

## TEN ETHICS-BASED QUESTIONS FOR U.S. COMPANIES SEEKING TO DO BUSINESS IN CUBA

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<sup>1</sup> This is the first in a series of articles that will discuss corporate governance, compliance, and ethical challenges for US-based multinationals that wish to do business in Cuba. It is adapted in part from three blog posts on the Business Law Professor Blog. This essay will address values-based ethics codes. Future articles will address compliance challenges such as bribery and whistleblower protection, and whether foreign direct investment will spur human rights reform or perpetuate the status quo.

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## I. INTRODUCTION

On December 17, 2014, President Barack Obama began the process of thawing the ice-cold relationship with Cuba by allowing additional travel to the island and relaxing some of the rules on doing business there. Full diplomatic relations were restored in July 2015, and a bank in Florida announced shortly thereafter that it would conduct business with Cuban banks. Nonetheless, as of the time of this writing, the 56-year embargo is still in force largely because of Cuba's human rights record and the nearly seven billion dollars worth of claims for confiscated property. Even so, US companies are rushing to the island to be the first to stake their claims when they are able to conduct business legally. After all, before the Communist revolution and the confiscation of property US persons and businesses owned or controlled 80% of the island's resources. When the embargo is lifted, US companies will compete with the EU and Canadian companies that have been there for decades, but what ethical challenges will US companies face? Cuba is one of five remaining Communist countries in the world, and US companies already do business in three of the others—the People's Republic of China, Laos, and the Socialist Republic of South Viet Nam. What makes Cuba different? How can and will companies reconcile a values-based code of ethics with the realities of the Cuban marketplace?

## II. LIVING AND DOING BUSINESS IN CUBA

Cuba, an island the size of the state of Ohio, has a population of eleven million people and lies 90 miles south of the United States. On first glance, the island would appear to be an ideal trading partner for the United States. However, the average Cuban earns only \$25-\$45 USD per month, and 86% of people work for the government in some form (although the government is now allowing more private businesses). Only 5% of the country has reliable access to the internet or a mobile phone and the government controls access to the internet.<sup>2</sup> By one estimate, the Cuban military or its officers has its hands in 60%-70% of economy, 40% of foreign exchange revenues, and 20% of workers due to its control over sugar and cigar production, import-export, IT, communications, and civil aviation.<sup>3</sup>

Although Cuba sits on the United Nations Human Rights Council and has signed a

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<sup>2</sup> U.S. Dep't of State, Human Rights and Labor, Cuba 2014 Human Rights Report 14 (2014), <http://www.state.gov/documents/organization/236892.pdf>.

<sup>3</sup> James Bruno, *How Obama's Cuba Deal is strengthening its Military*, PoliticoMagazine, (Mar. 17, 2015), <http://www.politico.com/magazine/story/2015/03/cuba-relations-obama-revolutionary-forces-far-116158.html#.Vcg54fViko>.

number of treaties and covenants,<sup>4</sup> Cuba's human rights record is a particular source of ire for many opponents of lifting the US embargo. Since 1996, the European Union has also conditioned full economic relations with Cuba on that island's progress toward human rights reform under the "Common Position," although the EU has announced steps to begin normalizing relations.<sup>5</sup> Currently, Cuba ranks 169 out of 180 countries on the World Press Freedom Index.<sup>6</sup> Human Rights Watch recorded over 7,000 arbitrary detentions in 2014<sup>7</sup> and Amnesty International's 2015 report on Cuba noted that the government continues to restrict freedom of assembly, association, movement, and expression.<sup>8</sup> Many observers have also raised concerns about the lack of rule of law and the minimal infrastructure necessary to conduct business.<sup>9</sup> The US State Department observed recently that civil and other courts lack procedural safeguards.<sup>10</sup>

Although Cuba announced a new foreign investment law in 2014<sup>11</sup>, most companies will still be forced to partner with the Cuban government in order to conduct business in the country because the full foreign capital companies are almost never approved by the government. Indeed most of the European and Canadian companies doing business in Cuba are in joint ventures with the Cuban government.<sup>12</sup> Those doing business in Cuba must recognize that their practices at home and even in other host nations will not

<sup>4</sup> UNITED NATIONS HUMAN RIGHTS, *Current Membership of the HRC*, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/CurrentMembers.aspx> (last visited Aug. 9, 2015).

