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US DOJ Responds to Biden Executive Order on Digital Assets

On March 9, 2022, President Joseph Biden issued Executive Order 14067, which charged the Department of Justice (in consultation with the Departments of State, Treasury, and Homeland Security) to submit a report on how to strengthen international law enforcement cooperation for detecting, investigating and prosecuting criminal activity related to digital assets. On June 6, 2022, Attorney General Merrick Garland submitted his report to the President (“How to Strengthen International Law Enforcement Cooperation for Detecting, Investigating, and Prosecuting Criminal Activity Related to Digital Assets”).

The law enforcement challenges of digital currencies are straightforward. Due to their decentralized nature, digital currency transactions can occur faster and across borders far more easily than traditional currency transactions. In addition, regulation of digital currencies varies from country to country. These factors, combined with the lack of uniform legal authorities and outdated law enforcement tools, present significant obstacles to international cooperation in the digital currency space.

According to the report, U.S. agencies are already addressing criminal activity in the digital currency sphere in several ways.

First, U.S. law enforcement agencies are developing and sharing expertise with foreign counterparts. These efforts not only build capacity within the United States to address the illicit use of cryptocurrency, but they also promote international cooperation. Examples include the following:

FBI: Virtual Assets Unit, housed within the Financial Crimes Division (VAU), created in February 2022. The VAU acts as a nerve center for the FBI’s virtual

currency programs where intelligence, technology, and operational support will flow to other divisions.

Transnational and High-Tech Crime Global Law Enforcement Network (GLEN), co-managed by DOJ and State. GLEN's worldwide law enforcement capacity-building network includes International Computer Hacking and Intellectual Property attorney advisers, computer forensic analysts, and federal law enforcement agents. This network delivers training and technical assistance to foreign law enforcement, prosecutorial, and judicial partners to combat cybercrime, and assists in collecting and using electronic evidence to combat all types of crime.

Second, U.S. agencies participate in international standard-setting fora, such as the following: Financial Action Task Force (FATF)—publishes guidance for anti-money laundering/counter-financing of terrorism (AML/CFT) regulations.

International Organization of Securities Commissions (IOSCO)—among other things, provides a forum to share information and experiences among member regulators of securities markets (The U.S. Securities and Exchange Commission and Commodity Futures Trading Commission participate in IOSCO).

Finally, the Department of the Treasury participates in international law enforcement efforts through the Office of Foreign Assets Control (OFAC). An example of OFAC's work is a 2021 sanctions compliance guidance document that highlights proactive steps companies can take to mitigate potential sanctions risks associated with ransomware payments.

The Attorney General noted that significant challenges remain in this arena and gave recommendations for tackling these challenges:

Strengthen and expand U.S. law enforcement operational and capacity-building efforts with foreign law enforcement partners.

Deepen information sharing, early coordination and deconfliction efforts.

Address jurisdictional arbitrage through closing gaps in AML/CFT regulation and supervision.

What this means to you

The President's Executive Order and the Attorney General's report make clear that not only is the United States pursuing a whole-of-government approach to regulating and policing the cryptocurrency space, but also that it intends to exert its substantial international influence to build

capacity of and promote cooperation between other nations to address perceived threats. Companies operating in the digital currency milieu, including those who rely on or utilize cryptocurrency for any part of their business, should expect a steady increase in inquiries from both U.S. and foreign law enforcement authorities.

Contact us

Please contact our team of cryptocurrency professionals or your Husch Blackwell lawyer if you require any assistance or have any questions regarding the regulation of digital assets.