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SMEs in Australia and Latin America: A Comparative Study of Regulation and Reality of in Encroaching COVID19 Pandemic

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ABSTRACT

This paper reports on a comparative study between the structures, regulation and challenges of small and medium size businesses (SMEs) in Australia and two Latin American jurisdictions – Chile and Cuba - with the object of exploring ways in which SME-propitious ecosystem can be configured in an unprecedented crisis situation. It examines the legislation, bodies and regulation in place which deal with SME issues, including consumer protection, and the differing contextual considerations, taking cognizance of the challenges faced during the COVID-19 pandemic. Finally, the paper explores ways in which SMEs can be assisted and advised of their legal rights, including the provision of clinical and advisory support at a university level, and considers the steps taken by governments in mitigating the impact of the COVID-19 pandemic. To compare practices and learn from them the research utilizes three case studies and contrasts the issues faced in an emerging economy such as Cuba with more established frameworks such as Chile and Australia, both OECD countries.

Keywords: SMEs, regulation and practice, Australia, Latin America, Chile, Cuba, COVID-19

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PYMEs en Australia y América Latina: un estudio comparado de la regulación y la realidad de la incipiente pandemia de la COVID19

RESUMEN

Este artículo presenta resultados del estudio comparado de las estructuras, la regulación, y los desafíos de pequeñas y medianas empresas (PYMEs) en Australia y América Latina. Aquello con el objetivo de explorar formas de lograr un ecosistema propicio para la actividad de las PYMEs enfrentando una crisis nunca antes visto. Examina la legislación, los órganos y los reglamentos vigentes, entre ellos régimen de protección del consumidor, y las diferentes consideraciones contextuales, entre ellas prestación de apoyo por parte de las clínicas jurídicas y otras iniciativas de las instituciones de la educación superior, teniendo en cuenta los desafíos enfrentados durante la pandemia de COVID-19. Por último, el estudio considera las medidas adoptadas por los gobiernos para mitigar el impacto de la pandemia COVID-19. La investigación utiliza tres casos de estudio y contrasta los problemas enfrentados en una economía emergente como la de Cuba con marcos más establecidos como Chile y Australia para comparar las prácticas y aprender de ellas.

Palabras Clave: PYME, regulación y práctica, Australia, América Latina (Chile and Cuba), COVID-19.

I. Introduction

This article takes an original and novel approach to exploring the operation of micro, small and medium size businesses (or enterprises) — also known as ‘SMEs’ in three diverse jurisdictions, namely Australia, Chile and Cuba. Australia and Cuba are both members of the Organisation for Economic Co-operation and Development’s (‘OECD’), whilst Chile and Cuba are Latin American countries at opposite ends of the scale. Such an investigation provides interesting comparisons on the operation and treatment of SMEs in these jurisdictions generally, and specifically during the COVID-19 pandemic.

Defining SMEs

The definition of SMEs may vary in different jurisdictions and contexts. In the context of this article, cognizance is taken of how SMEs are defined in Australia, Chile and Cuba, to facilitate a comparative enquiry into SME regulation in Australia and the two Latin American jurisdictions.

SMEs are recognised as important economic contributors in Australia, and internationally¹. In Australia, however, there is no agreement or uniform legislative definition of an SME. Commonwealth legislation does provide for differential treatment or special protections for certain businesses defined as ‘small businesses’. However, for statistical purposes, the Australian Bureau of Statistics (‘ABS’) defines an entity employing less than 20 employees as a ‘small business’, and a ‘medium-sized business’ as one that employs 20 to 199 employees (ABS, 2020a). Other definitions of ‘small business’ under Australian law include: the *Australian Securities and Investment Commission Act 2001* (Cth) s 12BC: “small business means a business employing less than: (a) if the business is or includes the manufacture of goods—100 people; or (b) otherwise—20 people”; and the *Corporations Act 2001* (Cth) s 761G: “small business means a business employing less than: (a) if the business is or includes the manufacture of goods—100 people; or (b) otherwise—20 people” (Cantatore & Crawford-Spencer, 2018, p. 38).

In Chile, Art 2 of Law 20,416 divides SMEs into the following three categories based on annual income from sales, services and other activities in the last calendar year: first, ‘microenterprises’ are companies whose annual income has not exceeded 2,400 Unidades de Fomento (‘UF’)²; second, ‘small businesses’ are entities with annual income between 2,400 UF and 25,000 UF; and third, ‘medium-sized businesses’ are those with annual income that is more than 25,000 UF but less than 100,000 UF. Additionally, the classification according to the

¹ For example, the United Nations General Assembly has designated 27 June each year to be Micro-, Small, and Medium-Sized Enterprises Day (Commonwealth of Australia, 2018, p. 5).

² At the moment, 1 UF equals 29.357 CLP which approximates to USD 40.53. Unidad de Fomento (UF) is an inflation-indexed unit of account, calculated and published by the Central Bank of Chile. It is authorized for pricing credit operations in national currency by banks and credit and savings cooperatives (Banco Central de Chile).

number of employees in a business is: (i) micro-companies employ between one to nine persons, (ii) small companies between 10 and 49, and (iii) medium-sized companies employ between 50 and 199 persons. So, this law sets out special rules for SMEs that govern their initiation, operation and termination, based on their size and degree of development. Finally, Law 20 659 established 'el registro de empresas y sociedades' (the Registry of Enterprises and Societies), an electronic platform which facilitates SME incorporation within one day. The procedure is free and was envisioned as a tool for saving entrepreneurs significant time and money. The first few years of the platform functioning were plagued by technical, legal and administrative difficulties, postponing the start of business operations for weeks, but its operation has improved markedly in recent years. More than 450,000 enterprises were created in 5 years (2013-2019) with the company-in-a-day system (Foreign Investment Promotion Agency, 2020).

Cuba's economy has largely comprised of state-owned companies since the 1959 revolution. Self-employed workers³, Cuba's 'private sector', have slowly been integrated into the economy and the numbers of such entities have been increasing in Cuba since 2010 (González-Corzo & Justo, 2014). The self-employed could be categorized as SMEs as they can hire employees and generate considerable amounts of income, however, SMEs are not yet regulated in Cuba even with respect to their composition and operation. This lacking regulatory framework in Cuba has caused increased debate in academia and, to a lesser extent, in political discourse⁴. Even though the 'Conceptualization of the Cuban Economic and Social Model of the Socialist Development' introduces the concept of SMEs⁵, a framework is yet to be implemented.

Economic background

The regulation of SMEs is impacted by the economic structures and environment in which they find themselves. Specifically, governmental structures, policies and programs all play an important role in how SMEs are regulated and what support is available to SMEs in the economic context. This paper also considers the impact of the COVID-19 pandemic on SMEs and the level of government support to address the challenges and financial hardship faced by SMEs during this period (see Section IV).

The Australian economy has been one of the OECD's best performing economies, though it now faces some major challenges. Australian income per head is among the highest in the OECD area, even after taking the cost of living into account (Hemmings, 2014).

³ Self-employed workers are natural persons who carry out productive economic activity or services for the market. The details of this sector's essence, characteristics, and peculiarities should be analyzed in another article.

⁴ This discourse should be taken as an objective element of the prevailing reality in Cuba.

⁵ 'Cuban natural persons can constitute the following types of entrepreneurship: 1) Small businesses essentially carried out by the worker and his family. 2) Private medium, small and small and medium-sized enterprises microscapes, depending on the volume of activity and number of workers, recognized as legal persons' (Cuba. Congreso del Partido Comunista de Cuba-PCC., 2018).

Australia's economy and labour market have been resilient, with rising employment and labour-force participation; pre-pandemic projections showed a continued robust output growth of around 3% in the near future. Living standards are good but socio-economic challenges remain, especially for more vulnerable groups with high risk of poverty (OECD, 2020a).

