

Litigation and enforcement in Chile: Overview

By Juan Carlos Manríquez, Manríquez y Benavides Abogados Ltda

A Q&A guide to dispute resolution law in Chile and wider Latin America. The country-specific Q&A gives a structured overview of the key practical issues concerning dispute resolution & Litigation in this jurisdiction.

Businesses that find themselves in disputes are facing pressure to decide which avenue is best suited to manage the conflict. It is important to ensure that the planned actions are appropriate and enforceable in the relevant jurisdictions by checking with local lawyers. Dispute resolution mechanisms vary dramatically not only within one country but also between all jurisdictions.

Main dispute resolution methods

1. What are the main dispute resolution methods used in your jurisdiction to settle large commercial disputes?

R: Currently the arbitration clause - through the Santiago or Valparaíso Chamber of Commerce - is the most relevant option the lawyers are choosing in Chile.

If a commercial dispute have not the clause on previous settlement could be able to the parts celebrate an agreement to carry it at the Chamber.

Sometimes occur the commercial claims are criminalized, i.e. one part alleged false promises or fraud, then our Criminal Proceedings Code admit a side bar or alternative solutions, paying or debts assume to the other side, using tools very similar to probation, or under parole systems in federal law of USA.

Court litigation

Limitation periods

2. What limitation periods apply to bringing a claim and what triggers a limitation period?

R: First, Chile has a legal system of civil law, from romanic and Hispanic influences, not is developed from the common law system.

Under these framework civil actions to claim damages caused by malicious acts they have 5 years to file a lawsuit. By reckless you have 4 years.

Criminal actions, normally, expires in 5 or 10 years.

Court structure

3. What is the structure of the court where large commercial disputes are usually brought? Are certain types of dispute allocated to particular divisions of this court?

R: As I said, first instance tribunals are integrated by privates judges nominated by the Chambers of Commerce, but appeals or specials motions often arrives to a second instance tribunal of arbitrators, or a Civil Chamber (1st) in our Supreme Court of Justice, in Santiago de Chile. Rights of audience

4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?

R: Only to be a licensed lawyer, with standing to advocate before the tribunals or Courts. Foreign lawyers cannot litigate in Chile, but if his title is co validated in front our Supreme Court, if there is a Treaty it permits, he could to practice.

Fees and funding

5. What legal fee structures can be used? Are fees fixed by law?

R: Fees are not fixed by law. Only in Bar Associations Codes of Ethic and Practice is it could be able to find suggestions about this. But, different modes for fees valuation between parts are applicable in Chilean advocate practice: Cap, Retainer, Hour, No Cure No pay, Mixed, etc.

6. How litigation is usually funded? Can third parties fund it? Is insurance available for litigation costs?

R: Usually the plaintiff funds his litigation. Third parts could fund it also, and yes, is able and very normal to use different types of legal liability assurances policies with legal cost included.

Court proceedings

Confidentiality

7. Are court proceedings confidential or public? If public, are the proceedings

or any information kept confidential in certain circumstances?

R: The general rule is the publicity of proceedings, when they are litigates in hearings. But, there are many specials rules over privacy, where the information collected and examine is only accessible to the parts in conflict. Currently, in civil matters, child law suits, labour and overall in issues under Chamber of Commerce Arbitration are not public, also the specific information in criminal matters. In all of them, LLP must be to use a digital pass to file enter.

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Pre-action conduct

8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?

R: Normally not. The court could impose rules of conduct to the parties if the motion started it is no clear, or it disobey the minimum exigencies to submit. Then, if the plaintiff not obey the order during the lapse was conferred, his action could be dismissed.

Main stages

9. What are the main stages of typical court proceedings?

R: We call it ordinary trial. In civil and commercial matters: Plaintiff, Responsive Motion, Replica (main pleading action is supported with refusal arguments to responsive motions) and Duplica (main defences from the accused or claimed are more charged with refusals arguments

against the Replica). Some arbitration process under Chamber of Commerce is shortest.

