

After Brazil Designations, Here's What Law Firms Want Clients to Know

The U.S. Department of State's move to designate two of Brazil's largest organized crime syndicates mirrors what firms have previously seen with regard to policy facing Mexico, Venezuela and Colombia, Javier Coronado Diaz, a partner at international firm Diaz Reus, told Law.com.

July 07, 2026 at 03:46 PM By  **Vivienne Serret**



São Paulo, Brazil. Credit: Igor/Adobe Stock

What You Need to Know

- The U.S. Department of State recently designated two of Brazil's largest organized crime syndicates as Foreign Terrorist Organizations
- The issue isn't limited to Brazil, and it impacts businesses and financial institutions with operations related to the country.
- Clients are feeling a greater sense of urgency as time goes on.

With the U.S. Department of State recently designating two of Brazil's largest organized crime syndicates—Comando Vermelho and Primeiro Comando da Capital—as Foreign Terrorist Organizations, clients have been rushing to law firms to ask about the implications and regulatory risks they may face as the Trump Administration treats Latin America with greater scrutiny.

Firms, particularly those who also hold offices in both Florida and Brazil, are navigating the surge of clients looking to make sense of the changing U.S. regulatory approach towards businesses in the region.

On [July 1](#), the U.S. Department of the Treasury's Office of Foreign Assets Control, or OFAC, designated two Brazilian nationals, three Brazilian companies, and one Portuguese company for their links to the PCC, meaning that all their property in the U.S. must be reported to OFAC.

The Department had previously designated both organizations as Specially Designated Global Terrorists, or SDGTs, on May 28. With the FTO designation becoming effective, financial institutions and other organizations interacting with these entities may face not only sanctions exposure arising from dealings with SDGTs, but also potential liability under U.S. federal anti-terrorism statutes, including for providing "material support or resources" to designated foreign terrorist organizations.

The concept of "material support" is interpreted broadly under U.S. law and may apply to conduct occurring entirely outside the United States, according to an alert posted by Miami-headquartered international firm Diaz Reus.

Javier Coronado Diaz, a partner at Diaz Reus, said that though the firm has multiple offices in Brazil, the issue goes beyond that country and also impacts businesses and financial institutions with operations related to Brazil and Brazilians.

The new US designations also increase potential civil litigation exposure for organizations that fail to identify or appropriately address transactions, counterparties, or other commercial relationships linked, directly or indirectly, to PCC or CV.

"The sort of initial reaction from the clients is, 'Why does this matter? How does it change our practices? What should change from now on?' Because what I hear is that the State Department now put them on a new list, but nobody was interested in doing business with PCC and CV anyways, right?" Diaz said. "This is a similar reaction that we have seen in other contexts before, because this administration has treated criminal organizations and cartels not just as bad actors and using this sort of drug trafficking and [anti-money laundering] authorities to target their activities, but now they are in the realm of terrorism and national security."

Much of the Brazil designations mirrors what the firm's lawyers have seen with previous Mexico, Venezuela and Colombia conflicts, Diaz said.

And Diaz noted the firm has been recommending clients to go back and look at their anti-money laundering (AML) and OFAC compliance programs, and really make sure they are meeting the expectations they should be meeting because "law enforcement and agencies are going to be putting the attention and the microscope on the operations of companies in Brazil."

This may also impact the oil industry, the digital asset industry and fintechs—and businesses of all different sizes should be worrying now about updating their policies and procedures due to the threat of litigation.

And the Brazilian government is also alarmed about the impact these new regulations will have on the country's business sector.

"There is a concern on the part of the Brazilian government that those designations will be used by the US government as a way to attack and affect business in Brazil, for instance, PIX, a Brazilian payment system equivalent to Zelle in the US," added Pedro Fragoso Pires, a Brazilian attorney who serves as a foreign legal consultant at Diaz Reus.

High Risk

Attorneys at several Am Law 50 firms observed that the FTO designations are just the start—the U.S. may use a wide variety of approaches to fight intermediaries who move money for these organizations.

Gina Parlovecchio, co-chair of the global investigations and white collar defense practice at Mayer Brown, said the firm has been counseling clients on how to deal with this new risk environment, including how to adapt their compliance programs, and in some cases assisting clients with government-facing investigations.

