Policy Overview

Peer to Peer Lending Platforms as Tools for Financial Inclusion in Uruguay

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1. Introductory Overview

For over a decade now, technology-based solutions have come to play a major role in all industries and across countries. Innovation has been one of the main drivers behind the increased productivity of markets, business growth, and economic dynamism (World Bank, 2015). Digital innovation and the vertiginous development of Fintech companies are evidence of such drivers, leading to better competitiveness, new and more accessible products as well as game-changing business models.

More often than not, the Latin American region has lagged behind on these world trends. But in the case of Fintech, the region has experienced impressive growth rates in the last few years and has, in many cases, made efforts to lead local markets on par with competitors from developed economies. For instance, collectively the Latin American and Caribbean technology-based finance companies made $ 7.6 million more than Canada's market in 2016, recording growth rates of 209 percent year-on-year from 2015, well above the 62 percent and 23 percent rates observed by the Canadian and US alternative finance markets respectively (Ziegler et al., 2017).

Collectively the Latin American and Caribbean technology-based finance companies made $7.6 million more than Canada's market in 2016, recording growth rates of 209 percent year-on-year from 2015

Within the region itself, the Uruguayan economy is favorably poised to foster the development of the Fintech market, and efforts from major market players point strongly towards this. Despite its small population and limited availability of capital, Uruguay is known as a technology service provider par excellence due to its high levels of technology penetration and literacy (US Commercial Service, 2017).

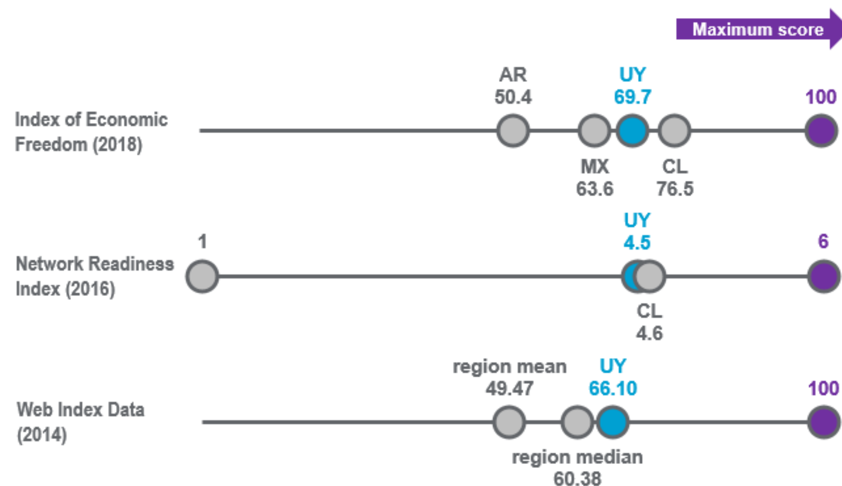
Grupo Radar's 2017 data shows 97 percent of Uruguayan households have a computer or smartphone, 71 percent of households have Wi-Fi, and 88 percent of the population has internet access. The Ceibal Plan (One Laptop per Child initiative in Uruguay) was one of the major contributors to this. Smartphone penetration is 20 times higher than five years ago, reaching 2.3 million users (roughly 67 percent of the population). E-commerce engagement is another activity on the rise. In October 2017, Uruguayans spent about $ 63 million on online e-commerce (El Observador, 2017).

UNCTAD (2017) positions Uruguay at number 6 in the Top 10 B2C E-Commerce Index 2017 in the Latin American and Caribbean region and according to a new study by a big retailer in Uruguay, e-commerce penetration amounts to 3.3 percent in the retail industry, growing about 25 percent annually, a figure above average within Latin America (El País, 2017).

According to the World Economic Forum's Network Readiness Index (NRI), Uruguay was ranked at 43 among 139 countries, with a value of 4.5 on 7. It trails only slightly behind the regional contemporary Chile, which comes in at 38 with a 4.6 score. In fact, it is the second highest ranked Latin American nation, ahead of other nations such as Brazil (72nd place), Mexico, (76th) and Argentina (89th) (World Economic Forum & INSEAD, 2016).

Similarly, data from the Web Index (2014) shows Uruguay second to Chile (rank 24) at rank 27. At a value of 66.10 (see Figure 1) it sits well above the region's mean (49.47) and median (60.38) levels.

Figure 1: Uruguay's position in international indexes



Source: Authors, based on data from cited indexes

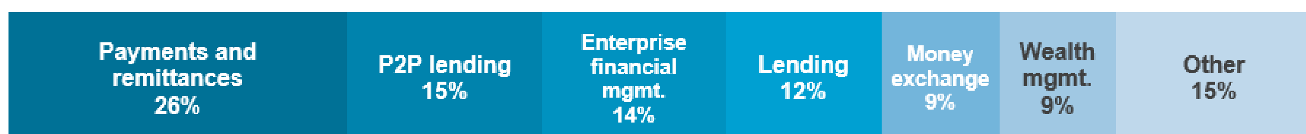
1.1 The Fintech ecosystem in Uruguay

Although Uruguay operates as an open market, has stable economic and legal conditions and also has well-established digital infrastructure, the Fintech environment in Uruguay still is nascent. Out of 207 financial startups in the Latin America and the Caribbean region, Uruguay accounts for only 1.8 percent of the Fintech startup market (IDB & Finnovista, 2017).

