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GT Alert

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U.S. Sanctions Scuttle Honduran Bank, Raise Compliance Stakes

For the first time in its history, the Office of Foreign Assets Control (OFAC) of the U.S. Treasury Department recently designated a bank under the Kingpin Act. The unprecedented designation of the Honduran bank, Banco Continental S.A., on Oct. 7, 2015, means that transactions with Banco Continental are prohibited by U.S. persons, and create compliance risks even for non-U.S. persons. The designation of Banco Continental is further evidence of U.S. regulators' increasing enforcement activity, and businesses should carefully review their current compliance programs and assess any relationships with designated entities to minimize the risk of even inadvertent dealings with sanctioned entities and individuals.

Notably, in a coordinated enforcement effort, certain owners of Banco Continental were also designated by OFAC, and charged in federal court in New York for money-laundering allegations. One owner's family member was arrested in Miami.

As a result of the OFAC designations, all property or interests in property of Banco Continental that is located in the United States or in the possession or control of U.S. person, or comes within the United States (such as in-bound funds transfers), is "blocked." As a practical matter, such property is frozen in place and generally cannot be sold, disposed of, or transferred without prior approval from OFAC.

Only days after OFAC's designation, the government of Honduras initiated liquidation proceedings against Banco Continental. The bank is now under control of the government of Honduras and is being managed by a government-appointed liquidator. It remains to be seen whether the Honduran government has or will launch its own investigation against the Bank and its owners.

According to OFAC, Banco Continental and related entities and individuals were designated for allegedly playing a significant role in international narcotics trafficking, specifically money laundering and other services that support international narcotics trafficking activities. The entities and individuals designated can be found in the U.S. Department of Treasury's website at http://www.treasury.gov/press-center/press-releases/Pages/jl0200.aspx.

The Kingpin Act is a U.S. law that gives OFAC the power to “designate” individuals and entities that OFAC finds have materially assisted or supported international narcotics trafficking activities; or are owned, controlled, directed by, or act for or on behalf of, a specially designated narcotics trafficker; or played a significant role in international narcotics trafficking. A designated individual or entity is placed on the Kingpin list. Any property or interests in property of the individuals or entities on the Kingpin list that is located in the U.S. or in the possession or control of U.S. person is “blocked.” As a practical matter, such property is frozen in place and generally cannot be sold, disposed of, or transferred without prior approval from OFAC.

Under the Kingpin Act and other sanctions programs, U.S. persons are prohibited from dealings with designated individuals and entities, who are specifically named on OFAC’s list of Specially Designated Nationals. More challenging from a compliance standpoint, however, U.S. persons are likewise prohibited from dealings with entities owned 50 percent or more by any designated entities or individuals (in the aggregate), who are not necessarily enumerated in OFAC’s SDN List.

While U.S. entities must remain vigilant and implement effective sanctions compliance programs, even non-U.S. entities may run afoul of OFAC sanctions. In particular, to the extent non-U.S. entities avail themselves of U.S. mail or financial systems, or engage in U.S. dollar transactions that clear through the U.S. banking system, OFAC may assert jurisdiction and initiate enforcement actions. Indeed, the majority of significant high dollar value OFAC enforcement settlement cases have been levied against non-U.S. financial institutions found to be engaging in transactions related to U.S.-sanctioned countries, individuals, or entities that involved U.S. dollar transactions or U.S. correspondent accounts.

Individuals and entities that have business dealings with the recently designated Kingpin Act entities and individuals should carefully review their relationships and assess the potential risk for future interactions or transactions. Although the Kingpin Act designation does not bar all transactions and generally addresses only assets or transactions in the U.S. or in the possession or control of U.S. persons, a violation of the Kingpin Act can result in both criminal and civil enforcement in the U.S. Additionally, entities or individuals who are deemed to be providing material support to any designated individuals or entities, run the risks themselves of becoming the target of U.S. sanctions. If the Banco Continental case is any example, in extreme cases that could spell the end of normal business operations.

