CPCU SOCIETY
INSURING YOUR SUCCESS

International Perspectives

IP

Volume 22 Number 2 August 2008

From the Chairman's Deck: The French Labor Market

by Anthony E. Fienberg, CPCU, ARe, RPLU

Anthony E. Fienberg, CPCU, ARe, RPLU, chairman, International Insurance Interest Group, runs a specialized insurance company in France. He holds a bachelor of arts degree in economics and has more than 15 years of experience in the insurance and reinsurance industries, both in the United States and Europe. Speaking numerous languages, he is very active in promoting insurance knowledge within the insurance industry and beyond. (http://anthony.fienberg.googlepages.com)

According to online research that I have just done, essentially, English-speaking writers have not taken much interest in how the French labor market works. This is surprising, given the reputation France has in most Anglo-Saxon business circles for being impossible to navigate, let alone understand. If France is that difficult, though, how do the more than one million French companies with employees captain their ships? The first step is to understand the legal, social and cultural issues, keeping in mind the political and historical perspectives on which they are based.

Most business decision-makers have only one statistic in mind about French economics—the unemployment rate has systematically been 4 to 6 percentage points above that of the United States over the last three or four decades. Some may think the logical correlation is French companies do not have the necessary flexibility to hire, pay and fire according to changes in their strategy. Luckily for French business-owners, this is not true, although there are a number of constraints to take into account. Let's take a quick look at some of these inevitably intertwined points of view.

Law

Due to the efforts of European champion Jacques Delors' daughter, Martine Aubry, the French work week was reduced from 39 to 35 hours at the beginning of this decade. Most of the details are left to the collective bargaining agreements between the employee (in reality the union) and employer representatives for each of the main business segments, or individual companies if they are big enough to warrant a worker's council. When the law was introduced, in

Continued on page 2

What's In This Issue

From the Chairman's Deck: The French Labor Market

Continued from page 1

exchange for working more than 35 hours, some of the negotiation produced results such as extra vacation days. It is legal, however, for certain employees to work up to 44 hours a week without being paid overtime, subject to receiving above-average pay, and officers (limited to only a few per company) can have their work contract stipulate that they are required to work 218 days per year.

In a 2006 article, *The New York Times* gave an over-simplified account of how difficult it is to fire a worker in France. In essence, dismissing a worker comes down to the following: (1) having factual reasons for doing so, and (2) paying the worker obligatory (depending on the company's activity and employee's longevity) and negotiated severance. The amounts involved are sometimes exaggerated in most people's minds because large portions of severance are not taxable and the employer must also pay for unused vacation and the notice period, a time between the official date when the work contract was legally set to terminate and its actual end. In essence, the financial burden can vary between three months and one year of annual salary. The only real complication comes in when there is a "mass lay-off," defined by law as more than nine people within a 12-month period.

Although unions represent only 5 percent of the private sector, they are involved in collective bargaining by law and can resort to media-pleading strikes. Except for those in the transport sector, short-term strikes have very little effect on the daily economy. Unions are surprisingly well-liked. According to a recent poll, almost 60 percent of workers gave unions a favorable opinion when asked if they were taking employee interests into consideration. Once a company has more than 10 employees, there must be an official employee representative nominated. Beyond 50 employees, an official worker's council must be put in place. The worker's council must be consulted on a regular basis and before any major strategic decision. Members of the worker's council are elected by the employees each year, and they are very difficult to fire, though it is not impossible.

Social

Over the years, governments have enacted laws—from tax policies to maternity leave—that generally encourage families to have children. Laws governing maternity leave, which legally is at least three months (six months for twins) but can extend to nine months, depend on the main business activity. Extenuating medical circumstances can lengthen this leave, to which regular vacation must be added. Maternity leave can in no way affect the woman's job when she returns to work. Now there is also a two-week paternity leave. Of the 25 million French workers (2005 statistics), just over 5 million are civil servants, who by definition, cannot be fired. Due to their sheer numbers, this group is influential relative to public opinion.

The French are known for enjoying lavish amounts of vacation days in comparison to U.S. norms. However, French vacation time is not much different from that of their European neighbors. The legal minimum is 25 days, although for most intellectual workers at insurance companies, the minimum is 28 days. When adding in extra days for longevity or earned days for working longer hours, the total amount of vacation days per year can rise to well over forty.

Cultural

There are two things to keep in mind about the French work mentality: (1) they do not like economic insecurity, and (2) most expect egalitarian treatment for all workers. So, it is not surprising that almost 50 percent of the population earns minimum wage. Unemployment can be a state of mind, not a temporary passage, because of high levels of government handouts. Up until recently, there were no major incentives to go back to work—why return to work when government unemployment insurance benefits for doing nothing equal almost the same as a salary.

Unlike many countries, all employees in France have employment contracts, some in writing and some not. When

the de Villepin government attempted to introduce a new contract for young people that contained an opt-out clause for the employer during the first two years, students descended into the streets and forced it out of law. There are many paradoxes that grow out of this structural and cultural situation, including employers turning to temporary employment contracts and outsourcing. Another is the trial period, anywhere from a one- to three-month renewable period which is essentially employment-at-will, because the employee can be terminated without cause. Lastly, most French are not especially geographically mobile for jobs outside their city or region, which stems from many sources, including the culture of attending university near home.

Economic

How much does all this cost? Well, first of all, you have to ignore the anti-capitalist measures of the wealth tax, progressive income tax and inheritance taxes, not to mention sales tax (19.6 percent) and social charges. The French social security system is a comprehensive regime consisting of a national health service as well as social security, medicaid and medicare. Pay in France, therefore, is not directly comparable to more liberal economies like the United States. If a worker is paid Euro 1,000 contractually, he only actually sees Euro 800 in his paycheck. And, yes, income taxes must be paid on this amount. The 200 Euro difference withheld by the employer is for social security. But wait—the employer has to add Euro 600 to the bill going to social security. So, in effect, for every Euro going into an employee's pocket, there is at least one going to the state.

