

IRAN SANCTIONS: A COMPLIANCE PERSPECTIVE
THE PROMISE AND PERIL OF ENTERING THE
ISLAMIC REPUBLIC

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ABSTRACT

U.S. sanctions against Iran have limited trade between foreign and Iranian companies for decades. The 2015 nuclear agreement eased sanctions by widening the scope of permitted business dealings, but brought attendant risks to foreign companies considering venturing into Iran. This Essay proposes that companies can employ a risk-reward model to assess whether the opportunity posed by a proposed venture justifies the risks of violating sanctions laws. The Essay suggests that companies can create a model by categorizing and quantifying the likely benefits of a business deal and compare the opportunity with risks, after implementing processes to limit specific risks. The Essay draws upon relevant sanctions laws and the history of violations to highlight some of the pitfalls that corporations and financial institutions may encounter under the recent loosening of sanctions.

TABLE OF CONTENTS

INTRODUCTION 504

I. THE OPENING OF IRANIAN MARKETS..... 506

 A. SANCTIONS TIMELINE 506

 B. SANCTIONS EASING..... 510

 C. SANCTIONS EASING ON BANKS 511

 D. TENTATIVE BUSINESS TIES WITH IRAN..... 513

II. HISTORICAL SANCTIONS 514

 A. SANCTIONS RUNNING: FINANCIAL INSTITUTIONS..... 514

 B. SANCTIONS RUNNING: CORPORATIONS 517

 C. AVENUES FOR BUSINESS 518

III. RISKS AND REWARDS 519

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A. CREATING A MATRIX.....	519
B. HYPOTHETICAL ASSESSMENTS	523
C. OIL COMPANY RISK-REWARD MATRIX.....	525
D. BANK RISK-REWARD MATRIX	527
E. EFFECTIVE CONTROLS FOR BANKS.....	529
1. <i>Risk: Regulator Scrutiny over ‘Check-the-Box’ Mentality Control: Emphasizing Culture of Compliance, Setting up Iran Hotline</i>	530
2. <i>Risk: U.S. Employees Interact with Iranian Accounts Control: ‘Ring-Fencing’ Employees, Separating Iran Funds</i>	532
3. <i>Risk: ‘Wire-Stripping’ Control: Additional Surveillance of Iran Wire Transfers</i>	532
4. <i>Risk: Sanctions Violations at Correspondent Banks Control: Strengthening Due Diligence</i>	533
5. <i>Risk: Client Affiliation with Sanctioned Entities Control: Enhancing Know-Your-Customer Screening</i>	534
6. <i>Risk: Sudden ‘Snap-Back’ of Sanctions, Asset Confiscation Control: Plan to Wind Down Iran Operations, Contingency Fund.....</i>	535
CONCLUSION.....	537
APPENDIX.....	538

INTRODUCTION

The Iran nuclear deal may by this point be resting on solid political ground, or it may be floundering in quicksand. For compliance officers entrusted with assessing the risks of doing business with the Islamic Republic, the volatility of the situation poses special challenges. The Obama administration announced the Iran deal with great fanfare in July 2015,¹ possibly heralding a new era of greater openness. President Barack

1. Wash. Post Staff, *Full Text: Obama’s News Conference on the Iran Nuclear Deal*, WASH. POST (July 15, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/07/15/transcript-obamas-news-conference-on-the-iran-nuclear-deal/?utm_term=.d422a4a9da06 [<https://perma.cc/P9EE-2U3S>].

Obama said the agreement was a “once-in-a-lifetime opportunity to see whether or not we can at least take the nuclear issue off the table.”² But the Joint Comprehensive Plan of Action (JCPOA), negotiated between Iran on the one hand and the U.S., Britain, France, Germany, Russia, and China on the other,³ has encountered grave problems since Donald Trump won the U.S. election. President Trump has been a staunch opponent of the agreement,⁴ putting its future in doubt. The administration’s opposition, however, is countered by the Europeans and Iranians stating their commitment to the deal.⁵ Moreover, a future Democratic administration could well continue with the diplomatic rapprochement that President Obama began.

The role of compliance officers who are responsible for assessing business risks in Iran takes on added urgency in this politically shifting environment. Compliance departments are by their nature adept at managing risks, and Iran sanctions laws—while particularly challenging—should not be an insurmountable hurdle to a credible risk assessment. This Essay seeks to present the Iran nuclear deal as an issue that can be analyzed in a risk-reward framework from a corporate compliance viewpoint. Similar frameworks may be familiar to compliance officers, risk managers, and ultimately, the corporation’s executives and directors. To be clear, this Essay does not espouse a particular political stance, nor can it predict where the deal will stand after all parties to the agreement have had their final word. This Essay delineates the regulatory opening that was afforded to some companies by the relaxation of sanctions, how those companies saw a business opportunity, and what the risks are to companies and financial institutions doing business with Iran if the deal ultimately collapses.

2. Thomas L. Friedman, *Iran and the Obama Doctrine*, N.Y. TIMES (Apr. 5, 2015), <https://www.nytimes.com/2015/04/06/opinion/thomas-friedman-the-obama-doctrine-and-iran-interview.html> [https://perma.cc/V4P2-U6JX].

3. Kelsey Davenport, *EU Prepares for U.S. Exit From Iran Deal: Trump’s Threat to Walk Away Rattles Key Allies*, ARMS CONTROL ASS’N (Apr. 2018), <https://www.armscontrol.org/taxonomy/term/10> [https://perma.cc/4WFM-GMWP].

4. Katie Bo Williams & Rebecca Kheel, *Iran Deal Faces Uncertain Future Under Trump*, HILL (July 18, 2017, 5:02 PM), <http://thehill.com/policy/national-security/342594-iran-deal-faces-uncertain-future-under-trump> [https://perma.cc/KXG8-Z32L].

5. Laura Smith-Spark, *US Allies in Europe Vow to Stand by Iran Nuclear Deal*, CNN (Oct. 14, 2017, 8:22 AM), <https://www.cnn.com/2017/10/14/world/iran-trump-world-reaction/index.html> [https://perma.cc/7ESL-VK5Z].

This Essay proposes that companies assessing risk in the Iran market create an overarching matrix for identifying risk compared with a side-by-side analysis of economic rewards. Seen from a macro level, the economic rewards of doing business with Iran can be weighed against risk holistically and serve as an effective tool to aid senior management in arriving at a final determination. Moreover, an early assessment of risk and reward can enhance the partnership between a company's compliance and business departments by developing risk controls—historically, a compliance function—alongside sales and marketing. Since the departments will agree to the risk categories prior to engaging in business deals with Iran, the risk-reward matrix will show the method used to determine whether the hazards of conducting business in Iran outweigh the potential benefits.

I. THE OPENING OF IRANIAN MARKETS

A. SANCTIONS TIMELINE

This section describes the complex history of U.S. sanctions rules, highlighting the relevant laws applicable to banking and corporate compliance. The U.S. government first imposed sanctions on Iran after the hostage crisis in 1979.⁶ Those sanctions were removed in 1981, but were reimposed in 1987 after the U.S. found that Iran supported international terrorism.⁷ The current sanctions regime results from the Comprehensive Iran Sanctions, Accountability, and Divestment Act passed by Congress in 2010.⁸ The law prohibits the export of goods or services to Iran or another country knowing the intended recipient is the Islamic Republic.⁹ The Treasury Department's Office of Foreign Assets

6. KENNETH KATZMAN, CONG. RESEARCH SERV., RS20871, IRAN SANCTIONS (2018), <https://fas.org/sgp/crs/mideast/RS20871.pdf> [<https://perma.cc/LK89-V3XJ>].

7. *Id.*

8. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. No. 111-194, 124 Stat. 1312 (2010) (codified at 22 U.S.C. 8501 (2012)).

9. Josh Levs, *A Summary of Sanctions Against Iran*, CNN (Jan. 23, 2012, 2:13 PM), <http://www.cnn.com/2012/01/23/world/meast/iran-sanctions-facts/index.html> [<https://perma.cc/D3HM-ZZ8S>].

Control (OFAC) has jurisdiction over the Iran sanctions rules.¹⁰ In a 2011 memo, then Treasury Secretary Timothy Geithner noted Iran's support for terrorist financing and money laundering and advocated for the international financial sector to sever ties with the Islamic Republic.¹¹ Treasury rules echoed similar actions by the U.K. and Canada.¹² To support the move, Mr. Geithner said the intergovernmental Financial Action Task Force (FATF) had identified the risk to the international financial system emanating from Iran. The Geithner memo stated that the FATF had brought attention to the Iranian central bank's role in financing terrorism and money-laundering activities around the world.¹³ Any individual violating the sanctions would be subject to civil penalties of up to \$250,000 or twice the transaction value, and criminal penalties for willful violations of up to \$1 million and twenty years in prison.¹⁴ Financial institutions were subject to civil penalties of up to \$250,000 or twice the transaction value.¹⁵ The Treasury said it could impose strict conditions on the opening or maintaining in the U.S. of correspondent accounts or payable-through accounts for a foreign financial institution.¹⁶ The 2011 directive was the most sweeping U.S. action against the Iranian banking sector, but it was not the only one. In 2007, the U.S. prohibited dealings with Iranian governmental organizations, including the IRGC based on its association with terrorism.¹⁷

10. *About*, U.S. DEP'T TREASURY, <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx> [https://perma.cc/22VG-NP5F] (last visited Mar. 31, 2018).

11. David S. Cohen, *Treasury Notes: The Entire Iranian Banking Sector*, U.S. DEP'T TREASURY (Nov. 22, 2011), <https://www.treasury.gov/connect/blog/Pages/The-Entire-Iranian-Banking-Sector.aspx> [https://perma.cc/6VVQ-S6BC].

12. Richard Solash, *U.S., U.K., Canada Hit Iran With New Economic Sanctions*, RADIOFREEEUROPE RADIOLIBERTY (Nov. 22, 2011, 8:24 AM), https://www.rferl.org/a/uk_cuts_all_financial_ties_with_iran_banks/24397756.html [https://perma.cc/67HT-F6MS].

13. Cohen, *supra* note 11.

14. *OFAC FAQs: Iran Sanctions*, U.S. DEP'T TREASURY, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#cisada [https://perma.cc/ZTV7-WCJH] (last updated Feb. 20, 2018, 5:44 PM).

