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THE VIRTUAL ASSETS ECOSYSTEM IN EL SALVADOR:

Strengthening Financial Integrity and Transparency



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The Virtual Assets Ecosystem in El Salvador: Strengthening Financial Integrity and Transparency

By Global Financial Integrity

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The findings and analysis in this report do not necessarily represent the views of any participating reviewer or organization.

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Acronyms and Terms

Term	Explanation
AML	Anti-Money Laundering
ART	Asset-referenced token
BCR	Central Reserve Bank
BSA	Bank Secrecy Act
BSP	Bitcoin Service Provider
BTC	Bitcoin
CBDC	Central Bank Digital Currency
CBI	Citizenship by Investment
CDD	Customer Due Diligence
CFT	Countering the Financing of Terrorism
CVC	Convertible Virtual Currency
DLT	Distributed Ledger Technology
DUI	<i>Documento único de identidad</i> (unique identification document)
EMT	E-Money Token
FATF	Financial Action Task Force
FGR	<i>Fiscalía General de la República</i> (Attorney General's Office)
FinCEN	Financial Crimes Enforcement Network
FIU	Financial intelligence unit
GAFILAT	<i>El Grupo de Acción Financiera de Latinoamérica</i> (Financial Action Task Force of Latin America)
GDP	Gross Domestic Product
GFI	Global Financial Integrity
GOES	Government of El Salvador
GTIAC	<i>Grupo de Trabajo Interinstitucional Anticorrupción</i> (Interinstitutional Anticorruption Working Group)
ICO	Initial Coin Offering
IMF	International Monetary Fund (IMF)

KYC	Know-Your-Customer
Maras	Gangs
ML	Money Laundering
MSB	Money Services Businesses
NCDA	National Commission of Digital Assets
NFT	Non-fungible token
NIT	<i>Número de identificación tributaria</i> (Tax identification number)
LAIP	Law on Access to Public Information
LCLDA	Law Against Money Laundering and Asset Laundering
<i>Peculado</i>	Misappropriation of public funds
PII	Personally Identifiable Information
REML	Real estate money laundering
SEC	United States Securities and Exchange Commission
SSF	<i>Superintendencia del sistema financiero</i> (Superintendence of the Financial System)
STR	Suspicious transaction reports
TF	Terrorist Financing
TSE	Supreme Electoral Tribunal
UNODC	United Nations Office on Drugs and Crime
USD	United States Dollar
USDT	USDT, also known as Tether, a stablecoin pegged to the US Dollar
VA	Virtual Asset
VASP	Virtual Asset Service Provider

Executive Summary

On September 7, 2021, El Salvador became the first country in the world to adopt Bitcoin as legal tender. Two years later, the country has undergone technological change and growth, faced operational and regulatory challenges, and learned a tremendous amount in the process.

This report analyzes virtual assets (VAs) in El Salvador, first from a legal and regulatory perspective, and second from an anti-money laundering (AML) and counter terrorism financing (CFT) perspective. The report lays out progress made by El Salvador as well as remaining challenges that need to be addressed. Through a balanced, technical discussion of these issues, the report aims to help El Salvador leverage the benefits of technological and financial innovation while also mitigating risks that may emerge.

The first half of the report analyzes the current regulatory landscape in El Salvador regarding Bitcoin and VAs. El Salvador has taken a major leap in embracing technological innovation, specifically in the digitalization of the financial system, through adopting bitcoin, cryptocurrencies, and digital assets. The country has established a regulatory framework encompassing the Bitcoin Law, the Digital Assets Issuance Law, and the Innovation and Manufacture of Technologies Promotion Law. These laws aim to provide a supportive environment for individuals and businesses engaging in transactions involving digital currencies while fostering innovation and technology manufacturing within the nation. As a result, El Salvador is poised to become a leading proponent of emerging technologies across various sectors of its economy. Due to the dynamic nature of the subject matter and the ongoing efforts to standardize these frameworks internationally, the report identifies additional areas that may still require regulation.

The second half of the report analyzes VAs in El Salvador from an AML/CFT perspective. The report approaches these issues from the perspective of the Financial Action Task Force (FATF), which states that “the cornerstone (...) is the risk-based approach which emphasizes the need for countries to identify and understand the money laundering (ML) and terrorism financing (TF) risks they are exposed to.”¹ Understanding risks enables countries such as El Salvador to take mitigating measures and to deploy limited resources effectively. In this regard, the report analyzes financial crime risks for the most common predicate offenses for ML in El Salvador, considering drug trafficking, extortion, migrant smuggling, and misappropriation of public funds (*peculado*). The report also assesses financial crime risks related to specific operational features or developments within El Salvador’s VA ecosystem.

The report concludes with policy recommendations that can help El Salvador to maximize the benefits and minimize the risks associated with financial innovation. Key recommendations include:

1. Policymakers in El Salvador should urgently adopt reforms strengthening AML/CFT as well as ensuring robust oversight over VAs. These reforms are particularly important in light of El Salvador’s upcoming Mutual Evaluation.
2. The Government of El Salvador, and specifically the Central Reserve Bank (BCR) and the National Commission of Digital Assets (NCDA), should engage with the legal and business com-

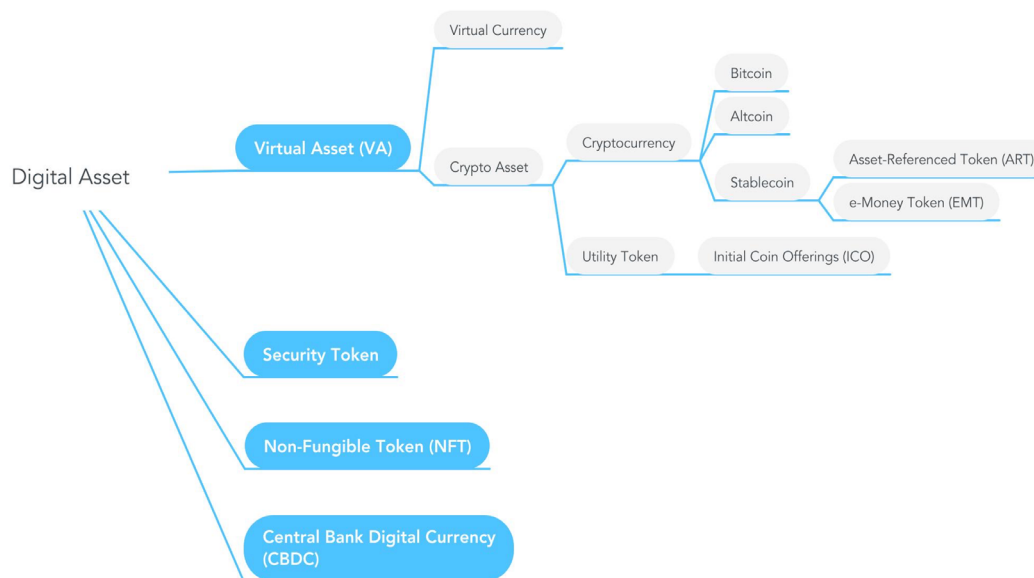
¹ “FATF Recommendations,” The Financial Action Task Force, accessed July 18, 2023, <https://www.fatf-gafi.org/en/topics/fatf-recommendations.html>.

munity in developing regulations and technical standards according to need and practice for the Bitcoin Law and Digital Assets Issuance Law, following international best practices.

3. Lawyers and law firms advising companies wanting to operate in El Salvador should enhance compliance mechanisms to verify client backgrounds to prevent criminal actors from entering the national financial system.
4. All relevant government agencies should ensure transparency and access to public information, including contractual and operational processes, fraud and mismanagement investigations, and the use of public funds, per domestic laws and international standards.
5. The BCR should incorporate information on government Bitcoin purchases into the Balance of Payments and other similar documents.
6. The Superintendence of the Financial System (SSF) should require that Chivo Wallet collect information on legal persons opening Chivo Wallet accounts in line with the requirements for legal persons to open other types of financial accounts. In addition, Chivo Wallet should maintain beneficial ownership information for legal persons using Chivo Wallet, in line with FATF Recommendation 15's interpretive guidance and similar to the requirements for financial institutions.
7. Considering that financial institutions and other obligated entities submit suspicious transaction reports (STRs) for crypto transactions, the Financial Intelligence Unit (FIU) of El Salvador and other government authorities should provide education and training opportunities to the financial sector and other obligated entities regarding identification of red flag indicators in crypto transactions. This will help to ensure that STRs contain relevant information and reflect an informed understanding of the risks.

Key Concepts and Definitions

Graphic 1. Key Concepts in Digital Assets



Source: Global Financial Integrity, June 22, 2023.^{2:3}

Asset-Referenced Token (ART): a.k.a “Stablecoins”. An ART is a type of crypto-asset. It is meant to maintain a stable value by referring to the value of several currencies that are legal tender (fiat currencies), one or several commodities, one or several crypto-assets or a combination of such assets.⁴

Altcoin: a.k.a “Alternative coin”. Math-based, decentralized convertible virtual currency (CVC) other than Bitcoin.⁵

2 Virtual Currencies: Key definitions and potential AML/CFT risks, Financial Action Task Force (2014), <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>; Regulation of the European Parliament and the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, https://eur-lex.europa.eu/resource.html?uri=cellar:f69f89bb-fe54-11ea-b44f-01aa75ed71a1.0001.02/DOC_1&format=PDF; Digital Assets Issuance Law, El Salvador (2023) <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/BED5A3F8-8937-4547-A291-CE06802B0B23.pdf>; Demystifying cryptocurrency and digital assets”, PWC, <https://www.pwc.com/us/en/tech-effect/emerging-tech/understanding-cryptocurrency-digital-assets.html>.

3 FATF defines virtual assets as crypto assets and establishes that the definition does not include a digital representation of fiat currency nor NFT’s when used as collectibles. It also mentions virtual currencies as convertible, non-convertible, centralized and decentralized, defining cryptocurrencies as decentralized and convertible, such as Bitcoin. Markets in Crypto-Assets regulation from the European Union makes reference to crypto assets and classifies them into asset-referenced token (ART), E-Money Token (EMT) (these two are also known as stablecoins) and utility Tokens. El Salvador’s regulation on digital assets uses the concept “digital” and classifies them in ARTs and stablecoins. Other classifications such as those by PWC mention five categories of digital assets, including cryptocurrencies, security tokens, central bank digital currency (CBDC), NFTs and stablecoins.

4 Markets in Crypto-assets, European Council (2023), https://eur-lex.europa.eu/resource.html?uri=cellar:f69f89bb-fe54-11ea-b44f-01aa75ed71a1.0001.02/DOC_1&format=PDF.

5 Virtual Currencies: Key definitions and potential AML/CFT risks, Financial Action Task Force (2014), <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>.

Bitcoin (BTC): First decentralized CVC, and the first cryptocurrency. Bitcoins are units of account composed of unique strings of numbers and letters that constitute units of the currency and have value only because individuals are willing to pay for them. Bitcoin works on blockchain technology which is composed of nodes approved by miners (“proof of work”).⁶

Blockchain: Blockchain is a technology based on blocks, where data is added from each of these blocks. Each block is built on top of the last and includes a piece of information that links back to the previous one. The blocks are linked to each other through a “hash”. That means taking the data of any size and passing it through a mathematical function to produce an output (a hash).⁷

Central Bank Digital Currency (CBDC): A type of digital asset that represents a nation’s fiat currency and is backed by its central bank. Not all nations issue CBDC.⁸

Crypto Asset: Generic terminology for a digital representation of value or rights which may be transferred or stored electronically using distributed ledger technology (DLT) or another similar technology.⁹

Cryptocurrency: Math-based, decentralized CVC that is protected by cryptography. Cryptocurrency relies on public and private keys to transfer value from one person (individual or entity) to another, and must be cryptographically signed each time it is transferred.¹⁰

Digital Asset: A digital representation that can be stored and transferred electronically, using Blockchain or a DLT or analog or similar technology, in which the registers are intertwined and encrypted to protect the security and privacy of the transactions. They can be possessed, exchanged, transferred, negotiated and promoted by individuals and enterprises.¹¹

Distributed Ledger Technology (DLT): A type of database that keeps multiple copies of information in different locations, which it can update consistently. This allows anyone who has access to the copy of the shared ledger to verify the same data (information). An important requirement for this type of database is maintaining integrity and availability. The three basic requirements are consistency, availability and partition tolerance. Blockchain was created to provide digital currency, while DLT has evolved over the past few years to provide other purposes such as record management and process automation, for example.¹²

6 Ibid.

7 “Demystifying cryptocurrency and digital assets”, PWC, <https://www.pwc.com/us/en/tech-effect/emerging-tech/understanding-cryptocurrency-digital-assets.html>; “What is blockchain technology?, the ultimate guide”; Academy Binance, (2023) https://academy.binance.com/en/articles/what-is-blockchain-technology-a-comprehensive-guide-for-beginners?utm_source=googleadwords_in-t&utm_medium=cpc&ref=HDYAHEES&gclid=Cj0KCQjwsIejBh.

8 “Demystifying cryptocurrency and digital assets”, PWC, <https://www.pwc.com/us/en/tech-effect/emerging-tech/understanding-cryptocurrency-digital-assets.html>; Jain Ashkin, “What countries have CBDC in 2023 and how they shape crypto future”, Crypto News (2023), <https://crypto.news/what-countries-have-cbdc-in-2023-and-how-they-shape-crypto-future/>.

9 Markets in Crypto-assets, European Council (2023), https://eur-lex.europa.eu/resource.html?uri=cellar:f69f89bb-fe54-11ea-b44f-01aa75ed71a1.0001.02/DOC_1&format=PD.

10 Virtual Currencies: Key definitions and potential AML/CFT risks, Financial Action Task Force (2014), <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>.

11 Law on the Issuance of Digital Assets, El Salvador (2023), <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/BED5A3F8-8937-4547-A291-CE06802B0B23.pdf>.

12 Behnke, Robert, “Digital Assets, Virtual Assets, and Crypto Assets Defined”, (2023), <https://www.halborn.com/blog/post/digital-assets-virtual-assets-and-crypto-assets-defined>; “Digital Assets”, Internal Revenue Services (2023), <https://www.irs.gov/businesses/small-businesses-self-employed/digital-assets>.

E-Money: Digital representation of fiat currency used to electronically transfer value denominated in fiat currency. E-money is a digital mechanism for fiat currency.¹³

E-Money Token (EMT): a.k.a “Stablecoins”. An ‘e-money token’ is a type of crypto-asset which is meant to be a means of exchange and maintains a stable value by referring to the value of a fiat currency that is legal tender.¹⁴

Fiat Currency: a.k.a “real currency”, “real money”, or “national currency”. The coin and paper money of a country that is designated as its legal tender and is customarily used and accepted as a medium of exchange in the issuing country.¹⁵

Initial Coin Offering (ICO): An initial coin issued by a company which releases its own cryptocurrency with the purpose of funding.¹⁶

Non-Fungible Token (NFT): A digital asset that can be used for payment or investment. NFTs are considered VAs when used for payment and investment. They can also be collectibles, considering their uniqueness, in which case they are not considered VAs.¹⁷

Security Token: A digital asset that meets the definition of a security or financial investment, like stocks and bonds. It can be used for tokenized versions of stocks (equity) and bonds and tokenized versions of real world assets (real estate, property, plant, and equipment, etc.).¹⁸

Stablecoin: Cryptocurrency whose value is tied to the price of other assets aimed at maintaining a stable value, such as USDT (or Tether). They are either a security or a VA.¹⁹

Utility Token: A ‘utility token’ is intended to provide digital access to a good or service. It is available on DLT and is only accepted by the issuer of that token.²⁰

Virtual Asset (VA): Any digital representation of value that can be digitally traded, transferred or used for payment. Does not include NFTs as collectibles or digital representation from fiat currencies.²¹

13 Virtual Currencies: Key definitions and potential AML/CFT risks, Financial Action Task Force (2014), <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>.

14 Markets in Crypto-assets, European Council (2023), https://eur-lex.europa.eu/resource.html?uri=cellar:f69f89bb-fe54-11ea-b44f-01aa75ed71a1.0001.02/DOC_1&format=PD.

15 Virtual Currencies: Key definitions and potential AML/CFT risks, Financial Action Task Force (2014), https://www.fatf-gafi.org/content/dam/fatf-gafi/brochures/FATF-Booklet_VA.pdf.

16 “ICO’s”, Cointelegraph, <https://cointelegraph.com/tags/ico>.

17 “Updated Guidance for a risk-based approach to virtual assets and virtual asset service providers”, FATF, (2021), [https://www.fatf-gafi.org/en/topics/virtual-assets.html#:~:text=Virtual%20assets%20\(crypto%20assets\)%20refer,many%20potential%20benefits%20and%20dangers](https://www.fatf-gafi.org/en/topics/virtual-assets.html#:~:text=Virtual%20assets%20(crypto%20assets)%20refer,many%20potential%20benefits%20and%20dangers).

18 “Demystifying cryptocurrency and digital assets”, PWC, <https://www.pwc.com/us/en/tech-effect/emerging-tech/understanding-cryptocurrency-digital-assets.html>.

19 Digital Assets Issuance Law, El Salvador (2023), <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/BED5A3F8-8937-4547-A291-CE06802B0B23.pdf>.

20 Markets in Crypto-assets, European Council (2023), https://eur-lex.europa.eu/resource.html?uri=cellar:f69f89bb-fe54-11ea-b44f-01aa75ed71a1.0001.02/DOC_1&format=PDF.

21 Virtual Currencies: Key definitions and potential AML/CFT risks, Financial Action Task Force (2014), <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>.

Virtual Currency: A digital representation of value that can be digitally traded and functions as a medium of exchange, a unit of account, a store of value (but does not have legal tender status). These can be convertible or non convertible and also decentralized or centralized.²²

²² Virtual Currencies: Key definitions and potential AML/CFT risks, Financial Action Task Force (2014), <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>.

Introduction and Country Context

Understanding VAs and financial integrity risks in El Salvador requires first understanding El Salvador and its unique country context. A small country with a population just under 6.4 million,²³ El Salvador is nonetheless highly global, with strong international connections both culturally and economically. This is in part due to its history of migration; an estimated 1.4 million Salvadoran migrants live in the United States and send over \$7 billion a year in remittances, which represent over a quarter of the country's gross domestic product (GDP).²⁴ Moreover, international trade is highly important to El Salvador's economy and represents 87 percent of GDP.²⁵ El Salvador has also been a dollarized economy since 2001, which has brought benefits but also challenges, not the least of which is exposure to financial crimes.²⁶ The economy is cash-heavy, financial inclusion is limited, and only 28 percent of the population has a savings account at a financial institution.²⁷ El Salvador is also a country with limited education levels, though that is changing. On average, the population has 7.2 years of schooling, though younger generations are making rapid progress and the population 18-29 years of age has 10.3 years of schooling.²⁸ While El Salvador's GDP growth bounced back after Covid-19, sustaining growth and improving economic livelihoods remains a challenge. In 2022, the average monthly income was just \$377.²⁹

There are also aspects of crypto adoption in El Salvador that are quite unique. Among users of VAs in El Salvador, 97 percent use Chivo Wallet, a wallet designed and owned by the government which affords the government certain control and oversight over transactions.³⁰ Moreover, the users of Chivo Wallet are limited to 1) Salvadorans or Salvadoran-Americans with a valid or expired *documento único de identidad* (DUI) or Salvadoran passport, and 2) Salvadoran businesses with a tax identification number (NIT).³¹ These factors are unique from a crypto adoption perspective and must be considered in evaluating financial integrity risks.

The adoption rate of VAs in El Salvador has been fiercely debated; whether consumer adoption has been slow or fast largely depends on perspective.

The results of a 2022 financial inclusion survey by the Government of El Salvador shed important light in this regard. Twenty-two percent of the population had used Bitcoin in the past 12 months,

23 Banco Central de Reserva, *Encuesta de Hogares de Propósitos Múltiples 2022* (San Salvador: Banco Central de Reserva, 2023), 7, <https://www.bcr.gob.sv/documental/Inicio/vista/0c0aa5ade233aa9a7345923e9329407a.pdf>.

24 "American Community Survey, 2021: ACS 1-Year Estimates Selected Population Profiles, Foreign Born Populations : El Salvador," U.S. Census Bureau, June 21, 2023, <https://data.census.gov/table?t=720&y=2021&tid=ACSSPP1Y2021.S0201>; Banco Central de Reserva. "Las Remesas Familiares Alcanzaron US\$6,981.7 Millones al Mes de Noviembre de 2022," Banco Central de Reserva, December 12, 2022. <https://www.bcr.gob.sv/2022/12/19/las-remesas-familiares-alcanzaron-us6981-7-millones-al-mes-de-noviembre-de-2022/>.

