Sanctions Compliance and Opportunity

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Complying with economic sanctions enforced by foreign governments can be an expensive burden for local businesses. At the same time, approached correctly, sanctions compliance can be an opportunity.

Economic sanctions are commercial restrictions applied by the governments of one or more countries against a targeted country, group, or individual. They may include various forms of trade barriers, tariffs, and restrictions on financial transactions.

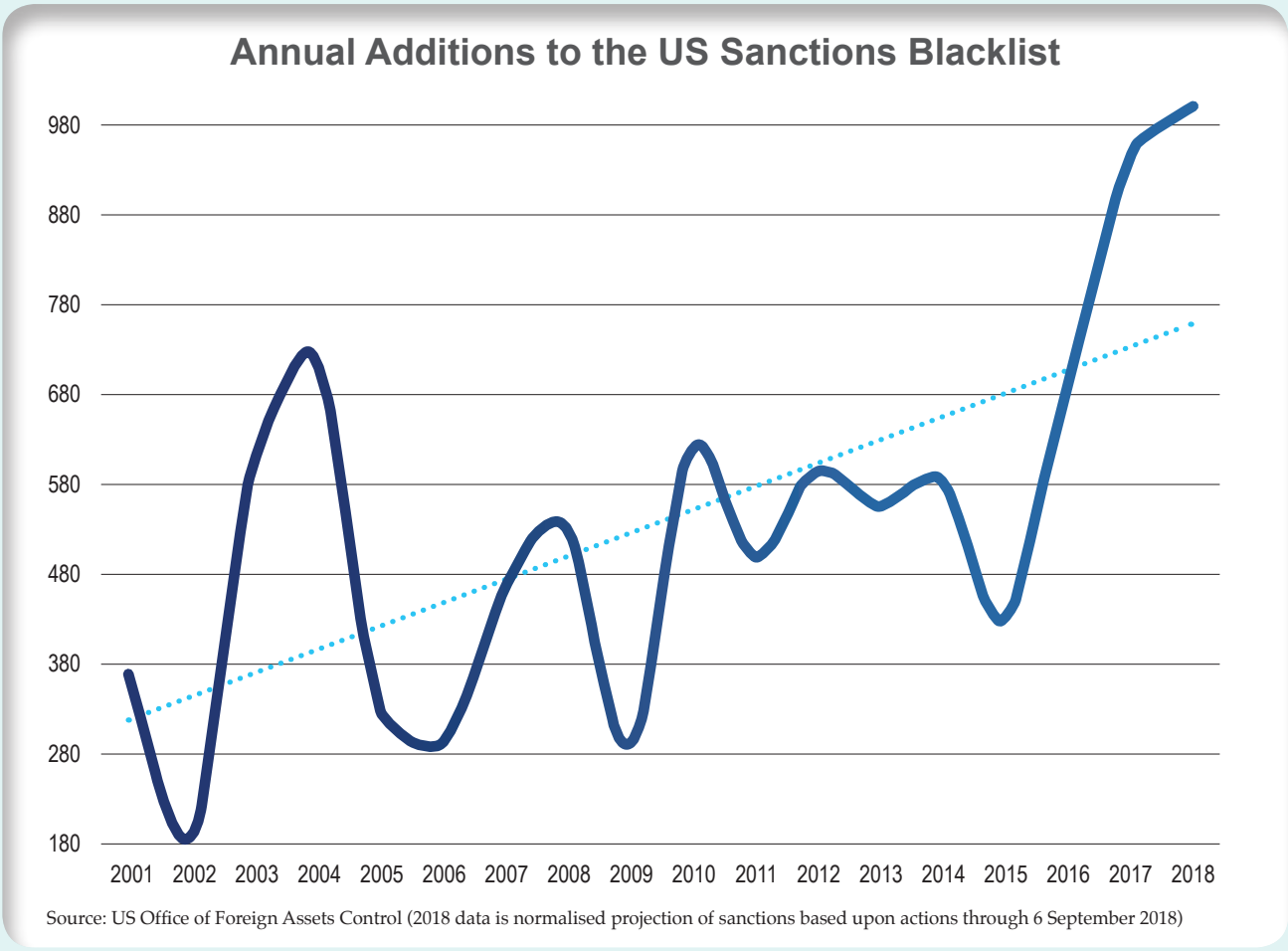
Economic sanctions are being used ever more frequently by the United Nations (UN), the European Union (EU) and individual countries.

The United States (US) is, by far, the most aggressive user and enforcer of sanctions (see chart, "Annual Additions to the US Sanctions Blacklist"). The power of its regulators to deny companies far removed from its shores access to its currency, domestic banks and insurers, and goods, services, suppliers, and customers – and to fine companies millions of dollars if they do not comply – makes it critical for global companies to understand US sanctions.

While all US presidents since 2000 have relied heavily on sanctions as a tool of foreign policy, President Trump is on track to launch more sanctions programmes, blacklist more entities, and impose more significant penalties than any of his predecessors.