15. *Id.*

16. *Id.*

17. Press Release, U.S. Dep't of the Treasury, Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism (Oct. 25, 2007), <https://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx> [https://perma.cc/2M3Q-L2KH].

On August 2, 2017, President Trump signed into law additional sanctions targeting Iran in addition to Russia and North Korea.¹⁸ Specifically, the Countering America's Adversaries through Sanctions Act, which took effect in October, toughened existing sanctions on the IRGC and individuals associated with it.¹⁹ The nuclear pact states that sanctions will not be applied retroactively to existing contracts between Iran and other parties, but a gray area exists on the timing of any wind-down period.²⁰ Therefore, companies seeking to do business with Iran need to be aware of sanctions against entities like the IRGC and its affiliates. This may be easier said than done, considering the wide reach of the organization in Iran and its central role in protecting the principles of the 1979 revolution.²¹ Dr. Emanuele Ottolenghi, a senior fellow at the Foundation for Defense of Democracies, has studied Iran sanctions and the IRGC's pervasive influence in Iranian society.²² In testimony before a House subcommittee in September 2015, Dr. Ottolenghi listed Iran's defense, aviation, oil, and shipping sectors, among others, as having heavy IRGC influence.²³ The nuclear pact strengthens the IRGC since foreign corporations accept companies owned or controlled by the group as legitimate business partners, according to Dr. Ottolenghi.²⁴ Thus, a multinational firm conducting business with an Iranian company in which

18. Countering America's Adversaries Through Sanctions Act, Pub. L. No. 115-44 (2017).

19. *Id.*

20. *The Challenges of the U.S. and EU Divergence on Iranian Sanctions*, ALLEN & OVERY (Mar. 29, 2016), <http://www.allenovery.com/publications/en-gb/Pages/The-challenges-of-the-U-S—and-EU-divergence-on-Iranian-sanctions.aspx> [<https://perma.cc/U7EY-YRZA>].

21. Anthony Rapa, *The IRGC and the Challenges of Entering the Iranian Market, Part I*, STEPTOE: INT'L COMPLIANCE BLOG (Oct. 20, 2015), <https://www.steptoelinternationalcomplianceblog.com/2015/10/the-irgc-and-the-challenges-of-entering-the-iranian-market-part-1/> [<https://perma.cc/P6FX-C2W7>].

22. *Our Team: Dr. Emanuele Ottolenghi*, FOUND. FOR DEF. DEMOCRACIES, <http://www.defenddemocracy.org/about-fdd/team-overview/emanuele-ottolenghi/> [<https://perma.cc/N52E-3T73>] (last visited Mar. 31, 2018).

23. *The Iran Nuclear Deal and Its Impact on Iran's Islamic Revolutionary Guards Corps: Hearing Before the Subcomm. on Middle E. & N. Afr. of the H. Comm. on Foreign Affairs*, 114th Cong. (2015) (testimony of Dr. Emanuele Ottolenghi, Foundation for the Defense of Democracies).

24. *Id.* at 1 ("The IRGC and the supreme leader's business interests are active in many sectors—some of which they dominate almost completely. IRGC companies will get the lion's share of public contracts and business opportunities.").

the IRGC or another sanctioned entity holds a stake may be held liable for violating U.S. sanctions laws.²⁵ OFAC issues a list of sanctioned individuals and entities, which includes the IRGC and individuals associated with it.²⁶ The extensive list of what the Treasury Department refers to as “Specially Designated Nationals,” or SDNs, is updated frequently.²⁷ Corporate compliance officers should note that the rationale behind sanctions in general is largely political, in which the U.S. seeks to advance foreign-policy objectives.²⁸ Any corporation doing business with Iran would assume liabilities by running afoul of “snapped back,” or reimposed sanctions if it did not wind down Iran-related business operations within the guidelines established by the Treasury Department.²⁹ While the original policy enacted by President Obama has changed due to the shift in political stance taken by the Trump administration, it should be noted that many of the largest sanctions violations penalties were levied during the Obama administration.³⁰ As one law firm noted, “[w]hile the size of corporate penalties may be impacted under a Trump Administration, we do not foresee a significant shift in terms of overall sanctions/[anti-money laundering] enforcement.”³¹

25. *Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day*, U.S. DEP’T TREASURY, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf [<https://perma.cc/953B-X3DC>] (last updated Dec. 15, 2016).

26. *Specially Designated Nationals and Blocked Persons List (SDN) Human Readable Lists*, U.S. DEP’T TREASURY (Mar. 23, 2018), <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> [<https://perma.cc/WZ84-2M26>].

27. *OFAC FAQs: Sanctions Lists and Files*, U.S. DEP’T TREASURY, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_lists.aspx [<https://perma.cc/NLZ5-L8JW>] (last updated Apr. 18, 2017, 6:13 PM).

28. Richard N. Haass, *Economic Sanctions: Too Much of a Bad Thing*, BROOKINGS (June 1, 1998), <https://www.brookings.edu/research/economic-sanctions-too-much-of-a-bad-thing/> [<https://perma.cc/XQ6M-XBYF>].

29. Steven F. Hill et al., *OFAC Provides Prospective Guidance on Potential “Snap-Back” of Iran Sanctions*, K&L GATES (Dec. 21, 2016), <http://www.klgates.com/ofac-provides-prospective-guidance-on-potential-snap-back-of-iran-sanctions-12-21-2016/> [<https://perma.cc/CBP8-JBRD>].

30. *The Regulatory and Enforcement Outlook for Financial Institutions in 2017: Trends in Sanctions, Anti-Money Laundering and Cybersecurity*, PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP (Feb. 22, 2017), <https://www.paulweiss.com/media/3967232/22feb17aml.pdf> [<https://perma.cc/L5ZX-WQW9>].

31. *Id.*

B. SANCTIONS EASING

In 2015, Iran and six world powers, including the U.S., reached an agreement to ensure that Iran's nuclear program would be exclusively peaceful.³² The agreement calls for the relaxation of international sanctions against the Islamic Republic beginning in January 2016 in return for Iran "verifiably meeting its nuclear commitments."³³ Sanctions were eased across a number of sectors, including, oil and natural gas, aviation, and shipping.³⁴ Indeed, many global companies saw their chance to invest in a country that was largely isolated from the world economy and needed to upgrade its industry.³⁵ For example, Boeing agreed to sell 80 aircraft to the national carrier, Iran Air.³⁶ Boeing's European rival, Airbus, reached a similar deal to deliver 100 airplanes to Iran Air³⁷ after the U.S. government granted Boeing and Airbus licenses to sell commercial airliners in September 2016.³⁸ Officials estimate that Iran will likely need upwards of 400 commercial planes in the next decade to replace its aging fleet.³⁹

32. *Joint Comprehensive Plan of Action*, U.S. DEP'T ST., <https://www.state.gov/e/eb/tfs/spi/iran/jcpoa/> [<https://perma.cc/GHP5-CNJ9>] (last visited Mar. 31, 2018).

33. *Id.*

34. Freshfields Bruckhaus Deringer LLP, *Iran Sanctions Relief Implemented*, LEXOLOGY (Jan. 18, 2016), <https://www.lexology.com/library/detail.aspx?g=f9d3ceda-c3b1-4eed-ac08-dbb0cc5775f7> [<https://perma.cc/BA8K-NBYF>].

35. Majid Rafizadeh, *Doing Business With Post-Sanctions Iran: Risks and Opportunities*, HUFFINGTON POST, https://www.huffingtonpost.com/majid-rafizadeh/doing-business-with-post_b_7960484.html [<https://perma.cc/HFX4-2E9K>] (last visited Mar. 31, 2018).

36. Jeff Daniels, *Boeing's \$8 Billion Deal on Sale of 80 Aircraft to Iran Air Still Safe — At Least for Now*, CNBC (Oct. 13, 2017, 4:34 AM), <https://www.cnbc.com/2017/10/13/boeings-8-billion-aircraft-sale-to-iran-air-still-safe-for-now.html> [<https://perma.cc/P9UZ-J8TN>].

37. Tim Hepher, *Iran Jetliner Deal Could Take Longer to Complete, Airbus Says*, REUTERS (Jan. 15, 2018), <https://www.reuters.com/article/us-airbus-orders-iran/iran-jetliner-deal-could-take-longer-to-complete-airbus-says-idUSKBN1F42B1> [<https://perma.cc/C4YX-75NX>].

38. Thomas Erdbrink & Nicola Clark, *U.S. Allows Boeing and Airbus to Sell Planes to Iran*, N.Y. TIMES (Sept. 21, 2016), <https://www.nytimes.com/2016/09/22/world/middleeast/iran-airbus-boeing-aircraft.html> [<https://perma.cc/RG9Q-5HJQ>].

39. Tim Hepher & Conor Humphries, *Aviation Giants Tread Carefully in Test Case for Post-Sanctions Iran*, REUTERS (Jan. 22, 2016, 3:52 AM), <https://www.reuters.com/>

Similarly, oil companies have taken advantage of the “opening.” Anglo-Dutch oil company, Royal Dutch Shell, signed a deal in December 2016 with Iran’s state-oil company to explore future projects.⁴⁰ In July 2017, French oil company, Total, said it would invest \$1 billion to develop an Iranian gas field.⁴¹ The Total deal is notable because a Chinese bank signed up to provide the financing; many Western banks have shied away from doing business in Iran.⁴²

C. SANCTIONS EASING ON BANKS

Existing sanctions rules still apply to U.S. banks, limiting their access to the Iranian market.⁴³ The primary effect of sanctions easing applies to foreign financial institutions.⁴⁴ Under the rules, non-U.S. banks are permitted to do business with an Iranian bank if the transactions are tied to civilian uses, energy, or trade finance, and the bank is not tied to terror groups, criminals, or weapons.⁴⁵ The sanctions relaxation allows foreign banks to engage in Iran-related trade and financing deals without fear of violating U.S. law.⁴⁶ In 2016, the Treasury issued updated guidelines that stressed the prohibition of U.S. employees from Iran-

article/us-iran-aviation-insight/aviation-giants-tread-carefully-in-test-case-for-post-sanctions-iran-idUSKCN0V00R4 [https://perma.cc/Q8EJ-QNCT].

40. Benoit Faucon & Sarah Kent, *Shell Signs Preliminary Iran Oil Deal Despite Uncertainty Over Trump*, WALL STREET J. (Dec. 7, 2016, 3:34 PM), <https://www.wsj.com/articles/iran-says-shell-to-agree-to-develop-oil-field-1481099100> [https://perma.cc/9855-WH3J].