This is on account of two factors. Firstly, as is common to most countries in the region, there is a lack of a specific regulatory framework that provides the sector with the legal soundness needed to attract new capital and grow. The fact that most Fintechs have been operating in a legal vacuum has left them not only with a great level of uncertainty that can cripple operations and capital flow, but also prevents them from having leverage in what is a much-needed dialog with the regulator and traditional finance intuitions. Secondly, in small economies such as Uruguay, local growth potential is limited and can only go so far. Local Fintechs are cognizant that their growth will be constrained by a small target market. However, according to local actors, given the flexible and lean nature of technology-based startups, they have the ability to expand beyond local markets without substantial operational changes and investments, provided regulation in the target countries allows it.

Despite these two factors, Fintechs in Uruguay have been developing steadily, albeit a bit slowly. As of May 2018, the Uruguayan Chamber of Fintech has registered 34 Fintechs operating in Uruguay. 15 percent comprises the local Peer-to-Peer lending market, the second biggest segment after Payments and Remittances (Figure 2).

Figure 2: Uruguay Fintech Ecosystem



Source: Authors, with data provided by the Uruguayan Chamber of Fintech (May 2018). Note: "Other" category includes: Financial education and savings (6 percent), Crowdfunding (6 percent), and Bitcoin (3 percent).

The Peer-to-Peer lending (P2PL) segment has been operating in Uruguay since 2015 when Prezzta first started operations, followed by TuTasa, Inversionate, and Socius in 2016. As of June 2016, these platforms have collectively facilitated 2890 loans for a total of $ 3.5 million, and have registered more than 2000 investors.

Off late, P2PL platforms have gained the support of alliances and institutions such as the newly created (March 2017) Uruguayan Chamber of Fintech, which has helped the market gain visibility with the media, regulators and the public. Despite these advances, there remain important roadblocks in terms of regulatory framework and financial education. With a market where an increasing number of industry associations (such as the Uruguayan Fintech Chamber), start-up incubators, international alliances (such as the Fintech Iberoamerican Alliance) and government supported initiatives (such as the National Research and Innovation Agency) are working together to foster Fintech growth and development in an innovation-based culture, the groundwork is underway for these roadblocks to be overcome.

2. Key Issues in P2PL Governance

2.1 P2PL within the alternative finance market

P2PL is part of the new and fast-paced growing 'alternative finance market'. Although precise definitions of the concept vary slightly depending on jurisdiction, alternative finance can be defined as intermediation or mediation through online channels between funding, demand, and supply (Wardrop et al., 2016). Within the alternative lending market, three broad types of platforms can be identified: P2P lending (either consumer, business or real estate P2P lending), balance sheet lending (either consumer or business balance sheet lending) and crowdfunding (donation, reward, equity, among others) (Wardrop et al., 2016).

Figure 3: Alternative finance models

Alternative finance model	Definition
Marketplace/P2P Consumer Lending	Individuals or institutional funders provide a loan to a consumer borrower
Balance Sheet Consumer Lending	The platform entity provides a loan directly to a consumer borrower
Marketplace/P2P Business Lending	Individuals or institutional funders provide a loan to a business borrower
Balance Sheet Business Lending	The platform entity provides a loan directly to a business borrower
Marketplace/P2P Property lending	Individuals or institutional funders provide a loan secured against a property to a consumer or business borrower
Real Estate Crowdfunding	Individuals or institutional funders provide equity or subordinated-debt financing for real estate
Equity-based Crowdfunding	Individuals or institutional funders purchase equity issued by a company

Source: Authors, based on data from Ziegler et al. (2017)

P2PL refers to the kind of financial arrangements that pair individual lenders with investors that could be either individual or institutional, usually providing a credit score for each possible loan thus reflecting its risk profile.

In the US, the predominant alternative finance model is institutional-based marketplace lending, where institutional investors act as counterparts of individual borrowers. In the UK, P2PL is mostly characterized by the individual-based marketplace lending model, where individual investors are the ones funding individual borrowers (FSB & BIS, 2017).

In Uruguay, the number of Fintech platforms is still quite limited and resembles the case of the UK, where individual borrowers dominate the market under a P2PL-based scheme.

Crowdfunding platforms are those where investors provide mostly donations, rewards, or equity-based financing to either individuals or Small and Medium Enterprises (SMEs). This model currently has the third highest market value in the country (Ziegler et al., 2017).

2.2 Fintech credit market benefits and risks

When developing a framework for the Fintech credit market for supervisory and regulatory authorities, the Financial Stability Board (2017) notes the following potential risks and benefits.