Interim remedies

10. What actions can a party bring for a case to be dismissed before a full trial? On what grounds must such a claim be brought? What is the applicable procedure?

R: Depends. If you have an executive title to demand a current debt, and your debtor

no refuse your action, you can demand auctioning of his assets without a full trial.

If you are the defendant, i.e. and you discover the executive title is expired, your or the judge could alleged it. Then, full trial is not able.

11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

R: Yes, he can. If defendant claims against the claimer inside the same process, he could demands a provisory order to retain claimer assets to provide security for its costs when at final of the trial, claimer results defeated.

12. What are the rules concerning interim injunctions granted before a full trial?

R: Need preliminary evidence, serious and convince.

As we say in Latin language: Fumus Bonis Iuris and Periculun in Mora.

Juan Carlos Manríquez Rosales
Founder Partner

It means colour of truth and serious risk in waiting.

13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent)?

R: Same like answer 12. But the defendant could change the interim giving a relevant assurance, in money, other assets or through an insurance company letter.

14. Are any other interim remedies commonly available and obtained?

R: Yes. If there are fundamental rights under urgent risk without a large discussion of facts, Court of Appeals could give you a protection interim measures. Same like that if your main commercial activity is currently under threat by the government or by tax authority, you could plea to the Superior Courts a Habeas Corpus in tax or economical matters.

Final remedies

15. What remedies are available at the full trial stage? Are damages just compensatory or can they also be punitive?

R: In our legal system there are not punitive damages, normally. Only you receive if you win compensatory damages. Next year is start up a new act and framework in consumer and consumer protection with punitive damages.

Evidence

Disclosure

16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

R: In pre-trial exist a motion to prepare your next proof time: documents exhibition it calls.

All relevant documents or files or notes the judge ordered to give the other hand, you must to show him.

Then, you only try to exclude of disclosure the impertinent or irrelevant documents.

The in due prejudice capacity is a non written law, but is able to apply if the Due Process is in risk.

Privileged documents

17. Are any documents privileged? If privilege is not recognised, are there any other rules allowing a party not to disclose a document?

R: Yes are privileged documents. I.e. Lawyer – Client communications; in certain matters, National Defence affairs; Bank Privacy; Legal strategies etc.

Examination of witnesses

18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?

R: Both. The witness can give testimony under oath in a document; could be calling him in front of the tribunal to affirm this statement where usually is cross examined by defendant lawyer, in fact.

Third party experts

19. What are the rules in relation to third party experts?

R: They are admitting. Each part solves his cost. His testimony follows the witness rules, could be impeached in front of the Court, and in civil or criminal proceedings his testimony is only one more evidence.

Appeals

20. What are the rules concerning appeals of first instance judgments in large commercial disputes?

R: Inside the Civil Ordinary Proceedings litigants always could appeal in front of the Court of Appeals. This is the most basic and simple motion to review a case, in order to obey our constitutional and International standard in fundamental rights.

In Arbitration under Chamber of Commerce sometimes the parts have settlement to not admit regular motions to review, only extraordinary motions like Recurso de Queja or Casacion (both Nullity Promotions).

In the criminal proceedings frame, when a business is criminalized, normal claim to review is the Nullity Motion in front of the Court of Appeals or Supreme Court of Justice, in accordance with the basis of each plea. Appeals are extraordinary admit.

Class actions

21. Are there any mechanisms available for collective redress or class actions?

R: Yes. The consumer protective law recognizes them. Currently our law makers had approved a new act in the area, to give to SERNAC (Consumer National Service) a lot of very strong abilities to prepare pre trial class actions.

Costs

22. Does the unsuccessful party have

to pay the successful party's costs and how does the court usually calculate any costs awarded? What factors does the court consider when awarding costs?

R: Yes. When the unsuccessful party was total defeated.

Objective factors like how long the trial was; the complexity of matters was involved: cost to obtain experts reports; speciality of lawyers etc are considered to fix them.