41. Sarah Kent & Benoit Faucon, *France’s Total Set to Invest \$1 Billion in Giant Iranian Gas Field*, WALL STREET J. (July 2, 2017, 9:03 AM), <https://www.wsj.com/articles/frances-total-set-to-invest-1-billion-in-giant-iranian-gas-field-1499000613> [https://perma.cc/K7KR-VH5A].

42. *Factbox – Iran’s Deals With Foreign Firms Since Easing of Sanctions*, REUTERS (Oct. 15, 2017, 6:07 AM), <https://uk.reuters.com/article/uk-iran-nuclear-economy-deals-factbox/factbox-irans-deals-with-foreign-firms-since-easing-of-sanctions-idUKKBN1CK0CZ> [https://perma.cc/K22T-HBK9].

43. *OFAC FAQs: Iran Sanctions*, *supra* note 14.

44. *Id.*

45. Brian Monroe, *In Iran Nuclear Deal, Compliance Challenges Rise When ‘Secondary Sanctions’ on Banks Fail*, ASS’N CERTIFIED FIN. CRIME SPECIALISTS (Apr. 16, 2015), <https://www.acfcs.org/news/300891/In-Iran-nuclear-deal-compliance-challenges-rise-when-secondary-sanctions-on-banks-fall.htm> [https://perma.cc/6EC8-TS4G].

46. *Id.*

related business at a foreign bank.⁴⁷ Americans “must be walled off or ‘ring-fenced’ from Iran-related business,” the Treasury guidelines said.⁴⁸ For example, under the eased sanctions, General License H permits non-U.S. subsidiaries of U.S. enterprises to trade with Iranian banks and businesses.⁴⁹ The license authorizes non-U.S. companies owned or controlled by U.S. persons to do business with Iran, subject to conditions.⁵⁰

The updated sanctions rules offer an opportunity to European banks to conduct business in Iran, and permit Iranian financial institutions to open branches in Europe.⁵¹ The rules include provisions prohibiting dollar-based processing of any payments that are linked to Iranian transactions.⁵² Foreign banks are prohibited from “rout[ing] transactions involving Iran . . . through the U.S. financial system, or involv[ing] U.S. persons in such transactions.”⁵³

Furthermore, U.S. financial institutions and foreign banks with U.S. operations may not do business with Iranian individuals or entities that are on sanctions lists, including those that have been designated as having ties to terrorism.⁵⁴ For example, the Islamic Revolutionary Guard Corps is on the terrorism sanctions list and also has ties to Iranian state enterprises, which subjects any foreign bank doing business with such an

47. *Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day*, *supra* note 25.

48. *Id.*

49. *Id.*

50. *Id.*

51. Mamta Borkar, *In an Effort to Play by International Rules, Iranian Banks Take Dutch Compliance Course*, SANCTIONSALERT.COM (Sept. 26, 2016), <http://sanctionsalert.com/in-an-effort-to-play-by-international-rules-iranian-banks-take-dutch-compliance-course/> [<https://perma.cc/4HFP-H9GY>].

52. Arne Mielken, *Six Compliance Lessons From the Iran Nuclear Sanctions Deal*, COMPLIANCE WK. (July 28, 2016), <https://www.complianceweek.com/blogs/global-glimpses/six-compliance-lessons-from-the-iran-nuclear-sanctions-deal/#.WUVPJjPMys> [<https://perma.cc/BX7W-AUUN>].

53. *Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day*, *supra* note 25.

54. *Id.*

enterprise to penalties for sanctions violations.⁵⁵ Therefore, global financial institutions can conduct business with certain Iranian enterprises, provided they have robust controls in place to comply with Treasury guidelines.⁵⁶

D. TENTATIVE BUSINESS TIES WITH IRAN

U.S. actions and rhetoric have chilled the atmosphere but not frozen ties between Iran and the rest of the world. In the past year, trade between Iran and the E.U. has increased, and Germany and other European countries have explored further strengthening ties.⁵⁷ To test the waters, German economic minister Sigmar Gabriel went to Iran in October 2016 and stated that “‘many thousand[s] of jobs in our country’” rely on Germany being active and successful abroad.⁵⁸ More to the point, he stressed that the country does not want to waste the opportunity presented by the relaxation of the Iran nuclear sanctions.⁵⁹ German engineering company, Siemens AG, also took advantage of the opening by agreeing to jointly manufacture locomotives and supply equipment to Iran’s transportation sector.⁶⁰

55. *Treasury Gives New Guidance, But Banks Still Wary*, IRAN WATCH (June 10, 2016), <http://www.iranwatch.org/our-publications/policy-briefs/treasury-gives-new-guidance-banks-still-wary> [https://perma.cc/DZ9T-U99Z].

56. *Sanctions on Iran Lifted - But Not for Most U.S. Companies*, BARNES & THORNBURG LLP (Jan. 20, 2016), <http://www.btlaw.com/International-Trade-Law-Alert—Sanctions-on-Iran-Lifted—But-Not-for-Most-US-Companies-01-20-2016/> [https://perma.cc/VB7G-27AZ].

57. *Iran-EU Trade Doubles*, FIN. TRIB. (Nov. 2, 2017), <https://financialtribune.com/articles/economy-domestic-economy/75418/iran-eu-trade-doubles> [https://perma.cc/SZK7-SHLE].

58. Daniel Mützel, *German-led ‘Scramble for Iran’ Under Way, Slowed by Fearful Banks*, EURACTIV (Oct. 6, 2016), <https://www.euractiv.com/section/trade-society/news/german-led-scramble-for-iran-underway-slowed-by-fearful-banks/> [https://perma.cc/8KYS-5GYU].

59. *Id.*

60. *Iran, Germany Sign 6 Transport MOUs*, IRAN INT’L (Jan. 2017), http://www.iraninternationalmagazine.com/issue_82/text82/iran,%20germany%20sign%206%20transport%20mous.htm [https://perma.cc/3JFA-77HY].

II. HISTORICAL SANCTIONS

A. SANCTIONS RUNNING: FINANCIAL INSTITUTIONS

This section recounts the history of sanctions violations and the lessons that can be learned in designing a risk-based compliance model for conducting business in Iran. Deutsche Bank was among several institutions that ran afoul of U.S. sanctions laws and paid a \$258 million fine to regulators in November 2015.⁶¹ The fines settled charges that it conducted nearly \$10.9 billion worth of dollar-clearing transactions from 1999 through 2006.⁶² The bank disguised 27,200 transactions with Iranian, Libyan, Burmese, Syrian, and Sudanese entities—all on the U.S. sanctions list.⁶³ The Federal Reserve said at the time that Deutsche Bank did not have the policies and procedures in place to effectively monitor sanctions compliance in offices outside of the U.S.⁶⁴ Deutsche Bank recognized the shortcomings, agreed to install an independent monitor, and fired six employees involved with the violations.⁶⁵ Regulators said those employees developed several processes to handle dollar payments in ways that circumvented controls designed to detect problematic payments.⁶⁶ One method was wire-stripping, or changing the information included on the payment message.⁶⁷ Bank staff in overseas offices removed payment information linking it to an Iranian sanctioned entity

61. Frances Coppola, *Deutsche Bank's Fine For Breaking Sanctions Is By No Means Its Biggest Problem*, FORBES (Nov. 7, 2015, 7:34 PM), <https://www.forbes.com/sites/francescoppola/2015/11/07/deutsche-banks-recent-fine-for-breaking-sanctions-is-by-no-means-its-biggest-problem/#16ab42fb2bfa> [<https://perma.cc/7DPP-DTRN>].

62. Christopher M. Matthews, *Deutsche Bank to Pay \$258 Million in Fines for Violating U.S. Sanctions*, WALL STREET J. (Nov. 4, 2015), <https://www.wsj.com/articles/deutsche-bank-to-pay-258-million-in-fines-for-violating-u-s-sanctions-1446661556> [<https://perma.cc/JH2E-NF4Q>].

63. Press Release, N.Y. Dep't of Fin. Servs., NYDFS Announces Deutsche Bank to Pay \$258 Million, Install Independent Monitor, Terminate Employees for Transactions on Behalf of Iran, Syria, Sudan, Other Sanctioned Entities (Nov. 4, 2015), <http://www.dfs.ny.gov/about/press/pr1511041.htm> [<https://perma.cc/J547-FUR8>].

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

before the payment was passed along to the correspondent bank in the U.S.⁶⁸

Other banks were also fined for violating U.S. sanctions. BNP Paribas stands out for the hefty \$8.9 billion penalty levied against it in June 2014.⁶⁹ U.S. regulators charged the French bank with breaking sanctions against Sudan, Iran, and Cuba.⁷⁰ Further, in 2012, HSBC agreed to pay \$1.9 billion in fines.⁷¹ Commerzbank agreed to pay \$1.45 billion in penalties in March 2015,⁷² and Credit Agricole was fined \$787 million in October of that year.⁷³ Barclays was levied a \$298 million fine in August 2010, and RBS had to pay a \$100 million fine for breaking sanctions against Iran, Sudan, Myanmar, and Cuba in 2013.⁷⁴ Standard Chartered faced multiple violations over the years, agreeing to pay fines totaling nearly \$1 billion for failing to comply with sanctions laws.⁷⁵ Additionally, regulators required Barclays,⁷⁶ BNP Paribas,⁷⁷ Deutsche

68. *Id.*

69. Danielle Douglas, *France's BNP Paribas to Pay \$8.9 Billion to U.S. for Sanctions Violations*, WASH. POST (June 30, 2014), https://www.washingtonpost.com/business/economy/frances-bnp-paribas-to-pay-89-billion-to-us-for-money-laundering/2014/06/30/6d99d174-fc76-11e3-b1f4-8e77c632c07b_story.html?utm_term=.c76a22847296 [https://perma.cc/5HWY-VGSC].

70. *Id.*

71. Aruna Viswanatha & Brett Wolf, *HSBC to Pay \$1.9 Billion U.S. Fine in Money-Laundering Case*, REUTERS (Dec. 11, 2012, 12:45 AM), <https://www.reuters.com/article/us-hsbc-probe/hsbc-to-pay-1-9-billion-u-s-fine-in-money-laundering-case-idUSBRE8BA05M20121211> [https://perma.cc/MU3K-NWLF].

