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RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.2 2026 | Submission: July 9, 2026 | Accepted: August 11, 2026 | Publication: September 20, 2026

Legal and contractual fragility as a factor in the mortality of micro and small businesses.

Legal and contractual fragility as a mortality factor in micro and small enterprises

Legal-contractual fragility as a factor in the mortality of micro and small companies

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SUMMARY

The high mortality rate of micro and small businesses is usually explained by market and financial factors, such as insufficient demand and a lack of working capital. This article examines a less explored dimension of the phenomenon: legal-contractual fragility, understood as the set of gaps in contract formalization, corporate structuring, regulatory compliance, and conflict resolution. Through a narrative review of the literature in institutional economics, sociology of organizations, and business law, combined with documentary analysis of Brazilian legislation and secondary data from the Brazilian Institute of Geography and Statistics, Sebrae, the National Council of Justice, and the US Bureau of Labor Statistics, the article discusses how the absence of adequate legal instruments increases transaction costs, exposes the assets of partners, and transforms ordinary disagreements into costly disputes. The analysis indicates that legal problems are frequent among small businesses, rarely receive professional treatment, and produce measurable losses in revenue and customers, although official closure statistics do not allow for isolating the legal cause from other causes. It is concluded that preventive legal structuring, proportionate to the size of the company and integrated into its management, should be treated as a component of the company's ability to survive and incorporated into policies supporting entrepreneurship.

Keywords: micro and small businesses; business mortality; business contracts; transaction costs; compliance.

ABSTRACT

The high mortality rate of micro and small enterprises is usually explained by market and financial factors, such as insufficient demand and lack of working capital. This article examines a less explored dimension of the phenomenon, legal and contractual fragility, understood as the set of gaps in contract formalization, corporate structuring, regulatory compliance and dispute management. Through a narrative review of the literature on institutional economics, organizational sociology and business law, combined with a documentary analysis of Brazilian legislation and of secondary data from the Brazilian Institute of Geography and Statistics, Sebrae, the National Council of Justice and the US
Bureau of Labor Statistics, the article discusses how the absence of adequate legal instruments increases transaction costs, exposes the personal assets of partners and turns ordinary disagreements into costly disputes. The analysis indicates that legal problems are frequent among small businesses, rarely receive professional treatment and cause measurable losses of revenue and customers, although official closure statistics do not allow the legal cause to be isolated from others. The article concludes that preventive legal structuring, proportional to firm size and integrated into management, should be treated as a component of business survival capacity and incorporated into entrepreneurship support policies.

Keywords: micro and small enterprises; business mortality; commercial contracts; transaction costs; compliance.

1 INTRODUCTION

Micro and small businesses occupy a central position in contemporary economies, both because

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number of establishments as well as the capacity to absorb labor and to boost
Local markets. This relevance coexists with a persistent fragility. According to the Institute
Brazilian Institute of Geography and Statistics, of Brazilian employing companies founded in 2017,
Only 37.3% remained in operation five years later (IBGE, 2024). In the United States,
The US Bureau of Labor Statistics, a business environment often cited as a benchmark,
(2024) recorded that just over half of the establishments created in 2013 reached the fifth
The organizational literature...
This solidified the explanation that young organizations face disproportionate risks, a phenomenon
which Stinchcombe (1965) termed the novelty disadvantage, and which later studies, such as those of
Freeman, Carroll and Hannan (1983) and de Brüderl, Preisendörfer and Ziegler (1992), confirmed in
different sectors and countries.
The most widely accepted explanations for early closures prioritize market factors.
financial and managerial challenges, such as insufficient demand, working capital shortage, and lack of...
planning (FERREIRA et al., 2012). One dimension receives much less attention: the legal one.
Contracts drafted without proper technique, verbal agreements with clients and suppliers, companies formed
no exit rules, confusion between personal and business assets, and lack of knowledge of
Regulatory obligations rarely appear as a stated cause of closure, although research shows that
Blackburn, Kitching and Saridakis (2015) with more than ten thousand small British businesses have
It is estimated that losses associated with legal problems in this segment amount to £9.79 billion annually.
Institutional economics offers a key to understanding this gap, as North argues.
(1990), the formal rules and the mechanisms for their application define the transaction costs, and these
Costs weigh more heavily on those with fewer resources to absorb them.
Given this scenario, this article investigates to what extent legal-contractual fragility can
to be understood as a mortality factor for micro and small businesses. Due to legal fragility-
In this context, "contractual" refers to the set of gaps in the formalization of commercial relations, in
Corporate structuring, regulatory compliance, and conflict resolution. The text is...
organized into nine sections. After this introduction and description of the methodology, the third section
presents data on business survival in Brazil and the United States. The fourth and fifth
The sections discuss the theoretical foundations of the contract as a governance structure and the limits of...
Informality. The sixth deals with corporate structuring, the seventh with regulatory compliance, and the eighth with informality.
of litigation and preventive mechanisms. The conclusion summarizes the implications of the study for
Businesspeople, legal professionals, and public policy makers.

