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## Chile—A Preliminary Post-Plebiscite Political Roadmap

- **Rejection of the draft constitution in Sunday's plebiscite could be market positive for Chilean assets, but those gains could prove ephemeral if political uncertainty is re-kindled**

**Recent surveys indicate that the exit plebiscite, which will take place on Sunday September 4, will reject the new Constitution.** Chilean asset prices (CLP, interest rates, and the stock market) have begun to internalize this scenario, and a confirmation on Sunday could generate additional appreciation of the CLP, increased appetite for assets, and a drop in short-term interest rates. However, the durability of these effects will largely depend on the signals that the government gives on the constitutional path after the plebiscite. Some of the policy options we highlight below would be more market-friendly than others.

**In our view, a call for a new constituent assembly with limited participation of independents and indigenous people, as well as alternative forms in which groups of representative parliamentarians are supported by constitutional experts, would be valued by the market and reduce political uncertainty. The latter would generate additional positive impacts on Chilean assets.**

### WHAT IF THE CONSTITUTION IS APPROVED?

There is a broad consensus that, even if the new draft Constitution is approved, it would be necessary to modify some of its articles. In this regard, the draft Constitution establishes a threshold for reforms of **four-sevenths of the members of the Congress of Deputies and the Chamber of Regions**. Note that the Congress will be made up of no less than 155 Deputies, while the number of members of the Chamber of Regions will be determined by law, with a minimum of three representatives per region (no fewer than 48).

What are the most controversial points of the new Constitution? We have identified several issues. The main points of controversy, their risks and proposed improvement agreed upon by the government parties and those adhering to the Approval option are detailed below (see the specific articles in the annex [link to the document in spanish](#)).

#### 1. Indigenous consultation

**Risks:** Key risks include an excessive privilege of a minority against the majority, which could increase the costs of any public or private activity; expansion of the topics subject to consultation; veto power. Moreover, the demarcation of indigenous territories and their possible future expansion is not limited. These effects could discourage investment.

**Proposals for improvement:** Delineate the specific meaning and scope of related articles limiting them to matters that directly affect indigenous peoples and explicitly establish that "prior consent" is only applicable to the regulation of territorial entities and is not required with respect to national matters or constitutional reforms.

#### 2. Indigenous territorial autonomy

**Risks:** The powers of autonomous territories and their interaction with the current State bodies with respect to self-government are not well defined in article 34 of the new Constitution. This too creates investment risk.

**Proposals for improvement:** Expressly establish that the application of these provisions must be consistent with the unique and indivisible character of the territory of Chile and that in no case the establishment of an indigenous territorial autonomy or its regulation can limit the right of free transit of any inhabitant of the Republic throughout the national territory, or curtail the Constitution and the laws.

### 3. Indigenous justice in the new Constitution

**Risks:** Inconsistent application of justice in cases of conflict between indigenous and non-indigenous people. Should the new Constitution be approved, there would be eleven indigenous courts (one for each recognized indigenous people).

**Proposals for improvement:** Specify that indigenous Justice will only apply to members of the same people; that it will be voluntary, and that it will not have jurisdiction over criminal offenses.

### 4. Public spending in the new Constitution

**Risks:** The draft Constitution could lead to higher public spending by ending the president's exclusive power to propose legal and budgetary changes that result in spending. In addition, it is proposed that the Congress of Deputies or the Chamber of the Regions can present the laws of presidential concurrence as motions.

**Proposals for improvement:** Contain the risk of higher public spending by eliminating parliamentary motions that directly incur expenses to the State.

### 5. Public debt ceiling in the new Constitution

**Risks:** The increase in public debt and fiscal deficit is a related risk.

**Proposals for improvement:** Modify the text to ensure that the indebtedness capacity of territorial entities established by law must be subject to the annual maximum established for this purpose by the budget law, with a clear fiscal responsibility rule.