25 "Trade as % of GDP," World Bank Data, 2022, accessed July 19, 2023, https://data.worldbank.org/indicator/NE.TRD.GNFS.ZS?locations=SV&most_recent_value_desc=false.

26 As an example of this phenomenon, see Prosper Simbarashe Maguchu, "Challenges of Money Laundering for Sovereign States that Use the US Dollar." *Journal of Money Laundering Control* 25, no. 2 (October 21, 2021): 306–12. <https://www.emerald.com/insight/content/doi/10.1108/JMLC-06-2021-0056/full/html>.

27 "Resultados Encuestas 2022 - Inclusión Financiera," Inclusión y Educación Financiera, Banco Central de Reserva and Government of El Salvador, June 21, 2023, <http://inclusionfinanciera.gob.sv/resultados-encuestas-2022/>.

28 Banco Central de Reserva, *Encuesta de Hogares de Propósitos Múltiples 2022*, 15.

29 Banco Central de Reserva, *Encuesta de Hogares de Propósitos Múltiples 2022*, 32.

30 "Resultados Encuestas 2022 - Inclusión Financiera."

31 "Preguntas Frecuentes | Chivo Wallet." Gobierno de El Salvador, June 21, 2023, <https://www.chivowallet.com/preguntas-frecuentes.html#item-6>.

while 78 percent had not used any digital currencies or cryptocurrencies over that period.³² No other digital currencies beyond Bitcoin were reported as being used by survey respondents.³³ This is consistent with a September 2022 survey by the *Instituto Universitario de Opinión Pública*, which found that 24 percent of respondents had used Bitcoin and 75 percent had not.³⁴

Table 1. In the Past 12 Months, What Digital Currencies or Cryptocurrencies Have You Used? (2022)

CATEGORY	DEMOGRAPHIC GROUP	BITCOIN	NONE
General	n	1208	4255
	Total	22%	78%
Gender	Male	26%	74%
	Female	19%	81%
Age	18-25	30%	70%
	26-35	28%	72%
	36-45	22%	78%
	46-60	18%	82%
	61+	12%	88%
Income range	No income	8%	92%
	Less than \$365	21%	79%
	Between \$365 and \$730	25%	75%
	Between \$730 and \$1460	30%	70%
	Between \$1460 and \$2555	30%	70%
	Between \$2555 and \$5475	40%	60%
	More than \$5475	0%	100%
Region	West	28%	72%
	Central	28%	72%
	Paracentral	16%	84%
	East	13%	87%
Urban or rural	Urban	25%	75%
	Rural	19%	81%

Source: Tablas cruzadas de información de Inclusión financiera, <https://inclusionfinanciera.gob.sv/resultados-encuestas-2022/>.

Table 2. Percentage of Respondents who Reported Having Used Bitcoin (September 2022)

DEPARTMENT	PERCENTAGE
Cuscatlán	35%
San Vicente	31%
San Salvador	31%
Chalatenango	28%
La Paz	26%
La Libertad	25%
Grand Total	24%
Morazán	22%
Cabañas	21%
Usulután	20%
Santa Ana	19%
San Miguel	18%
La Unión	17%
Ahuachapán	16%
Sonsonate	15%

Source: “Encuesta sobre coyuntura sociopolítica,” Instituto Universitario de Opinión Pública (Iudop), Universidad Centroamericana José Simeón Cañas (UCA), El Salvador, September 2022, <https://uca.edu.sv/iudop/publicacion/encuesta-sobre-coyuntura-nacional-2/>.

It is also important to consider the profile of crypto users in El Salvador. In terms of demographics, Bitcoin users in El Salvador included more men, young people, urban residents, and those with higher incomes compared to non-users. Table 1 provides additional detail.

32 Tablas cruzadas de información de Inclusión financiera, <https://inclusionfinanciera.gob.sv/resultados-encuestas-2022/>.

33 Tablas cruzadas de información de Inclusión financiera, <https://inclusionfinanciera.gob.sv/resultados-encuestas-2022/>.

34 “Encuesta sobre coyuntura sociopolítica,” Instituto Universitario de Opinión Pública (Iudop), Universidad Centroamericana José Simeón Cañas (UCA), El Salvador, September 2022, <https://uca.edu.sv/iudop/publicacion/encuesta-sobre-coyuntura-nacional-2/>.

A survey by the *Instituto Universitario de Opinión Pública* provides more detail on Bitcoin adoption by department (a term for geographic regions of the country). The departments of Cuscatlán, San Vicente and San Salvador were among those with higher adoption rates. Meanwhile, the departments of Sonsonate, Ahuachapán, and La Unión had lower adoption rates. Table 2 on the previous page provides additional detail.

A 2023 survey by the University Francisco Gavidia of El Salvador provides additional insights. Users of Bitcoin in El Salvador include people from all educational backgrounds, but those with a high school degree are heavily represented. Among those respondents who reported using Bitcoin once, 47 percent had a high school education, and among those who had used it several times, 46% had a high school education.³⁵ Among all people with high school degrees, 19 percent had tried Bitcoin once and 11 percent had used it several times, according to the survey.³⁶

Table 3. Have You Ever Made a Purchase or Transaction Using Bitcoin? What Was the Highest Level of Education You Attained? (Cross-Tabulation with Column Percentages)

Have you ever made a purchase or transaction using Bitcoin?	HIGHEST LEVEL OF EDUCATION ATTAINED							
		None	Elementary School	Middle School	High School	Technical school	University or Beyond	Line Total
Yes, once	COUNT	2	30	34	84	6	22	178
	LINE %	1%	17%	19%	47%	3%	12%	100%
Yes, several times	COUNT	2	6	12	46	5	30	101
	LINE %	2%	6%	12%	46%	5%	30%	100%
No ³⁷	COUNT	57	233	191	308	25	118	932
	LINE %	6%	25%	20%	33%	3%	13%	100%

Source: University Francisco Gavidia of El Salvador, Encuesta Microeconomía de los Salvadoreños 2023.

Among remittance recipients, 15.3 percent reported having used Bitcoin once and 12.3 percent reported using it several times. Among people who occasionally receive remittances, 14.5 percent reported using Bitcoin once and 7.0 percent used it several times. This is similar to the population as a whole.³⁸

35 University Francisco Gavidia of El Salvador, Encuesta Microeconomía de los Salvadoreños 2023.

36 Ibid.

37 The responses “Never” and “No, I don’t trust Bitcoin” were combined into this row.

38 “Encuesta Macroeconómica 2023,” *Disruptiva: Periodismo, Ciencia y Tecnología*, Universidad Francisco Gavidia, pg 37, <https://www.disruptiva.media/wp-content/uploads/2023/05/encuesta-economica-2023.pdf>.

Table 4. Use of Bitcoin and Receiving Family Remittances from Abroad (Cross-Tabulation with Column Percentages)

		<i>Do you or does someone in your household receive family remittances from abroad?</i>	
<i>Have you ever made a purchase or transaction using Bitcoin?</i>		Yes	Yes, sometimes
Yes, once	COUNT	46	132
	% COLUMN	15.3%	14.5%
Yes, several times	COUNT	37	64
	% COLUMN	12.3%	7.0%
No ³⁹	COUNT	217	714
	% COLUMN	72.3%	78.5%
TOTAL	COUNT	300	910
	% COLUMN	100%	100%

Source: University Francisco Gavidia of El Salvador, Encuesta Microeconomía de los Salvadoreños 2023. Respondents who did not respond to this question were excluded from totals when calculating the column percentages.

Government Investment in Bitcoin

Consumers were not the only ones acquiring VAs during this time. In addition to analyzing user adoption in El Salvador, this report presents data on government investments in Bitcoin. As mentioned earlier in this report, the Government of El Salvador adopted Bitcoin as legal tender on September 7, 2021. At the same time, the government also began to purchase Bitcoin and develop its own portfolio.

The following provides a summary of El Salvador’s Bitcoin purchases and current portfolio. As El Salvador does not publish official statistics on Bitcoin purchases, the data was gathered from social media statements by the president.⁴⁰ In the absence of official data, this research approach required making a series of methodological assumptions.⁴¹

On September 6, 2021, one day before Bitcoin became legal tender, the government made its first official Bitcoin purchases, with two transactions for a total of ₡400 and spending approximately US\$20,750,924. From then until June 30, 2022, President Bukele tweeted about an additional nine purchases of bitcoin, for a total of 11 separate bitcoin purchases. These 11 transactions involved the purchase of ₡2,381 and approximately US\$105,669,148 cumulatively spent. Over the roughly 21-month period, the USD/BTC ranged from a low of ₡19,000 (June 30, 2022) to a high of ₡59,822 (10/27/2021). The smallest number of bitcoins purchased was ₡21 (12/21/2021) while the largest purchase was ₡500 (5/9/2022).

39 The responses “Never” and “No, I don’t trust Bitcoin” were combined into this row.

40 Based on statements made by President Bukele’s Twitter account (@nayibbukele).

41 This approach assumes that i) President Bukele’s tweets are accurate and reflect all government purchases and ii) the government has not sold any bitcoin. Additionally, unless the USD/BTC rate or total purchase amount was provided by President Bukele, the average daily exchange rate was used (average of the daily high and low exchange rates).

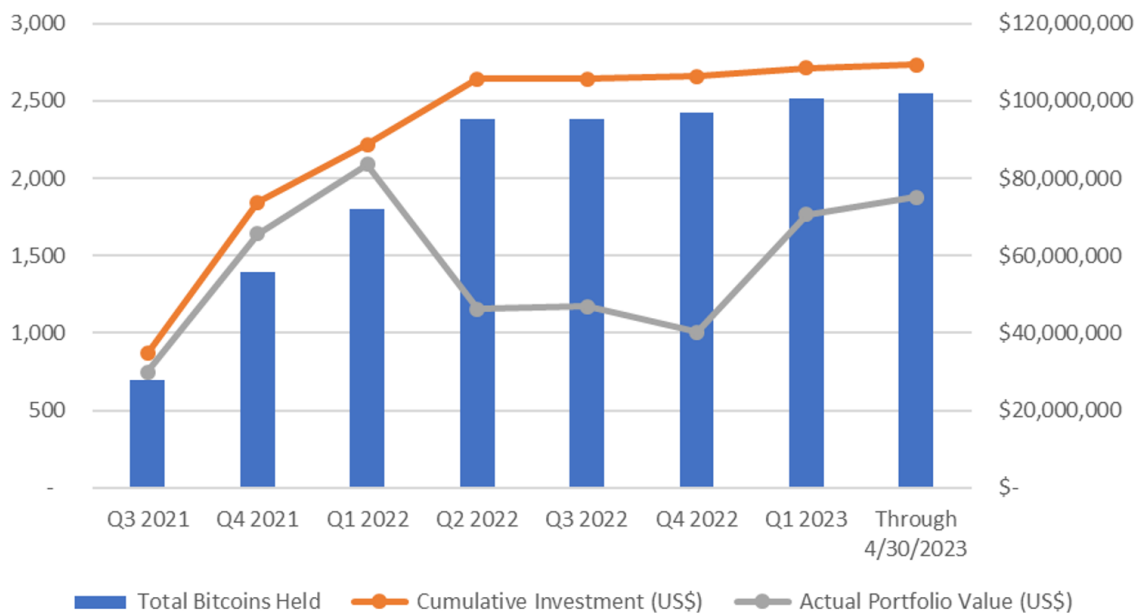
Graphic 2. Bitcoin Purchases vs. Purchase Amount



Source: Global Financial Integrity, April 30, 2023.

Then, on November 17, 2022, President Bukele tweeted that, beginning the following day on November 18, 2022, the government would purchase ₡1 a day. From November 18, 2022 through April 30, 2023, the government purchased ₡164 and spent approximately US\$3,659,548.

Graphic 3. Cumulative Bitcoins Held and Investment Versus Actual Portfolio Value (US\$)



Source: Global Financial Integrity, April 30, 2023.

As of April 30, 2023, El Salvador held a total of ₡2,545 and the government cumulatively invested approximately US\$109,328,695. As of the same date, the government's Bitcoin portfolio was valued at approximately US\$75,161,550, representing a loss of roughly US\$34,167,146 or more than 30 percent of the invested value.

It should be noted that these are estimates and that official data is not currently available. At this time, it is not possible to confirm whether the Bitcoin purchases announced on social media were really purchased. Nor is it possible to ascertain whether the Bitcoin that was purchased remains, or whether it was transferred or spent in the meantime. As DeCrypt has noted, “No one other than the Salvadoran government knows (...) how much crypto the government owns.”⁴²

Mapping of Private Sector Involvement

Currently, a number of private sector stakeholders are involved in El Salvador's VA ecosystem. Initially, 94 companies are listed on the “Bitcoin Registry,” which includes custody activities, digital wallets, exchange houses, and payment processors.⁴³

Similarly, under the Virtual Asset Providers Law, anyone interested in conducting operations involving the transfer of any type of digital asset used in the creation of public offers issued within the country must comply with the requirements established by this Law.

Overall, the impact of the regulation concerning Bitcoin and VAs reaches the financial sector and companies involved in activities within the ecosystem, extending even to retailers with the capability to accept Bitcoin as a form of payment. Major financial institutions in El Salvador have given their appreciations about the use of Bitcoin, but they are not directly processing payments through Bitcoin since the Bitcoin Law establishes that accounting must be conducted in USD.⁴⁴

Another important stakeholder is ASOBITCOIN, an association dedicated to educating and promoting the adoption of VAs.

It is also important to consider private sector stakeholders involved in providing services to the Government of El Salvador. According to reporting by CriptoNoticias.com, these have included Athena for technological infrastructure and ATMs, Uller for support services, Yu Security for KYC, Cipher Trace (Elliptic) for transaction monitoring, Bitso/Binance/Coinbase for exchange and custody services, Mobile SV for SMS services, and OUIPU for credit and debit card services.⁴⁵

42 Mat Di Salvo, Decrypt / “Bitcoin Surfing Tourists Are Flocking to El Salvador—What’s the Big Deal? - Decrypt.” Decrypt, May 12, 2023. <https://decrypt.co/139944/bitcoin-surfing-tourists-are-flocking-to-el-salvador-whats-the-big-deal>.

43 El Salvador Bitcoin Registry public information: <https://registrobtc.bcr.gob.sv/web/proveedores-registrados>.

44 La República; <https://www.larepublica.co/finanzas/entrada-del-bitcoin-al-mercado-pone-en-aprietos-a-los-bancos-que-operan-en-el-salvador-3213262>, BAC Credomatic; <https://www.baccredomatic.com/es-sv/personas/pago-con-bitcoin-en-nuestras-agencias>, Criptonoticias; <https://www.criptonoticias.com/comunidad/adopcion/el-salvador-banco-agricola-acepta-bitcoin-pagar-tarjetas-credito/>, Portafolio, <https://www.portafolio.co/economia/finanzas/davivienda-y-binance-empiezan-piloto-de-operaciones-con-criptomonedas-560760>.

45 Luis Esparragoza, “ChivoLeaks: así funcionaría Chivo, el monedero de Bitcoin de El Salvador,” CriptoNoticias, August 23, 2021, <https://www.criptonoticias.com/comunidad/adopcion/chivoleaks-funcionaria-chivo-monedero-bitcoin-el-salvador/>.

1

Legal and Regulatory Analysis

This section of the report presents a summary of the current regulatory status in El Salvador regarding Bitcoin and VAs, and identifies areas that may still require regulation. Additionally, it briefly compares existing legislation in the United States that impacts the VAs sector and its historical background. In general terms, learning from international experiences, including the U.S. as well as other jurisdictions, can help El Salvador design an effective framework for regulating VAs, considering its unique context and fostering a thriving digital asset ecosystem.

The country has established a regulatory framework encompassing the *Bitcoin Law*, the *Digital Assets Issuance Law*, and the *Innovation and Manufacture of Technologies Promotion Law*. These laws aim to provide a supportive environment for individuals and businesses engaging in transactions involving digital currencies while fostering innovation and technology manufacturing within the nation. As a result, El Salvador is poised to become a leading proponent of emerging technologies across various sectors of its economy.

Due to the dynamic nature of the subject matter and the ongoing efforts to standardize these frameworks internationally, this section identifies opportunities to complement the legal and regulatory initiatives already approved in El Salvador.

It is important to mention the legal framework created to regulate Bitcoin and digital assets adds to the existing legal system in El Salvador, and its impact touches on laws and regulations not created specifically for these new developments.

Regulatory Framework in El Salvador

In broad strokes, El Salvador has two regulatory frameworks relevant to VAs: a regulatory framework for Bitcoin (as legal tender), and a regulatory framework for VAs other than Bitcoin. With regards to the former, El Salvador has a public registry for Bitcoin Service Providers (BSPs) which is managed by the BCR and whose supervision falls under the SSF, including the application of sanctions. With regards to the latter, El Salvador has established a regulatory framework to govern the issuance, trading, and custody of digital assets other than Bitcoin through the NCDA. The NCDA's regulations mandate that digital asset issuers and service providers adhere to specific financial and operational requirements to safeguard investors and promote responsible development. Furthermore, El Salvador has enacted a law to incentivize technological innovation and manufacturing by providing tax benefits and incentives to companies investing in technology-related activities.

Bitcoin Law

On June 8, 2021, the Legislative Assembly of El Salvador approved the “Bitcoin Law,” making Bitcoin legal tender in the country. This means that Bitcoin can be used for various transactions, including buying goods and services, paying taxes, and settling debts. The *Bitcoin Law* was published in the Official Gazette on June 9, 2021, and came into force as a law of the Republic on September 7, 2021.

While the Bitcoin Law does regulate Bitcoin as legal tender in El Salvador, it does not mean that Bitcoin can be used in any transaction and for any purpose, without restrictions. The law sets specific guidelines and regulations for using Bitcoin as legal tender. Among key aspects of the law:

- The exchange rate between Bitcoin and the United States Dollar (legal tender in El Salvador) is freely established by the market.⁴⁶
- Any price can be expressed in Bitcoin. However, for accounting purposes, the Dollar is used as the reference currency.
- All tax contributions can be paid in Bitcoin.
- Every economic agent must accept Bitcoin as a form of payment when offered by a buyer for a good or service, except those who, by evident fact, do not have access to technologies that would allow Bitcoin transactions to be carried out.⁴⁷

In addition, complementary legal frameworks for implementation and operation by different participants in the Bitcoin ecosystem can be found, such as:

- i. Law Creating the Bitcoin Trust.** The Legislative Assembly of El Salvador approved the law on August 31, 2021. It was published in the Official Gazette and came into force on August 31st, 2021. Its purpose is to establish and regulate the operation of the Bitcoin Trust, to financially support the alternatives that the State of El Salvador provides, allowing users to convert Bitcoin automatically and instantly to USD within a state digital wallet if desired.⁴⁸

⁴⁶ [Crypto.com https://crypto.com/price/bitcoin](https://crypto.com/price/bitcoin).

⁴⁷ A survey was carried out by the Chamber of Commerce of El Salvador in March 2022, stating that 86% of businesses have never made a sale in Bitcoin, and only 20% of businesses take Bitcoin, despite the Law's mandate. Chamber of Commerce Publication: <https://camarasal.com/empresarios-proyectan-invertir-en-el-salvador-pese-a-los-retos-que-enfrenta-el-pais/>, <https://www.cnbccom/2022/10/13/el-salvadors-bitcoin-holdings-down-60percent-to-60-million-one-year-later.html>.

⁴⁸ Supreme Court of El Salvador with Decree 137 concerning Bitcoin Trust: <https://www.asamblea.gob.sv/sites/default/files/documentos/decretos/F3A0E7AF-97F0-471E-95D8-06FEDD63E457.pdf>.

ii. Regulation of the Bitcoin Law. The regulation was approved by Executive Decree on August 27th, 2021, and published in the Official Gazette on the same day. Its purpose is to develop, facilitate, and ensure the application of the Bitcoin Law, creating a clear regulatory environment for the actors involved in the Bitcoin ecosystem in El Salvador.⁴⁹

Bitcoin Law Regulations govern the entities that provide services related to Bitcoin in El Salvador, defining them as BSPs, i.e. *individuals or entities that provide for themselves or for third parties services related to Bitcoin, such as but not limited to custody services, exchange services, payment process services or wallet services*, excluding from such definition all persons that use Bitcoin for their own use, economic agents who carry out transactions in Bitcoin only as a means of payment in relation to the purchase and sale of goods, and services and technology suppliers that do not maintain custody of their clients' Bitcoin or private passwords.

According to the Bitcoin Law Regulation, the initial requirement for BSPs consists of the registration in the Registry of BSPs, which is managed by the BCR. This requirement must be accomplished prior to starting operations. The Bitcoin Law Regulations also require BSPs to immediately inform the BCR, in case they decide to interrupt their services.