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2 METHODOLOGY

The research is qualitative in nature and exploratory and descriptive in character, as proposed by...
Gil (2017), since it seeks to provide greater familiarity with a problem that is still little known.
systematized and describe the relationships between the legal dimension of management and the survival of
small businesses. The central procedure is the narrative literature review, a modality that,
According to Rother (2007), it lends itself to the description and discussion of the state of the art of a topic under
theoretical or contextual perspective, without the intention of exhausting the available sources by means of
systematic search protocol. The choice is justified by the interdisciplinary nature of the object, which
It cuts across institutional economics, the sociology of organizations, administration, and law.
Business, fields with quite distinct publishing and indexing traditions.

The selection of literature prioritized three sets of sources. The first brings together classic works and articles.
from transaction cost economics and contract theory, such as the works of Coase (1937),
Williamson (1979, 1985), Hart and Moore (1999) and North (1990), in addition to Macaulay's studies (1963)
and Macneil (1980) on relational contracts. The second covers empirical research on
Business mortality and legal problems of small businesses published in periodicals
with peer review or review by recognized research institutions. The third comprises doctrine.
Brazilian business law and economic analysis of law, represented by Forgioni (2015),
Zylbersztajn and Sztajn (2005) and Pinheiro and Saddi (2005). In parallel, an analysis was carried out.
documentation of the relevant legislation, with emphasis on the Civil Code and the Code of Civil Procedure,
Complementary Law No. 123/2006, Law No. 12.846/2013, and the General Law on the Protection of Personal Data
and Law No. 13.874/2019.

The quantitative data used are exclusively secondary and were extracted from publications.
official data from IBGE (2024), Sebrae (2021, 2026), the National Council of Justice (CNJ, 2025) and
US Bureau of Labor Statistics (2024). It should be noted that these databases are not directly
comparable. IBGE monitors employing companies registered in the Central Registry of
Companies, according to Sebrae, are expected to survive based on the decrease in registrations in the National Registry of
Legal entity with the Kaplan-Meier estimator and the US agency observes
private sector establishments. For this reason, the numbers are presented side-by-side only.
to highlight orders of magnitude and temporal patterns, and not to establish comparisons of
Performance across countries or between sources.

A second limitation concerns the very notion of mortality. Headd (2003), when analyzing data
Data from the U.S. Census Bureau showed that about a third of businesses that closed were
considered successful by its owners at the time of closing, which prevents treatment

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all closures are considered failures. Furthermore, official statistics do not record the cause of the...
closures, and opinion polls with business owners tend to capture immediate causes, such as
The article discusses the drop in sales or lack of capital, not the factors that caused or exacerbated them.
Therefore, it does not intend to demonstrate a statistical causal relationship between legal vulnerability and mortality.
and rather to build, from the convergence between theory, empirical evidence and positive law, a
a reasoned argument about the mechanisms by which this fragility increases the risk of
closing.

3. MORTALITY OF MICRO AND SMALL ENTERPRISES IN PERSPECTIVE EMPIRICAL

The survey "Demography of companies and entrepreneurship statistics," published by IBGE.
in 2024 with baseline data from 2022, it followed the cohort of newly established employing companies
In 2017, of the total, 76.2% survived the first year, 59.6% the second, 49.4% the third, and 42.3%
to the fourth and only 37.3% to the fifth (IBGE, 2024). In other words, almost a quarter of these
Companies disappeared before completing twelve months, and more than 60% did not reach the fifth month.
anniversary. The same study recorded the birth of 405,600 employing companies in 2022.
which corresponds to an entry rate of 15.3%, indicative of an environment in which the opening of
Business is intense, and staying in business is comparatively much more difficult to achieve.
The Sebrae technical report (2026) on the survival of Brazilian commercial companies between
For 2021 and 2025, a different approach was adopted. Based on approximately 19.7 million records of
Using the National Registry of Legal Entities and the Kaplan-Meier estimator, the institution calculated curves.
survival by size, taking the cancellation of the CNPJ (Brazilian tax ID) as the closing event. The results,
The data summarized in Table 1 reveal a marked difference between individual micro-entrepreneurs and
the other categories. While micro-enterprises and small businesses presented
Estimated five-year survival rates of 75.8% and 77.8%, respectively, among the
For individual micro-entrepreneurs, this index was 41.5%, and the median lifespan of
The number of downloaded records in this group was less than nine months.

