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Country chapters

Venezuela

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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 petros and other cryptocurrencies, granting special authorisations to ensure that contracts may be paid in petros, etc.). On the other hand, the government has, from time to time, imprisoned miners and threatened to close cryptocurrency operations that deal with foreign exchange transactions.

Further to the creation of the petro, recent statements made by President Maduro and instruments enacted by the Constitutional Assembly[1] suggest the government's intention is now to link its value to that of the official currency, the bolivar.[2]

Promotion of cryptocurrencies

As an introduction, a little background on 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)*. So, 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 apply currently to cryptocurrency.

Due to hyperinflation, amounts expressed in bolivars are huge. Whether the amounts refer to prices, to salaries, to the value of goods, etc., they have become extremely high amounts – sometimes so high that systems do not recognise them. As a solution, the President has ordered a monetary conversion, that is, to create a "new" bolivar (called sovereign bolivar, *bolívar soberano*), which would be represented by dividing the current bolivar value by 100,000. In theory, this will enter into force on August 20, 2018, but so far the conversion has been delayed twice.

Pursuant to the Constitution and the law, only bolivars (soon to be sovereign bolivars) represent legal tender. Cryptocurrencies do not represent legal tender.

However, Venezuela – particularly the Executive Branch and the Constitutional Assembly – have made important efforts to promote the use of cryptocurrency.

In April 2018, the Constitutional Assembly issued a constitutional decree, regulating

cryptocurrencies.[3] It mandates, under Article 9, that Venezuela must promote, protect and guarantee the use of cryptocurrencies as 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 to achieve in practice.

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 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 it also bound itself to do it abroad. Needless to say, even in practical terms, complying with such obligation is going to prove difficult (if not impossible).

Launch of the petro

In December 2017, by Presidential Decree, the government authorised the issuance of the petro, a cryptocurrency "backed" (*respaldada*) by Venezuelan oil reserves.[4] In January 2018, it published the first petro whitepaper,[5] which it then modified in March.[6] In February, the Executive earmarked a portion of the oil reserves in the Orinoco Belt for potential development to "back" (*respaldar*) the issuance of petros.[7] In April, the Constitutional Assembly issued the Constitutional Decree, further regulating petros and approving the decision to dedicate 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*).[8]

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. 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. Petros fall within both categories.

First, petros qualify as securities under Venezuelan law. This assertion probably requires a paper of its own, but for the 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, etc.). Other Venezuelan authors have also categorised petros as securities.[9]

Second, when issuing petros, the government set aside part of the reserves of the Orinoco Belt to back the cryptocurrency. It did so by means of the Presidential Decree issued in February, confirmed by the Constitutional Decree issued in April. Further, both the Presidential Decree creating petros in December and the white paper published in January refer to petros being backed by oil. The efficiency of the guarantee has been questioned in

economic terms,[10] as well in legal ones – these are addressed below. Yet, its inefficiency or illegality does not change the fact that a guarantee was granted regarding petros. Again, Venezuelan authors share this point of view.[11]

Accordingly, since petros qualify as securities under Venezuelan law, and guarantees were granted regarding their issuance, petros 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 Congress – has taken this position.[12] 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 regarding Frequently Asked Questions on Venezuela-Related Sanctions indicated the following: "A currency with this characteristics would appear to be an extension of credit to the Venezuelan government…"[13]

Petros – the issuance of public debt?

There is an argument to be made that the petro is both illegal and unconstitutional.

First, pursuant to Article 312 of the Constitution and 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 petros. Further, the National Assembly has denounced its unconstitutionality and illegality on such grounds.[14]

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 rights constitutionally vested are null and void.

Therefore, the issuance of petros is null and void pursuant to Venezuelan law.