### 6. Pension system in the new Constitution

**Risks:** The draft constitution does not innovate with respect to pension reform proposals, with possible future funding risks.

**Proposals for improvement:** Adopt a mixed model (with individual and government contributions), featuring an individual capitalization component on the same terms as currently. The pension reform that the government will take to Congress in the coming days will propose a mixed system, combining a universal basic benefit (Guaranteed Universal Pension) with an increase of 6 ppts in the individual contribution, paid by employers. In addition, there will be private administrators and a public entity, and the heritability of the funds will be respected.

### 7. National health system in the new Constitution

**Risks:** Proposed constitution does not innovate with respect to national care system, leading to potential sustainability and access issues.

**Proposals for improvement:** Allow the possibility of private health care providers; ensure an integrated system with public and private participation, in which clinics, hospitals, and private medical centers continue to co-exist; create a Single Health Insurance, which protects the freedom of all people to choose where to receive medical attention.

**In addition, there are still issues pending, not included in the proposals for improvement:** property over water (articles 140 to 144); mining concessions (articles 145 to 147), "fair price" and property rights (article 78).

**When will it come into force?** If the text proposed by the Convention is approved, the President of the Republic must call the Plenary Session of Congress to promulgate the new Constitution, which will enter into force as of the date of its publication in the Official Gazette, within ten days, following to its enactment.

### WHAT IF THE CONSTITUTION IS REJECTED?

If the draft Constitution is rejected, the current Constitution will remain in force (article 142 of the current Constitution). This is because there is no institutional mechanism to continue with the constituent process after the exit plebiscite; if the draft constitution is rejected, the process legally ends. Consequently, any proposal to extend the constituent process must be approved by both Houses of Congress by a majority of four-sevenths (new threshold recently approved).

### WHAT ARE THE POLITICAL ALTERNATIVES IN THE EVENT OF REJECTION?

1. **Call for a new plebiscite (plebiscito de entrada) (estimated term: 25 to 28 months):** This would be similar to the October 2020 plebiscite since its objective would be to determine if citizens agree to start a constituent process to draft a new Constitution and the mechanism through which it would be drafted. Because it is an electoral process, they must be held at least 125 days after the plebiscite on September 4 (around January 2023), according to information from the Electoral Service (SERVEL).

Based on the times observed in the previous constituent process, we estimate the terms that each alternative would entail as summarized in Table 1.

2. **Call for a new constituent process:** This process would begin with the presentation to Congress of a constitutional reform bill to define the mechanisms for continuing the constituent process. At a minimum, the bill must contain deadlines, the citizen ratification process and the mechanisms to draft the new constitutional text. Within the latter, three alternatives are possible:
  - a. **Call elections to elect new assembly members (estimated timeline: 18 to 21 months).** Elections must take place at least 125 days after the plebiscite of September 4 (around January 2023), according to information from the Electoral Service (SERVEL).
  - b. **Elect a committee of experts to draft a new Constitution (estimated timeline: 10 months).** It is proposed that 30 days after the plebiscite of September 4, the plenary session of Congress call a constitutional commission of experts made up of prestigious academics in the field. It must be installed 10 days after of the convening of the plenary session of Congress and would have a period of six months to deliver the text of the new Constitution.
  - c. **Congress prepares a new Constitution (estimated timeline: 12 to 15 months).** Under this approach, it must be defined if Congress wants to start from scratch (blank sheet) or reform the current Constitution incorporating elements of the constitutional proposal prepared by the Constituent Assembly. Recall that the necessary threshold for constitutional reforms corresponds to four-sevenths of the members of both Chambers. It should also be noted that this was recently reduced (from two-thirds for some chapters and three-fifths for others). In other words, to carry out the constitutional reforms, approval of 89 parliamentarians in the Lower House and 29 in the Upper House would be needed.