Figure 4: Potential benefits and risks of the Fintech credit market

Potential benefits	Potential risks
More diversified and resilient financial system	More difficult for supervisors to monitor a less transparent market
More competitive borrowing rates	Reduction of lending standards
Improve efficiency of incumbent banks	More pro-cyclical credit provision
Wider spectrum of alternative products for investors	Untested credit models
More diversified sources of credit	Higher operational risk such as cyber risk
Lowering systemic risk of banking sector	Lowering traditional financial institutions' margins making them more vulnerable
Constraining contagion	Traditional financial institutions more inclined to increase their risk profile
Greater inclusion	
Improve overall competition in credit markets	

Source: Authors, based on data from Financial Stability Board (2017)

Potential benefits and risks detailed in Figure 4 would apply to different degrees depending on several factors, including the development stage of the market and current regulatory frameworks, among others. As such, there is mixed evidence of Fintech credit providing more competitive borrowing rates. It is also not clear whether P2P or crowdfunding are lowering the credit concentration in the traditional banking sector, since there are cases such as

the US market where traditional banks function as main funds suppliers for these platforms, hence countering the benefits of diversification (Financial Stability Board, 2017).

In addition, the potential for predatory lending and that for causing harm to already marginalized populations needs to be analyzed. The fact that a big portion of the alternative finance target market comprises financially, and educationally vulnerable populations calls for the regulatory entity's close supervision. In this context, the Uruguayan market is still in a phase where platforms are very conservative and work only with those associated with relatively lower risk within the population which means they reject around 60 percent to 85 percent of the loan applications they receive. A fast, unsupervised growth could eventually tempt market players to take-on higher-risk applications in exchange for substantially higher interest rates, potentially undermining the sector's capacity to empower the low-income population. In this regard, a regulatory framework that allows for the sector's growth under conditions of healthy competition that counter predatory lending, will not only benefit the financial sector as a whole but also the underbanked population.

The Uruguayan market is still in a phase where platforms are very conservative and work only with those associated with relatively lower risk within the population which means they reject around 60% to 85% of the loan applications they receive

The alternative finance market has the potential to address several other socio-economic issues present in the region such as financial empowerment of low income populations, gender discrimination with regard to access to financial services, and the development of SMEs. As an illustration, P2PL platform algorithms consider all demographic variables when building up the credit score of a borrower, gender being one of them. This usually plays out in favor of women since they are usually associated with lower default rates. Nevertheless, at the moment of choosing a loan request to finance, if gender information is provided, the investor's selection could be biased and lead to discrimination.

Platforms that do not ask or display to the lender the applicant's gender as input for loan selection can prevent gender discrimination being an issue for the credit market. Regulatory frameworks should consider this aspect in order to boost the platform's potential to generate an even playground for all segments of the population (UN Women, 2016).

In terms of SMEs, alternative finance can play a key role in leveling the competitive ground and boosting their growth potential. Lack of collateral, historic performance records, among other things hinder the willingness of traditional financial institutions to finance and support this segment. Alternative finance can not only pair SMEs in need of capital with investors willing to take on their risk, but it can also provide more efficient and inexpensive operational solutions that can have a positive impact on the SMEs profitability and sustainability.

2.3 Fintechs and the challenge of financial inclusion

As defined by the World Bank (2018), "financial inclusion means that individuals and businesses have access to useful and affordable financial products and services that meet their needs – transactions, payments, savings, credit and insurance – delivered in a responsible and sustainable way. Access to a transaction account is a first step toward broader financial inclusion since it allows people to store money as well as to send and receive payments."

People who are excluded from the formal financial system may face difficulties accessing credit loans, saving well in a safe way, and may encounter mobility issues due to the lack of electronic payment capacity. Numerous studies have proven that financial inclusion is not gender neutral, and that the need to address financial access especially for women is vital. Worldwide, there is a significant gender access gap to financial products and services, with 58 percent of women owning an account in a formal financial institution, compared to 65 percent men (IPA, 2017). In Uruguay, this gap is relatively higher, with 41 percent women owning a transaction account compared to 51 percent men (World Bank, 2014).

Data from 2014 suggests Uruguay has still a relatively low level of 'bancarization', with less than 50 percent of the adult population owning a transaction account. Nevertheless, when compared against data from 2011, the Global Findex shows that Uruguayan financial inclusion levels have doubled since (24 percent vs 45 percent) (World Bank, 2014).

According to the Center for Global Development, one of the factors hindering Uruguay's financial inclusion efforts is the absence of cooperation mechanisms between the public and private sector, a weakness shared by its neighbors, Argentina and Paraguay. Uruguay also lacks a formal financial literacy strategy, although the Central Bank of Uruguay (CBU) has developed some initiatives such as the education program "BCU Educa" and a web portal to provide information on the financial system's products and services (Rojas-Suarez & Pacheco, 2017).