72. Press Release, U.S. Dep't of Justice, *Commerzbank AG Admits to Sanctions and Bank Secrecy Violations, Agrees to Forfeit \$563 Million and Pay \$79 Million Fine* (Mar. 12, 2015), <https://www.justice.gov/opa/pr/commerzbank-ag-admits-sanctions-and-bank-secrecy-violations-agrees-forfeit-563-million-and> [https://perma.cc/F3C8-R2U3].

73. Ben Protess & Chad Bray, *Crédit Agricole to Pay \$787 Million for Sanctions Violations*, N.Y. TIMES: DEALBOOK (Oct. 20, 2015), <https://www.nytimes.com/2015/10/21/business/dealbook/credit-agricole-to-pay-787-million-for-sanctions-violations.html> [https://perma.cc/43BN-E6FP].

74. Coppola, *supra* note 61.

75. Cynthia O'Murchu et al., *Standard Chartered: The Iranian Connection*, FIN. TIMES (Sept. 20, 2015), <https://www.ft.com/content/2b174d9c-5c81-11e5-9846-de406ccb37f2> [https://perma.cc/92WT-3JXD].

76. Mario Mancuso et al., *Lessons Learned From Recent OFAC Enforcement Cases*, 3 FIN. FRAUD L. REP. 640 (2011).

77. Michelle S. Carino, *BNP Paribas Joins the Bank Perp Walk*, POMERANTZ LLP (July/Aug. 2014), <http://pomerantzlawfirm.com/publications/2015/6/22/bnp-paribas-joins-the-bank-perp-walk> [https://perma.cc/VAS5-VQ44].

Bank,⁷⁸ Commerzbank,⁷⁹ Credit Agricole,⁸⁰ HSBC,⁸¹ and Standard Chartered⁸² to appoint independent monitors as part of their settlement agreements. In many cases, regulators found that the violations were not isolated incidents occurring in a small office, but actions that spanned many years and involved employees at senior levels.⁸³ In the case of Deutsche, staff handbooks instructed employees to conceal payments involving sanctioned countries or institutions.⁸⁴ Deutsche Bank ended business dealings with Iran in 2007 under pressure from U.S. sanctions laws.⁸⁵ The bank said it was cutting ties because the effort of maintaining Iranian accounts did not justify the returns.⁸⁶ Iranian business made up only 0.1% of turnover, according to Deutsche statements at the time.⁸⁷

78. *Deutsche Bank Fined \$258m for Violating US Sanctions*, GUARDIAN (Nov. 4, 2015, 1:51 PM), <https://www.theguardian.com/business/2015/nov/04/deutsche-bank-us-sanctions-fine> [https://perma.cc/YH6N-VA AW].

79. Press Release, N.Y. Dep't of Fin. Servs., NYDFS Announces Commerzbank to Pay \$1.45 Billion, Terminate Employees, Install Independent Monitor for Banking Law Violations (Mar. 12, 2015), <http://www.dfs.ny.gov/about/press/pr1503121.htm> [https://perma.cc/5GXH-JBZA].

80. Karen Freifeld, *Credit Agricole to Pay \$787 Million to Resolve U.S. Sanctions Probe*, REUTERS (Oct. 19, 2015, 8:12 PM), <https://www.reuters.com/article/us-credit-agricole-probe/credit-agricole-to-pay-787-million-to-resolve-u-s-sanctions-probe-idUSKCN0SD2J820151020> [https://perma.cc/3GXP-5ARX].

81. Aruna Viswanatha & Brett Wolf, *HSBC to Pay \$1.9 Billion U.S. Fine in Money-Laundering Case*, REUTERS (Dec. 11, 2012, 12:45 AM), <https://www.reuters.com/article/us-hsbc-probe/hsbc-to-pay-1-9-billion-u-s-fine-in-money-laundering-case-idUSBRE8BA05M20121211> [https://perma.cc/2RJM-S9SH].

82. Lawrence White & Suzanne Barlyn, *StanChart Faces Extension of U.S. Money-Laundering Vigilance*, REUTERS (Sept. 2, 2016, 11:40 AM), <https://uk.reuters.com/article/uk-hsbc-stanchart-compliance/stanchart-faces-extension-of-u-s-money-laundering-vigilance-idUKKCN118223> [https://perma.cc/C4KW-62LX].

83. O'Murchu et al., *supra* note 75.

84. Press Release, N.Y. Dep't of Fin. Servs., *supra* note 63.

85. David Crawford & Laura Stevens, *European Lenders Keep Ties to Iran*, WALL STREET J. (Sept. 13, 2012, 3:45 PM), <https://www.wsj.com/articles/SB10000872396390443696604577644781261934626> [https://perma.cc/2YBW-DX87].

86. *Report: Deutsche Bank to Cut Business Ties to Iran*, DEUTSCHE WELLE (July 28, 2007), <http://www.dw.com/en/report-deutsche-bank-to-cut-business-ties-to-iran/a-2710190> [https://perma.cc/S9QN-GZN3].

87. *Id.*

B. SANCTIONS RUNNING: CORPORATIONS

The Treasury Department has recently adopted a more aggressive posture in prosecuting sanctions violations against nonfinancial institutions.⁸⁸ In March 2017, Chinese technology company ZTE agreed to pay a \$1.2 billion fine to resolve U.S. sanctions on Iran and North Korea.⁸⁹ U.S. regulators accused the company of using American-made equipment to build telecommunication networks in Iran.⁹⁰ In February 2017, the U.S. found that Taiwan-based B Whale Corporation had run afoul of the law when a ship received Iranian crude oil in the Pacific Ocean.⁹¹ OFAC found that the transfer of crude constituted an “an importation from Iran to the United States’ in contravention of the Iranian Transactions and Sanctions Regulations (‘ITSR’)”.⁹²

In August 2017, the Treasury Department found that Singaporean oil field-services company COSL Singapore had violated Iran sanctions by exporting supplies through subsidiaries to rigs operating in Iranian water.⁹³ COSL agreed to pay a fine of more than \$400,000.⁹⁴ That same month, U.S. due-diligence firm IPSA International Services Inc. agreed to pay nearly \$260,000 for apparent violations of the ITSR by facilitating payments to providers of Iranian-origin services.⁹⁵ Again in August 2017, American Export Lines and International Shipping Company violated sanctions law by shipping used and junked cars and parts to Afghanistan

88. Mike Casey et al., *Sanctions Compliance Lessons From Recent OFAC Actions*, LAW360 (Sept. 13, 2017, 12:27 PM), <https://www.law360.com/articles/963445/sanctions-compliance-lessons-from-recent-ofac-actions> [<https://perma.cc/YEE5-VBB5>].

89. *Id.*

90. *Id.*

91. Zachary S. Brez et al., *OFAC Hits ExxonMobil with \$2 Million Sanctions Penalty and Public Rebuke*, ROPES & GRAY LLP (July 24, 2017), https://www.ropesgray.com/~media/Files/alerts/2017/07/20170724_GE_Alert.pdf.

92. *Id.*

93. Michael O’Kane, *OFAC Fines COSL Singapore for Violating US Sanctions on Iran*, EUR. SANCTIONS (Aug. 29, 2017), <https://europeansanctions.com/2017/08/29/ofac-fines-cosl-singapore-for-violating-us-sanctions-on-iran/> [<https://perma.cc/8D7W-7RA7>].

94. *Id.*

95. Tyler Cullis, *OFAC Settlement Agreement With IPSA Highlights Needs to Reconsider Licensing Policies*, SANCTIONLAW (Aug. 17, 2017), <https://sanctionlaw.com/ofac-settlement-agreement-ipsa-highlights-needs-reconsider-licensing-policies/> [<https://perma.cc/MJ2K-U284>].

from the U.S. via Iran on multiple occasions from 2010 to 2012.⁹⁶ The company agreed to pay more than a half million dollars to settle the violations.⁹⁷

Commerce Secretary Wilbur Ross said after the ZTE settlement was announced that the U.S. government intended to vigorously punish sanctions violators.⁹⁸

C. AVENUES FOR BUSINESS

Companies wishing to pursue business with Iranian counterparts, which is otherwise prohibited under the sanctions regime, can apply for either a general or specific license to the OFAC.⁹⁹ A general license allows dealings with “a class of persons” while a specific license is geared toward “a particular person or entity.”¹⁰⁰

OFAC rules require companies applying for a license to state the reason for business and provide details of the proposed deal, including, information on the individuals and entities involved.¹⁰¹ OFAC’s determination process can take weeks, depending on the type of transaction proposed and whether the deal touches upon other areas of U.S. law.¹⁰² Acquiring a general or specific license is perhaps the most direct method for a U.S. company to do business with Iran, as U.S. companies and financial institutions are generally barred from doing

96. *Settlement Agreement Between the U.S. Department of the Treasury’s Office of Foreign Assets Control and Blue Sky Blue Sea, Inc., Doing Business as American Export Lines and International Shipping Company (USA)*, U.S. DEP’T TREASURY (Aug. 17, 2017), https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20170817_33.aspx [<https://perma.cc/2XGS-ERC4>].

97. *Id.*

98. Charles Riley, *Chinese Firm Fined \$1.2 billion for Violating U.S. Sanctions on Iran*, CNN TECH (Mar. 8, 2017, 12:53 AM), <http://money.cnn.com/2017/03/07/technology/zte-china-iran-sanctions/index.html> [<https://perma.cc/297X-SLKY>] (“We are putting the world on notice: the games are over,” Commerce Secretary Wilbur Ross said in a statement. “Those who flout our economic sanctions and export control laws will not go unpunished—they will suffer the harshest of consequences.”).

99. *OFAC FAQs: General Questions*, U.S. DEP’T TREASURY, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx [<https://perma.cc/4R9C-XZLH>] (last updated Oct. 31, 2017, 2:31 PM).