Chile, also an OECD member, is one of Latin America's fastest-growing economies, and this has enabled the country to reduce poverty significantly (World Bank, 2020). The unemployment rate in Chile was 7.1% in 2019, a 0.14% decrease from 2018 (Macrotrends, n.d.). The quality of life of Chileans has also improved significantly over the past decades, supported by a stable macroeconomic framework, bold structural reforms, such as trade and investment liberalisation, and buoyant natural-resource sectors (OECD, 2020b). However, more than 30% of the population is economically vulnerable and income inequality remains high. In the context of Social Upheaval (movement against inequality and structural failure to reduce vulnerability), GDP growth decreased from 3.9% in 2018 to 1.1% in 2019 (World Bank, 2020).

In Cuba, state-owned companies still make up the majority of the Cuban economy despite 'updates' to the economic model leading to the expansion of the private sector in the last decade (Schmieg, 2017; Sweig, 2016). In 2011, the private sale of cars and houses was legalized and since this time a growing number of occupations "have become eligible for private employment and business" (Sweig, 2016, p. 259). The rent from 'casas particulares' (private homes rented to tourists), bars and private restaurants and transportation services have also continued to expand (Anderson and Serpa, 2018). Today, however, all privatized sector is suffering from the depressed market. The Economic Commission for Latin America and the Caribbean anticipates a decrease of Cuba's GDP by 3.7% in 2020 (Fernández Estrada, 2020). The introduction of regulation for SMEs in Cuba would allow for the creation of new economic actors and would encourage alliances between private enterprises and the state sector (Terrero, 2020).

II. SMEs in Australia

Background and introduction

In Australia, the vast majority of businesses retain either no employees, or less than 20 employees; which is a 'small business' according to the ABS definition. Australia had 2.2 million small business at the end of 2016-17, representing 97.5% of all businesses operating at the end of 2016-17. As for the number of medium-sized businesses — one that employs between 20 and 199 employees — the ABS reported 52,200, which represents only 2% of all businesses operating at the end of 2016-17 (ABS, 2014; ABS, 2018). In 2017-18, almost two-thirds of businesses in Australia were non-employing small or micro businesses. The most common employing businesses had between 1 and 4 employees (71.5% of businesses) (ABS, 2019).

As noted above, the definition of SMEs in Australia remains broad and flexible and varies depending on the regulating body. While the ABS defines small and medium businesses based on the number of employees (Gilfillan, 2015), the Australian Taxation Office ('ATO') considers 'a sole trader, partnership, company or trust that operate a business for all or part of the income year and has an aggregated turnover less than \$10 million (the turnover threshold)' as a small business entity for tax concession purposes.⁶

Structures and regulation

SMEs have existed in Australia for many years, however, government interest in SMEs has developed significantly since the 1970s through legislation, regulation, and support systems for small businesses (Schaper, 2014). There are four main structures for SMEs: sole trader; partnership; trust business structures; and companies (Australian Securities and Investment Commission [ASIC], 2020). Owners of small businesses generally provide business capital, control operations and have input into the management of the business (Gilfillan, 2015). The extent of the owner's involvement will vary depending on the selected business structure. The structures vary from minimal government regulation but full liability for sole traders, to greater government regulation but less owner liability for companies.

There are benefits and disadvantages to each structure. A *sole trader* is a simple and inexpensive structure to establish and involves few legal and tax formalities (ASIC, 2020). Sole traders are run without a company structure or partners, enabling an individual to have complete control over their business. Owners assume full liability for any business debts placing their personal assets at risk. To establish the business, sole traders must register their business name with the Australian Government Business Registration Service and pay a nominal fee.⁷ Owners will include business income and expenses in their personal tax return and may claim deductions for costs incurred in running the business (Australian Taxation Office, 2019a). Financial records must be retained for 5 years and a sole trader must notify the government of any business changes within 28 days. Sole traders with no employees account for 62% of Australian businesses (Australian Small Business and Family Enterprise Ombudsman [ASBFEO], 2019, p. 7).

A *partnership* is comprised of two or more people who operate a business as co-owners and share income. It is relatively inexpensive to set up.⁸ Similar to a sole trader, a partnership provides flexibility and is easier to establish than a company. Although encouraged, written agreements are not required for the formation of a

⁶ Aggregated turnover is the annual turnover from a current business and any annual turnover from other businesses that an individual is connected or affiliated with. (Australian Taxation Office, 2020).

⁷ Sole traders must have an Australian Business Number (ABN) and register the business name. Australian Government. (s. f.).

⁸ Relationships between partners are legislated at the State level through State Partnership Acts and are based on contractual and fiduciary duties. See e.g., *Partnership Act 1891* (Qld).

partnership.⁹ Although partnerships have the advantage of combining the resources and expertise of a number of people, partners are jointly and severally liable for business debts incurred even by other partners.¹⁰ Each partner 'pays tax on the share of the net partnership income each receives' (Australian Government, 2020a).

A *trust* structure enables a relationship where a trustee (either an individual or a company) carries on business for the benefit of others (the beneficiaries). The creation of a trust is complex requiring a formal deed to be drawn up with the assistance of a solicitor or accountant. Ongoing costs arise due to complex annual administrative requirements making trusts inherently more expensive than the sole trader or partnership structures. However, a trust structure provides asset protection and is often chosen for its tax advantages. Trustee's obligations are governed by Commonwealth and State law as well as the rules of equity.¹¹

A *company* is a distinct legal entity; it is separate from its shareholders and directors.¹² This more complex structure incurs higher set up and administrative costs. Companies are heavily regulated under the *Corporations Act 2001* (Cth) and are governed by the Australian Securities and Investments Commission ('ASIC'), which is responsible for administering the *Corporations Act* and regulating Australian companies.¹³ For example, company directors must keep financial records and check annual statements compiled by ASIC.¹⁴ However, companies have the benefit of a maximum tax rates of 30% (Australian Taxation Office, 2019b) and their structure provides some protection of for personal assets.¹⁵ Shareholders benefit from this structure as they are not liable for the company's debts and can only lose the value of their shares.

The type of business and priorities of SMEs will determine which structure is most suitable for their enterprise. Entrepreneurs in Australia can avail themselves of online government resources which explain the basic structures;¹⁶ however, because of the extensive regulation in Australia it is generally advisable to obtain legal advice when considering legal structures.

⁹ See e.g., *Partnership Act 1891* (Qld) s 5(1).

¹⁰ See e.g., *Partnership Act 1891* (Qld) s 12.

¹¹ See e.g., Queensland government. (1973).

¹² The most common types of companies in Australia are: proprietary limited companies (cannot raise money from the general public through share issues) and public companies (usually formed to raise or borrow public money by listing the company's shares for trading on a stock exchange). Public Companies must comply with the rules of the Australian Stock Exchange. See also *Corporations Act 2001* (Cth) Part 1.5 - Small Business Guide. (Australia, 2015).

¹³ Companies are responsible for submitting records to ASIC each year. See generally, *Australian Securities and Investments Commission Act 2001* (Cth).

¹⁴ *Corporations Act 2001* (Cth) ss 346 A, 346C and 352.

¹⁵ Directors can be held personally liable for their actions and sometimes the debts of the company if they have not complied with their director's duties. See *Corporations Act 2001* (Cth) ss 180-184.

¹⁶ See for example, Australian Government. (s. f.). *Support for businesses in Australia*.