23. Is interest awarded on costs? If yes, how is it calculated?

R: No, only over the damages conferred.

Enforcement of a local judgment

24. What are the procedures to enforce a local judgment in the local courts?

R: After the main trial, with your judgment, you must appear before first instance tribunal and demand the enforce execution through a short proceeding. Your debtor has four days to pay or give you a specific opposition. Could it be able a little stop to prove very particular issues or directly you pass to execution.

Inside the Chamber of Commerce arbitrations you don't have execution capacity, and then your solicitor must go in front of a civil tribunal asking his local authority to enforce within civil justice.

Cross-border litigation

25. Do local courts respect the choice of governing law in a contract? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

R: Under Chilean Civil Code, a contract legally celebrated is a law between contractors.

But, if well Chile obeys the international law and the law of contracts, also is true if the main dispute says about assets sited in Chile, or over agreements discordances occur in Chile, or taxes caused here, all of them and the capable proceedings will be submitted under Chilean law.

Also law in contract, in Chile is necessary to observe if one or both parts in contract are signatories of Private International Law Code (Codigo Bustamante); some Bilateral or Multi lateral Treaty, Complementary Economic Accordance or other specific instruments with jurisdiction clause (NAFTA, EU – CHILE, JAPAN- CHILE, CHINA – CHILE).

26. Do local courts respect the choice of jurisdiction in a contract? Do local

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courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

R: You shall know there is not permission to Forum Shopping acts. Chilean Courts could despite the choice jurisdiction if it is against public Chilean law or constitutional principles refuse the parts selection and retain jurisdiction, in relation with my previous advice in answer 25.

27. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction party to any international agreements affecting this process?

R: Foreign party not required special permission to start a new action in Chile, under Chilean law, if his motion is adequate into our civil, commercial, arbitration or criminal regular proceedings.

Need to demonstrate standing and fundamentals, power of Chilean or authorized attorney, and adjust to special requests in conflict.

If you plea an extradition request, you have to occur before Chilean Supreme Court of Justice, after diplomatic via was done.

28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?

R: Letters rogatory or international letters calling for proof in Chile need exequatur of the Supreme Court. Chile is part of several international conventions on this matter.

After Supreme Court exequatur was obtained, you must go before Court of Appeals in the circuit when the proof shall be received, and this Court name one specific first instance tribunal to the

hearing. In front judge, a minister of faith receives the statement and sometimes lawyers who are advocating in case to practice direct or cross examination to the witness. All is written and registered, signed by all of them and after it is return to the senders.

Enforcement of a foreign judgment

29. What are the procedures to enforce a foreign judgment in the local courts?

R: Via Exequatur, first adjusted it into International Treaties or International Law principles between countries. After, appearing in front of the Court and asking the enforcement, proving you have an indubitable credit to charge.

Alternative dispute resolution

30. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Is ADR used more in certain industries? What proportion of large commercial disputes is settled through ADR?

R: The arbitrations proceedings, within private judges nominated by the main Chambers of Commerce (Santiago, Valparaiso y Concepción). Also mediation is viable, in pre trial.

Real Estate, Engineering Building, Natural Resources, Partners conflict large disputes etc often are settled through ADR.

Currently, in Chile the most relevant cases are settled in arbitration or ADR via, in very high numbers.

31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

R: No, to both. Courts cannot compel to use ADR, but sometimes suggest it to the parties.

32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential?

R: Same like an ordinary or regular proceeding, if it is on arbitration. In mediation could be most flexible. The privileges and disclosure are the same as in the regular process are.

33. How are costs dealt with in ADR?

R: A flat rate in starting, with a percentage of the issue in conflict valuation if the parts are in agree. If not, not is second pay.

34. What are the main bodies that offer ADR services in your jurisdiction?

R: Professionals Mediators enlisted in Santiago or Valparaiso Bar Association, and Chambers of Commerce of both cities.