Uruguay is certainly addressing this issue and is even discussing new laws to foster entrepreneurship. An important game changer was the passage of the Financial Inclusion Law in April 2014 (Law 19.210). The Law established a series of measures to boost citizens' financial inclusion, including universalization of rights, tax reductions, and better, more efficient payment systems. The Law aims to provide universal access to financial services and encourages the use of electronic payments. The Law mandates that salaries and other wages must be paid by electronic transfer via financial institutions. Since September 2017, a new decree (Decree No. 106/017) to the Law came into force that allows the electronic transactions between financial intermediaries and money issuers by different means, including mobile phones and websites. The Uruguayan Chamber of Fintech lauded this change as a favorable step towards innovation in the financial sector, allowing interoperability between Fintechs and traditional players.

Given that these are technologically-oriented companies with innovative business models, the Uruguayan Chamber of Fintech maintains that Fintechs are well-positioned to address two of the main obstacles that prevent further financial inclusion: limitations on account of the lack of offerings and products tailored to specific segments, and high operational costs that this would imply for traditional banks. Their technological focus is an asset in not only reaching wider segments but also when targeting specific cohorts like millennials and SMEs (Olivera, 2017).

The president of the Uruguayan Chamber of Fintech Sebastián Olivera, (Olivera, 2017), states that Fintechs promote universal access to financial services by:

1. Enabling people to save in a safer and more convenient manner
2. Enabling lower income population to access government subsidies and benefits in an easier way
3. Allowing entrepreneurs and SMEs to access the credit they need to start small business and reach new markets
4. Expanding the usage of financial services for inexperienced consumers
5. Reducing geographic limitations through technology use (e.g. mobile phone use)

Overall, the case is made for P2PL, as well as other alternative finance platforms, to play a key role in closing socio-economic gaps in the current financial market and to promote financial inclusion. A better-served, more

empowered and financially educated population can be easily the result of a well-developed Fintech market. Uruguay has a lot to gain, having a significant portion of the adult population still fully, or partially financially unserved. Initiatives such as Plan Ceibal that has facilitated internet access to low-income individuals and the Financial Inclusion Law directed at providing universal access to financial services, have been forces playing in favor of the platformization of financial services. Nevertheless, potential risks posed by the Fintech industry have to be placed on the table as well. Aspects such as transaction transparency, increased systemic risk, higher operational risks and data breaches need to be carefully addressed and treated in order to ensure a healthy industry development.

In conclusion, when considering P2P lending as an alternative finance market, its immense potential should not only be viewed in terms of its benefits for those marginalized by the traditional banking sector but also seen for the substantial set of challenges it poses in terms of regulatory risk and oversight. In this sense, the possibility to build a regulatory framework that grants guarantees to market players and consumers but at the same time does not fail to enable the industry's growth, innovation, and development will be key moving forward.

3. Regulatory Frameworks: Uruguay and the Region

3.1 The Region

In terms of current financial regulatory structures, the region is still lagging behind the sector's development. A 2017 survey found that only 9 percent and 19 percent of respondents (comprising approximately 126 platforms) consider current regulatory frameworks to be adequate within equity-based and debt-based[1] platforms respectively (Ziegler et al, 2017). Furthermore, proposed regulation is deemed adequate by 25 percent and 43 percent of debt-based and equity-based platforms respectively. This shows an improved scenario to the one found the year before in Wardrop et al. (2016) where only 17 percent perceived proposed regulations as appropriate.

In the region there are only a handful of governments, such as the Mexican (Law DOF 09-03-2018 or Fintech Law) and Brazilian (Resolution 3954), that have taken actions towards facilitating market growth and establishing industry specific regulatory frameworks. These are not only focused on control and compliance requirements but also address aspects such as tax incentive structures and other frameworks aimed at boosting the Fintech market (e.g. regulatory sandboxes, innovation hubs and funding support). On this front, Uruguay is catching up, having recently released a set of the main guidelines to be used by the Central Bank of Uruguay to develop the new regulation (BCU, December 2017).

Besides the financial aspects to regulate, data protection and governance is another important policy consideration given that Fintech companies provide essentially a data-based service. Many influential financial authorities worldwide recognize data privacy and data security as top risks emanating from financial technologies and innovation. The European Banking Authority (EBA), for instance, perceives a growing trend of alternative methods of consumer data usage within financial institutions (EBA, 2017). This includes combining their private internal gathered data from consumers with publicly available sources like social media. EBA identifies several risks associated to these innovative practices (although with different grades of likelihood and severity), such as: uninformed consent on data use, risk of data misuse, erroneous data inputs leading to incorrect decisions, consumers "locked-in" by their current provider because their data is not assessable to other financial institutions, and information security risks.

1 Equity-based alternative finance relates to funding channelled via the platform directed to start-ups or entrepreneurs in exchange for shares of participations in the respective endeavours. Investors will mostly benefit from investing in successful enterprises that increase the value of these shares. However, if the company fails, shares lose value and investors face a deterioration of their investments. The investment pay-off of debt-based alternative finance products comes from interest payments on the loan provided via the platform.

In Latin America, there is a broad range of situations regarding data protection regulations, ranging from countries where laws are well-developed to others where they are non-existent (as in El Salvador and Panama) or currently underway. As of 2017, only 10 countries (Argentina, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, Mexico, Nicaragua, Peru, and Uruguay) have any kind of privacy and data protection laws in place (Velasco, 2016). Argentina, Mexico, and Uruguay, are in the list of countries that have passed some of the most advanced legislation, and which have a fully independent entity created to supervise its compliance and apply sanctions as needed.

