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## Hakamana becomes first disputes fund in Chile

Benjamin Wein 26 May 2020

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Latin Lawyer speaks to Francisco Orrego and Carolina Plaza, the president and chief executive officer of Chile's first disputes fund, Hakamana.

**Who?** Hakamana is the first disputes fund in Chile, joining a small group of funds operating in Latin America.

The five-strong team includes chief executive officer Carolina Plaza, Aldo Díaz as legal director, and Andrés Veszpremy and Mario Gómez, who sit on the investment committee with president Francisco Orrego.

The name Hakamana comes from Rapa Nui, the aboriginal Polynesian language of Easter Island, and means *to give power*.

**What?** The fund finances the cost of arbitration and litigation proceedings, such as legal fees and administrative expenses, thereby assuming the risk. The litigant is only charged a fee if the proceeding is successful.

To select cases, the investment committee first considers a matter and accepts to take it on if there are solid legal grounds involved and a high probability of success.

Litigation funding is a relatively modern source of finance, originating around 15 years ago in Australia. It later expanded to Europe and the United States. Its presence in Latin America has been mostly confined to Brazil, with one other fund in Peru.

**Why?** Many individuals and businesses do not pursue valid claims because of the prohibitive cost of disputes. By covering those costs, Hakamana hopes to enable such claims to be brought before courts and arbitration tribunals.

Guillermo Jorge, partner at Bruchou, Fernandez Madero & Lombardi says "there is a need for funding in a range of disputes that are usually below the radar and scope of American and European funders."

### **Latin Lawyer: Why do you think there is a market for disputes funding in Chile?**

Francisco Orrego: Since European or American funds are concentrated in their geographic markets, very few funds have focused on Latin America. This is mainly due to the deficiencies of Latin American judicial systems; corruption and general inefficiency hinder the due diligence of cases. However, in general, arbitration centres have a better performance than ordinary justice.

Many medium-sized companies do not resort to arbitration, even when they have solid cases, because they can't afford the fees of the best law firms and the associated costs of arbitration. This is where Hakamana can play a key role by providing the funding to cover those costs and allow companies to defend their rights in arbitration proceedings.

### **LL: This is the first disputes fund in Chile. What regulations applied to the formation and running of the fund, and who is it supervised by?**

Orrego: Very few countries have regulation and supervision over litigation funds. For that reason, for example in Europe, litigation funds have formed associations to issue self-regulating guidelines for members. In Latin America, no country has regulation over funds. For this reason, at Hakamana we choose to have strong corporate governance and very high standards of transparency.

### **LL: Is the fund modelled on any other from outside the region? Who, and**

## **why them?**

Carolina Plaza: The market for litigation funds is highly developed in Europe, the US and in some parts of Asia. We have had meetings with English, Spanish, and American litigation funds, visiting their offices to learn from their mistakes and successes. Today we have collaborative relationships with various funds and we have modelled Hakamana on those that have been most successful.

## **LL: How is the percentage charged to clients decided upon?**

Plaza: Each case is different. The funding agreements are suited to the specific case, considering the strength of the case, the quality and reputation of the law firm in charge and the likelihood of a favourable, and therefore successful, judgment. In general, Hakamana collects a fee only upon a favourable result, unless the complexity of the case demands a different approach. For example, if there is a counterclaim in the case of arbitration proceedings.

## **LL: What kind of cases will your fund focus on? What kinds of clients and in which sectors?**

Plaza: The priority, for now, is arbitration cases. The most suitable are construction or real estate projects, and clients are generally medium to large companies. Another line of business is consulting. We are able to advise companies to select the most suitable law firm for the conflict in question, the negotiation of fees, and eventually, the case's financing.

## **LL: What's the future for disputes funding in Latin America?**

Plaza: It has a promising future. Given the world's economic situation, investors are currently looking for alternative investment instruments, like litigation funds. The arbitration system, both local and regional, is continually improving. Companies need funding more than ever to access top-level legal representation in their disputes.

Practice area: Litigation, Arbitration

Country: Chile