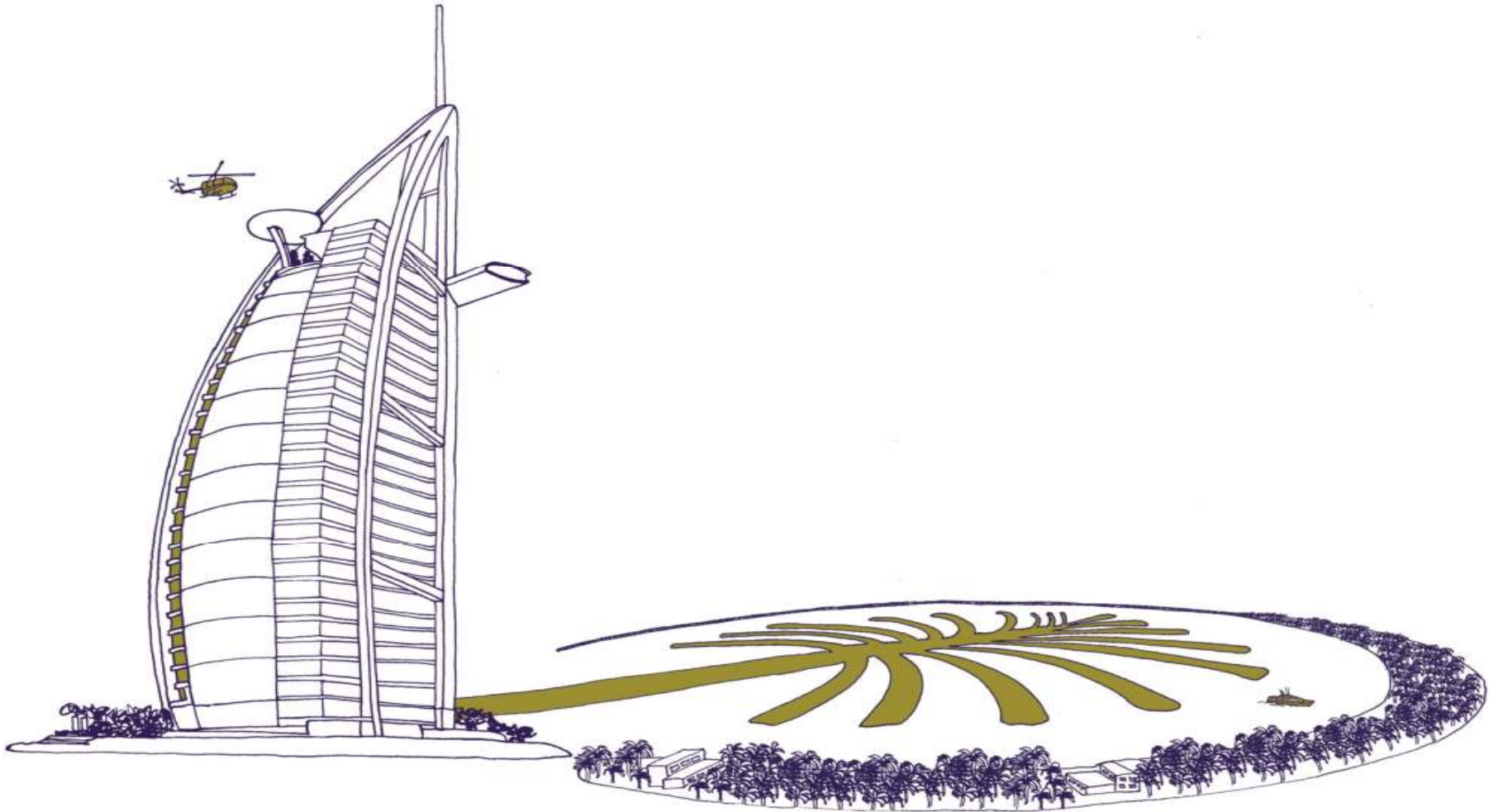


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# **Sanctions and the MENA Region**

**Presented by:  
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## Economic Sanctions?

- Economic sanctions are restrictive measures imposed by national governments and/or supranational bodies against targets to achieve foreign policy objectives or financial restrictions.
- These typically include:
  - asset freezes against listed persons and corporations; and
  - restrictions / thresholds on transfer of funds to listed persons and corporations.

## Overview of economic sanctions

- Most sanctions affecting the MENA region originate from three sources:-
  - The UN, the USA and the EU.
- Individual member states of the EU are also free to impose more stringent sanctions than provided for by EU regulations and to determine the appropriate level of punishment.

## Overview of economic sanctions – who is covered?

- EU sanctions affect:
  - all EU nationals; and
  - all companies incorporated or conducting business within a member state, regardless of current location.
- All those covered are prohibited from dealing with individuals / companies who appear on the list of designated persons or 'blacklist'.
- A lack of knowledge is not a defence.

## What is in fact prohibited?

- The prohibition covers making funds / economic resources available, either directly or indirectly, for the benefit of any designated person.
- In effect, this makes entering into business with any blacklisted person / entity impossible.
- Breach of asset freeze restrictions can incur severe penalties (for example up to 2 years in prison in respect of UK citizens).