<sup>5</sup> EUROPEAN PARLIAMENTARY RESEARCH SERV., *A New Phase in EU-Cuba Relations* (June 25, 2014), <http://epthinktank.eu/2014/06/25/a-new-phase-in-eu-cuba-relations/>; EUROPEAN UNION EXTERNAL ACTION, *EU Relations with Cuba*, [http://eeas.europa.eu/cuba/index\\_en.htm](http://eeas.europa.eu/cuba/index_en.htm) (last visited Aug 9, 2015).

<sup>6</sup> REPORTERS WITHOUT BORDERS, *World Press Freedom Index 2015*, <https://index.rsf.org/#/> (last visited Aug. 9, 2015).

<sup>7</sup> HUMAN RIGHTS WATCH, *World Report 2015: Cuba*, <https://www.hrw.org/world-report/2015/country-chapters/cuba> (last visited Aug. 9, 2015).

<sup>8</sup> AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 2014/15 (2015), <https://www.amnesty.org/en/countries/americas/cuba/report-cuba/>.

<sup>9</sup> See *Business in Cuba*, CUBA BUSINESS REPORT, <http://www.cubabusinessreport.com/category/business-in-cuba/> (last visited Aug. 9, 2015); see also Frank Calzon, *Investing in Cuba can be a risky business*, MIAMI HERALD, (Jan. 29, 2015); Gail DeGeorge, David Tweed & Christopher Donville, *A Cuba Reality Check, From Golf Course to Myanmar Towers*, BLOOMBERG BUSINESS, (Dec. 22, 2014, 12:01 AM), <http://www.bloomberg.com/news/articles/2014-12-22/a-cuba-reality-check-from-golf-course-to-myanmar-towers>

<sup>10</sup> Cuba 2014 Human Rights Report, *supra* note 3, at 10-12.

<sup>11</sup> Daniel Trotta, *Cuba approves law aimed at attracting foreign investment*, REUTERS, (Mar. 29, 2014, 3:53 PM), <http://www.reuters.com/article/2014/03/29/us-cuba-investment-idUSBREA2SoEJ20140329>; Raul J. Valdes-Fauli, *What Does the New Cuban Foreign Investment Act Mean*, FoxRothchild, (July 2014), <http://www.foxrothschild.com/publications/what-does-the-new-cuban-foreign-investment-act-mean/>.

<sup>12</sup> <http://ctp.iccas.miami.edu/CubaBrief/Cuba%20Brief-LaborConditionsinCuba.pdf> at 2; <http://www.ft.com/cms/s/0/eb663b9a-27b3-11e4-8e78-00144feab7de.html#axzz3iKhPDTFA>

apply in Cuba. For example, foreign companies employing Cuban workers cannot legally pay them directly. Instead, they must pay a company controlled by the Cuban government in the home currency, and the Cuban worker receives payment in the Cuban peso, which has a much lower value.<sup>13</sup> In fact, the average Cuban employee receives only 8% of the employer's desired wage due to a law that allows the Cuban government to keep 92% of wages paid for foreign firms.<sup>14</sup> Cuban employees are not permitted to strike or to collectively bargain for their rights.<sup>15</sup> No laws protect people with disabilities in the workplace, although the law prohibits discrimination on the basis of sexual orientation and gender identity. Afro-Cubans have reported significant discrimination in encounters with police, government, and in employment.<sup>16</sup>

### III. CURRENT U.S. BARRIERS TO DOING BUSINESS WITH CUBA

With few exceptions, US companies and persons currently cannot legally do business in Cuba without a license from the Treasury Department.<sup>17</sup> Notwithstanding the steady stream of new licenses granted of late, the embargo remains in place until it is lifted by the United States Congress.<sup>18</sup>

