

Venezuela

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1. Fintech regulatory framework: a summary of the most relevant laws and regulations concerning fintech and financial innovation.

In 2021, the Superintendency of Banks and Other Financial Institutions (Sudeban) issued the Rules Governing the Financial Technology Services of the Banking Sector ('Fintech Regulations').¹ These regulations introduce a structured framework for the operation of financial technology entities in Venezuela, particularly those engaging in services aimed at the banking sector.

Under the Fintech Regulations, financial technology institutions in the banking sector (*instituciones de tecnología financiera del sector bancario* or ITFBs) must obtain prior authorisation from Sudeban to provide financial technology services to licensed banks in Venezuela ('fintech licence'). These services include a wide range of offerings, including payment services, e-wallet features, onboarding, multiplatform banking, risk management, voice recognition solutions and banking as a service (BaaS) solutions.²

ITFBs are required to comply with Sudeban's regulations (*Normativa Prudencial*), including Sudeban's anti-money laundering (AML) regulations.³ Moreover, these entities fall under Sudeban's supervision and oversight. Sudeban possesses substantial supervisory authority, allowing it to inspect, monitor, supervise and manage all aspects of ITFBs' operations. This authority extends to the examination of financial records, accounts, files, computer systems, documents, databases, electronic and printed correspondence, and other materials relevant to their operations.

The Fintech Regulations also include provisions governing advertising. Until financial technology companies obtain their licences from Sudeban, they are prohibited from advertising their services in Venezuela.⁴

In line with the Fintech Regulations, local banks are required to be responsible for monitoring the use of and access to their systems to ensure that unauthorised fintech activities are not offered.⁵

2. Regulations on crypto assets: a summary of the legal framework regarding crypto assets and how they are regulated.

In Venezuela, cryptocurrencies are legally recognised as a distinct asset class, separate from traditional categories such as securities or commodities. The Constitutional Decree on the Comprehensive System of Crypto Assets of 2019 (the 'Crypto Assets Law') establishes a comprehensive and autonomous framework governing all matters related to these digital assets. Within this framework, crypto assets – treated as a subset of digital assets – are classified as intangible property, such that they may be the subject of property rights and commercial transactions in the same manner as other intangible assets.

1 Regulation No 001-21. Rules Governing the Financial Technology Services of the Banking Sector ('Fintech Regulations'), *Official Gazette* No 42.162 of 6 July 2021.

2 Art 16, Fintech Regulations.

3 Regulation No 083.18. Rules on the Management and Oversight of Risks Related to Money Laundering, Terrorism Financing, and the Financing of the Proliferation of Weapons of Mass Destruction applicable to Banking Sector Institutions. *Official Gazette* No 41.566 of 17 January 2019.

4 Art 41, Fintech Regulations.

5 Art 34, *ibid.*

The regulatory landscape for crypto assets in Venezuela consists primarily of two key components: (1) the Crypto Assets Law; and (2) the regulations established by the Venezuelan crypto asset regulatory agency, Sunacrip (Superintendencia Nacional de Criptoactivos y Actividades Conexas). This regulatory framework encompasses various aspects, including the general operating conditions for crypto asset exchanges, AML regulations, and digital crypto mining regulations.

The Crypto Assets Law was enacted in January 2019 with the goal of providing a regulatory framework for the crypto asset ecosystem in Venezuela. It holds a broad scope, encompassing all goods, services, securities or activities related to the constitution, issuance, organisation, operation, and use of crypto assets and sovereign crypto assets in Venezuela. Furthermore, it extends to the purchase, sale, use, distribution and exchange of any products or services derived from crypto assets and their associated activities.⁶

In 2019, Sunacrip issued the regulations on the operation of crypto asset exchanges (the Crypto Exchange Regulations), aimed at defining the operational rules governing crypto asset exchanges. These regulations establish the parameters for crypto exchanges, which serve as platforms facilitating lawful transactions using crypto assets within secondary markets.⁷

