



# Blockchain & Cryptocurrency Regulation

# 2020

## Second Edition

Contributing Editor  
Josias N. Dewey



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# Venezuela

Luisa Lepervanche

Mendoza, Palacios, Acedo, Borjas, Páez Pumar & Cía. (Menpa)

## Government attitude and definition

The Venezuelan government has had an ambivalent attitude towards cryptocurrency.

On the one hand, it has taken on obligations to promote the use of cryptocurrency, both in the public and private spheres; it has created its own cryptocurrency, called the Petro; it has taken additional steps to promote cryptocurrencies (such as the creation of special zones for paying with Petro and other cryptocurrencies, granting special authorisations to ensure that contracts may be paid in Petro, fixing prices, salaries, etc. in Petro, among others). On the other hand, the government has, from time to time, imprisoned cryptocurrency miners and threatened to close cryptocurrency operations that deal with foreign exchange transactions.

As indicated, the government has taken steps to promote cryptocurrency use in Venezuela, to the extent that it created its own cryptocurrency: the Petro. Further, pursuant to certain regulations, the bolivar is supposedly linked to the value of the Petro.<sup>1</sup> Also, the government has used the value of Petro to establish minimum wages, taxes, public prices, etc.

### Government promotion of the use of cryptocurrencies, in general, and the Petro in particular

As an introduction, below is a brief background of the rules regulating money in Venezuela.

Article 318 of the Constitution provides that the bolivar is the “monetary unit” of Venezuela. This is ratified by Article 106 of the Law on the Central Bank of Venezuela (*Ley del Banco Central de Venezuela*). Therefore, the legal tender in Venezuela is the bolivar. There are two exceptions to this rule: the possibility of issuing common monetary units issued in the context of integration agreements regarding Latin-America and the Caribbean; and the possibility of issuing communal money (*monedas comunales*) issued by *comunas*, which is a complicated concept that refers to basic social groups. None of these exceptions currently apply to cryptocurrency.

Due to hyperinflation, in 2018, amounts expressed in bolivars were huge. Whether the amounts referred to prices, to salaries, to the value of goods, etc., they had become extremely high amounts – sometimes so high that systems did not recognise them. As a solution, the President ordered a monetary conversion, that is, he created a “new” bolivar (called the Sovereign Bolivar, *Bolivar Soberano*), which was represented by dividing the previous bolivar value by 100,000. This entered into force on August 20, 2018.<sup>2</sup>

Pursuant to the Constitution and the law, only bolivars (now Sovereign Bolivars) represent legal tender. Cryptocurrencies do not represent legal tender. However, Venezuela – particularly the Executive Branch and the Constitutional Assembly<sup>3</sup> – have made important efforts to promote the use of cryptocurrency.

In April 2018 the Constitutional Assembly issued a constitutional decree regulating cryptocurrencies.<sup>4</sup> It mandates, under Article 9, that Venezuela must promote, protect and guarantee the use of cryptocurrencies as a means of payment of obligations, both by the public sector and the private sector, not only in Venezuela but also abroad. Other instruments referred to below also reflect similar obligations. Accordingly, Venezuela is making efforts, at least theoretically, to promote cryptocurrencies. However, these efforts may extend beyond its legal powers and may even be impossible, in fact, to achieve.

First, Venezuela is, in theory, bound to promote, protect and guarantee the use of cryptocurrencies by the public and private sectors. The obligation to promote may prove both possible and legal. Venezuela may create incentives, benefits, discounts, etc. But it cannot guarantee the use of cryptocurrencies because, as indicated, only bolivars are of legal tender in Venezuela, so forcing (by guaranteeing) the use of cryptocurrencies would violate both the Constitution and the law.

Second, Venezuela bound itself not only to promote, protect and guarantee the use of cryptocurrencies in Venezuela, but also abroad. Needless to say, even in practical terms, complying with such obligation is going to prove difficult (if not impossible).