Notably, the US government has not been consistent in its business dealings with authoritarian or socialist regimes. Although the State Department has criticized this authoritarian government's human rights record,<sup>19</sup> China, another communist authoritarian country is the US' third largest trading partner.<sup>20</sup> The US lifted its trade embargo

<sup>13</sup> U. OF MIAMI, INST. FOR CUBAN AND CUBAN-AMERICAN STUDIES (ICCAS), *The Plight of Cuban Workers: Rights Violations by the Cuban Government and Foreign Investors* (Nov. 2012), <http://ctp.iccas.miami.edu/CubaBrief/Cuba%20Brief-LaborConditionsinCuba.pdf>

<sup>14</sup> Onaisys Fonticoba, *Nuevas disposiciones sobre pago a trabajadores vinculados con la inversión extranjera* (Dec. 15, 2014, 21:12:18), <http://www.granma.cu/cuba/2014-12-15/nuevas-disposiciones-sobre-pago-a-trabajadores-vinculados-con-la-inversion-extranjera>. (noting "The payment will now be agreed to with businesses possessing foreign capital taking into consideration the salaries issued to workers in jobs of similar complexity in entities in the same area or sector of our geographic area, the salary scale that is applied in the country (as a reference point) and some additional payments for the corresponding law.")

<sup>15</sup> ICCAS, *supra* note 14.

<sup>16</sup> Cuba 2014 Human Rights Report, *supra* note 3, at 26-27.

<sup>17</sup> See U.S. DEP'T OF THE TREASURY, RESOURCE CENTER, CUBA SANCTIONS, <http://www.treasury.gov/resource-center/sanctions/Programs/pages/cuba.aspx> (last visited Aug. 9, 2015).

<sup>18</sup> See Cuban Assets Control Regulations (CACR), 31 C.F.R. pt. 515.

<sup>19</sup> U.S. DEP'T OF STATE, HUMAN RIGHTS AND LABOR, CHINA (INCLUDES TIBET, HONG KONG, AND MACAU) 2014 HUMAN RIGHTS REPORT 52-53 (2014), <http://www.state.gov/documents/organization/236644.pdf>.

<sup>20</sup> The US-China Business Council (USCBC), *US State Exports to China (2005-2014)*, <https://www.uschina.org/reports/us-exports/national>

with Viet Nam twenty years ago and major US companies now operate there, including Coca Cola, Proctor and Gamble, GE, and IBM<sup>21</sup> notwithstanding the fact that, the State Department has leveled some of the same human rights criticisms against Viet Nam as it has against Cuba.<sup>22</sup> The communist government of Laos did not fare much better in a recent human rights report,<sup>23</sup> but the US government actively promotes investment in that country.<sup>24</sup>

Cuba, however, is different in the eyes of some legislators. In addition to its human rights record, opponents of restoring full ties with the nation point to the nearly \$7 billion USD (\$1.8 billion plus interest at the time) of claims from confiscated property.<sup>25</sup> The United States Congress held hearings in July 2015 to address property rights in Cuba<sup>26</sup> and it is likely that Congress will not lift the embargo until there is some path to resolution on the confiscation claims.<sup>27</sup>

Despite all of the barriers, a number of US companies are eager to do business in Cuba. Assuming that they can do so legally, can they do so ethically? At the end of this essay, I have ten questions for some of the US companies that have recently announced that they are exploring business in Cuba.

#### IV. CAN A U.S. COMPANY ETHICALLY DO BUSINESS IN CUBA?

Approximately 79% of US employees work for an organization with a written code of

<sup>21</sup> See *US Firms See Vietnam Investments Skyrocket*, US – ASEAN BUS. COUNCIL, INC. (JUNE 18, 2015), <https://www.usasean.org/council-in-the-news/2015/06/18/us-firms-see-vietnam-investments-skyrocket>.

