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New terrorist organization designations: Implications for U.S. and global companies

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President Trump's recent executive order directing the designation of cartels and transnational criminal organizations as terrorist organizations—as well as broader government efforts to more aggressively pursue these entities—is likely to shift focus from more traditional types of corporate enforcement and create corresponding risk for companies in Mexico and Latin America. Companies should review their risk-based compliance programs to ensure that they are adequate to mitigate any new risks.

On January 20, President Trump issued Executive Order 14157 (the Executive Order), instructing the State Department to consider designating cartels and transnational criminal organizations (TCOs) as Foreign Terrorist Organizations (FTOs) and Specially Designated Global Terrorists (SDGTs) (together, "designated terrorist organizations" or DTOs). The Executive Order furthers the aim of the Trump administration to pursue the "total elimination" of cartels. On February 5, the Justice Department (DOJ) issued its own, corollary guidance that redirects DOJ resources and policies toward the goal of "total elimination." In addition, on February 20, the State Department designated eight cartels operating in Mexico and Latin America as DTOs, consistent with the Executive Order.

The new DTO designations—coupled with DOJ's new focus on prosecuting transnational cartel activity—may increase the risk to U.S. and multinational companies operating in Mexico and Latin America, including under criminal and civil laws prohibiting the provision of "material support" and other improper assistance to terrorist organizations. DOJ has rarely prosecuted companies for providing material support to terrorist groups, and almost all of the cartels and TCOs designated by the State Department pursuant to the Executive Order were already blocked entities under U.S. sanctions. However, given the uncertain enforcement landscape under the Trump administration and a renewed focus on stamping out transnational criminal activity with domestic impacts—including through the use of more traditional corporate enforcement tools like the Foreign Corrupt Practices Act (FCPA) and Bank Secrecy Act, as well as the use of sanctions—companies operating and acquiring businesses in Mexico and Latin America, as well as other high-risk regions, should review their risk-based compliance programs to ensure that they are adequate to mitigate any new risks.

The administration's day-one focus on cartels

The Executive Order announced the "total elimination" of drug cartels and TCOs as the policy of the federal government. To this end, the Executive Order directed the Secretary of State—in consultation with the Secretary of the Treasury, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence—to make a recommendation regarding any cartel that should be designated as a DTO. The Executive Order provided that these cartels "functionally control, through a campaign of assassination, terror, rape, and brute force nearly all illegal traffic across the southern border of the United States," and that their activities "threaten the safety of the American people, the security of the United States, and the stability of the international order in the Western Hemisphere." The Executive Order also provided, consistent with widespread media reports, that in some portions of Mexico, cartels "control[] nearly all aspects of society."

The Executive Order named Tren de Aragua (TdA) and La Mara Salvatrucha (MS-13) as examples of cartels that pose such threats. Both cartels had previously been sanctioned by the Office of Foreign Assets Control (OFAC), as described below.[1]

Consistent with the Executive Order, Attorney General Pam Bondi issued a memorandum on February 5, 2025, that redirects DOJ resources towards the goal of "total elimination" of cartels and TCOs (the Bondi Memo). Among other things, the Bondi Memo directs DOJ prosecutors to use criminal terrorism, sanctions, anti-corruption, and money laundering statutes to "eliminat[e]" the threats posed by the cartels. On its face, the Bondi Memo focuses on cartels themselves, but its express reference to the federal "material support" laws—which may apply to third parties (including corporations) that provide material support to DTOs—means companies must be attuned to potential criminal and civil risk when operating, or considering operating, in areas where cartels are known to be active.

On February 20, 2025, the State Department designated eight organizations as both FTOs and SDGTs: (1) TdA; (2) MS-13; (3) Cartel de Sinaloa (Sinaloa Cartel); (4) Cartel de Jalisco Nueva Generacion (CJNG); (5) Cartel del Noreste (CDN); (6) La Nueva Familia Michoacana (LNFM); (7) Carteles Unidos (CU); and (8) Cartel del Golfo (CDG). With the exception of CU, each of these organizations had previously been designated by OFAC pursuant to counter-narcotics or transnational organized crime sanctions authorities.

Consistent with these executive actions, U.S. and multinational companies operating in Mexico, Latin America, and other high-risk jurisdictions should consider their legal risk under federal laws that prohibit providing "material support" to terrorists, the FCPA, and various sanctions laws and regulations.

