

Chile's rejection of new constitution is good news for business, say lawyers

Lily Squires
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Latin Lawyer spoke to partners and associates at Chilean law firms about what the 'no' vote means for the market and what comes next for the Latin American nation.

On 4 September, Chileans voted against the passing of a new constitution. Whilst almost 80% of Chileans had previously voted in favour of replacing the current document in a referendum in October 2020, some 60% of the electorate voted against the new draft in a plebiscite earlier this month. The margin was larger than many polls expected.

The proposed text would have legalised abortion, created universal healthcare, enshrined gender parity in government bodies and increased mining regulations. It embodied a major departure from the country's current constitution written in 1980, during general Augusto Pinochet's regime.

Certainty over experimentation

Lawyers are certain of one thing: the vote brings both clarity and hope to key sectors of the local economy.

Despite the country's booming renewable energy industry, Chile remains reliant on its mining sector, which generated 11% of its GDP last year. The business community was spooked by the election of left-wing president Gabriel Boric, who [took](#) office back in March and campaigned on a platform to combat climate change by reforming the mining sector. In the run up to the referendum, investors – particularly foreign players – were hesitant to inject funds into Chilean mining projects, which would have faced significant regulatory upheaval had the plebiscite succeeded.

Rafael Vergara co-head of Carey's natural resources and environment practice, explains that the proposed draft "generated great uncertainty in the mining industry, both for what it regulated – and more importantly – omitted." The outcome of the vote has, therefore, brought a much-needed sense of calm to the Chilean business environment, according to the Carey partner.

Javier Naranjo, former environmental minister and current head of Jara del Favero Abogados' natural resources practice, concurs that it was a lack of certainty surrounding the future of the country's mining sector, as well as more stringent water and environmental rights in the proposed text that contributed to the document being rejected. "Markets can be reassured that Chile

prefers certainty over experimentation.” Rodrigo Delaveau, a former deputy judge of Chile’s Constitutional Court and now counsel at Morales & Besa agrees: “markets should feel relieved.”

Partisan, overreaching and technically deficient

The potential impact of the new constitution on Chile’s economy was certainly a major concern for many, but voters are said to have also struggled with the length and vague nature of the proposed 170-page document, which included 388 articles. Delaveau described the draft as “partisan, overreaching and technically deficient,” as well as “extensive.” Carey’s Vergara also suggests that the text was too vague: “the drafting style was unclear, leaving many sensitive issues (including mining concessions) open to interpretation.”

Many Chileans also found the proposed document too radical. The draft included numerous matters that were – according to Vergara – “perceived as controversial by the general public.” For senior associate Alina Bendersky from Bofill Mir Abogados, it “went too far in certain measures and statements,” whilst Lembeye Abogados partner Rony Zimerman agrees that the text “did not reflect the hopes and objectives of the majority of Chileans.”

One article included in the document that caused much concern in the electorate would have defined Chile as plurinational, recognising the coexistence of two or more preserved national groups. The same clause referred to the people of Chile as being “composed of various nations.” The passage worried voters who believed that the declaration of plurinationalism would divide Chilean society.

Among other provisions in the draft constitution, it opted to eliminate the senate in favour of a single-chamber legislature. Changes to the judicial make-up of Chile, along with changes in property were also met with scepticism by a large part of the population, highlights Lembeye’s Zimerman. These proposals all appeared too drastic for the largely conservative Chilean population, who rejected the constitution in favour of a new, less divisive second draft.

It doesn’t end here

The vote has been considered a setback for President Boric, who openly backed the new constitution. Some expect the vote to force the president into the political centre, whilst it already prompted a cabinet reshuffle, including a new interior minister.

Boric has expressed his willingness to repeat the constitutional process, learning lessons from this draft to produce a better document next time round. In a speech following the vote, the president said that he would now work to achieve a “text that will incorporate the lessons of the process and win over a broad majority of citizens” and there seems no doubt that a second attempt will be made.

It is not yet clear what shape the redrafting will take and how long the process will take. Lawyers agree, with Morales & Besa counsel Delaveau calling for a “[more] efficient, shorter and less biased” process next time.

Carey’s Vergara explains that the new constitution “should not be a full reset and instead build upon certain parts of the rejected proposal and other past constitutional drafts.” According to Bofill Mir’s Bendersky, “the upcoming weeks will be crucial in defining the future of the process.”

In the meantime, local law firms expect a higher demand for legal services, particularly from international clients, as the debate surrounding the second attempt begins. Delaveau believes that “public law demands are here to stay,” adding that since the constitutional debate is not yet over, coordinated advice across several practice areas will be needed to best serve clients.

The constitutional process is expected to be drawn out for at least another year, meaning investors will continue to need guidance from their trusted local advisers. “Until the process is complete, there will remain certainty as to the definitive rules for investing here,” Zimerman concludes.

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