<sup>22</sup> See generally U.S. DEP'T OF STATE, HUMAN RIGHTS AND LABOR, VIETNAM 2014 HUMAN RIGHTS REPORT (2014) <http://www.state.gov/documents/organization/236702.pdf>.

<sup>23</sup> See generally U.S. DEP'T OF STATE, HUMAN RIGHTS AND LABOR, LAOS 2014 HUMAN RIGHTS REPORT (2014) <http://www.state.gov/documents/organization/236664.pdf>.

<sup>24</sup> See *Doing Business in Lao PDR*, EMBASSY OF THE UNITED STATES, <http://laos.usembassy.gov/doing-business-local.html> (last visited Aug. 9, 2015).

<sup>25</sup> See *Certified Cuban Claims*, <http://www.certifiedcubanclaims.org/faqs.htm>. See also Alan Gomez, *Americans have new hopes to reclaim property seized by Cuba 50 years ago*, USA TODAY (JULY 30, 2015, 7:44 PM), <http://www.usatoday.com/story/news/world/2015/07/30/cuba-opening-property-claims/30784849/> (noting that the U.S. Justice Department established a Foreign Claims Settlement Commission for American citizens and companies whose properties were confiscated which approved 5,913 claims worth roughly \$7 billion today).

<sup>26</sup> See Jeff Duncan, *Chairman of the Subcommittee on the Western Hemisphere, House Foreign Affairs Committee, Subcommittee Chairman Duncan Opening Statement at Hearing on Future of Property Rights in Cuba*, YOUTUBE (June 18, 2015), <https://www.youtube.com/watch?v=IUQ6ttzWdus>.

<sup>27</sup> See MARK P. SULLIVAN, CONG. RESEARCH SERV. REP., CUBA: ISSUES FOR THE 114<sup>TH</sup> CONGRESS 51–59 (2015), available at <http://www.fas.org/sgp/crs/row/R43926.pdf>.

conduct or ethics.<sup>28</sup> This essay will focus on values-based ethical codes, and it is important to make the distinction between these and compliance-based codes of conduct. According to ethics expert Frank Bucaro:

These two codes are often confused as being the same thing and yet there are distinct differences.

1. A code of conduct has as its primary focus behavior. A code of ethics has as its primary focus *values as a basis for behavior*. (Emphasis added).
2. A code of conduct is primarily a result of compliance dictates and is a reactive approach for appropriate behavior. A code of ethics is always a proactive approach to provide values based reasons for good behavior.
3. A code of conduct is a “letter of the law” activity. A code of ethics is a “spirit of the law” activity.
4. The process of creating a code of conduct is a “top down” process. A code of ethics should be an [sic] collaborative participatory activity.
5. A code of conduct, being an offshoot of the compliance program, is a result continual compliance training. A code of ethics is the result of an organization that understands, that in addition of a code of conduct or in place of a code of conduct, values are the pivotal foundation by which good behavior is the result of personal choice.
6. There is more of a monetary investment in the development of a code conduct than in the development and implementation of a code of ethics.
7. A code of conduct is easier to develop because it is based on law and therefore less critical thinking is needed because the goal is compliant behavior. A code of ethics takes more time, more discernment, and more transparency to identify those values by which all will live by in the workplace.

Can both be compatible? Yes. Are they the same? Absolutely not.

One scholar who argues that convergence between the codes is inevitable defines the difference between a values-based code and a “compliance code” as follows:

A typical example of a values-based code would be a list of the values that are commonly shared in an organization, and a set of principles that provide some guidance for decision-making. The specified values can be very diverse and express the goals that are important to the users of the code, the preferred means to achieve these ends, and the underlying motivations driving the enterprise. The fundamental feature of a values-based code is that it provides broad guidance for decision-making as opposed to explicitly stating the “correct” or “incorrect” deci-

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<sup>28</sup> See LRN, THE IMPACT OF CODES OF CONDUCT ON CORPORATE CULTURE 4 (2006), <http://www.ethics.org/files/u5/LRNImpactofCodesofConduct.pdf>.

sion. As a consequence, values-based approaches are flexible and could, potentially, be useful in situations that are not anticipated at the time when the code is written – a key difference to compliance codes discussed below.

