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Compliance Update

Implications for Mexican Banks and Financial Institutions of President Trump's Designation of Drug Cartels as Foreign Terrorist Organizations Under US Law¹

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A. Introduction

On his first day in office, President Donald Trump signed an executive order that initiates the process of designating certain drug cartels as foreign terrorist organizations.² The executive order is primarily focused on Mexican drug cartels and is part of President Trump's broader plan to combat the flow of illicit drugs into the United States by providing the U.S. government with more options to fight the cartels. This designation will likely have significant implications, especially for Mexican banks and financial institutions.

Companies providing "material support" to terrorist organizations are subject to both criminal and civil penalties. Because the definition of material support broadly includes the offering of financial services, Mexican banks and other financial institutions that conduct business with companies that are owned or controlled by designated Mexican drug cartels face the risk of criminal sanctions from U.S. law enforcement, civil lawsuits from victims of cartel terrorism and other negative consequences. In light of these heightened risks, it is imperative that Mexican banks and financial institutions take immediate actions to review and update their compliance programs and policies.

B. The Executive Order

As set forth in the executive order, the Trump Administration has found that international drug cartels "constitute a national-security threat beyond that posed by traditional organized crime," 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."³ The President ordered that within 14-days, the Secretary of State, in consultation with the Secretary of Treasury and Attorney General, shall take all appropriate actions to make recommendations regarding the designation of any international drug cartel as either a Foreign Terrorist Organization ("FTO") or a Specially Designated Global Terrorist ("SDGT").⁴ The designation of a cartel as either a FTO or SDGT is governed by different legal frameworks but follow similar legal processes. It is widely expected that the U.S. will designate several Mexican drug cartels, including the Sinaloa and Jalisco New Generation ("CJNG") cartels, as foreign terrorist organizations.⁵

C. Implications for Mexican Banks and Financial Institutions

While the designation of a Mexican drug cartel is not specifically targeted at Mexican banks, they will likely be in the crosshairs of U.S. authorities given their potential proximity to cartel-related businesses. It is well-known that the operations of the largest and most sophisticated Mexican drug cartels go well beyond mere drug trafficking and other illegal ventures. Many cartels have diversified their operations using front companies to extend into areas reported to be connected to the drug trade, such as mining, transportation, agriculture and even high-speed internet. Mexican financial institutions that provide financial services to businesses controlled or owned by the cartels could be subject to substantial sanctions and other negative consequences.

First, it is a crime to knowingly provide “material support” to a designated terrorist organization.⁶ The definition of “material support” broadly includes any “service, including currency or monetary instruments or financial securities, [or] financial service.” Thus, any Mexican bank or financial institution that conducts a financial transaction—such as processing a payment, transferring funds, or converting currency—for a business that it knows to be owned or controlled by a designated drug cartel could be found in violation of criminal laws (in addition to the additional consequences that this would have under Mexican law). Even if such financial transactions are conducted without knowledge of the connections to a designated cartel, a Mexican financial institution or its employees still could be included in counter-terrorism investigations. Notably, the criminal statute provides for broad extraterritorial application of the law to allow prosecutions in the United States courts even for conduct occurring wholly outside of the country.⁷

Second, the Secretary of Treasury is authorized to freeze and block any assets, in which a designated cartel or its agents have an interest, if they are located in a U.S. financial institution.⁸ Moreover, existing laws already allow the U.S. to seize and forfeit those funds if they are found to be the proceeds of narcotics money laundering. Because Mexican banks doing business in the U.S. often have correspondent accounts with U.S. banks and assets located in U.S. financial institutions, Mexican banks are vulnerable to having those assets frozen if they are found to be the assets of a designated cartel.

Third, under a U.S. law called the Anti-Terrorism Act (“ATA”),⁹ Mexican financial institutions providing material support to businesses owned or controlled by Mexican cartels could also face civil lawsuits from victims of terroristic acts carried out by the drug cartels. Such lawsuits have previously been brought against banks accused of providing financial services to more traditional terrorist organizations, such as Hezbollah or ISIS, where the terrorist organization later carried out violent attacks. Given the well-documented violence carried out by Mexican drug cartels, it is possible that a victim of such violence could seek to bring a civil lawsuit under the ATA against a Mexican financial institution for providing financial services to a designated cartel.