This *GT Alert* was prepared by **Jared E. Dwyer**, **Carl A. Fornaris,** and **Kara M. Bombach.**

Jared E. Dwyer focuses his practice on white collar criminal matters, criminal and civil tax litigation, and complex civil litigation. Prior to joining the firm, Jed served for 10 years as a federal prosecutor, first as a trial attorney with the U.S. Department of Justice, Criminal Enforcement Section, Tax Division, where Jed was hired on through the Attorney General’s Honors Program, and then as an Assistant United States Attorney at the U.S. Attorney’s Office for the Southern District of Florida. As an Assistant United States Attorney, Jed concentrated on the investigation and trial of white collar crimes, including mail and wire fraud, public corruption, money laundering and Bank Secrecy Act violations. Jed routinely worked closely with FinCEN, the OCC, and the IRS in criminal and regulatory matters involving financial institutions.

Carl A. Fornaris is co-chair of the firm's Financial Regulatory and Compliance Practice. With more than 20 years of legal experience, Carl concentrates his practice on the representation of financial services firms, including supervisory and compliance counseling for banks, their holding companies, investment advisers, securities broker dealers, money services businesses, and other financial institutions in all aspects of their business, including capital-raising transactions, Volcker Rule implementation, CFPB compliance, critical examination reports and enforcement proceedings, and compliance with the Dodd-Frank Act, FATCA, USA PATRIOT Act/BSA/AML, and OFAC sanctions programs. He is the immediate past General Counsel of the Florida International Bankers’ Association and sits on the Board of Directors of FIBA. Previously, he served as Head of Legal and Compliance for the Latin America region of Barclays Bank PLC, with responsibility for managing legal and compliance matters throughout the region of Latin America.

Kara Bombach’s international trade practice focuses on compliance with anti-corruption and anti-bribery measures (FCPA and OECD Convention), export control laws (EAR and ITAR), anti-boycott laws, and special sanctions (embargoes) maintained by the U.S. government (OFAC and other agencies) against various countries (including Iran, Cuba and Sudan), entities and individuals. She regularly counsels clients in designing and implementing global anti-corruption and trade compliance programs, including complex and high impact issues such as compliance assessments and government investigations.

Questions about this information can be directed to:

- > Jared E. Dwyer| +1 305.579.0564 | dwyerje@gtlaw.com
- > Carl A. Fornaris | +1 305.579.0625 | fornarisc@gtlaw.com
- > Kara M. Bombach | +1 202.533.2334 | bombachk@gtlaw.com
- > Or your Greenberg Traurig attorney

Albany
+1 518.689.1400

Amsterdam
+ 31 20 301 7300

Atlanta
+1 678.553.2100

Austin
+1 512.320.7200

Berlin¬
+49 (0) 30 700 171 100

Berlin-GT Restructuring¯
+49 (0) 30 700 171 100

Boca Raton
+1 561.955.7600

Boston
+1 617.310.6000

Chicago
+1 312.456.8400

Dallas
+1 214.665.3600

Delaware
+1 302.661.7000

Denver
+1 303.572.6500

Fort Lauderdale
+1 954.765.0500

Houston
+1 713.374.3500

Las Vegas
+1 702.792.3773

London*
+44 (0)203 349 8700

Los Angeles
+1 310.586.7700

Mexico City+
+52 55 5029.0000

Miami
+1 305.579.0500

New Jersey
+1 973.360.7900

New York
+1 212.801.9200

Northern Virginia
+1 703.749.1300

Orange County
+1 949.732.6500

Orlando
+1 407.420.1000

Philadelphia
+1 215.988.7800

Phoenix
+1 602.445.8000

Sacramento
+1 916.442.1111

San Francisco
+1 415.655.1300

Seoul∞
+1 82-2-369-1000

Shanghai
+86 21 6391 6633

Silicon Valley
+1 650.328.8500

Tallahassee
+1 850.222.6891

Tampa
+1 813.318.5700

Tel Aviv^
+03.636.6000

Tokyo¤
+81 (0)3 3216 7211

Warsaw~
+48 22 690 6100

Washington, D.C.
+1 202.331.3100

Westchester County
+1 914.286.2900

West Palm Beach
+1 561.650.7900