Subsequently, in April 2021, Sunacrip issued regulations on anti-money laundering and combat of the financing of terrorism (AML/CFT Regulations). The AML/CFT Regulations set out essential guidelines, actions, and controls to be implemented by subject entities, with the aim of preventing and mitigating the risk of their operations being exploited for money laundering or terrorist financing purposes. The scope of the AML/CFT Regulations extends to include all individuals, and both public and private entities, engaged in activities involving virtual assets or crypto assets within or originating from the Venezuelan territory.⁸

The tax treatment of crypto assets falls under the provisions of the Income Tax Law.⁹ Generally, cryptocurrencies are treated as capital assets, similar to stocks or bonds. Consequently, any enrichment derived from their sale, that is, a capital gain resulting from selling at a price higher than the acquisition cost, is considered taxable income. Conversely, losses generated from the sale or exchange of these assets may be deductible, provided they comply with the criteria of being normal and necessary expenses incurred for the purpose of producing income.¹⁰ All transactions are subject to the principle of territoriality, meaning that income (and associated losses) is considered Venezuelan-sourced and subject to local taxation if the economic activities giving rise to it occur within the country.¹¹

Crypto asset regulations are relatively recent, with most of them enacted in and after 2019. As a result, several services provided by offshore entities, such as crypto remittance and pool

6 Constituent Decree on the Comprehensive System of Crypto Assets ('Crypto Assets Law'). *Official Gazette* No 41.575 of 30 January 2019.

7 Regulation No 012-2019. Regulations for the operation of Exchange Houses in the Comprehensive System of Crypto Assets ('Crypto Exchange Regulations'). *Official Gazette* No 41.609 of 3 April 2019.

8 Regulation No 044-2021. Rules for the administration and oversight of risks related to money laundering, terrorism financing, and the financing of the proliferation of weapons of mass destruction, applicable to virtual asset service providers and to persons and entities that provide products and services through activities involving virtual assets, within the Integral System of Cryptoassets ('AML/CFT Regulations'), *Official Gazette* No 42.110 of 21 April 2021.

9 Income Tax Law. *Extraordinary Official Gazette* No 6.210 of 30 December 2015.

10 Art 27, Income Tax Law.

11 Art 6, *ibid*.

mining remittance services, are incompatible with the Venezuelan crypto asset regulations. Sunacrip has centralised these services within a specific platform under the management of the Venezuelan Government.

In March 2023, the President of Venezuela ordered the restructuring of Sunacrip.¹² The process, initially scheduled for six months, received three subsequent six-month extensions in September 2023,¹³ March 2024¹⁴ and September 2024.¹⁵ A five-member commission was tasked with submitting a comprehensive restructuring plan for presidential approval. This plan was to detail a new organisational and operational structure, propose amendments to the regulatory framework, and establish a clear timeline for implementation. To date, there has been no further extension nor any official news regarding the status of the restructuring process. Nevertheless, Sunacrip has continued to issue operating licences for exchanges, such as those granted to OHA Technology, CA and Crixto Venezuela, CA.

3. Payment service providers and digital wallets: a summary of regulations applying to payment service providers and/or digital wallets.

In 2018, the Central Bank of Venezuela issued the General Rules on Payment Systems and Nonbanking Payment Services Providers ('PSP Regulations').¹⁶ Under the PSP Regulations, any public or private entity, other than those entities integrated into the payment infrastructures of banking institutions, that provides (or intends to provide) payment services in bolivars will need to be authorised by the Central Bank of Venezuela.¹⁷

The Regulation distinguishes between payment systems administrators and non-banking payment services providers.

Payment systems administrators are defined as any legal entity – public or private – authorised by the Central Bank of Venezuela to operate a system whose main purpose is the processing and execution of orders for the transfer of funds and/or securities among its participants.¹⁸ Payment systems administrators must:

- ensure availability and operability;
- maintain participant contracts and internal operating rules;
- process transfer orders per those rules;

12 Decree No 4,788, ordering the restructuring of the National Superintendency of Sunacrip an Autonomous Institute attached to the Sectorial Vice Presidency of Economy; and appointing as members of the Restructuring Commission the citizens indicated therein. *Extraordinary Official Gazette* No 6.739 of 17 March 2023.