Once the entity has been registered before the BCR, it shall carry out its operations complying with the following requirements:

- To have an AML program that complies with the Law Against Money Laundering and Asset Laundering (LCLDA) and the best international practices of the FATF.
- To safeguard clients' assets with a high degree of care by implementing policies and procedures designed to prevent the loss, theft, or deterioration of clients' assets.
- To have books and records that accurately reflect the assets, liabilities, and equity of the BSPs and clients' account records that reflect the data obtained from each client and the relevant information for each transaction requested by a client, carried out or not.
- To have a record of complaints, including the name of each client, the nature of the claim, any resolution, and the date of such resolution.
- To publish on its website and display in its terms of use, the contact information of the SSF and a notice that communicates that said institution can be contacted to announce unresolved complaints from clients of the BSP.
- To have a cybersecurity program adapted to the nature of the services offered by the BSPs.
- To have a physical security program and a disaster recovery plan adapted to the nature of the services offered by the BSP.
- To have a resolution plan that provides for an orderly liquidation of the BSP in the event of insolvency.
- To have a policy of limitations to transactions within its platforms that is consistent with its due diligence programs for users, comprehensive risk management and prevention of

⁴⁹ Official Gazette that includes Regulation of the Bitcoin Law: <https://imprentanacional.gob.sv/servicios/archivo-digital-del-dia-rio-oficial/> Decreto. 2021-08-27.

ML and other financial crimes.

- Additional items may be requested by the SSF as the regulator, depending on each case and according to the provider, its nature, nationality, and level of complexity of the documentation filed, among other aspects.

iii. Technical Standards for Facilitating the Implementation of the Bitcoin law.⁵⁰ In August 2021, the BCR published, through the Bank's Standards Committee, Technical Standards to Facilitate the Implementation of the Bitcoin Law. The purpose of the Standards is to regulate the rights and obligations in commercial relationships between financial entities and suppliers. The Technical Standards cover the proper functioning of digital transactions and payments, including those made in Bitcoin as well as in dollars, through various electronic mechanisms. This includes aspects such as subjects, terms, obligations of those supervised and obligations of business models.

Digital Assets Issuance Law

The Digital Assets Issuance Law⁵¹ was approved by the Legislative Assembly of El Salvador on January 11, 2023, published in the Official Gazette on January 24, 2023, and entered into force on February 1, 2023.

The *Law of the Issuance of Digital Assets* regulates the transfer of any digital assets used in public offerings conducted in the territory of El Salvador, as well as regulates the requirements and obligations of issuers, digital asset service providers, and other participants operating in the public offering process. Offers of digital assets or their derivatives made privately are excluded from the provisions of this law.

According to the law, a digital asset is a digital representation that can be stored and transferred electronically using a DLT⁵² system or similar or analogous technology, in which the records are linked and encrypted to protect the security and privacy of transactions. As an essential feature, digital assets can be owned, exchanged, transferred, traded, and promoted by individuals and legal entities. Digital assets are not considered securities.

The following are excluded from the application of the law:

- ✔ Digital currencies issued by central banks of other countries.
- ✔ Digital assets that by law are legal tender in any country (such as Bitcoin).
- ✔ Digital assets that can only be exchanged for a good or service provided by the issuer of that digital asset or by a limited number of providers of that good or service, and digital assets that cannot be traded or exchanged.

⁵⁰ Technical Standards to Facilitate the Implementation of the Bitcoin Law, https://www.bcr.gob.sv/regulaciones/upload/Normas_Tecnicas_para_Facilitar_la_Aplicacion_de_la_Ley_Bitcoin.pdf.

⁵¹ Published Digital Assets Issuance Law: <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/BED5A3F8-8937-4547-A291-CE06802B0B23.pdf>.

⁵² Refers to a novel and fast-evolving approach to recording and sharing data across multiple data stores (or ledgers). This technology allows for transactions and data to be recorded, shared, and synchronized across a distributed network of different network participants. Distributed Ledger Technology (DLT) and Blockchain. 2017. FinTech Note No. 1. World Bank Group: <https://documents1.worldbank.org/curated/en/177911513714062215/pdf/122140-WP-PUBLIC-Distributed-Ledger-Technology-and-Blockchain-Fintech-Notes.pdf>.

The Law on the Issuance of Digital Assets creates NCDA as the regulator for the registration, authorization, and supervision of all entities participating in the digital assets ecosystem, which include:

- i. Issuers:** Refers to the State or a natural or legal person, private or public, who carries out or promotes a public offering of digital assets or seeks the admission of a digital asset to sell or market it on a centralized or decentralized exchange or trading platform, fulfilling certain conditions, such as being domiciled in El Salvador, using an exchange in El Salvador, or promoting public offers in El Salvador.
 - a. Duties:** 1. Provide accurate and complete information about their business and operations. 2. Prepare a Relevant Information Document for public offerings. 3. Safeguard and control funds or digital assets obtained during the public offer. 4. Other requirements and conditions set by the NCDA (Articles 22 and 25).
- ii. Digital Asset Service Providers:** Natural or legal persons whose ordinary business involves the provision of digital asset services, such as the exchange of digital assets for fiat⁵³ money or equivalent or other digital assets, using their capital or third-party capital; the operation of a digital asset or derivative⁵⁴ exchange or trading platform; the placement of digital assets on digital platforms or wallets, among others, and meet one of the following two conditions:
 - a. Domiciled in El Salvador.
 - b. Not domiciled in El Salvador but actively promotes or markets services to potential clients in the country.
 - c. Duties:** 1. Offer products at competitive prices. 2. Disclose all fees and charges to users. 3. Inform potential acquirers about the terms and conditions of public offerings. 4. Identify acquirers and maintain transparency in transactions. (Article 33)
 - d. The following activities are considered digital service providers:
 - Exchange of digital assets for fiat money or equivalent, or other digital assets, using either their capital or that of a third party.
 - Operating a platform for the exchange or trading of digital assets or derivative digital assets.
 - Risk and price evaluation, as well as a subscription to digital asset issuances.
 - Placing digital assets in digital platforms or wallets.
 - Promoting, structuring, and managing all investment products in digital assets.
 - Acting on behalf of and for the benefit of third parties: transferring digital assets or the means to access or control them between legal entities or different buyers, electronic wallets, or digital asset accounts; safeguarding, custodianship, or managing

⁵³ Inconvertible paper money made legal tender by a government, and that is not backed by a commodity.

⁵⁴ Financial marketplace where various types of derivative contracts are bought and sold. Derivatives are financial instruments whose value is derived from an underlying asset, such as stocks, bonds, commodities, currencies, or market indices. In a derivative exchange, participants can trade these derivative contracts, which include futures contracts, options contracts, swaps, and other similar instruments. These contracts enable market participants to speculate on or hedge against the future price movements of the underlying assets.

digital assets or the means to access or control them; receiving and managing orders to buy or sell digital assets or negotiate derivative digital assets and executing orders to buy or sell derivative digital assets.

- iii. Public Registry and Digital Asset Service Providers' Registration Duty.** Digital asset service providers must register with the Public Registry of the Commission. They can only offer and provide digital asset services once they are duly registered, complying with the requirements of laws. Digital asset service providers must comply with the obligations set forth in the law, including having systems in place to prevent, detect and disclose financial crime risks, such as ML and TF.
- iv. Certifiers.** A legal entity that performs financial, legal, technical, and administrative analysis of the material and relevant public offerings contained in the Document of Relevant Information⁵⁵ and issues and presents a report on the issuer's compliance before the Commission.⁵⁶ The Commission is responsible for verifying that public offerings of digital assets and activities carried out by issuers, certifiers, and providers are conducted in accordance with applicable obligations, guaranteeing market integrity and the supply of adequate information to buyers.
 - a. Duties:** 1. Evaluate the viability and risks of proposed public offerings. 2. Provide a comprehensive opinion on the certification of public offerings. 3. Maintain confidentiality of information received from potential issuers. 4. Report any indications of illicit activities to the Attorney General's Office (FGR). 5. Comply with the regulations and standards set by the NCD. (Articles 26 and 29 (d, e, f, g)).
- v. Tax benefits.** The Digital Assets Issuance Law establishes that digital asset service providers, among other participants, will enjoy tax benefits regarding the activity related to the digital assets they develop.
- vi. Bitcoin Fund Administration Agency.** This is the institution responsible for the administration, safeguarding, and investment of funds from the public offerings of digital assets carried out by the State of El Salvador, as well as the returns from such public offerings.⁵⁷ Its administration will be entrusted to an administrator appointed by the President of the Republic for 5 years.⁵⁸
- vii. Issuance.** The law introduces the possibility of issuing digital assets by the State of El Salvador. It establishes the Bitcoin Administration Agency, responsible for the administration, custody, and investment of i) funds from public offerings of digital assets carried out by the State of El Salvador and its autonomous institutions and ii) the returns from public offerings.

As of July 2023, the Government of El Salvador, along with the Commission, is working on issuing regulations and technical standards that will further develop the Digital Assets Issuance Law.

⁵⁵ It is a document that informs the public of the most relevant aspects of any public offering of digital assets, such as the clear identification of the issuer, the characteristics, and the objectives of the issue. This document shall identify whether the interest, gains, income, or yields of the public offering will be paid with scriptural money or digital assets. Article 5(i). Digital Assets Issuance Law.

⁵⁶ Ibid., Article 5(c).

⁵⁷ Ibid., Article 13.

⁵⁸ Ibid., Article 14.

Innovation and Manufacture of Technologies Promotion Law

On April 18, 2023, the Legislative Assembly of El Salvador approved the Law for the Promotion of Innovation and Manufacturing of Technologies. The law aims to contribute to the country's economic growth and sustainable development by granting fiscal incentives for certain technological activities.

The Ministry of Economy is responsible for enforcing the law, while the Ministry of Finance is responsible for effective supervision and control of the customs and fiscal regime.

In accordance with the law, individuals, or legal entities, whether national or foreign, who undertake new investments in innovation or technological manufacturing projects within the territory of El Salvador may be eligible for benefits, if they fall within at least one of the following areas:

- Programming, management, maintenance, consulting, and analysis of computer systems or software.
- Development and commercialization of cloud computing services and data flow, artificial intelligence, big data analytics, DLT, and cybersecurity solutions.
- Technologies based on the manufacturing of parts, materials, equipment or facilities, and assembly, including manufacturing plants for technological equipment or hardware, semiconductors, telecommunications technology, robotics, nanotechnology, aircraft, and unmanned vehicles.
- Engineering and system technology necessary for integrating basic industrial technologies into global production chains.

Some activities are excluded from the benefit, such as (i) investments made before the law came into force; (ii) investments related to operations already established in the territory, or those under special regimes resulting from the increase in net worth as a result of merger, acquisition, or any operational and administrative restructuring of assets; and (iii) individuals or legal entities enjoying benefits included in other special tax regimes, such as those provided in the regulations governing Industrial and Commercial Free Zones and those regulating International Service Parks and Centers, among others.

The fiscal benefits provided by the law are granted for a period of 15 years, which include:

- i. Total exemption from income tax for incentivized activities.
- ii. Exemption from any withholding of income tax for the incentivized activities.
- iii. Total exemption from municipal taxes on the net assets declared by the beneficiaries.
- iv. Exemption from the payment of capital gains tax on income tax.
- v. Total exemption from payment of import tariffs and taxes levied on importing goods, inputs, machinery, equipment, and tools necessary to develop the incentivized activities.

Article 17 establishes a mechanism for evaluating fiscal incentives after three years of the law's enactment. If the evaluation is unsatisfactory, reforms may be proposed to modify, reduce, or replace the fiscal incentives. This could generate uncertainty for current and future beneficiaries, as the granted benefits could be subject to changes in the future.

The NCDA has issued regulations in the field of VAs (a.k.a digital assets) beyond Bitcoin, establishing three types of assets such as stablecoins, derivative digital assets, and underlying digital assets. These regulations include the *Provisional Registry Regulation for Digital Asset Service Providers*, which establishes the requirements and procedures for registering service providers operating in the digital asset space. Another significant regulation is the *Stablecoin Public Offering Regulation*, which outlines the requirements and conditions for conducting public offerings of stablecoins. Additionally, the NCDA has introduced the *Issuer and Public and Private Issuance Registry Regulation*, which sets forth the guidelines and procedures for registering issuers and their public and private offerings. These regulations provide a framework for the regulation of digital assets and aim to ensure transparency, compliance, and investor protection in the cryptocurrency industry.

The Law for the Promotion of Innovation and Manufacturing of Technologies has already been signed by the President of the Republic of El Salvador; it was published in Official Gazette number 81, Volume 439, dated May 4th, 2023, and came into effect on June 5th, 2023.

Anti-Money Laundering Laws and Regulations

El Salvador has regulations in place to prevent and combat financial crimes. These regulations apply to financial institutions, non-banking financial institutions, and other entities. The key regulations include the Law Against Money Laundering and Asset Laundering (LCLDA), the Regulation of the Financial Investigation Unit (the FIU), and technical standards for managing ML and TF risks, such as the NRP-36 Norms,⁵⁹ and Agreement Number 380, issued by the FGR.⁶⁰

The LCLDA identifies entities subject to due diligence requirements.⁶¹ Regulated entities are required to establish internal due diligence policies for user or client identification. They must maintain transaction documentation, identification data, account files, and commercial correspondence for a minimum of five years.

Regulated entities must assess the inherent risk level of customers or counterparties. Risk assessment criteria may include activities or sectors rated as high risk by international organizations, risks associated with products or services offered, risks of channels and geographical areas, and cautionary lists issued by international organizations. Due diligence also extends to politically exposed persons, but does not explicitly cover family members, close associates, or foreign persons. The procedure and parameters mandatory for companies to conduct due diligence, as well as reporting to the regulator on their users' transactions, are included.

Some other important aspects of this Law include the classification of ML-generating crimes (often called predicate offenses), special cases of the crime of concealment, inter-agency cooperation, and the exception to bank secrecy during the investigation of these crimes.

Non-compliance with AML obligations carries criminal and civil liability. The penalties vary depend-

59 Normas Técnicas para la Gestión de los Riesgos de Lavado de Dinero y de Activos, Financiación del Terrorismo y la Financiación de la Proliferación de Armas de Destrucción Masiva NRP-36; <https://www.bcr.gob.sv/regulaciones/upload/NRP-36.pdf>.

60 Agreement 380, Attorney General's Office; <https://www.uif.gob.sv/wp-content/uploads/instructivos/InstructivoUifDiarioOficial2021.pdf>.

61 These entities include financial institutions, microfinance companies, credit unions, non-bank financial intermediaries, importers/exporters, credit card issuers, pawnshops, casinos, dealers in precious metals and stones, real estate companies, travel agencies, transportation companies, political parties, corporate service providers, trusts, and others.

ing on the severity of the offense. The FIU is responsible for supervising financial institutions and designated non-financial businesses and professions (DNFBPs) in their efforts to prevent ML and TF.

Upcoming Regulations

Lawyers in El Salvador are aware that the government of El Salvador is currently working on a package of laws and it is expected that during 2023 new laws related to new technologies will be approved, such as a law that regulates financial technology services.⁶²

Lawyers in El Salvador consider there is need for a regulation regarding the protection of personal data, aimed at guaranteeing the safeguarding and proper handling of personal information, especially information that is stored in automated databases, since the operations of the sectors that use technological innovations are based and depend essentially on the transfer of information. This has generated a “data-driven economy”, in which information has become the most important asset for any company.

In simple terms, the upcoming regulations should continue incorporating provision of incentives, protection of consumers and supporting competition among industry participants. Appropriate regulation generates legal certainty and confidence for both domestic and foreign investment.

Implementation Issues Identified by the Legal Community

Everywhere in the world and for every imaginable topic, it is true that reality always exceeds the created legal framework. There may be cases not foreseen by the law or situations for which the regulation does not provide clarity.

Below are some points that lawyers in El Salvador have identified as challenges to implementation.

- **Operation of a BSP as a Legal Entity.** There is no specific regulation on this point regarding its incorporation, so a BSP must comply with the minimum incorporation rules for any other legal entity. Lawyers have mentioned it would be beneficial to obtain clarity around this topic.
- **Bitcoin-related Companies’ Financial Institutions Regulation.** In El Salvador, Bitcoin-related companies are considered regulated entities, since they need a prior registration before the BCR to provide bitcoin-related services, being subject to the supervision of the SSF of El Salvador. It is perceived that regulated entities like banks or insurers have a high standard of regulations, while companies whose main activities are only Bitcoin-related services, have minor standards of regulation and supervision. However, it has been understood by lawyers practicing in this field that Bitcoin-related companies have more obligations than the minimum standard for companies in El Salvador. Also, the obligation to report operations is more frequent than the minimum standard. According to the Salvadoran legal framework, the supervisor can require specific information regarding its activities through a specific note to the company. This specific note considers factors such as the number, the amount of the operation, the type of activity, and the type of customer.
- **Foreign Entity Registration.** Lawyers in El Salvador have received questions from entities that do not want to operate in El Salvador, but do want to be registered as a BSP before the

62 Enlace, online news, <https://www.utec.edu.sv/enlaces/articulo/la-fintech-como-una-innovacion-financiera-mundial>.

Central Bank. The purpose of the Salvadoran legal framework is to register companies that will provide Bitcoin-related services from El Salvador or to Salvadoran citizens. It is important to emphasize that the superintendent will only regulate activities within El Salvador.

- **Tax Benefits.** One of the common issues consulted to law firms in El Salvador is around the tax benefits, to understand if it is necessary to establish a company in El Salvador to enjoy the benefits, or if an international entity can be the beneficiary of these incentives. Up to this date, there are no tax incentives for Bitcoin-related services.
- **Due Diligence.** Even when it is not required by law, lawyers in El Salvador have mentioned the importance of conducting due diligence on client backgrounds for entities interested in Bitcoin regulation, as a good practice to prevent criminal actors from entering the national financial system. Currently, some companies provide services to verify client backgrounds. Also, Bitcoin-related entities have to comply with the Salvadoran AML regulations.
- **Collateral.** The specific use of Bitcoin or wallets as collateral to guarantee payment or obligation is not regulated.
- **Legal Entity Incorporation Using Bitcoin.** A non-regulated matter is the incorporation of a legal entity using Bitcoin. The Commercial Code states that the public notary must attest to the minimum amount to establish a company (US \$2,000) through a manager or cashier check to the incorporation deed. Therefore, the Bitcoin must be converted to dollars so that the check required by law can be issued.
- **Payment of Legal Services Fees with Bitcoin.** Lawyers can receive Bitcoin as payment for legal fees; however, lawyers recommend:
 - a. Using systems where Bitcoin is backed by another currency, as in El Salvador.
 - b. Carrying out due diligence of shareholders to at least the second degree.
 - c. Requesting information regarding the client's wallet and carrying out investigative due diligence that verifies its reputation.
 - d. Ensuring that the wire transfer number comes from a recognized wallet.

Regulations in the United States as a Point of Comparison

Innovation in El Salvador with the use of Bitcoin as a legal tender requires looking at good practices internationally to regulate its effective use while strengthening financial integrity and transparency. Even though crypto is not legal tender in the United States, the country has a long history of financial regulation, and a vibrant digital asset industry. And in addition, the US and El Salvador have a close relationship with partnerships in a number of areas, including trade, security, and development. This makes the U.S. an interesting point of comparison for laws and regulations regarding VAs.

There are relevant U.S. laws that can provide insights, including: (1) U.S. AML laws; (2) state money transmission laws as well as New York and Louisiana digital asset regimes; (3) consumer protection laws; and (4) data protection and privacy. This section focuses on Bitcoin as currency and not as an investment. Accordingly, there are some issues not covered which include but are not limited to securities, commodities, tax, and export control (sanctions) laws.

