

KIRKLAND ALERT

March 22, 2018

Trump Administration Bans Dealings in Venezuelan Cryptocurrency in a First Step Toward Extending Sanctions to Digital Currency Transactions

On March 19, 2018, President Trump issued an Executive Order “Taking Additional Steps to Address the Situation in Venezuela” (“Executive Order”) that prohibits U.S. persons from engaging in dealings in any digital currency, digital coin, or digital token issued by, for, or on behalf of the government of Venezuela.¹ The same day, the U.S. Department of the Treasury Office of Foreign Assets Control (“OFAC”) issued corresponding guidance that lays the groundwork for potential sanctions related to digital currency transactions more generally. Taken together, these actions reflect tightening sanctions on Venezuela, and may foreshadow OFAC asserting jurisdiction over cryptocurrency in other sanctions programs, particularly in the context of Russia.

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The View from Washington

The Executive Order follows actions in August 2017, when the Trump administration first [imposed sectoral sanctions](#) targeting the Venezuelan government. It demonstrates a continued focus on using sanctions to pressure President Nicolás Maduro and others in the Venezuelan government, particularly with Venezuelan elections coming up in May.² This past February the Venezuelan government launched a cryptocurrency (the “petro”), to try to enable its national oil company, *Petróleos de Venezuela, S.A.* (“PDVSA”), to engage in transactions not denominated in U.S. dollars.³ The Executive Order provides that the Trump administration’s action was taken in response to the Venezuelan government’s “attempt to circumvent U.S. sanctions by issuing a digital currency.”⁴

Beyond Venezuela, OFAC’s first-ever guidance on digital currencies, in the form of Frequently Asked Questions (“FAQs”),⁵ suggests OFAC is sensitive more broadly to parties attempting to work around U.S. sanctions by engaging in transactions using this new medium of exchange. For example, Russia reportedly is also planning to launch its own cryptocurrency and, earlier this year, an economic adviser to President Putin stated that Russia could use cryptocurrency to “settle accounts with our counterparties all over the world with no regard for sanctions.”⁶ As some countries seek to counter the leverage that the U.S. dollar, as the world’s reserve currency, has traditionally conferred on U.S. sanctions, OFAC in turn may seek to extend its jurisdictional reach to cryptocurrencies to further curb methods of support for sanctioned parties.

Summary of Sanctions Developments

The March 19th actions are directed at Venezuelan cryptocurrency specifically, as well as digital currency more generally.

Venezuelan Cryptocurrency

The Executive Order prohibits parties from financing, engaging in transactions related to, or engaging in dealings in any digital currency, digital coin, or digital token issued by, for, or on behalf of the government of Venezuela, if they are U.S. persons or within the U.S.⁷ The prohibition applies immediately. Moreover, U.S. persons who participated in the pre-sale of the petro are prohibited from selling, trading, using, or otherwise dealing in that digital currency without a license from OFAC.⁸ A pre-sale precedes a cryptocurrency's "initial coin offering."

When transactions are conducted in U.S. dollars, OFAC often can assert jurisdiction regardless of the nationality or location of the parties involved given that such transactions generally have to clear financial institutions in the U.S. In the case of the Venezuelan petro and petro gold, without a U.S. dollar nexus, the Executive Order focuses on applying its prohibitions more narrowly on those subject to U.S. jurisdiction under more conventional criteria.

Digital Currency

OFAC issued several FAQs expressing how it views digital currency and seeks to regulate it for sanctions purposes.⁹ For example:

- OFAC states it considers digital currency to constitute property or interest in property.¹⁰ This means that, if digital currency is owned by restricted parties on the Specially Designated Nationals and Blocked Persons List ("SDN List"), it must be blocked by U.S. persons just as U.S. sanctions require for property generally.¹¹
- OFAC points out that digital currency "is neither issued nor guaranteed by any jurisdiction; and does not have legal tender status in any jurisdiction."¹² This may reflect an attempt by OFAC to seek to emphasize that digital currency, notwithstanding not being U.S. dollars, also is not the currency of any other country or under the particular regulatory purview of any other government.
- OFAC notes that digital currency wallets are a "software application" and that most hosted wallet providers that create and hold a digital currency wallet on behalf of a customer "offer exchange and payment services to facilitate participation in a digital currency system by users."¹³ This may serve as OFAC seeking to characterize those that host digital currency wallets as providers of goods or services, which falls within OFAC's purview, as well as telegraphing that OFAC may seek to regulate those that provide support for digital currency transactions in addition to the financial transactions themselves.