13 Decree No 4.865, whereby the period for the restructuring process of Sunacrip is extended for a term of six months, beginning on 17 September 2023. *Extraordinary Official Gazette* No 6.739 of 19 September 2023.

14 Decree No 4.926, whereby the period for the restructuring process of Sunacrip is extended for a term of six months, beginning on 17 March 2024. *Official Gazette* No 42.840 of 15 March 2024.

15 Decree No 5.003, whereby the period for the restructuring process of Sunacrip is extended for a term of six months, beginning on 17 September 2024. *Official Gazette* No 42.964 of 16 September 2024.

16 Regulation No 18-12-01. General Norms on payment systems and non-banking payment service providers operating in the country ('PSP Regulations'). *Official Gazette* No 41.547 of 17 December 2018.

17 Art 4, PSP Regulations.

18 Arts 2.1; 2.17, *ibid*.

- safeguard confidentiality and information security;
- establish contingency and complaint-handling procedures;
- keep comprehensive records; and
- maintain an orderly reserve fund equal to at least six months of operating expenses.

They must also keep documentation current, submit an annual external audit, notify the Central Bank and participants at least six months before exiting, and implement corrective actions as directed.¹⁹

On the other hand, nonbanking payment services providers (PSPs) are defined as any public or private legal entity authorised by the Central Bank of Venezuela to offer payment services in the country. These services involve executing transfer orders as instructed by users, with charges made against the funds held in their respective accounts.²⁰

PSPs authorised by the Central Bank of Venezuela under these regulations may:

- open payment accounts, known as *cuentas transaccionales*;
- provide customers with payment instruments for their payment transactions;
- handle the receipt or withdrawal of funds in cash, which involves crediting or debiting payment accounts;
- execute transfer and payment orders originating from a payment account; and
- offer money remittance services in bolivars.²¹

The PSP Regulations restrict PSPs to providing services in local currency only.²² Also, payment accounts offered by a PSP are limited to payment transactions. Such accounts may not accrue interest and are subject to the operating and commission rate restrictions set forth in regulations issued by the Central Bank of Venezuela.²³

Carrying out payment services activities without the relevant authorisation may constitute an infraction punishable by a fine.²⁴

¹⁹ Chapter 2, *ibid.*

²⁰ Arts 2.14; 2.16, *ibid.*

²¹ Art 23, *ibid.*

²² Art 2.14, *ibid.*

²³ Art 24, *ibid.*

²⁴ Third Final Provision, *ibid.*

4. Special support for fintechs: a description of special programmes supporting the fintech ecosystem, fintech startups (eg, regulatory sandboxes and accelerator programmes) and regulations regarding special support.

There are no special programmes or initiatives tailored to support fintech companies or startups. The Fintech Regulations do not mention any regulatory sandbox, accelerator programme, nor other incentive for fintech innovation. On the contrary, it imposes several requirements and restrictions on ITFBs.

5. Open banking: a summary of regulations regarding open banking and direct or indirect regulations that affect open banking.

In Venezuela, there is no dedicated open banking framework in place at present. However, open banking activities in the country are subject to regulation through existing legal frameworks:

- The Banking Sector Law prohibits banks and other financial institutions from sharing active and passive operations data with third parties without obtaining explicit consent from users.²⁵ Unauthorised data sharing is punishable by law, including potential imprisonment.²⁶
- Decision No 1318 of the Constitutional Chamber of the Supreme Court outlines guidelines for obtaining user consent to collect and transfer data. These guidelines ensure that data sharing practices adhere to constitutional principles and protect user rights.²⁷
- Regulations issued by Sudeban impose restrictions on financial data storage, including geographic limitations.
- The Fintech Regulations include a broad range of activities that can be carried out by ITFBs. These regulations create a framework that could potentially be utilised for open banking purposes.

While Venezuela currently lacks specific open banking regulations, these existing legal provisions and regulations serve as a foundation for governing data sharing and financial technology activities in the country. As the fintech landscape continues to evolve, these regulations may provide a basis for the development of open banking practices within Venezuela.