FinTech companies looking to grow their business beyond national borders will also need to be compliant with world regulations currently in place.

The fast and growing development of technologies in all spaces has increased the need for Latin American countries to update regulations, not only in all aspects of commerce and finance but also in terms of data protection and privacy. Lagging behind could eventually imply heavy repercussions such as the loss of commercial opportunities with the Eurozone and other developed regions. Fintech companies looking to grow their business beyond national borders will also need to be compliant with world regulations currently in place. Failure to do so will certainly imply losing business opportunities or even having to pay huge fines.

Governments of these countries are working towards effective regulations, mostly following the directives proposed by the European General Data Protection Regulation (GDPR), as it is likely that this regulation will end up being the base for regulations at a world level. However, there is still a great deal to cover, being that as to this date, only two Latin American countries, Argentina and Uruguay, are certified by the EU as having the adequate level of data protection, including during data transfers.

Taking into account the aforementioned, the three biggest and most relevant markets in the region (Mexico, Chile and Brazil) were selected in this report to provide a valid benchmark to compare against the Uruguayan regulatory framework for alternative finance online platforms.

3.2 Mexico

Mexico has shown an annual growth rate of 14.1 percent in internet transactions for the period 2010 – 2016, which translates into a total of 29.7 million users by the end of 2016. Further, a survey conducted with more than 2000 people, showed that 68 percent of them had used online banking in the past 12 months, and only 7 percent of non-users stated the lack of internet access as the reason for non-use (Asociación de Internet.mx, 2017).

The increase in use of internet-based financial services (both traditional and non-traditional) is aided by the high and surging rates of internet penetration which went up from 45 percent in 2012 to 70 percent coverage of the population by 2016 (Asociación de Internet.mx, 2017 May).

This suggests that both Mexican infrastructure and consumer trends have paved the way for internet-based financial platforms to develop, prosper, and reach unbanked populations. The need to establish a sound and transparent regulatory framework that assures certainty and confidence in Fintech market players has therefore been considered key by regulatory authorities. In March 2017, the Law for the Regulation of Technology-based Financial Institutions (LRTFI) was passed in Mexico (see Annex 1 for more detail) with the following objectives (Law DOF 09-03-2018):

1. Contribute to the country's efforts towards financial inclusion
2. Generate a regulatory framework with flexibility such that it allows for the emergence of new products, services and business models, without necessarily having to comply with all regulatory burdens at the initial stages
3. Work under a sandbox structure, providing temporary authorizations to innovative platforms
4. Increase market competition and reduce market cost of financial products and services
5. Update the current regulatory framework on traditional finance (Credit Institutions Law, Protection of the Financial Services User Law, Federal Law on Prevention and Identification of Illegal Funding Operations) in order to make it compatible with the new law and market
6. Eliminate the legal vacuum that prevents the supervising authority from taking action towards prevention and detection of illegal operations that might fall under the Federal Penal Code

In terms of data protection regulations, Mexico currently has a "Federal Law on the Protection of Personal Data held by Private Parties" (LFPD, in Spanish) as well as a specific national data protection regulator, the National Institute of Access to Information and Data Protection (INAI, in Spanish). Despite Mexico's proximity to the United States, it draws heavily from European law, and in some cases especially, from Spanish law.

There is one characteristic of the Mexican Federal Law that sets it apart from its other Latin American counterparts, in that it applies only to "private parties" and not to governmental entities. Nevertheless, there are other laws and articles in place that regulate data protection in the public environment such as the "Law on General Transparency and Access to Public Information" implemented in May 2015. In January 2017, a General Law for the Protection of Personal Data in Possession of Obligated Subjects came into force. Additionally, in October 2018, Mexico became the second Latin American country to accede to the Council of Europe's Convention 108 and its additional protocol (DLA Piper, 2019).

3.3 Chile

Despite the relevance of Chile's Fintech market in the region, both in terms of market volume -- accounting for almost one third of the Latin America and Caribbean market (Ziegler et al., 2017) – as well as in number of operating platforms, its beginnings have been nothing but bumpy. Right after starting operations in 2012, the P2PL platform, Cumplo, was suspended by the regulator on claims of violating Chile's banking law (The Economist, 2012).

Although the Central Bank of Chile (CBC) acknowledges the relevance of this growing new market, it has taken a conservative stance towards the sector and has not yet provided guidelines or a clear framework under which Fintech can develop (Madeira et al., 2017). In fact, steps taken in this direction so far are overcautious. In late 2016, the Chilean Financial Stability Board stated that a group be created with the purpose of evaluating the development of a regulatory framework for the crowdfunding market, but still there has been no tangible output for Fintechs to take as guidelines (Abarca, 2018).