Anti-Money Laundering

- i. The Bank Secrecy Act (BSA), Its Implementing Regulations, and Financial Crimes Enforcement Network (FinCEN) Guidance.** Generally, cryptocurrency businesses are subject to U.S. AML laws. The principal U.S. law concerning AML is commonly referred to as the BSA, and regulations implementing the BSA are promulgated, administered, and enforced by FinCEN, a bureau within the U.S. Treasury Department.⁶³ The BSA provides a foundation to promote financial transparency and deter and detect those who seek to misuse the financial system to launder criminal proceeds, finance terrorist acts, or move funds for other illicit purposes.⁶⁴ It applies to “financial institutions,” a term that is broadly defined to include, among others, banks, brokers, or dealers in securities, mutual funds, and money services businesses (“MSBs”). For the purposes of the BSA, an MSB includes any person, wherever located, doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of certain enumerated capacities.⁶⁵ FinCEN issued cryptocurrency guidance in 2013 and 2019 to clarify how these regulations that predate cryptocurrency apply to users, administrators, and exchangers of CVC.⁶⁶
- ii. BSA/AML Compliance Program.** MSBs are subject to requirements under the BSA, which may generally be split into two categories: (a) requirements to maintain a BSA/AML compliance program; and (b) requirements to register with FinCEN, keep records, and file reports. The minimum requirements for a BSA/AML compliance program are outlined in 31 C.F.R. § 1020.210(b) and are commonly referred to as the “pillars” of the compliance program. The five pillars are:

 - a. A system of internal controls to assure ongoing compliance.
 - a. Independent testing for compliance to be conducted by the MSB personnel or an outside party.
 - a. Designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance (the “BSA Officer”).
 - a. Training for appropriate personnel.
 - a. Appropriate risk-based procedures for conducting ongoing Customer Due Diligence (CD-D).⁶⁷

State Laws

In addition to US federal regulation, individual states regulate MSBs but do not yet consistently regulate cryptocurrency. Currently, 49 out of 50 U.S. states have money transmission laws that require money transmitters to obtain and maintain licenses. Although it varies significantly by state, the definition of “money transmission” normally includes receiving money or monetary value for transmission by any means or engaging in the business of transmitting money or monetary value

⁶³ Other U.S. regulatory agencies have also brought AML enforcement actions in the crypto space, including the Securities and Exchange Commission and the Commodities Futures Trading Commission.

⁶⁴ <https://www.fdic.gov/resources/bankers/bank-secrecy-act/>.

⁶⁵ 31 C.F.R. § 1010.100(ff)(8)(i)-(iii).

⁶⁶ FIN-2013-G001, Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies (Mar. 18, 2013), FIN-2019-G001, Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies (May 9, 2019).

⁶⁷ 31 C.F.R. §§ 1020.210(b)(1)-(5).

by any means. Additionally, some states' laws explicitly include cryptocurrency in their definition of monetary value. State treatment of crypto-to-crypto exchangers and crypto custody generally falls into one of the four categories: (i) license is required for merely providing cryptocurrency custody services; (ii) license is required when receiving or transmitting cryptocurrency; (iii) license is not required when receiving or transmitting cryptocurrency, and (iv) states that have not made their positions with respect to crypto exchangers and cryptocurrency custody clear.

In addition to the money transmitter licensing requirements, some states have cryptocurrency business licensing requirements, and other states have laws that require persons providing custody of others' assets to obtain licensure as a custodian or trust company, which may also provide insights to lawmakers in El Salvador. Specifically, two states, New York⁶⁸ and Louisiana,⁶⁹ have implemented licensing regimes applicable specifically to cryptocurrency. In New York, entities that conduct covered activities must either receive a license or a limited-purpose trust charter. As of July 2023, Louisiana will also require entities that conduct certain cryptocurrency activities to obtain a license, although Louisiana's licensing regime includes certain exemptions not found under New York's law.

Consumer Protection Laws

The United States and each state have implemented several laws to protect consumers. Relevant laws include the Electronic Fund Transfer Act and its implementing Regulation E ("Reg E"), which "provides a basic framework that establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer systems such as automated teller machine transfers, telephone bill-payment services, point-of-sale (POS) terminal transfers in stores, and preauthorized transfers from or to a consumer's account (such as direct deposit and social security payments)";⁷⁰ and prohibitions on unfair, deceptive, or abusive acts or practices, in compliance with the FTC UDAPs and/or Dodd-Frank UDAAPs.⁷¹ The application of these laws is highly fact-specific, and we will summarize them at a high level only. However, as El Salvador continues to develop its Bitcoin regulatory structure, guidance may shift.

Data Protection and Privacy

Despite maintaining relatively robust, comprehensive privacy laws (e.g., the California Consumer Privacy Act) and industry-specific data protection regimes (e.g., the Gramm-Leach-Bliley Act), the extent to which U.S. data protection and privacy law apply to cryptocurrency transactions and records remains subject to continued debate. Many laws in the United States (including U.S. state breach notification laws) were written during a time when privacy and security concerns were only broadly recognized for data associated with traditional identifiers (like name or social security number)—otherwise known as "personally identifiable information" or "PII".

These laws did not contemplate that data associated with masked identifiers (e.g., pseudonyms) could present similar privacy and security risks as traditional PII. While the definitions of protected

68 New York State, Department of Financial Services, https://www.dfs.ny.gov/virtual_currency_businesses.

69 State of Louisiana Regulation of Virtual Currency Business Activity Office of Financial Institutions, <http://ofi.la.gov/ofl-docs/Non-DepVirtualCurrencyRegulationGuidance.pdf>.

70 Federal Reserve, <https://www.federalreserve.gov/supervisionreg/regecg.htm>.

71 FDIC, <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/7/vii-1-1.pdf>.

data under U.S. data protection law continue to expand (for example, the California Consumer Privacy Act defines “personal information” broadly to include essentially all data that can reasonably be linked to a particular person) and regulators in other countries suggest cryptocurrency data should be treated as protected personal data,⁷² the extent to which cryptocurrency data on its own can be linked to an identifiable individual has not been clearly defined by U.S. law, regulators or courts.

This lack of clarity has empowered much of the cryptocurrency industry in the United States, as well as parties handling cryptocurrency data, to maintain that their collection and processing of cryptocurrency data is not directly governed by many U.S. data protection laws. As a result, cryptocurrency transaction data are often not treated with the same degree of care and security as financial transactions involving more traditional currencies.

Lawmakers and regulators are beginning to recognize some of the gaps in these historic laws, and are taking steps to improve the security and privacy of crypto-related transactions. For example, President Joe Biden issued an Executive Order on March 9, 2022 directing the Secretary of the Treasury, in consultation with the heads of a number of key agencies, to prepare a report in relation to the development and adoption of digital assets, which would include policy recommendations and potential regulatory / legislative actions to protect U.S. consumers, investors, and businesses in the expansion of digital assets and cryptocurrency. In this Executive Order, President Biden proclaimed that the “United States must ensure appropriate controls and accountability for current and future digital assets systems to promote high standards for transparency, privacy, and security – including through regulatory, governance, and technological measures – that counter illicit activities and preserve or enhance the efficacy of our national security tools.”⁷³

Educational Programs

Strong financial literacy-related efforts may increase Bitcoin usage by giving Salvadorans the knowledge to spend, trade, and invest in Bitcoin. Practitioners may consider how to incorporate certain portions of legal education programs when considering financial literacy measures domestically. As a point of comparison, information on US educational programs is included as follows.

Some state regulators have published consumer and investor guidance or advisories related to cryptocurrency.⁷⁴ Through these advisories, state regulators have tried to educate consumers and investors about the factors and risks they should consider when dealing with cryptocurrency, and in particular, about the volatile nature of cryptocurrency and the potential for complete loss of value. These advisories may operate as a useful starting point for understanding money transmission risks to individuals at the state level.

In 2003, the State of Utah passed a law that created “a one-semester course titled ‘General Financial Literacy’ that would be required for [all high school students, starting with the] 2008 graduating

72 See Blockchain and the General Data Protection Regulation, European Parliament (July 2019), available at https://www.europarl.europa.eu/RegData/etudes/STUD/2019/634445/EPRS_STU%282019%29634445_EN.pdf.

73 Executive Order on Ensuring Responsible Development of Digital Assets, March 9, 2022, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/>.

74 The Wall Street Journal; news on Crypto guidance for banks: <https://www.wsj.com/articles/new-york-financial-regulator-is-sues-crypto-guidance-for-banks-11671137496>; New York State Attorney General Guidance: <https://ag.ny.gov/press-release/2022/investor-alert-attorney-general-james-warns-new-yorkers-about-cryptocurrency>; Washington State Department of Financial Institutions: <https://dfi.wa.gov/consumers/virtual-currency>.

class.”⁷⁵ The course is broken down into four units: “(1) understanding how values, culture, and economic forces affect personal financial priorities and goals; (2) understanding sources of income and the relationship between career preparation and lifetime earning power; (3) evaluating saving methods and investment strategies; and (4) understanding principles of personal money management, including budgeting, managing accounts, and the role of credit and its impact on personal finance.”⁷⁶ Some of the specific topics include “explain[ing] the purposes and features of consumer protection laws” and “identify[ing] the federal and state entities that exist to protect consumers from forms of fraud and abuse.”⁷⁷

To cite another financial education initiative, the Fair and Accurate Credit Transactions Act of 2003 created the Financial Literacy and Education Commission. The purpose of the commission is to “set strategic direction for policy, education, practice, research, and coordination so that all Americans make informed financial decisions.”⁷⁸ The 24 members of the commission work for a wide range of federal agencies including the Department of the Treasury, the Department of Education, and the Social Security Administration. One of the Commission’s responsibilities was to create a website (MyMoney.gov). The website includes a Crypto-Assets tab that directs users to a page with links informing consumers about cryptocurrency scams. One link goes to an article titled “What To Know About Cryptocurrency and Scams.” This article is specifically meant for “consumers with limited background knowledge of cryptocurrency.”⁷⁹ MyMoney.gov also directs users to a phone number (1-800-FED-INFO) for “question[s] about federal agencies, programs, benefits or services related to financial literacy and education.” A caller can choose English or Spanish.

Transparency and Integrity

Legal Framework and Challenges

The use of Bitcoin as a legal tender requires transparency and integrity policies by the public and private sector to build trust in the Bitcoin ecosystem, prevent and address crime, as well as to continue to educate the public. In particular, the respect of transparency rules and enhanced access to information, as well as anti-corruption policies, play an important role in shaping the effective implementation of laws and regulations.

According to the Vance Center’s Latin America Anti-Corruption Assessment,⁸⁰ El Salvador has a sufficient legal framework to access public information, strengthened before 2019 with the Law on Access to Public Information (LAIP), and an anti-corruption legal framework composed of eleven instruments that regulate the institutions responsible for fighting corruption and their respective

75 John Dougall, Cole Kelley & Karsten Walker, Utah’s General Financial Literacy Graduation Requirement 1 (2018).

76 Ibid.

77 Ibid, pg. 32.

78 U.S. Department of the Treasury, <https://home.treasury.gov/policy-issues/consumer-policy/financial-literacy-and-education-commission> (last visited May 18, 2023).

79 [MyMoney.gov](https://www.mymoney.gov/flec-crypto-asset-recourses), <https://www.mymoney.gov/flec-crypto-asset-recourses> (last visited May 18, 2023).

80 Cyrus R. Vance Center for International Justice, Latin America Anti-Corruption Assessment 2021-2022. Available: <https://www.vancecenter.org/our-programs/lawyers-council/eval2021/english/>.

mechanisms, at the constitutional level.⁸¹

For the public sector, El Salvador has standards that regulate the actions of public officials. In general, there are a number of administrative disciplinary measures that are applicable to all public officials and employees. Anti-corruption legislation in El Salvador includes the obligation to create codes of conduct, policies, and procedures to identify and manage conflicts of interest, as well as policies on reporting corruption by public servants. However, the legal framework does not include gift policies for public officials, policies on post-public employment obligations and limitations, and policies for training public officials in anti-corruption measures.

In any case, according to the Assessment, implementing these mechanisms has proven challenging for a number of reasons including limited resources and issues of political will. For example, even when the Salvadoran legal framework provides for the presentation of asset declarations, there aren't measures requiring public officials to make disclosure of interest and make tax returns public. For the private sector, the regulation has been drafted from a criminal and administrative point of view, through instruments such as the LCLDA, the Banking Law, the Regulation and Supervision of the Financial System Act, and the Criminal Code.

The assessment establishes that the mechanisms for reporting acts of corruption are not accessible in El Salvador and whistleblowing protections are limited or non-existent.

Civil Society Report on the Implementation of Chapter II (Prevention) & Chapter V (Asset Recovery) of the United Nations Convention Against Corruption in El Salvador.⁸² Much like the Vance Center Assessment, a 2023 report on the United Nations Convention Against Corruption (UNCAC) highlighted the need to enhance transparency and anti-corruption mechanisms in El Salvador. The report evaluates international standards for corruption prevention and AML in El Salvador. According to the report:⁸³

- Although the LAIP allows individuals to obtain public information, it has not been effectively implemented, and the Institute of Access to Public Information, which is under the indirect control of the Executive Branch, has limited access to information.
- Limited online availability and outdated websites also hamper public access. External sources such as NGOs and media investigations have been crucial in revealing public information.
- In Chapter II, Article 5, the report states that “El Salvador does not have a coordinated public or governmental policy aimed at preventing corruption.”⁸⁴ While there are institutions with specific powers for corruption prevention, such as the FGR, Government Ethics Tribunal, and Court of Accounts of the Republic, their efforts often remain isolated.

81 These instruments are: (i) the Constitution of the Republic of El Salvador, (ii) the Penal Code, (iii) the Code of Criminal Procedure, (iv) the Law against Money Laundering and Assets, (v) the Law on Extinction of Domain, (vi) the Inter-American Convention against Corruption, (vii) the United Nations Convention against Corruption, (viii) the Government Ethics Act, (ix) the Public Administration Procurement and Procurement Act, (x) the Public Information Access Act, and (xi) the Probity Act.

82 El Salvador signed the United Nations Convention against Corruption (UNCAC) on December 10, 2003 and ratified it on June 25, 2004. El Salvador was selected by the UNCAC Implementation Review Group through a drawing of lots for review in the fifth year of the second cycle.

83 New Civil Society Report on El Salvador: <https://uncaccoalition.org/uncacparallelreportelsalvador/>.

84 Ibid.

- Despite the existence of the Interinstitutional Anticorruption Working Group (GTIAC), which includes institutions from the justice sector and the institutional framework on ethics and transparency, there is limited interagency coordination for the prevention and fight against corruption.
- The independence of state entities involved in corruption prevention is questioned due to the control exerted by the central government over the appointment of officials. Recent controversial actions, such as the illegal dismissal and appointment of magistrates, have raised concerns about politicizing these positions.
- Transparency in political financing remains a pending issue, with some political parties refusing to disclose their sources of financing. Bitcoin as a legal currency has raised additional concerns.
- The Law on Illicit Enrichment of Public Officials and Employees requires asset declarations but lacks provisions for public disclosure or periodic updates. The Probity Section, responsible for verifying asset declarations, is dependent on the judicial branch and subject to political influence. The penalties for non-compliance with asset declaration requirements are not deterrent enough.
- Public procurement has been characterized by opacity, particularly during the COVID-19 pandemic. The management of public finances lacks transparency, with limited public data beyond frequent budget modifications.
- Despite regulatory reforms aimed at expanding regulated entities, there are concerns about the potential saturation of the Financial Investigation Unit due to the significant increase in filings and reports of unusual and suspicious transactions, which may lead to a lack of effectiveness in ML analysis, the report states.
- In regards to AML regulations, the report states that the effectiveness of the legal system cannot be evaluated due to limited access to information from the FIU and the FGR.
- El Salvador does not have national laws addressing the direct recovery of assets as outlined in Article 53 of the UNCAC. There are no regulations or jurisprudential criteria that allow for its application at the national level. The Special Law for the Asset Forfeiture and Administration of Assets of Illicit Origin or Destination (LEEDABODI) does not provide for the involvement of other states in asset recovery processes or the recognition of the rights of victim states to claim compensation or damages. The effectiveness of this tool and related information are not publicly available.

The report provides recommendations for addressing corruption and ML in El Salvador. The key recommendations include strengthening the recruitment process for public officials, implementing a state policy for corruption prevention, ensuring transparency in political campaign financing, monitoring the use of cryptocurrencies, enforcing procurement laws, promoting access to public information, protecting whistleblowers, safeguarding freedom of expression, increasing transparency in ML data, and updating regulations on illicit enrichment.

FATF Recommendations: As the discussion centers around VAs in El Salvador, it is important to

mention that international standards are playing a pivotal role. FATF recommendations,⁸⁵ including the latest 2023 guide on best practices for VA regulation,⁸⁶ provide countries a clearer path forward on how to regulate VAs. Specifically, the FATF recommends:

- Developing a comprehensive legal and regulatory framework to define the legal status of VAs and establish rules for their use, trading, and custody.
- Implementing measures to protect investors, including disclosure requirements, licensing, and enforcing regulations to prevent fraud and scams.
- Establishing robust AML/Counter Terrorism Financing (CFT) regulations to prevent illicit activities, including Know Your Customer (KYC) and transaction monitoring requirements. This includes managing the information of operations of various activities and products related to VAs and assessing the risk associated with each of them.
- Promoting fair and transparent markets by addressing market manipulation, insider trading, and ensuring sufficient disclosure and reporting standards.
- Implementing measures to ensure the security and integrity of VAs, including cybersecurity protocols, secure storage solutions, and promoting technological innovation.
- Encouraging international cooperation and information sharing among regulators to address cross-border transactions and regulatory challenges.
- Providing educational resources and raising awareness among consumers about the risks and benefits associated with VAs, promoting responsible investment practices.
- Assessing and managing risks associated with VAs, including market volatility, operational risks, and potential systemic risks to the financial system.
- Aligning with international standards and best practices developed by organizations such as the FATF.
- Establishing mechanisms for ongoing monitoring, evaluation, and adaptation of policies to keep pace with evolving technologies and market developments.

To summarize, the FATF identifies aspects that countries need to address, such as detailing the management of risks,⁸⁷ highlighting the importance of continuous monitoring, and noting the severe consequences for regulatory non-compliance, especially due to the nature of cross-border activities⁸⁸ and the need to standardize international requirements. FATF also points out the need to prioritize educational initiatives to promote financial literacy and raise awareness of digital assets.⁸⁹

85 FATF Updated Standards, <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/targeted-update-virtual-assets-vasps-2023.html>.

86 GAFILAT regulation guide 2023, <https://gafilat.org/index.php/es/biblioteca-virtual/gafilat/documentos-de-interes-17/guias-17/4580-guia-para-la-regulacion-alacft-av-psav/file>.

87 FATF Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers: <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-virtual-assets-2021.html>.

88 The FATF Travel Rule: Implications for Privacy and Data Protection: <https://medium.com/shyft-network/the-fatf-travel-rule-implications-for-privacy-and-data-protection-f85cd337887c>.

89 World Bank Group; Impact of the FATF Recommendations and their implementation on financial inclusion: <https://documents1.worldbank.org/curated/en/597781637558061429/pdf/Impact-of-the-FATF-Recommendations-and-their-Implementation-on-Financial-Inclusion-Insights-from-Mutual-Evaluations-and-National-Risk-Assessments.pdf>.

International Monetary Fund (IMF) - Staff Concluding Statement of the 2023 Article IV Mission: Another important international point of reference is the IMF. The IMF conducted virtual discussions and visited San Salvador for the 2023 Article IV consultation.⁹⁰ The IMF mission emphasized the importance of implementing reforms to enhance macroeconomic stability and foster sustainable growth in El Salvador. They underscored the importance of good governance practices, fiscal transparency, and accountability to improve resource management, lower borrowing costs, and build trust. Among the recommendations made in the IMF report, the following are relevant:

- Maintain transparency in government transactions involving Bitcoin and assess fiscal contingencies and counterparty risks related to the state-owned Bitcoin-wallet, Chivo.
- Caution against financing Bitcoin purchases through tokenized securities due to fiscal risks and speculative nature of crypto markets.
- Ensure proper expenditure controls and governance practices for the new Bitcoin Fund Management.
- The guarantees provided by the Digital Asset Law should be comparable to traditional securities regulations.
- Conduct audits of Chivo and complete the audit of the Bitcoin trust fund (FIDEBITCOIN) soon.
- Align the Act of Illicit Enrichment of Public Officials and the Criminal Code with international standards on AML, CFT, and anti-corruption measures.
- Finalize the revised AML/CFT legislation, including rules for Virtual Asset Service Providers (VASPs), based on the national risk assessment.
- Strengthen the institutional capacity of the FIU to monitor and investigate suspicious activities, particularly in VASPs.
- Protect judicial independence, ensure impartial access to the court system, and create an attractive business climate for investment in El Salvador.⁹¹

Transparency and Integrity: Current Challenges

News Reports on Chivo Wallet and Potential Risks

Several news reports from 2021 and 2022 highlight potential risks and fraudulent activities associated with Chivo Wallet. Based on the provided information from public sources and digital media, the following analysis outlines the situation of Chivo Wallet and the potential risks that may arise:

- *Possible Scams and Impersonation:* One of the major concerns regarding Chivo Wallet is the existence of fraudulent activities.⁹² The government has issued warnings⁹³ to the public about

90 IMF: <https://www.imf.org/en/News/Articles/2023/02/10/el-salvador-staff-concluding-statement-of-the-2023-article-iv-mission>.