#### Venezuela's own cryptocurrency – the Petro

In December 2017, by Presidential Decree, the government authorised the issuance of the Petro, a cryptocurrency “backed” (*respaldada*) by Venezuelan oil reserves.<sup>5</sup> In January 2018, it published the first Petro whitepaper,<sup>6</sup> which it then modified in March.<sup>7</sup> In February, the Executive affected the potential development of a portion of the oil reserves in the Orinoco Belt to “back” (*respaldar*) the issuance of Petro.<sup>8</sup> In April, the Constitutional Assembly issued the Constitutional Decree, further regulating the Petro and approving the decision to affect the oil reserves to serve as “backing for the creation and issuance of the Venezuelan cryptocurrency Petro” (*como respaldo para la creación y emisión de la criptomoneda venezolana Petro*).<sup>9</sup> In October, Venezuela published the third version of the Petro whitepaper.<sup>10</sup>

However, even if the Petro is a cryptocurrency, in our opinion, it also qualifies as public debt – even if an atypical one. And, because it qualifies as such, its issuance breaches the Constitution and the law.

#### *Qualification of the Petro*

The Petro qualifies as public debt under the Law on the Financial Administration of the Public Sector (*Decreto con Rango, Valor y Fuerza de Ley Orgánica de la Administración Financiera del Sector Público*). Article 80 provides that the issuance of securities and the granting of guarantees, *inter alia*, qualify as public debt transactions. The Petro falls within both categories.

First, Petro qualify as securities under Venezuelan law. This assertion probably requires a paper of its own, but for purposes of this analysis, let us state that they constitute a unilateral promise by the issuer – Venezuela – represented in dematerialised documents issued *en masse*, which grant their holders certain rights (*e.g.* the right to benefit from the eventual exploitation of a portion of oil reserves, the right to pay debts to the Republic at a certain rate determined by oil prices, the right to receive Petro under the Staking savings plan, etc.). Other Venezuelan authors have also categorised Petro as securities.<sup>11</sup>

Second, when issuing Petro, the government affected part of the reserves of the Orinoco Belt to back the cryptocurrency. It did so by means of the Presidential Decree issued in February 2018, confirmed by the Constitutional Decree issued in April 2018. Further, both

the Presidential Decree creating the Petro in December 2017 and the whitepaper published in January 2018 refer to the Petro being backed by oil. Significantly, the whitepaper published in October 2018 refers to the Petro being backed by natural resources. The efficiency of the guarantee has been questioned in economic terms,<sup>12</sup> as well in legal ones – these are addressed below. Yet, its inefficiency or its illegality does not change the fact that a guarantee was granted regarding the Petro. Again, Venezuelan commentators share this point of view.<sup>13</sup>

Accordingly, since Petro qualify as securities under Venezuelan law, and guarantees were granted regarding their issuance, Petro would fall within the scope of the definition of Article 80 of the Law on the Financial Administration of the Public Sector, thus being public debt – a very unusual type, but still public debt. The National Assembly – the Venezuelan equivalent of the U.S. Congress – has taken this position.<sup>14</sup> This was also the initial position of the government of the United States of America, through the Office of Foreign Assets Control, which on its website for Frequently Asked Questions on Venezuela-Related Sanctions indicated the following: “A currency with these characteristics would appear to be an extension of credit to the Venezuelan government...”<sup>15</sup>

### *Legality of the Petro*

The fact that the issuance of Petro is equivalent to the issuance of public debt means that the Petro is both unconstitutional and illegal.

First, pursuant to Article 312 of the Constitution and to Article 98 of the Law on the Financial Administration of the Public Sector, public debt must be approved by law. Laws in Venezuela are issued by the National Assembly, by mandate of Article 202 of the Constitution. The National Assembly did not enact a law approving the issuance of Petro. Further, the National Assembly has denounced its unconstitutionality and illegality on such grounds.<sup>16</sup>

Second, Article 12 of the Constitution and Article 3 of the Organic Law on Hydrocarbons (*Ley Orgánica de Hidrocarburos*) prohibit encumbering oil reserves. Further the Law on the Financial Administration of the Public Sector also prohibits guaranteeing public debt transactions with public assets. Accordingly, the granting of the guarantee violates the Constitution and the law.

Pursuant to Article 25 of the Constitution and Article 19 of the Organic Law on Administrative Proceedings (*Ley Orgánica de Procedimientos Administrativos*), acts that violate constitutionally vested rights are null and void. Therefore, the issuance of Petro is null and void pursuant to Venezuelan law.