100. *Id.*

101. *Id.*

102. *Id.*

business directly with the Islamic Republic or Iranian companies under the sanctions regime.¹⁰³ “Many of OFAC’s licensing determinations are guided by U.S. foreign policy and national security concerns. Numerous issues often must be coordinated with the U.S. Department of State and other government agencies, such as the U.S. Department of Commerce.”¹⁰⁴

III. RISKS AND REWARDS

A. CREATING A MATRIX

In light of the history of Iran sanctions and an analysis of the rules governing the nuclear accord, a company faces a daunting task in assessing the risks and rewards for a business to enter Iran.¹⁰⁵ A company must balance its goals of creating value, such as capturing market share, with an understanding of the threats emanating from new ventures.¹⁰⁶ Risk-management tools can assess the trade-offs between opportunities and risks in a way that reflects the degree of risk a company is willing to assume compared with the value it sees in a proposition.¹⁰⁷ By categorizing and prioritizing each risk and reward, executives in risk-management departments can determine the risk-reward calculus based on the organization’s risk appetite.¹⁰⁸ Companies commonly use a risk-reward or risk-rating methodology matrix to determine the opportunity for a business prospect compared with the risk.¹⁰⁹ Firms must ensure,

103. *OFAC FAQs: Iran Sanctions*, *supra* note 14.

104. *OFAC FAQs: General Questions*, *supra* note 99.

105. Michael Volkov, *The Changes to Iran Sanctions and Compliance Challenges*, VOLKOV L. GROUP LLC: CORRUPTION, CRIME & COMPLIANCE (Jan. 17, 2016), <https://blog.volkovlaw.com/2016/01/changes-iran-sanctions-compliance-challenges/> [https://perma.cc/2TK9-CXD6].

106. Sam Balaji, *The Strategic Value of Risk Taking*, RISK MGMT. (Sept. 25, 2017, 6:00 AM), <http://www.rmmagazine.com/2017/09/25/the-strategic-value-of-risk-taking/> [https://perma.cc/7EDJ-2EDX].

107. Neil Roiter, *IT GRC Tools: Control Your Environment*, CSO (Mar. 7, 2011, 7:00 AM), <https://www.csoonline.com/article/2127514/compliance/it-grc-tools—control-your-environment.html> [https://perma.cc/U56A-UR98].

108. *Definition of ‘Risk Return Trade Off’*, ECON. TIMES, <https://economictimes.india.com/definition/risk-return-trade-off> [https://perma.cc/58VG-WAYX] (last visited Apr. 3, 2018).

109. George S. Day, *Is It Real? Can We Win? Is It Worth Doing?: Managing Risk and Reward in an Innovation Portfolio*, HARV. BUS. REV., Dec. 2007, at 110.

however, that the benefits to the bottom line and any employee incentives stemming from a particular business project are balanced against an ethical corporate culture.¹¹⁰

In many instances, not abiding by a rule or regulatory requirement that prohibits certain business would result in at least a short-term profit, until the company is caught and fined.¹¹¹ Jason Waite, international trade practice leader and partner at Alston & Bird LLP, said a risk-reward matrix should be created only after a company has determined that the business deal is allowed under sanctions laws.¹¹² “You can’t do a risk matrix on something that is clearly illegal. Going through that exercise would make the consequences even worse,” Mr. Waite said in an interview.¹¹³ “The time to do a risk-reward matrix is after a legal analysis. You’ve got to get over that hump first.”¹¹⁴ Once a company has determined the legality of a business venture, it can assess the other risks it would face when entering Iran.¹¹⁵ A disciplined approach allows a company to categorize and weigh these ancillary risks, Mr. Waite said.¹¹⁶

Companies will look at the potential opportunity, the potential risk involved, the controls to prevent the risk and the remaining or “residual” risk.¹¹⁷ Companies may balance the business opportunity against the cost of implementing controls and determine if the risk is contained and worth taking. A risk matrix assesses the business opportunity and the risk after looking at ways to mitigate those risks. If a company can mitigate a risk down to a lower score, it can compare that figure with the score assigned to the potential rewards of the business proposition. Risks and rewards are relative to each business decision, so scores on a matrix will vary

110. Eric Feldman, *The 7 Biggest Mistakes Companies Make That Can Erode Their Ethical Culture and Destroy Their Reputation*, ETHIKOS, Jan.–Feb. 2015, at 1.

111. Andrew White, *Lessons from Companies That Put Purpose Ahead of Short-Term Profits*, HARV. BUS. REV. (June 9, 2016), <https://hbr.org/2016/06/lessons-from-companies-that-put-purpose-ahead-of-short-term-profits> [https://perma.cc/KC4J-KSCP].

112. Telephone Interview with Jason Waite, Partner, Alston & Bird LLP (Mar. 10, 2017).

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Inherent and Residual Risk: How Both Scores Drive Enterprise Risk Decisions*, OPTIV (Dec. 15, 2011), <https://www.optiv.com/blog/inherent-and-residual-risk-how-both-scores-drive-enterprise-risk-decisions> [https://perma.cc/UY7X-R599].

based on the risk appetite a company determines for the particular proposition. If, for example, a company sees an opportunity that cannot be missed, it will be willing to bear greater risks, but only to the extent that the company feels it can defend its actions to regulators. Consequently, the risk score of a matrix will likely be higher than it has been in other business decisions. Additionally, companies seeking to develop a risk-reward model in the Iran sanctions context should avoid the “function trap,” which is a tendency to assess risks separately without evaluating the overall picture that the combined risks present.¹¹⁸ For example, risks to a company’s credit, reputation and operations from a potential business deal in Iran must be evaluated together, even though the credit monitoring and operational functions may rest in different departments. “Such organizational silos disperse both information and responsibility for effective risk management. They inhibit discussion of how different risks interact.”¹¹⁹

One method to determine the type and extent of risk is through a risk-assessment form, which classifies the risk in terms of the probability of occurrence and impact.¹²⁰ The threat of sanctions violations can be measured against the proposed benefits of any business dealings.¹²¹ Risk-management models have been applied to a variety of scenarios involving industrial projects and their exposure to the specific factors stemming from their environment.¹²² Decisions and risks associated are categorized to evaluate the effect of these factors using a risk matrix.¹²³ A “project manager can take a holistic view of risk at an early stage, quantify such risks, and then interpret the result for making a judicious decision.”¹²⁴

118. Robert S. Kaplan & Anette Mikes, *Managing Risks: A New Framework*, HARV. BUS. REV., June 2012, at 48.

119. *Id.*

120. Sidharth Thakur, *A Critical Tool for Assessing Project Risk*, BRIGHT HUB PROJECT MGMT. (June 13, 2015), <http://www.brighthubpm.com/risk-management/88566-tool-for-assessing-project-risk/> [<https://perma.cc/7P2F-RPTP>].

121. *Business Risk Matrix*, UNITED AGAINST NUCLEAR IRAN: IRAN BUS. RISK, <https://www.unitedagainstnucleariran.com/iran-business-risks> [<https://perma.cc/SX3A-E9EC>] (last visited Apr. 3, 2018).

122. Sumit Datta & S.K. Mukherjee, *Developing a Risk Management Matrix for Effective Project Planning—An Empirical Study*, 32 PROJECT MGMT J. 45, 45 (2001) (“Industrial projects by nature are exposed to various factors arising out of their environment. Decisions and risk associated with them should therefore consider the effect of these factors.”).

123. *Id.*

124. *Id.* at 46.

Some of the risks inherent to industrial projects are technological risks, political risks, social risks, and risks associated with the economic climate.¹²⁵ When the authors applied their model to a steel-plant modernization project in India, “all the executives in the sample felt that they could have averted many of the failures by rethinking some of their strategic decisions, had this model been available to them at the project formulation stage.”¹²⁶ Companies contemplating doing business with Iran can borrow from this model and create risk-reward scales based on the information they have on hand and how they wish to evaluate it.¹²⁷ Risk-management templates range from simple to complex, with the simpler ones based on a more intuitive approach that allows senior management easy comparisons of strategic alternatives.¹²⁸ In the context of doing business in Iran, political risk is a broad category that encompasses all the hazards associated with an Iran-related project failing to get government approval or being in violation of sanctions rules if the nuclear agreement is canceled.¹²⁹ Financial risk is the hit a company would take in case it needs to cease operations in Iran.¹³⁰ Reputational risk is any diminution of a company’s public image if it is associated with doing business in Iran or paying sanctions-related penalties.¹³¹ The categories encompass many of the risks firms of all types face when entering the Islamic Republic.¹³² The model’s flexibility is such that additional categories can be added based on the type of business and the level of specificity that a company

125. *Id.*

126. *Id.* at 51.

127. Johannes Alnes, *Risk-Reward Optimization: Illustrated with Conditional Value-at-Risk* (Spring 2016) (unpublished master’s thesis, University of Oslo), <https://www.duo.uio.no/bitstream/handle/10852/52735/Johannes-Alnes—thesis.pdf?sequence=1&isAllowed=y> [<https://perma.cc/DMV4-FEQD>].

128. *Risk and Reward Analysis*, EXPERT PROGRAM MGMT., <https://www.expertprogrammanagement.com/2011/07/risk-and-reward-analysis/> [<https://perma.cc/8R5T-998G>] (last visited Apr. 3, 2018).

129. Matthew Spivack, *What to Know About Doing Business in Iran*, HARV. BUS. REV. (May 5, 2016), <https://hbr.org/2016/05/what-to-know-about-doing-business-in-iran> [<https://perma.cc/D33H-5D75>].

130. *Iran Sanctions Solution: Are Your Clients Or Counterparties Doing Business With Iran? You Are Accountable*, THOMSON REUTERS ACCELUS, <https://www.thomsonreuters.com/content/dam/openweb/documents/pdf/governance-risk-compliance/fact-sheet/iran-sanctions-solution.pdf> [<https://perma.cc/2X7E-HG2Q>].

131. *Id.*

132. *Id.*

deems it necessary to present.¹³³ The objective is to provide management and the board with a thorough assessment of the risk relative to reward.¹³⁴ A company's ability to assess risk and opportunity simultaneously allows it to manage "offensively as an opportunity rather than defensively as a hazard."¹³⁵

Another point to consider in developing a risk matrix is the stage at which due diligence is being conducted.¹³⁶ When companies start the due diligence on an Iran-related project early, they are less likely to encounter problems further down the line.¹³⁷ Developing a business plan concurrent with risk management allows deals to proceed more smoothly because due diligence issues can be addressed at the outset.¹³⁸

B. HYPOTHETICAL ASSESSMENTS

Thus, for a company seeking to sell airplanes in Iran as Boeing and Airbus are currently seeking to do, a risk model could show the highest level of political risk based on the Trump administration's reassessment of the nuclear accord.¹³⁹ The financial risk would also be deemed high

133. *Which is the Best Strategic Option to Pursue? A Risk Reward Analysis Can Help*, FACTUAL DECISIONS, <http://www.analysthire.com/strategy/25-which-is-the-best-strategic-option-to-pursue-a-risk-reward-analysis-can-help> [https://perma.cc/2SRC-HNHB] (last visited Apr. 3, 2018).