A typical example of a compliance-based code would be a list of rules and limits that need to be respected by all users. Ideally, this list would provide guidance in all commonly encountered moral dilemmas, for example in situations of conflict-of-interest. The fundamental feature of a compliance code is the clarity and specificity by which it provides guidance. Compliance codes can be understood as “soft law” – rules that ought to be followed. Unlike law itself, these rules will not be enforced by the judicial system. Still, they can have force if, for example, compliance is a requirement for employment, membership, grant applications, and so forth. Further, such codes provide a good basis for performance measurement and audit – a key benefit from an outcome-oriented perspective, and a key difference from values-based codes.<sup>29</sup>

Many companies do in fact collapse the two concepts into one document. The flexibility inherent in a values-based code may be particularly useful for companies operating in Cuba.

A number of companies that have publicly announced possible Cuba ventures have a code outlining their core values. Google, a company that also faced criticism<sup>30</sup> for operating in China in past years, has offered to assist the Cuban government in building the Internet infrastructure of Cuba. This could be a critical step in opening the island up to new views and democratic ideals—if the government does not continue to censor and monitor the Internet. But will this assistance mesh with the company’s values? Google’s code states in part:

### **Privacy, Security and Freedom of Expression**

Always remember that we are asking users to trust us with their personal information. Preserving that trust requires that each of us respect and protect the privacy and security of that information. Our security procedures strictly limit access to and use of users’ personal information, and require that each of us take measures to protect user data from unauthorized access. Know your responsibilities under these procedures, and collect, use, and access user personal information only as authorized by our security policies, our Privacy Policies and ap-

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<sup>29</sup> See Marc Saner, *Ethics Codes Revisited: A New Focus on Outcomes*, INSTITUTE ON GOVERNANCE POLICY BRIEF no. 20 (June 1, 2004), <http://ssrn.com/abstract=1555814>.

<sup>30</sup> See Neal Ungerleider, *The Human Rights Violations of Google, Microsoft, and Yahoo*, FASTCOMPANY (APR. 20, 2012, 10:00AM), <http://www.fastcoexist.com/1679720/the-human-rights-violations-of-google-microsoft-and-yahoo>.

plicable data protection laws.

*Google is committed to advancing privacy and freedom of expression for our users around the world. Where user privacy and freedom of expression face government challenges, we seek to implement internationally recognized standards that respect those rights as we develop products, do business in diverse markets, and respond to government requests to access user information or remove user content. (Emphasis added).*

Carnival Cruise lines has announced “social impact” trips<sup>31</sup> to Cuba beginning in 2016. That company’s Business Partners Code of Business Conduct and Ethics<sup>32</sup> has a specific human rights section, which has values that may be incompatible with the current Cuban labor system. The code instructs:

Labor and Human Rights- Carnival and its business partners must know and comply with applicable employment laws and support human rights for all people. Carnival and its business partners must comply with the legal employment age in each country where they operate. Carnival and its business partners must not use any form of forced, bonded, indentured or prison labor. Carnival and its business partners must be committed to a workplace free of all forms of harassment. Carnival and its business partners must not illegally discriminate against employees for any reason... We expect our business partners to adopt and incorporate these commitments into their own organizations.