Risk of criminal liability under federal "material support" laws

The criminal "material support" provisions (as relevant here, those found at 18 U.S.C. § 2339B) provide for extraterritorial jurisdiction over U.S. persons and, with respect to foreign persons, extend to conduct that occurs in whole or in part in the United States, or where the offense "occurs in or affects" interstate or foreign commerce. This means non-U.S. companies could face liability even for payments in U.S. dollars or other transactions that merely transit U.S. mail or wire facilities. And while a U.S. company cannot typically be held liable for the activity of a foreign subsidiary, liability may attach if one is the alter ego or agent of the other.

To be liable as a principal under the federal material support provisions, DOJ must show that a defendant (1) knowingly, (2) provides, (3) material support, (4) to a terrorist organization. Because "material support" is defined expansively under federal law—encompassing even indirect financial support, as well as the provision of services and other forms of support—liability turns on a company's knowledge, with the government required to show that a defendant knew both that it was providing material support to an organization and that the organization engaged in terrorist activity. At least some courts have held that the knowledge requirement can be satisfied by a showing of deliberate indifference or willful blindness.

But the enforcement landscape is far from clear. Criminal prosecutions of companies by DOJ for providing material support to terrorist groups are rare. DOJ has previously brought two criminal prosecutions against corporations under various federal anti-terrorism laws. In 2007, Chiquita Brands pled guilty to engaging in transactions with an SDGT—namely, by making millions of dollars of payments to the United Self-Defense Forces of Colombia, a violent, right-wing terrorist organization. Separately, in 2022, the French corporation Lafarge S.A. pled guilty to conspiring to provide material support to the Islamic State of Iraq and al-Sham (ISIS) and the al-Nusrah Front (ANF) years prior, in 2013 and 2014; also implicated in the scheme was Lafarge's Syrian subsidiary, which had made the payments to ISIS and ANF. Lafarge S.A. did not disclose the misconduct during its acquisition by a third-party competitor company. Moreover, in a separate memorandum issued on February 5, 2025, AG Bondi disbanded the Corporate Enforcement Unit of the National Security Division (NSD), which typically has handled and has expertise in such prosecutions.

That said, the Bondi Memo expressly authorizes U.S. Attorney's Offices to file terrorism charges without seeking NSD approval, and the statute of limitations for material support charges, at eight years, extends well beyond President Trump's current term. There may also be significant reputational risks to companies accused of supporting, even indirectly, a terrorist group.

Risk of civil liability under the Anti-Terrorism Act

Under the Anti-Terrorism Act (ATA), there is a separate, private, civil cause of action (found at 18 U.S.C. § 2333) for U.S. victims of international terrorism against (1) those who are directly liable for causing an act of international terrorism, and (2) for any such act committed, planned, or authorized by a DTO, those who aided and abetted the act, or those who

conspired with the person who committed the act. Like Section 2339B, Section 2333 applies extraterritorially, subject to a plaintiff's ability to establish personal jurisdiction over each defendant. Liability under Section 2333 allows the plaintiff to seek treble damages and attorney's fees from the defendant. Recent examples of corporate defendants in civil material support lawsuits include financial institutions, social media and technology companies, and other corporations.

Past civil suits under the ATA have most often proceeded under aiding and abetting theories, which require a plaintiff to allege: (1) an injury arising from an act of international terrorism, (2) that the act was committed, planned, or authorized by a DTO, and (3) that the defendant aided or abetted an act of international terrorism by knowingly providing substantial assistance. Last year, the Supreme Court held that to satisfy the requirement of "knowing provision" of substantial assistance, the plaintiff must prove the defendant consciously, voluntarily, and culpably participated in the DTO's wrongdoing so as to help make it succeed.

Risks under the FCPA

As we covered in a recent update, on February 10, 2025, President Trump issued an executive order pausing new FCPA investigations and enforcement actions for 180 days while the AG determines appropriate guidelines for such enforcement. During that period, the AG has the ability to approve new investigations and enforcement actions on a case-by-case basis. One area where such approvals may be granted are cases linked to cartels and TCOs. Indeed, the Bondi Memo directs the FCPA Unit and Money Laundering and Asset Recovery Section to "prioritize investigations related to foreign bribery that facilitates the criminal operations of Cartels and TCOs, and shift focus away from investigations and cases that do not involve such a connection."

As has been publicly reported, the FCPA Unit has previously investigated corporate defendants in circumstances where civil material support lawsuits alleged that corporate defendants made improper payments to DTOs. Thus, even with the disbanding of NSD's Corporate Enforcement Unit and a likely narrowing of FCPA enforcement, companies with operations in or exposure to countries with DTO activity may still face FCPA risk for any payments to DTOs, especially where those DTOs are functioning as de facto state actors. In addition, depending on how broadly the Bondi Memo is interpreted, companies could face additional risk where third parties or joint venture partners are associated with or otherwise linked to DTOs, or where companies pay bribes to foreign officials who are supporting DTOs.