Protections for businesses and consumers

Australian SMEs have certain rights and obligations under the *Australian Consumer Law* ('ACL') and more broadly, the *Competition and Consumer Act 2010* (Cth) (Bruce, 2011)¹⁷. For example, businesses are regarded as consumers in certain circumstances¹⁸ and have the benefit of certain remedies under the consumer guarantees¹⁹. In addition, any representations suppliers make about goods or services that is being bought for the business must be accurate and honest. If goods or services purchased by the business does not do what it is supposed to do, they may exercise their consumer rights under the consumer guarantees if applicable, or make a complaint to the Australian Competition and Consumer Commission ('ACCC') or local consumer protection agency if the supplier is misleading customers²⁰.

Where the SME is operating as a franchise, it has protections under the Franchising Code of Conduct²¹, a mandatory industry code across Australia that regulates the conduct of franchising participants towards each other. In general, SMEs have the following avenues of complaint:

- a. *The Australian Small Business Commissioner* deals with advocacy, referrals and dispute resolution services. There are State Small Business Commissioners in New South Wales, South Australia, Victoria and Western Australia which provide advice and dispute resolution services.
- b. *State and territory consumer protection agencies* deal with problems with supplied goods. The local consumer protection agency in states or territories (sometimes referred to as 'Fair trading') can provide SMEs with information about their rights and options. They may also be able to help negotiate a resolution between an SME and the supplier.
- c. *Industry ombudsmen and dispute resolution schemes* deal with problems with supplied services: Some industries have a national ombudsman (such as the Telecommunications Industry Ombudsman and the Financial Industry Ombudsman) and other industries (such as energy) have an ombudsman or dispute resolution office in each state and territory, which can assist SMEs with goods and service complaints.

¹⁷ See also *Competition and Consumer Act 2010 (Cth) Sch 2, Australian Consumer Law*, which has been in force since 1 January 2011. Businesses can refer to the Australian Competition and Consumer Commission (2012).

¹⁸ When purchasing goods or services for the business which are: under \$40,000 or over \$40,000 and normally bought for personal, domestic or household use or consumption, or vehicles and trailers used mainly to transport goods on public roads. (Australian Competition and Consumer Commission, 2012).

¹⁹ See *Australian Consumer Law*, Part 5-4, Consumer Guarantees. Businesses can also refer to Commonwealth. (Australian Consumer Law, 2016).

²⁰ Australian Consumer Law, s 18.

²¹ See *Franchising Code of Conduct* (Australian Competition and Consumer Commission, 2013, January 11).

- d. *The ACCC deals with problems with supplied goods and services and reporting potentially unlawful business behaviour. The ACCC can provide SMEs with information about their consumer rights and obligations as a business and suggest possible courses of action they may take. The ACCC can also investigate alleged breaches of the *Competition and Consumer Act* and where necessary, take legal action against businesses that break the law (ACCC, n.d.a).*

Certain anti-competitive business practices that limit or prevent competition are prohibited for all Australian businesses, including SMEs. Section 45 of the *Competition and Consumer Act* specifically prohibits contracts, arrangements, understandings or concerted practices that have the purpose, effect or likely effect of substantially lessening competition in a market, even if that conduct does not meet the stricter definitions of other anti-competitive conduct such as cartels. This could include, for example, misuse of market power, imposing minimum resale prices and unconscionable conduct²².

Other regulation applying to SMEs relate to the issue of unfair contract terms. The ACL protects SMEs in standard form contracts entered into or renewed on or after 12 November 2016, if:

- it is for the supply of goods or services or the sale or grant of an interest in land.
- at least one of the parties is a small business (employs less than 20 people, including casual employees employed on a regular and systematic basis).
- the upfront price payable under the contract is no more than \$300 000 or \$1 million if the contract is for more than 12 months (ACCC, n.d.b).

If the term is deemed 'unfair' by a tribunal or court then the term is void (i.e., it is not binding on the parties), however the contract continues to bind the parties to the extent it is capable of operating without the unfair term (ACCC, n.d.b). Importantly, SMEs are also subject to these laws in respect of consumer contracts with their customers (Bruce, 2011, p. 140).

Challenges faced by SMEs in Australia

In Australia, SMEs are heavily regulated²³ and the regulatory burden on small businesses has been a concern since the 1970s. The survey indicated that, relative to their size, the burden of regulation was higher on smaller businesses where regulations imposed the same requirements regardless of firm size (Douglas & Pejoska, 2017, p. 2).

²² ACCC, *Competition and Consumer Act 2010 (Cth)* s 45.

²³ Douglas & Pejoska (2017).

To address concerns regarding the burden of regulation, the Australian Government created a deregulation agenda in 2013, and reduced annual compliance costs for businesses, individuals and community organisations have been reduced by \$5.8 billion (to 31 December 2016) (Douglas and Pejoska, 2017). In 2015, the Australian Government (2015) expanded this agenda into a regulatory reform agenda, with a focus on reforms that facilitated innovation, competitiveness and productivity growth.

In addition to Workplace Health and Safety legislation, Employment Law, Competition and Consumer Law, Tax legislation and Insolvency legislation, SMEs have to comply with Privacy Laws and all the requirements of industry and government organizations, such as the ACCC (2012), the Australian Transaction Reports and Analysis Centre (AUSTRAC, 2022) and ASIC (2022). There are additional requirements for certain legal structures, for example, companies are also regulated by the *Corporations Act 2001* (Cth) (see above). This extensive regulation places a significant financial burden on Australian SMEs.

The impact of COVID-19 has exacerbated the concerns of SMEs about their ongoing viability in a climate of uncertainty, restrictions and limitations on business activities (Plastow, 2020). Although the government has provided some tax and other relief for SMEs (Australian Government, 2020b), businesses face significant hardship due to closures, reduced income and existing financial commitments such as rent and compliance.

Legal assistance and advice for SMEs

As noted above, SMEs in Australia are able to access online government resources which may assist them, and currently have additional assistance due to COVID-19 restrictions (Australian Government, 2020b); however, because of regulatory and other requirements, SMEs are often in need of legal advice on a variety of issues, such as contractual advice, debt recovery, legal disputes, business structures and leasing issues. Smaller businesses experience the burden of regulation more keenly than larger businesses because they have fewer resources and are unable to take advantage of ‘economies of scale’ in order to understand, comply with and benefit from regulation (Douglas and Pejoska, 2017, p. 14).

In most instances, Australian SMEs are unable to access free legal advice from state based Legal Aid services²⁴. Certain community organisations may accommodate small business matters²⁵ but in order to receive assistance businesses need to satisfy the means and merits tests²⁶ and assistance is usually limited to the most deserving cases. A recent project by the Law Council of Australia (2018) found that “more than 13 per cent of Australians live under the poverty line, while legal

²⁴ Kinsett, L. (2013).

²⁵ Such as LawRight (n.d.) and some community legal centres: See for example: Community Legal Centres Queensland (2013).

²⁶ See e.g., Legal Aid (2022).

aid is available to just eight per cent”, and that “[m]any impoverished people are considered too wealthy to get basic legal help”. These findings echoed earlier findings by the Productivity Commission (2014), where it was acknowledged that “[m]ore resources are required to better meet the legal needs of disadvantaged Australians” (p. 2) and that “only 8 per cent of [Australian] households would likely meet income and asset tests for legal aid, leaving the majority of low and middle income earners with limited capacity for managing large and unexpected legal costs” (p. 20). The lack of resources available for free legal assistance makes it difficult for SMEs to obtain free legal advice. In a recent report by the Queensland Law Society (2019), survey respondents identified ‘affordability of legal representation’ and ‘inadequate funding of legal assistance services’ as the most significant barriers to access to justice (p. 4). There is thus a large sector of the Australian economy that does not traditionally have access to free legal advice (Connolly et al., 2012).