### Enactment of different regulations and agreements promoting cryptocurrencies

A few examples are as follows:

- a) The Superintendence on Cryptocurrency and Connected Activities (*Superintendencia de Criptoactivos and Actividades Conexas*, now called SUNACRIP) and the Zamora Municipality, Miranda State, have executed agreements to grant certain benefits to taxpayers who cancel their taxes in Petro and other cryptocurrencies, as well as authorizing virtual mining.
- b) The President has created special zones for mining and negotiating with Petro and other cryptocurrencies, which it has called “Petro Zones”.<sup>17</sup>
- c) Several resolutions enacted by the Ministry of Transport, which refer to payment of certain obligations due to the National Institute of Civil Aviation (*Instituto Nacional de Aeronáutica Civil*, INAC), the Institute of the International Airport of Maiquetía

(*Instituto Aeropuerto Internacional de Maiquetía*, IAIM) and the Bolivarian Airports Company (*Empresa del Estado Bolivariana de Aeropuertos*, BAER), provide that prices are established in Petro and that obligations may be paid in Petro and other cryptocurrencies, among others.

- d) In the context of promotion of youth employment (*Gran Misión Chamba Segura*), the President imposed an obligation to create conditions to develop and strengthen a cryptocurrency “ecosystem”, which would allow young people to be instructed regarding blockchain technology, digital mining, virtual trading, virtual exchanges, digital wallets, etc.
- e) In the context of the economic emergency, the President has been granted powers to incorporate cryptoassets into the economy.
- f) The Ministry of Economy and Finance (*Ministerio de Economía y Finanzas*) authorised the Superintendence of Insurance Activities (*Superintendencia de la Actividad Aseguradora*) to, in turn, authorise the issuance of bonds to guarantee certain obligations derived from public contracts paid in Petro.
- g) Venezuela tried – and failed – to negotiate with India payment of their oil exports in Petro.
- h) Earlier this year, the Agency on Intellectual Property (*Servicio Autónomo de Propiedad Intelectual*, SAPI) ordered that foreign corporations should only pay taxes and other obligations owed to SAPI in Petro. Such order was later reversed.
- i) Additional taxes, levies, etc. have been established in Petro, even if they are payable by conversion to bolivars.
- j) The minimum wage has also been informally established by reference to Petro.
- k) The Supreme Tribunal of Justice has issued decisions ordering that damages be calculated in Petro.<sup>18</sup>

The validity of some of these instruments may be questionable. But, at least rhetorically, Venezuela has shown a positive attitude towards cryptocurrencies, which have not necessarily been translated into practice. However, the government has not always been consistent with this promotion.

#### Consistency of promotion and enforcement

First, in the past few years, different police forces (including the anti-money laundering task force) have apprehended cryptocurrency miners.

Second, certain government officials had also criticised and threatened persons dealing in cryptocurrencies. For instance, the Executive Vice-President of Venezuela (now Vice-President for the Economic Area) issued a statement in June 2018 criticising the “imposition” of “speculative cryptocurrencies’ prices” and threatening to “severely punish” the culprits. This needs to be understood in the current local context: a foreign currency exchange control system has been in place in Venezuela since 2003, which has given rise to a parallel foreign currency market (which at times has been illegal), which the government has heavily criticised and sometimes tried to control. Cryptocurrency transactions have been used to circumvent the exchange controls regime. Therefore, the former Vice-President’s threats, based on the exchange controls considerations, incidentally affected cryptocurrency ones.

However, the Executive’s parlance has changed since July 2018 regarding exchange controls and there now seems to be a more tolerant approach towards the parallel market. In fact, the Constitutional Assembly enacted a constitutional decree abrogating punishments related

to the exchange regime (*Decreto Constituyente mediante el cual se establece la Derogatoria del Régimen Cambiario y sus Ilícitos*), published in the Official Gazette N° 41.452, on August 2, 2018. Since that date, the Venezuelan government has taken a tolerant attitude towards exchange transactions, including cryptocurrency ones. However, this may change, as it has in fact done in the past 16 years of exchange limitations and controls.

Based on the above, we can argue that Venezuela has taken a positive view of cryptocurrencies – even promoting them – to the extent of issuing its own (illegal and unconstitutional) cryptocurrency, the Petro. Yet, to the extent that cryptocurrency use leads to circumventing exchange controls, the government's position will depend on the stance it takes, at any given moment, regarding exchange controls. At the time of writing this article, the governmental stance, as indicated above, is tolerant and flexible on exchange issues and transactions.

## Cryptocurrency regulation

### Regulation specific to cryptocurrencies

Instead of taking the more conservative approach of other jurisdictions, which have applied existing rules on commodities, capital markets, etc., to cryptocurrency transactions, Venezuela has issued regulations applicable specifically to cryptocurrencies and has even created a controlling body to supervise and control them: SUNACRIP (initially called SUPCACVEN).

