

The Impact of El Salvador Recognizing Bitcoin as “Legal Tender” on U.S. Law

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Last Saturday, El Salvador’s President Nayib Bukele announced he was proposing a bill that recognizes Bitcoin as “legal tender.” If enacted, El Salvador will become the first sovereign nation to formally recognize Bitcoin as its national currency, alongside the United States Dollar. Bukele’s political party holds a supermajority in congress, giving this proposed bill a high probability of becoming law.

The bill explains the rationale for Bitcoin adoption. “Central banks are increasingly taking actions that may cause harm to the economic stability of El Salvador.” The Bill states that Bitcoin will be adopted as legal tender “in order to mitigate the negative impact from central banks.” On *Twitter*, President Bukele explained that there will be “no capital gains tax for Bitcoin, since it will be a legal currency and legal tender.” The move might pave the way for El Salvador to migrate away from U.S. dollar denomination of its currency. It is also unclear what impact the move will have on the valuation of El Salvador’s currency reserves and how this might affect its credit in the capital markets.

“Legal tender” refers to the coin, paper money, or other circulating medium that the law compels a creditor to accept in payment of a debt. By declaring Bitcoin as “legal tender,” Bitcoin is given legal status in El Salvador that is equivalent to the U.S. Dollar. As President Bukele explained, “Bitcoin will have 10 million potential new users [in El Salvador] and [is the] fastest growing way to transfer 6 billion dollars a year in remittances.”

Under U.S. law, Bitcoin is regulated as a commodity by the Commodity Futures Trading Commission (CFTC). The Internal Revenue Service identifies cryptocurrency as “property” for federal income tax purposes. Therefore, the treatment of Bitcoin under U.S. law will likely not be impacted by El Salvador’s proposed bill.

Some commentators have speculated that El Salvador’s adoption of Bitcoin as legal tender could make Bitcoin fall within the definition of “money” under the Uniform Commercial Code (U.C.C.).^[1] Sec. 1-201(a)(24) defines money as:

[A] medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more

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countries.

The U.C.C. is cited throughout federal and state law. Bitcoin falling within the definition of “money” could have significant legal implications. However, Professor Jeanne L. Schroeder disagrees with that assessment.[2] “Bitcoin could not be made into “money” for the purposes of the U.C.C., even if a government were to adopt it. The problem is that, although inartfully drafted, in context, it is clear that the term under the U.C.C. is limited to physical, or ‘hand-to-hand,’ currency.” The U.C.C. limits the term ‘money’ to physical currency and pursuant to U.C.C. 9-312(b)(3), a non-proceeds “security interest in money may be perfected only by the secured party’s taking possession.”

However, no case law or formal legal authority exists allowing one to predict how Bitcoin will be treated for U.C.C. purposes. If El Salvador moves forward with the proposed legislation, this issue will spark a new round of debate on how Bitcoin should be treated under state and federal law.

[1] https://twitter.com/Andrea_Tosato/status/1401283436355239941?s=20

[2] Jeanne L. Schroeder, *Bitcoin and the Uniform Commercial Code*, 24 U. Miami Bus. L. Rev. 1 (2016)

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