Table 1 – Estimated survival of Brazilian commercial companies by size (2021-2025)

Size	Survival in 1 year (%)	5-year survival rate (%)
Individual micro-entrepreneur (MEI)	77.1	41.5
Microenterprise (ME)	94.3	75.8

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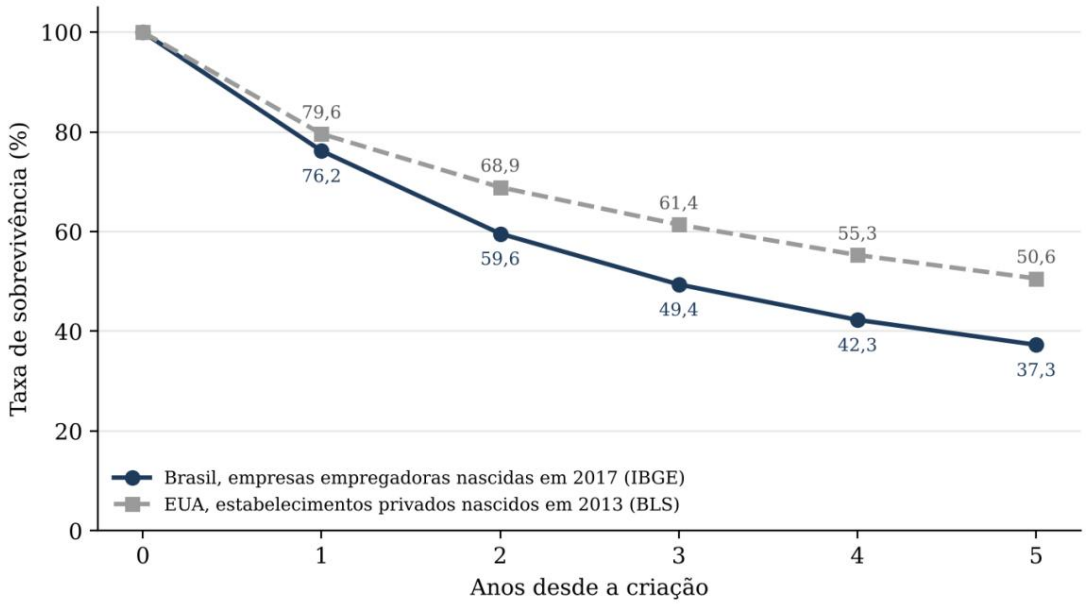
Size	Survival in 1 year (%)	5-year survival rate (%)
Small business (EPP)	94.2	77.8

Source: prepared by the author based on Sebrae (2026). Estimates using the Kaplan-Meier method.

The contrast between the IBGE figures and those of Sebrae stems largely from differences in
The universe and method already mentioned should not be interpreted as a contradiction. What both
What they indicate, in a convergent way, is that the risk of closure is concentrated in the first few years and
It decreases as the company matures. Data from the US Bureau of Labor Statistics (2024)
They follow the same pattern. Of the private establishments created in March 2013, 79.6%
They were still in operation one year later, 50.6% after five years, and 34.7% after ten years. (Chart)
1 reproduces the Brazilian and North American survival curves for the first five years and allows
To visualize the steepest slope of business losses in the initial period of activity, the pattern...
common to both series.

Chart 1 – Business survival rate in the first five years, Brazil and States United



Source: prepared by the author based on IBGE (2024) and US Bureau of Labor Statistics (2024). The series adopt distinct universes and methodologies and are not intended for direct performance comparison.

The concentration of mortality in the early years corresponds to what Stinchcombe (1965)
He described it as a disadvantage of novelty. For the author, new organizations depend on their

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Members learn roles that are not yet defined, so that relationships of trust are built with strangers and the formation of stable bonds with clients and suppliers who still they are unfamiliar with the company. Freeman, Carroll, and Hannan (1983) tested this hypothesis in populations from unions, semiconductor manufacturers, and newspaper publishers, and confirmed that the rates Organizational mortality rates decrease with age. Brüderl, Preisendörfer and Ziegler (1992), In studying companies founded in the Munich region, they added that the human capital of The founder and the initial characteristics of the organization, such as the amount of capital invested and its size, They significantly influence the chances of survival.

The elements pointed out by Stinchcombe directly relate to the subject of this article. To build. Building trust with strangers, defining roles, and establishing business relationships are precisely the... functions that well-structured contracts perform. A newly created company does not have neither accumulated reputation nor a history of relationships can replace formalization, in such a way that the legal quality of its initial agreements with partners, clients, suppliers, and financiers tends to carry more weight than it would in a consolidated organization. It is reasonable to assume, therefore, that contractual fragility is especially harmful precisely at the stage where the literature identifies the higher concentration of closures, a hypothesis that the following sections seek to substantiate. based on economic theory, available empirical evidence, and positive law.

