

Legal Opinion on

Issuance of Utility Tokens in the Republic of EL Salvador



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Research Paper

BRIEF ABOUT UTILITY TOKENS IN ELSALVADOR



Utility tokens are a type of digital token that provide users with access to a product, service, or functionality within a blockchain-based ecosystem. Unlike cryptocurrencies such as Bitcoin (which function as mediums of exchange) or security tokens (which represent an investment or ownership interest), utility tokens are designed to be functional rather than financial in nature. For example, a company might issue utility tokens that allow holders to access premium features on its platform, pay for services at discounted rates, or participate in governance or loyalty programs. Their value is therefore tied to the demand for the underlying service not to profit expectations. From a legal standpoint, utility tokens generally fall outside securities or investment regulations if they meet certain conditions, primarily that they do not promise returns, dividends, or profit from the efforts of others. However, regulators in most jurisdictions, including the EU, UAE, and El Salvador, apply a “*substance over form*” approach, meaning that if a utility token behaves like an investment, it may still attract securities regulation.

CLIENT REQUIREMENT



Our client proposes to establish a corporate entity in El Salvador for the purpose of developing and operating a blockchain-based platform that will issue and distribute utility tokens (hereinafter referred to as “**Tokens**”) to users and participants within its ecosystem. These Tokens are intended to be used exclusively for accessing services, participating in platform activities, and availing of specific utilities provided by the project.

Based on the information provided by client, the Tokens are designed to serve a functional purpose within the platform rather than as investment instruments. Holders will use the Tokens to access certain digital products, features, or transaction-based benefits. The Tokens do not represent equity, do not entitle holders to dividends or profit-sharing, and do not grant any

ownership or governance rights in the issuing entity. The Tokens will not be marketed as financial investments, and their value will be derived solely from their utility within the platform.

Based on our conversation with the client and their representation, it is our considered opinion that the proposed Tokens, being designed solely for access and functionality within the client's platform, would qualify as utility tokens and in El Salvador governed under the Digital Assets Issuance Law (*explained in detail hereunder*). However, if the Tokens are later offered, traded, or promoted as investment products, or if their structure changes to include profit participation or transferable investment characteristics, they may be reclassified as security-type digital assets, thereby attracting additional regulatory requirements and approvals. For now, this opinion is based upon the assurance by client that the Tokens are utility tokens in nature.

LEGAL OPINION ON ISSUANCE OF UTILITY TOKENS

LEGISLATIVE FRAMEWORK IN EL SALVADOR

The primary legislative framework governing digital assets (*including utility tokens*) in El Salvador is the Law for the Issuance of Digital Assets (hereinafter referred to as “**LEAD**”), which was approved in January, 2023. This law establishes and empowers the National Commission of Digital Assets (hereinafter referred to as “**CNAD**”) as the principal regulatory body. The CNAD is tasked with overseeing and regulating both issuers of utility tokens and its service providers within the country. In addition, Anti-Money Laundering Law and FATF Recommendations will also apply.

Anti-Money Laundering Law: All digital asset issuers and service providers are subject to El Salvador's Anti-Money Laundering (AML) Law, which mandates the implementation of internal compliance programs to prevent illicit financial activity. Key obligations include KYC verification before onboarding users or allowing token purchases, transaction monitoring, record keeping and reporting obligations.

Token Issuance to Citizens of El Salvador

Where a client proposes to issue utility tokens solely to Salvadoran citizens, it is advisable to establish a locally domiciled entity in El Salvador. This entity should act as the issuing entity and the applicant for CNAD registration. Establishing a local company ensures that the issuance falls squarely under Salvadoran jurisdiction, thereby simplifying regulatory oversight, and compliance. Approximate incorporation timeline is 2 to 3 weeks from filing with the regulatory authority, provided all documentation and local representation requirements are met.

Under the LEAD, an issuer conducting a public offering of digital assets within El Salvador must:

1. Register as an Issuer of Digital Assets with the CNAD.
2. Prepare and file a “Relevant Information Document” (DIR) detailing the purpose, nature, and structure of the token, the rights conferred, and related project information.
3. Engage an accredited “Certifier” (an independent third-party entity registered with CNAD) to review the DIR and issue a certification report confirming accuracy and compliance.

Only after CNAD approval may the issuer proceed with the token offering to Salvadoran residents. While fee schedules vary depending on the nature of the issuance, current regulatory guidance and market practice indicate the following indicative costs:

Category	Fee (Approx.)	Frequency
Registration as a Digital Asset Issuer	USD 5,475	One-time (Initial)
Annual Renewal Fee	USD 3,650	Annual
CNAD Filing Fee for Public Issuance	0.01 % of the total value of the offering	Per issuance
Certifier’s Professional Fee	USD 3,000 – 10,000 (market range)	One-time (per review)
Company Incorporation & Legal Costs	USD 2,000 – 4,000	One-time

Timelines: Once the issuer has filed the DIR and the Certifier's report with CNAD, the regulator typically issues an authorization decision within 5 to 10 business days. Preparation and documentation (white paper drafting, certification, and legal filings) may take approximately 4 - 8 weeks, making the overall expected project timeline 6 - 10 weeks from company formation to issuance authorization. Post-authorization, the issuer must comply with continuing obligations, including, maintenance of accurate transaction and holder records, periodic reporting to CNAD and compliance with AML/KYC and data-protection requirements aligned with FATF standards.

Cross-Border Sale of Utility Tokens

Considering the client will issue tokens from El Salvador but may sell to buyers in other jurisdictions, we need to address exposure and compliance obligations for cross border token issuance as well.

In this scenario, while the issuance of tokens will also be governed by LEAD and supervised by CNAD, it is important to note that the sale or offering of these tokens to buyers located outside El Salvador may trigger legal and regulatory implications in those respective jurisdictions. Each country applies its own legal tests to determine whether a token constitutes a security, utility token, or payment instrument. Even if the tokens qualify as utility tokens under El Salvador's LEAD framework, other jurisdictions, such as the U.S. (SEC), the EU (MiCA Regulation), Singapore (MAS), or the U.K. (FCA) may adopt a different interpretation depending on the token's design, use case, or marketing approach. Therefore, it is crucial for the client to define and outline the nations where tokens will be issued and accordingly respective jurisdiction's regulations will have to be studied and adhered to with regards to clearly defining the offering scope, implement geo-blocking, avoiding investment-like language in the whitepaper and complying with global AML/KYC standards.