This article contends that universities can play an important role in assisting SMEs through university-run law clinics. In Australia there are a number of successful university-run law clinics (Cantatore, 2015, p. 151). The Kingsford Legal Centre at the University of New South Wales (‘UNSW’)²⁷ incorporates a number of different clinical subjects and is run by a staff solicitor. The South Australian law schools — Flinders University (See Leiman, Ankor and Milne, 2015; Leiman, 2014), University of South Australia and University of Adelaide — also adopt a similar model involving legal academics who have legal practice experience and current unrestricted practising certificates to provide legal advice to clients. Similarly, the Pro Bono Centre at the University of Queensland (‘UQ’)²⁸ incorporates a number of different clinics in which students can enrol for academic credit. A Commercial Law Clinic (‘the Bond Law Clinic’) run by Bond University serves as another example of a pro bono teaching clinic that incorporates an effective service-learning model (Cantatore, 2015, p. 158).

In the case of the Bond Law Clinic, the objectives of establishing the clinic were four-fold: first, to provide students with an opportunity to engage in pro bono legal work and promote a sense of community service; second, to provide students with practice-based learning to prepare them for legal practice; third, to provide small businesses, non-profits and entrepreneurs with much-needed legal advice and service; and fourth, to enable lawyers to engage in pro bono activities and provide community services and student mentoring (Cantatore, 2015, p. 159). Although

²⁷ See University of New South Wales, *Kingsford Legal Centre* which states that ‘Kingsford Legal Centre’s clinical legal education courses provide opportunities for law students to engage directly with disadvantaged communities about pressing legal matters. Students work to empower not just the individual client, but the community or group’s interests as a whole’.

²⁸ See the University of Queensland (2010) – TC Beirne School of Law, *UQ Pro Bono Centre*, which states that ‘[t]he UQ clinics aim to provide students with work experience in a legal setting for academic credit. Clinics are currently run out of the Queensland Public Interest Law Clearing House, Caxton Legal Centre, the Prisoners’ Legal Service, the Refugee and Immigration Legal Service, Queensland Advocacy Inc., the Environmental Defenders Office and Tenancy Law Clinic.

the clinic was primarily established as part of the student learning experience in the Faculty of Law, the structure and operation of the clinic has consistently met the additional objective of serving small businesses in a meaningful way²⁹.

Given the high cost of legal services, university clinics provide an excellent opportunity for universities to assist in serving the needs of SMEs through an alternative model, whilst also providing valuable practice-based experience for their students.

III. SMEs in Latin America

States in Latin America apply varying criteria to define SMEs. The most common definitions are based on employment (eight countries), turnover/revenue (six countries) and assets (four countries) (International Labour Organization, 2015; Zevallos, 2003). Definitions can also differ dependent upon the enterprise's industry. The complexity of regulations throughout Latin America makes it challenging to determine the number of SMEs throughout the region. According to the Development Bank of Latin America -CAF- (2019), SMEs make up 99.5% of firms in Latin America and provide 60% of formal productive employment.

Parra and Haar (2018), from the Council of the Americas, suggest that SMEs need to “develop modern, nimble and transparent management and business structures” (p. 6). Although the law is considered to be the most appropriate avenue for responding to business problems, in the past there has been little correlation between legislative amendments and amelioration of business problems (Zevallos, 2003, p. 60). However, Latin American governments expend considerable energy to support the formalization and growth of SMEs as they play an essential part in economic development (Parra and Haar, 2018, p. 6). This is particularly crucial in countries where SMEs account for a large percentage of enterprises but often fall outside the scope of the law.

A. Chile

Background and introduction

In Chile, the Servicio de Impuestos Internos (Chile's internal revenue service) (n.d.) reported a total of 507,814 SMEs that carried out commercial activities during 2019, which represented 96.9% of the companies in Chile. However, their sales represented less than 25% of the total turnover generated by all businesses (Ministerio de Economía, Fomento y Turismo, 2019). The economic sectors that have the largest concentration of SMEs are commerce, manufacturing, transport and storage.

²⁹ Since its inception in 2013, the Bond Law Clinic has been fully booked and the demand for appointments has outstripped the available appointment times. Client surveys conducted since the beginning of 2014 show that 75 per cent of all clients are regularly referred to the Clinic by the Legal Aid Board.

Structures and regulation

In Chile, as per its civil law system tradition, the relationships between SME owners, co-owners, shareholders and participants, and especially the State, are thoroughly regulated. Furthermore, individual and collective labour relations, working conditions, employment contracts, social security, tax rules, hygiene (health), and environmental impact regulations are enforced through a complex network of mandates provided to authorities at various administrative levels (locally and nationally). There are also several special provisions for micro, small and medium-sized companies, contained in various laws, which regulate specific areas such as tax, labour and other matters.

In 2013, Chile made significant progress by promulgating Law 20 659, which established a simplified regime of constitution, modification, and dissolution of companies. El Consejo Nacional Consultivo de la Empresa de Menor Tamaño (The National Consultative Council of Minor Enterprises), has the function of advising the Ministry of Economy, Development and Tourism in proposing policies and coordinating the efforts of the public and private sectors to promote adequate participation of SMEs in the national economy. Referring to the activities of this body and other regulatory changes, the OECD (2019) noted that many countries, including Chile, made important progress “to reduce regulatory barriers to entrepreneurship, such as legal barriers to entry, administrative burdens on start-ups, regulation complexity and regulatory compliance costs in different areas” (p. 96).

There are different possible structures for SMEs in Chile, the most common being:

- a. The *empresa individual de responsabilidad limitada* (an individual limited liability company). Law 19 857 regulates this legal entity, which has its own assets (separate from those of its owner). This type of business is run without partners, enabling an individual to have complete control over their business.
- b. The *sociedad de responsabilidad limitada*, which is a limited liability company regulated by Law 3 918. It is also a legal entity which owns its own assets. This model requires that the partnership comprises of two or more people who operate a business as co-owners and share income from the business.
- c. The *empresa familiar*, which is a family microenterprise regulated by Law 19 749. It typically belongs to one or more natural persons residing in a house, who can carry out professional work, trades, industry, crafts, or any other lawful activity, whether it be the provision of services or the production of goods.

Chilean legislation also contemplates other types of companies that are not very common to SMEs, for example, collective companies, limited partnerships, cooperatives, and corporations.

Protections for businesses and consumers

In 1997, Law 19 496 (the Chilean Consumer Protection Act, hereafter referred to as CCPA) was enacted to protect the rights of consumers and establish rules of trade in a market where citizens were previously at a clear disadvantage (Chile. Servicio Nacional del Consumidor. SERNAC, n.d.). The *SERNAC* is the government agency responsible for ensuring the protection of consumer rights under the CCPA.

The purpose of the CCPA is to regulate the relations between suppliers and consumers; to detect activities that are detrimental to consumers; and set out the applicable procedure or remedy. Consumers are defined as natural or legal entities who acquire, use or enjoy, as final recipients, goods or services³⁰.

If non-compliance is related to quantity, pursuant to article 19 of the CCPA, the consumer can request a replacement of the product or a partial refund or credit equal to amount paid in excess. For other non-conformity issues (e.g., manufacturing defects, differences between the product and its description, not of acceptable quality or safety), the consumer can receive a replacement, repair, or a total refund within 3 months (7 days in case of perishable goods) from the delivery date of the product (Andrade, 2019).

Challenges faced by SMEs in Chile

In Chile, SMEs suffer business operation difficulties due to late or non-payments. Payment delays have been reported by 59.9% of companies in Chile, with SMEs making up 62.1% of the cases (Grewal et al., 2019; Ministerio de Economía, Fomento y Turismo, 2019).