134. Martin Lipton, *Risk Management and the Board of Directors*, HARV. L. SCH. F. ON CORP. GOVERNANCE & FIN. REG. (July 28, 2015), <https://corpgov.law.harvard.edu/2015/07/28/risk-management-and-the-board-of-directors-3/> [https://perma.cc/6BUR-KQBS].

135. TAMARA BEKEFI ET AL., *MANAGING OPPORTUNITIES AND RISKS* 6 (2008), http://www.cimaglobal.com/Documents/ImportedDocuments/cid_mag_managing_opportunities_and_risk_march08.pdf.pdf [https://perma.cc/P6W5-9ZPJ] ("The ability to use tools to simultaneously recognize and assess risk and opportunity can enable a company to manage offensively as an opportunity rather than defensively as a hazard, which is the more typical response.").

136. *International Expansion and Global Market Opportunity Assessment*, in CHALLENGES AND OPPORTUNITIES IN INTERNATIONAL BUSINESS 402 (2012), <http://jsmith.cis.byuh.edu/pdfs/challenges-and-opportunities-in-international-business.pdf> [https://perma.cc/YTH4-7D49].

137. Henry Smith, *Iran: Risk and Reward. Could Your Business be a Successful First-Mover?*, LEXOLOGY (Aug. 18, 2015), <https://www.lexology.com/library/detail.aspx?g=a189b67-bb88-46ec-8925-f626daef7be0> [https://perma.cc/RWJ9-8CZL].

138. *Id.*

139. Felicia Schwartz & Ian Talley, *Boeing, Airbus Sales Imperiled as Trump Administration Formulates Iran Plan*, WALL STREET J. (Dec. 15, 2017, 4:01 PM),

for the hypothetical airplane company based on the potential loss of a contract worth tens of millions of dollars.¹⁴⁰ The reputational risk stemming from regulatory penalties, on the other hand, could receive the lowest risk score because of the shifting political stances surrounding Iran sanctions. The airplane company could argue that it had entered into its Iran contracts before the nuclear accord was annulled, limiting negative publicity. The total score would be a seven out of a possible nine, signifying a medium-risk scenario for the company seeking to sell airplanes to Iran.

Chart 1: Airplane Manufacturer Risk Score

Risk	Score
Political Risk	3-Highest
Financial Risk	3-Highest
Reputational Risk	1-Lowest
Total	7-Combined Score

When assessing potential benefits of doing business in Iran, broad categories such as financial gain, market-share advantage, and the effect to a stock price can be assessed using the same numeric scale, with three denoting the most favorable outcome.¹⁴¹ Using the example of the hypothetical airplane company, the financial gain could be determined by measuring the potential sales as a fraction of revenue.¹⁴² Market-share

<https://www.wsj.com/articles/boeing-airbus-sales-imperiled-as-trump-administration-formulates-iran-plan-1513360961> [<https://perma.cc/V5HW-TCBW>].

140. Samuel Rubinfeld, *U.S. Aviation Exports to Iran Still at Risk from Sanctions*, WALL STREET J. (Mar. 30, 2016, 6:00 AM), <https://blogs.wsj.com/riskandcompliance/2016/03/30/u-s-aviation-exports-to-iran-still-at-risk-from-sanctions/> [<https://perma.cc/942S-PNVG>].

141. Matthew Maclachlan, *Iran: The New Frontier for Companies Looking to Grow*, COMMUNICAID (Apr. 25, 2017), <https://www.communicaid.com/cross-cultural-training/blog/before-doing-business-in-iran/> [<https://perma.cc/97ZY-UEUD>].

142. JOHN D.W. MORECRAFT, STRATEGIC MODELLING AND BUSINESS DYNAMICS: A FEEDBACK SYSTEMS APPROACH (2d ed. 2015).

gains may be calculated as the percentage of the Iranian airplane market the company is seeking to capture, and the stock price assessment may be an estimate of the share price rising if airplanes are sold in Iran—provided the company is publicly traded.¹⁴³

Chart 2: Airplane Manufacturer Reward Score

Reward	Score
Financial Gain	3-High
Market Share	3-High
Stock Price	2-Medium
Total	8-Combined Score

The rewards scenario presents a favorable score of eight out of a possible nine, indicating that for the airplane company, the potential gains of doing business with Iran outweigh the risks based on the specific factors considered.

C. OIL COMPANY RISK-REWARD MATRIX

A risk-reward matrix can similarly be applied to a hypothetical foreign oil-and-gas company seeking to explore and develop oil fields in Iran. French oil-and-gas company Total SA set an example last year when it signed a deal with Iran to take part in the development of the South Pars natural gas field.¹⁴⁴ Oil exploration and development is typically a years-long process requiring a large upfront investment before costs can be recouped.¹⁴⁵ In the context of Iran, an energy company could foresee heightened political and financial risks that accompany oil exploration and development. The score likely would be supported by an analysis

143. *Id.*

144. Stanley Reed, *Total Signs Deal With Iran, Exposing It to Big Risks and Rewards*, N.Y. TIMES (July 3, 2017), <https://www.nytimes.com/2017/07/03/business/energy-environment/iran-total-france-gas-energy.html> [<https://perma.cc/3U28-SE9F>].

145. IFP SCHOOL: THE GRADUATE SCHOOL FOR ENERGY AND TRANSPORTATION PROFESSIONS, WHAT ARE THE MAIN STEPS OF AN OIL OR GAS FIELD DEVELOPMENT PROJECT? (2014), http://www.ifp-school.com/upload/docs/application/pdf/2015-02/3_main_steps_oil_gas_field_development.pdf [<https://perma.cc/A3E6-NQTR>].

showing greater risk to the company the longer it takes to complete the project, as political and economic uncertainty increase over time. The oil company could conceivably seek further nuance in its matrix, differentiating between political risks emanating from the possible reimposition of sanctions on Iran and regulatory risks from it failing to comply with Iranian laws governing the extraction of oil.

Two other risk factors could be added to the matrix—price fluctuations and industrial hazards—based on a prior study of oil-industry risks.¹⁴⁶ Price fluctuations would take into account the price per barrel of oil extracted to break even on the project and forecast the likelihood that world oil prices would remain above that threshold. Industrial hazard could analyze the history of accidents in similar projects and proposed safety protocols. The oil company could have the greatest control over this last risk if it adheres to strict safety protocols.

Chart 3: Oil Company Risk Score

Risk	Score
Political Risk	3-Highest
Regulatory Risk	3-Highest
Financial Risk	3-Highest
Oil Price Risk	2-Medium
Industrial Hazard	1-Lowest
Total	12-Combined Score

On the reward side of the calculus, the hypothetical oil company can draw a distinction between market share—what percentage of Iranian oil it stands to export relative to peers—and crude supplies to which it will have access. A large proportion of oil companies' research-and-

146. INSTITUTE AND FACULTY OF ACTUARIES, RISK MANAGEMENT CASE STUDY—OIL AND GAS INDUSTRY (2016), <https://www.actuaries.org.uk/documents/oil-and-gas-case-study> [<https://perma.cc/6JTF-G95N>].

development budget is devoted to securing new crude reserves.¹⁴⁷ By entering Iran, the hypothetical foreign oil firm could gain access to a large supply of easy-to-access oil, potentially diminishing the need to spend on less promising ventures in other parts of the world. Similarly, the company could possibly gain a technological edge over rivals if its Iranian partners share oil-extraction techniques with it.

Chart 4: Oil Company Reward Score

Reward	Score
Financial Gain	2-Medium
Access to Reserves	3-High
Market Share	3-High
Technology	1-Medium
Stock Price	1-Low
Total	10-Combined Score

A simple risk-reward matrix as illustrated above would show that the risks to the oil company entering Iran outweigh the potential benefits based on the factors chosen and their relative scores. A risk-reward matrix can be as simple or complex as the conditions require to aid in the decision-making process. A similar tool, called a “value-risk option,” evaluates the trade-off between the value a particular business proposition holds compared with its attendant risks.¹⁴⁸

D. BANK RISK-REWARD MATRIX

A bank considering establishing business relations in the Islamic Republic or with an Iran-affiliated financial institution could also create

147. EY, DRIVING OPERATIONAL PERFORMANCE IN OIL AND GAS (2015), [http://www.ey.com/Publication/vwLUAssets/ey-driving-operational-performance-in-oil-and-gas/\\$FILE/ey-driving-operational-performance-in-oil-and-gas.pdf](http://www.ey.com/Publication/vwLUAssets/ey-driving-operational-performance-in-oil-and-gas/$FILE/ey-driving-operational-performance-in-oil-and-gas.pdf) [https://perma.cc/5DB3-DQSZ].

148. Genebelin Valbuena, *Decision Making Process - a Value-Risk Trade-off Practical Applications in the Oil & Gas Industry*, 3 MANAGEMENT 142 (2013).

a risk-reward matrix to evaluate the overall costs and benefits of the venture. Global banks conducting business in high-risk areas must routinely conduct assessments based on a variety of threats to their business. Financial institutions face the risk of running afoul of U.S. anti-money-laundering and sanctions laws, for instance. A bank seeking links with an Iranian financial institution could create a matrix weighing these risks against the proposed opportunities. For example, if the bank’s compliance department has proposed controls to diminish the risks of running afoul of sanctions laws, then those residual risks can be evaluated against the proposed business opportunity. If the bank deems that the probable occurrence of a violation is lower after it has implemented robust monitoring mechanisms, then it can assign a lower risk score to such an event. Alongside operational risks are threats to the hypothetical bank’s reputation, share price and earnings if it runs afoul of sanctions laws. Based on these factors, the bank’s executives can create a simple matrix, but one based on rigorous research and controls.

Chart 5: Bank Risk Score

Iran Sanctions: Bank Risk Matrix	Score
Regulatory Monitors	3-Highest
Fines and Penalties	3-Highest
Reputational Risk	2-Medium
Share Price Loss	1-Low
Sanctions Reimposed	3-Highest
Total	12-Combined Score

On the reward side of the ledger, the bank can list the opportunities derived from being one of the few international banks operating in Iran. The hypothetical bank could, through its non-U.S. subsidiary, finance deals between international and Iranian companies in Iran’s oil, aviation and shipping sectors. The opportunities that banking in Iran provide would be based on the bank’s risk appetite, backed by analysis, and

balanced by controls that would prevent it from running afoul of sanctions laws. A simple chart could show the scores for each opportunity.