Work on Sundays is almost forbidden, and work on holidays must be paid up to 200 percent of the normal hourly rate. Ignoring any effects of exchange rates, the minimum wage in France is 20 percent higher than in the United States. Older workers find it harder to find jobs because retirees have a portion of their retirement payments paid by their last employer and cost even more to fire than younger workers. Although this last point could have gone under the cultural heading because of the general French phobia against earning money, the income distribution is skewed and those earning in excess of Euro 75,000 per year are already in the top percentile of all salaried workers.

Political

Although train workers used to be able to retire at age 50, as of 2008 all workers now can retire only after 40 years of employment. Because the government's coffers are (near) empty, however, there is discussion about increasing the minimum progressively to 41 years and then beyond. France has a history of great state involvement and nationalizing companies (EDF, Crédit Lyonnais, and so forth). Therefore, even though some companies have seen IPOs or been sold to private concerns, the government made promises to the unions on guaranteeing employment so the deals could go through. Lastly, the "American dream" of everybody having a chance to "make it" in life faces a stark reality in France—more than a healthy portion of political and business leaders come from the École Nationale d'Administration ("ÉNA") school.

In conclusion, I have made no attempt in this article to analyze or put forth solutions for political or economic policies, but merely laid out some explanations about labor characteristics and labor law in France. Although it may seem like a minefield, the big picture should show that despite misconceptions about doing business in France, as long as you understand the boundaries, you are much better equipped at playing the (labor) game. ■

Protecting Your Company Abroad—Evaluating International Risks

by Eduardo A. Hernández

Eduardo A. Hernández is the multinational practice leader for Marsh U.S. South region based in Miami, Fla. He has a bachelor of arts degree in economics from the University of Southern California, a master in business administration degree from the University of Miami with a specialization in international business, and has completed graduate work in economics at Pepperdine University.

The globalization, or "flattening," of today's business marketplace, where economies and societies are interacting more often, allows U.S. firms to enhance their competitiveness in what is becoming an increasingly more level global playing field. Globalization is being driven by:

- Liberalization, deregulation, privatization and removal of trade barriers.
- Creation of trade pacts among countries.
- Access to a foreign talent pool with a comparatively skilled and lower cost labor force.
- Increased accessibility by way of transportation and communication.
- Saturation of local markets and the extension of product life cycles.
- Institutions, such as the World Bank, that facilitate international transactions.
- Emerging markets, such as Latin America, China and India, that represent new sources for production and sales.
- Technological advances, including the growth and widened use of the Internet.

Insurance follows the risk is a common axiom. As a company expands its geographic footprint, its risks become more far reaching and less predictable,

Figure 1: Multinational Risks

Global Issues

- Compulsory
- Non Admitted
- IPT
- Non Concurrency
- Currency Devaluation
- Reinsurance
- Fronting
- Retentions
- Premium Allocations
- Primary/xs groups
- Evidencing XS Limits
- Underlying Scheduling
- Reinsurance Restrictions
- Tariffs
- Broad Underlying
- Solvency
- Erosion of Local limits
- Fragmented brokers

Product	Exposures
Property	Fire protection, BI/EE/CBI, NatCat, Supply chain, Self procurement, DIC, Theft, Goods in transit, Floater: Declaration versus Use of Assets, Supply chain, Terrorism Carve outs
Foreign Casualty	Adequacy of local limits, Occurrence versus Jurisdiction, Tort, Product liability, Punitive damages, Pollution, Product recall, Accidental contamination, Malicious product or tampering, Fire legal
Excess Casualty	Bottom-to-top gaps, Adequacy of limits, Premium allocation, Evidencing XS limits, Pay on behalf versus Indemnification, Non concurrencies broad underlying, Specialty coverages, Currency devaluation
Work Comp	FVWC, DBA Expat, Local Hires, Third country national, Occupational versus Non occupational, Definition of endemic/pandemic, Primary versus contingency, Social security versus private, EL versus WC, EL excluded countries, Scheduled to X/S umbrella
Employee Benefits	Travel accident, Avian flu, Non occupational, K/R crisis management, Loss of key employees
Political Risk	Expropriation, Confiscation, Nationalization, Deprivation, Contract frustration, Trade credit
Cargo	Theft of goods in transit, Risk of loss, transportation, Consolidation, Tariff/duties, Stock Throughout, Warranties, Reporting requirements
Financial Lines	D&O, IVI, Differing D&O laws, Prudentman Rule, EPL Professional Liability, Crime, Private pension plans
Surety	Loss of bid, Capacity shortage, Contractual/commercial requirements, Custom bonds, Judicial bonds, Economic uncertainty, Reinsurance

increasing its exposure to people, assets, earnings and liabilities. U.S. companies will venture into new territories that are nascent risks for its operations and employees. Avian flu and other pandemics could potentially have an impact on firms and their employees traveling and working in affected areas. Further, the proliferation and possible development of terrorism risks, specifically nuclear, biological, chemical, and radiological (NBCR) acts undoubtedly further expose firms and their assets.

Risks are geographically diverse and intrinsic to certain regions. Figure 1 shows a sample of potential risks and corresponding implications for firms with international exposures. (See Figure 1.)

Globalization has also produced a new generation of risks, specifically in areas such as **regulatory compliance,** where insurance is becoming increasingly governed and enforced by regulatory authorities seeking legal adherence to local laws. European landmark cases such as Kvaerner and U.S. corporate reforms similar to Sarbanes-Oxley have heightened awareness of international insurance regulation, specifically what insurance is procured (compulsory requirements), how and where insurance programs are purchased (admitted insurance) and where any corresponding Insurance Premium Tax (IPT) is to be collected and paid. As a result, firms need to reevaluate their strategy in global insurance procurement practices as well as business assurance and internal controls.

Evaluation of International Risks

Companies able to properly evaluate their international risks may gain a global competitive advantage. Public and stakeholder confidence will increase due to the company's proven methods of identifying, measuring, monitoring and managing its risks.