The relevant regulations currently in force are the following: the Constitutional Decree on Cryptoassets and the Sovereign Cryptocurrency Petro, referred to above, published on April 9, 2018; and the Constitutional Decree on Cryptoassets Integral System, published on January 30, 2019.

Specific rules shall be addressed below, in each relevant section. However, two general ideas are important at this point:

- 1) The regulations contain both explicit and implicit controls and limitations. For instance, on the one hand, the Constitutional Decree on the Cryptoassets Integral System explicitly imposes, under Article 30, a registration obligation on all individuals and corporations who conduct activities related – directly or by connection – to cryptoassets; and Article 28 establishes an obligation for the exchanges (*casas de intercambio*) to obtain licences. On the other hand, the same decree establishes, among the powers vested in SUNACRIP under Article 11 (numbers 4, 9 and 12), the power to authorise and grant permits in connection with cryptoasset-related activities. Thus, although prior authorisation or permission is not expressly required by the rules, an implicit obligation to obtain such authorisation or permit is inferred from the rules. The rules detailing registration are referred to below.
- 2) Regulating cryptocurrencies via the Constitutional Decrees violates the Constitution for two reasons.
  - First, the Constitution provides, under Article 112, the right to economic freedom, that is, the right of every person to pursue their economic activities of choice, without limitation other than those provided by Constitution or law. The Constitution (which dates from 1999) establishes no limitation regarding cryptoassets. The law – which must be understood, as indicated above, as that enacted by the National Assembly (as opposed to the Constitutional Assembly) – does not provide limitations regarding this subject either.

- Second, Article 156 (32) of the Constitution limits legislation of certain matters (including commercial issues) to the national authorities; and Article 187 (1) mandates that the National Assembly legislates regarding matters reserved to the national authorities. This is known as *reserva legal*. Accordingly, commercial matters are part of the *reserva legal*, that is, only subject to regulation by law enacted by the National Assembly.

Therefore, a law is needed both to establish limitations on the right to economic freedom and to regulate commercial matters. Regulating cryptoassets qualifies as both and, thus, may only be done by law, and not by Constitutional Decree.

Accordingly, even if the regulations regarding cryptoassets exist, they are unconstitutional and, thus, null and void.

Apart from these regulations, which, as indicated, are targeted directly at cryptocurrency, certain other general rules, which are addressed below, may also be applicable.

### Sales regulation

As indicated below, all activities related – directly or indirectly – to cryptoassets are regulated by the decrees enacted by the Constitutional Assembly, which were published in the Official Gazette on April 9, 2018 and January 30, 2019, pursuant to which both registration and authorisation requirements are applicable to individuals and corporations that conduct activities related to cryptocurrencies:

- 1) Article 30, which creates the Registration System, refers to the registration requirement extending to cryptocurrency miners, virtual exchanges, entities dedicated to saving or intermediation with cryptoassets, as well as to the suppliers of goods or services to persons who conduct such activities.
- 2) The implicit authorisation requirement provided for under Article 11 (numbers 4, 9 and 12) refer to (i) persons who participate in the system, (ii) corporations dedicated to intermediation in cryptoassets, (iii) corporations dedicated to virtual wallets, (iv) corporations dedicated to mining activities, and (v) the use of equipment intended for digital mining. To understand number (i) above, please take into account that under Article 6, the Cryptoassets Integral System is formed by “principles, rules and procedures, applied to individuals and corporations, public and private entities, include Communal Councils and other forms of Popular Power that interact with the purpose of guaranteeing that cryptoassets and related technologies are incorporated in the Bolivarian Republic of Venezuela”. Accordingly, the aforementioned system seems to include all players in the cryptoasset community.
- 3) Articles 27 and 28 regulate the exchanges (*casas de intercambio*). The latter establishes that the powers of each exchange shall be determined by the specific Operation License (*Licencia de Operación*) granted by SUNACRIP. This matter was further addressed under a resolution that regulates operations of exchanges.<sup>19</sup> This resolution establishes, under Article 4, two types of licences: (i) general licences (which do not have restrictions regarding activities); and (ii) specific licences (that only authorise the exchanges to conduct certain activities). Further, the licences shall also limit other issues regarding the exchanges’ activities, such as cryptocurrencies, foreign currency, types of users, etc.<sup>20</sup>

Summarising, based on the above, certain authorisation and registration requirements apply to any individual or corporation that conducts activities related directly or indirectly to

cryptoassets. This includes, as explained below, those wishing to acquire or sell cryptocurrency, and those involved in personal remittances in cryptocurrencies.

