Prior consultation: two-edged sword for Chile investment?

Adherence to Convention 169 gives indigenous communities stronger position

Effective Tuesday, June 24, Chile has adopted full compliance with the Indigenous and Tribal Peoples’ Convention of the International Labor Organization of the United Nations – known to Chile’s mining sector and environmentalists as ILO Convention 169. It requires the government to hold Prior Consultation with any local indigenous communities whose rights might be directly affected by any new legislative or administrative measure, national or regional plan, or major program or project. Chile’s full adherence to the convention expresses President Bachelet’s stance of asserting social inclusion. We welcome the move on principle, but acknowledge it also as a factor that could potentially slow investment in areas where there is serious confrontation.

90–day window for discussion – no veto powers, but may still take longer

The Mapuches, a group of indigenous inhabitants of South-central Chile, are a good example of what is involved. They have claimed return of ancestral lands, recognition and support of cultural identity, and jurisdictional autonomy. Their demands have led to violent or deadly confrontation with government, landowners and enterprises – the latter mainly forestry companies, that have suffered arson and vandalism. In the past, prior consultation was not a formal requirement in Chile, but execution of projects was in practice led by dialogue with affected communities. Now the process is formalized: when a proposal is made the community has 90 days to debate and reach an agreement over recommended changes (if any). The law does not provide veto powers, but we have seen from experience in other countries that this does not necessarily mean that a veto-in-practice cannot develop from certain situations.

Peru implemented prior consultation: de-risked some projects, risked others

A parallel is Peru – where Law 29876 incorporated Convention 169 into legislation on September 2011. There, prior consultation has enabled dialogue between company, government and community, and this has been effective in smoothing rollout of some projects – but Peru also has cases where the new rule has been successfully used as a political weapon: community demands have derailed execution, impeded investment flows and ultimately caused companies to shelve or abandon projects.

Mitigating social hazard?

Theoretically, for Chile we see the law as a tool for resolving social conflicts – and indeed potentially tending to free up obstructions in the investment pipeline. However, based on indigenous demands as we know them today, we feel the change will not necessarily translate into mitigation of social hazard, reduction of risk for projects, nor ironing out of delays. We believe that bringing disputes formally to the table should indeed generate some good will on all sides, but if the mechanism is used strongly as a maneuvering tool, we could see it becoming detrimental to investment.
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<table>
<thead>
<tr>
<th>BTG Pactual Rating</th>
<th>Definition</th>
<th>Coverage *1</th>
<th>IB Services *2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buy</td>
<td>Expected total return 10% above the company’s sector average.</td>
<td>55%</td>
<td>46%</td>
</tr>
<tr>
<td>Neutral</td>
<td>Expected total return between +10% and -10% the company’s sector average.</td>
<td>41%</td>
<td>46%</td>
</tr>
<tr>
<td>Sell</td>
<td>Expected total return 10% below the company’s sector average.</td>
<td>4%</td>
<td>0%</td>
</tr>
</tbody>
</table>

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---------------|---------|--------------|-------|------------|
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COPEC 1, 2, 4, 5, 16, 19, 20 | COPEC CI | Buy | CLP7,265.50 | 19-6-2014 |
Endesa Chile 1, 9, 18, 20, 21, 22 | N.A. | Buy | CLP827.47 | 19-6-2014 |
Enersig 1, 9, 16, 20, 22 | N.A. | Buy | CLP183.15 | 19-6-2014 |
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