Regulations and agreements governing cryptocurrencies

The two most relevant regulations are both dated April 9, 2018: the Constitutional Decree on Cryptoassets and the Sovereign Cryptocurrency Petro, referred to above; and Presidential Decree Nº 3.355,[15] which created the Superintendence on Cryptocurrency and Connected Activities (*Superintendencia de Criptoactivos and Actividades Conexas,* SUPCACVEN).[16]

Additional regulations and agreements have also been enacted, executed or negotiated. A few examples:

(a) The SUPCACVEN and the Zamora Municipality, Miranda State, have executed agreements to grant certain benefits to taxpayers who cancel their taxes in petros and other cryptocurrencies, as well as authorising virtual mining.

(b) The President has created special zones for mining and negotiating with petros and other cryptocurrencies, which it has called "Petro Zones".

(c) Resolutions Nº 36 and 37 enacted by the Ministry of Transport, which refer to payment of certain obligations due to the National Institute of Civil Aviation (*Instituto Nacional de Aeronaútica Civil*, INAC), Institute of the International Airport of Maiquetía (*Instituto Aeropuerto Internacional de Maiquetía*, IAIM) and Bolivarian Airports

Company (*Empresa del Estado Bolivariana de Aeropuertos*, BAER), provide that these may be paid in cryptocurrencies.

(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 to 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 petros.

(g) Venezuela tried – and failed – to negotiate with India payment of its oil exports in petros.

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 is not always consistent with this promotion.

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

Second, certain government officials have 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) that 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.

Yet, the Executive parlance changed in the last days of July 2018 regarding exchange controls, and there is now a more tolerant approach towards activities involving foreign currency, including the parallel market. In fact, after statements to that effect by the President and Vice-President of the Economic Area, the Constitutional Assembly issued the Constitutional Decree which establishes the Abrogation of the Currency Exchange Regime and its Crimes (*Decreto Constituyente mediante el cual se establece la Derogatoria del Régimen Cambiario y sus Ilícitos*).[17] The preamble of this decree refers to the need to allow currency exchange transactions between private parties ("*que los particulares puedan realizar transacciones cambiarias entre privados propias en divisas*"), and the need to provide security-productive foreign investment ("*máximas seguridades para la inversión extranjera productiva*").

Based on such premises, Article 2 thereof abrogates the Law on the Exchange Regime and its Crimes (*Ley de Régimen Cambiario y sus Ilícitos*). The latter contained important sanctions regarding different crimes and infractions related to the exchange controls regime – including considerable prison terms – some of which we address below. Please note that,

based on strict legal considerations, we question the validity of this decree.[18] However, the stance of the authorities regarding the exchange controls regime has been far from consistent over the years, which makes it difficult to foresee what will happen in this area in the future.

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, from time to time, it has also shown a negative attitude towards certain activities connected to cryptocurrencies.

Cryptocurrency regulation

Venezuela has issued regulations 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: SUPCACVEN.

As indicated above, the most relevant regulations are the Constitutional Decree on Cryptoassets and the Sovereign Cryptocurrency Petro, and the Presidential Decree Nº 3.355,[19] which "created" SUPCACVEN.[20]

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

(i) The regulations contain both explicit and implicit controls and limitations. For instance, on the one hand, the Presidential Decree explicitly imposes, under Article 17, a registration obligation on all individuals and corporations who conduct activities related – directly or by connection – to cryptoassets. On the other hand, the same decree establishes, among the powers vested in SUPCACVEN under Article 9 (numbers 5, 6 and 7), 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. However, the rules detailing registration, and authorisation or permission, have not been specified in the Presidential Decree or elsewhere.

(ii) Regulating cryptocurrencies via the Constitutional Decree and the Presidential Decree 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 the economic activities of choice, without limitation other than the ones 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 the one enacted by the National 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 legislate 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 to 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 nor by Presidential 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 to cryptocurrency, the Law on the Exchange Regime and its Crimes – theoretically abrogated by the Constitutional Assembly – was also applicable. Due to the nullity of its abrogation, we shall still address the interaction of this law with cryptocurrency activities.