Proposals for reform

35. Are there any proposals for dispute resolution reform? If yes, when are they likely to come into force?

As I said, in few months is starting a new framework in consumer law. Shall be studied his behaviour into a real scene of claims and corporate reaction and regulatory authorities.

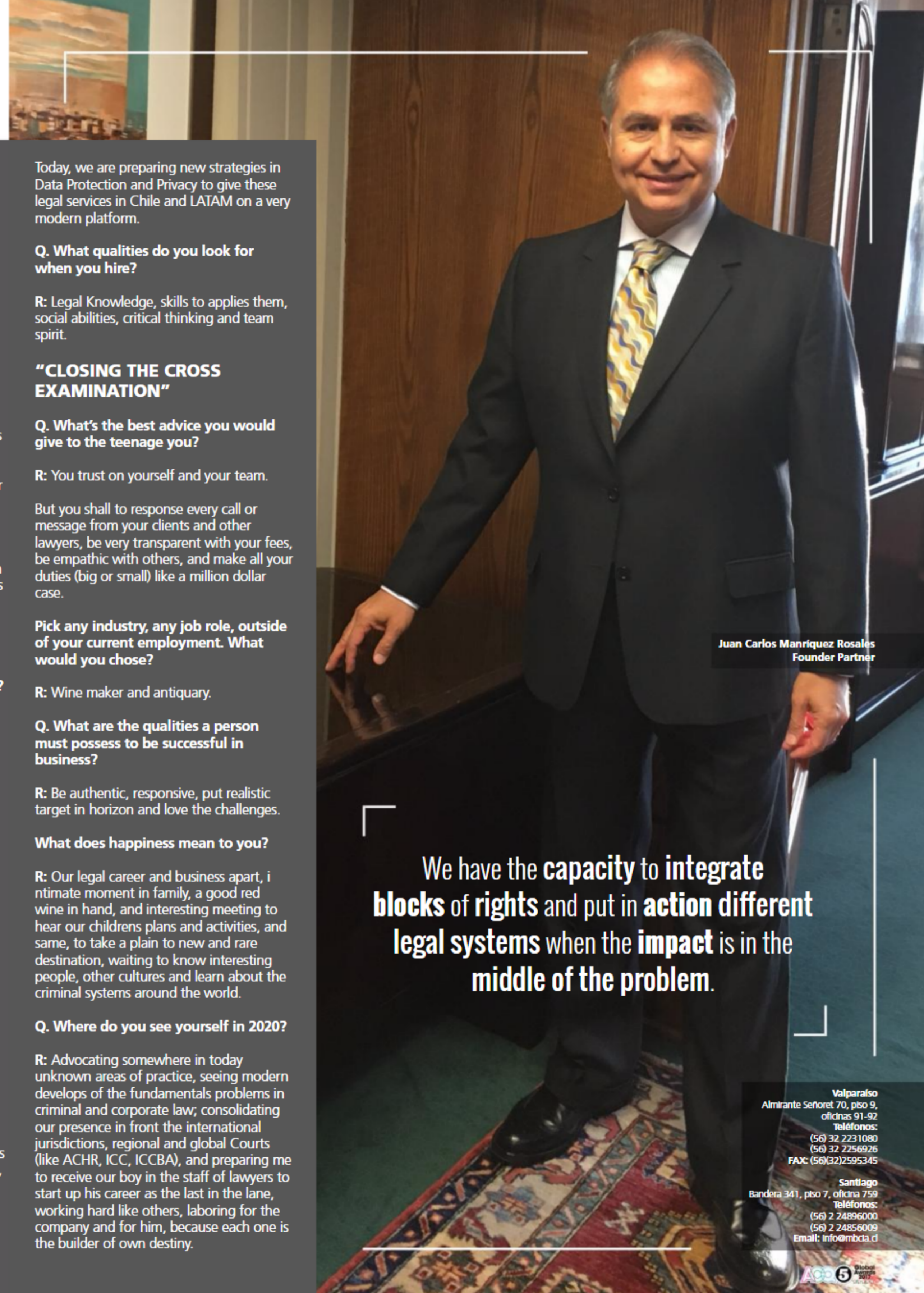
In this moment we could view what will be the real reform impact.

