

Locke Lord QuickStudy: Department of Commerce Launches Public List to Aid Compliance With Antiboycott Regulations

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The Office of Antiboycott Compliance (“OAC”) within the U.S. Department of the Treasury’s Bureau of Industry and Security (“BIS”) is charged with administering and enforcing the Anti-Boycott Act of 2018, Part II of the Export Control Reform Act of 2018, and the antiboycott provisions set forth in Part 760 of the Export Administration Regulations, 15 CFR parts 730-774 (“EAR”). These provisions discourage, and in certain circumstances prohibit, U.S. persons from supporting a boycott maintained by a foreign country against a country friendly to the United States. U.S. persons must report promptly to OAC certain boycott-related requests as described below.

On March 28, 2024, to bolster enforcement of antiboycott regulations, the OAC opened access to a new public list webpage. The public list includes names of companies, financial institutions, freight forwarders, and other entities who have previously violated the U.S. antiboycott regulations by inserting, in most cases, contractual clauses that prohibit counterparties from transacting with Israel or Israeli parties.

The name and shame public list puts U.S. persons on notice that if dealing with any listed counterparty, they must be vigilant to spot and report any violative requests. By publishing this list, BIS raises awareness of the sources of past impermissible boycott requests which require reporting, and potentially deters listed parties from including boycott requests and conditions. While the list is not exhaustive, BIS plans to update it quarterly to account for reports received.

Parties who believe they have been listed in error, or who seek clarification regarding their inclusion, are encouraged to contact the OAC for resolution; it may be best for such parties to contact the OAC through counsel familiar with applicable antiboycott regulations.

U.S. persons involved in international trade, particularly those who have dealings in the Middle East, would be well served to review the public list as well as their transaction documents if any involve listed parties. If a U.S. person identifies proscribed antiboycott language, applicable law requires reporting to BIS pursuant to Part 760 of the EAR. The boycott reporting form can be accessed on the BIS website.

Under the antiboycott provisions of Part 760 of the EAR, U.S. persons are prohibited from furthering or supporting a boycott maintained by a foreign country against a country friendly to the United States. These actions include refusing to do business with or discriminating against individuals or entities based on their nationality, race, or religion, as well as furnishing information about business relationships with boycotted countries or their nationals.

U.S. persons must also report to the OAC their receipt of certain boycott-related requests promptly.

To ensure compliance with antiboycott regulations, U.S. persons should develop policies, procedures, and internal controls to identify and report antiboycott violations. It's also essential to conduct regular training sessions to educate employees on antiboycott regulations and incorporate antiboycott compliance into the due diligence process for mergers and acquisitions.

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

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