Research into the stated causes of closures reinforces the need for caution. interpretative. In a survey released in 2021, Sebrae recorded that, among the entrepreneurs who Of those that had closed their businesses, more than 40% cited the Covid-19 pandemic, and 22% They pointed to a lack of working capital, and 20% cited low sales and a lack of customers (SEBRAE, 2021). Ferreira et al. (2012), when applying factor analysis to data from one hundred micro and small businesses in the city Studies conducted in São Paulo that ended in the first years of operation concluded that strategic factors, such as Lack of planning and difficulty in acquiring customers explained approximately 41% of the variance. compared to approximately 29% attributed to resource-related factors. None of these studies isolate the legal dimension, but also several of the immediate causes that are recorded, such as insufficient capital. Working capital problems can result from customer defaults without contractual guarantees, or from liabilities. unforeseen labor disputes or protracted litigation suggest that legal weaknesses are at play. often as a hidden aggravating factor beneath more visible categories.

4. The Contract as a Governance Structure and the Problem of TRANSACTION COSTS

Understanding the economic role of the contract starts with Coase's article (1937),

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which explained the firm's existence by the presence of costs associated with the use of the pricing mechanism. Negotiating, drafting, and enforcing agreements in the market consumes time and money, and the firm emerges. Organizing certain activities internally proves to be less costly than outsourcing them each time. operation. This intuition, which remained relatively marginal in economic theory for decades, It was systematically developed by Williamson (1979, 1985), for whom transactions should to be analyzed according to their attributes and allocated to governance structures capable of saving costs, ranging from market governance, suitable for standardized exchanges, to bilateral governance and trilateral long-term contractual relationships and, ultimately, the integration of the activity within the own organization.

Williamson (1985) bases his analysis on two behavioral assumptions. The first is... Bounded rationality, that is, the inability of agents to predict and process all information. relevant at the time of hiring. The second is opportunism, understood as the pursuit of Self-interest through the use of cunning, which includes omitting information and distorting commitments. and explore contractual loopholes. Combined with the attributes of the transaction, especially the specificity of the assets involved, the uncertainty and the frequency of exchanges, these assumptions explain why Seemingly simple business relationships can turn into sources of loss when not... They have adequate safeguards. The greater the specific investment made by one of the parties in The more a relationship there is, the greater your exposure to opportunistic behavior from the other person.

This theoretical framework finds immediate application in the reality of small businesses. A supplier a small-scale company that adapts its production line to the specifications of a single large client, a service provider who hires personnel to fulfill a specific project or a merchant which immobilizes inventory to fulfill an order involves making specific investments whose recovery... It depends on the continuity of the relationship. In the absence of clauses regarding minimum volume, the term of Regarding the validity period, notice period for termination, readjustment, and penalties for non-compliance, the weaker party is left... exposed to unilateral renegotiation of conditions, a situation that the literature refers to as the problem of Imprisonment. For a large company, the loss of a contract is a major event. manageable. For a small business whose revenue depends on a few clients, it may represent The disruption of the cash flow that sustains the entire operation.

The theory of incomplete contracts adds an important layer to this discussion. Hart and Moore (1999) examine the foundations by which, even among rational agents, specify anticipating all future contingencies of a relationship proves impossible or excessively costly, so the contracts remain incomplete and subject to renegotiation. The practical consequence is that the quality of a contract is not measured by its length. It's not about the text or the number of clauses, but about how it allocates decision-making rights and the...

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Adjustment mechanisms in the face of unforeseen events. For small businesses, this means that a
A concise instrument that clearly defines responsibilities, guarantees, and grounds for resolution.
Regarding price review criteria and dispute resolution methods, it tends to offer superior protection.
to a generic, extensive model that is poorly adapted to the operation.
Brazilian law has made this issue even more sensitive following Law No. 13.874/2019.
known as the Economic Freedom Law. The legislation inserted article 421-A into the Civil Code,
according to which civil and commercial contracts are presumed to be equal and symmetrical until the presence
of concrete elements that justify departing from this presumption, further determining that the
that the allocation of risks defined by the parties is respected and that contractual review only occurs when
exceptional and limited manner (BRAZIL, 2019). Forgioni (2015) already argued that contracts
Businesses follow their own logic, guided by the economic function of the business and by
The expectation is that the entrepreneur will act diligently and with knowledge of the market. Under this regime, the
A small business that signs an unbalanced contract has reduced chances of obtaining redress.
judicial, which shifts the decisive weight of legal protection to negotiation and drafting.
The economic analysis of law developed in Brazil reinforces the link between legal certainty and
business performance. Pinheiro and Saddi (2005) argue that the predictability of rules and the
The effectiveness of contract enforcement mechanisms determines the volume of credit available.
The cost of capital and the willingness of agents to make long-term investments. Zylbersztajn
Sztajn (2005) emphasize that organizations can be understood as bundles of contracts and
that the efficiency of these arrangements depends on the institutional environment in which they are implemented. On a large scale
Internationally, La Porta et al. (1998) showed, based on data from 49 countries, that legal protection
The rights granted to investors and creditors vary systematically according to the origin of the legal system and
weaker protective environments are associated with a higher concentration of the property of
companies, indicating that the quality of the rules influences how businesses are financed.
Small businesses, which rely on bank credit and supplier financing, feel the need.
The effects of an unpredictable contractual environment are felt in a particularly intense way.