Chart 6: Bank Reward Score

Iran Sanctions: Bank Reward Matrix	Score
Market Share	3-Highest
Earnings Contribution	2-Medium
Expertise in Iranian Market	3-Highest
New Clients	3-Highest
Share Price Gain	3-Highest
Total	14-Combined Score

The risk-reward matrix could be as complex as needed to account for all the factors that the bank deems important to make a determination on whether to do business in Iran. Each score should reflect the bank’s overall risk appetite, and risk and reward scores should be comparable. In other words, the total numerical scores of the risk and rewards should be the best quantitative estimate possible based on a rigorous analysis of each factor. Thus, the matrix should be a reader-friendly assessment based on thorough research, which is included in the overall report. Also included in the final report should be the controls that compliance officers will help create to prevent the hypothetical bank from running afoul of sanctions laws. The following section looks at some of the most common controls that banks have instituted in the aftermath of sanctions violations of the recent past.

E. EFFECTIVE CONTROLS FOR BANKS

Compliance professionals are routinely entrusted with the establishment and implementation of controls after the business has

conducted a thorough risk assessment and identified major risks.¹⁴⁹ Controls are checks on specific risks and may include business practices, written policies and procedures, independent verification, background checks, monitoring, and employee training, among other factors.¹⁵⁰ Seen in the context of Iran sanctions, U.S. regulators already have identified many of the compliance deficiencies that financial institutions face when dealing with the Islamic Republic or affiliated organizations.¹⁵¹ Furthermore, some global banks have sought compliance guidance in the deferred prosecution agreements or consent orders issued by authorities when announcing penalties and have enacted controls based on that guidance.¹⁵² Consequently, this section delineates several of the biggest risks to financial institutions and controls to limit Iran-related risk.

*1. Risk: Regulator Scrutiny over ‘Check-the-Box’ Mentality*¹⁵³
Control: Emphasizing Culture of Compliance,
Setting up Iran Hotline

Emphasizing core values is perhaps the most important single step banks have taken to send a message that they will not tolerate sanctions-dodging or any other violations regardless of the locale or the potential sums involved.¹⁵⁴ Banks often emphasize their core beliefs through statements of principles stating they will prioritize “what is right—not just

149. LORI A. BROWN ET AL., COMPLIANCE 101: A GUIDE TO BUILDING EFFECTIVE COMPLIANCE PROGRAMS (2008), www.higheredcompliance.org/compliance/resources/Compliance-101.ppt [<https://perma.cc/R9QD-JG8L>].

150. *Internal Controls*, COMPLIANCE WK., https://www.complianceweek.com/internal-controls#.Whmx_7aZMIU [<https://perma.cc/CP7E-3YKJ>] (last visited Apr. 3, 2018).

151. Mancuso et al., *supra* note 76.

152. INTERNATIONAL MONETARY FUND, RECENT TRENDS IN CORRESPONDENT BANKING RELATIONSHIPS—FURTHER CONSIDERATIONS (2017), <https://www.imf.org/~media/Files/Publications/PP/031617.ashx> [<https://perma.cc/W4YP-9XM2>].

153. See Appendix for chart of business risks and proposed controls.

154. DELOITTE, TONE AT THE TOP: THE FIRST INGREDIENT IN A WORLD-CLASS ETHICS AND COMPLIANCE PROGRAM (2015), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/risk/us-aers-tone-at-the-top-sept-2014.pdf> [<https://perma.cc/N5S6-SPDA>].

what is allowed.”¹⁵⁵ Compliance officers at banks can stress core values through periodic updates to the board of directors and meetings with department heads to gauge the extent to which the core values are being adhered to in day-to-day business.¹⁵⁶ U.S. regulators have looked favorably upon the speed and extent of remediation efforts when issues are brought to light.¹⁵⁷ Officials, for example, are looking for a “critical mindset versus a more passive and box-checking approach.”¹⁵⁸

Furthermore, a potential violation or gap in monitoring could potentially lead to a review of a bank’s other branches and operations.¹⁵⁹ Banks have taken an active approach to managing the risk of sanctions violations by instituting a compliance hotline.¹⁶⁰ The hotline is an independently monitored, anonymous reporting tool that allows banks to investigate complaints of possible unethical or illegal activity in the early stages, before it has come into public view.¹⁶¹ The goal is to institute a forward-looking policy that aims to root out shortcomings instead of reacting to media reports or regulators’ inquiries.¹⁶²

155. Corporate Culture and Corporate Values, Deutsche Bank, <https://www.db.com/cr/en/concrete-cultural-change.htm?kid=werte.inter.redirect> [https://perma.cc/UE32-TRR7] (follow “Corporate values” tab) (last visited Apr. 3, 2018).

156. Dianne Pledgie, *Striking the Right Balance: The OIG’s New Compliance Guidance for the Board of Directors*, HEALTH CENTER COMPLIANCE (Aug. 6, 2015), <https://www.healthcentercompliance.com/subscriber/compliance-connection/1625> [https://perma.cc/Q29B-ZANJ].

157. Press Release, N.Y. Dep’t of Fin. Servs., DFS Fines Zenefits \$1.2 Million for Repeated Violations of New York Insurance Law (Apr. 11, 2017), <http://www.dfs.ny.gov/about/press/pr1704111.htm> [https://perma.cc/RP3J-HC6W].

158. *The Regulatory and Enforcement Outlook for Financial Institutions in 2017: Trends in Sanctions, Anti-Money Laundering and Cybersecurity*, *supra* note 30.

159. Press Release, Office of the Comptroller of the Currency, OCC Releases Review of Efforts to Enhance Large Bank Supervision (Dec.13, 2016), <https://www.occ.treas.gov/news-issuances/news-releases/2016/nr-occ-2016-155.html> [https://perma.cc/FWQ3-DAHJ].

160. Ethics & Compliance Hotline, KPMG, <https://home.kpmg.com/us/en/home/about/ethics-and-compliance-hotline.html> [https://perma.cc/S7SY-MMDE] (last visited Apr. 3, 2018).

161. *Id.*

162. DELOITTE, *supra* note 154.

2. *Risk: U.S. Employees Interact with Iranian Accounts*
Control: 'Ring-Fencing' Employees, Separating Iran Funds

Treasury Department guidelines emphasize that foreign financial institutions with U.S. operations may do business with Iran as long as Americans are not involved in the Iran deals, and that no dollar-based transactions occur.¹⁶³ To avoid sanctions violations, compliance officers should set up separate accounts for any business conducted in Iran, and establish related policies and procedures prohibiting a co-mingling of Iran-related money with other funds. Creating clearly marked separate Iran accounts is a cumbersome but worthy endeavor in light of the potential liabilities a bank may incur if American bank employees come into contact with Iranian funds.¹⁶⁴ The separation of Iran accounts also allows the fund transactions to be conducted in euros, not in prohibited dollars.¹⁶⁵ As an additional layer of protection, policies and procedures regarding the separate accounts can be tested by an independent auditor periodically, and any shortcomings can be addressed with the greatest urgency.¹⁶⁶

3. *Risk: 'Wire-Stripping'*
Control: Additional Surveillance of Iran Wire Transfers

Financial institutions paid hefty sanctions fines for removing identifying information contained in wire transfers.¹⁶⁷ Banks must ensure that mechanisms are in place to monitor compliance with regulations surrounding such transfers.¹⁶⁸ Compliance professionals can become active participants in business decisions and establish processes to closely monitor the businesses emails and interactions between a company's employees and parties in the Iranian business venture to effectively front-run an issue, such as wire-stripping, before it occurs. Compliance departments can also conduct thorough reviews of policies and procedures around wire transfers to identify where potential gaps in

163. OFAC FAQs: *Iran Sanctions*, *supra* note 14.

164. *Id.*

165. *Id.*

166. *Id.*

167. Press Release, N.Y. Dep't of Fin. Servs., *supra* note 63.

168. *Id.*

compliance can occur.¹⁶⁹ Once those policies and procedures have been strengthened, banks can establish a monitoring and random-testing schedule that should uncover any anomalies in the way funds are transferred in and out of Iran or with Iranian entities.¹⁷⁰ More generally, Robert Cook, president of the Financial Industry Regulatory Authority, an industry body, has pointed to gaps in firms' money-surveillance systems as an area that needs special focus.¹⁷¹ "We have seen weaknesses in systems monitoring foreign currency transactions and transactions that flow through suspense accounts," Mr. Cook said in his 2017 Regulatory and Examination Priorities Letter.¹⁷²

4. *Risk: Sanctions Violations at Correspondent Banks Control: Strengthening Due Diligence*

Treasury Department rules state that "Non-U.S., non-Iranian financial institutions should have appropriate systems and controls to ensure that they do not route transactions involving Iran to or through the U.S. financial systems unless the transactions are exempt from regulation or authorized by OFAC."¹⁷³ To control for this risk, compliance officers have designated a supervisor or a committee to ascertain the effectiveness of sanctions and anti-money-laundering programs at the correspondent banks.¹⁷⁴ Banks must be cognizant of the ownership structure and the products and services offered at the correspondent banks.¹⁷⁵ Furthermore, they must be satisfied that the controls at the correspondent banks are effective enough to prevent sanctions violations, and that the affiliate bank investigates any suspicious activity.¹⁷⁶ This step adds an extra layer

169. *Id.*

170. Countering America's Adversaries Through Sanctions Act, Pub. L. No. 115-44 (2017).

171. FINRA, 2017 REGULATORY AND EXAMINATION PRIORITIES LETTER (2017), <http://www.finra.org/sites/default/files/2017-regulatory-and-examination-priorities-letter.pdf> [https://perma.cc/2UXA-SWWG].

172. *Id.* at 8.

173. *Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day*, *supra* note 25, § C. 15.

174. *The Correspondent Banking Due Diligence Guide*, ARACHNYS, <http://info.arachnys.com/correspondent-banking-white-paper-due-diligence-guide> [https://perma.cc/4B7E-NM4R].