For the purposes of its own interpretation and application, Article 3 established the following definition of foreign currency (*divisas*): money other than bolivar, which includes "deposits in foreign or national banks or financial institutions, transfers, bank checks, promissory notes, securities and credit instruments, as well as any other asset or obligation that is denominated or may be liquidated in foreign currency…" (our emphasis).

Pursuant to this definition, cryptocurrencies – which are assets that may be liquidated in foreign currency – would probably qualify as "foreign currency". Accordingly, in the context of the Law on the Exchange Regime and its Crimes, activities involving cryptocurrencies would have been subject to the prohibitions, limitations and restrictions contained therein, including restrictions regarding exchange transactions, obligations to declare such transactions, obligations to sell export prices, obligations not to publish non-official exchange rates, among others.

Sales regulation

As indicated below, all activities related – directly or by connection – to cryptoassets are regulated by the decrees enacted on April 9, 2018, pursuant to which both registration and authorisation requirements are applicable to individuals and corporations that conduct activities related to cryptocurrencies.

Article 16, which creates the Registration System, refers to the registration requirement extending to virtual miners, virtual exchanges, entities dedicated to saving or intermediation with cryptoassets.

The implicit authorisation requirement provided for under Article 9 (5, 6 and 7), refers to: (i) persons regulated by SUPCACVEN; (ii) corporations dedicated to intermediation and "capital markets" of national cryptoassets; (iii) corporations dedicated to virtual wallets; (iv) corporations dedicated to mining activities; and (v) persons that conduct activities regulated by the decree.

To understand numbers (i) and (v) above, please note the following:

(a) The Presidential Decree indicates, under Article 2, that SUPCACVEN's object is to regulate activities conducted by corporations and individuals related to cryptoassets, such as commodities agreements, virtual exchanges, mining activities, virtual intermediation, among others.

(b) Pursuant to Article 4, the function of SUPCACVEN is to coordinate and control activities conducted by individuals or corporations related to commerce, circulation and possession of Venezuelan cryptoassets, including international exchanges, virtual miners, entities dedicated to saving and intermediation.

(c) Article 17 includes, within the scope of the registration obligation, two additional categories, not referred to above: (i) suppliers of goods for any of the phases of activities regulated by SUPCACVEN (a broad concept, which we believe must be interpreted considering goods that are relevant to cryptocurrency, for instance, mining equipment, and not unrelated goods); and (ii) individuals and corporations that conduct studies

for mineral reserves' certification (which, except for the relationship of petros with oil, seems to be an odd category to include. Thus, we believe this category would be subject to registration only when the certification is to be related to cryptocurrencies).

Articles 2, 4, 9 and 16 have a residual category: activities related directly or by connection to cryptoassets. To summarise, there are authorisation and registration requirements which apply to any individual or corporation that conducts activities related directly or indirectly to cryptoassets.

Additionally, we believe that it may be possible that the Capital Markets Law (*Ley del Mercado de Valores*) also applies. Indeed, to the extent that a particular cryptocurrency qualifies also as a security under such law, it may become applicable too. Other jurisdictions have taken the position that in order to determine whether cryptocurrencies qualify as securities, the particular characteristics of each cryptocurrency 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 SUPCACVEN and SUNAVAL. However, from a strict legal point of view, this would be, in our opinion, the correct approach.

Finally, to the extent that cryptocurrency transactions qualified as implicit exchange transactions, limitations under the Law on the Exchange Regime and its Crimes would have been applicable too. For instance, the transactions would have had to be reported to the National Foreign Trade Center (*Centro Nacional de Commercio Exterior,* CENCOEX) pursuant to Article 16 thereof; or the transaction would have had to be conducted at a particular rate, pursuant to Article 11, jointly with Articles 28 and 30 of Exchange Agreement Nº 39 (*Convenio Cambiario Nº 39*). Again, these rules were abrogated by the Constitutional Assembly; however, such abrogation is unconstitutional.

