

United States Issues New Venezuela-Related Sanctions Targeting Digital Currency

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On March 19, 2018, President Trump expanded the scope of the Venezuela sanctions¹ by issuing a new Executive Order (EO) “Taking Additional Steps to Address the Situation in Venezuela.”² The EO prohibits US persons from dealing in any digital currency issued by, for, or on behalf of the Government of Venezuela on or after January 9, 2018, including the “petro” and “petro-gold.”

Concurrently with the issuance of the EO, the US Department of the Treasury, Office of Foreign Assets Control (OFAC) issued FAQs related to the EO, as well as new FAQs related to digital currencies. OFAC also added four Venezuelan nationals to the List of Specially Designated Nationals (SDN List).

Executive Order

The EO provides that “[a]ll transactions related to, provision of financing for, and other dealings in... any digital currency, digital coin, or digital token, that was issued by, for, or on behalf of the Government of Venezuela³ on or after January 9, 2018, are prohibited” within the United States or by US persons.⁴ The prohibition is applied expansively. Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in the EO is prohibited, as is any conspiracy formed to violate any of the prohibitions set forth in the EO.

In the EO-related FAQs, OFAC provides that, for purposes of the EO, the “petro” and “petro-gold” are each considered a “digital currency, digital coin, or digital token” issued by, for, or on behalf of the Government of Venezuela on or after January 9, 2018. Taking the prohibition further, the FAQs specify that the prohibition set forth in the EO applies to US persons who participated in the pre-sale for a Government of Venezuela-issued “digital currency, digital coin, or digital token” before the effective date of the EO. However, OFAC will “consider license applications involving Government of Venezuela-issued ‘digital currency, digital coin, or digital token’ on a case-by-case basis.” Licensing determinations will be based on the “facts and circumstances of the particular application.”

¹ Please see our earlier client alert regarding the Venezuela sanctions [here](#).

² https://www.treasury.gov/resource-center/sanctions/Programs/Documents/vz_eo_petro.pdf.

³ The Government of Venezuela is defined to include “any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and Petroleos de Venezuela, S.A. (PdVSA), and any person owned or controlled by, or acting for or on behalf of, the Government of Venezuela.”

⁴ A US person is defined to include any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

OFAC also states in the FAQs that, for purposes of the EO, Venezuela's traditional fiat currency, bolívar fuerte, is not considered a "digital currency, digital coin, or digital token" that was issued by, for, or on behalf of the Government of Venezuela on or after January 9, 2018.

Digital Currency

In the separately issued FAQs addressing digital currencies, OFAC defines the following terms "for purposes of OFAC sanctions programs":

- **Virtual currency** "is a digital representation of value that functions as (i) a medium of exchange; (ii) a unit of account; and/or (iii) a store of value; is neither issued nor guaranteed by any jurisdiction; and does not have legal tender status in any jurisdiction."
- **Digital currency** "includes sovereign cryptocurrency, virtual currency (non-fiat), and a digital representation of fiat currency."
- A **digital currency wallet** "is a software application (or other mechanism) that provides a means for holding, storing, and transferring digital currency. A wallet holds the user's digital currency addresses, which allow the user to receive digital currency, and private keys, which allow the user to transfer digital currency. The wallet also maintains the user's digital currency balance. A wallet provider is a person (individual or entity) that provides the software to create and manage wallets, which users can download. A hosted wallet provider is a business that creates and stores a digital currency wallet on behalf of a customer. Most hosted wallets also offer exchange and payments services to facilitate participation in a digital currency system by users."
- A **digital currency address** "is an alphanumeric identifier that represents a potential destination for a digital currency transfer. A digital currency address is associated with a digital currency wallet."

In the digital currency FAQs, OFAC further provides that OFAC compliance obligations are the same, "regardless of whether a transaction is denominated in digital currency or traditional fiat currency." In this regard, OFAC specifically notes that "firms that facilitate or engage in online commerce or process transactions using digital currency, are responsible for ensuring that they do not engage in unauthorized transactions prohibited by OFAC sanctions, such as dealings with blocked persons or property, or engaging in prohibited trade or investment-related transactions." The FAQs also state that OFAC "may add digital currency addresses to the SDN List to alert the public of specific digital currency identifiers associated with a blocked person." In addition, the FAQs note that "[p]arties who identify digital currency identifiers or wallets that they believe are owned by, or otherwise associated with, an SDN and hold such property should take the necessary steps to block the relevant digital currency and file a report with OFAC that includes information about the wallet's or address's ownership, and any other relevant details[.]"

Venezuela-Related Designations

OFAC also added four Venezuela-related individuals to the SDN List. All property and interests in property of these individuals and entities located in the United States or within the possession or control of a US person, wherever located, are considered blocked and may not be dealt in. Any entity in which a blocked person holds a 50 percent or greater ownership interest is itself considered blocked by operation of law. US persons may not engage in any dealings, directly or indirectly, with blocked persons. Provision of goods, services or support for blocked parties is identified as a criterion for potential future designation.

Implications for Further Consideration

The EO has potentially far ranging implications for companies doing business relating to Venezuela and, more importantly, the broader cryptocurrency ecosystem. Cryptocurrency promoters, broker-dealers, alternative trading systems, exchanges (whether centralized or decentralized), cryptocurrency-backed lenders, trust company and bank custodians, and a myriad of other cryptocurrency-centric companies should take care to incorporate the EO and related FAQs guidance into their respective OFAC compliance programs and closely monitor subsequent developments.

Parties seeking to structure deals using digital currency with counterparties potentially vulnerable to future sanctions should note OFAC's willingness to extend sanctions targeting traditional debt and equity financing

structures to structures involving entire classes of digital assets. Of particular note, the FAQs make reference to combatting a wide array of crimes and human rights abuses by “targeting an array of activities, including the use of digital currencies or other emerging payment systems to conduct proscribed financial transactions and evade US sanctions.” In this regard, OFAC indicated its intent “to include as identifiers on the SDN List specific digital currency addresses associated with blocked persons.” The OFAC guidance is also notable given the interest other sovereigns have shown toward creating their own cryptocurrencies. As a reminder, penalties for noncompliance can be severe.

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