The lack of regulatory guidance and the non-committal stand of the government regarding Fintech could be the reason why Chile has dropped in market relevance within the region, going from holding almost half of the market in 2015 to a less relevant, albeit still substantial (23 percent), market by 2016 (Ziegler et al., 2017; Wardrop et al., 2016).

In terms of personal data protection, Chile is regulated by Law No. 19.628 (1999) called "Protection of Private Life" and its update, Law No. 19.812 from 2002. On March 2017, the Government of Chile signed a draft of the "Law on Protection of Personal Data" (Bulletin 11.144-07) emphasizing the need for this change due to the challenges and

opportunities of the new digital economy, as well as the need to “balance the interests of individuals and the free circulation of information” (Rodríguez, 2016).

The draft stipulates the creation of an authority – the Personal Data Protection Agency – to regulate data protection, and for better and specific regulation on the international transfer of personal data, in order to position Chile as a world center for safe information treatment. Although created with parameters in line with the Organisation for Economic Co-operation and Development (OECD) requirements, privacy experts in Chile are still not clear as to the extent to which this new Law will comply with EU standards. One of the reasons being that the new controller created will not possess total autonomy from the government, a major issue in European Law.

3.4 Brazil

The current alternative finance market in Brazil is characterized by its extraordinary growth rate (Ziegler et al., 2017), despite the fact that until 2017, Brazil lacked a specific regulatory framework for this market.

Under the current regulatory framework (Law No. 4.595/1964), for any alternative finance institution to operate, it has to be licensed by the Brazilian Central Bank (BCB) – Resolution 4.122/2012 – or act as correspondent or associated company to an authorized financial institution. Given that compliance with Resolution 4.122 is usually too complex and burdensome, Fintechs usually opt to associate with a traditional finance institution and offer its services through it, following Resolution No. 3.954. Furthermore, as per Resolution 2.921/01, through the so called “linked active operations” traditional finance institutions can open credit lines based on funding provided by other agents without affecting their risk profile and capital requirements.

This has played in favor of the interaction between Fintechs and traditional financial institutions and ultimately the development of the alternative finance market in Brazil. Although the dynamics might not seem as straightforward, from an operational point of view “linked active operations” directly connect funds provided by investors to those requested by the applicant, maintaining the operational scheme of a P2PL platform.

Given the nature of the alternative finance ecosystem in Brazil, the BCB has issued a new Law – Regulation No. 588 – specific for the crowdfunding market (see Annex 2), aiming to regulate equity investments in SMEs that are made through digital platforms. Although this sandbox-like framework covers a very specific market – equity crowdfunding for SMEs – it sets the ground for further regulatory developments.

In terms of data privacy, Brazil does not yet have a specific privacy law yet. As many other countries, legislation at this point is based mostly on the inherent rights provided by the Constitution, the Consumer Protection Law, the Civil Code and the latest Law on Internet Civil Rights (Law No. 12,965/14). This Law, commonly known as the Internet Law, which was passed in April 2014, prohibits the sharing of personal data online without the users’ express consent. Historically, Brazilian regulations are very sectoral, with different rules for financial services than that from say the health sector. In the internet era, keeping the sectors separated has proven to be almost impossible, and therefore, Brazil began drafting the new Personal Data Protection Law modeled after the GDPR. The Law is currently under review and it may be approved in 2018.

With a small banking system that is highly concentrated in a handful of banks, frictions with the traditional banking system were faced by P2PL entrepreneurs from the beginning

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3.5 Uruguay

While there are differences in market volume, the Uruguayan case is not very different from the Chilean experience; a rocky start with an undefined future. In 2015 and 2016, the current market players started their operations without a clear legal framework, and although the attention the market is getting has changed considerably from two years ago, the regulatory landscape has barely changed. With a small banking system that is highly concentrated in a handful of banks, frictions with the traditional banking system were faced by P2PL entrepreneurs from the beginning. Currently, the market players do not perceive the traditional banking system as institutions working against them, but they have not reached a point where they may see collaboration among them as a potential opportunity.

Uruguay has a regulatory framework – Law No. 15.322 on Financial Intermediation – that applies to the traditional finance sector, with complex and costly authorizations and compliance processes, when seen from the perspective of a small company in its first years of operations. Besides being prohibitive from an operational point of view, a case is made that the Law, while providing clear guidelines for all financial intermediaries like banks and other traditional institutions, leaves P2PL–while properly defined as performing financial mediation – in a regulatory void.

Nevertheless, the Central Bank of Uruguay followed the development of the local P2PL market, and by the end of 2017, circulated a series of 10 points to be considered as the pillars for the future regulation. This allowed market players to start evaluating how they could comply with upcoming regulations. The CBU stated that main aspects of the regulation draft would consider:

1. The supervisor must receive real time data or periodic data regarding the project's financial health, default information, financial statements and annex
2. Supervision powers to be granted both *in situ* and on line
3. Regulation must provide definition of all illegal conduct that might take place in the business
4. Provide a regime of both monetary and non-monetary sanctions
5. Prohibition to the online platform to manage client's funds
6. Prohibition of "automatic matching"
7. Counterpart identification before funds are transferred, for which counterpart data will have to be provided before the deal is closed
8. Establishment of both borrowing and investment limits to clients
9. Only debt-based agreements are planned to be allowed, excluding the equity-based market
10. Prohibition of credit risk distribution among investors

The Uruguayan Central Bank has also proposed the creation of a new figure under the title of "Peer to Peer Lending Administration Companies", which is applied to technology platforms offering financial mediation. A key specification being that they will not be allowed to manage or control clients' funds in any way, and will have pre-established limits on the maximum loan amount they can sanction.