91 Ibid.

92 El Economista Newspaper: <https://www.eleconomista.net/cripto/Fiscal-salvadoreno-asegura-que-investigacion-transacciones-de-Chivo-Wallet-20220223-0006.html>, La Prensa Gráfica: <https://www.laprensagrafica.com/elsalvador/Piden-a-la-Fiscalia-salvadorena-investigar-millonario-fraude-con-Chivo-Wallet-20230222-0043.html>.

93 El Salvador Presidency Department Communication: <https://www.presidencia.gob.sv/gobierno-advierte-a-la-ciudadania-de-posibles-estafas-con-sitios-que-simulan-ser-parte-de-chivo-wallet/>.

scams where fake websites and advertisements impersonate Chivo Wallet, promising rewards or bonuses in exchange for personal information. Such scams can lead to data theft and other financial crimes. It is important for users to remain vigilant and only provide their personal information through official channels, such as verified social media accounts and the official website of Chivo Wallet.

- *Allegations of Fraud and Mismanagement:* Civil society organizations like Cristosal have requested the FGR to investigate potential fraudulent activities, including the manipulation of registration, identity theft, and embezzlement of public funds through Chivo Wallet.⁹⁴ Cristosal presented evidence from journalistic investigations, including testimonials in US courts claiming that around 400,000 accounts created during the initial weeks of Chivo Wallet were fraudulent, resulting in a potential fraud of at least \$12 million.⁹⁵
- *Ongoing Investigations:* The FGR has acknowledged the allegations and stated that investigations are underway. However, there have been delays in providing updates on the progress of these investigations. Meanwhile, Cristosal submitted 131 new criminal complaints related to Chivo Wallet, adding to the previous 755 cases reported in November.⁹⁶ The growing number of complaints emphasizes the scale of potential risks.

The situation surrounding Chivo Wallet raises significant concerns about the potential risks associated with the digital wallet application. The existence of scams and impersonation attempts, allegations of fraud and mismanagement, and ongoing investigations contribute to a sense of uncertainty and mistrust among the public. It is crucial for the Salvadoran government to address these issues, enhance the security measures of Chivo Wallet, and ensure transparency in investigations to ensure public trust and to mitigate the potential risks.

Access to Public Information regarding Bitcoin

Multiple requests for information regarding Bitcoin have been submitted to various governmental entities. Examples of information requested and the responses are included below.

✔ Presidency of the Republic

Date: September 14, 2021

Information requested: The administrative file pertaining to the Bitcoin purchase, including the amounts paid as commissions, financial risk analysis, and the budgetary allocations used for the purchase.

Response: The Presidency directed the requester to the BCR for the requested information.⁹⁷

94 Voces Organization: <https://voces.org.sv/politica-fallida-cristosal-pide-investigacion-contra-el-gobierno-por-chivo-wallet/>, El Salvador News: <https://www.elsalvador.com/noticias/nacional/corte-de-cuentas-chivo-wallet-cristosal-bitcoin-/1020458/2022/>, Criptonoticias: <https://www.criptonoticias.com/judicial/piden-fiscalia-salvador-investigar-fraude-millonario-chivo-wallet/>.

95 El Salvador Local News: <https://ysuca.org.sv/2022/11/gobierno-salvadoreno-debe-rendir-cuentas-sobre-fraude-ocurrido-a-traves-de-billetera-chivo/>, https://www.ivoox.com/2-gobierno-salvadoreno-debe-rendir-cuentas-sobre-fraude-audios-mp3_rf_97280004_1.html.

96 El Salvador Local News: <https://www.diariocolatino.com/cristosal-presenta-131-nuevos-casos-de-personas-afectadas-por-chivo-wallet/>, <https://heraldolatino.com/?p=1409>.

97 Resolución Presidencia de la República 2022 - 063/064: https://www.transparencia.gob.sv/system/documents/documents/000/520/319/original/UAIP_ACUM_063-064-2022_Incompetencia.pdf?1674244421, Resolución Presidencia de la República 2023-017: https://www.transparencia.gob.sv/system/documents/documents/000/538/566/original/UAIP_017-2023_Resoluci%C3%B3n_Final.pdf?1683234946.

✔ Central Reserve Bank

Date: September 14, 2021

Information requested: The administrative file documenting the Bitcoin purchase, including the amounts paid as commissions, financial risk analysis, and the budgetary allocations used for the purchase.

Response: Surprisingly, the BCR declared the requested information as nonexistent. They provided an act of verification of existence in their general archive, despite previous confirmation by two Information Officers that the bank possessed the information.⁹⁸

98 Resolución de Acceso a la Información No. 048/2021: https://www.transparencia.gob.sv/system/documents/documents/000/458/845/original/Resoluci%C3%B3n_048_2021.pdf?1635955276, Resolución de Acceso a la Información No. 015/2022: https://www.transparencia.gob.sv/system/documents/documents/000/490/937/original/Resoluci%C3%B3n_015_2022.pdf?1652906986.

2

VAs and Financial Crime Risks

The next section of the report assesses financial crime risks in the VA ecosystem in El Salvador and proposes measures to address them.

Criminals use a variety of assets to move and store criminal proceeds, including cash,⁹⁹ bank accounts,¹⁰⁰ real estate,¹⁰¹ investment funds,¹⁰² VAs,¹⁰³ and gold,¹⁰⁴ to name a few. To a certain degree, criminals select these asset classes for the same reasons that anyone might, considering factors such as their convenience, reliability, transportability, reputation, and investment potential. However,

99 Grupo de Acción Financiera de Latinoamérica (GAFILAT), *Transporte físico de dinero en efectivo e instrumentos negociables al portador en la región Latinoamericana: Análisis estratégico sobre patrones, tendencias y alertas por posible lavado de activos* (Buenos Aires: GAFILAT, June 2021). <https://www.gafilat.org/index.php/es/biblioteca-virtual/gafilat/documentos-de-interes-17/estudios-estrategico-cos-17/4168-final-analisis-estrategico-de-ttd-en-la-region/file>.

100 Financial Action Task Force, *Risk-Based Approach for the Banking Sector* (Paris: FATF, October 2014). <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Risk-based-approach-banking-sector.html>.

101 Lakshmi Kumar and Kaisa de Bel, *Acre of Money Laundering: Why U.S. Real Estate Is a Kleptocrat's Dream* (Washington, D.C.: Global Financial Integrity and Financial Transparency Coalition, August 2021). <https://gfinitegrity.org/wp-content/uploads/2021/08/Acre-of-Money-Laundering-Final-Version-2021.pdf>.

102 Lakshmi Kumar, *Private Investment Funds in Latin America: Money Laundering and Corruption Risks* (Washington, D.C.: Global Financial Integrity, December 2021). <https://gfinitegrity.org/report/private-investment-funds-latam/>.

103 Financial Action Task Force, *Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers* (Paris: FATF, October 2021). <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-virtual-assets-2021.html>.

104 Brian Monroe. "Special ACFCs/GFI Webinar Series: Inside the Illicit Gold Trade – Using Financial Tools and Public Policy to Fight Money Laundering." Association of Certified Financial Crime Specialists, June 7, 2020. <https://www.acfcs.org/special-acfcs-gfi-webinar-series-inside-the-illicit-gold-trade-using-financial-tools-and-public-policy-to-fight-money-laundering/>.

criminals are also looking for other qualities: assets that can be purchased with no questions asked, that leave no trace of ownership, and that remain beyond the reach of law enforcement. The solution, therefore, lies not in vilifying specific asset classes, but in asking the right questions, implementing integrity measures, and ensuring that law enforcement has the capacity to take action where needed.

As a starting point, the report uses guidance from the FATF, an international standard-setting body, on VAs. The FATF states that countries need to:

- a. Understand the ML and TF risks in the VA sector,
- b. License or register VASPs, and
- c. Supervise the sector in the same way it supervises other financial institutions.

The FATF goes on to state that VASPs need to implement the same preventative measures as financial institutions, including conducting CDD, keeping records, and reporting suspicious transactions, as well as obtaining, holding and securely transmitting originator and beneficiary information when making transfers.¹⁰⁵ As the FATF guidance suggests, the financial crime risks associated with VAs are not unsurmountable nor entirely unique. The table below indicates some of the risks or vulnerabilities associated with VAs, as well as factors that help to mitigate risks.

Table 5. Understanding Risks Associated with the VA Ecosystem

RISKS OR VULNERABILITIES	MITIGATING FACTORS
The pseudonymous nature (meaning that the user's identity is a series of numbers and letters, not a normal name) may be used by those wishing to hide their identity.	Ability to trace transactions in the blockchain.
Transactions can be made rapidly across international borders.	
In many jurisdictions, regulations have not yet caught up to usage.	This is a top regulatory priority for many countries.
Law enforcement faces challenges in understanding VAs and investigating cases.	New training and technologies are providing law enforcement with more tools.
KYC efforts have been uneven and at times insufficient.	Significant progress has been made on digital identification and verification.
Unscrupulous companies involved in the VA ecosystem have not managed funds responsibly, raising significant risks for consumers.	As a result of these scandals, customers may place more of a premium on reliability and trustworthiness among companies that remain active in the space.

Source: Global Financial Integrity, May 2023.

The FATF has also developed red flag indicators to help identify suspicious transactions. These include:

- **Geographical risks:** criminals can exploit countries with weak or absent national AML-CFT measures regarding VAs. Globally, many countries have implemented robust measures to comply with

105 “Virtual Assets,” Financial Action Task Force, October 28, 2021. <https://www.fatf-gafi.org/en/topics/virtual-assets.html>.

FATF's requirements. However, when it comes to addressing the ML and TF risks that VAs pose, some countries have not, or not yet, fully implemented the FATF's latest safeguards. Criminals exploit these gaps in implementation and move their illicit funds to countries where regulations are less strict. Indicators of this type of activity include:

- Customer's funds originate from, or are sent to, an exchange that is not registered in the jurisdiction where either the customer or exchange is located.
 - Customer uses a VA exchange or foreign-located money value transfer service in a high-risk jurisdiction known to have inadequately regulated for VA entities, including inadequate CDD or KYC measures.
- **Technological features that increase anonymity** make VAs more attractive to criminals. VAs have introduced a whole new vocabulary that identify processes and features that only exist in a virtual context, such as peer-to-peer exchanges, mixing or tumbling services or anonymity enhanced cryptocurrencies. These features complicate law enforcement investigations and could suggest illicit activity:
- Transactions involving more than one type of VAs, particularly those that provide higher anonymity, such as anonymity enhanced cryptocurrency or privacy coins and despite additional transaction fees.
 - VAs moved from a public, transparent blockchain to a centralised exchange and then immediately traded for anonymity enhanced cryptocurrency or privacy coin.
 - Customers that operate as an unregistered or unlicensed VASP on peer-to-peer exchange website.
 - Abnormal transaction activity of VAs from peer-to-peer platform associated wallets with no logical business explanation.
 - VAs traded to or from wallets that indicated the use of mixing or tumbling services or peer-to-peer platforms.
- **Size and frequency of transactions**, including:
- Structuring transactions in small amounts and under the record-keeping or reporting thresholds.
 - Making multiple high-value transactions.
 - Transferring VAs immediately to multiple VASPs, including those registered or operated in other countries.
- **Transaction patterns that are irregular, unusual or uncommon** can suggest criminal activity, for example when:
- New users make a large initial deposit to open a new relationship with a VASP, inconsistent with the customer profile.
 - Transactions involve multiple VAs, or multiple accounts, without a logical business explanation.
 - Frequent transfers occur in a certain period of time, to the same VA account by more than one person, from the same location or concerning large amounts.

- **The sender or recipient suggest criminal activity:**
 - Irregularities during account creation, such as creating different accounts under different names, or transactions initiated from IP addresses from sanctioned jurisdictions.
 - Irregularities during the CDD process, for example incomplete or insufficient customer information, forged identification document during onboarding.
 - Irregularities in customer profile, such as shared credentials or presence on forums associated with illegal activity.
 - Potential mule or scam victims, who are often unfamiliar with VAs technology.
- **The source of funds or wealth**, relates to criminal activities, such as illicit trafficking in narcotics and psychotropic substances, darknet marketplace, online gambling or fraudulent initial coin offerings.¹⁰⁶

The Scale of Financial Crime Cases Involving VAs

How concerned should authorities be about crypto-related financial crimes in El Salvador, and what typologies should they be looking for? This section of the report analyzes regional trends in order to provide insights.

It can be difficult to assess the scale of financial crimes since many cases are not known to authorities; this is especially true for financial crimes that utilize new technologies, since not all authorities may have the technical capacity to investigate them. Analyzing documented cases of financial crimes is not a perfect methodology because it involves looking at what in fact may be the tip of the iceberg. However, analysis of these known cases can nonetheless provide certain insights as to the size of the problem and the typologies being used.

Using publicly available information, this report identified 31 known cases involving VAs and financial crime in the Western Hemisphere from 2017 to early 2023 amounting to over US\$39 billion in alleged criminal activity. This included 27 cases involving Latin American and Caribbean countries, amounting to US\$29 billion in total. Of the 31 cases, at least 17 involved the use of Bitcoin. This is consistent with other research, which has found that, “owing to its relatively high liquidity, Bitcoin remains by far the favored choice for criminal actors using crypto assets.”¹⁰⁷

The most common crimes from the list of cases included ML, identity theft, and fraud. However, some cases involved related, complex crimes like human trafficking and drug trafficking as well as cyber-dependent crimes such as phishing, crypto hacking, and ransomware. In total, over 16 countries in Latin America and the Caribbean were affected, with some crimes involving multiple jurisdictions. Most of these cases are in ongoing judicial proceedings; only a few have been sentenced.

The results of this case analysis confirm what FATF and other international stakeholders have point-

¹⁰⁶ Financial Action Task Force, *Virtual Assets Red Flag Indicators of Money Laundering and Terrorist Financing - Public Sector* (Paris: FATF, September 2020), <https://www.fatf-gafi.org/content/dam/fatf-gafi/brochures/Handout-Red-Flags-VA-Public-Sector.pdf>.

¹⁰⁷ Elliptic, 2023 Typologies report, (London: Elliptic, 2022), 57, https://www.elliptic.co/resources/elliptic-typologies-report-2023?utm_campaign=Typologies%202023&utm_medium=email&_hsmi=262465460&_hsenc=p2ANqtz-QRaYGEi4ZB5eXyNEsX-q1wydFBGtt4XbbuIWpkRtrEK3IDHO4F8H2MWn7xl9xIWbd8GCXeuD4Rr5YHykAs40bxGhr4_A&utm_content=262448813&utm_source=hs_email.

ed out: crypto-related financial crimes are becoming a new reality, and it is important for governments to take steps to understand, address, and mitigate such crimes.

VAs and Financial Crime Risks in El Salvador

Like any country, El Salvador faces unique security challenges and financial crime threats. Therefore, this section begins by analyzing financial crime risks according to the most prevalent predicate offenses in the country. Next, it considers operational features and specific technical aspects of Bitcoin implementation that may present financial crime vulnerabilities.

Risks Identified by Predicate Offense

To understand the financial crime risks posed by VAs in El Salvador, this report has identified the most common underlying (“predicate”) offenses affecting the country. According to research conducted by GFI for this report, the most common predicate offenses in El Salvador include migrant smuggling, extortion, contraband merchandise, drug trafficking, and misappropriation of public funds (*peculado*).¹⁰⁸ These predicate offenses are not unique to VAs, but rather the most common in general. The following sections analyze the specific vulnerabilities and risks posed by VAs in the context of these predicate offenses.

Migrant Smuggling

A common predicate offense in El Salvador is migrant smuggling. Therefore, it is important to identify and mitigate risks of this predicate offense within a variety of sectors including banking, MSBs, and, more recently, VAs.

The size of this illicit economy is significant. A previous report by GFI estimated that the financial scale of migrant smuggling from El Salvador to the United States amounted to \$250 million a year as of 2021.¹⁰⁹ Payments tend to be geographically segmented and a wide variety of stakeholders are often involved. One migrant, in a case documented by *The New York Times*, paid US\$800 leaving San Salvador, US\$1,900 crossing Chiapas, US\$450 in Puebla, US\$2,800 crossing northern Mexico, US\$180 at Matamoros, and US\$6,500 upon arriving in Texas; the entire trip cost \$12,630.¹¹⁰ Payments are made both in cash and electronically. Electronic payments are used for several reasons: migrants may not be able to travel with large amounts of cash on their person due to safety concerns, migrants may rely on financial assistance from family already in the country they are trying to reach, and final payments upon arrival often need to be sent back to the country of origin, thus amounting to a cross-border payment which is more easily made electronically.

Salvadoran authorities have not announced any cases involving VAs and migrant smuggling to date. However, authorities from Mexico’s FIU recently raised an alert regarding the use of crypto in mi-

108 Interviews with public and private sector financial crime experts in El Salvador, conducted during April 2023 by Global Financial Integrity Staff.

109 Julia Yansura, Channing Mavrellis, Lakshmi Kumar, and Claudia Helms, *Financial Crime in Latin America and the Caribbean: Understanding Country Challenges and Designing Effective Technical Responses* (Washington, D.C.: Global Financial Integrity, October 2021), 147. <https://gointegrity.org/wp-content/uploads/2021/10/GFI-LAC-Financial-Crime-Report.pdf>.

110 Nicholas Kulish. “El Costo de Cruzar La Frontera de Contrabando,” *The New York Times*, July 6, 2018. <https://www.nytimes.com/interactive/2018/07/06/universal/es/migracion-coyotes-contrabando.html>.

grant smuggling and human trafficking cases.¹¹¹ Meanwhile, the FATF's 2022 report, *Money Laundering and Terrorism Financing Risks Arising from Migrant Smuggling*, notes that "VAs are beginning to be used in criminal activities as a method of payment," yet notes that "this is incidental and not a widespread typology."¹¹² The report concludes that "there is a risk that their use has either gone undetected or that VAs may be more frequently misused in [the] future as increasing numbers of people become familiar with their use."¹¹³

In the case of El Salvador, specific financial crime risks include the potential use of Chivo Wallet or another wallet to make or receive payments for migrant smuggling. There is also the risk that large-scale proceeds from migrant smuggling could be laundered in the VA ecosystem due to the minimal requirements surrounding use by legal persons (see page 44).

Beyond the Chivo Wallet, there may be risks associated with the use of Chivo ATMs to deposit or receive smuggling payments. As is noted in the Elliptic 2023 Typologies report, "criminals seek to take advantage of how easy it is to use cryptoasset ATMs."¹¹⁴ Further, they note that, "they particularly explore how to convert dirty fiat into cryptoassets – or vice versa – and move their illicit proceeds to other members of a criminal network"¹¹⁵ Red flags may include criminals using crypto ATMs "located in regions or neighborhoods associated with high concentrations of criminal and gang activity."¹¹⁶

Taking this into consideration, heightened risks may present themselves at Chivo ATMs along the US-Mexico border, such as the locations in San Diego, California; El Paso, Texas; Nuevo Laredo, Texas; and McAllen, Texas.¹¹⁷ Some of these border locations are within consulates, which may mitigate risks due to the increased supervision of being inside a government building. However, others are located in local restaurants or corner stores where there is less supervision. The border area presents heightened risks since payment for migrant smuggling typically occurs at several points along the route, including a large payment upon or immediately after arrival in the United States.

Extortion

One of the most significant predicate offenses facing El Salvador in recent years has been extortion. It remains closely linked to financial crimes including ML and TF.¹¹⁸

Perhaps more than any other country in the world, El Salvador has suffered from horrific gang violence. Two gangs - MS 13 and Barrio 18 - took over vast swaths of land, exerting territorial control with high levels of violence. The results were absolutely devastating for local residents. In 2016,

111 María Ramos Pacheco. "México Alerta Del Uso de Criptomonedas Como Pago a Coyotes o Traficantes de Personas," *Dallas Morning News*, September 1, 2021. <https://www.dallasnews.com/espanol/al-dia/dallas-fort-worth/2021/09/01/criptomoneda-coyotes-mexico-alerta-inmigrante-trafico-personas/>.

112 Financial Action Task Force, *Money Laundering and Terrorist Financing Risks Arising from Migrant Smuggling* (Paris: FATF, March 2022), 26, <https://www.fatf-gafi.org/en/publications/MethodsandTrends/Migrant-smuggling.html>.

113 Ibid.

114 Elliptic, 2023 Typologies report (London: Elliptic, 2022), 68, <https://www.elliptic.co/resources/elliptic-typologies-report-2023>.

115 Ibid, 68.

116 Ibid, 72.

117 Of the 54 Chivo ATM locations in the United States, five are located along the US-Mexico border. See "Inicio | Chivo Wallet." Gobierno de El Salvador, June 21, 2023, <https://www.chivowallet.com/index.html#ubicacion>.