One of the main challenges for SMEs is the establishment of payment terms due to asymmetry in the company-payer relationship. Currently, commercial conditions are imposed by large companies or the government due to the volume of their purchases from SMEs. The issue stems from the type of agreement that usually governs the relationship between the 'payer' and the SME. In Chile, most of the agreements are verbal (42.5% of all B2B agreements). This is also much more common with micro rather than larger enterprises (47.3% versus 27.8%) (Ministerio de Economía, Fomento y Turismo, 2019, p. 119). This shows that SMEs lack access to legal advice because generally legal counsel will draft contracts, for signing, that require the client to pay according to what is initially agreed. Thus, the Chilean government recently legislated on payment deadlines. Law 21 131 of January 2020 established a payment period of up to 30 calendar days from receipt of the invoice (Article 2). This law introduced modifications to promote the prompt payment of debts under contracts with SMEs. The law fixes deadlines

³⁰ See Article 1, Law 19 496.

for payment, regulates non-compliance, guarantees the right to apply interest due to late payment, defines abusive clauses as any agreement that violates the rights contained in the law, and finally, the incorporates right to compensation.

Another challenge is the digitalization of SMEs, as there is inadequate enforcement of antitrust regulation, thus enabling 'oligopolization' of already scarce infrastructure and predatory pricing for SMEs and the general public. The Chilean Constitution protects private property (including company income) over and above public interest and the common good which makes antitrust regulation and telecommunications frameworks virtually "toothless" (Agostini et al., 2017).

This challenge has another facet to it, namely, education. "In particular, Chile lags behind OECD countries in terms of skills for the future, with only 3% of graduates in ICT and 1% in natural sciences, maths and statistics" (OECD, 2019, p. 289). These few graduates are then able to be employed by larger firms who can afford better wages; have better working conditions; and/or have more stability in terms of career path for professionals. Consequently, SMEs, though a bedrock of local and regional development in Chile, are often left with lower quality workforce.

Legal assistance and advice for SMEs

In Chile, there are several cheaper alternatives that allow SMEs to access legal advice. First, government provides virtual legal advice through The Technical Cooperation Service SERCOTEC³¹. The advice provided is intended to solve legal matters in labour, tax, contracting, commercial matters and associativity or cooperative issues. On the administrative level, *Superintendencia de Insolvencia y Reemprendimiento* (SUPERIR)³², implements financial education programs for Chilean SMEs as part of its mission to transform the national insolvency framework. Second, Chile was among the first Latin American countries to lead the pro bono movement through pro bono foundations, NGOs and private law firms. Support and promotion of pro bono culture has also led to its expansion beyond Chilean borders within Latin America (Díez et al., 2015). For example, the Pro Bono Foundation (2020) has benefitted from many law schools requiring at least one semester of pro bono work for students to obtain a law degree. Similar student experience enhancing work is also available through university or law school based law clinics which, depending on their specialization, provide a valuable service to SMEs, especially to financially disadvantaged small businesses and sole proprietors.

³¹ SERCOTEC is a State institution, whose mission is to promote the development of micro and small businesses and strengthen the management capacity of their entrepreneurs.

³² The Superintendency of Insolvency and Re-entrepreneurship is a public institution whose mission is to oversee insolvency, renegotiation, restructuring and re-entrepreneurship procedures for natural and juridical persons. (Chile. Ministerio de Economía, Fomento y Turismo, n.d.).

More than 20 Chilean universities have law clinic services for their respective community (Guzmán, s.f.). These law clinics usually specialise in fundamental Human Rights issues (Criminal Law), Family Law or Administrative Law issues faced by users of public services. Only a few are focused on business issues or specifically on SME and entrepreneurship (Universia Chile, 2019). One of these clinics is Clínica Jurídica FCJE-UFRO (the 'FCJE-UFRO Law Clinic'), which aims to connect the Universidad de La Frontera's undergraduate law program with its regional community. They provide a framework for institutional internships by law students, legal advice, and litigation assistance for natural and juridical persons in the matters of Insolvency (through collaboration with SUPERIR) and Consumer Rights (through collaboration with SERNAC). Since it became operational in 2017, more than 80 internships in public and private institutions have been completed, and more than 45 cases have been handled by the clinic through its students and mentors (lawyers licenced to practice in Chile). Thus, the FCJE-UFRO Law Clinic is unique in the sense that it has a business focus and provides legal advice and assistance to small businesses, filling a gap in the types of pro bono services offered by law clinics in Chile. (Universidad de la Frontera, 2019)

B. Cuba

Background and introduction

Cuba is no stranger to the economic benefits that SMEs provide. The 'Conceptualization of the Cuban Economic and Social Model of Socialist Development' recognizes SMEs as productive entities distinct to cooperative partnerships³³. Despite this recognition, however, the success of SMEs continues to be limited by the absence of a regulatory framework (Rodríguez, 2020; Schmiege, 2017). A framework could provide clarity to business management structures that are currently being developed by a number of the self-employed, who have workforce procurement schemes, and a level of sales and investment that make them easily identifiable as micro, small or medium-sized enterprises. Until such a framework is implemented, SMEs are unable to contribute to the consolidation and success of the Cuban economic structure (Feinberg & Piccone, 2014).

The 'self-employed' in Cuba are defined as natural persons who individually or as a contracted worker carry out one of the authorized economic activities pursuant to Decree-Law No. 356 (Cuba, 2018). According to Cuban government figures, the self-employment sector accounted for almost one third of national employment prior to 2017 (Kuritzkes, 2019). However, the numbers are believed to be higher than this as many operate without licenses (Kuritzkes, 2019), which Schmiege (2017) refers to as the 'shadow economy'.

³³ These partnerships are legal forms which are formed and function on the basis of the associated work of their members. They do not focus on profit as much as other social and cultural work.

Structures and regulation

The current provisions relating to the commercial companies in Cuba allow for establishment with either a mix of national and foreign public capital; with only foreign capital; or with only public capital. In other words, it is not possible to form commercial companies with private capital³⁴. Further legislation relating to companies with foreign investment³⁵ have been introduced, for example, in Law No. 118 of 29 March 2014 'Law on Foreign Investment' and Decree No. 325 of 9 April 2014 'Regulation of the Law on Foreign Investment'. Thus, there is currently diverse laws regulating commercial companies and the rules relating to their establishment and operation are inconsistent.

The Commercial Code 1886 allows for the establishment of collective companies, limited partnerships, limited liability and incorporated companies (Book II, Commercial Code). However, most Cuban companies are limited liability companies. In some instances, this is due to the Law 118 on Foreign Investment (Cuba, 2018), which requires that both joint ventures and wholly foreign capital firms take the form of a public limited company with nominative shares (Mesa, 2017). For companies established with public capital, since the first law that made co-establishment of these companies possible, the only form adopted has been the limited liability company. If SMEs are regulated in the future, the legal frameworks should ensure that there is flexibility regarding what corporate structure SMEs choose, not only in the private sector but also in the public.

Sole traders are regulated in the Commercial Code from Article 2 onwards. Cooperatives are regulated by sectors in the Cuban legal framework, for example, agricultural and non-agricultural³⁶.

Challenges faced by SMEs in Cuba

The legal regulation of SMEs in Cuba is still yet to be developed. However, the Constitution of the Republic of Cuba was amended in 2019 to recognize private property, defined as "that which is exercised on certain means of production by Cuban and foreign natural or legal persons; with a complementary role in the economy." There has been considerable push for the recognition of SMEs in Cuba and there is now constitutional support for private companies to own property (Fangmann, 2019).

³⁴ See articles, 117-238 of *Código de Comercio, Real Decreto de 28 de enero de 1886* [Commercial Code, Royal Decree of January 28, 1886].