She noted that this "new enforcement landscape" really heightens the risk around those issues and has caused companies to put a renewed focus on some of those areas of potential risk.

"At first clients were curious, interested, but not feeling the sense of urgency given that they were already sensitive to these issues, but as we've seen more enforcement actions brought, and the U.S. government has been more proactive about bringing sanctions against entities...and a variety of other enforcement issues, I think people are taking this issue more seriously and being more proactive," Parlovecchio said.

What makes the designations so significant in Brazil is that PCC has potentially infiltrated hundreds otherwise legitimate companies, and they done it in a way that makes it unclear "to the

outside world" that you could have exposures under the federal statute that bars providing material support to designated foreign terrorist organizations, her colleague Kelly Kramer, a partner at Mayer Brown, added.

When designations came out of Mexico, Kramer didn't get the sense that it was a "game changer for clients," but with Brazil, the Brazilian market, particularly the financial institution world, has had many concerns.

"PCC has infiltrated maybe more legitimate business than the cartels did even in Mexico. What that's done is created a situation where even the fund managers aren't sure who's invested in their funds or where the money **is** coming from. We've seen multinationals who have basically called us and said, 'We have this FTO designation coming into place in a ... week. We have to do something immediately...how do we get out of this situation that we find ourselves in,'" Kramer said. "That's a very challenging situation to be in."

Michel Sancovski, an attorney at Mayer Brown based in Brazil and co-leader of the global investigations and white collar defense practice, agreed, noting that companies in Brazil are approaching the firm to better understand what improvements they should be doing so that they can identify any connections.

However, doing so is extremely difficult.

"This is how the PCC works. They initially appear to be legitimate, and during the course of a business relationship, they change or obscure ownership structures. A lot of companies, particularly multinationals, doing business in Brazil, are also extremely concerned with the reputational damage, which makes robust due diligence essential," Sancovski said.

David Stier, a partner at DLA Piper and co-lead of the firm's anti-money laundering and countering the financing of terrorism task force, said the firm has been dialed into the issue of the administration's increased focus on drug trafficking organizations and drug cartels throughout Latin America.

His colleague, Amadeu Ribeiro, a partner and a dual-licensed attorney active in both the United States and Brazil, notes this is indeed a significant development.

"The same thing that we saw happening in Mexico, I think we'll be seeing in Brazil, which is to say that companies need to revisit their compliance controls and mechanisms given this very important development," Ribeiro said.

"It is broader than just supply chain, it involves investments and other touch points with Brazil, Mexico, and Latin America, more in general," Stier added.

Per an alert posted by DLA Piper, these designations may present significant legal and compliance implications for industries with operational, financial, or supply-chain touchpoints in the Americas, including agriculture, chemicals and pharmaceuticals, financial services, construction, logistics, transportation and shipping, energy, oil and gas, mining and natural resources. Industries that are cash-intensive, embedded in local supply chains, or historically exposed to cartel activity may face heightened scrutiny.

"Apart from any political considerations one may have, this development is here to stay, and we'll see the regulatory implications on a variety of fronts creating criminal, civil, and regulatory risk, especially I think for companies from Brazil doing business in the U.S. and in Florida, in particular," Ribeiro said. "They're not used to this type of heightened compliance scrutiny that one may get stemming from a development like this."

Similarly, civil regulatory enforcement may pose many litigation risks, according to Stier.

The Anti-Terrorism Act and Justice Against Sponsors of Terrorism Act provide a private right of action for U.S. nationals injured by acts of international terrorism to sue for damages based on an aiding and abetting theory, or that the defendant knowingly provided substantial assistance to an FTO or SDGT.

ATA and JASTA litigation in the US has increased markedly in the last several years, according to DLA Piper, including with respect to financial institutions, cryptocurrency exchanges, social media companies, medical supply and manufacturing companies, and others whose goods and/or services have allegedly been used by SDGTs or FTOs in furtherance of terrorist acts.

Accordingly, companies that engage with CV or PCC at any point in the supply chain may face civil and even criminal litigation risk.

"I'm a former federal prosecutor, and the biggest threat is often, 'Am I going to go to jail for this?' Deploying in good faith a compliance program that's risk-based, that tries to engage with these challenges, is a very significant mitigating factor that often counsels against bringing criminal charges," Stier said.

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