118 Julia Yansura, *Extortion in the Northern Triangle of Central America: Following the Money* (Washington, D.C.: Global Financial Integrity, September 7, 2022), <https://gfintegrity.org/wp-content/uploads/2022/09/GFI-Extortion-Report-FINAL.pdf>.

The New York Times reported that the two gangs had a combined membership of 60,000 people in a country of just 6.5 million, they maintained control of 247 out of 262 municipalities, and extorted 70 percent of businesses.¹¹⁹ A 2022 report by GFI estimated that gangs were present in 90 percent of the country and that their main income source was extortion, which amounted to over \$1 billion a year.¹²⁰

The state of exception has greatly changed these dynamics.¹²¹ Since March 2022, the government has arrested nearly 70,000 suspected gang members and built a new mega prison in what is viewed by many as a war against the gangs.¹²² However, the government has announced that an estimated 30,000 additional gang members remain at large.¹²³ In other words, while the state of exception has dealt a significant blow to gangs and to extortion networks, extortion as a predicate offense remains a concern for El Salvador to some extent.

Interviews with subject matter experts conducted in May 2023 suggest that gangs in El Salvador are not regularly or habitually using VAs for extortion payment or extortion related ML. However, there is the risk that this could develop in the future, and that extortion payments could be processed or laundered using VAs. As one report notes, “increasingly, criminal extortion schemes are carried out in the digital space.”¹²⁴ Moreover, it notes that “bad actors can use cryptocurrency as a payment method to facilitate ransom and blackmail without having to demand suitcases full of cash or risk bank accounts being traced.”¹²⁵ In this regard, it is important to identify and mitigate financial crime risks related to extortion proceeds in the VA ecosystem.

Red flags may include many recurring payments from unrelated parties to a single individual without a clear explanation or justification, unusual or unexpectedly frequent usage of crypto ATMs in neighborhoods that historically had high extortion rates, or unusual transactions by family members of known gang members. In neighboring countries, extortion carried out from within prisons has become a major problem, and it will be important for Salvadoran authorities to monitor this going forward, especially in light of the country’s large prison population.¹²⁶

119 Carlos Martinez, Deborah Sontag, Óscar Martínez, and Efrén Lemus. “Killers on a Shoestring: Inside the Gangs of El Salvador,” *The New York Times*, November 20, 2016. <https://www.nytimes.com/2016/11/21/world/americas/el-salvador-drugs-gang-ms-13.html>.

120 Yansura. *Extortion in the Northern Triangle of Central America*, 9.

121 Article 39 of the Constitution of El Salvador (1983) establishes the term, “State of exception”, which dictates that some fundamental rights (For example, the right of association, some rights related to fair trial and communications intervention) can be suspended in a exempt manner during a situation where public order might be in danger. In this regard, the Parliament approved the first state of exception on March 27th of 2022, which has been extended 14 times since then, with the justification of violent acts from gangs against the Salvadorans. More information can be found at <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/A8F46609-5BAD-4EFD-A1C7-1F20ECFDA019.pdf> and https://www.oas.org/dil/esp/constitucion_de_la_republica_del_salvador_1983.pdf.

122 The emergency measures have given security forces leeway while curtailing certain legal rights; for example, under the state of exception, suspected gang members can be arrested without a warrant. Will Grant, “Guerra Contra Las Pandillas En El Salvador | ‘Hemos Encarcelado a Más de 65.000 Personas, y Cuando Manejas Una Operación de Estas Dimensiones Podría Haber Un Error,’” BBC News March 30, 2023, <https://www.bbc.com/mundo/noticias-america-latina-65118697>. For more discussion, see “El Salvador Extends Emergency Powers in Year-Long Gang Crackdown,” Al Jazeera, March 16, 2023. <https://www.aljazeera.com/news/2023/3/16/el-salvador-extends-emergency-powers-in-year-long-gang-crackdown>.

123 Karen Molina. “Todavía Faltan 30,000 Pandilleros Por Capturar, Asegura Ministro de Defensa,” Noticias de El Salvador, February 27, 2023, <https://www.elsalvador.com/noticias/nacional/regimen-de-excepcion-pandillas-lucha-contra-las-negociacion-con-megape-nal-san-vice-nayib-bukele-gabinete-/1042965/2023/>.

124 Office of the Deputy Attorney General’s Cyber-Digital Task Force, Cryptocurrency Enforcement Framework, (Washington, D.C.: United States Department of Justice, October 2020), 7, <https://www.justice.gov/archives/ag/page/file/1326061/download>.

125 Ibid.

126 Phoebe Studdert-Kennedy, “Half of Extortion Calls in Guatemala Are Made from One Prison,” InSight Crime, December 30, 2019, <https://insightcrime.org/news/brief/extortion-calls-guatemala-prison/>.

Contraband Merchandise

Another common predicate offense in El Salvador is contraband merchandise, which is smuggled across borders without proper customs declaration, typically in order to avoid paying taxes. A focus of the current Salvadoran presidential administration has been to increase tax revenue through the enforcement of existing laws, specifically by combating tax evasion and contraband.¹²⁷ In one recent case, authorities dismantled a network of 68 people involved in contraband worth over \$2 million, including cigarettes from China that had illegally entered the country via Panama and Belize.¹²⁸ While any merchandise can be smuggled, the most common include cigarettes, liquor and oils.¹²⁹ These goods are typically taxed, which is one of the reasons that criminal groups seek to smuggle them illegally into the country. One study found that four out of every 10 cigarettes in El Salvador entered the country illegally as contraband.¹³⁰

Using publicly available information, there do not appear to be known cases of contraband smuggling involving VAs in El Salvador, though this will be an important area to monitor going forward. Authorities should be alert to unusual behavior by legal persons using the Chivo Wallet, particularly since little information is required by the company to register (see page 44).

Drug Trafficking

As the UN Office on Drugs and Crime (UNODC) notes, gangs in El Salvador “do not appear to be deeply involved in the international drug trade,” though they do sell drugs locally, in addition to the main source of income which is extortion.¹³¹ According to statements from the Government of El Salvador, 2022 was one of the largest years ever in cocaine seizures; though the 12 tons seized is relatively modest compared to many other countries in the region, it represents a sizable figure for El Salvador.¹³² While El Salvador is not classified as a top production or transit country for drugs,¹³³ some analysts have pointed out that the country may nonetheless be attractive to drug trafficking networks because of its dollarized economy. “It becomes attractive to money launderers because they can easily settle accounts without having to deal with currency exchange,” one expert noted.¹³⁴

As of yet, there are no publicly available cases of narcotics-related ML using VAs in El Salvador. Yet

127 “El Salvador Une Esfuerzos En Contra de La Evasión y El Contrabando,” Ministerio de Hacienda de La República de El Salvador, February 14, 2023, <https://www.mh.gob.sv/el-salvador-une-esfuerzos-en-contra-de-la-evasion-y-el-contrabando/>.

128 Alexander Pineda. “Fiscalía Ordena Captura de Traficantes de Cigarros a Nivel Nacional,” Noticias de El Salvador, April 27, 2023, <https://www.elsalvador.com/noticias/trafico-fiscalia-general-policia-nacional-investigacion-policia-pnc-contrabando-de-mercancias/1056992/2023/>.

129 Rosa María Pastrán, “Contrabando golpea a las empresas salvadoreñas,” El Economista, July 22, 2022, <https://www.eleconomista.net/actualidad/Contrabando-golpea-a-las--empresas-salvadorenas-20220722-0003.html>.

130 David Cañenguez, “Cuatro de Cada 10 Cigarrillos Son de Contrabando En El Salvador, Según Estudio,” Noticias de El Salvador, September 11, 2022, <https://www.elsalvador.com/noticias/nacional/contrabando-de-cigarros-el-salvador/996789/2022/>.

131 UN Office of Drugs and Crime, World Drug Report 2022 (Vienna: UNODC, 2022), 68, https://www.unodc.org/res/wdr2022/MS/WDR22_Booklet_2.pdf.

132 Claudia Espinoza and LPG Datos, “Gobierno reportó en 2022 el mayor decomiso de droga de últimos 34 años”, La Prensa Grafica, February 10, 2023, <https://www.laprensagrafica.com/elsalvador/Gobierno-reporto-en-2022-el-mayor-decomiso-de-droga-de-ultimos-34-anos-20230217-0085.html>.

133 Sean Doherty and Douwe Den Held, “InSight Crime’s Cocaine Seizure Round-Up 2022,” InSight Crime, March 8, 2023, <https://insightcrime.org/news/insight-crimes-cocaine-seizure-round-up-2022/>.

134 Espinoza and LPG Datos, “Gobierno reportó en 2022 el mayor decomiso de droga de los últimos 34 años”, La Prensa Gráfica, February 10, 2023, <https://www.laprensagrafica.com/elsalvador/Gobierno-reporto-en-2022-el-mayor-decomiso-de-droga-de-ultimos-34-anos-20230217-0085.html>.

numerous cases from other countries suggest that this may be or may become an issue. Europol has noted that “organized crime groups in Europe are increasingly using Bitcoin ATMs to disguise payments for cocaine shipments from Colombia.”¹³⁵ In Spain, authorities reported “the frequent use of Bitcoin ATMs operated by a company under investigation by a criminal organization with a background in drug trafficking to convert illicit proceeds into VAs.”¹³⁶ In an attempt to avoid detection, “the persons in charge of making the deposits applied “smurfing” (structuring) techniques, dividing the funds into batches of less than EUR 1,000” and making multiple deposits a day to different ATMs in different locations.¹³⁷ Moreover, “the suspicion of the Spanish authorities was that there was complicity with the illegal operation on the part of the company (...) since no [customer due diligence] tasks were carried out and no [suspicious transaction reports] were filed.”¹³⁸

One expert noted in a media interview that Mexican and Colombia cartels “are increasing their use of virtual currency because of the anonymity and speed of transactions” and predicted that their use “will only increase in the future.”¹³⁹ Others have noted that “law enforcement has seen a significant increase in the use of cryptocurrency by transnational criminal organizations involved in the illicit drug trade.”¹⁴⁰ In 2022, U.S. authorities seized a sum of crypto as part of “an operation to disrupt a cash pipeline that funneled the proceeds of narcotics sales to Mexico via stablecoins.”¹⁴¹ Allegedly, “cash couriers would deposit money generated from drug trafficking, use Binance to purchase USDT¹⁴² as well as Bitcoin (BTC), and then send the crypto to a designated address controlled by a criminal organization in Mexico.”¹⁴³

Unfortunately, El Salvador will likely remain an attractive target for narcotics traffickers because it has a dollarized economy and because it is geographically located between production and consumption countries. The speed and relative anonymity of VAs may exacerbate existing vulnerabilities.

Research by Elliptic, presented in the graphic on the next page, differentiates between the methods used by different criminal groups. The analysis sheds light on some of the methods that may potentially be used by drug dealers in the VA ecosystem in El Salvador.¹⁴⁴ The report points to crypto exchanges, peer to peer transactions, bitcoin ATMs, and cards as those methods at greatest risk for use by street level drug dealers.

135 Koos Couvée, “European Traffickers Pay Colombian Cartels Through Bitcoin ATMs: Europol Official,” ACAMS [MoneyLaundering.com](https://www.moneylaundering.com/news/european-traffickers-pay-colombian-cartels-through-bitcoin-atms-europol-official/), February 28, 2018, <https://www.moneylaundering.com/news/european-traffickers-pay-colombian-cartels-through-bitcoin-atms-europol-official/>.

136 Financial Action Task Force of Latin America, *Guide on Relevant Aspects and Appropriate Steps for the Investigation, Identification, Seizure, and Confiscation of Virtual Assets* (Buenos Aires: GAFILAT, December 2021), 39, <https://www.gafilat.org/index.php/es/biblioteca-virtual/gafilat/documentos-de-interes-17/traduccion/4338-guide-on-relevant-aspects-and-appropriate-steps-for-the-investigation-identification-seizure-and-confiscation-of-virtual-assets/file>.

137 Ibid.

138 Ibid.

139 Diego Oré, “Latin American Crime Cartels Turn to Crypto to Clean up Their Cash,” Reuters, December 8, 2020, <https://www.reuters.com/article/mexico-bitcoin-idUSL1N2IJ01D>.

140 U.S. Department of Justice, “The Report of the Attorney General Pursuant to Section 8(b)(iv) of Executive Order 14067: How To Strengthen International Law Enforcement Cooperation For Detecting, Investigating, And Prosecuting Criminal Activity Related To Digital Assets” (Washington, D.C.: U.S. Department of Justice, 2022) 23, <https://www.justice.gov/media/1225896/dl?inline=>.

141 Sam Reynolds, “US Drug Enforcement Agency Seized \$1.8M From Binance in 2022,” CoinDesk, February 24, 2023. <https://www.coindesk.com/business/2023/02/24/us-drug-enforcement-agency-seized-18m-from-binance-in-2022/>.

142 USDT, also known as Tether, is a stablecoin pegged to the US Dollar. This means that every USDT is equal to \$1 USD.

143 Reynolds, “US Drug Enforcement Agency Seized \$1.8M.

144 Elliptic, 2023 Typologies report (London: Elliptic, 2022), 122, <https://www.elliptic.co/resources/elliptic-typologies-report-2023>.

Graphic 3. Financial Crime Methods Used in the VA Ecosystem by Type of Criminal Actor

Methods	Crypto Exchanges	DEXs	ATMs	Cards	Mixers/Privacy Wallets	Tokens &			Metaverse
						Stable coins	Wallet-Specific	Privacy Coins	
Criminal/Threat Actor									
Hacker/Cybercriminal	X	X	X	X	X	X	X	X	X
Dark Web Vendors (including online drug dealers, carders, etc.)	X	X	X	X	X		X	X	
Fraudsters (including Ponzi scheme perpetrators)	X		X	X	X	X			X
Professional Money Launderers	X	X	X	X	X	X	X	X	
Street Drug Dealer	X		X	X					
Human Traffickers/Sex Trade	X		X	X					
Tax Evaders	X			X	X	X		X	X
State Actors/Sanctions Evaders	X	X		X	X	X	X	X	X
Terrorist/Political Extremist	X	X	X	X	X	X	X	X	X

Source: Elliptic, 2023.

Crypto ATMs present specific risks in El Salvador, especially due to the unusually high transaction threshold established by some ATM providers. For example, in an advertisement on social media on July 29, 2023, Athena stated that users can withdraw up to \$10,000 in cash at their ATMs in El Salvador.¹⁴⁵ Compared to other types of ATMs, which establish daily and transactional limits, this is an unusually high threshold.¹⁴⁶ In this regard, it will be important for authorities in El Salvador to be alert to these risks.

Misappropriation of Public Funds (*Peculado*)

Another common predicate offense for ML in El Salvador is misappropriation of public funds, known as *peculado* in Spanish. The risks of misuse of public funds—corruption—are not unique to VAs. The proceeds of corruption can flow through cash payments, bank accounts, charitable donations, international trade, and much more. VAs are vulnerable as well. As one report notes, “given the hurdles to connecting pseudonymous cryptocurrency wallets to real people—particularly in countries where law enforcement lacks expertise and resources—a perception that using cryptocurrency lowers the risk of being caught for embezzlement could potentially reduce the constraints on corruption.”¹⁴⁷

145 Athena Bitcoin twitter account, July 29, 2023. https://twitter.com/AthenaBTC_SV/status/1685470623311536128 Accessed August 2, 2023.

146 As a point of comparison, for cash withdrawal from an ATM using a card, Banco Agrícola sets the transaction limit at \$275 and the daily total limit at \$2,000. See Banco Agrícola, Cajero Total Preguntas Frecuentes, <https://www.bancoagricola.com/cajero-total> Accessed August 2, 2023.

147 S. Elsayed, *Cryptocurrencies, Corruption and Organised Crime: Implications of the Growing Use of Cryptocurrencies in Enabling Illicit Finance and Corruption* (Berlin: Transparency International, March 3, 2023), 8, <https://knowledgehub.transparency.org/helpdesk/cryptocurrencies-corruption-and-organised-crime-implications-of-the-growing-use-of-cryptocurrencies-in-enabling-illicit-finance-and-corruption>.

In the case of El Salvador, one of the main risks emerges with the government’s purchases of Bitcoin. As noted on page 12, the country has invested over \$100 million in public funds in the purchase of Bitcoin. Yet, it is not clear who has access to these funds, what security measures are in place, or what protocols are established for using these funds. Information on the purchase value or current value of these funds does not appear to be publicly available on the Central Bank website or another official location, increasing risks that an unscrupulous individual from either the private or public sector with access to the account could skim funds off the top.¹⁴⁸ In addition to strengthening the integrity and anti-corruption measures as discussed previously, systemic solutions, including security and usage protocols as well as transparent record-keeping, are needed to safeguard the funds.

Misappropriation risks arise as well with Bitcoin ATMs. The current Bitcoin ATM provider notes that “from time to time, the Company receives money from [the Government of El Salvador (GOES)] to facilitate replenishment of cash in the ATMs that we provide and operate for them. As of March 31, 2023 and December 31, 2022, the cash received as advances from GOES was \$273,000 and \$1,107,000 respectively.”¹⁴⁹ Another report notes that “as of December 31, 2022 and 2021, the cash received as advances from GOES was \$1,107,000 and \$3,647,000 respectively.”¹⁵⁰ Movements of large sums of cash, even when necessary for operations, present significant risks. The previous information comes from the U.S. Securities and Exchange Commission (SEC) filings as required by U.S. law. However, the Government of El Salvador should consider its own mechanisms to track, report, and publish such transfers of money as a means to ensure greater oversight and transparency.

Table 6. Cash Replenishments—As Advances—Made by the Government of El Salvador to Athena ATMs

REPORTING PERIOD	CASH ADVANCES (USD)
March 31, 2023	\$273,000
December 31, 2022	\$1,107,000
December 31, 2021	\$3,647,000

Source: <https://athenabitcoin.com/filings>, accessed May 17, 2023.

could themselves. However, risks of corruption emerge when contracts are signed behind closed doors, when the responsibilities of each party is not clearly defined, and when the technology being developed is complex and highly technical. As the Organization for Economic Co-operation and Development has noted, “public procurement is one of the government activities most vulnerable to corruption.”¹⁵¹ They continue that, “in addition to the volume of transactions and the financial interests at stake, corruption risks are exacerbated by the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders.”¹⁵²

Lastly, there are risks of misuse of funds with regards to contracts between the government and technology service providers. As is detailed on page 12, a number of private companies are operating in the crypto ecosystem with government funds. This is not inherently problematic; private companies may be able to provide services more efficiently and rapidly than government agencies

148 In fact, in responses to public information requests, the Central Bank has stated that it does not have access to this information. See <https://www.transparencia.gob.sv/search?utf8=%E2%9C%93&ft=bitcoin>.

149 Athena Bitcoin Global, “Disclosure Statement Pursuant to the Pink Basic Disclosure Guidelines: Quarterly Report for the period ending March 31, 2023” (Chicago: Athena Bitcoin Global, 2023) 19, <https://static.athenabitcoin.com/wp-content/uploads/2023/05/ABIT-Q1-2023-Quarterly-Report.pdf>.

150 Ibid, 20.

151 Organization for Economic Co-operation and Development, *Preventing Corruption in Public Procurement* (Paris: OECD, 2016) 6, <https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf>.

152 Ibid.

Additional Risks Identified In Relation to Operational Features

In addition to risks identified by predicate offense, this report analyzes financial crime risks linked to specific operational features of crypto implementation in El Salvador.

Requirements for Legal Persons to Use Chivo Wallet

One of the most concerning risks identified in this report is the unusually low requirements for companies to open business accounts with Chivo Wallet, especially compared to requirements to open business accounts at other financial institutions. This creates a significant risk that front or shell companies could abuse the Chivo Wallet.

The FATF explains that despite the important role that corporate vehicles play in the economy,¹⁵³ “their unique legal status also lends them to be used in complex schemes designed to conceal the true beneficial owners and, in many respects, the real reason for holding assets and conducting transactions.”¹⁵⁴ Moreover, they note that “corporate vehicles can be misused for various illicit purposes, including ML, bribery and corruption, insider dealings, tax fraud, TF, sanctions evasion and other illegal activities,” and that, “for criminals trying to circumvent AML and CFT measures, corporate vehicles are an attractive way to disguise their identity and conceal the origin and/or destination or ultimate purpose of funds through manipulation of the financial system.”¹⁵⁵

Like many countries, El Salvador faces financial crime threats from the misuse of corporate vehicles. This has traditionally, though not exclusively, been linked to the country’s gangs. In a 2018 court case, one witness testified how MS-13 laundered money using “associated merchants who receive money to invest in restaurants, vegetable sales, breweries, taquerias, bakeries, pupuserías or public transport routes (...).”¹⁵⁶ Moreover, a 2022 financial crime typology written by the FIU of El Salvador highlights a similar phenomenon. The document describes how the *Maras* have utilized corporate structures to launder illicit proceeds obtained through extortion, homicides, and drug and weapons trafficking.¹⁵⁷

Therefore, risks associated with front companies or shell companies are important to consider. These risks predate the adoption of Bitcoin as legal tender and the creation of the Chivo Wallet, having long affected traditional financial institutions. That said, it is important to understand how these risks might emerge within the crypto ecosystem.