6. Regulation of virtual asset service providers.

The legal and regulatory framework for virtual asset service providers (VASPs) in Venezuela is primarily governed by the Crypto Assets Law of 2019. This decree establishes the foundational legal basis for virtual asset (VA) activities and grants the National Executive broad powers over the sector. This authority is exercised through Sunacrip, which is the enforcement agency tasked with regulating, promoting, coordinating and supervising crypto asset activities. Sunacrip can

25 Art 86, Banking Sector Law. *Official Gazette* No 37.313 of 8 December 2014.

26 Art 22, Law against Cybercrime. *Official Gazette* No 40.557 of 30 October 2001.

27 Ruling No 1318 of the Constitutional Chamber of the Supreme Court of Justice of 4 August 2011.

issue permits and licences, exercise control and perform inspections over operations, and impose sanctions on those who fail to comply with regulations, such as the AML/CFT and the Crypto Exchange Regulations.

Under Sunacrip's AML/CFT Regulations, VAs are defined as digital representations of value that can be digitally traded or transferred and may be used for payment or investment purposes. VAs do not include digital representations of fiat currencies.²⁸ VASPs – which constitute part of the subject entities of the regulations – are defined as any natural or legal person that, in the ordinary course of business, carries out one or more of the following activities for or on behalf of another person:

- *Exchange*: Facilitating the exchange of virtual assets for fiat currencies, or between one or more forms of virtual assets.
- *Transfer*: Moving virtual assets on behalf of another person from one VA address or account to another.
- *Custody and administration*: Providing safekeeping or administrative services for virtual assets or instruments (like private keys) that allow control over them.
- *Financial services*: Participating in or providing financial services related to the issuance, offering, and/or sale of a VA.²⁹

Any natural or legal person that intends to engage in activities involving virtual assets must obtain both a licence and registration from Sunacrip. In particular, operating a crypto asset exchange platform requires a Sunacrip-issued licence valid for a renewable one-year term. This licence is granted under two distinct categories:³⁰

- *General licence*: Authorises the crypto exchange platform to provide all services listed on Sunacrip's General Conditions for the Operation of Crypto Exchanges, which includes peer-to-peer (P2P) trading, crypto-to-crypto transactions, crypto-to-fiat transactions, payment services, fund management, and crypto management.
- *Special licence*: Grants authorisation to provide only one or several of those specific services.

In addition to licensing, all users and entities involved in crypto asset activities must register in the *Registro Integral de Servicios en Criptoactivos* (RISEC). The registration process for RISEC is typically completed online through Sunacrip's website.³¹

Pursuant to the AML/CFT Regulations, all public and private entities that provide products and services that involve virtual assets or crypto assets, in or from the territory of Venezuela, are

28 Art 4a, AML/CFT Regulations.

29 Art 2, *ibid*. Also, Art 23 of the PSP Regulations establishes that VASPs are authorised to conduct any of the following activities: open transactional accounts; issue payment instruments linked to a transactional account or a product account; conduct account-management activities; receive cash for credit to an account; distribute cash debited to an account; execute fund transfers or payment orders debited to an account; receive fund transfers or payments for credit to an account; provide clients with mechanisms for receiving payments; receive and send remittances in domestic currency, at users instruction, of funds associated with the accounts; and perform any other activity authorised by the Central Bank of Venezuela in the operating authorisation.

30 Art 4, Crypto Assets Law.

31 Art 30, *ibid*.

subject to oversight by Sunacrip. Therefore, Sunacrip may require a licence from foreign entities providing services in Venezuela. Failure to obtain the required licence may result in administrative fines for breaches of the VA regulations, as well as Venezuelan authorities imposing measures that restrict access to the platform's website, application or social media channels from Venezuela. However, it would be challenging to enforce such fines against a legal entity that has no presence or assets in Venezuela.