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 petros in the petros whitepaper.

(b) Article 7 of the Presidential Decree which creates the "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 virtual mining. Such exceptions 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.

Money transmission laws and anti-money laundering requirements

No specific rules regarding these matters have been formally enacted in connection with cryptocurrencies. So general rules on money transmission and anti-money laundering apply.

However, two very vague documents regarding anti-money laundering have been published on the petros website: http://www.elpetro.gob.ve/#docs. Such documents are: (i) Guidelines for the manual on internal control regarding prevention of money-laundering and financing of terrorism (*Lineamientos para el manual de control interno para la prevención del lavado de activos y financiamiento del terrorismo*); and (ii) an Orientation Guide for prevention of laundering of cryptoassets, financing of terrorism and "Know Your Customer" policies (*Guía de Orientación para la Prevención de Lavado de Criptoactivos, Financiamiento de Terrorismo y Políticas de "Conoce a tu Cliente"*).

From a formal point of view, such documents: (i) are not signed or issued by a particular public official or authority, yet they are included in the website; and (ii) have not been published in the Official Gazette. Accordingly, their validity is questionable.

From a substantive point of view, the documents: (i) are very vague – and sometimes technically defective; and (ii) contain obligations and recommendations applicable to the virtual exchanges. The main obligation refers to the need to submit to SUPCACVEN, for approval, any project regarding mechanisms to avoid criminal activities being conducted in connection with cryptoassets. Such projects must address issues such as the implementation of KYC procedures, the obligation of reporting criminal activities, the appointment of a Compliance Officer, etc.

In any case, as indicated, we believe that 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, in principle, 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) virtual 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 customs tax benefits referred above) and payment in cryptocurrencies (e.g. gas prices).

Ownership and licensing requirements

Activities related – either directly or by connection – 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.

As evidenced from the joint analysis of Articles 2, 4, 9, 16 and 17 detailed above, the regulatory scope would not seem to extend to mere owners of cryptocurrency. Indeed, as evidenced from the above lists, the only reference to possession (*tenencia*) is under Article 4, but it seems to refer to players in the intermediation field, rather than to individuals and corporations who merely own cryptocurrency.

Accordingly, in our opinion, ownership is not subject to requirements or controls.

Mining

As indicated, mining cryptocurrency in Venezuela is permitted, subject to prior authorisation, pursuant to Article 9 of the Presidential Decree; and registration, pursuant to Articles 16 and 17 thereof.

Border restrictions and declaration

No specific rules regarding these matters have been enacted in connection to cryptocurrencies. General rules contained in the Law on the Central Bank of Venezuela and the Organic Law Against Organised 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 is extensible to cryptocurrency transactions.

Finally, Article 15 of the Law on Exchange Regime and its Crimes established an obligation to notify CENCOEX of any import, export, entry or exit of foreign currency in amounts that exceed US$ 10,000. Since the term *foreign currency* was so broadly defined – and may have been deemed to include cryptocurrency – the authorities may have argued that cryptocurrency transactions were subject to this requirement. However, we believe that this makes no sense, in practical terms, because cryptocurrencies are not properly imported or exported. We believe for an obligation of this kind to be applicable to cryptocurrency, it would probably have to be imposed regarding the owner, that is, it would have to refer to the holdings of the person entering or exiting the country, rather than to the transactions themselves. In any case, as indicated, the law in reference was abrogated by the Constitutional Assembly, but we question the validity of the abrogation.

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.

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Endnotes

1. The Constitutional Assembly is a body elected in 2017 to enact a new Constitution. References to its validity and functions are made below.