## Overview of economic sanctions – who is covered?

- Other economic restrictive measures include:-
  - restrictions on the provision of finance to categories of persons; and
  - thresholds / caps on what transactions financial institutions are permitted to process.

## Targeted Countries

- For example, the following states, important to the MENA region, are currently subject to some form of sanctions:

**Afghanistan**

**Russia**

**Syria**

**Yemen**

**Iran**

**Libya**

**Iraq**

**Lebanon**



## Restricting Business

- 1) The cost of compliance
- 2) Difficulty in locating finance
- 3) Capital flight from sanctioned countries
- 4) Dislocation due to black market economics
- 5) Political risk and commercial uncertainty

## Cost of Compliance

- The MENA region draws extra scrutiny given the proliferation of sanctions imposed on some Middle Eastern states.
- The cost of complying with Know Your Client and Anti Money Laundering requirements can restrict and/or make costly business development.
- Cost is particularly important because of complex corporate structures – subsidiaries can cause issues for parent companies without realising.

## Local Issues

- With “western” companies most affected, it might be expected that MENA-based financial institutions / businesses have a competitive advantage.
- However, usually MENA companies have to deal with “western” banks.
- In order to attract investment / finance and provide commercial certainty, MENA businesses are under commercial pressure to conform to the same compliance standards.

## Difficulty in locating finance

- Financial institutions are now more cautious than ever in providing finance.
- Example of why:
  - In 2012, ING Bank paid USD619m to settle charges brought by OFAC of conspiracy to violate sanctions imposed against Iran and Cuba.
- Heightened due diligence slows down or prevents funding and results in higher scrutiny, of strategy and staff.

## Capital flight from sanctioned countries

- Regions such as Russia / Ukraine /Iran are traditionally investors in the Middle East.
- Military actions, civil unrest, and threat of sanctions (as well as national expropriation) force businesses to move assets out of the risk jurisdiction.
- Fewer investments and less willingness to move capital around the region.

## Black market economies

- Financial sanctions weaken the strength of a sanctioned state's currency and result in parallel currency dealings.
- Restricted states and those living within them find ways to evade financial sanctions and embargoes but at a cost.
- Even Iranian sanctions, widely recognised as one of the most restrictive sanctions regimes, have often been described as “leaky”.

## Political risk and commercial uncertainty

- The current political climate in the MENA region means that investment in certain countries represents a risk. Equally, some investors view risk as an opportunity.
- The penalties for breaching sanctions are so severe that banks would rather not process payments from sanctioned states.
- Recent negotiations regarding relaxation of sanctions in Iran give rise to opportunity, but may affect political / economic stability in the region.

## The future for sanctions in MENA region

- The Joint Plan of Action agreed in January 2014 remains fundamentally in place.
- But the complex and extensive sanctions architecture remains.
- It is difficult to do business with Iran if EU and especially USA companies are involved.



## The future for sanctions in MENA region

- By their very nature, sanctions are unpredictable – Russia / Syria – for example.
- Because of international sanctions, terms such as:
- “due diligence”,
- “Know Your Customer/Client”; and
- “risk awareness”,
- are familiar concepts in the region.

## About Dr Mark Hoyle

### Areas of Law

Commercial dispute resolution (especially through arbitration), including joint ventures, construction and infrastructure projects, international trade (both sales and transport), transnational disputes, private international law, freezing and search orders and other protective measures, fraud and asset tracing.

### Arbitrator and Mediator

Mark has received appointments as an arbitrator since 1999. He is frequently appointed as an arbitrator in disputes concerning Arab and Islamic jurisdictions and has wide experience of the Arab world. Appointing organisations include DIAC, DIFC/LCIA, ICC, LCIA, Law Society (England & Wales), and Chartered Institute of Arbitrators. Mark is a Chartered Arbitrator, and has acted as mediator since 2001, in private and court appointed mediations.

### Advocacy, case management and areas of law

Mark has appeared as advocate in all levels of the English Courts, including the House of Lords, and in a wide variety of arbitrations. He is experienced in leading teams of advocates and directing lawyers in complex cases. Mark has also appeared in the DIFC Courts in cases involving freezing orders, document discovery, insolvency, investment litigation and the recovery of costs, in the DWT.

## About Dr Mark Hoyle .... Contd

### Expert work

Mark was awarded a PhD from SOAS, and has over twenty five years' experience of expert advisory work on Egyptian law, and other Arab laws (especially the UAE, Kuwait, Iraq, Saudi Arabia). His first work in the Gulf involved assessing Shari'ah and local law aspects of construction projects such as the dry docks at Jebel Ali and the Red Sea University, blending modern construction techniques with traditional Islamic principles to ensure a modern view of the applicable legal principles.

### Publications and academic work

Mark designed the Arab Law Quarterly, first published in 1985, and has been its Editor-in-Chief since. His book Mixed Courts of Egypt (1991) is the leading work in English on the history of the Egyptian legal system. He has written often on arbitration, commercial and Arab & Islamic Law topics. The University of Leeds appointed Mark as a Visiting Professor in 2008. Mark's work on Freezing and Search Orders (5th. Edition in prep.) was the first major book on Mareva and Anton Piller injunctions, and his work The Law of International Trade was widely acclaimed.

November 2017

Questions



**Any Questions?**