P2PL platforms have shown a proactive stand, and when interviewed for this report, all of them stated not only being compliant with standard financial regulations (Anti-money Laundering Law No. 18.494, financial inclusion Law No. 19.210 and Law No. 18.212 of interest rates and usury regulation) but going beyond those in order to be better prepared for what they could expect to be the future regulatory framework.

Up until 2018, with the exception of the P2PL platform TuTasa, which the supervisory entity deemed non-compliant, the rest of this new market was able to work with no major hiccups despite the lack of regulatory certainty. In 2016, TuTasa had to suspend operations as required by the CBU. The business model implemented by TuTasa was different from the rest of the Uruguayan P2P platforms in the sense that it had set up a trust under

which all lending, marketing, and debt collection activities were to take place. The platform offered a contingency fund, fuelled by investors, which provided a safe cushion in case of a borrower defaulting in his obligations. Although this business structure was somewhat approved by the CBU in 2016 (BCU, January 2016), one year later the supervisory institution ordered the platform to suspend all activities under this structure and provide an action plan to return all funds to individual lenders (BCU, 2017 May). The main argument behind this request was based on three characteristics that made the platform different from its peers, and that, if continued, would require a different regulatory framework:first, that by setting a trust-based structure the platform was performing financial intermediation (not just mediation), and the ownership of the investors' funds was being transferred to the Trust in order to invest the same, a role that the platform was not regulated for. Secondly, the Trust was the one in charge of selecting the specific loans. And finally, that default risk was being shared by all investors through the Trust, all of which were against their current regulated role as mediator (BCU, May 2017).

All in all, in terms of financial regulation of the P2PL market, the CBU has shown a conservative and mostly reactive stance, having released general guidelines by end of year 2017 for a market that was already operational by 2015. Further, the regulator's guidelines focused on potential risks arising from this new industry, while leaving aside the latent benefits in terms of SME-driven economic growth and the empowering of low-income individuals (Cantera, 2017).

On November 23, 2018, the regulator approved the final regulation under circular N. 2,307 titled: "Peer to Peer Lending Administration Companies – Regulation" (BCU, 2018). Since then, the local market has reached a stand still point in matters of Fintech regulation. After the passing of its final resolutions, all P2PL platforms have ceased operations in the country, keeping active only the current loans already accredited. Some of them started operating in other countries, like TuTasa in the UK and Argentina and Prezzta also in the latter.

In terms of data privacy regulation, in August 2008 Uruguay approved the Data Protection Act Law No. 18.331 to update the previous 17.838 Law in view of three main reasons: Uruguay's economic relationships with other countries (for instance, to be recognized by the European Union as a compliant country), to be able to attract other foreign investors, and to offer a more up to date legal framework that facilitates the use of technology, among other things. It was also a way to be able to better compete with Argentina, which has a strong privacy legislation, as an attractive potential market for foreign investors, especially as a service provider (Park, 2009).

The Law does not prohibit the commercial use of personal data but rather establishes the right conditions and terms to do so, as well as the potential sanctions in place in case of noncompliance and exceptions. Its First article clearly states "the right to the protection of personal data is inherent to the human being, so it is included in Article 72 of the Constitution of the Republic."

Law 18.331 established a series of principles that regulates personal data use:

1. Legality: a database will be legal when it is properly registered and observes legal requirements
2. Truthfulness: data will be accurate and updated as needed
3. Purpose: data shall be used only for the purpose for which they were collected and shall be deleted whenever they cease to be necessary or relevant for those purposes.
4. Informed consent: data owners need to give their prior, free, express and informed consent, which should be properly documented
5. Data security: those responsible for the database must adopt any measures needed to guarantee security and confidentiality of personal data
6. Reserve: data must not be disclosed or sent to third parties
7. Accountability: the database responsible is accountable for any violation of this law

In addition, there is some data that is deemed to need special protection measures, this includes data related to credit or commercial activity. Law No. 18.331 also dictates that every public or private database that comprises personal data, must be registered with the correspondent authority. It also states that data must be collected with a certain purpose and cannot be transferred to a third party unless certain conditions are met (including consent from the data subject).

Another positive aspect of the Law has been the creation of a regulatory entity named Unit for the Regulation and Control of Personal Data (URCDP, 2012), with technical autonomy and whose function is to ensure compliance with data protection legislation and its principles.