5. Relational Governance and the Limits of Informality

It would be inaccurate to say that the absence of formal contracts necessarily leads to failure.
Macaulay's classic study (1963), based on interviews with businessmen and state lawyers.
A North American from Wisconsin revealed that a large part of the commercial relations were conducted without
detailed contractual planning and that businessmen rarely resorted to legal sanctions for
To resolve disagreements. Reputation, expectations of future business, and personal relationships between the

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The agents functioned as more efficient disciplinary mechanisms than the threat of prosecution.
judicial. Many of those interviewed even considered that insisting on detailed clauses
This could be interpreted as a sign of distrust and end up compromising the relationship.
intended to protect.

Macneil (1980) expanded on this perception by proposing the relational contract theory, according to which the
Economic exchanges are embedded in ongoing social relationships, governed by norms of solidarity.
Reciprocity and flexibility that written text cannot fully capture. For the author, the
A model of a discontinuous contract, entered into between strangers and exhausted in a single transaction.
It represents the exception, not the rule, in economic life. This contribution helps explain the persistence.
of informality in small businesses, whose relationships are often based on personal ties,
Family or community members. A verbal agreement between merchants who have known each other for years is not, under
This perspective, while irrational, represents a form of governance based on accumulated social capital.
over time.

The problem arises when these relationships are subjected to tensions that trust cannot overcome.
To absorb, such as a change in management at a client company, a liquidity crisis, or the entry of a competitor.
or the death of a partner. Poppo and Zenger (2002), when analyzing outsourcing relationships of
Information technology services, they found that formal contracts and relational governance
They function as complements, not as substitutes. More comprehensive contracts favored the
development of cooperative relationships, and cooperative relationships, in turn, contributed to that
the contracts were adjusted and fulfilled over time. The finding dispels the false opposition between
trust and formalization indicate that writing the agreement tends to preserve the relationship.
especially when unforeseen circumstances require renegotiation.

The frequency and impact of legal problems in small businesses were measured in a way...
comprehensive by Blackburn, Kitching and Saridakis (2015), in research conducted for Legal Services
Board, the regulatory body for legal services in England and Wales. Based on
questionnaire answered by 10,528 business owners with fewer than fifty employees,
The authors found that 29% had faced at least one legal problem in the twelve months.
previous ones. The most common involved commercial transactions with customers and suppliers, reported
by 19% of companies, followed by labor and tax issues. Among the most significant consequences
Among the reasons cited were revenue loss, mentioned by 25.6% of the affected companies, and customer loss.
or contracts, mentioned by 9.2%.

The same study reveals a fact of great relevance to the present discussion. More than half of
Companies that faced legal problems tried to resolve them on their own, and only about
One-fifth resorted to legal professionals, with accountants being consulted more frequently.

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frequency than lawyers (BLACKBURN; KITCHING; SARIDAKIS, 2015). Hadfield (2017) interprets such behavior as a symptom of a legal system whose services are They became excessively expensive and complex for most economic agents, far removed from of the needs of a globalized and dynamic economy. The informality of small businesses, From this perspective, it is less a cultural choice than a rational response to the cost of access to right, which shifts some of the responsibility to the design of institutions and the provision of Legal solutions proportionate to the size of the company.

6. Corporate Structure, Asset Autonomy, and Conflicts BETWEEN PARTNERS

The first legal decision for any undertaking is the choice of its organizational structure, and Its effects accompany the company throughout its entire existence. In Brazilian law, the entrepreneur... individual, a category that includes the individual micro-entrepreneur regulated by Law Complementary Law No. 123/2006, carries out the activity in its own name and is liable with its own assets. Personal liability for business obligations (BRAZIL, 2006). Limited liability companies, on the other hand, They allow for the separation between the assets of the legal entity and those of the partners, whose liability is... limited to the value of their shares, subject to the joint and several liability for the full payment of the share capital, in accordance with article 1,052 of the Civil Code (BRAZIL, 2002). The difference is decisive in the case of Failure, because it determines whether closing the company also compromises its stability. The entrepreneur's family finances.

Recent legislation has broadened the possibilities for limiting liability for those who undertakes alone. Law No. 13.874/2019 added to article 1,052 of the Civil Code the provision of that a limited liability company can be formed by one or more people, and Law No. 14.195/2021 determined the transformation of existing sole proprietorships with limited liability into single-member limited liability companies, regardless of any changes to their articles of incorporation. (BRAZIL, 2019, 2021). The same Economic Freedom Law introduced article 49 into the Civil Code-A, whose sole paragraph defines the patrimonial autonomy of legal entities as a lawful instrument. of risk allocation and segregation, established with the purpose of stimulating ventures for The generation of jobs, taxes, income, and innovation. The legislator thus recognized the separation. Heritage as a policy to encourage entrepreneurship, and not as a privilege.