Businesses should develop a systematic and comprehensive process to evaluate their international risks. A common framework and language will help to facilitate a thorough review and audit of insurance and risk management programs. Such an audit should:

- Enhance the quality of information needed for management decision making on global insurance programs.
- Reduce a firm's global total cost of risk.
- Increase client confidence in its global insurance portfolio.
- Help to limit a firm's foreign exposure.
- Optimize and sustain regulatory compliance processes with respect to such activities as non-admitted insurance procurement.
- Reduce potential regulatory compliance costs such as those associated with the failure to purchase changing compulsory insurance requirements.

By instituting this review as an internal risk management process, a company can:

- Analyze compliance with local laws and customs, such as compulsory, non admitted, IPTs, fronting, premium payment and reinsurance.
- Review exposures, risk quality and loss experience by country.
- Identify gaps in coverage or duplication.
- Eliminate redundant insurance purchases.
- Assess financial security of all insurers in each country.
- Document all insurance policies in a central database.
- Identify opportunities for centralized purchasing of insurance and related services, including risk control.
- Highlight broad socioeconomic and political threat issues.
- Review processes, procedures and communications protocols for global risk management.
- Provide alternative program designs based on a review/analysis outcome.

Conclusion

As organizations continue to globalize, they will undoubtedly enter new territories and will need to better manage uncertain risks. Those that possess sound technical risk and insurance knowledge may be able to find an opportunity in these risks.

Evaluating international risks will help companies understand international nuances that will ensure the structural integrity of their risk and insurance programs with respect to protecting their people, assets, earning and liabilities. An extensive review and program audit also can help ensure regulatory compliance in this age of dynamic changes in international regulatory requirements.

Philippines Political Risk Toward Democracy and Prosperity

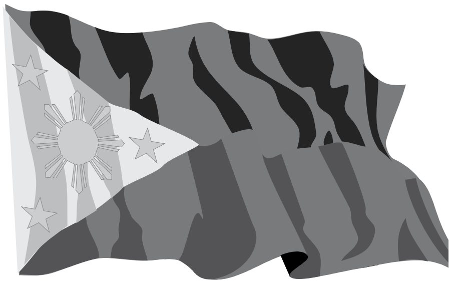
John L. Linantud, Ph.D.

John L. Linantud, Ph.D., is an assistant professor of political science at the University of Houston-Downtown. He received his Ph.D. in political science from Arizona State University, and a master's degree from George Washington University. Linantud's teaching and research interests include nation-building, American foreign policy, and East and Southeast Asia.

Editor's note: This is the second in a series of articles commissioned by the CPCU Society's International Insurance Interest Group on Asian Country Political Risks. The first article appeared in the March 2008 issue of *International Perspectives.*

Introduction

In 1966 John Lennon and Ringo Starr hid behind nuns at the Manila airport to avoid Filipinos angered by the Beatles' refusal to meet First Lady Imelda Marcos. The Beatles departed unharmed, but only after they surrendered their concert receipts to military officials. Twenty years later, nuns at the forefront of hundreds of thousands of protestors protected soldiers who had mutinied against President Ferdinand Marcos during the People Power Revolution of 1986. Today, a generation later, the Philippines is still working toward a stable democracy in which violence, corruption, street protests and other extraordinary acts are replaced by the rule of law.



Convent to Hollywood

The Philippines possesses a political culture that, according to one colloquialism, combines Southeast Asia with 350 years in a convent (Spanish colonization 1521–1898) and 50 years in Hollywood (American colonization 1899–1946). Spain originally created the Philippines from local tribes, established the Catholic faith, and fostered a social milieu of families and patronage. The Spanish era is not remembered fondly: the Philippines' earliest icon is Muslim chieftain Lapu-Lapu, whose men killed

MacArthur at Leyte.

Ferdinand Magellan in 1521; the official National Hero, Jose Rizal, was the intellectual father of the revolution against Spain in the 1890s; and the current dress shirt for males, the barong, features an open collar in memory of Spain's refusal to allow Filipinos to wear ties.

The Spanish–American War brought America to the Philippines in 1898. After the American navy destroyed the Spanish fleet, local authorities ignored the Filipinos and surrendered to Commodore George Dewey. In 1899–1902, American and Filipino troops fought each other for control of the country in a war that produced mutual atrocities and bloodshed between soldiers and civilians. Fonder memories of U.S. rule include a public school system and a popular culture of entertainment and celebrities. Under American oversight the Philippines also became the first Southeast Asian people to hold regular elections, and Filipino officials negotiated with Washington for full independence by 1946. This timeline was interrupted when the Japanese defeated a combined Filipino–American army and ruled Manila during the Second World War in 1942–1944. Filipinos generally welcomed the reconquest of the country by allied forces led by General Douglas MacArthur.

Guns, Goons, and Gold versus People Power

Filipino politics after independence mixed elections with oligarchs and private armies. Pundits named this amalgam of democracy and factional violence Guns, Goons, and Gold, and celebrated the Philippines' status as the freest and wealthiest country in Asia outside Japan. By the 1960s, however, traditional politics was an impediment to further growth, and Marcos was elected president in 1965 and 1969 on the promise of purging the oligarchs and modernizing the country. To this end he stressed national independence, built heritage

The EDSA Shrine, Manila.

sites at wartime battlefields and leveraged more aid from Washington for military base rights. It was into this atmosphere of resurgent Filipino nationalism that the Beatles blundered in 1966. Marcos, however, was himself flummoxed by two separate and equally serious insurgencies. The first came from the New Peoples Army (NPA), which began a communist revolution against the state in the 1960s. The second was a separatist Muslim rebellion in Mindanao in the far south, which began in the early 1970s.

Marcos thus declared martial law in 1972 in a time of violence and uncertainty. He did not install a military government, but enlarged the armed forces, closed the legislature, jailed opponents and appointed technocrats to manage the economy. Some of these measures were supported by a population that welcomed a commitment to law and order. Marcos, however, lost support when he failed to deliver on his promises. The symbolic turning point came when he named Mrs. Marcos governor of Manila in 1976. Popular discontent rose as Marcos looted public funds; placed allies in politics, business and the media; and used loyalists in the military to harass opponents.

