
Hughes Hubbard & Reed

Designation of Criminal Cartels as Foreign Terrorist Organizations Increases Compliance Risks for Companies (US or Not) Operating in Mexico and Greater Latin America

Client Advisories

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Feb. 19, 2025 — Among the flurry of executive orders (EO) issued on his first day in office, President Donald Trump declared a national emergency related to an extraordinary threat posed by international criminal cartels and directed members of his cabinet to take actions necessary to designate such cartels and their members as Foreign Terrorist Organizations (FTO) and/or Specially Designated Global Terrorists (SDGT).¹ The EO identifies the policy of the United States to be “the total elimination of these organizations’ presence in the United States and their ability to threaten the territory, safety and security of the United States.” To further support the EO, Attorney General Pam Bondi issued a memorandum prioritizing investigations and prosecutions of cartels and transnational criminal organizations, removing procedural hurdles to bringing prosecutions, and reallocating Department of Justice (DOJ) resources in support of the president’s “total elimination” policy.²

On Feb. 19, the Department of State designated six Mexican cartels — Sinaloa Cartel, Jalisco New Generation Cartel, Northeast Cartel, Gulf Cartel, United Cartels and La Neuvo Familia Michoacana — as well as Venezuela’s Tren de Aragua and El Salvador’s Mara Salvatrucha (MS-13) as FTOs.

Previous administrations considered, but decided against, designating drug cartels and other transnational criminal organizations as FTOs. They decided against doing so in part due to the significant compliance burdens and potential criminal and civil liability that would be placed on legitimate businesses doing business in regions where FTOs operate. Financial institutions must expand screening to include not only the FTOs and SDGTs that are specifically designated but also “agents” who may be acting, directly or indirectly, on behalf of a designee. Other companies, including those that operate or source from factories taking advantage of the Maquiladora program, could be held criminally and civilly liable for making protection payments or contracting with companies known or suspected to have an affiliation with a cartel or cartel member. And anyone deemed to have provided material support to an FTO could be liable in U.S. courts to the victims of violence perpetrated by that organization.

In this client advisory, we discuss the specific implications for companies operating in Mexico and greater Latin America.

Key Takeaways:

- U.S. and non-U.S. companies and individuals risk criminal or civil liability for dealing with FTO-designated cartels or their affiliates, including making protection payments or contracting with companies with known or suspected links to the cartel.
- Financial institutions must block financial transactions involving the assets of FTOs and retain and report funds of FTOs and their agents, which imposes an exceptional obligation to identify parties to a transaction who may be acting on behalf of an FTO.
- Companies operating in regions where cartels are known to have significant influence should prioritize identifying any potential links to FTOs and SDGTs, including among customers, suppliers and service providers. Doing business with an FTO or entity owned by or affiliated with an FTO can subject companies to civil and criminal penalties, as can making protection payments to ensure the security of facilities, personnel or shipments.
- Companies may face secondary liability to victims of cartel violence if found to have knowingly provided “material support” to an FTO or SDGT.

Analysis

Why It Matters

Under the Foreign Terrorist Organizations Sanctions Regulations, U.S. financial institutions (e.g., banks, insurance companies, credit card companies, real estate companies) must block “all financial transactions involving any assets” of an FTO and “any funds in which the designated foreign terrorist organization or its agent has an interest.”³ With the expected designations following the EO, this will now include certain cartels and any business (legitimate or illegitimate) in which those cartels have any interest.

Typically under Office of Foreign Assets Control (OFAC) regulations, U.S. financial institutions are required to block all funds in which designated persons — such as those identified to the Specially Designated Nationals and Blocked Persons list — or entities that are owned 50% or more by such designated persons have an interest. An FTO designation, however, imposes a significantly greater burden on financial institutions, in that they must take additional steps to evaluate and determine whether individuals or entities qualify as agents of an FTO and therefore are also subject to blocking. As a practical matter, this burden will also reach non-U.S. financial institutions that will be required to collect and provide additional information to U.S. financial institutions seeking clarification and reassurance that FTOs and their agents do not have an interest in payments and transactions.