First, SUNACRIP issued the Resolution that regulates the Integral Registry of Cryptoasset Services (RISEC).<sup>21</sup> Pursuant to Article 4, all individuals and corporations that engage in activities related to the Cryptoassets Integral System are subject to registration.

A joint interpretation of several provisions seems to imply that all persons who participate in the cryptoasset market, in any capacity, need to register before the RISEC. First, Article 6 defines “users” as individuals or corporations that **acquire or use** goods or services based on cryptoassets or related technology. Second, Article 8 indicates the procedure for users to register before RISEC, and Article 9 provides the documentation needed for such registration. Third, references to users may also be found under several other provisions (such as Articles 7 and 11). The above may be interpreted as leading to the conclusion that even individuals and corporations who only wish to buy or sell cryptocurrency also need to register with RISEC, which – if so – we deem to be extremely unpractical.

Second, SUNACRIP has also issued a Resolution applicable to the receipt and transfer of personal remittances (*remesas*) in cryptocurrency in Venezuela.<sup>22</sup> Under Article 3, all individuals who send remittances to or receive remittances in Venezuela are subject to the aforementioned resolution. Such resolution establishes certain formalities, commissions, procedures, etc. Additionally, pursuant to Article 5, there is a limitation on the amount of cryptoassets that may be transferred monthly to Venezuela: the equivalent of 10 Petro per month.

Finally, regarding registration and authorisation issues, the Constitutional decree published in January 2019 establishes fines on those who conduct any activity related to cryptoassets without due authorisation. Additional penalties are established regarding other issues (such as altering or interfering with information technologies, damaging or modifying information technologies, etc.). In some cases, such penalties include prison terms. In any case, we question the validity of these penalties, since this is subject to the *reserva legal* addressed above, which also covers criminal matters, as well as due to the principle of legality (which mandates that penalties may only be imposed by a previously enacted law: *nullum crimen nulla poena sine lege*).

In addition to these rules, which are specifically tailored to address cryptocurrency, we believe that other rules, not specifically drafted, may be applicable. For instance, we believe this to be the case for securities regulations.

First, it may be possible that the Capital Markets Law (*Ley del Mercado de Valores*) also applies. Indeed, to the extent that a particular cryptocurrency or token also qualifies as a security under such law, it may as a result be applicable too. Other jurisdictions have taken the position that in order to determine whether cryptocurrencies or tokens qualify as securities, the particular characteristics of each cryptoasset must be analysed. Further, they have defended that in such case capital markets rules and controls would apply.

We believe this may be the case in Venezuela too. In fact, as explained above, certain cryptocurrencies – the Petro being a good example – may qualify as securities too. Further, the Capital Markets Law, under Article 46, mandates that, in case of doubt, the National Superintendence of Securities (*Superintendencia Nacional de Valores*, SUNAVAL) shall have the final right to determine if a particular asset qualifies as a security. If SUNAVAL were to determine that a certain cryptocurrency qualifies as a security, then all the capital markets rules would be applicable to the particular ICO and/or related activities.

We believe the authorities are not interpreting this matter from the perspective of dual control or regulations. There is no evidence of a joint approach by SUNACRIP and SUNAVAL. However, from a strictly legal point of view, this would be, in our opinion, the correct approach.

### **Taxation**

Except as detailed below, the tax authorities and regulators have not issued tax rules regarding cryptocurrencies in particular. Accordingly, transactions relating to cryptocurrencies would be regulated by general rules on the matter.

