

Boycotts and Business in the Middle East: A Reminder of U.S. Anti-Boycott Laws

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Individuals and companies conducting business in the Middle East, and in particular the United Arab Emirates (“U.A.E”), often face cultural and legal challenges while doing business. One such challenge is the interplay between State of Israel (“Israel”) boycott laws applicable in the U.A.E. and related legislation in the United States.

Arab League Boycott and U.A.E. Law

Following the establishment of Israel, the Arab League, an umbrella organization comprising of 23 Middle Eastern and African countries and entities formalized a boycott against Israel. Following the adoption of this boycott, the U.A.E., among other Arab League nations, enacted specific legislation to implement the boycott.

In 1972, the U.A.E. enacted Federal Law No. 15 (“U.A.E. Boycott Law”) which prohibits dealings with individuals of Israeli nationality and the trade of Israeli goods. Specifically, the U.A.E. Boycott Law prohibits “a natural person or legal entity [domiciled in the U.A.E.] to enter, either personally or by proxy, into an agreement with concerns or individuals domiciled in Israel or holding Israeli nationality...”. Furthermore, pursuant to the U.A.E. Boycott Law, it is prohibited to import, exchange, process or trade in goods, commodities or products of Israeli origin.

While the boycott may be sporadically applied and inconsistently enforced in practice, it is nonetheless entrenched in current U.A.E. legislation.

Boycott Requests

Many U.S. individuals or companies conducting business in the Middle East, and in particular the U.A.E., are routinely requested to enter into agreements containing provisions that require the U.S. contracting party to participate in the boycott of Israel. Such boycott requests may be direct and explicit, or indirect and implicit.

Examples of direct boycott requests are when a contracting party is requested to provide a “negative certificate of origin” (e.g. “these goods are not of Israeli origin”), to provide information regarding past, present, and future business relationships with Israel, Israeli persons or nationals, or simply not to conduct business with Israel or trade in Israeli goods.

More commonly, individuals or companies are presented with indirect or implicit boycott requests. Such requests are often in the form of apparently innocuous contractual provisions requiring the U.S. contracting party to “comply with all applicable laws in the U.A.E.”. On the face of it, such a provision may appear benign. However, since the U.A.E. has enacted specific Israel boycott legislation in the form of the U.A.E. Boycott Law, complying with the laws of the U.A.E. has the effect of causing the U.S. contracting party to agree to an indirect boycott of Israel.

As discussed below, agreeing to such contractual provisions can create challenges for U.S. contracting parties in the U.A.E. and can potentially cause such parties to fall afoul of applicable U.S. laws, resulting in fines or prison sentences.

Applicable U.S. Legislation

The U.S. government officially opposes the boycott of Israel and is working to end its enforcement. In fact, in the 1970s, the U.S. enacted anti-boycott laws that prohibit U.S. individuals and companies from cooperating with the boycott of Israel and require that boycott requests be reported to the U.S. government. Such anti-boycott laws are set out in the Export Administration Act of 1979 (“EAA”) and the Ribicoff Amendment to the Tax Reform Act of 1976 (“TRA”).

The EAA applies to “U.S. persons” which include all individuals, corporations and unincorporated associations resident in the U.S. including permanent domestic affiliates of foreign concerns. The EAA also applies to U.S. citizens abroad and “controlled in fact” affiliates of domestic concerns. The TRA applies to any U.S. taxpayer or a member of a controlled group which includes such a U.S. taxpayer.

The EAA prohibits any U.S. person from complying with an unsanctioned boycott, such as the Israel boycott, while the TRA denies certain tax benefits that would otherwise be available to individuals or companies that do not participate in the boycott. Specific conduct that may be prohibited and penalized under the EAA and the TRA include entering into agreements to refuse to do business with Israel or agreements to furnish information on business relationships with or in Israel.

U.S. persons and taxpayers also have certain reporting requirements under the EAA and the TRA in the event of a boycott request. With reference to the EAA, U.S. persons are required to report, on a quarterly basis, any boycott requests they have received to the Department of Commerce's Office of Antiboycott Compliance in the Bureau of Industry and Security. The TRA on the other hand requires U.S. taxpayers to report operations in, with, or related to a boycotting country or its nationals and requests received to participate in or cooperate with an unlawful boycott.

Solution

One of the main challenges faced by U.S. individuals and companies conducting business in the Middle East, and in particular the U.A.E., is the prevalence of implicit boycott requests - contractual provisions that if agreed to, would cause the U.S. contracting party to be in violation of U.S. anti-boycott laws.

A simple solution is for the U.S. individual or company to effectively identify the violating provisions and to negotiate amendments and changes to contractual language that would ensure compliance with U.S. anti-boycott laws. Small changes in contractual language may appear subtle, but the effect of such small changes with respect to compliance with U.S. anti-boycott laws is monumental.

Recently, on behalf of our clients, we have undertaken reviews of agreements executed in the U.A.E. and currently in effect. We have found that many of these agreements contained boycott request provisions that violate U.S. anti-boycott laws and that such boycott requests have gone unreported. We have further assisted our clients to ensure that such boycott requests were duly reported to the relevant U.S. authorities.

Moving forward, it would be prudent to be mindful of applicable U.S. anti-boycott laws when entering into agreements in the Middle East, and in particular the U.A.E.. Furthermore, it would also be wise to retrospectively consider previously executed agreements to ensure compliance with U.S. laws.

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