Risks under existing sanctions laws and regulations

As noted above, most of the organizations designated by the State Department as DTOs on February 20 had previously been sanctioned by the Treasury Department, with U.S. companies—as well as other companies subject to U.S. jurisdiction, such as those making U.S. dollar payments—already prohibited from providing services and goods to them. As such, designating these organizations as DTOs does not change the scope of applicable sanctions prohibitions and, with two exceptions, does not otherwise have legal significance relative to the existing sanctions framework. However, the prioritization of cartel-related offenses may increase the practical risk of sanctions enforcement against companies active in high-risk jurisdictions or that otherwise engage in activities that could intersect with sanctioned cartels.

There are two areas where designation of cartels as DTOs does change the sanctions landscape. First, for entities currently designated under the Kingpin Act, redesignation as SDGTs allows OFAC and prosecutors to take advantage of the 10-year statute of limitations under the International Emergency Economic Powers Act (IEEPA) (as compared to five years under the Kingpin Act) for violations occurring after the SDGT designation. Second, Section 219 of the Iran Threat Reduction and Syria Human Rights Accountability Act requires U.S. issuers to disclose in annual and quarterly SEC reports if the issuer or an affiliate has engaged in certain transactions, primarily but not exclusively relating to Iran, during the period covered by the report. Among other things, an issuer must disclose if it or its affiliates knowingly conducted any transaction with a person whose property is blocked by virtue of their designation as a SDGT. Transactions with SDGTs must be disclosed even if otherwise lawful, including if they are licensed by OFAC. This requirement does not currently apply with respect to cartels designated under other sanctions authorities, and so would be a new consequence of their designation as DTOs.

Key takeaways

It remains to be seen how the various executive actions described above will work in practice, but even during this period of uncertainty, there are a few key takeaways that U.S. and foreign companies operating in high-risk jurisdictions, including Mexico and Latin America, should keep in mind:

- First, although the risk landscape is uncertain, the possibility that companies operating in or with exposure to cartel-dominated areas of Mexico and Latin America could face criminal (or civil) risk under federal law in the U.S. cannot be ruled out. There is not a significant record of enforcement under the relevant U.S. anti-terrorism provisions and the administration's early focus appears to be on transnational criminal actors themselves rather than companies that may better be characterized as victims of such actors. But, as has widely been reported, vast regions of Mexico and Latin America are controlled or otherwise dominated by cartels, and are now embedded even in legitimate industries and supply chains. And, as always, more serious and culpable conduct is more likely to draw scrutiny from U.S. law enforcement, especially in light of the eight-year limitations period applicable to material support offenses.
- Second, the baseline measures for managing this risk should be a company's internal controls and existing sanctions, FCPA, and anti-money laundering compliance programs—including pre- and post-acquisition diligence processes. Any new risk posed by the Trump administration's focus on cartels is incremental and, in most cases, can be addressed by strengthening, refining, or updating existing controls.
- Third, whether new or enhanced compliance measures are necessary should be informed by a risk-based analysis, keyed to a company's degree of suspicion that aspects of its operations are exposed to cartel activity. For instance, whereas companies with actual knowledge that a Mexico-based vendor or supplier is cartel-connected would be well-advised to terminate that third-party relationship, mere suspicion of cartel activity or awareness of red flags may be best addressed by further, targeted diligence and monitoring. In addition, because regulators or litigants may seek to establish scienter under the material support laws by a showing of willful blindness or deliberate indifference, companies should consider holistically all red flags that may exist across their business operations.
- Fourth, given the Trump administration's emphasis on disrupting cartel activity, companies who become aware of such activity—in the U.S. or abroad—or who are facing demands for payment or other threats should consider reporting such concerns to law enforcement in the United States. Active partnership with U.S. law enforcement may mitigate legal risk, help position companies as victims of cartel activity, and at the very least enhance cooperation credit in any future enforcement action. With respect to voluntary disclosure, although such reporting is a difficult decision that should be made on a case-by-case basis, at least at this point the NSD's voluntary disclosure program remains in effect, and we expect to learn more about how DOJ will interpret and apply it in coming months.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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[1] MS-13 operates primarily in Latin and North America, including El Salvador, Honduras, Guatemala, Mexico, and the United States, whereas TdA operates in Venezuela, with cells in Colombia, Peru, and Chile, and further reported presence in Ecuador, Bolivia, and Brazil.