However, the following tax-related issues are relevant:

- a) Venezuela has assumed a general obligation to promote the use of cryptocurrencies. It has also taken on a specific obligation to accept payment of taxes by means of cryptocurrencies in the agreements between SUPCACVEN and the Zamora Municipality. Further, it has assumed such obligations particularly with respect to Petro in the different versions of the Petro's whitepaper.
- b) Article 7 of the Presidential Decree, which creates "Petro zones", provides an exception regarding customs duties for the import of goods related to electronic equipment, computer equipment, software licences, hardware, electric power plants, air conditioning units, support equipment, etc. used in connection with cryptocurrency mining. Such exception would apply in Margarita Island, Los Roques, Territorio Insular Francisco de Miranda, Paraguaná and Ureña – San Antonio, and would last for two years, beginning on March 22, 2018.
- c) Article 17 of the 2019 Constitutional Decree provides a similar exception regarding taxes and custom duties for the import of goods and technical equipment, and imported, exported or in-transit goods, which are necessary for SUNACRIP's role. A presidential authorisation is required in this case.
- d) A Presidential Decree established that all taxes generated due to transactions conducted in cryptocurrency need to be calculated and paid in the same cryptocurrency in which the transaction was conducted.<sup>23</sup> Transactions related to (i) securities traded in the stock exchanges, and (ii) export of goods and services, were exempted from this obligation. However, to the best of our knowledge, such mandate has not been implemented by the tax authority (probably because certain regulations necessary for such implementation are still pending).

### **Money transmission laws and anti-money laundering requirements**

Few specific rules regarding these matters have been formally enacted in connection with cryptocurrencies, and these are addressed specifically to exchanges (*casas de intercambio*). Indeed, Article 6 of the resolution published on March 2019 regarding exchanges specifically indicates that such entities must comply with applicable legislation regarding anti-money laundering, specifically referring to: (i) the Organic Law on Organized Crime, Terrorism Financing and Proliferation of Mass Destruction Weapons; (ii) recommendations issued by the Financial Action Task Force (FATF), referred to by its name in Spanish: GAFI; and (iii) the Drugs Law.

Article 6 further establishes an obligation to notify SUNACRIP and the Prosecutor General's Office regarding any irregular movement detected in transactions, that may constitute money laundering, financing of terrorism, proliferation of weapons of mass destruction, drug

trafficking, and other related crimes. Failure to report may lead to dissolution and liquidation of the exchange, cancellation of its registration before the Commercial Registry, as well as to the imposition of penalties (of both administrative and criminal nature), among others.

Regarding all other stakeholders, general rules on anti-money laundering and related activities would be applicable to cryptocurrencies and, in the case of cryptocurrencies which also qualify as securities, the specific rules on the matter enacted in connection with the capital market would also be applicable.

### **Promotion and testing**

As already indicated, Venezuela is bound to promote the use of cryptocurrencies.

Also, as referred to above, Venezuela has created two types of special “environments” for the promotion and development of cryptocurrencies.

First, the Zamora Municipality has in theory created a special space for (i) cryptocurrency mining, and (ii) payment of taxes in cryptocurrency.

Second, the President has created the “Petro Zones”, which also have benefits from the point of view of mining (including the custom tax benefits referred above) and payment in cryptocurrencies (e.g. gas prices).

### **Ownership and licensing requirements**

Activities related – either directly or indirectly – to cryptoassets are subject to prior authorisation, and individuals and corporations conducting them are subject to registration. However, in our opinion, this would not extend to ownership. However, as indicated above, buying and selling cryptocurrencies may be interpreted as seeming to require registration before RISEC, which, as indicated, seems extremely unpractical.

### **Mining**

As indicated, mining cryptocurrency in Venezuela is permitted, subject to prior authorisation, pursuant to Article 11.9 of the Constitutional decree dated January 2019 and registration, pursuant to Articles 29 and 30 thereof.

### **Border restrictions and declaration**

The only specific rules regarding these matters have been enacted in connection to remittances, as addressed above.

Therefore, general rules would be applicable. For instance, the Law on the Central Bank of Venezuela and the Organic Law Against Organized Crime and Financing of Terrorism (*Ley Orgánica Contra la Delincuencia Organizada y Financiamiento al Terrorismo*) contain limitations regarding import and export of fiat money, under Articles 118 and 137 in the case of the first law, and import and export of money or securities by individuals entering or leaving the country, under Article 22 in the second one. We believe none of these are extensible to cryptocurrency transactions.

### **Reporting requirements**

No rules regarding these matters have been formally enacted specifically in connection to cryptocurrencies. General rules may be extensible to cryptocurrencies.

## Estate planning and testamentary succession

There are no special rules regarding this matter. We have not been privy to any estate planning or succession by testament containing cryptocurrency holdings in Venezuela.