Apple, which can now sell products in Cuba after the lifting of specific restrictions has spent a great deal of time burnishing its human rights reputation after allegations of inhumane working conditions in China several years ago. Its Supplier Code of Conduct has more than a page outlining its expectations for labor and human rights.<sup>33</sup> Perhaps conveniently if it plans to operate in Cuba, its freedom of association policy has a loop-

<sup>31</sup> See Gene Sloan, *Cruise giant Carnival Corp. to launch sailings to Cuba*, USA TODAY (JULY 7, 2015, 5:33 PM), <http://www.usatoday.com/story/cruiselog/2015/07/07/carnival-cruise-fathom-cuba/29805319/>; see also FATHOM, <http://www.fathom.org/cuba/> (last visited Aug. 9, 2015) (advertising these sponsored cruises). “The true value of your Fathom voyage to Cuba will be to connect to the heritage of Cuba through an immersive program that encourages cultural, artistic, faith-based, and humanitarian exchanges between American and Cuban citizens. Purpose driven travelers will immerse, learn, and flourish. The opportunities are many, and so are the possibilities. And your presence on this journey will help you understand the power of story, as well as encouraging the Cuban people to share their stories more completely with the world.” *Id.*

<sup>32</sup> See CARNIVAL CORPORATION & PLC, BUSINESS PARTNER CODE OF CONDUCT AND ETHICS 4 (April 2014), <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjUzMzZfENoaWxkSUQ9LTF8VHlwZT0z&t=1>.

<sup>33</sup> See APPLE SUPPLIER CODE OF CONDUCT, (Jan. 2014), [https://www.apple.com/supplier-responsibility/pdf/Apple\\_Supplier\\_Code\\_of\\_Conduct.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_Supplier_Code_of_Conduct.pdf).

hole:

#### Freedom of Association and Collective Bargaining

*As legally permitted*, Supplier shall freely allow workers to associate with others, form, and join (or refrain from joining) organizations of their choice, and bargain collectively, without interference, discrimination, retaliation, or harassment. In the absence of formal representation, Supplier shall ensure that workers have a mechanism to report grievances and that facilitates open communication between management and workers. (emphasis added)

Jet Blue touts its five values of Safety, Caring, Integrity, Fun, and Passion in its code.<sup>34</sup> But there is no mention of human rights in their code, nor in the barebones ethic code of Netflix,<sup>35</sup> another company entering Cuba. AirBnB, which boasts 2,000 listings in Cuba notwithstanding the fact that most hosts don't have Internet access, doesn't even have a code of ethics. Instead, it has a responsible hosting page.<sup>36</sup> The lack of specific value statements regarding core human rights may inure to these companies' benefits.

In addition to the varying types of code of conduct or ethics, a number of companies have signed on to the UN Global Compact; the world's largest corporate social responsibility initiative. In January of 1999, U.N. Secretary General, Kofi Annan asked a corporate audience at the annual World Economic Forum in Davos to "initiate a global compact of shared values and principles, which will give a human face to the global market."<sup>37</sup> The Global Compact focuses on ten principles related to human rights, labor, the environment, and anti-corruption.<sup>38</sup> 12,000 companies in over 170 countries serve as the signatories. The Compact requires those signatories to report on their progress on these principles, and companies operating in Cuba may have a special burden.

Others companies have re-drafted their codes based in part on the U.N. Guiding Princi-

<sup>34</sup> See JETBLUE AIRWAYS CORPORATION CODE OF BUSINESS CONDUCT 5 (Sept. 2014), <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9ODkxNjR8Q2hpbGRJRDotMXxUeXBIPtM=&t=1>.

<sup>35</sup> See *Code of Ethics*, NETFLIX, <http://ir.netflix.com/documentdisplay.cfm?DocumentID=73> (last visited Aug. 10, 2015).

<sup>36</sup> See AIRBNB, <https://www.airbnb.com/help/responsible-hosting> (last visited Aug. 10, 2015).

<sup>37</sup> See Press Release, Secretary-General, Secretary-General Proposes Global Compact on Human Rights, Labour, Environment, in Address to World Economic Forum in Davos, U.N. Press Release SG/SM/6881 (Feb. 1, 1999).