Change accelerated in 1981 as Marcos terminated martial law and stood for re-election. Marcos won easily, in part because of vote-buying and intimidation, but the prospect of one day defeating Marcos in a more competitive election lured opposition leader Benigno Aquino from exile to the Philippines, where he was assassinated at the Manila airport upon arrival from the United States in 1983. His death resulted in capital flight and more recruits for the NPA.

The crisis led to the first People Power, or EDSA I. Nearly incapacitated with lupus, Marcos approved an election in 1986 between himself and Corazon Aquino, the wife of Benigno, in which hundreds died from partisan and NPA violence. After the government named Marcos the winner, Aquino and the Archbishop of Manila, Cardinal Jaime Sin, refused to recognize the decision. When General Fidel Ramos and several junior officers also denounced the results, Sin called protestors to gather around Ramos' headquarters along EDSA Boulevard. Philippine troops refused to fire on nuns and young women, which forced Marcos to abdicate and made Aquino president. Today these events are honored by a complex centered on the Virgin Mary.

Toward Democracy and Prosperity

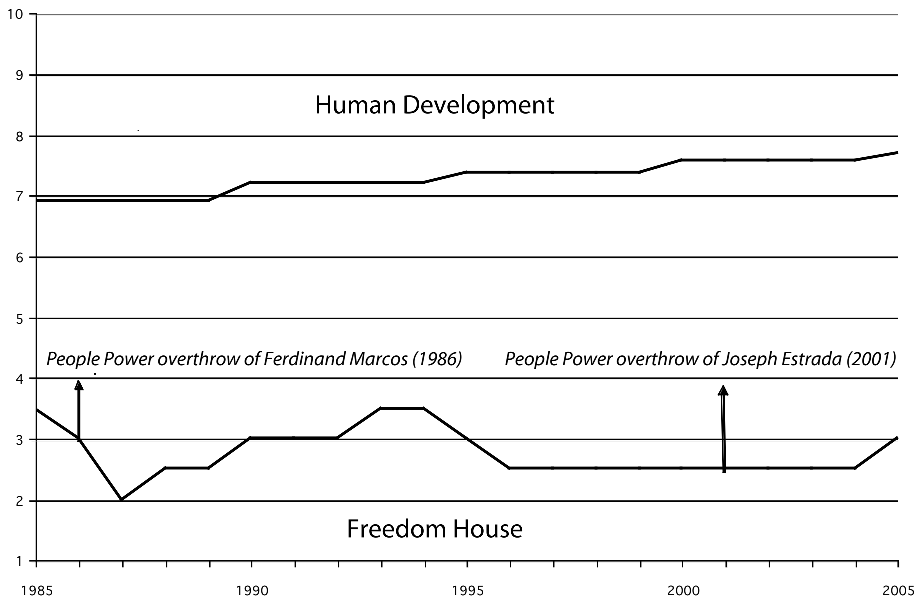
Figure 1 traces socioeconomic and political change since EDSA I. The top line tracks the United Nations Human Development Index (HDI), a compendium of gross domestic product, education and health—the higher the HDI, the better the quality of life for the average Filipino. HDI has only slowly improved since 1985, and the gross domestic product (GDP) per capita of $3,300 is among the lowest in Asia. The Philippines does have a comparative advantage in English, making it a

Continued on page 8

Philippines Political Risk Toward Democracy and Prosperity

Continued from page 7

Figure 1
Freedom House and Human Development: 1985–2005



regional leader in outsourcing, but GDP growth of 5 percent in 2001–2007 must continue indefinitely to help the 1 in 3 people in poverty.

Note: The Human Development line multiplies index scores by 10 to make whole numbers. The best possible score is 10. The Freedom House line averages the separate annual assessments of political and civil rights. The highest possible rating is 7, designating a state with no political or civil rights. The lowest possible rating is 1, designating a liberal democracy.

The bottom line tracks Freedom House grades on political rights and liberties: the lower the grade, the stronger the democracy. The Philippines improved from 3.5 to 2 in 1985–1987 during the decline and fall of Marcos, but in 1988–2005 it actually posted a net regression back to 3. Why? In general, democracy has struggled to assert the rule of law over civilian politicians, insurgents, the military and People Power. The specific problems in Figure 1 includes the peak of military coups, insurgencies and government countermeasures in 1988–1994; lingering insurgency, election irregularities and capital unrest in 1995–2004; and corruption and extrajudicial killings in 2005 and thereafter.

Political disorder lies at the root of these difficulties. Factional bloodshed and communist insurgency have weakened since 1986, as has Islamic separatism following autonomy for majority-Muslim cities and provinces in the 1990s. Yet guerillas still collect illegal taxes, dragoon young people into their ranks, and enforce their own brand of law and order. The military has also employed extrajudicial killings. But if civilian leaders were to prosecute soldiers for violations of human rights, they might lose their protection against coups and People Power. And the virtual immunity of the armed forces has enticed the rogues among them into organized crime, extortion, kidnapping (see Kevin Henry in *International Perspectives*, March 2008), and murder.

Capital unrest is both the cause and effect of disorder. Aquino (1986–1992) survived coups led by soldiers opposed to her alleged corruption and soft line toward the NPA. Failing to oust her, many retired officers have won elected offices and remained active in plots against civilian government. Officers who stayed loyal to Aquino have also moved into politics, most prominently Ramos. As president in 1992–1998, he made progress against insurgents and faced no coups, but a campaign to keep him in office by changing the constitution failed after Aquino and Sin led counter-rallies in Manila.

People Power returned under Joseph Estrada (1998–2001) and Gloria Arroyo (2001–). Estrada, a former film star, won the 1998 election but was criticized by other elites as uneducated and corrupt. After the House of Representatives impeached him for profiteering from illegal gambling, several legislators refused to admit key evidence during his Senate trial in 2001. Legions of protestors, with the support of Aquino, Sin and Ramos, occupied the EDSA Shrine and demanded Estrada's resignation. This second People Power, or EDSA II, forced Estrada to vacate the office even though he refused to formally resign. Arroyo, the former vice president, charged him with corruption, and in retaliation Estrada

Highway marker and tribute to 1942 Death March of American and Filipino prisoners of war, Bataan.

loyalists stormed the presidential palace. This failed People Power, or EDSA III, killed several people and wounded others. Since 2001 Arroyo has survived more protests, military plots and attempted impeachments over allegations of misconduct and corruption.