\* \* \*

### Endnotes

1. Asamblea Nacional Constituyente. *Decreto Constituyente mediante el cual se acuerda apoyar los anuncios del Presidente Nicolás Maduro Moros sobre el Programa de Recuperación y Prosperidad Económica*. Official Gazette N° 41.452, August 2, 2018, Article 1: “the value [of VES] shall be anchored on the value of the Petro...”.
2. The efficiency of the conversion is doubtful since, again due to hyperinflation, amounts have increased substantially, although not reaching pre-conversion levels yet.
3. The Constitutional Assembly is a body elected in 2017. References to its validity and functions are made below.
4. The validity of this decree is highly questionable. First, the Constitutional Assembly was elected amidst very controversial circumstances (which included the technical company hired to conduct the election having stated that the electoral authority announced more votes than those actually cast), which may render its appointment null and void. Yet, we shall refer to only one of those circumstances: the basis for the election violated the principle of universal vote, which is a right recognised under Article 63 of the Constitution. Such violation occurred because the principle of “one person – one vote” was not respected, since certain categories (workers, women, natives, etc.) had the right to cast more than one vote, while other persons did not. Accordingly, the election of the Constitutional Assembly is null and void. Second, the Constitutional Assembly – even setting aside the nullity of the election – was elected to enact a new Constitution, not to enact other regulations. Some may argue that the Constitution, under Article 347, empowers the Constitutional Assembly to enact a new legal system (*ordenamiento jurídico*). However, that must be understood in the context of its mandate: the Constitutional Assembly would be allowed to enact new regulations only to the extent necessary to make the legal system compatible with the new Constitution. This is not the case. Further, the Constitutional Assembly has not even enacted the new Constitution.
5. President. *Decreto N° 3.196, mediante el cual se autoriza la creación de la Superintendencia de los Criptoactivos y actividades conexas venezolana*. Official Gazette N° 6.346 (E), December 8, 2017, Preamble. This decree was abrogated by Constitutional Assembly by means of the *Decreto Constituyente sobre el Sistema Integral de Criptoactivos*, published in the Official Gazette N° 41.575, on January 30, 2019, which further regulates cryptocurrencies as addressed below.
6. Venezuela. “Petro. Papel Blanco. Versión Beta 0.9. Propuesta Financiera. 30 de enero 2018.” Available at <http://pandectasdigital.blogspot.com/2018/01/whitepaper-libro-blanco-del-petro.html> (last visited 7/20/2018).
7. Venezuela. “Petro. Papel Blanco. Beta 1.0. Propuesta Financiera y Tecnológica. 15 de marzo 2018”. Available at [http://www.elpetro.gob.ve/pdf/esp/Whitepaper\\_Petro\\_es.pdf](http://www.elpetro.gob.ve/pdf/esp/Whitepaper_Petro_es.pdf) (last visited 7/20/2018).