7. AML and the Travel Rule in crypto asset transactions.

Venezuela has adopted a comprehensive regulatory framework to impose AML/CTF obligations on VASPs. This framework is set forth mainly in the AML/CFT Regulations issued by Sunacrip, but also in the Crypto Exchange Regulations,³² and incorporates requirements analogous to the Financial Action Task Force (FATF) Recommendation 16 (the 'Travel Rule').

The AML/CFT Regulations impose specific know-your-customer (KYC) requirements on subject entities. For VA transfers exceeding €1,000 or its equivalent, subject entities must collect, verify and transmit specific information about both the originator and the beneficiary of the transfer.³³ The required information includes:

- the name of the originator and the beneficiary;
- an account or virtual wallet number for each, when applicable, or a unique reference number to track the transaction; and
- the originator's address, national identity number, or date and place of birth.³⁴

The required information must be transmitted immediately and securely, and must be sent simultaneously or concurrently with the VA transfer itself. Both the subject entity ordering the transfer and the subject entity beneficiary of the same must retain this required information. The regulations specify that any technology, software solution or tool is acceptable for the transmission, as the information is not required to be incorporated into the blockchain/distributed ledger; however, it must be effective, immediate and secure.³⁵

The regulation applies broadly to subject entities that provide products and services involving virtual assets in or from the territory of the Bolivarian Republic of Venezuela. Intermediary subject entities that facilitate transfers must ensure the required originator and beneficiary information accompanies the transfer throughout the entire transfer chain.³⁶

The regulatory and supervisory authority responsible for overseeing VASP compliance with AML/CTF obligations and the Travel Rule requirements is Sunacrip. Subject entities must also report to the

32 Art 6, Crypto Exchange Regulations.

33 Art 40, AML/CFT Regulations.

34 Art 41, *ibid*.

35 Art 42, *ibid*.

36 Art 2, *ibid*.

Unidad Nacional de Inteligencia Financiera, which receives the suspicious activity reports from the subject entities.³⁷

8. Enforcement and cross-border recognition of tokenisation and structuring of secured transactions involving crypto assets.

Venezuela currently lacks specific laws governing the tokenisation of real-world assets, digital bonds, or DeFi instruments. The legal and regulatory framework for digital assets focuses primarily on crypto assets under the Crypto Asset Law of 2019. The precise legal qualification of a tokenised asset remains unsettled, and is typically addressed through traditional Venezuelan civil and commercial law concepts.

The primary challenge in securing digital asset transactions lies in the tension between traditional Venezuelan security regulation and the intangible nature of crypto assets. The creation and perfection of conventional security interests require specific formalities under Venezuelan law, such as public registration, notarisation, or physical dispossession or control of the asset. These methods are often ill-suited for the nature of digital assets. There are no explicit regulations specifying notarisation, registration or stamp duty requirements to perfect a security interest specifically over crypto assets – a gap exacerbated by the intervention of Sunacrip since March 2023.

Under the Venezuelan Law of Private International Law (LDIP), the principle of party autonomy is generally respected for cross-border contractual obligations. Venezuelan jurisprudence has long recognised a party's choice of foreign law for contract interpretation and validity. However, a foreign law cannot be applied if it contravenes Venezuelan mandatory rules or public order. Therefore, while a clause selecting a foreign governing law for a crypto asset-related contract should generally be recognised by Venezuelan courts, any provision attempting to circumvent mandatory licensing, registration or AML/CFT regimes would be vulnerable on public order grounds. In terms of crossborder enforcement, foreign arbitral awards are generally recognisable and enforceable in Venezuela under the New York Convention, while foreign court judgments require *exequatur* before the Supreme Tribunal of Justice.

In the event of a documented default, a secured lender must initiate a judicial execution proceeding before the Venezuelan courts. Generally, enforcement over secured assets is carried out through a public auction. Venezuelan law forbids contractual clauses allowing a creditor to acquire the collateral directly upon a debtor's nonperformance or without an auction, a doctrine known as the prohibition of the *pacto comisorio*. The judicial procedure requires a court order, public announcement, the establishment of a base price, and a subsequent bidding process.