These problems have sullied the Philippines' business reputation despite macroeconomic gains. Since 1996 the Philippines has slipped on every category in the World Bank Governance Project, including Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption.[1] Some agencies rate it the most corrupt in Asia, and *The Economist* gives the Philippines high marks only in Brain Drain, defined as talented people leaving for other countries, and Workers' Remittances. Indeed, the $17B in national remittances trailed only Mexico, India and China in 2007, and accounted for 13 percent of GDP in 2006, the most in Asia.

In conclusion, the Philippines has made real but uneven progress toward stability and prosperity. Despite the setbacks described above, popular faith in democracy is still strong, as evidenced by the actions of citizens and the churches—including the ubiquitous Catholic nuns—who assume an array of responsibilities, from voter education and election security to the counting of ballots. This determination and commitment suggest that the Philippines will continue to move forward, albeit at its own pace, and by its own design. ■

Endnote

1. United Nations, Human Development Report 2007/2008, "Table 2: Human Development Index Trends," p. 235 (hdr.undp.org/en/); Freedom House excel worksheet, "Freedom in the World Country Ratings, 1972–2006" (freedomhouse.org).

International Perspectives Editor's Note: Expand Your Networking Base!

■ **Mickey Brown, CPCU, ARM,** is a senior vice president at Marsh USA Inc. in Atlanta, Ga. He is a graduate of Loyola College in Baltimore, Md., with more than 20 years of experience in international finance, mergers and acquisitions, risk management and commercial insurance brokerage.

We are actively seeking articles about your country-specific knowledge, personal experiences in working internationally, or dealing with global risk and insurance issues. This publication represents an excellent opportunity to gain publicity for both yourself and your respective organization! Don't worry about being a journalism major; we stand by to edit and format the content in sharing your knowledge with other professionals.

Here's a great chance to gain both exposure as an authority on a given topic and expand your networking base! If you would like to submit an article, please contact Mickey Brown, CPCU, ARM, by phone at (404) 995-3386 or by e-mail at mickey.brown@marsh.com. ■

Japan Vertical Segregation

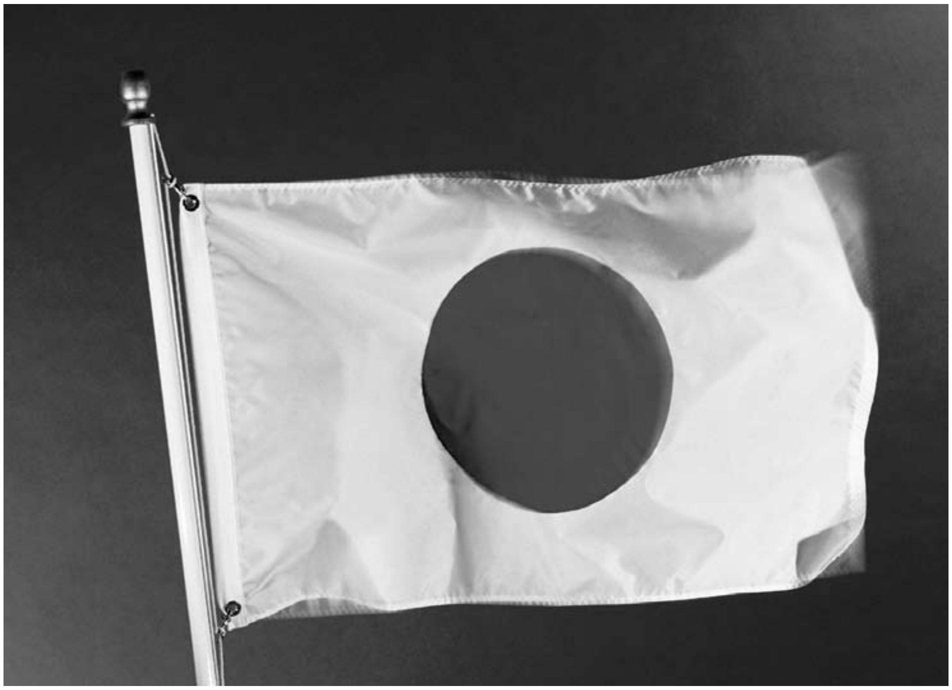
by Coletta Kemper, ARM

Coletta Kemper, ARM, is vice president of Industry Affairs for the Council of Insurance Agents and Brokers, which she joined in 1991. Prior to joining the Council, Kemper served as director of public affairs for the National Association of Insurance Brokers for six years. She brings more than 30 years of political and public policy experience to the job. Kemper has worked on political campaigns at the presidential and state levels. She also spent four years in the legislative department for a public interest organization headquartered in Washington, D.C. Kemper has worked in the private sector in the telecommunications and finance fields. She received a master's in public administration degree in 1982 from Harvard's the Kennedy School of Government. She holds a B.A. degree in English Literature from the University of Maryland.

Editor's note: This article originally appeared in *Leader's Edge* Magazine and is reprinted with permission.

Out of the ruble of sheer destruction following World War II, Japan emerged as an economic miracle in the second half of the 20th century. Behind Japan's success is a tradition of close-knit business arrangements that helped create economic powerhouses, such as Mitsubishi. For decades, these powerful alliances controlled Japanese industry from supplier to distributor and threatened U.S. dominance in the steel and auto industries. No longer the power force they once were, these mega corporations still pose a barrier to foreign and domestic insurance brokers and carriers in Japan's insurance market. Prior to World War II, Japan's industry was controlled by zaibatsu—closely held, family-owned industrial conglomerates. The zaibatsu helped build Japan's military industrial complex before the war. The Allies dismantled the zaibatsu after the war, but companies quickly reorganized into alternative business alliances called keiretsu.