8. President. *Decreto N° 3.292 mediante el cual se determina como respaldo para la implementación de operaciones de intercambio financiero y comercial a través de criptoactivos, el desarrollo potencial de 5.342 MMBN de Petróleo Original en Sitio (POES) pesado y extrapesado, de acuerdo a una certificadora internacional independiente, localizado en el Bloque Ayacucho 01, de la Faja Petrolífera del Orinoco Hugo Chávez Frías.* Official Gazette N° 41.347. February 23, 2018.
9. Constitutional Assembly. *Decreto Constituyente sobre Criptoactivos y la Criptomoneda Soberana Petro.* Official Gazette N° 6.370 (E), April 9, 2018, Articles 5 and 12.
10. Venezuela. “Petro. Hacia la Revolución Digital.” Available at <https://www.petro.gov.ve/files/petro-whitepaper.pdf>.
11. LEPERVANCHE, Luisa and ACEDO SUCRE, Manuel. *A few ideas on Petros and other cryptocurrency transactions in Venezuela.* Available at <http://www.menpa.com/serve/file/assets%2Fuploads%2FEFEE5A71CC346147C.pdf> (last visited 7/20/2018). CAPRILES BAENA, Gonzalo. *Petro, la “moneda virtual” del gobierno venezolano.* Available at <http://www.cavecol.org/wp-content/uploads/2018/02/BDE-5-PETRO.pdf> (last visited 7/20/2018). HERNÁNDEZ, José Ignacio. *¿Es el petro una operación de crédito público?* Available at <https://prodavinci.com/es-el-petro-una-operacion-de-credito-publico/> (last visited 7/20/2018).
12. MONALDI, Francisco J. *Is the Petro Truly Backed by Oil Reserves?* February 27, 2018. Available at <https://www.caracaschronicles.com/2018/02/27/petro-truly-backed-oil-reserves/> (last visited 7/20/2018).
13. LEPERVANCHE, Luisa y ACEDO SUCRE, Manuel, *op. cit.* CAPRILES BAENA, Gonzalo, *op.cit.* HERNÁNDEZ, José Ignacio, *op.cit.*
14. National Assembly. *Acuerdo sobre la emisión de la criptomoneda Petro. 9 de enero de 2018.* Available at [https://es.scribd.com/document/368773539/Acuerdo-sobre-la-emision-de-la-criptomoneda-Petro#from\\_embed](https://es.scribd.com/document/368773539/Acuerdo-sobre-la-emision-de-la-criptomoneda-Petro#from_embed) (last visited 7/20/2018).
15. However, this version of the FAQs was eliminated when the new Executive Order 13827, dated March 19, 2018, was issued. Such order prohibits transactions on any “digital currency, digital coin, or digital token”. After the issuance of said order, the position of the OFAC changed, and now reflects that Petros are forbidden under the new Executive Order, as evidenced in [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_other.aspx#venezuela](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#venezuela), question N° 564 (last visited 7/20/2018).
16. National Assembly. *Acuerdo sobre la emisión de la criptomoneda Petro. 9 de enero de 2018;* referred to above.
17. President. *Decreto N° 3.333, mediante el cual se crean como Zonas Petro: La Isla de Margarita, Estado Nueva Esparta. Los Roques, Territorio Insular Francisco de Miranda. Paraguaná, Estado Falcón. Ureña-San Antonio, Estado Táchira, a los fines de incorporarlas al desarrollo de la Minería Virtual y el uso de cripto-activos como elementos estructurales de la diversificación de fuentes de divisas tanto para el desarrollo nacional como de las actividades económicas propias de las citadas áreas.* Official Gazette N° 41.366. March 22, 2018.
18. On October 31, 2018, the Political-Administrative Chamber issued the first decision in this regard.

19. Vicepresidencia Sectorial de Economía. *Providencia mediante la cual se regula la operatividad de las Casas de Intercambio en el Sistema Integral de Criptoactivos.* Official Gazette N° 41.609. April 3, 2019.
20. Pursuant to the information of SUNACRIP, as of August 1, 2019, all licences granted by SUNACRIP qualify as general licences: <https://sunacrip.gob.ve/casas.html>.
21. SUNACRIP. *Providencia mediante la cual se regula el Registro Integral de Servicios en Criptoactivos (RISEC).* Official Gazette N° 41.578. February 4, 2019.
22. SUNACRIP. *Providencia aplicable al trámite de remesas en criptoactivos en la República Bolivariana de Venezuela.* Official Gazette N° 41.581. February 7, 2019.
23. President. *Decreto N1 35 en el marco del Estado de Excepción y de Emergencia Económica, mediante el cual los sujetos pasivos que realicen operaciones en el territorio nacional en moneda extranjera o criptodivisas, autorizadas por la ley, deben determinar y pagar las obligaciones en moneda extranjera o criptodivisas.* Official Gazette N° 6.420 (E). December 28, 2018.

**Luisa Lepervanche****Tel: +58 212 909 1611 / Email: [llepervanche@menpa.com](mailto:llepervanche@menpa.com)**

Luisa Lepervanche graduated from the Law School of Universidad Católica Andrés Bello, *cum laude* and specialised in corporate law at Universidad Metropolitana. Later, she participated in the International Program of Hydrocarbons Management at Instituto de Estudios de Educación Superior (IESA). She is a Partner at Menpa, after re-joining the firm after being Legal Counsel to The Coca-Cola Company for Venezuela and the Caribbean. She has taught commercial law, legal analysis and human rights and has worked on human rights issues. Her practice focuses on corporate law, M&A, banking and finance, international sanctions, project financing and debt restructuring, real estate issues, public law and *pro bono* work. Luisa has written several legal articles. She is a member of the Legal Committee of the *Cámara Venezolana Americana de Comercio e Industria* (Venamcham). Luisa is fluent in Spanish and English.

## Mendoza, Palacios, Acedo, Borjas, Páez Pumar & Cía. (Menpa)

Urb. Las Mercedes, Calle Veracruz con Calle Cali, Torre Aba, Piso 1 y 2, Caracas, 1060, Venezuela  
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