**Table 1: Chile—Estimated Terms to Continue the Constituent Process in Case of Rejection**

Months	Date	(1) Plebiscite (25-28 months)	(2a) Elect New Assembly Members (18-21 months)	(2b) Committee of Experts (10 months)	(2c) Congress (12-15 months)
1	Sep-22		Call new assembly members		Start of the discussion in Congress
2	Oct-22			Call committee of experts and installation	
3	Nov-22				
4	Dec-22				
5	Jan-23	New plebiscite	Election for assembly members		
6	Feb-23	Call new assembly members			
7	Mar-23		Installation of the Constituent assembly		
8	Apr-23			Final text (after 6 months)	
9	May-23				
10	Jun-23			Exit plebiscite	Final text (after 9 months)
11	Jul-23				
12	Aug-23	Election for assembly members			Exit plebiscite
13	Sep-23				Final text (considering 3 months of extension)
14	Oct-23	Installation of the Constituent assembly			
15	Nov-23				Exit plebiscite (considering extension)
16	Dec-23		Final text (after 9 months)		
17	Jan-24				
18	Feb-24		Exit plebiscite		
19	Mar-24		Final text (considering 3 months of extension)		
20	Apr-24				
21	May-24		Exit plebiscite (considering extension)		
22	Jun-24				
23	Jul-24	Final text (after 9 months)			
24	Aug-24				
25	Sep-24	Exit plebiscite			
26	Oct-24	Final text (considering 3 months of extension)			
27	Nov-24				
28	Dec-24	Exit plebiscite (considering extension)			

Source: Scotiabank Economics.

**ANNEX (IN SPANISH)****1. Indigenous consultation in the new Constitution:**

Article 66: "los pueblos y naciones indígenas tienen derecho a ser consultados previamente a la adopción de medidas administrativas y legislativas que les afectasen".

Article 191: "los pueblos y naciones indígenas deberán ser consultados y otorgarán el consentimiento libre, previo e informado en aquellas materias o asuntos que les afecten en sus derechos reconocidos en esta Constitución".

**2. Indigenous territorial autonomy in the new Constitution**

Article 234: "la autonomía territorial indígena es la entidad territorial dotada de personalidad jurídica de derecho público y patrimonio propio, donde los pueblos y naciones indígenas ejercen derechos de autonomía en coordinación con las demás entidades territoriales".

**3. Indigenous justice in the new Constitution**

Article 309: "el Estado reconoce los sistemas jurídicos de los pueblos y naciones indígenas, los que en virtud de su derecho a la libre determinación coexisten coordinados en un plano de igualdad con el Sistema Nacional de Justicia".

**4. Public spending in the new Constitution**

Article 266: "son leyes de concurrencia presidencial necesaria: a) Las que irroguen directamente gastos al Estado; b) las leyes relacionadas con la administración presupuestaria del Estado, incluyendo las modificaciones de la Ley de Presupuestos; d) las que impongan, supriman, reduzcan o condonen tributos de cualquier clase o naturaleza, establezcan exenciones o modifiquen las existentes y determinen su forma, proporcionalidad o progresión".

Article 277: "las leyes de concurrencia presidencial necesaria pueden tener su origen en un mensaje o en una moción".

**5. Public debt ceiling in the new Constitution**

Article 250: "Los gobiernos regionales y locales podrán emitir deuda en conformidad con lo que disponga la ley, general o especial".

**6. Pension system in the new Constitution**

Article 45: "La ley establecerá un sistema de seguridad social público, que otorgue protección en caso de enfermedad, vejez, discapacidad, supervivencia, maternidad y paternidad, desempleo, accidentes del trabajo y enfermedades profesionales, y en las demás contingencias sociales de falta o disminución de medios de subsistencia o de capacidad para el trabajo... El Estado define la política de seguridad social. Esta se financiará por trabajadoras, trabajadores, empleadoras y empleadores, a través de cotizaciones obligatorias y rentas generales de la nación".

**7. National health system in the new Constitution**

Article 44: "el Sistema Nacional de Salud es de carácter universal, público e integrado".

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