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Regulation of crypto-assets in Latin America

Diana Rivera Andrade analyses cases from El Salvador, Colombia and Argentina

DIANA RIVERA ANDRADE
Partner, Rivera Andrade Estudio Jurídico (Colombia)

> *El Salvador has struggled to encourage the adoption of crypto-assets among its population*

The primary issue faced by cashless economies is the need to combat financial crimes such as money laundering and financial terrorism. This article analyses cases from El Salvador, Colombia and Argentina to establish how crypto-asset regulation in Latin America is affecting companies and traders in the region today.

El Salvador

Despite its extensive legal framework, El Salvador has struggled to encourage the adoption of crypto-assets among its population. According to the International Monetary Fund (IMF), El Salvador is one of the most important countries in terms of crypto market regulation due to its legal recognition of Bitcoin as legal tender, alongside the US dollar. The "Bitcoin Law" was enacted on 8 June 2021, designating the US dollar as the reference currency and allowing Bitcoin to serve as an official currency for the exchange of goods and services by Salvadoran consumers. Chivo is the system that facilitates such transactions, which is fully integrated with the national banking system and supports transactions in standard currencies like the US dollar. Moreover, the Salvadoran government established a backup monetary system through the creation of FIDEBITCOIN, which has been endowed with US$150 million to provide guarantees and protection for consumers. Despite these measures, the IMF has concluded that the legal framework has not been effective in promoting the adoption of crypto assets among the population.[1]

Colombia

There have been attempts in Colombia to create a legal framework, but, unfortunately, those efforts have not succeeded. One of the greatest examples of these efforts is the debate around draft law number 139 of 2021 by the Congress of the Republic of Colombia. The draft aims at tackling consumer problems and the deregulation of the crypto market in order to establish a correct mechanism to exchange goods and services. Nevertheless, the Colombian Congress did not approve the draft due to the numerous reforms that needed to be made to other matters that were directly affected by crypto-assets.[2]

However, it is worth mentioning that different authorities have referred to such assets, such as Banco de la República, which has stated that crypto-assets "*are digital units issued by private agents, expressed in their own unit of account, susceptible to be acquired, preserved and transferred electronically.*"[3] The tax authority has recognized that crypto-assets are intangible assets for accounting purposes, that these assets can be valued, that they are part of equity and that they can cause the seizure of taxable income.[4] The Financial Information and Analysis Unit (FIAU) ordered the reporting of operations involving exchange, transfer, custody and administration of virtual assets on a monthly basis. Moreover, the Financial Supervisor has carried out a review of cash-in and cash-out operations on behalf of the Exchange and presented a draft directive containing instructions indicating the evaluation elements that supervised entities must take into account when providing financial services to virtual asset service providers, among others.

Argentina

Despite the efforts to adopt a legal framework for the technological market in 2021 (Decree 796/2021) and the permissions to trade with Bitcoin for banks, such as Galicia and Brubank, recently Argentina has taken a step back towards crypto regulation by banning them in national transactions.[5] This action was a surprise, not only to the national banks and companies that started to use these assets, but to the civilian population, who thought that the implementation of crypto-assets will be a great solution to solve the domestic economic situation, regarding hyperinflation in the economy.[6]

Summary

In conclusion, compared to Europe (with MiCA as the standard legal framework), Latin America lags behind and we must wait a few years to catch up with Europe, which is currently the benchmark.[7]

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Footnotes:

1 Maximiliano Appendino *et al.*, *Crypto Assets and CBDCs in Latin America and the Caribbean: Opportunities and Risks* (International Monetary Fund, 2023).

2 Congress of the Republic of Colombia, *Information on the intervention of the second debate of draft law no. 139 of 2021 of the chamber* (Congress of the Republic of Colombia, 2021).

3 Banco de la República (2019), available at: www.amvcolombia.org.co/wp-content/uploads/2022/11/Nota-de-Analisis-Nueva-regulacion-activos-virtuales.pdf.

4 OFFICE N° 0232 [901303] Directorate of National Taxes and Customs (DIAN).

5 Enrique Pérez, 'Golpe sorpresa de Argentina contra las criptomonedas: ha prohibido a las billeteras ofrecerlas' (*Xataka*, 5 May 2023), available at: www.xataka.com/criptomonedas/golpe-sorpresa-argentina-criptomonedas-ha-prohibido-a-billeteras-ofrecerlas.

6 Fernanda Paúl, 'Cómo salió Argentina de la "hiperinflación" hace 30 años (y cuán factible sería recurrir a la misma solución hoy día)' (*BBC World News*, 24 March 2023), available at: <www.bbc.com/mundo/noticias-america-latina-65027059.

7 Aditya Narain and Marina Moretti, *The Regulation of Crypto Assets* (International Monetary Fund, September 2022).

> "Argentina has taken a step back towards crypto regulation by banning [Bitcoin] in national transactions"