Keiretsu is a Japanese term for a type of business arrangement with interlocking companies and shareholdings. A keiretsu is organized either horizontally or vertically. The major keiretsu are centered on a bank, which lends money to the other members and holds equity positions in the companies. The all powerful bank exercises considerable control over the keiretsu and bails out members when needed. Through these arrangements the keiretsu is able to dominate the market. Mitsubishi Corp. is a prime example. Its group includes the Bank of Tokyo-Mitsubishi UFJ, Kirin Brewery, Mitsubishi Electric, Mitsubishi Fuso, Mitsubishi Motors, Nippon Yusen, Nippon Oil, Tokio Marine and Fire Insurance, and Nikon and Hino Motors. Vital to Japan's early economic recovery, the keiretsu system is viewed as a barrier to trade and an obstacle to Japan's future economic success. The keiretsu structure has been the subject of trade negotiations since the early 1990s. The U.S. asked the Japanese to dismantle the keiretsu and allow U.S. firms to compete. As a result, the Japanese agreed to make the keiretsu relationships more "open and transparent." While progress has been



made, the keiretsu system lives on, and significant trade barriers still exist in the areas of non-life insurance and brokerage services. Foreign and even domestic insurance brokers find it difficult to compete for commercial clients that are part of a keiretsu. There are six major barriers to trade for the insurance industry:

Shareholding by insurance companies of large publicly traded corporations. Currently, Japanese law permits non-life, property-casualty insurers to hold no more than 10 percent of a public company. On its face, the 10 percent ownership doesn't seem that onerous if the corporation's insurance needs are put out for competitive bid. In reality, because of the cozy keiretsu relationship, the insurer with the ownership stake most often gets the business.

Corporate subsidiary insurance agencies. A number of large Japanese corporations have a wholly owned subsidiary that operates as a licensed property-casualty agency. Current regulations limit the percentage of the parent company's insurance that can be funneled into the agency. The percentage calculation excludes any personal insurance that employees buy—distorting the amount of business going to the subsidiary agency. Another issue arises when Japanese non-life insurers assert their influence by assigning the insurer's current or retired employees to the agency.

Cooperative insurance company scheme. Under this scenario, non-life insurers provide quotes for the risk. The business is still awarded to the largest shareholding insurance company, but the insurers who "lost" the bid form a cooperative "coinsurance scheme" and underwrite a proportion of the risk based on the shares they own. This effectively locks out other competitors.

Direct foreign insurance placements. Japan requires many lines of coverage be placed with admitted companies. This isn't uncommon in developing economies that protect emerging industries, but it limits the coverage available for complex risks.

Insurance brokerage system. Japan does not allow brokers to negotiate fees for services with commercial clients. The fixed commission rate approach needs to be eliminated, and brokers should be allowed to be compensated by fee for services and/or commission depending on services provided.

Toa Reinsurance Co. Toa was created largely by capital provided by Japanese insurance companies, which are also Toa's largest shareholders. As a result, Toa often becomes the reinsurer of choice for the insurers and may provide conditions more favorable to its shareholders than the competition. Japan has progressively opened its insurance market to foreign competition, but to have a truly free market that benefits consumers, it must let competition reign.

Working Abroad in Insurance: How Does Insurance Work on a Small Caribbean Island?

by John C. Ramsey, ARM

John C. Ramsey, ARM, is an assistant vice president and manager of risk and insurance advisory services at Marsh Management Services Cayman Ltd. in Grand Cayman. He received his bachelor of business administration degree with a double major in finance and risk management and insurance from the University of Georgia in Athens, Ga. Prior to joining Marsh in the Cayman Islands, Ramsey was with the Marsh International Practice based in Atlanta, where he was responsible for client advisory of multinational clients and their overseas operations.

As a commercial insurance broker, I have transitioned from working with global clients to implementing similar risk management and insurance concepts at a local level. In transferring from a large U.S. brokerage office to a small office in the Caribbean, I migrated from servicing multinational corporate clients and liaising with foreign offices on international programs to being the representative in a foreign office—Grand Cayman.

I sought an overseas assignment in order to gain valuable experience within the international insurance arena. So, when an opportunity arose in the Cayman Islands, no one had to sell me. Needless to say, I have grown to thoroughly enjoy this island and the residents of Grand Cayman. The tremendous amount of opportunity here on various levels in the insurance and risk management industry is something you do not find in many other places—the local market continually growing in sectors such as tourism and construction, the captive market with numerous alternative risk solutions and the potential to be a reinsurance hot spot down the road.

Compared to the United States, it is definitely a different local insurance culture. Historically, a great deal of the local business has been handled on a direct or agency basis with minimal local broker involvement. As the Island continues to grow, especially in the financial and property sectors, the need for a broker representing the insured's best interests becomes more evident.

It is estimated that the Cayman Islands has a resident population of about 55,000 people, with roughly 60 percent Caymanians. The local commercial insurance environment has a unique culture, which also is evident in other Caribbean jurisdictions. To a large degree, agency arrangements exist as well as local insurers writing direct business. Considering the size of the Cayman Islands, relationships go a long way when insureds decide to transact their business, be it through an agent, broker or direct. Broker of Record Letters are not widely acknowledged for commercial business, and the role of the broker is still somewhat vague by many insureds. It is often thought that the broker will add cost to the equation or there is some unknown catch, even though a broker's number one priority is to represent the best interests of the insured!

So, how do brokers differentiate themselves and show value? A strong influence consists of the local relationships that a broker builds and focuses on core questions such as: Are businesses properly identifying their risks? Do they have the proper insurance coverage? Has business continuity been addressed in the event of a disaster? What alternative risk management solutions exist? And so forth. The key is providing innovative solutions and utilizing worldwide resources for the insured's benefit to demonstrate that a local touch has a global reach.

Grand Cayman Insurance Marketplace

In the 1970s, the Cayman Islands began to push itself as an offshore center domicile with the first captive insurer being established as a result of hardening in the U.S. medical malpractice insurance marketplace. Two local domestic insurance companies were established in 1984 and remain intact today. In 2004, the first license was issued to an open market reinsurer. The Cayman Islands Monetary Authority (CIMA) is responsible for the supervision of all insurance companies, whether they operate domestically writing local risks or as insurance companies accepting overseas risks.