This protection, however, is not absolute and depends on the behavior of the business owner himself. Article... Article 50 of the Civil Code, as amended by Law No. 13.874/2019, authorizes the disregard of Legal personality in cases of abuse characterized by misuse of purpose or confusion.

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patrimonial, and the latter is defined by the absence of a de facto separation between assets, evidenced, among other hypotheses, by the repetitive fulfillment of obligations by the partner. society and the transfer of assets without effective consideration. In consumer relations, paragraph § Paragraph 5 of Article 28 of the Consumer Protection Code allows for disregard whenever the legal personality represents an obstacle to the compensation of damages caused to consumers (BRAZIL, 1990). In small businesses, where the same individual usually accumulating the roles of partner, administrator, and financial operator, the lack of separation between accounts Personal and business expenses make the commingling of assets a real risk, capable of nullifying the... protection that motivated the choice of corporate structure.

Another frequent source of crisis lies in the relationships between the partners themselves. When partnerships are formed Businesses formed by friends or family are based on standardized social contract models. It is common for the document not to include specific provisions regarding the departure of partners, death, etc. disability, division of duties, compensation for work in the company, or evaluation criteria. Regarding quotas. When disagreements arise, the absence of these rules transfers the responsibility to the Judiciary. Conflict resolution. The Code of Civil Procedure governs the action for partial dissolution of a company. in articles 599 to 609 and establishes, in article 606, that, in case of omission in the articles of association, the judge will define as a criterion for determining assets, the net worth determined in the balance sheet. (BRAZIL, 2015a). The discussion about the value of participation, conducted in judicial proceedings with Forensic accounting can take years and drain resources that the company needs to continue operating. operating.

Corporate governance, traditionally associated with publicly traded companies, offers tools Useful for preventing these impasses when applied on a proportional scale. The Code of Best Practices Corporate governance practices of the Brazilian Institute of Corporate Governance, in its sixth edition. The edition is organized around five principles: integrity, transparency, fairness, and... accountability and sustainability, and directs its recommendations to organizations of different nature and size, and not just listed companies (IBGC, 2023). For small businesses, this This translates into simple measures, such as a shareholders' agreement with rules for exit and succession, and separation. between profit distribution and remuneration for work, the periodic rendering of accounts between the partners and the formal recording of relevant decisions. These are low-cost measures that reduce the The likelihood that personal disagreements will turn into threats to the continuity of the business.

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7. Regulatory Compliance and Integrity Programs

Proportional to size

The Federal Constitution, in articles 170, item IX, and 179, mandates preferential treatment and differentiated for micro-enterprises and small businesses, with the aim of simplifying and to reduce its administrative, tax, social security and credit obligations (BRAZIL, 1988). A Complementary Law No. 123/2006 implemented this mandate by establishing the National Statute of Microenterprise and Small Business and the Simples Nacional tax regime (BRAZIL, 2006). Even so, small business owners remain subject to a wide range of regulations. labor, consumer, health, environmental, tax, and data protection laws, whose Failure to comply results in fines, penalties, and liabilities that may exceed the financial capacity of the entity. business. Unlike large companies, which maintain legal and business departments. compliance, small businesses rarely have an internal structure dedicated to it. compliance with these standards, a limitation that, in the British context, Blackburn, Kitching and Saridakis (2015) associated the trend of small businesses facing legal problems without professional support.

Law No. 12.846/2013, known as the Anti-Corruption Law, clearly illustrates this risk. The legislation establishes the strict liability of legal entities for the practice of harmful acts against the public administration, national or foreign, regardless of size, and provides for a fine of 0.1% to 20%. of the gross revenue of the fiscal year prior to the initiation of the administrative process, excluding taxes (BRAZIL, 2013). Decree No. 11,129/2022, which regulates the law, defines in article 57 the parameters for evaluating integrity programs and determines that the size and the specific characteristics of the legal entity, including its status as a micro-enterprise or small business. small size, and, in article 67, authorizes the Comptroller General of the Union to establish a form of evaluation. simplified for these companies (BRAZIL, 2022). Article 23 of the same decree allows for a reduction of up to five percent in the calculation of the fine when the existence and application of the program are proven. integrity, which makes integrity not only an ethical requirement but also a factor of Financial risk mitigation.

Recognizing that integrity models designed for large corporations are rarely effective Adjusting to the reality of small businesses, Sebrae, in partnership with the Comptroller General of União published the booklet "Integrity for Small Businesses" (SEBRAE, 2015). The material proposes that the program relies on the commitment of management, demonstrated by example, and on a A code of ethics is disseminated to all employees. It also recommends a prior risk analysis. focused on identifying the company's specific vulnerabilities, such as its relationship with regulatory bodies.