³⁵ As defined by the Foreign Investment Act, foreign investment arrangements are joint ventures, wholly foreign capital firms and international economic partnership contracts. Joint venture: Cuban trading company that takes the form of a public limited company by nominative shares in which one or more domestic investors and one or more foreign investors participate as shareholders; All-out capital company: commercial entity with foreign capital without the concurrence of any national investor or natural person with foreign capital.

³⁶ As there is no single body of law regulating commercial companies in Cuba, the legal rules that regulate them are dispersed throughout various legislation.

There are still, however, many considerations for the future regulation of SMEs in Cuba. For example, such commercial entities should be able to have either a single partner or more. It is also necessary to determine a minimum initial share capital for the establishment of a company as there is currently no minimum share capital requires for companies incorporated in Cuba. In addition, there should be compliance with the traditional structural requirements of commercial companies, such as a Public Deed (including articles of association and registration in the commercial register), and registration on a Commercial Register. One might consider requiring administrative authorization for the establishment of these companies, issued by a body or institution responsible for the care, promotion, control, etc., of SMEs. Other requirements may exist as part of this process: SMEs may need a certificate of disbursement from the Bank, with which the company initiates its operations, stating that it certifies that the SME demonstrates the veracity and uniqueness of the company name issued by the Commercial Registry. Relevant laws should also include legal terminology that is accessible to all entities involved to ensure that the constitution process is not protracted and tortuous.

Current administrative authorization processes for the establishment of non-agricultural cooperatives, contained in Decree Law 366/2019, are complex (Rojas, 2019). To have the constitution of a cooperative approved, SMEs must follow a phased process that begins with the local municipal bodies and ends with the Council of Ministers. This illustrates the need for a process of approval for SMEs to be more flexible and granted by local governments³⁷. In addition, the self-employed should be able to freely choose the economic activity in which they engage as they are currently limited to a restricted list of activities (González-Corzo & Justo, 2014). It would be beneficial to learn from past experience when Cuban law was modified to enable foreign investment. Law 118 (Cuba, 2018) states which activities are restricted from foreign investment. In this sense it would be worth reflecting on what the economist Fernández Estrada (2020) recently stated, “Let’s use this CNAE (Classifier National Activities Economic) to order all the activities that could eventually be developed by the private sector ... [t]he logical first step would be to identify, in the CNAE, economic activities where the participation of the private sector is not compatible with the objectives of the construction of Cuban Socialism”. Thus, the idea is that the regulation of activities should correlate with the regulation of foreign investment, i.e. to determine which activities cannot be carried out through foreign investment, which would offer flexibility to entrepreneurs to exercise their economic activity.

While there should be emphasis on protection for consumers, regulation on SMEs should be determined by public policies that encourage the creation and promotion of SMEs. For example, taxes for the self-employed should be reduced so that it is fair across all entities that would classify as an SME (Schmiegel, 2017).

³⁷ By virtue of the municipal autonomy regulated in the new constitutional text.

Legal assistance and advice for SMEs

While increased regulation on SMEs would have its advantages, there will be other challenges that arise. For example, as other economic entities do, SMEs will require legal advice and consultancy services so that they can operate with legal certainty. All Cuban citizens are able to access legal services through the La Organización Nacional de Bufetes Colectivos ('ONBC'), however, the difficulty of obtaining advice stems from the lack of regulation for SMEs or the self-employed. Furthermore, the lawyers in Cuba lack legal expertise in commercial law, particularly for private sector procedures (Hernández, 2019).

IV. Comparative insights and findings: Australia and Latin America

SMEs in Australia and Latin America – Developments and Challenges

It is evident that SME support infrastructure varies from country to country and the authors argue that the value of a descriptive, analytical approach lies in taking stock of these differences, and how they stood out in the pandemic situation. As highlighted above, Australia has a very comprehensive legal framework for SMEs, which has been firmly established through statutory and more localised regulatory means. However, the impact of various structures, including taxation and State regulation, has meant that the regulatory burden is very high for SMEs. Furthermore, the lack of accessibility to legal services leaves a large proportion of Australian SMEs without legal recourse. The recent bushfires in Australia have severely impacted two-thirds of Australian SMEs (NAB, 2020), and this disruption to the sector has been further exacerbated by the impacts of COVID-19 (discussed below).

In terms of the institutional and regulatory framework in Chile the OECD (2019) highlighted the latest initiatives of *Tu Empresa En Un Día*; however, "electronic signature, access to bank accounts or digital municipal permits" (p. 288) are all services hardly attainable by regional SMEs, namely those incorporated outside the main metropolitan areas. Regional municipalities lack human capital to service forward-looking businesses. Under pre-pandemic market conditions exports were still the only "official" opportunity for internationalization of SMEs, with operations supported by the government. Luckily, services have been highlighted in the design of new government support programs administered by ProChile (OECD, 2019).

While there have been many changes to the legal framework in Cuba, SMEs are yet to be regulated (Rodríguez, 2020). The state is gradually reducing their share of total employment, and measures are increasingly introduced for the promotion

of the self-employment sector, however, the activities of private entities are still limited. For example, there are still excessive tax requirements placed on private activities in the state's attempt to maintain economic control (González-Corzo & Justo, 2017). In addition, as discussed above, the 'SMEs' in Cuba largely consist of the self-employed and they are currently restricted in their permitted activities. These activities are generally low-skill jobs (Schmieg, 2017).

Overall, it may be observed that in both Australia and Chile SMEs face the issue of limited access to justice – although there is the ability to seek advice from university law clinics in certain instances. In contrast, there currently appears to be a lack of adequate regulation or recognition of SMEs in Cuba, and no access to free legal services.

Challenges for SMEs amid COVID-19 pandemic measures

It has been observed that the economic downturn in Australia may impact severely on small businesses, especially post the COVID-19 pandemic (Plastow, 2020; ASBFEO, 2020). The restrictions imposed by the government in the wake of COVID-19 has forced the closure – in some instances permanently – of many SMEs. The Australian Government announced social distancing measures to protect the Australian community from the spread of the coronavirus, with restrictions imposed on social gatherings, events and services; including retail businesses, restaurants, bars, hotels, cinemas, gyms, educational institutions, to name but a few (Australian Government, 2020b). At the time of writing these restrictions were in place to varying degrees in different States and Territories depending on the infection rates. Although the government has provided some support for businesses (Australian Government, 2020c) in the form of asset write-offs, cash grants, financial counselling and 'jobkeeper' assistance packages (see Table 2 below), there are significant concerns around the long term effects of COVID-19 on SMEs. According to a recent survey by the ABS (2020b), three in five (60%) Australian businesses sought external advice in response to COVID-19.

In response to the COVID-19 pandemic severely impacting SMEs, new legislation has been passed in Chile³⁸ to address these issues. Access to finance, skills and innovation assets are the main areas of concern during the COVID-19 pandemic. The financial safety cushion available is relevant as it determines the absorptive³⁹ capacity of SMEs during a disaster event (Linnenluecke, 2017). Additionally, SMEs need skills and innovation assets to develop anticipatory and adaptive capacity for future crises (Linnenluecke, 2017). Unfortunately, "[t]he Digital Agenda 2020 [which] aims to improve access and effective use of digital infrastructure" has been drawn up 10 years too late as a response to the February 27 earthquake in 2010 (OECD, 2019, p. 288; Žebrytė et al., 2019).

As the vast majority of Cuban adults work for state entities, they have not stopped

³⁸These legislative measures are summed up in Table 1 below.