Both individuals (“natural persons”) and companies (“legal persons”) can open Chivo Wallet accounts.¹⁵⁸ For individuals, the requirements to open a Chivo Wallet account are similar to the re-

153 Corporate vehicles include companies, trusts, foundations, partnerships, and other types of legal persons and arrangements.

154 Financial Action Task Force, Guidance on Beneficial Ownership of Legal Persons (Paris; FATF, March 10, 2023), 4, <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html>.

155 Ibid.

156 “Los Moteles al Servicio de La MS-13,” La Prensa Gráfica, August 29, 2018. <https://www.laprensagrafica.com/elsalvador/Los-moteles-al-servicio-de-la-MS-13-20180829-0059.html>.

157 Unidad de Investigación Financiera de El Salvador, *Informe de lavado de dinero; Tipología II: Organización criminal que blanquea el producto de sus actividades delictivas ingresándolas en el sistema financiero y/o comercio legal del país* (San Salvador: El Salvador UIF, 2022), 3. <https://www.uif.gob.sv/wp-content/uploads/2023/01/Informe-de-Tipologia-II-2022.pdf>.

158 “Preguntas Frecuentes | Chivo Wallet.” Gobierno de El Salvador, June 22, 2023, <https://www.chivowallet.com/preguntas-frecuentes.html#item-6>.

requirements to open a traditional bank account. One difference is that the Chivo wallet account can be opened using an expired identification document or expired passport, which is far from ideal from an AML perspective.

Table 7. Comparison of Requirements for Natural Persons to Obtain Financial Services with Chivo Wallet versus other Financial Service Providers in El Salvador

Requirements to Open a Chivo Wallet Account as a Natural Person	Requirements to Open a 100% Online Savings Account with a Major Salvadoran Bank as a Natural Person ¹⁵⁹
<ul style="list-style-type: none"> - Valid or expired DUI or Salvadoran passport - Mobile phone for registering on the application 	<ul style="list-style-type: none"> - DUI - Mobile phone and internet connection - Income justification when equal to or more than \$2,000 USD

Source: Internet research conducted by GFI in May 2023.

However, the requirements differ quite dramatically when it comes to legal persons. For a legal person to register or install Chivo Wallet, only three steps are required. First, they must provide their NIT. Second, they must provide their DUI, properly registered in the General Direction of Internal Taxes (Dirección General de Impuestos Internos, DGII) within the Ministry of Finance (Ministerio de Hacienda).¹⁶⁰ Third, they must provide a cell phone number from El Salvador or one of the countries where Chivo Wallet is offered.

Based on publicly available information on the Chivo website, in-person consultations with Chivo kiosk staff, and interviews with companies using corporate Chivo accounts, GFI was not able to identify additional requirements to open a Chivo wallet business account.¹⁶¹ For example, it does not appear that the deed of incorporation of the company, the selection of the legal representative (*Credencial de elección de representante legal de la sociedad*), or the list of shareholders, among other documentation, is required to open a business account on this platform.

The information required by Chivo Wallet was contrasted to the information required by three of the largest banks in El Salvador.¹⁶² There was relatively little variation among the banks in terms of requirements for opening a corporate checking account. This is due to regulatory standards: NPB-32, “Standards on information on deposits and their holders,” issued by the SSF in 2001, which requires that banks have minimum information to carry out deposit operations and establishes a series of requirements for natural and legal persons.¹⁶³ Among the three banks consulted, 13 requirements were identified to open a corporate checking account. To open a corporate mobile banking account, four

159 “Cuenta ya,” Banco CUSCATLAN, June 22, 2023, <https://www.bancocuscatlan.com/productos-digitales/cuenta-ya>.

160 “Chivo Wallet Comercios,” COEXPORT, June 22, 2023, <https://coexport.com.sv/chivo-wallet-comercios/>.

161 Research was conducted in April and May of 2023.

162 The documentation required by the banks was requested directly from Banco Agrícola and Banco Cuscatlán and was identified on the Banco Promérica website. The consolidation of requirements is expressed in the table below.

163 In the year 2016, the Financial Inclusion Law was approved. This regulation has modifications from years 2017, 2019 and 2022. In this last version, Article 20, regarding the deposits on savings accounts with simplified requirements was added, allowing exclusively individuals to open this type of account, also, through electronic means.

additional requirements were identified beyond the original 13.¹⁶⁴ The table below provides more detail.

Table 8. Comparison of Requirements for Legal Persons to Obtain Financial Services by Chivo Wallet and by Other Financial Institutions

Requirements to Open Chivo Wallet as a Legal Entity	Requirements to Open a Checking Account at a Salvadoran Bank as a Legal Entity	Requirements to Open Mobile Banking at a Salvadoran Bank as a Legal Entity
<ol style="list-style-type: none"> 1. NIT 2. DUI of the legal representative of the company 3. Available mobile phone number to register it on the application 	<ol style="list-style-type: none"> 1. Deed of Incorporation registered in the Commerce Registry¹⁶⁵ 2. Document that consigns the designation of the legal representative or the proxy which allows a person to do this activity 3. Company NIT 4. DUI or Passport and Tax ID of the legal representative or the proxy, and also from the persons allow to sign on behalf the legal representative 5. The minimum amount for opening the account is \$1,000 6. Sales Tax ID 7. A receipt of any service provided to the company, that contains its mailing address. 8. The last three Sales Tax Declarations 9. Commercial License (given by the Commercial Registry) 10. Income Tax declaration from the last year 11. Income statement and Balance Sheet 12. Name of the most important clients 13. Name of the most important providers 	<ol style="list-style-type: none"> 1. Have already services with the bank, specifically being part of the corporate or commercial area 2. Deed of Incorporation registered in the Commerce Registry 3. Document that consigns the designation of the legal representative or the proxy which allows a person to do this activity 4. DUI or Passport and Tax ID of the legal representative or the proxy, and also from the persons allow to sign on behalf the legal representative 5. Maintain the same signatures registered for the bank accounts

Source: Internet research conducted by GFI in May 2023.

The dramatic discrepancy between the requirements for legal persons to open a Chivo Wallet (three requirements) versus to open a bank account (13 requirements) is problematic and may encourage the misuse of Chivo by corporate vehicles looking for a no-questions-asked way to access the financial system. This raises risks of the use of shell and front companies utilizing the crypto ecosystem in El Salvador for ML or other illicit activities.

¹⁶⁴ Only those legal persons that already have traditional financial services from a banking entity can receive Online Banking services. See for example, “Company e-Bank”, Banco Agrícola.

¹⁶⁵ For example, the requirements of Banco Cuscatlán, establishes that if the enterprise has just been constituted, the stakeholders should present the last three Sales Tax Declarations and the Income Declaration from the last year, just as the Sales Tax ID and Tax ID.

Chivo Wallet and Consumer Protection Responsibilities

There are also concerns over consumer protection which stem from Article 5 of the Chivo Wallet's Terms and Conditions, which states as follows:

“The User accepts and agrees that CHIVO S.A. DE C.V., is not responsible for any damage, harm or loss to the User, caused by failures in the system, on the server, on the Internet or in Chivo Wallet. CHIVO S. A. DE C. V., will not be responsible for any virus that could infect the User's equipment as a result of the access, use or examination of Chivo Wallet or as a result of any transfer of data, files, images, texts, or audio, contained in it. The User may not impute any responsibility to CHIVO S. A. DE C. V., nor demand payment for lost profits or any damage, by virtue of damages resulting from technical difficulties or failures in the systems, Internet or Chivo Wallet.”¹⁶⁶

While avoiding legal liability for internet outages may seem reasonable, it is worth analyzing whether it is reasonable for Chivo to avoid responsibility in all the cases outlined above. This is particularly important in light of cases in which funds have allegedly been stolen or have gone missing from accounts¹⁶⁷ (see page 30). In one recent case, a Salvadoran man was convicted of stealing US\$81,000 from Chivo Wallet in April 2022, around which time the users reported failures in the operating system resulting in some users becoming “millionaires” overnight while others reported disappearing funds.¹⁶⁸ In these situations, the Terms and Conditions make it unclear whether a user would be legally responsible for system errors that subtract or add funds to their accounts without their knowledge or consent.

Identity Verification and KYC

To open a Chivo Wallet account, users must submit a photo of a valid or expired Salvadoran DUI or passport, along with a profile photo of their face, among other required information. However, reports have emerged raising concerns about identity verification systems. According to media accounts, some users have managed to open Chivo Wallet accounts using photocopied (as opposed to original) DUIs and profile photos that do not match the photo on the DUI.¹⁶⁹ These risks are amplified by media reports alleging that leaked data from 5.1 million Salvadorans, including photos and DUIs, is illegally for sale on the Internet.¹⁷⁰

Moreover, former Chivo programmer Shaun Overton has alleged that KYC controls on the Chivo

166 El Usuario acepta y acuerda que CHIVO S. A. DE C. V., no se responsabiliza por cualquier daño, perjuicio o pérdida al Usuario, causado por fallas en el sistema, en el servidor, en internet o en Chivo Wallet. CHIVO S. A. DE C. V., tampoco será responsable por cualquier virus que pudiera infectar el equipo del Usuario como consecuencia del acceso, uso o examen de Chivo Wallet o a raíz de cualquier transferencia de datos, archivos, imágenes, textos, o audio, contenidos en el mismo. El Usuario no podrá imputarle responsabilidad alguna a CHIVO S. A. DE C. V., ni exigir pago por lucro cesante o daño alguno, en virtud de perjuicios resultantes de dificultades técnicas o fallas en los sistemas, Internet o en Chivo Wallet.” See “Terminos y Condiciones,” Chivo Wallet, accessed April 24, 2023, <https://www.chivowallet.com/terminos-y-condiciones.html>.

167 Leonardo Cerón, “Joven Devolverá \$81,000 Tras Condena Por Extraer Dinero de Chivo Wallet,” *Diario El Mundo*, April 10, 2023, <https://diario.elmundo.sv/nacionales/joven-devolvera-81000-tras-condena-por-extraer-dinero-de-chivo-wallet>; Andrés Engler, “After Identity Theft, Salvadorans Now Report Funds Disappearing From Chivo Wallets,” *CoinDesk*, December 31, 2021, <https://www.coindesk.com/business/2021/12/30/after-identity-theft-salvadorans-now-report-funds-disappearing-from-chivo-wallets/>.

168 Cerón, “Joven Devolverá \$81,000.”

169 Andrés Engler, “Identity Thieves Exploit El Salvador's Chivo Bitcoin Wallet's Setup Process,” *CoinDesk*, November 1, 2021, <https://www.coindesk.com/business/2021/10/29/identity-thieves-exploit-el-salvadors-chivo-bitcoin-wallets-setup-process/>.

170 David Bernal and Gabriela Villaruel, “Los datos de 5.1 millones de salvadoreños están a la venta en la web por \$250,” *La Prensa Gráfica*, August 22, 2023, <https://www.laprensagrafica.com/elsalvador/Los-datos-de-5.1-millones-de-salvadorenos-estan-a-la-venta-en-la-web-por-250-20230821-0104.html>.

Wallet were in fact turned off for a period of time.¹⁷¹ According to reporting by Bitcoin.com, the Chivo Wallet team “willfully turned off the KYC filters when the system failed, to allow the app to achieve its goal of having 50,000 users registered, and allowed people to transact money to bank accounts without reporting it due to a bug in the app.”¹⁷² As Overton testified in a U.S. court, “within the first 150 sign-ups on the platform, the vendor for KYC compliance crashed. So the government of El Salvador... [decided] to eliminate the KYC vendor from the process so that the Chivo Wallet registrations could continue.”¹⁷³ By January 2022, a new digital identification firm announced that it had assumed KYC/AML onboarding for Chivo.¹⁷⁴ It is not clear whether retroactive KYC measures were applied if earlier KYC was not effective, as is alleged.

Concerns over KYC and the Travel Rule¹⁷⁵ are echoed in an SEC report filed by Athena, a company involved in the Chivo ATMs as well as Chivo wallet implementation. The report, filed by Athena in February 2022, stated that “the FATF mandates that the parties engaging in virtual-asset transactions provide complete and sufficient KYC information. It also requires that senders and recipients of VAs obtain accurate knowledge and information about ‘the transaction, the source of funds, and the relationship with the counterparty.’ The chances of Bitcoin transactions meeting such requirements are unlikely (...).”¹⁷⁶

Allegations of identity theft (as described on page 31) further raise concerns regarding adequate customer identification and KYC. Internationally, identity theft has also been used as part of larger ML typologies. The Elliptic Typologies Report 2023, which presents red flag indicators for crypto ML, notes that “the account holder may not have any understanding of what the funds in the account are being used for when questioned. In a case of stolen identity, they may not even be aware that an account was opened in their name.”¹⁷⁷

Exposure to Risk through Corporate Service Providers

Chivo implementation in El Salvador involves a number of corporate stakeholders with wide-ranging

171 Sergio Goschenko, “El Salvador Chivo Wallet Programmer Opens Up About Alleged ID Fraud, Tech and Money Laundering Issues,” Bitcoin News, January 13, 2023, <https://news.bitcoin.com/el-salvador-chivo-wallet-programmer-opens-up-about-alleged-id-fraud-tech-and-money-laundering-issues/>.

172 Ibid.

173 Nelson Rauda Zablah, “The Inside Story of How El Salvador’s Official Crypto Wallet Crashed and Failed,” El Faro, December 15, 2022. https://elfaro.net/en/202212/el_salvador/26601/The-Inside-Story-of-How-El-Salvador%E2%80%99s-Official-Crypto-Wallet-Crashed-and-Failed.htm.

174 “Chivo Wallet Identification Verification Partner Netki Successfully Onboards 4 Million Users in 45 Days to Facilitate El Salvador’s Official Bitcoin Adoption,” Business Wire, January 18, 2022, <https://www.businesswire.com/news/home/20220118005185/en/Chivo-Wallet-Identification-Verification-Partner-Netki-Successfully-Onboards-4-million-users-in-45-days-to-Facilitate-El-Salvador%E2%80%99s-Official-Bitcoin-Adoption>.

175 The Travel Rule states that key information about the originator and beneficiary of funds must “travel” along with the transaction. For more technical detail, see the Interpretive Note to Recommendation 16 in Financial Action Task Force, ‘International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (Paris: FATF, updated February 2023) <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>. For discussion on implementation challenges, see Andrey Sergeenkov, “What’s the Crypto ‘Travel Rule,’ and What Does It Mean for You?,” CoinDesk, May 11, 2023, <https://www.coindesk.com/learn/whats-the-crypto-travel-rule-and-what-does-it-mean-for-you/>.

176 Athena Bitcoin Global, “Form S-1 Registration Statement Under the Securities Act of 1933,” (Chicago: Athena Bitcoin Global, February 10, 2022), 15, https://www.sec.gov/Archives/edgar/data/1095146/000168316822000848/athena_s1.htm.

177 Elliptic, 2023 Typologies report, (London: Elliptic, 2022), 26, https://www.elliptic.co/resources/elliptic-typologies-report-2023?utm_campaign=Typologies%202023&utm_medium=email&_hsmi=262465460&_hsenc=p2ANqtz-QRaYGEi4ZB5eXyNEsX-q1wydFBGtt4Xbbu1WpkRtrEK31DHO4F8H2MWn7x19xIWbd8GCXeuD4Rr5YHykAs40bxGhr4_A&utm_content=262448813&utm_source=hs_email.

and complex international engagement. Igor Telyatnikov, the Alphapoint CEO and Co-Founder, noted in an interview with CoinDesk, “part of the Chivo ecosystem are the Bitcoin ATMs, there are point of sale devices throughout the country, its integrated into the banking system, is integrated to any external, third party wallet for Bitcoin or Lightning on chain, so there are various integrations into the ecosystem.”¹⁷⁸ This is further underscored in a 2022 interview in which the Telyatnikov brothers commented that “the Chivo wallet is a public utility that enables interoperability with the local banking system in US Dollars as well as Bitcoin transactions between Chivo wallets or any third party wallet.”¹⁷⁹ In terms of risks, this exposes Chivo to all other third party wallets internationally; Chivo’s KYC and AML relies on these third parties and is only as strong as they are.

In terms of ML risks, it is also important to consider activities by international corporate stakeholders. While these situations may be geographically beyond the control of Salvadoran authorities, they may end up impacting El Salvador by association.

One example is the recent alliance between Athena Bitcoin Global, El Salvador’s ATM provider, and the Mexican company Elektra, part of Grupo Salinas and affiliated with Banco Azteca.¹⁸⁰ Mexican authorities at the Comisión Nacional de Banca y Valores have fined Grupo Elektra for failures to inform investors of changes in operations as well as failures to maintain appropriate AML prevention mechanisms as required by Mexican law.¹⁸¹

In 2020, the affiliated Banco Azteca lost correspondent banking relationships with the U.S.¹⁸² This created a bulk cash currency problem for the Bank.¹⁸³

In June 2021, corporate leadership announced that Banco Azteca would become the first bank in Mexico to accept cryptocurrency, perhaps as a way to solve problems with excess US dollars in cash.¹⁸⁴ However, Mexican authorities responded with a definitive no.¹⁸⁵ As of April 2022, “Banco Azteca, which is part of Salinas’ flagship home appliance distributor Grupo Elektra, [was] accumulating around \$50 million in US currency per week in its branch network,” and reported issues returning

178 CoinDesk Youtube Channel. “El Salvador Using Crypto Software Firm AlphaPoint to Fix Chivo Wallet Problems,” February 6, 2022, <https://www.youtube.com/watch?v=fiK9k8Ykzjs>.

179 Aprameya Rao. “Heavy Tax On Cryptocurrency Better Than Outright Restriction: Crypto Firm Founders,” *NDTV.com*, February 13, 2022, <https://www.ndtv.com/business/heavy-tax-on-cryptocurrency-better-than-outright-restriction-crypto-firm-founders-2766345>.

180 Athena Bitcoin. “Elektra Selects Athena Bitcoin Global (OTC:ABIT) to Process Bitcoin Payments Using the Lightning Network,” *GlobeNewswire News Room*, March 31, 2022, <https://www.globenewswire.com/en/news-release/2022/03/31/2413791/0/en/ELEKTRA-SELECTS-ATHENA-BITCOIN-GLOBAL-OTC-ABIT-TO-PROCESS-BITCOIN-PAYMENTS-USING-THE-LIGHTNING-NETWORK.html>.

181 Roberto Noguez and Forbes Staff, “CNBV Impone Multa a Grupo Elektra Por Más de 2 Mdp,” *Forbes México*, March 15, 2022, <https://www.forbes.com.mx/cnbv-impone-multa-grupo-elektra-por-mas-de-2-mdp>.

182 Claudia Villegas, “La Historia Detrás de Los Dólares Atrapados de Banco Azteca,” *Proceso*, February 7, 2021, <https://www.proceso.com.mx/reportajes/2021/2/7/la-historia-detras-de-los-dolares-atrapados-de-banco-azteca-257793.html>; R. Lopez, “Banco de EE.UU Cierra Cuentas Del Banco Azteca Por Lavado de Dinero,” *Antilavado de Dinero*, December 22, 2020, <https://www.antilavadodedinero.com/banco-de-ee-uu-cierra-cuentas-del-banco-azteca-por-riesgos-de-lavado-de-dinero/>.

183 “Mexico Central Bank Swats down Banking Magnate over Bitcoin,” *AP News*, June 28, 2021, <https://apnews.com/article/caribbean-mexico-technology-bitcoin-business-52e4832f4c47cf6ad9bc18d5d2211ed9>.

184 Adriana Hamacher, “Mexico’s Financial Authorities Pour Cold Water on Billionaire’s Bitcoin Bank Plan,” *Decrypt*, June 29, 2021, <https://decrypt.co/74751/mexicos-financial-authorities-pour-cold-water-on-billionaires-bitcoin-bank-plan>.