175. *Id.*

176. *Id.*

of protection and shows regulators and global clientele that banks are committed to standards of integrity.¹⁷⁷ Regulators expect banks to have “robust . . . compliance programs that include appropriate customer due diligence so that the institutions have a clear understanding of . . . risk profiles and expected account activity.”¹⁷⁸ The information is designed to help U.S. depository institutions make informed decisions regarding the risks associated with correspondent banks and the level of suspicious-activity monitoring needed to manage those risks effectively.¹⁷⁹

*5. Risk: Client Affiliation with Sanctioned Entities
Control: Enhancing Know-Your-Customer Screening*

Among the greatest risks of doing business in Iran are the links between individuals and businesses that may be on a sanctions list.¹⁸⁰ For example, a bank may be permitted to do business with a local Iranian business, but not if that business is owned or controlled by the IRGC.¹⁸¹ The group is still under U.S. terrorism-related sanctions, and the existence of such a relationship would put a financial institution in jeopardy of violating sanctions rules.¹⁸² Compliance officers would generally create and monitor such an internal database of Iranian businesses and individuals, including politically exposed persons, or PEPs, on U.S. sanctions lists.¹⁸³ The database can borrow from the list maintained by the Treasury Department’s OFAC.¹⁸⁴ Indeed, OFAC has made available a detailed compliance checklist for identifying and assessing name

177. INTERNATIONAL MONETARY FUND, *supra* note 147.

178. BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ET AL., U.S. DEPARTMENT OF THE TREASURY AND FEDERAL BANKING AGENCIES JOINT FACT SHEET ON FOREIGN CORRESPONDENT BANKING: APPROACH TO BSA/AML AND OFAC SANCTIONS SUPERVISION AND ENFORCEMENT 2 (2016), <https://www.treasury.gov/press-center/press-releases/Documents/Foreign%20Correspondent%20Banking%20Fact%20Sheet.pdf> [<https://perma.cc/5CGX-7FF8>].

179. *Id.*

180. Paul Renner, *Iran-Know Your Customer (KYC) Rules*, KYCMAP, <http://kycmap.com/iran-know-your-customer-kyc-rules/> [<https://perma.cc/8ZU2-SH2W>] (last visited Apr. 3, 2018).

181. *Id.*

182. *Id.*

183. INTERNATIONAL MONETARY FUND, *supra* note 152.

184. OFAC FAQs: *Iran Sanctions*, *supra* note 14.

matches.¹⁸⁵ Compliance officers would routinely incorporate the Treasury Department checklist into a financial institution's Iran sanctions policies and procedures. The registry should include a confirmation of the person's identity and any aliases, addresses, passport numbers, professional status, and links to government and organizations.¹⁸⁶ Determining Iranian companies' links to the IRGC is also a difficult endeavor due to the lack of transparency in the Iranian market.¹⁸⁷ Compliance officers generally start the due-diligence process by determining the controlling stakeholders or beneficial owners of an Iranian corporation, and whether it is listed on any stock exchange.¹⁸⁸ Further inquiry could include determining if there are any affiliates through a search of news reports and by commissioning a private investigation within Iran.¹⁸⁹

*6. Risk: Sudden 'Snap-Back' of Sanctions, Asset Confiscation
Control: Plan to Wind Down Iran Operations, Contingency Fund*

The Trump administration has refused to recertify the Iran deal, putting it at risk.¹⁹⁰ Under heightened tensions with Iran, the U.S. could categorize any number of acts by Iran as a potential violations to the agreement.¹⁹¹ For example, tankers carrying Iranian oil turned off their radars or gave misleading or incomplete information, according to recent

185. *OFAC FAQs: Sanctions Compliance*, U.S. DEP'T TREASURY, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_compliance.aspx [<https://perma.cc/22JB-G7GH>] (last updated Mar. 19, 2018, 2:06 PM).

186. *Enhanced Due Diligence Reports / Detailed KYC Background Checks in Iran*, PROXIMAL CONSULTING, <https://www.proximalconsulting.com/iran/> [<https://perma.cc/2875-WVWC>] (last visited Apr. 3, 2018).

187. Nicholas Borroz, *Beyond Sanctions: Minimizing Beneficial Ownership Risk in Iran*, RISK ASSISTANCE NETWORK & EXCHANGE (Oct. 28, 2015), <https://nicholasborroz.wordpress.com/2015/11/09/beyond-sanctions-minimizing-beneficial-ownership-risk-in-iran/> [<https://perma.cc/32BB-K3LH>].

188. *Id.*

189. *Id.*

190. Adam Edelman, *Trump Threatens to Cancel Iran Nuclear Deal If It's Not Strengthened*, NBC NEWS (Oct. 13, 2017, 3:49 PM), <https://www.nbcnews.com/politics/donald-trump/trump-puts-iran-nuclear-deal-hands-congress-n810366> [<https://perma.cc/VK4B-AHQW>].

191. Jay Solomon & Carol E. Lee, *White House Intervened to Toughen Letter on Iran Nuclear Deal*, WALL STREET J., (April 25, 2017, 7:20 PM), <https://www.wsj.com/articles/white-house-intervened-to-toughen-letter-on-iran-nuclear-deal-1493151632> [<https://perma.cc/3P5V-NHS9>].

reports.¹⁹² As the flash points between the U.S. and Iran rise, so do the risks that the nuclear deal will collapse.¹⁹³ Banks must weigh the risk that Iran-related operations would be violating U.S. laws if sanctions are “snapped back” or reimposed.¹⁹⁴ The Treasury Department’s OFAC has indicated that companies would be allowed a wind-down period to exit Iran-related business dealings, and that this period could be around 180 days.¹⁹⁵

To mitigate the risk of a business disruption, a bank can employ an unconventional protective measure: devising a “living will” to dispose of Iran assets and wind down Iran operations in case sanctions are reimposed. Living wills are plans that banks provide U.S. regulators on how they would wind down operations in an orderly fashion in the event of a severe crisis.¹⁹⁶ Creating a living will for Iran operations would allow compliance officers to designate supervisors responsible for creating and possibly implementing a plan to exit the country. Such contingency planning could include contractual provisions about liability, claims, and asset sales when entering into agreements with Iranian counterparties.

Asset confiscation looms as a related threat to any business a bank conducts in Iran or with Iranian assets.¹⁹⁷ Seizure of property or funds can occur anywhere in the world, as a recent judgment against an Iranian-owned building in New York demonstrates.¹⁹⁸ In such a volatile environment, a bank must have a contingency fund as well as appropriate

192. Sarah McFarlane & Benoit Faucon, *Ships Exporting Iranian Oil Go Dark, Raising Sanctions Red Flags*, WALL STREET J. (July 6, 2017, 7:46 PM), <https://www.wsj.com/articles/ships-exporting-iranian-oil-go-dark-raising-sanctions-red-flags-1499333402> [<https://perma.cc/ML5F-KT7Z>].

193. Carol Morello, *Iran Nuclear Deal Could Collapse Under Trump*, WASH. POST (Nov. 9, 2016), https://www.washingtonpost.com/world/national-security/iran-nuclear-deal-could-collapse-under-trump/2016/11/09/f2d2bd02-a68c-11e6-ba59-a7d93165c6d4_story.html?utm_term=.4cf2828203f5 [<https://perma.cc/DU8H-7X29>].

194. Hill et al., *supra* note 29.

195. *Id.*

196. Reuters, *Wells Fargo Faces Sanctions After Failing ‘Living Wills’ Test*, FORTUNE (Dec. 13, 2016), <http://fortune.com/2016/12/13/wells-fargo-living-wills-test/> [<https://perma.cc/4CUX-BKH9>].

197. Keiko Morris, *U.S. Government Wins Right to Seize Iranian-Owned Tower in Manhattan*, WALL STREET J. (June 29, 2017, 6:49 PM), <https://www.wsj.com/articles/u-s-government-wins-right-to-seize-iranian-owned-tower-in-manhattan-1498776556> [<https://perma.cc/LG7E-6KMG>].

198. *Id.*

insurance to protect itself against haphazard events.¹⁹⁹ In their advisory role, compliance officers can recommend that senior management set aside certain sums from the revenue generated by Iranian business. The amount of any contingency fund should be based on a risk assessment of the various businesses that could be in danger of forfeiture, and the amount could fluctuate over time as the risk rises or dips.

CONCLUSION

This Essay has approached the issue of Iran sanctions by presenting the legal and regulatory challenges that the law presents for businesses, not least of all the sanctions' complexity and ever-shifting nature. It has argued that despite such complexity, compliance officers have the means to assess the risks and rewards of business prospects with a sanctioned country such as Iran. This Essay has presented the history of Iran sanctions laws and their current implementation, allowing compliance officers to develop a firm grounding in the legal and regulatory environment. It has listed sanctions violations by banks as well as corporations, showing the range of violations and effective controls to mitigate risks. Furthermore, this Essay has proposed the creation of a risk-reward matrix as a tool to holistically evaluate the overall business opportunities relative to the risks of any Iran business dealings across a variety of industries.

199. FED. DEPOSIT INS. CORP., RMS MANUAL OF EXAMINATION POLICIES § 6.1 (2015), <https://www.fdic.gov/regulations/safety/manual/section6-1.pdf> [<https://perma.cc/FW2M-4Y4H>].

APPENDIX

IRAN BUSINESS RISK-CONTROL CHART

Iran Business Risk	Control	Control	Control
‘Check the Box Mentality’	Strengthen Culture of Compliance Through Policies, Procedures, Integrity Principles	Establish Hotline to Report Suspect Activity	Training Managers on Policies, Procedures, Integrity Principles
U.S. Employees Interact With Iranian Accounts	‘Ring-Fence’ Iran Accounts to Authorized Personnel Only	Training Employees on Permissible Iran Activity	Tracking and Reviewing Account Handling, Independent Auditing
‘Wire-Stripping’	Surveillance of Iran Wire Transfers	Set Up Transaction Monitoring System Software	Establish Chain of Command to Handle Red Flag Alerts
Sanctions Violations at Correspondent Banks	Strengthening Due Diligence When Establishing Relationship	Contractual Provisions That Correspondent Bank Will Adhere to Deutsche Bank Sanctions Policies	Periodic Review of Media Reports of Correspondent Bank, Review of Bank Transactions for Red Flags
Client Affiliation With Sanctioned Entities	Enhancing Know- Your-Customer Screening	Set Up Database of Sanctioned Entities	Update Database to Reflect Changes

Iran Business Risk	Control	Control	Control
Sudden ‘Snap-Back’ of Sanctions, Asset Confiscation	Plan to Wind Down Operations	Contingency Fund Based on Profits From Iran Business	Insurance