The Cayman Islands is probably best known for its economic development in international finance and tourism. The country is regarded as one of the world's premier financial centers, consistently ranked in the top five. Forty-seven of the world's largest banks are currently registered in the Islands. They are also home to the world's leading legal and accounting firms.

Captive and Offshore Insurance Market

The Cayman Islands is the second largest captive domicile in the world. The number of companies registered is approximately 760, which include individual and group captives, associations, segregated portfolio companies and alternative financing vehicles, with total premium income in excess of U.S. $7.6B as of April 2008, according to CIMA statistics.

The main business lines written by the captives are healthcare, liability, workers compensation and property, with almost 90 percent of business coming from North America. Cayman has historically been known as the domicile for healthcare and medical malpractice captives. Healthcare accounts for excess of U.S. $3.03B in premium or 36.3 percent of Cayman captives, followed by workers compensation with U.S. $1.89B premiums or 21.1 percent, Liability premiums of U.S. $1.61B or 18.8 percent, and Property US $450M with 11.1 percent.

There are currently 25 registered insurance managers in the Cayman Islands. The top five captive managers comprise roughly 70 percent of the total number of captive companies under management, and they are a large reflection of international based captive managers.

With one reinsurer now set up and doing business in the Cayman Islands, the thought and hope is that a trend will begin to attract more reinsurers to set up shop here. As the government is keen to develop a reinsurance market, it has created a reinsurance task force to attract reinsurers and further enhance the image of being a domicile with favorable regulations. A report of the Insurance Law Working Group, established by CIMA, stated that there is an opportunity for Cayman to firmly establish itself as a domicile that can house the non-captive reinsurance market, which has traditionally gravitated toward Bermuda.

Local Property and Casualty Market

According to statistics from CIMA, at year end 2006 the total gross written premiums of the domestic non-life market were roughly U.S. $304M. The largest class was property, accounting for U.S. $126.6M, healthcare contributed U.S. $108.4M, and motor was U.S. $30.5M. Professional liability and D&O liability are placed overseas through global programs or stand alone placements.

Hurricane Ivan hit Grand Cayman on Sept. 12, 2004, resulting in the worst ever natural disaster on the island, causing an estimated U.S. $1.5B in property claims. In 2005, property premium increased by almost 80 percent due to the large rate increases after Hurricane Ivan. The standard property deductibles for catastrophe perils have since increased from 2 percent to 3 percent of the insured value and up to 5 percent for some waterfront areas and difficult-to-place risks.

Because of windstorm exposure, property continues to be a challenge in the Cayman Islands. Although the overall market is softening to a degree, the capacity, terms and pricing still remain issues as there are a limited number of local and overseas markets willing to write in this windstorm prone area.

About 90 percent of the islands' food and consumer goods must be imported. As industry infrastructure is minimal, future growth is likely to be from increases on existing business and developments in the residential, resort and tourism sectors. Much of the islands' large risks are placed abroad, including the resort hotels placed through global programs.

The following classes of insurance are compulsory in the Cayman Islands: motor third party liability, health insurance, professional indemnity for insurance brokers and workers compensation (for those earning less than a stated salary level). All employers must provide health insurance for their employees through a licensed health insurer. Condo association by-laws require replacement cost insurance to be procured for the building structure.

Non-admitted insurance is effectively permitted, as there is no law stating that a buyer for a local risk cannot purchase from an unlicensed insurer, with the exception being compulsory coverage. There is no local market for professional liability and D&O liability, which results in coverage having to be placed overseas. Lloyds is an external licensed admitted insurer in Cayman. Licensed brokers and agents are permitted to place local risks with non-admitted insurers only by obtaining a special dispensation from the authority where certain criteria are satisfied.

As of April 2008, CIMA reported licenses for 22 brokers, 6 local insurers and 22 external insurers, who are all authorized to do business in the Cayman Islands. Many of the local brokers act in an underwriting agency capacity. Foreign external licensed insurers who are predominantly located in the Caribbean region operate mainly through agency-type relationships. There are no international insurers with local operations. ■

United Kingdom's Corporate Manslaughter Act

Implications on Employers Liability and General Liability Insurance

by Michael A. Leinenbach, CPCU, AIM, ARe, ASLI, ARM, ARM-P

Michael A. Leinenbach, CPCU, AIM, ARe, ASLI, ARM, ARM-P, is a senior underwriter in the International Casualty unit of Zurich North America. He has 20 years of industry experience, including seven years with Chubb and seven years with a regional agency.

Editor's note: This is the second in a series of articles on the United Kingdom's Corporate Manslaughter Act of 2007 commissioned by the CPCU Society's International Insurance Interest Group. The first article appeared in the March 2008 issue of *International Perspectives.*

Introductory Notes

As the U.K. Corporate Manslaughter Act of 2007 ("the Act") has been in effect since April 6, 2008, there remain many questions relative to the insurance marketplace coverage response to this new law. At the time of this writing, no prosecutions under the Act could be identified, so there are no guiding precedents.

Please keep the following in mind regarding this article:

- It is based on U.K. "Good Local Standards," not on any specific insurer's policy. Many insurers have not publicized a coverage position for losses resulting in prosecution under the Act.
- Information is addressed on a broad perspective rather than a discussion of specific provisions of any insurer's proprietary policy.
- Coverage questions are discussed relative to whether an insured should reasonably expect coverage under the lines of business addressed. The "reasonable expectation" standard is addressed as an opinion of the author.

In addressing the question of how criminal prosecution can be covered under an insurance policy, we shall focus here on the answers from the perspective of employers liability and general liability.

Employers Liability

Since the employer's responsibility for the safety of their employees is automatic, Employers Liability (EL) exposures are especially susceptible to losses resulting from prosecution under the Act. Therefore, anytime an employee dies in the course of employment, management is considered responsible to some extent.

A typical U.K. EL policy covers action taken by the Health and Safety Authority (HSA) under certain circumstances. Accordingly, it's not a stretch to expect coverage for a criminal prosecution which would result from a grossly negligent deviation from HSA standards. In any case, it goes against the nature of insurance to provide indemnification for the consequences of criminal activity. So, how is it being handled?