³⁹This is considered one of the triple A's of resilience — anticipatory, adaptive and absorptive capabilities — which is a concept from Business, Entrepreneurship and Management research on organizations such as SMEs.

earning during this time. However, there is an estimate of 500,000 who are self-employed or entrepreneurs (the private sector) that are suffering from freezes of many activities (Miranda, 2020). The complete collapse of tourism in the country has also “left the Cuban working class at the precipice of disaster due to its key role in the economy” (Fangmann, 2020). However, the tourism industry had already been in a slow decline as a result of the American embargo. This has also meant that the country is currently experiencing major obstacles for sourcing medical supplies (Fangmann, 2020).

In all three jurisdictions governments have stepped into the breach and implemented measures to deal with the impact of COVID-19. This has varied from country to country and has been predicated on infection rates and the economic circumstances in each region. Table 1 below sets out the COVID-19 Pandemic impact mitigation measures directed at SMEs in Australia and Chile, as reported by the World Bank; and the measures implemented in Cuba. This provides a birds-eye view and a comparative indication of government responses in the Latin-American (Chile and Cuba) and Asia-Pacific region (Australia) countries examined in this paper.

Table 1. COVID-19 Pandemic impact mitigation measures directed at SMEs; as reported by the World Bank (2020) (Australia & Chile) and various sources about Cuba (Gentilini et al., 2020; CubaNEt, 2020; CiberCuba, 2020; KPMG, 2020).

Country	Type of Support	Instrument	Description	Inductive and Interpretative analysis
Australia	Business climate	Changes to bankruptcy, business closure, insolvency, business restructuring regulations	The Government is temporarily increasing the threshold at which creditors can issue a statutory demand on a company and to initiate bankrupt proceedings against.	Whilst a temporary relief, this measure would need to be extended to address ongoing hardship.
	Employment support	New working schemes	Companies can register their employees to short-time work (with 80-90% salary) over a period of up to 3 months with potential extension of another 3 months.	The jobkeeper subsidies have enabled businesses to keep staff employed where businesses were forced to close, providing much-needed economic support.
		Provide wage subsidies as alternative to direct payments to individuals	Eligible employers can apply for a wage subsidy of 50% of the apprentice's or trainee's wage for 9 months from 1 January 2020 to 30 September 2020.	
		Support for informal or self-employed workers	The State Government will provide a one-off emergency relief payment of \$250 for individuals and up to \$1,000 for families in self-quarantine.	

Australia	Debt finance	Credit guarantees – new schemes, more generous guarantee levels	Through a new Coronavirus SME Guarantee Scheme ⁵⁸ , the Government will guarantee 50 per cent of new loans issued by eligible lenders to SMEs.	The total lending capacity of the facility will be AUD 40 billion (2% of GDP), a significant boost for SMEs.
		Delayed repayments. Deferral of payments, restructuring and rescheduling	Businesses with up to AUD 10 million in total loan facilities will be able to defer their loan repayments for six months.	An initiative put forward by the banking industry.
		New lending – under concessional terms	Boosting Cash Flow for Employers: up to \$100,000 to eligible small and medium-sized businesses, and not-for-profits (NFPs) that employ people.	With a minimum payment of \$20,000 per business, this measure will assist with keeping businesses operational.
	Other finance	Grants	New South Wales announced a AUD 10 000 cash grant for 75 000 small businesses	These measures, specifically aimed at SMEs will assist in mitigating their substantial losses during COVID-19.
		Support for firms which need to close or have reduced their activities	Supporting small business through cash flow assistance up to \$25,000 tax-free subsidy for small and medium-sized businesses with annual net sales of less than \$50 million.	
	Tax	Incentives for capital expenditure (larger/wider limits, accelerated depreciation, broader range of products eligible)	Time-Limited 15-month investment incentive (through to 30 June 2021) to support business investment and economic growth over the short term, by accelerating depreciation deductions.	This provides a tax relief measure for SMEs that they would not ordinarily have.
Chile	Debt finance	New lending – under concessional terms	A new capitalization plan of Banco Estado for 500 million dollars US to grant more credits and the extension of state guarantees for loans. / Capital injection of USD 500 million to fund loans to SMEs and individuals until July 2020.	The regulation of the banking activities in Chile have created a cash-cow for private banks. The retail banking has a few practices which border consumer rights infringement despite “SERNAC financiero” (National Consumer Service in Finance) serving the very indebted nation (77 % of households in Chile report some sort of debt). Traditionally, the loans handed out with a state guarantee have double the interest rates that in most European countries. So, banking activity in Chile is virtually risk free and very lucrative even under the State of Emergency due to the COVID-19 Pandemic.

Chile		Existing lending with reduced or no interest, and/or lower collateral requirements	Central Bank has lowered interest rates by .75 to 1%.	
		Capital buffer safeguards requirements on banks and central banks' actions to induce commercial banks to increase lending to SMEs, such as lowering capital requirements	The Central Bank announced a historic drop in interest rates to 1%	
		Credit guarantees – new schemes, more generous guarantee levels	The use of mortgage guarantees to safeguard SME loans	
		Capital buffer safeguards requirements on banks and central banks' actions to induce commercial banks to increase lending to SMEs, such as lowering capital requirements	The Commission initiated the revision of the timetable for the implementation of the Basel III standards in order to avoid accentuating the negative effects of the current economic cycle.	
		Credit guarantees – new schemes, more generous guarantee levels	State Guarantees for USD 3 billion guarantees fund for SMEs (credits for working capital) from Banco del Estado, as well as a fund of up to USD 2 billion for workers to access emergency benefits.	
	Employment support	Support for informal or self-employed workers	Creation of COVID-19 direct payments to 2 million workers of informal sector, the measure is worth USD 130 million, and a \$100 million fund will be set up to be managed by municipalities [local authorities] for SMEs directly affected.	In contrast, in Cuba, most of the SMEs are businesses operating under “self-employed” licenses and are allowed to employ one other person. Private artisan and food businesses in Cuba are usually organized as production cooperatives, though some services cooperatives exist too.
		Provide wage subsidies (can be broad, or targeted – e.g. apprentices) as alternative to direct payments to individuals	Salary guarantee for people who cannot go to work or do telework.	

Chile	Tax	Corporate tax – rate reductions, credits, waivers, and/or deferrals	Suspension of the profit tax for companies in the next three months. It has a value of USD 2400 million	The need for this measure is at least till October 2020 because of the seasonality I the sectors where SMEs prevail – agribusiness, gastronomy and tourism.
		Payroll/social security/VAT taxes/ land taxes – rate reductions, credits, waivers, and/ or deferrals	Deferral of VAT payment for the next 3 months for all companies with sales below UF 350.00 and Transitory reduction of stamp tax to 0% for all credit operations during the next 6 months. With a value of USD 1920 million	
		Corporate tax – rate reductions, credits, waivers, and/or deferrals	Several measures for support for SMEs (tax payment deferrals, increased liquidity for banks to lend to SMEs etc.) are under discussion.	The timing of the government was off on that and it is now estimated that many SMEs will go out of business due to their inability to pay off the emergency loads. This is due to the fact that, as expected, the COVID-19 cases surged during winter months and stringent measures to curb the spread of the virus might have to be in place till mid-September of 2020.
		Payroll/social security/VAT taxes/ land taxes – rate reductions, credits, waivers, and/ or deferrals	The delay for the next three months of the provisional [social security] monthly payments of companies' income tax and VAT for companies with sales below USD 10 million, together with the anticipation of the return of income tax, and postponement of the payment of contributions (real estate tax) in April for companies with sales of less than USD 10 million.	
		Corporate tax – rate reductions, credits, waivers, and/or deferrals	Postponement of payment of income tax.	
Cuba	Employment and employee support		Private businesses are not subject to pay contributions to social security or tax for their labor force. However, they must guarantee that employees contracted pre-COVID-19 are paid in proportion to time worked but not less than the minimum wage.	This measure ensures availability of liquidity for business operations. The issue here is whether it is a postponement of payments, such as in Chile, or a tax relief. Another consideration is that employees must be paid the minimum wage, even if the business generates no income.
			Suspension of school classes for affected mothers and guardians.	This affects employment in a negative way since childcare is not readily available.