185 Tanaya Macheel, “Bank of Mexico Shoots down Billionaire Ricardo Salinas’ Plans to Bring Bitcoin to Banco Azteca,” *CNBC*, June 28, 2021, <https://www.cnbc.com/2021/06/28/mexican-billionaire-salinas-says-he-wants-to-give-his-bank-clients-access-to-bitcoin.html>.

these funds to the U.S. or converting to local currency.¹⁸⁶

Mexican authorities have stated that crypto ATMs are not permitted by law in Mexico.¹⁸⁷ However, the Athena website indicates the presence of an Athena ATM in Mexico City, at the corporate headquarters of Grupo Salinas.¹⁸⁸ In this context, the partnership between Athena Bitcoin Global and Elektra, occurring around the same time, presents both AML and reputational risks to El Salvador that merit further analysis even though they occur beyond El Salvador's borders.¹⁸⁹

Citizenship by Investment (CBI)

In 2022, the President of El Salvador announced that he was considering a CBI Program.¹⁹⁰ While full details are not yet available, it is rumored that an investment of either 3 bitcoins or US\$100,000 would be required for residency, and that citizenship would be available after five years.¹⁹¹ Investment in El Salvador's Volcano Bonds would also count towards the investment requirement, according to some sources.¹⁹²

Many countries have CBI programs, which can help to attract foreign investment.¹⁹³ However, as the IMF notes, "programs that offer passports in return for investment have financial integrity risks that must be managed."¹⁹⁴ GFI explains that "when corrupt actors get to hand-pick the set of criminal and tax laws they'd like to abide by, they expand their berths of impunity."¹⁹⁵ Moreover, "dual citizenship enables criminals and criminal networks to seamlessly coordinate transnational operations."¹⁹⁶ In some cases, criminals or terrorists "shop around for a country that offers a safe haven from law enforcement or extradition."¹⁹⁷ For example, an investigation by Al Jazeera into Cyprus' CBI program found that among the 2,500 individuals who had received citizenship through the program from 2017-2019 were dozens of criminals and fugitives.¹⁹⁸ Discretionality in the vetting process of

186 "Banco Azteca Tiene Un Excedente de 50 Millones de Dólares Cada Semana," *Expansión*, April 7, 2022, <https://expansion.mx/economia/2022/04/07/banco-azteca-excedente-50-millones-de-dolares-cada-semana>.

187 See <https://www.banxico.org.mx/publicaciones-y-prensa/miscelaneos/%7B56A7FE3D-C30E-86ED-E5C9-D9876D47D21E%7D.pdf> and Tanaya Macheel, "Bank of Mexico Shoots down Billionaire Ricardo Salinas' Plans to Bring Bitcoin to Banco Azteca," *CNBC*, June 28, 2021, <https://www.cnbc.com/2021/06/28/mexican-billionaire-salinas-says-he-wants-to-give-his-bank-clients-access-to-bitcoin.html>.

188 Athena Bitcoin, ATM Locations, <https://athenabitcoin.com/es/atm-locations-es/> Accessed August 2, 2023.

189 Athena Bitcoin, "Elektra Selects Athena Bitcoin Global."

190 CS Global Partners, "Bitcoin Heaven El Salvador Newest Nation to Consider Citizenship by Investment," *PR Newswire*, February 25, 2022, <https://www.prnewswire.com/news-releases/bitcoin-heaven-el-salvador-newest-nation-to-consider-citizenship-by-investment-301490625.html>.

191 "Citizenship by Investment in El Salvador," *Buy Golden Visa*, December 7, 2021, <https://buygoldenvisa.com/citizenship-by-investment-in-san-salvador/>.

192 Christian Henrik Nesheim. "El Salvador Citizenship by Investment Program Could Open by Spring, Bukele's Tweet Indicates," *Investment Migration Insider*, February 21, 2022, <https://www.imidaily.com/caribbean/el-salvador-citizenship-by-investment-program-could-open-by-spring-bukeles-tweet-indicates/>.

193 David Lesperance and Melvin A. Warshaw, "Increased Crackdown on Citizenship and Residency by Investment Programs," *Wealth Management*, March 23, 2022, <https://www.wealthmanagement.com/alternative-investments/increased-crackdown-citizenship-and-residency-investment-programs>.

194 Francisca Fernando, Jonathan Pampolina and Robin Sykes, "Citizenship for Sale," *International Monetary Fund*, Summer 2021, <https://www.imf.org/external/pubs/ft/fandd/2021/06/citizenship-for-sale-fernando-pampolina-sykes.htm>.

195 "Citizenship by Investment," *Global Financial Integrity*, June 22, 2023, <https://gfintegrity.org/issue/citizenship-by-investment/>.

196 *Ibid.*

197 Fernando, Pampolina and Sykes, "Citizenship for Sale."

198 James Kleinfeld and Al Jazeera Investigative Unit "Explainer: What Are The Cyprus Papers?," *Al Jazeera*, August 23, 2020, <https://www.aljazeera.com/news/2020/8/23/explainer-what-are-the-cyprus-papers>.

applicants has also led to corruption schemes involving public officials as well as private sector operators.¹⁹⁹

Going forward, if El Salvador decides to implement its CBI program, it will be important to mitigate these risks by implementing rigorous integrity and accountability measures.

Political Donations Using VAs

Another important risk to consider is campaign donations using VAs. When Bitcoin became a legal tender in El Salvador, it also opened up new channels for campaign financing and raised questions about the controls that are needed to avoid opacity in the amounts and sources of funding as well as the identities of the donors.

The Political Party Law is the main legal framework that establishes the structure, power and characteristics of political parties in El Salvador. It also stipulates how parties can be funded. Two of its main pillars pertain to promoting transparency and predictability when dealing with private and public sources. The aforementioned law states that parties can be financed through public and private means, in cash or in kind (Articles 50 and 51). One important detail is that parties are not able to receive contributions from unidentified persons with the exception of donations collected from rallies or in the street. Article 64 states that contributions cannot be anonymous, and must be registered with a receipt.

Electoral authorities already face challenges in supervising traditional means of campaign finance, such as verifying the accuracy of registers and forms that political parties submit. In many cases, they face limited human and technological resources. The introduction of Bitcoin as a legal tender introduces a new level of complexity. The use of cryptocurrency for campaign donations will create challenges for electoral authorities, as well as for political parties themselves, to respect and follow ethical codes to promote transparency. If either by negligence or intentional misconduct, political parties and/or authorities fail to comply with integrity measures in the electoral process and with regards to political parties, cryptocurrency campaign donations could easily become an outlet for financial crime.

Acción Ciudadana, a non-governmental organization, has raised concerns about the risks associated with cryptoasset financing, such as ML, illegal campaign financing, and diversion of public funds.²⁰⁰

The risks can be divided into two scenarios: the integrity of political parties and their contributions, and political parties within an electoral process. In the long run, all stakeholders should have adequate training and capacity to comply with the law in a meaningful way as well as the appropriate resources to do so. In this sense, political parties, political donors, and Salvadoran authorities will

199 See Laure Brillaud, Maíra Martini and Global Witness. *European Getaway: Inside the Murky World of Golden Visas* (Berlin and London: Transparency International; Global Witness, 2018), https://images.transparencycdn.org/images/2018_report_GoldenVisas_English.pdf; Organization for Economic Co-operation and Development, *Corruption Risks Associated with Citizen- and Resident-by-Investment Schemes* (Paris: OECD, 2019), <https://www.oecd.org/corruption/integrity-forum/oecd-corruption-risks-of-citizen-and-resident-by-investment-schemes-scoping-note-2019.pdf>; “Four Charged over Cyprus ‘Cash-for-Passports’ Scheme,” Al Jazeera, July 16, 2022, <https://www.aljazeera.com/news/2022/7/16/four-charged-over-cyprus-cash-for-passports-scheme>.

200 Acción Ciudadana: <https://accion-ciudadana.org/noticia-accion-ciudadana-expresa-su-preocupacion-por-la-posible-utilizacion-de-las-criptomonedas-para-financiar-campanas-electorales/>, El Salvador Local News; <https://www.elsalvador.com/noticias/nacional/precampana-electoral-partidos-politicos-financiacion-de-corrupcion-politica-lucha-contra-la-bitcoin-elecciones-2024-/1055611/2023/>.

need training on how to handle crypto donations to ensure the proper process is followed. It is also important to explicitly define the role of wallets, such as Chivo Wallet, and their responsibilities.

A learning curve is to be expected, but since political parties play a key role in democracy, it is essential to follow international standards, establish clear frameworks, and ensure the capacity to comply. If there is no transparency on who funds political parties or where the funds are coming from, there is a higher risk that criminal, corrupt, private and/or international influence might impact political parties and electoral outcomes.

It is important to update articles in the Political Party Law, the AML Law, as well as electoral norms to address VAs and political processes. Additionally, the real capacity of electoral authorities - especially the Supreme Electoral Tribunal (TSE) - should be evaluated to ensure their ability to supervise what is proposed in the law and to effectively apply these frameworks. It is not only up to the authorities to ensure due diligence processes in campaign contributions, it is also a responsibility of the political parties to make sure the funds they receive are legal. Political parties must also appropriately implement KYC practices, submit the mandatory documentation, and provide the information required by the authorities.

Authorities need to consider the resources required to supervise VA campaign financing. Even if traceability is possible, analyzing transactions and identifying the real people behind them is key. If bad actors use mixers and other tools to hide their identities and act with impunity, VAs could easily be used for illicit purposes.

Finally, a concrete framework and guide is needed to prevent crimes from occurring. Internationally, cryptocurrencies have been used in political campaigns since 2014.²⁰¹ Insights gleaned from past experiences coupled with academic research on cryptocurrencies and political finance as well as adherence to international standards (such as the FATF) can make the difference in preventing ML, TF, and corruption.

El Salvador's legal framework must adapt to the new ecosystem in order to protect the integrity of democracy and protect the country from financial crimes. If Bitcoin is going to be used as part of political campaigns, it is essential that authorities publish norms on the matter and share them with political parties so they can be trained to appropriately report on crypto funding. It is also important to include citizens and civil society groups in this effort so everyone knows the law.

Real Estate Money Laundering (REML) Using VAs

There is rising awareness in the international community of the threat of REML. As the FATF has noted, "real estate is a popular choice for investment, but it also attracts criminals who use real estate in their illicit activities or to launder their criminal profits."²⁰² The FATF also highlights that "the real estate sector often has poor understanding of these risks and regularly fails to mitigate them."²⁰³ REML is a popular method for many illicit actors. A 2021 study by GFI found that over US\$2.3 billion was laundered in the U.S. real estate market over a five-year period, and that over half of cases in-

201 For example, former candidate Mathias Sundin ran for Parliament in Sweden and was financed by Bitcoin donations.

202 Financial Action Task Force, *Risk-based Approach Guidance for the Real Estate Sector* (Paris: FATF, 2022), 76 <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-real-estate-sector.html>.

203 Ibid, publication landing page.

volved politically exposed persons.²⁰⁴ Available case data from El Salvador suggests that real estate has frequently been used in gang and extortion-related ML in the country.²⁰⁵

In light of these international and national dynamics, it is important to consider risks related to REML through VAs in El Salvador. GFI began by assessing the prevalence of crypto real estate purchases in the country. In May 2023, GFI identified 25 properties for sale with crypto with a total value of over US\$25 million. Properties were located in the central, east, west and paracentral regions of the country including urban and rural areas. Properties in rural areas include the coast, like in La Libertad department beaches such as el Tunco, el Zonte, el Sunzal or Costa del Sol beach located in La Paz department. Most of the properties can be bought in USD or Bitcoin, but some properties can only be bought in Bitcoin or with NFTs.

REML using VAs presents specific risks to El Salvador due to the pseudonymous nature of transactions, the large value of real estate transactions in general, limited oversight by government authorities, involvement by foreign nationals, and the country's previous experiences with REML.

204 Kumar and de Bel, *Acres of Money Laundering*, 4.

205 Yansura, *Extortion in the Northern Triangle of Central America*, 17.

Policy Recommendations

Legal and Regulatory Recommendations

1. Policymakers in El Salvador should urgently adopt reforms strengthening AML/CFT as well as ensuring robust oversight over VAs. These reforms are particularly important in light of El Salvador's upcoming Mutual Evaluation.
2. The Government of El Salvador, and specifically the BCR and NCD, should engage with the legal and business community in developing regulations and technical standards according to need and practice for the Bitcoin Law and Digital Assets Issuance Law, following international best practices.
3. Any new legislation should consider an open process to allow the opinion of the expert legal community and private sector to incorporate the needs of daily practice, as well as international best practices.
4. Policymakers should create advanced legislation and regulation for consumer protection, data protection, and privacy, based on international standards and best practices.
5. All relevant government agencies should respect and guarantee transparency and access to public information, including implementing open government policies to guarantee access to information on contractual and operational processes, fraud and mismanagement investigations, and the use of public funds. It is recommended to establish sanctions for public officials denying access to public information.
6. The Government of El Salvador should strengthen preventive anti-corruption and integrity policies in the public sector, including asset declarations, mechanisms to report misconduct, and protection of whistleblowers.
7. The SSF, the FIU, and other relevant government agencies should update guidance for Chivo Wallet regarding use of Chivo Wallet by legal persons. The requirements for legal persons to open a Chivo Wallet account should seek to identify sufficient information about the legal person. Moreover, the requirements should be consistent with requirements for legal persons to open accounts at traditional financial institutions.
8. The SSF, the FIU, and other relevant government agencies should require that Chivo Wallet collect and maintain beneficial ownership information for legal persons using Chivo Wallet, in line with FATF Recommendation 15's interpretive guidance and similar to the requirements for financial institutions.
9. The Political Party Law and other regulatory guidance should be updated to address VAs; the TSE should require political parties to report campaign donations made via VAs and to identify the natural persons behind those transactions.
10. The SSF and the BCR, the oversight bodies responsible for registering crypto companies in El Salvador, should require information on the management structure of crypto companies, including their beneficial owners. It should not allow the registration of any company whose managers, shareholders or beneficial owners have been previously convicted of fraud, ML, or

TF.²⁰⁶ This is standard for the establishment of most financial institutions, such as banks.

11. The regulation applied to Bitcoin as a legal tender and the regulation applied to VASPs more generally should comply with cybersecurity standards. Since the SSF is the entity in charge of supervising Bitcoin as legal tender and the NCDA in charge of the application of the regulation regarding VASPs, it is important that a technical regulation be developed taking into account international cybersecurity standards for the protection of the infrastructure, identification of vulnerabilities and mitigation of cybersecurity risks for Bitcoin and VASPs (known as Digital Assets Providers in the *Ley de Emisión de Activos Digitales*), digital wallets, exchanges and Bitcoin and VASPs custodian companies registered under national legislation.

Operational Recommendations

12. The Chivo Wallet should no longer permit the use of expired identification documents to register or use the wallet.
13. The BCR should incorporate information on government Bitcoin investments and assets in the Balance of Payments as part of transparency and accountability measures.
14. The Customs of El Salvador should update its form on the Transborder Declaration of Cash to include VAs.
15. The Government of El Salvador should form an inter-agency commission comprised of the FIU, the SSF, the Oficina de Inclusión y Educación Financiera, Oficina Nacional del Bitcoin, and other relevant stakeholders to discuss and establish the criteria for a legal person to open an account at Chivo Wallet and at a bank, seeking a balance between financial inclusion and security and greater alignment between Chivo requirements and traditional financial sector requirements.
16. The SSF, BCR, and NCDA, the as oversight bodies responsible for registering VASPs in El Salvador, should require as a condition for registering, a procedural document outlining the AML/CFT procedures that the company has in place, and review such document as a condition for approval of the license.²⁰⁷
17. The Chivo user agreement should stipulate specific time periods for updating Chivo user information, such as within 20 days of a change in account information, or a confirmation that user information is correct every 6 months. The current language of the user agreement, which states that, “Any change in this information is your responsibility and for this reason, we ask you to update it in case of any changes and from time to time,” may be too vague to be effective.²⁰⁸
18. Chivo Wallet and its service providers should undertake testing of digital identification features used as part of the onboarding process in accordance with Recommendation 10 of FATF

206 This policy recommendation is inspired by the European Union, see European Parliament, “REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Crypto-Assets, and Amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937,” May 3, 2023. <https://data.consilium.europa.eu/doc/document/PE-54-2022-INIT/en/pdf>.

207 Ibid.

208 “Terminos y Condiciones | Chivo Wallet.”

regarding CDD, ensuring their effectiveness and accuracy.²⁰⁹ At a minimum, the DUI photo should be compared to the user profile photo.

19. The Government of El Salvador should ensure that issues of identity theft and theft of funds involving Chivo Wallet are reported directly to law enforcement. Consumer reporting to Chivo Wallet customer service staff should be reserved for non-criminal matters.
20. Given El Salvador's long standing issues with gangs, Chivo Wallet compliance staff should compare Chivo user lists to known gang member lists in an effort to prevent criminal groups from using the wallet. It is not currently clear whether the Government of El Salvador or Chivo Wallet can or does prevent registration by specific individuals, such as known gang members or terrorists.²¹⁰
21. Taking into consideration long standing, regional issues with gang control of prisons, Chivo Wallet compliance staff should compare Chivo user lists to lists of incarcerated persons as well as penitentiary system staff to flag these transactions as high risk.
22. The Government of El Salvador should evaluate the effectiveness of customer identification measures for crypto ATMs operating in the country in an effort to avoid issues that have plagued other jurisdictions. In one international case, authorities found that "customers can buy bitcoins with a debit card or cash, but while some machines require identity verification, such as a palm print or photo ID scan, many ATM operators allow clients to buy the cryptocurrency anonymously."²¹¹
23. Chivo ATMS should implement lower transaction thresholds and additional monitoring for ATMs located along the U.S.-Mexico border due to heightened security risks in that area.
24. Law enforcement agencies should strengthen efforts to investigate and prosecute pending cases related to fraudulent activities associated with Chivo Wallet.

Educational Recommendations

25. Considering that financial institutions and other obligated entities submit STRs for crypto transactions, the FIU of El Salvador and other government authorities should provide education and training opportunities to the financial sector and other obligated entities regarding

209 FATF (2020), Guidance on Digital Identity, FATF, Paris, www.fatf-gafi.org/publications/documents/digital-identity-guidance.html.

210 Article 5 from the Bitcoin Law Rulebook establishes that the SSF can impose sanctions on BSPs but it does not specify any sanctions to users, such as blocking or rejecting them. With regards to the technical regulations issued by the Central Bank, the regulations do not specify blocking users. Finally, the Terms and Conditions of the Chivo Wallet establish that a user's account can be suspended for the following reasons: "1. The unauthorized use of Accounts other than its own will, in the opinion of CHIVO S. A. DE C. V., will result in the immediate suspension or closure of all Accounts involved, as well as any Service provided by CHIVO S. A. DE C. V. Any attempt to do so or assist third parties in unauthorized use of Accounts, whether by distributing instructions, software or tools for such purpose, will result, in the opinion of CHIVO S. A. DE C. V., in the immediate closure of the Accounts involved. 2. The User accepts and agrees that, CHIVO S. A. DE C. V. may, without prior notice, limit, suspend or terminate the Services and Accounts, prohibit access to the Site, its content, services and tools, restrict or remove stored content, and take technical and legal action to keep Users out of Chivo Wallet if they feel they are violating T&C. Likewise, when creating an Account, the User accepts that the decision to cancel or block it may be based on confidential criteria essential to the compliance and risk protocols of CHIVO S. A. DE C. V., so, the User understands and accepts that the latter has no obligation to disclose details of these internal protocols." See <https://www.chivowallet.com/terminos-y-condiciones.html#item-6>. In conclusion, at time of writing, regulation regarding sanctions to users does exist, but only the Terms and Conditions of wallets, like Chivo Wallet, which has the discretion to suspend or to terminate the services and eliminate accounts.

211 Koos Couvée, "European Traffickers Pay Colombian Cartels Through Bitcoin ATMs: Europol Official." ACAMS MoneyLaundering.com, February 28, 2018, <https://www.moneylaundering.com/news/european-traffickers-pay-colombian-cartels-through-bitcoin-atms-europol-official/>.

identification of red flag indicators in crypto transactions. This will help to ensure that STRs contain relevant information and reflect an informed understanding of the risks.

26. The government should create programs to develop the capacity of public officials from the three branches of government and other autonomous institutions to understand VAs.
27. Considering the upcoming electoral period, training should be provided to electoral authorities, political parties, elections monitoring organizations, civil society, and citizens as a whole regarding appropriate use of VAs in campaign financing.
28. The FIU and other authorities should emit guidance and provide training for the real estate sector regarding AML/CFT best practices and the use of VAs in real estate transactions.
29. Financial education efforts should be continued and bolstered, ensuring that Salvadorans have the knowledge to spend, trade, and invest in VAs in an informed, responsible manner.