Hitting home

Recent penalties against major Asian manufacturers, prohibitions on certain Asian companies importing goods from US suppliers, and the blacklisting of large corporations that trade on Asian exchanges



Source: US Office of Foreign Assets Control (2018 data is normalised projection of sanctions based upon actions through 6 September 2018)

have, understandably, unnerved companies in the region. Likewise, the likelihood of future sanctions against Russia, North Korea and Iran – the latter of which could affect Singaporean energy supplies – generates unwelcome uncertainty.

This increasingly aggressive sanctions environment has hit home in Singapore. Given their export orientations and close ties with international suppliers and customers, Singaporean firms, both large and small, are at particular risk of being collateral damage in economic sanctions.

For example, in July 2017, the US settled with a Singaporean-based firm, CSE Global, for US$12 million for alleged violations of US sanctions. A month later, COSL-Singapore paid US$415,350 to settle allegations that it too had violated US sanctions.

While it would be a natural reaction for Singaporean corporate leaders to simply grit their teeth and resign themselves to allocating ever-increasing resources towards regulatory compliance, there is another way to look at the modern compliance function: done correctly, a robust, flexible compliance framework can actually be a commercial and competitive advantage, and potentially a lucrative opportunity.

Put another way, companies that can differentiate themselves in their implementation of compliant processes will pull ahead of their competitors, and potentially gain mind- and market-share, while demonstrating their corporate values and value propositions to public consumers and shareholders.

There are two ways that companies can leverage compliance as a competitive advantage and transform the cost of compliance into a profit centre.

Avoiding bad business

First, while many aspects of compliance appear to be political – and indeed political sanctions on Iran and Russia receive the bulk of the compliance-related news headlines – the reality is that the vast majority of entities and individuals under US sanctions are listed due to manifestly legal or even moral reasons.

For instance, narcotics traffickers, transnational organised criminals, international terrorists, and human rights violators make up the bulk of the 6,000+ entities on the US sanctions blacklist. Indeed, even in the case of Iran and Russia where sanctions are largely political in nature, a significant number of individuals and organisations against whom sanctions have been assessed are listed because of human rights violations, terrorism, and/or mass corruption.

As such, rather than surrender to extra-territorial political measures emanating from Washington, a company's maintaining regulatory compliance with third-party, US sanctions often entails making sure that the company does not do business with individuals or entities whom it would wish to avoid engaging with in the first place.

The problem is that due to opaque beneficial ownership chains and limited investigative resources, a company might not even know that a certain counterparty is a bad actor. The sanctions list, in this regard, can be used as a form of supplemental corporate intelligence and due diligence to identify entities and individuals whose involvement in a transaction could, if ever it became public, hurt the company's brand equity, or worse.

As such, having a robust compliance programme – and making sure the public is aware of this programme via corporate messaging and

even branding associated with a company's commitment to the programme – can be an effective way to underline a company's commitment to, and investment in, being a good corporate citizen.

In a sense, public and express compliance with a sanctions programme can be an unexpected component of effective corporate social responsibility.

De-risking for advantage

A commitment to sanctions compliance can also benefit the bottom line because such issues are no longer solely the province of compliance and legal experts on the frontlines of deals and business making. Rather, compliance has become a topline concern for the board and shareholders. In fact, many institutions – from international banks and suppliers, to customers and insurers – are under board direction to completely shy away from doing business with entities about whom compliance concerns exist.

The result has been an unrelenting, global march towards "de-risking" – the process by which institutions back away from doing business with those who do not share (or who do not seem to share) their commitment to effective compliance.

Banks have been leading the charge towards de-risking with far-reaching and often devastating results. A large number of institutions and companies – and in some cases even entire countries – have effectively lost access to the formal financial sector as banks have closed accounts and denied services.

No company or institution is too big to be immune from the potential of de-risking as other sectors have followed the lead of the banks. Suppliers, customers, insurers, logistics providers, and others increasingly demand and expect robust compliance from all counterparties and intermediaries, whilst companies are requiring broad representations, warranties and even indemnities from business partners assuring them of their compliance.

As a consequence, companies that are able to implement robust compliance – and to demonstrate that commitment and strength to their counterparties – have a market-leading advantage. They do not need to fear being labelled as "unconcerned" by dealings with troubling actors – an increasingly common charge levelled by a growing number of non-governmental groups and shareholder activists around the world who focus on compliance issues.

Such companies also need not be concerned by the severe reputational damage that would arise from an enforcement action by a global regulator. Instead, they can take advantage of relationships and transactions with even the most conservative counterparties.

The Singapore case

The scrutiny that Singapore and its companies have been under for many years by global regulators – from the US, the UK and others – is increasing. After all, the country is at the financial and trade cross-roads of the most economically dynamic region in the world. Given the speed and magnitude of economic flows through Singapore, it is, perhaps, not surprising that some Singaporean companies are sometimes caught up in compliance nets and even face enforcement actions.

This places ever more urgency on Singapore to ensure that its corporate compliance and governance framework is in order. Many Singaporean companies are already there – others are catching up. The investment in compliance can be significant, but if done well, the pay-off can be equally so. ■