Cuba			Workers who stay at home as COVID-19 prevention measures are guaranteed 100% of their salary by the State during the first month and then 60% of their salary under a “phaseout plan”.	The ongoing study being led by World Bank experts (Gentilini et al., 2020) indicates that these measures apply only to older or chronically ill vulnerable workers.
	Vulnerable population		Workshops employing disabled workers are allowed to open if raw materials and resources are available.	This measure is effective as a first stage of the “phaseout plan”. However, limited public transport availability might render this measure useless.
	Debt finance		The banks have declared a moratorium on payment of principal and interest for financing, granted to companies affected by COVID-19.	Again, this measure ensures that there is a bit more cashflow available to keep consumption going and lessen ensuing recession.
	Tax		A decrease in the tax rate on payments on account of profit tax was offered to businesses whose profits have been impacted by COVID-19.	Ironically, the Employee Contract Tax paid by businesses as a measure for curbing growth of the Cuban private sector, has not been affected by the COVID-19 emergency relief legislation. So, even if there is no income after reopening, tax for contracting new employees must be paid regardless of whether it is a replacement of someone who quit or a new additional contract.
			There was a deferment of all tax payments until May. Some tax rates have been adjusted for activities that are affected by COVID-19 but still operating.	
	Income diversification		Accommodation, lodging and housing service providers carrying sanitary licenses may provide food services in addition to their main service.	In contrast, gastronomic service providers will be able to open only in the third and last stage of the “phaseout plan”.
	Business permits	Bureaucracy associated with SMEs business activities	Creation of new businesses, namely issuance of new self-employed licenses, has been suspended until further notice.	The Ministry for Work and Social Security has indicated that in the second and third stages of the “phaseout plan” there will be differences in the renewal of licenses. For example, bars and restaurants, pools and gymnasiums will be allowed to open but under an obligation to cap attendance numbers to ensure physical distancing.

Source: World Bank (2020) (Australia & Chile) and various sources about Cuba (Gentilini et al., 2020; CubaNet, 2020; CiberCuba, 2020; KPMG, 2020).⁴¹

Applying a Commercial Law Clinic model to assist SMEs

Given the high costs of legal services in Chile, free services by university clinics provide an excellent opportunity to meet the needs of SMEs while simultaneously benefitting tertiary education. Law and Business students gain experience in a real-life context by dealing with challenges posed by the ongoing COVID-19 pandemic. In particular, the FCJE-UFRO Law Clinic provides services in relation to insolvency and debt restructuring, as well as consumer protection. There are many potential SME clients for this law clinic as the pandemic has caused a surge in the need for advice in these particular areas.

In Australia, university law clinics similarly provide valuable services to small business, non-profits and entrepreneurs in every State and Territory at a number of the country's 36 law schools. Because SMEs do not typically qualify for traditional legal aid services, these university driven pro bono services can help to meet the need of the 'missing middle' of entities and persons. However, the onset of COVID-19 has meant that the demand for services has risen due to increased debt levels, imminent bankruptcies and the financial pressures experienced by SMEs. A lack of capital after the range of government payments and deferments came to an end was one of the major concerns mentioned, causing ASBFEO to submit multiple letters to Australian Government cautioning against early withdrawal of support systems. As the cost of legal representation and inadequate funding of legal assistance services have been identified as the most pressing factors in limiting access to justice (Queensland Law Society, 2019), more reliance is being placed on alternative services such as law school clinics. An example of an effective Commercial Law Clinic in Australia which services SMEs is the Bond Law Clinic, held at Bond University. In a recent client survey, 97% of respondents stated that they would recommend the clinic to their friends and associates, based on the free legal services provided to them. This pointed towards a deep appreciation by SMEs for this type of pro bono service (Cantatore, 2020), which also benefits the law students involved by providing them with practical work experience.

⁴¹ See CubaNet. (2020, June 16).

CiberCuba. (2020, June 16).

KPMG. (2020, May 6). Gentilini et al. (2020). <https://www.cubanel.org/noticias/regimen-cubano-anuncia-medidas-pos-covid-19-para-cuentapropistas/>; <https://www.cibercuba.com/noticias/2020-06-16-u1-e199370-s27061-medidas-cuba-cuentapropistas-etapa-pos-covid-19>; <https://home.kpmg/xx/en/home/insights/2020/04/cuba-government-and-institution-measures-in-response-to-covid.html>; Cuba - Measures in response to COVID-19 - KPMG Global (home.kpmg); <https://documents1.worldbank.org/curated/en/448321588971503966/pdf/Social-Protection-and-Jobs-Responses-to-COVID-19-A-Real-Time-Review-of-Country-Measures-May-8-2020.pdf>

In Cuba, the University of Havana is currently investigating the possibility of setting up a law clinic similar to those in Chile and Australia, in order to advise small businesses and entrepreneurs of their rights and obligations. This is in response to economic advances in the country, and a lack of knowledge on the part of many business owners. The initiative will also create learning opportunities for students and staff involved, whilst providing an important community service. Such a program would require support of the university and the enthusiasm of dedicated educators to implement the service successfully. As Cuban businesses have also been hard-hit by the COVID-19 pandemic, especially in the tourism and hospitality industries, it has become imperative that SMEs are provided with the necessary support structures to promote knowledge and resilience in times of increased financial stress.

V. Conclusion

It has been observed that OECD countries like Australia with relatively higher service sectors and high consumption suffer relatively more under the COVID-19 Pandemic scenario, resulting in a projection of a A\$37.9 billion decline in Australia's household consumption over the next year (PWC Australia, 2020). This projection translates to extensive losses and a significant number of closures in the ranks of SMEs, which will be under increasing pressure to remain viable going forward. The Australian government's support measures have assisted in addressing some of the hardship; however, long term solutions will be needed to mitigate the ongoing challenges faced by businesses, especially in the service sectors.

In Chile it is envisaged that government loans will allow Chilean SMEs to generate sufficient liquidity to overcome the COVID-19 crisis, by providing funds to cover working capital needs, including payment of wages and payment to suppliers, among other company expenses, in order to help re-establish their business operations. Cuba – at the other end of the Latin American scale - has 'moved rapidly to deal with the emerging threat' of COVID-19, implementing early lockdown plans and border closures in the context of an excellent healthcare system (Morris and Kelman, 2020). However, SMEs in Cuba face increased challenges in the face of already tightened US sanctions, a loss of earnings from tourism and other services, deterred foreign investment, hampered trade (including medical equipment imports) and obstructed access to international finance (Morris and Kelman, 2020).

This article provides an overview of structures supporting SMEs in Latin America (with specific reference to Chile and Cuba) and Australia, and compares the challenges faced by these enterprises in diverse jurisdictions. As noted, SME support infrastructure varies from country to country. This article highlights these differences, and explores how these affected SMEs in the pandemic situation. During the writing of this piece, what has emerged from the COVID-19 Pandemic is that no region is immune to its impacts, and that SMEs, wherever they are, are bound to suffer the negative after-effects of such a disaster. It has been instructive to witness the

willingness of governments to step in and take positive action to mitigate economic losses by means of tax reforms, wage subsidies and other accommodations. However, the long-term effects of the crisis should not be underestimated. More will need to be done in all regions to support SMEs over the next few years in the hope of recovery, and sadly, many may not survive the onslaught of the virus and disease caused by it.

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