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Machine Translated by Google
RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.2 2026 | Submission: July 9, 2026 | Accepted: August 11, 2026 | Publication: September 20, 2026

public and participation in bidding processes, followed by periodic training, accounting records
reliable internal controls and consistent application of disciplinary measures. The logic of
Proportionality permeates the entire document and demonstrates that compliance does not require specific structures.
too costly to produce concrete effects.

The protection of personal data follows the same guidelines. Law No. 13.709/2018 applies to any
natural or legal person who processes personal data, which encompasses almost all individuals.
of small businesses that maintain customer databases, payrolls, or contact lists
for commercial purposes (BRAZIL, 2018). To reduce the cost of compliance, the National Authority
The Data Protection Authority issued Resolution CD/ANPD No. 2/2022, which established a differentiated regime for
small-scale processing agents, with measures such as dispensing with the appointment of a supervisor,
the possibility of simplified registration of transactions and differentiated deadlines for certain
obligations, except in cases of high-risk processing (ANPD, 2022). Flexibility,
However, this does not eliminate the essential duties of security and transparency, the breach of which...
remains subject to the sanctions provided for by law.

To structure controls that are compatible with its size, a small business can resort to
Consolidated benchmarks, such as the internal control model of the Committee of Sponsoring.
Organizations of the Treadway Commission. In the 2013 version, this model organizes the control.
The internal structure is divided into five components, namely, the control environment, risk assessment, and activities.
control, information and communication, and monitoring activities, broken down into
seventeen principles (COSO, 2013). There is also a frequently overlooked market effect.
Decree No. 11,129/2022 includes among the parameters for evaluating integrity programs the
conducting appropriate due diligence for the hiring and supervision of third parties, which entails significant
Companies are requiring their suppliers to provide minimum evidence of compliance. The small business
Those who fail to demonstrate these risks being excluded from relevant supply chains.
with a direct impact on your revenue.

8. LITIGATION, COST OF CONFLICT AND PREVENTIVE MECHANISMS

The cost of resolving a conflict once it has arisen is especially high in Brazil. According to
According to the "Justice in Numbers 2025" report from the National Council of Justice, the Judiciary concluded...
In 2024, there were approximately 80.6 million pending cases, and 39.4 million cases were received.
new cases in the same period (CNJ, 2025). The average processing time for pending cases was
approximately four years within the Judiciary as a whole, reaching two years and nine months in the phase of
knowledge and five years and three months in the execution phase. For a large company, a credit

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A matter that was litigated during this period represents one accounting provision among many others.
For a small business, it can mean the inability to pay suppliers, employees, and...
taxes while awaiting the outcome of the lawsuit.

The relationship between the quality of dispute resolution mechanisms and the functioning of
The markets were examined by Djankov et al. (2003), who compared the procedures in 109 countries.
legal proceedings to evict a defaulting tenant and to collect on a bounced check. The authors
They found that procedural formalism was higher in countries with a civil law tradition and was
associated with longer expected process durations, less consistency in decisions, and perception
inferior justice and honesty of the system. The conclusions reinforce North's argument (1990).
that the costs of enforcing agreements are included in transaction costs. When enforcement
The judicial process is slow and uncertain; the economic value of a contract depends less on the possibility of obtaining it.
it to the court and more of its ability to prevent conflict and offer quick avenues for satisfaction.
of the credit.

Brazilian procedural law offers instruments that shorten this path when provided for.
in advance. Article 784 of the Code of Civil Procedure confers the force of an enforceable title.
extrajudicial to the private document signed by the debtor and two witnesses, which allows
allowing the creditor to initiate enforcement directly, without the need for a lengthy discovery phase.
(BRAZIL, 2015a). Law No. 14,620/2023 added to the provision that, in the securities
For documents constituted or certified by electronic means, any type of electronic signature is accepted.
as provided by law, the signature of witnesses is waived when the integrity of the document is...
conferred by subscription provider (BRAZIL, 2023). For the small business that sells on credit, the
Simply adapting the sales instrument to these requirements, combined with the provision of guarantees, alters
significantly impacts the position one will find oneself in in the event of default.

Consensual and private means of dispute resolution constitute another preventive front.
Law No. 9,307/1996 governs arbitration, and Law No. 13,140/2015 regulates mediation between private parties.
While the Code of Civil Procedure stipulates, in article 3, that conciliation and mediation are
encouraged by professionals in the justice system and admits, in article 190, that parties fully
capable of adjusting procedures to the specifics of the case through legal transactions.
procedural (BRAZIL, 1996, 2015a, 2015b). Arbitration, although swift and specialized, involves
Arbitrators' fees and administrative fees that may prove disproportionate in litigation.
of small value. Mediation and tiered clauses, which provide for direct negotiation and mediation.
Before any legal action is taken, they prove to be more suitable for the profile of small businesses, because
They preserve the commercial relationship and reduce the time of exposure to conflict.