9. Litigation and jurisdiction on crypto assets: legal implications of disputes involving crypto assets.

Exclusive jurisdiction clauses are generally legally binding and enforceable under Venezuelan law. The LDIP regulates both express submission (through an explicit clause in the contract) and tacit submission (when a party responds to a lawsuit without contesting jurisdiction) as valid criteria for establishing jurisdiction.

³⁷ Art 17.10, *ibid*.

Despite this general recognition of party autonomy, the LDIP expressly rejects any possibility of submission to foreign courts or arbitrators if the case falls within Venezuelan courts' exclusive jurisdiction. Venezuelan jurisdiction is considered exclusive in cases relating to real rights over immovable property situated in Venezuela, matters where a settlement is not permissible under Venezuelan law, or cases that go against the essential principles of Venezuelan public order. An exclusive jurisdiction clause selecting a foreign forum is unenforceable if it conflicts with any of these mandatory Venezuelan jurisdiction rules.³⁸

10. Intellectual property and crypto assets: legal protection, ownership, enforcement and monetisation of IP rights related to digital and virtual assets.

In Venezuela, the protection of intellectual property is primarily governed by two key legal frameworks: the Industrial Property Law (IPL)³⁹ and the Copyright Law.⁴⁰ The IPL covers patents, utility models, industrial designs and trademarks, granting inventors and creators exclusive rights over their inventions and distinctive signs. Patents are available for new products, processes, machines and industrial designs that meet the requirements of novelty, inventive step, and industrial applicability. A patent confers upon its holder the exclusive privilege to exploit the industrial product or process that is the object of the patent. The law provides for a registration system, where rights are conferred upon the successful filing and approval of an application with the Autonomous Service of Intellectual Property (SAPI). Copyright law, on the other hand, protects original literary, artistic and scientific works, including software, without the need for registration, although registration is available and can serve as evidence in disputes.

Ownership of IP is generally attributed to the creator or inventor. For patents and industrial designs, the person or entity listed as the applicant in the official registry is the owner of said right. For copyright, the author is the initial rightsholder, but economic rights can be transferred or assigned by contract. In collaborative works, co-ownership is recognised, and the law provides mechanisms for resolving disputes among co-owners.

Intellectual property rights in Venezuela can be enforced through both civil and criminal proceedings. Under the IPL, anyone who infringes the rights of the legitimate holder of a patent by manufacturing, executing, or using a patent for industrial and profit purposes without consent, can be punished with a prison sentence of one to twelve months. Copyright holders can seek judicial remedies to stop unauthorised use, claim damages, and request the seizure of infringing copies. Criminal sanctions may apply in cases of wilful infringement, counterfeiting or piracy. The courts have the authority to order interim measures, such as seizures or injunctions, to prevent ongoing or imminent infringement.

When considering protection in foreign jurisdictions, several factors are evaluated, including the commercial value of the invention or brand in the target market, the likelihood of infringement, the strength and enforceability of IP rights in the foreign country, and the costs associated with obtaining and maintaining protection. It is important to note that for almost two decades,

38 Art 47 of the Law on Private International Law. *Official Gazette* No 36.511 of 6 August 1998.

39 Intellectual Property Law. *Official Gazette* No 25.227 of 10 December 1956.

40 Copyright Law. *Extraordinary Official Gazette* No 4.638 of 1 October 1993.

Venezuela has ceased to comply with the obligations imposed by the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights). As a result, Venezuelan legislation has not met the minimum standards set forth by it. Therefore, the choice of jurisdictions for seeking IP protection is typically guided by the markets where the product or service will be commercialised, manufactured or where significant competitors operate, but must also take into account the current limitations on the ability to protect innovations and inventions in Venezuela.

The monetisation of IP rights over crypto assets, such as non-fungible tokens (NFTs) or blockchain-based digital assets, is an emerging area in Venezuela. The legal enforceability of such transactions and the recognition of ownership transfers via blockchain may face challenges due to the lack of regulation and the need for compliance with existing IP registration. While monetisation of IP associated with crypto assets is technically possible, it is subject to strict governmental controls, registration and comprehensive compliance with financial and crypto-specific regulations.



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