2. At the time of submission of this paper, the only regulation published in this regard was a constitutional decree issued by the Constitutional Assembly, which merely stated that the sovereign bolivar would have a reference of value linked to the petro, which in turn is associated with the price of Venezuelan oil (*cuyo valor referencial, estará anclado al valor del Petro, el cual estará asociado al precio del barril de petróleo venezolano*). But how this link would work was unknown as of this date.
3. 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.
4. President. Decreto Nº 3.196, mediante el cual se autoriza la creación de la Superintendencia de los Criptoactivos y actividades conexas venezolana. Official Gazette Nº 6.346 (E), December 8, 2017, Preamble.
5. 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 visit 7/20/2018).
6. 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. (Last visit 7/20/2018).
7. President. Decreto Nº 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 Nº 41.347. February 23, 2018.
8. Constitutional Assembly. Decreto Constituyente sobre Criptoactivos y la Criptomoneda Soberana Petro. Official Gazette Nº 6.370 (E), April 9, 2018, Articles 5 and 12.
9. Lepervanche, Luisa & 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 visit: 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 visit: 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 visit: 7/20/2018).
10. 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 visit: 7/20/2018).

11. Lepervanche, Luisa y Acedo Sucre, Manuel*, op. cit.*. Capriles Baena, Gonzalo, *op.cit*. Hernández, José Ignacio, *op.cit*.
12. 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 (Last visit 7/20/2018).
13. 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, question Nº 564 (Last visit: 7/20/2018).
14. National Assembly. Acuerdo sobre la emisión de la criptomoneda Petro. 9, see Endnote 12 above.
15. Presidente de la República. Decreto Nº 3.355, mediante el cual se crea la Superintendencia de los Criptoactivos y Actividades Conexas Venezolana (SUPCACVEN), como servicio desconcentrado sin personalidad jurídica, administrado, supervisado e integrado a la Vicepresidencia de la República Bolivariana de Venezuela, con capacidad de gestión presupuestaria, administrativa y financiera sobre los recursos que correspondan. Official Gazette Nº 6.371 (E). April 9, 2018.
16. Please note that although SUPCACVEN was, according to Decree 3.355, "created" on April 9, 2018, although it had already been operating for five months. Indeed, the appointment of the corresponding Superintendent was published in the Official Gazette in December 8, 2018 and such Superintendent has been acting, even jointly with other public officials, since that date. Further, SUPCACVEN's Twitter account indicates that it was created in December 2018.
17. Constitutional Assembly. Decreto Constituyente mediante el cual se establece la Derogatoria del Régimen Cambiario y sus Ilícitos. Official Gazette Nº 41.452, dated August 2, 2018.
18. There are two reasons that lead us to argue that this decree is null and void. First, as indicated above, the Constitutional Assembly's election violated the Constitution and, thus, is null and void. Second, laws may only be abrogated by other laws, as established under Article 218 of the Constitution and Article 7 of the Civil Code. The Law on the Exchange Regime and its Crimes is a decree issued by the President, under legislative delegation (*habilitación legislativa*) pursuant Articles 236.8 and 203 of the Constitution. Thus, it is considered to be a law and, therefore, it may only be abrogated by another law. A decree issued by the Constitutional Assembly does not qualify as a law and, thus, may not abrogate one. We have also expressed above our position against the argument that the Constitutional Assembly is empowered with legislative powers.
19. Presidente de la República. Decreto Nº 3.355, mediante el cual se crea la Superintendencia de los Criptoactivos y Actividades Conexas Venezolana (SUPCACVEN), como servicio desconcentrado sin personalidad jurídica, administrado, supervisado e integrado a la Vicepresidencia de la República Bolivariana de Venezuela, con capacidad de gestión presupuestaria, administrativa y financiera sobre los recursos que correspondan. Official Gazette Nº 6.371 (E). April 9, 2018.
20. Please note that although SUPCACVEN was, according to Decree 3.355, "created" on April 9, 2018, although it had already been operating for five months. Indeed, the appointment of the corresponding Superintendent was published in the Official Gazette in December 8, 2018 and such Superintendent has been acting, even jointly with other public officials, since that date. Further, SUPCACVEN's Twitter account indicates that it was created in December 2018.

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