In 2012, the EU Commission recognized Uruguay's legal framework as providing adequate personal data protection (Park, 2012) which allowed any EU Member State to transfer personal data to Uruguay freely and without any additional guarantees. Uruguay was the second country in South America to be recognized by the EU as such, the first one being Argentina in 2003, almost 10 years earlier (Rodríguez, 2016). The following year, in 2013, the Council of Europe (CoE) announced that Uruguay was to become the first non-European country to accede to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (Convention 108) and its additional protocol (Park, 2013). As of today, the non-member countries amount to eight, Uruguay being the only one from the Americas. Regulatory authorities in Uruguay are following closely the implementation of the GDPR since 2016 and expect to make the changes and adjustments needed to be in line with it (Nelson-Daley, 2017).

In terms of commitment to cybersecurity, the Global Cybersecurity Index 2017 ranked Uruguay as one of the top 5 countries in the Americas. Uruguay was found to be in the "maturing stage" meaning that it has "developed complex commitments and engaged in cybersecurity programs and initiatives." A good score in cybersecurity regulation means having laws dealing with data protection, breach notification and standard requirements as well as including the right terminology to cover cyberspace (ITU, 2017).

4. Final remarks

Tech-based and innovation-driven market solutions can be said to have taken off in the Latin American and Caribbean region. Although in terms of transaction volume this market can still be considered small, the region has experienced a growth rate that has surpassed by far, those of developed economies in the continent. In this context, the Uruguayan alternative finance market is still in its first stage of development, but several factors point to favorable growth. Within the region, Uruguay finds itself well positioned in terms of having a competitive digital business environment. It fares well on data protection regulations maintaining standards well above other countries in the region and even the world, and on par with its European counterparts. Moreover, several government policies and initiatives have helped and worked in favor of tech-driven innovation and inclusion. Government initiatives such as the Ceibal Plan have had a substantial impact in terms of increasing the population access to internet, especially for lower income sectors. Further, the relatively new Financial Inclusion Law has as one of its major objectives, to bridge the gap in terms of financial access between the low-income population and the middle- and high-income strata. Overall, the regulation aims at including the unbanked in the traditional financial system with measures such as enforcing all companies to pay salaries through bank accounts.

Despite officially being considered as included in the financial system, many in Uruguay are still considered underbanked. The main reason behind this phenomena is the lack of education

Nevertheless, how the law translates into actual inclusion is far from clear, since there are many aspects that are not fully addressed and can diminish its effectiveness. One important factor is the low level of financial literacy. Despite officially being considered as included in the financial system, many in Uruguay are still considered underbanked. The main reason behind this phenomena is the lack of education. If a bank account is provided to individuals but the knowledge of how it can be used or what services might be at hand, the end result will likely be one where these individuals cash-in all their salary at the beginning of the month and continue to operate, leaving aside all services and products the financial system might offer. If this roadblock is not overcome, the final impact of the Law could be even a negative one -- the strengthening of an already concentrated traditional financial sector, without empowering the underbanked.

Within this panorama, the alternative finance market constitutes a new and small market with a potential for economic growth and inclusion that has yet to be discovered. It's a sector that could definitely leverage the Law and facilitate the road to financial inclusion. Not only does it offer the possibility of opening up the playing field to new players and improving competition with traditional finance institutions, but also has the capabilities to reach those who are marginalized because of the lack of infrastructure. However, the sector still lacks a formal legal framework and its growth has been hampered due to the high level of uncertainty posed by a legal void, among other factors.

The initial local government approach to regulation can be regarded as protectionist, focused on the potential risks the industry might pose but leaving aside considerations in terms of the potential benefits that alternative finance platforms might present in terms of financial inclusion, empowerment of the underbanked and unbanked as well as the development of SMEs.

From a socioeconomic point of view, the repercussions of the Fintech regulatory body are still far from certain. One problem that the regulation provided by the CBU might pose is related to the enforcement of the disclosure of personal data before the transaction is closed. If the investor has to be provided with the borrower's personal data, such as gender (may be inferred by sharing the borrower's name), it could potentially lead to gender discrimination, opening up a gap between female and male borrowers. Despite the relevance of this issue and the proactive stand of the government against discrimination, no statements have been given regarding this.

Apart from dealing with a protectionist regulatory approach, Fintechs also have to deal with a traditional finance market that has not been supportive. Although traditional finance institutions might not be actively against the Fintech sector, their neutral stance is working against it. There are many aspects of the Fintech industry where the interaction with traditional institutions could be a game changer for alternative finance platforms, so that the majority of the P2PL platforms see a potential interaction as nothing but beneficial for both sectors. The impossibility to work together and exploit synergies not only works to the detriment of the Fintech market, but also hurts the population. The hindering of this innovative market leaves consumers with less alternatives to services and products, and curtails financial inclusion and the empowerment of at-risk segments of the population, while SMEs are left to deal with an adverse scenario of limited support, and expensive or, unattainable financing.

Strengthening the normative environment, fostering healthy competition, educating the population to improve their financial literacy levels, increasing levels of financial inclusion, will help achieve the goal of positioning Uruguay in the international Fintech radar as an attractive economy to invest in, as well as a Fintech Hub for the development and testing of new ideas.

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