<sup>38</sup> See U.N. SECRETARY-GENERAL, REPORT OF THE SECRETARY-GENERAL ON THE WORK OF THE ORGANIZATION, ¶ 46, U.N. Doc. A/61/1 (Aug. 16, 2006); see also U.N. Global Compact, *The Ten Principles of the UN Global Compact*, UNGLOBALCOMPACT.ORG, <https://www.unglobalcompact.org/what-is-gc/mission/principles>.

ples on Business and Human Rights.<sup>39</sup> The principles, which were unanimously adopted by the UN Human Rights Council in 2011, operationalize a “protect, respect, and remedy” framework, which indicates that: (i) states have a duty to protect against human rights abuses by third parties, including businesses; (ii) businesses have a responsibility to comply with applicable laws and respect human rights; and (iii) victims of human rights abuses should have access to judicial and non-judicial grievance mechanisms from both the state and businesses.<sup>40</sup> These principles have added additional pressure to ensure that companies proceed not only legally, but ethically in host states with poor human rights records.

## V. QUESTIONS FOR U.S.-BASED MULTINATIONALS ENTERING CUBA

With this backdrop in mind and assuming for the sake of this Essay that operating in Cuba were legal, what should companies entering Cuba consider from an ethical perspective?

1. What ethical issues can arise when doing business with state-owned enterprises or the military? As previously stated, unless the Cuban government changes its stance, approval of full foreign capital companies is not likely, and thus US companies, like their European counterparts, will be business partners with the Cuban government or military officers. Will these state-owned enterprises have the same value system or feel the need to adopt a US corporate code of ethics?
2. If the US company has a speak-up culture, where employees are encouraged to bring forward instances of known or suspected misconduct, will Cuban employees of US companies in joint ventures with the government feel comfortable being open with their views?
3. On a related note, if employees do not feel comfortable speaking up and they live in a country where communication has been monitored by the government, will they ever use whistleblower or other anonymous complaint mechanisms? US companies subject to the Sarbanes-Oxley or Dodd-Frank laws must ensure that anonymous reporting mechanisms are in place.
4. Are there any lessons to be learned from doing business in other Communist countries or in host states with similar or worse human rights regimes?

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<sup>39</sup> See U.N. Human Rights Office of the High Comm’r, *The Guiding Principles on Business and Human Rights; Implementing the United Nations “Protect, Respect and Remedy” Framework*, U.N. Doc. HR/PUB/11/04 (2011).

<sup>40</sup> See *Company policy statements on human rights*, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, <http://business-humanrights.org/en/company-policy-statements-on-human-rights> (last visited August 8, 2015).

5. If the company has a universal code of ethics, is that enough, or does the code have to change to operate in a country that does not embody the same core values such as freedom of association, freedom of assembly, and nondiscrimination in the workplace?
6. Can and should the universal code of ethics change if the local law does not provide for certain protections? If so, how will the company enforce those protections?
7. How will local managers respond to ethical rules imposed on them from a foreign company? How will the Cuban government in a joint venture with a US company respond?
8. What level of due diligence should a company like AirBnB or other hospitality companies conduct if there is a possibility, or even probability that they will be utilizing confiscated property to make a profit? If it is legal to use those properties according to the Cuban government, does not that mean that it is ethical to avoid due diligence on the property's true ownership?
9. How will US companies address the wage issues in Cuba, where the worker will only receive a small fraction of what is paid? Will US companies face pressure from unions or consumers for adhering to the Cuban law on wages?
10. Does a US company have an ethical duty to avoid doing business in Cuba until the situation is better for workers and their potential Cuban customers or should US companies try to improve living and working conditions for Cubans by entering the marketplace?

I pose these ten questions for compliance and ethics officers, board members, socially responsible investors, and other stakeholders to consider as companies rush into Cuba. These questions also pose compliance challenges, which I will address in a separate article. I do not believe that operating in Cuba is per se unethical, although many opponents of renewed US-Cuba relations do. But before entering into any country, not just Cuba, I contend that companies must ask themselves whether the business opportunity comports with its core values. Companies must grapple with the question that their codes of conduct often ask their employees: even if it is legal, is it ethical?