Lastly, a Mexican financial institution that is accused of providing material support to a designated drug cartel would suffer other negative consequences separate and apart from criminal or civil sanctions, including significant reputational consequences, which could lead to de-risking by U.S. and other financial institutions. Mexican financial institutions, and other Latin American financial institutions with exposure to Mexico, could also garner increased attention from U.S. law enforcement and financial regulators. Given the extra focus placed on terrorism matters, this could lead to heightened scrutiny of the bank’s other activities and potentially lead to other enforcement actions against the bank. Indeed, U.S. prosecutors have broader and more powerful investigative tools when investigating crimes involving terrorism and national security, and they could use those tools when investigating designated cartels and the entities that support their operations.

D. Recommended Actions for Mexican Financial Institutions

With the President’s executive order, the U.S. is expected to soon designate several Mexican drug cartels as foreign terrorist organizations. As explained above, these designations will carry increased risks of criminal and civil sanctions, and other negative consequences for Mexican banks and other financial

institutions. It would be a mistake, however, to look at these designations in isolation. The U.S. has prioritized enforcement against non-U.S. banks and financial institutions for their role in laundering funds for narcotics trafficking and other crimes. As recent criminal and civil enforcement actions against non-U.S. banks confirm, the U.S. will continue to take steps to target non-U.S. financial institutions for failing to take sufficient actions to prevent violations of U.S. law. The executive order is just the latest example of these efforts, and clearly signals the Trump administration's intent to take a much more aggressive approach to combatting drug trafficking organizations, and more importantly, the non-U.S. financial institutions that support or facilitate their illegal operations.

As such, financial institutions in Mexico and elsewhere in Latin America should immediately consider taking steps to minimize the risks of conducting business with companies that are owned or controlled by designated cartels. Specifically, Mexican and Latin American financial institutions should:

- Conduct an institutional risk assessment to determine the risks associated with the bank's customer base, including the business profiles and geographic locations of the bank's customers. Where there are heightened risks (e.g., a customer is located in region associated with a designated cartel), the bank should consider additional diligence and monitoring steps.
- Review their Know Your Customer ("KYC") policies and procedures to ensure that they are sufficient to uncover potential connections between customers and designated cartels, and where appropriate, conduct additional KYC and enhanced due diligence.
- Review their transaction monitoring policies and procedures to ensure that they are sufficient to detect suspicious patterns that suggest illegal activity connected to drug trafficking and potentially designated drug cartels, especially where transactions occur within areas known to be connected to drug trafficking activity.
- Review their internal whistleblower policies to ensure that they encourage employees to report issues to the bank, and not make reports directly to U.S. authorities, which is now a more attractive option given the potential for increased monetary awards.
- Review representations made to U.S. banking partners concerning the bank's Anti-Money Laundering ("AML") risks and adequacy of its AML program, particularly with respect to customers that may be associated with designated cartels. This includes ensuring that U.S. financial institutions are made aware of any change in their business model that directly impacts the Mexican institution's use of its U.S. services. U.S. law enforcement has used alleged misrepresentations to charge non-U.S. banks with bank fraud.
- Monitor closely all U.S. regulatory, policy and enforcement developments related to the designation of Mexican cartels as foreign terrorist organizations.

This Client Alert has been prepared in collaboration with Ricardo Calderon Mendoza and his team at Ritch Mueller.

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- ¹ This Client Alert has been prepared in collaborations with Ricardo Calderón Mendoza and his team at Ritch Mueller in Mexico City, Mexico.
- ² Executive Order, *Designating Cartels And Other Organizations As Foreign Terrorist Organizations And Specially Designated Global Terrorists* (Jan. 20, 2025).
- ³ Executive Order ¶ 1.
- ⁴ See 8 U.S.C. § 1189 (authorizing the Secretary of State to designate an organization as a “Foreign Terrorist Organization”); 50 U.S.C. § 1702 and Executive Order 13224 (authorizing the President to designate an organization as a “Specially Designated Global Terrorist”).
- ⁵ The Office of Foreign Asset Control (“OFAC”) has previously used its existing authorities under the U.S. Foreign Narcotics Kingpin Designation Act to administer and enforce economic sanctions programs against Mexican drug cartels and associated business and members, including the Sinaloa and CNJG cartels. Thus, with respect to OFAC and U.S. economic sanctions, the designation of Mexican cartels as foreign terrorist organizations should not have much of a legal impact.
- ⁶ 18 U.S.C. § 2339B(a)(1).
- ⁷ 18 U.S.C. § 2339B(d) (setting forth bases for extraterritorial jurisdiction).
- ⁸ 8 U.S.C. § 1189(a)(2)(C).
- ⁹ 18 U.S.C. § 2333 (allowing “[a]ny national of the United States injured in his or her person, property, or business by reason of an act of international terrorism” to bring a civil lawsuit).

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