First, keep in mind that being prosecuted is only an allegation of criminal activity. Until when and if an organization pleads guilty or is convicted, the activity in question is not deemed criminal. Also, we need to separate intentional criminal conduct from conduct undertaken not only without the intent to commit criminal acts, but with responsible action in mind. Therefore, until and unless there is an actual criminal conviction, an insured would be reasonable in his expectation of coverage, as such claims situations, in which there is a duty to defend, are generally broader than those where there is a duty to pay the ultimate loss.

The typical U.K. EL coverage grant provides for losses which include the Employers Liability deemed by a court as well as auxiliary costs, the most important of which is defense. The defense costs are included within the policy's coverage limit (for example, GBP 10M). My research reveals that most insurers are offering defense costs for prosecution under the Act, though with a sublimity. I have neither found any EL policy that would cover the resulting fines or other costs involved with implementation of the various penalties, nor is this expected.

General Liability/Public Liability

Just as with the EL, the duty to defend is generally broader on the General Liability (GL) than the responsibilities to cover an actual judgment. So should an insured expect the same level of protection (that is, defense costs, perhaps subject to a sublimit) as with the EL policy? I do not think so. With Employers Liability, the employer is automatically considered responsible for any injury in the course of employment and the defenses are limited. Indeed the EL policy is designed to address the specific exposures borne by an employer in an expeditious (in other words, cheap) manner in light of the fact that defenses to their responsibilities are limited (notwithstanding the abilities of plaintiff attorneys to often negotiate large settlements). The range of defenses against a suit under the GL—public liability or products liability coverage grants—is much wider given that it may cover liability to a much larger potential pool of claimants, such as any third party other than employees.

To form an opinion as to whether an insured should expect coverage for prosecution under the Act within the public liability or products liability coverage grants, I will separate losses into two categories: Losses which would give rise to a claim solely as a result of prosecution under the Act (especially where it would clearly not be covered under the GL policy otherwise), and losses which would give rise to civil/public liability whether or not prosecution under the Act ensues.

In the first article, we established that prosecution under the Act requires an allegation of gross negligence committed by corporate "management" that is so egregious it is deemed criminal. Management failure in and of itself is not a coverage grant under the GL policy, and criminal acts should be excluded. I would therefore suggest that an insured not look to a GL policy for defense costs arising solely out of prosecution for manslaughter.

But what if the insured's operation causes a loss where the insured is potentially liable to a claimant under a civil proceeding, and that same occurrence also leads to prosecution? Now, just as with the EL policy, we should expect to have defense costs until when and if criminality is proven, as the prosecutorial defense parallels the civil defense, requiring similar investigative and claim adjustment resources. One could say that it is in the insurer's best interests to help negotiate a favorable (to the insured) outcome to the prosecution to lessen the impact of the civil liability. Since U.K. GL policies are generally "defense within," the insured should likewise expect to have a limitation to these costs.

Conclusion

To summarize, under EL and GL policies, it would be reasonable to expect indemnification from defense costs for prosecution under the Act where liability for an occurrence exists, whether or not criminality was alleged. Such coverage should be subject to a policy sublimit based on insurance market capacity and underwriting appetites. On the other hand, an insured should not expect to be protected against the punitive results of a successful criminal prosecution nor should an insurer offer such coverage.

Since this article provides only this author's opinion of reasonable coverage expectations, how can this information assist in designing an insurance coverage program? Hopefully, you now know the questions to ask, such as: Am I covered for defense? Is it sublimited? What if the same occurrence causes a loss covered under multiple policies? What if a single occurrence results in a products liability claim and simultaneous prosecution under the Act?

If answers to these questions are not available, or if the insurance company in question has not established a position, then you may want to investigate alternatives.

In the next installment of this series, I will address the perspective of professional policies (D&O, E&O), umbrella/excess coverage and a global master policy. My expectation is that major insurers will also publicize more specific information regarding their proprietary underwriting position on this coverage prior to the next publication date. ■

CPCU: Heritage & Horizons

CPCU Society Annual Meeting and Seminars
September 6–9, 2008 • Philadelphia, PA

Attend the CPCU Society's Annual Meeting & Seminars

September 6–9, 2008 • Philadelphia, PA
Philadelphia Marriott Downtown

Commemorate "CPCU: Heritage and Horizons"

Celebrate with colleagues and new designees at Conferment!
Hear Phil Keoghan, adventurer and television host. Best known for his role in *The Amazing Race.*

Gain first-hand historic insights! Hear Keynote Speaker Doris Kearns Goodwin, an award-winning author and historian. Author of *The New York Times* best seller, *Team of Rivals: The Political Genius of Abraham Lincoln.*

Glean inside perspectives on where the industry is heading! Attend two new exciting panel discussions: "Heritage and Horizons: Leadership Perspectives of Large Regional Carriers," and "Through the Looking Glass: Industry Insiders Contemplate the Future."

Increase your professional value! Experience an all-new educational lineup of 30-plus technical, leadership, and career development seminars.

Register online today at www.cpcusociety.org.

International Perspectives
is published four times a year by and for the members of the International Insurance Interest Group of the CPCU Society. http://international.cpcusociety.org

International Insurance Interest Group Chairman
Anthony E. Fienberg, CPCU, ARe, RPLU
E-mail: afienberg@nassau.eu

***International Perspectives* Editor**
Mickey Brown, CPCU, ARM
E-mail: mickey.brown@marsh.com

Director of Technical Programming and Chapter/Interest Groups
John Kelly, CPCU
CPCU Society

Managing Editor
Mary Friedberg
CPCU Society

Associate Editor
Carole Roinestad
CPCU Society

Design/Production Manager
Joan Satchell
CPCU Society

CPCU Society
720 Providence Road
Malvern, PA 19355
(800) 932-CPCU
www.cpcusociety.org

CPCU Society
720 Providence Road
Malvern, PA 19355
www.cpcusociety.org

International Perspectives

Volume 22 Number 2 August 2008

IP

CPCU Society Insuring Your Success