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Compliance Issues

OFAC emphasizes that parties involved in digital currency transactions have to implement compliance programs just as if they were engaging in financial transactions through conventional payment systems using traditional currency. OFAC states:

Persons including technology companies; administrators, exchangers, and users of digital currencies; and other payment processors should develop a tailored-risk-based compliance program, which generally should include sanctions screening and other appropriate measures.¹⁴

OFAC also sheds some light on how it may try to work through the new compliance issues associated with the virtual nature of digital currency. For example, with respect to screening for SDNs, OFAC states that, as another identifier, it may add to traditional addresses any associated “digital currency addresses” such as a “public key,” as well as the digital currency to which the address responds, e.g., Bitcoin, Litecoin or Petro. In undertaking this approach, OFAC may be seeking to treat digital currency wallets like traditional bank accounts, to try to link them to an SDN and flag them as such for sanctions purposes. This effort may be complicated by the fact that individuals can have many digital currency addresses and typically generate a new digital currency address for each virtual currency transaction. As a result, it is unclear the extent to which digital currency addresses will serve as a meaningful identifier.

Key Takeaways

- The Trump administration has put further pressure on the Venezuelan government by prohibiting U.S. persons from dealing in its cryptocurrency and it could take additional sanctions steps as a lead-up to the forthcoming elections.
- U.S. persons should be cautious about dealing in cryptocurrencies issued by other governments that are subject to certain U.S. sanctions, such as Russia, as those currencies may also be subject to similar restrictions in the future.
- OFAC is focused on the use of digital currency to circumvent economic sanctions and is taking steps to try to counter it.
- As digital currency introduces new methods of conducting payment transactions outside of the traditional financial institution channels, those involved will have to navigate novel compliance challenges.

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- ¹ The White House, Executive Order No. 13827, Taking Additional Steps to Address the Situation in Venezuela, 83 Fed. Reg. 12469-70 (Mar. 19, 2018) (the “Executive Order”), available at <https://www.gpo.gov/fdsys/pkg/FR-2018-03-21/pdf/2018-05916.pdf>.
 - ² OFAC also added three individuals to the Specially Designated Nationals and Blocked Persons List.
 - ³ Rachelle Krygier, “Venezuela Launches the Petro, Its Cryptocurrency,” *The Washington Post*, Feb. 20, 2018, available at https://www.washingtonpost.com/news/worldviews/wp/2018/02/20/venezuela-launches-the-petro-its-cryptocurrency/?utm_term=.0e713f298b78.
 - ⁴ Executive Order at p. 12469.
 - ⁵ U.S. Dep’t of the Treasury, OFAC FAQs, Nos. 559-563 (Mar. 19, 2018), available at https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_compliance.aspx (the “FAQs”).
 - ⁶ Cristina Maza, “Russia Will Create Its Own Bitcoin to Avoid U.S. Sanctions: Report,” *Newsweek*, Jan. 12, 2018, available at <http://www.newsweek.com/russia-bitcoin-avoid-us-sanctions-cryptocurrency-768742>.
 - ⁷ Executive Order at p. 12469.
 - ⁸ U.S. Dep’t of the Treasury, OFAC FAQs, No. 566 (Mar. 19, 2018), available at https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#venezuela.
 - ⁹ *Id.* at Nos. 559-563.
 - ¹⁰ *Id.* at No. 562 (“Parties 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”).
 - ¹¹ *Id.* at No. 560.
 - ¹² *Id.* at No. 559.
 - ¹³ *Id.*
 - ¹⁴ *Id.* at No. 560.

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