But in this area, in Privacy, Data Protection in neighbourhood law, and little criminal offenses we need a most modern laws, most effective, speedy and rational proceedings.

The Bars have a new field of big challenges to show to his associates, and LLP have a large rainbow of opportunities to practice new skills and develop today unimagined business projects.

- ★ CHILE – LITIGATION LAW FIRM OF THE YEAR, MANRIQUEZ, BENAVIDES & CIA. ABOGADOS
- ★ LATAM – LITIGATION LAW FIRM OF THE YEAR, MANRIQUEZ, BENAVIDES & CIA. ABOGADOS
- ★ LATAM – GAMECHANGER OF THE YEAR, JUAN CARLOS MANRIQUEZ ROSALES, MANRIQUEZ, BENAVIDES & CIA. ABOGADOS

MANRIQUEZ
BENAVIDES
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Juan Carlos Manríquez Rosales
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Gamechangers has been speaking to the people of today to find out what inspires them, who motivates them and how they picture the future. In each edition we pose some quick-fire questions that dig deeper into their work, life and industry.

For over a decade ACQ5 has been recognising people of influence and achievement globally. Beginning in 2006, ACQ5 has developed into a network of over 163,000 people across the business community.

Gamechangers is a positive endorsement and recognition of the world's most influential people and businesses. It has been carefully compiled by our independent panel of specialists. It is a truly inspirational group of people.

In this edition we are introducing Mr. Juan Carlos Manríquez, a Chilean lawyer, whose professional career has caught the attention of ACQ5 for its continuous global projection.

He is the current GameChanger 2017 in criminal economic issues and corporate litigation in Chile and Latam.

WHO I AM

Q. How would you describe yourself and what is your story?

R: I am the result of those who have helped to train me as a person and lawyer. A professional who tries to be up to date in their knowledge and skills, maintaining ethical rules and respect towards others.

I am an independent lawyer, main partner of my own Law Firm (Manriquez, Benavides Ltda LLP); LLM in Trial (CWSL, USA, 2016); Specialist in Economic and Business Criminal Law (Castilla – La Mancha, Spain, 2011); Searcher and Lecturer in Economic and Business Criminal Law, Trial and Criminal Proceedings in various Universities and Public Institutions in Chile, Peru, Argentina, Spain, etc. and now attending the First International Programme, for Lawyers and Counsels, on Defence of Human Rights before International Courts (Syracuse, Italy). Also, I am AIDP member.

Q. How did you find yourself in your industry?

R: Mature to face the new challenges. Since 1991 at today, every moment at work dedicated by me and our team is thinking how to make the job better; how to find effective solutions by our client problems, in domestic or international jurisdictions, applying knowledge over the law, but overall, over which is the most relevant and speedy way to solve the legal problem.

Currently find me very attempt to new technologies functioning, the impact of them inside privacy of millions people and corporate, really training me in acquired new skills and standing to do a legal practice in domestic jurisdiction (Chile and Latam), and inside the international systems of protection of human rights before international Courts (International Criminal Court, American Court of Human Rights) relative to modern phenomenon of attacks them (i. e. money laundering, transnational smuggling, environmental crimes, tax fraud etc).

Q. What motivates you?

R: To find and give a reasonable and efficient solution, with real justice, to every legal problem, because our client's urgency is our problem too.

Q. Can you tell us about your experience with your company?

R: We have grown applying simples and fundamentals principles of law practitioner's art: we had built a boutique law firm, specialist in economics crime, environmental illicit behavior, tax fraud, prevention of corruption, Parliament and law makers' advice, etc. going forward step by step.