International experience shows that legislators can also act on the root causes of conflict.

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Directive 2011/7/EU of the European Parliament and of the Council established measures to combat
Payment delays in commercial transactions, generally limiting the period to sixty days.
Payment between companies, unless expressly agreed otherwise and not manifestly abusive to the creditor,
and ensuring default interest and compensation for collection costs (EUROPEAN UNION, 2011). A
The initiative stemmed from the recognition that payment delays compromise liquidity and...
survival of small and medium-sized enterprises. In Brazil, Law No. 11.101/2005 provides, in articles 70 to
72, a special judicial recovery plan for micro and small businesses.
(BRAZIL, 2005), but its usefulness depends on the company having accounting records and
minimally organized contractual documentation, which confirms that legal prevention
It even conditions the restructuring options available during times of crisis.

9 CONCLUSION

This article started from the observation that the mortality rate of micro and small businesses is high in...
Brazil and other economies, and the prevailing explanations tend to favor factors

Marketing, financial, and managerial data. Data from IBGE (Brazilian Institute of Geography and Statistics), Sebrae (Brazilian Micro and Small Business Support Service), and the US Bureau of Labor.

Statistics confirm that the risk of closure is concentrated in the first years of operation.
a period in which, according to organizational literature, the company does not yet have a reputation, of
neither established routines nor stable relationships with clients, suppliers, and financiers.
A review of transaction cost economics and contract theory has made it possible to identify the
mechanisms by which legal weaknesses increase this risk. Poorly structured contracts expose the
small businesses are vulnerable to opportunistic business partners, especially when they carry out...
Specific investments or depend on a few clients. As the contracts are necessarily
Incomplete, what matters is not their extent, but the way they distribute risks, rights,

Decision-making and adjustment mechanisms in the face of unforeseen events, an aspect aggravated in Brazil by the legal presumption.

parity in business contracts.
The analysis of relational governance showed that personal trust, so prevalent in small businesses, is crucial.
Business transactions should not be seen as opposed to formalization. Evidence suggests that contracts and
Trusting relationships reinforce each other, and writing the agreement tends to preserve that relationship.
precisely during moments of tension. The British research examined also revealed that
Legal problems are frequent, cause loss of revenue and customers, and rarely resolve issues.
professional treatment, which suggests a repressed demand for accessible legal solutions.
In the corporate sphere, it was found that recent Brazilian legislation has broadened the possibilities for
Asset separation, even for those who are sole proprietors, but this protection can be

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The conflict arises when the business owner mixes their personal finances with those of the company.
Partners, in turn, become particularly destructive when the articles of association are silent on the matter.
to the rules for exiting and determining assets, transferring to the Judiciary decisions that could have been made by the courts.
decisions made consensually at the time the company was formed.

Regulatory compliance has proven to be another point of vulnerability. Standards such as the Law
Anti-corruption laws and the General Data Protection Law affect companies of all sizes.
even though the regulations provide for simplified treatment for small businesses. A
Integrity, in addition to reducing exposure to sanctions, has become a requirement for access to
supply chains, as large contractors need to demonstrate diligence in choosing their suppliers.
business partners, which can turn compliance into a competitive advantage for those
can prove it.

The high level of litigation and the length of legal proceedings in Brazil make prevention economically unproductive.
more rational than reparation. Instruments such as the extrajudicial executive title, the guarantees
Contractual agreements, mediation, and tiered dispute resolution clauses reduce the time...
during which the small business is exposed to conflict and they preserve the liquidity necessary for
The continuity of operations. Even judicial reorganization, the last resort in the face of a crisis, depends
Organized documentation is necessary to make it feasible.

It is important to acknowledge the limitations of the study. Official statistics do not record the cause of
Regarding closures, the methodologies used are distinct, and not every closure represents...
failure. Therefore, it was not stated here that legal weakness is the main cause of mortality.
It is not a business risk factor, but rather an inherent risk factor and an aggravating factor for more visible causes.
such as lack of working capital and loss of customers. Future research could test this hypothesis.
through surveys that directly investigate the degree of contractual formalization of
Active and closed companies.

The practical implications affect three groups. For business owners, preventive legal structuring...
It should be treated as part of management from the opening of the business, and not as an expense to be avoided.
For legal professionals, the challenge is to offer services commensurate with the size and scope of their work.
small business budget. For policymakers, legal training.
Basically, the dissemination of appropriate contractual models and the encouragement of consensual means of dispute resolution are key.
Conflict resolution can be integrated into actions to support entrepreneurship, alongside credit and...
managerial qualification, contributing to a greater number of companies exceeding the years
initials of greater vulnerability.

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Machine Translated by Google

Year VII, v.2 2026 | Submission: July 9, 2026 | Accepted: August 11, 2026 | Publication: September 20, 2026

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