, and not the percentage of revenue (as in other partnerships). This is what is established in article 9º, § 1º and 3º of the Law Decree nº 406/68. There was a legal ruling on this issue, with decisions from the Brazilian Higher Courts that recognize the acceptance of the decree on the ISS by the Federal Constitution of 1988 (RE 236 604-PR), not having been revoked by the Complementary Law nº 116/03 (Resp nº 713 752/PB and REsp nº 1016. 688/RS). The value is determined by each municipality.

\textsuperscript{73} According to article 1 of Law nº 11.101/2005 (Recovery Act for Business and Bankruptcy): “This Law regulates the legal recovery, extrajudicial recovery of the businessperson and of the company filing for bankruptcy, hereinafter referred to as simply the debtor”. (Emphasis added).
Changes occurred within a sector accustomed to acting with a traditional logic and this revealed some contradictions. As presented, on the one hand it experienced an increase in competitiveness resulting from market growth and from sophistication of the service demand; on the other hand, there are still restrictions to minimum fees, set forth by the Brazilian Bar Association (OAB), and to “advertising” and marketing activities by firms. Although there is great opposition to allowing law firms to be “companies”, interviewees affirmed that large sized firms seek to develop policies of market positioning and strategies aimed at constructing and envisioning the brand in the long term. Solidifying the firm's image as a brand at the expense of the personal image of their professionals also demonstrates a change of scenario - which is a shift from a personal practice of law to something that does not make the large firm a hostage of their partners in order to attract clientele.

The contradictions between the legal scenario of the corporate law firms, which prevents them using the corporate form, and the market demands that require an enterprise level organization, were among the topics addressed by some respondents. In this context, it was noticeable that even though law firms in Brazil are not considered "companies" in the strict sense of the meaning, this does not mean that organic control structures are not created, otherwise companies would be mismanaged. Nor does it mean that the law firms are no longer establishing processes for the provision of legal services in a business format. Issues like the creation of decision making bodies, career plans, adequacy of instruments for process control (including the use of appropriate technological resources) are topics currently being faced by Brazilian law firms.

It is possible to notice the existence of some difference between speech (supported by regulation) and practice. Strengthening the brand of large law firms is an example that the mere distinction between intellectual capital vs. social capital and between societies of persons vs. companies cannot explain the more complex reality that lies behind the growth of legal market.

As for the degree of professionalism in the management of Brazilian corporate law firms, the empirical investigation found that it varies according to the size and characteristics of the firm and do not follow a single model. Larger corporate law firms usually have a defined governance structure, with their own organic bodies and a managing partner or equivalent figure, and internal employees with controlling
functions (particularly human resources, billing and accounting). The main factor in common in the models of the respondents’ law firms is the structuring of the management bodies, such as Councils and Committees specialized in certain topics. It is true, however, that while the larger interviewed firms demonstrated a very professional management, the ones of smaller size still leave a larger portion of their decision making in the hands of its founding partners, in a management model in which control and ownership overlap.

Regardless of size, in most law firms managing partners had a legal background, and in some cases there was also a manager, who was graduated in business administration, responsible for the administrative and bureaucratic tasks. One of the main career models used by the larger interviewed firms involves elements from the system known as "lockstep", a model that establishes a series of requirements for a lawyer to become a partner, with periodic assessment to determine payments, bonuses and promotion.

As there was no standardized management model in law firms, nor was a single model for structuring remuneration. All the corporate law firms that participated in the interviews had similar hierarchical categories (partners, senior associates, mid-level associates, junior associates, and trainees), but with significant variations in how quotas were distributed among partners and whether the associates were salaried employees registered under the Brazilian labor law (CLT) or not.

Interviews carried out in this study ended with a question on the challenges to be faced by Brazilian firms in the near future. The respondents offered multiple answers. Part of them pointed out as a trend the strengthening of specialized boutique and medium law firms, which are becoming significant competitors of the full service firms.  

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74 “The tendency is to consolidate it into specialized small law firms. Because the sectors are becoming increasingly complex, with a larger number of companies in each sector. (...) So as the number of companies grow, the relationship with the different public agencies becomes more complex, as there are many public agencies interfering with every activity. So it is not just the regulatory agency, but also the Executive Branch, you have the city hall and its offices, the state agencies, it is a much more complicated thing”(Founding Partner, works in a specialized small office with up to 10 lawyers); “I think there it is an irreversible trend today, as you have more and more small and medium-sized firms that will be competing in some areas, the specialized ones. Then you have a very specialized small office, in competition law, in tax law, in arbitration, and in M&A (...) So they cannot compete with you, perhaps on a big project, they do not have enough people, but they can compete with you on a more specific case, but that would be very good for you as well.”(Manager Partner, works in a full service office, from 201 to 250 lawyers); “It
Some believe that the big challenge will be the ultimate arrival of the foreign law firms in the Brazilian market, while others find that the strengthening of the post-crisis American economy will decrease the interest of these law firms in emerging countries like Brazil. As for the areas considered most promising, the interviews highlighted infrastructure and compliance, and references were made to out-of-court methods of dispute resolution, such as mediation and arbitration.\(^{75}\)

While we have revealed some of the trends in the corporate law market in Brazil, this study, the first of its kind in the country, could not exhaust all the important issues. A main conclusion of our pioneering project is that much more needs to be done to understand the growth of the corporate law sector in Brazil. We hope that future will build on our study, looking more deeply into some of the issues we have examined and engaging into a comparative analysis to see how Brazil compares with other emerging economies.

6. References


\(^{75}\) Environmental law was mentioned by 41% of the respondents in the Análise Advocacia de 2012 as the most prominent area. Following were infrastructure, arbitration, digital law and petrol and gas. Such statement, according to this publication, reflects the level Brazilian economy and its new demands and priorities. See A ELITE DA ELITE: Análise Advocacia 500. São Paulo: Análise Editorial, 2012, p.32.


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