We are frequently choose to litigate not only in criminal matters, also in real estate, child and family, labor or commercial matters, advocating in front the Chilean Supreme Court, Constitutional Court, Courts of Appeals, Arbitration Chambers, and First Instance Tribunals personally with compromise.

Q. Who in your life has been the most inspiring?

R: My parents, my professors, my family, my children and their mother; our partners and assistances are my quarry, because we are a team of tailored solutions working with passion, commitment and faithfully.

WHAT I AM DOING & WHAT I WANT TO DO.

Q. What is your greatest weakness?

R: To loose the nervous before to advocate to third persons problems; go to the open or closing speech before the judges without the best effort done, because this moment will be my retirement.

Q. What is the phrase could represent your theme at work?

R: I am a laws carpenter.

We build strategies, plans and methods of job ever thinking "How the judge could appreciate our Case?", "What is the best advice to give?"

Q. At what stage in your life did you have your biggest career break?

R: When I learned, after a long and complex case, with huge media pressing, to speak in front the judges, our clients, colleagues and third parties in Direct, Clear and Persuasive form is the most profit action.

In Chile we were the first LLP to advocate in front our Constitutional Court discussing no solved problems in New Criminal Proceedings Code, about Parliamentary Shield against criminal charges before effective Trial (Due Process); the first Law Firm in obtain from our Constitutional Court a very relevant decision it make and declare anti constitutional same parts of new Act on auto trafficking limitative over judge abilities to give alternative methods of punish this illicit when them will be must paid, because this precepts represent an obstacle in admitted by our law against human rights to reinsertion and others.

Q. In your opinion, what are the key attributes to fit the "Gamechanger" title?

R: A Holistic overview.

We have the capacity to integrate blocks of rights and put in action different legal systems when the impact is in the middle of the problem. Our manner of study the Case requires actual and comprehensive abilities, to gain trough our proceedings a speedy and solid proposal of solutions.

You can't design a tactic for defendant or plaintiff case without considerer all of them.

In marine pollution criminal cases in Chile we are pioneers building a legal structure to attack civil, criminal and regulatory claims of the main issue, always thinking how to integrate common law rules of maritime affairs nearby to civil law and criminal proceedings of alternative solutions (i. e. P&I Liability Limitations caps – Maritime authority investigations and fines – New Criminal Proceedings Code, leaving the ship free with LOU accepted by all).

I always work seeing the future consequences of each movement in the table: Legal, Media, Political, Business, Ethical aspects are every time involved inside the complex litigation. Same framework we use in politician's affaires, tax fraud, or international business.

Today, we are preparing new strategies in Data Protection and Privacy to give these legal services in Chile and LATAM on a very modern platform.

Q. What qualities do you look for when you hire?

R: Legal Knowledge, skills to applies them, social abilities, critical thinking and team spirit.

"CLOSING THE CROSS EXAMINATION"

Q. What's the best advice you would give to the teenage you?

R: You trust on yourself and your team.

But you shall to response every call or message from your clients and other lawyers, be very transparent with your fees, be empathic with others, and make all your duties (big or small) like a million dollar case.

Pick any industry, any job role, outside of your current employment. What would you chose?

R: Wine maker and antiquary.

Q. What are the qualities a person must possess to be successful in business?

R: Be authentic, responsive, put realistic target in horizon and love the challenges.

What does happiness mean to you?

R: Our legal career and business apart, i ntimate moment in family, a good red wine in hand, and interesting meeting to hear our childrens plans and activities, and same, to take a plain to new and rare destination, waiting to know interesting people, other cultures and learn about the criminal systems around the world.

Q. Where do you see yourself in 2020?

R: Advocating somewhere in today unknown areas of practice, seeing modern develops of the fundamentals problems in criminal and corporate law; consolidating our presence in front the international jurisdictions, regional and global Courts (like ACHR, ICC, ICCBA), and preparing me to receive our boy in the staff of lawyers to start up his career as the last in the lane, working hard like others, laboring for the company and for him, because each one is the builder of own destiny.

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