For violations of the FTO sanctions regulations, OFAC may impose civil monetary penalties of up to the greater of \$377,700 per transaction or twice the amount that the financial institution was required to block and retain.

The impact of these designations also extends beyond financial institutions. The U.S. Criminal Code prohibits any person — U.S. or non-U.S., company or individual — from “knowingly provid[ing] material support or resources” to an FTO.⁴ “Material support” is broadly defined as “any property, tangible or intangible, or service” and specifically includes “currency or monetary instruments.” Material support can include engaging in otherwise lawful commercial transactions with an FTO or an entity that is owned 50% or more by an FTO from which the FTO derives value. It can also include making “protection payments” to allow continued operations or to ensure the safety of facilities, personnel or shipments.

Finally, the Anti-Terrorism Act creates secondary liability that could allow private plaintiffs who have been victims of violence at the hands of an FTO to seek monetary damages from companies that have allegedly “aided and abetted” terrorist activity by providing material support to that FTO.

Examples include:

- In 2007, Chiquita Brands International Inc. pled guilty and agreed to a \$25 million fine for having made \$1.7 million in protection payments over a seven-year period to the Colombian paramilitary group AUC, an FTO.⁵ In 2024, Chiquita was ordered to pay \$38.3 million to the families of eight Colombian victims of AUC violence in a suit in the Southern District of Florida.⁶
- In 2022, Lafarge S.A. pled guilty to conspiring to provide material support to ISIS and paid a \$777.78 million fine.⁷ Lafarge admitted to paying ISIS approximately \$6 million in exchange for permission to operate a cement plant in Syria from 2013 to 2014. Lafarge currently faces two suits in the Eastern District of New York brought by U.S. and Yazidi victims of ISIS violence, including the families of two U.S. journalists who were beheaded on camera.⁸

Considerations for Companies Operating in the Region

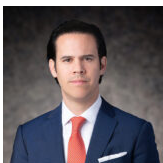
Now that the designations resulting from the EO are known, companies operating in regions that are likely to be affected should prepare to re-assess and mitigate their potentially associated compliance and litigation risks. Such preparations could include reevaluating (and enhancing as appropriate):

- Compliance and enterprise risk assessments
- Third-party and supplier due diligence processes
- Know Your Customer and other sanctions screening processes
- Prior responses to reports or allegations of cartel-related activity

Our Sanctions, Export Controls & Anti-Money Laundering team is monitoring developments and is available to discuss effective risk-based strategies to mitigate the compliance and enforcement risks that FTO and SDGT designations may create. Please contact us if you would like to speak further about any of the above.

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1. The White House, Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists, [Executive Order](#) (Jan. 20, 2025). [↪](#)
 2. [Memorandum](#), "Total Elimination of Cartels and Transnational Criminal Organizations," DOJ (Feb. 5, 2025). [↪](#)
 3. 31 C.F.R. § 597.201. [↪](#)
 4. 18 U.S.C. § 2339B. [↪](#)
 5. [Press Release](#), "Chiquita Brands International Pleads Guilty to Making Payments to a Designated Terrorist Organization and Agrees to Pay \$25 Million Fine," DOJ (Mar. 19, 2007). [↪](#)
 6. Jane Doe 8, et al., v. Chiquita Brands International, Inc., et al., 0:08-md-01916 (S.D. Fla.). [↪](#)
 7. [Press Release](#), "Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations," DOJ (Oct. 18, 2022). [↪](#)
 8. Foley et al. v. Lafarge S.A. et al., 1:23-cv-05691 (E.D.N.Y.); Murad et al. v. Lafarge S.A. et al., No. 1:23-cv-09186 (E.D.N.Y.). [↪](#)

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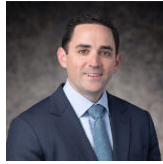
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