THE INTERNATIONAL BAR ASSOCIATION

GLOBAL EMPLOYMENT INSTITUTE

Intra-Company Transfers

A Draft Policy Document and Recommended Best Practices

By: The Working Group on the Global Corporate Relocation Treaty

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Background

The process of Intra-company transfers (ICT) is one of the fastest growing aspects of corporate relocation. Short-term transfers of managerial, executive and skilled employees of branches and subsidiaries of multinational corporations to other units of the company in different countries, has become crucial in recent years. The capacity of businesses to react rapidly to new challenges, to transfer know-how to their future managers and to harmonize qualifications in every country where the company is active is essential.

There are several unique aspects to intra-company transfers of employees. The first is that these transfers provide both an appropriate education and practical experience to those in the destination country. A second unique aspect is that intra-company transfers can vary in length, from as short as a few days to as long as six years. This allows employees to remain in the destination for as long as is needed, but at the same time allows workers in the destination to develop their careers as well without the job market saturated by long-term foreign workers.
ICT encompass a wide variety of workers, including blue- and white-collar professions. Finally, ICT can be important in the career development of both the transferee and the employees in the country of destination. The transferee gains experience in training and leading a group of foreign employees, while these employees gain essential experience in learning from top professionals in the field.

Several countries have specific ICT visas, such as Canada, the United Kingdom, the United States, South Africa, Ireland and Denmark. In 2014, the European Union accepted a directive establishing the framework of an ICT visa. The elements of this protocol are similar to those of the EU directive, in order to reduce any legislative burden on the European Union in accepting the ICT protocol of the GCRT.

Purpose of the Document

The draft document has been prepared by the Working Group of the International Bar Association Global Employment Institute (GEI) for matters concerning the Global Corporate Relocation Treaty. The purpose of the document is to be used by any country, employer or any other organization, as well as for a basis for discussion.

Description of the Problem

Several factors currently limit the mobility of ICT. Multinational corporations who wish to transfer their personnel require specific visa schemes that do not exist in most countries. The complexity of requirements the high costs, the delays in granting work visas and the uncertainty regarding the rules and procedures. To make it harder, there are also large differences in the conditions of admission and restrictions on family rights between countries that made the ICT process even less unified.

The Proposed Solution

The proposed solution reconciles the ability of the destination country to monitor and control the entrance of foreign citizens, with the need of the corporate sector to transfer ICT between different companies, projects and affiliates of the group.

This solution establishes a transparent and simplified procedure for admission of ICT based on a common definition and harmonized criteria. Intra-company transferees would be issued an ICT visa allowing them to carry out their assignment in different entities of the same multinational corporation. Thus the visa would promote globalized corporate activity.

The Stages of the Proposed Solution

Stage A - Obtaining the Status of a Qualified ICT Company
Stage B – Obtaining the Status of ICT for an Employee
Stage C – Filing an Application for an ICT Employee
Stage D - The ICT Employee's Stay and Departure
Stage E –Annual Report and a Request to Extend Qualifying ICT Status

Stage A - Obtaining the Status of a Qualified ICT Company

All local companies who believe they may require the use of the ICT visa will be required to apply for recognition as a **"Qualified ICT Company"** with the local immigration authority. The status will be available to companies from all fields. To achieve this status, corporations must provide evidence that it belongs to a certain undertaking business group and that the entities are related in one of four ways: parent and subsidiary; branch and headquarters; sister companies owned by a mutual parent; or affiliates owned by the same people in the same percentages.

The application for "Qualified ICT Company" status shall be submitted to the local immigration authority for review. The application shall outline the background of the company requesting status, as well as a detailed explanation of the relationship between the companies. The structure of the application and the documents required will be published in the regulations.

The application for status as a "Qualified ICT Company" may be subject to a government fee.

The validity of the status as a "qualified company" will be issued for a period of five years from the date the status is granted. The company may apply for extension of status at the end of the five year period, subject to the submission of an annual report. Barring any compliance issues, there shall be no limitation to the number of applications submitted for extension of status. An extension of the ICT status will be valid for an additional five years from the date the extension is granted.

Note: A country may specify a different validity period for the status of "Qualified ICT

Company" in the regulations.

Stage B – Obtaining the Status of ICT for an Employee

An ICT refers to the temporary transfer of a foreign employee (transferee) to the destination country. Types of transferees may include executives, managers, specialists or employees that are certified in a particular field.

A third-country national who applies to be admitted to a foreign country as part of an intra-company transfer must provide a sponsorship letter from the employer along with the following:

1. Evidence of employment within the same group of undertakings for at least three and up to 12 uninterrupted months immediately preceding the date of the ICT.
2. Evidence that the transfer is temporary and that he or she will be able to transfer back to the country of origin at the end of the assignment.
3. Evidence of the duration of the transfer and the location of the host entity.
4. Evidence that he or she is taking a position as an executive, manager or essentially skilled worker in the destination country.
5. Information regarding remuneration during the transfer.

The third-country national must also supply the following in separate documentation:

1. Evidence that he or she has the professional qualifications needed in the destination country for the position sought.
2. Valid travel document (i.e. a passport).
3. Consent to a security examination by the destination country.
4. Medical insurance letter.

Qualified applicants will be issued a renewable three year ICT visa that will include WP, a spouse WP and children's visas. A competent authority must be designated by the signatory nations to receive the applications and issue the work visas.

In addition to the right to stay and work in the destination country, an ICT visa holder shall enjoy equal treatment as nationals of the destination country with regard to the following:
Freedom of association and affiliation with trade unions. Recognition of degrees and diplomas from the country of origin. Social welfare benefits. Equal treatment in the workforce as nationals of the destination country. And access to public goods and services except housing.

ICT visa holder will have the right for family reunification in the destination country. Family members should be able to join the ICT in the destination country. Proof of relationship and security clearance will be all that is required for the admission of family members to the destination country.

Stage C – Filing an Application for an ICT Employee

All WP applications for an ICT employee will automatically process via premium processing manner as the sponsor is already approved.

The ICT employee will have the ability to enter the country of destination according to the regular short term visit procedure.

Stage D - The ICT Employee's Stay and Departure

The ICT visa will be valid for up to 24 months and can be renewed to a maximum of six years for up to two renewals.

Family applications may be filled together with the ICT employee's application. Children shall be permitted to attend school in the destination country. Spouses of ICTs can be eligible for a WP as a local employee for as long as the ICT visa is valid.

The ICT employee (and their family) will depart the country of destination expiration of the ICT visa, or the end of the project whoever comes first. An ICT visa holder will not be permitted to apply for a change in his visa catagory.

Stage E –Annual Report and a Request to Extend Qualifying ICT Status

Signatory nations shall publish annual reports, providing statistics on the number of ICT visas issued, the number of ICT visas denied, the current number of workers on ICT visas on a per country basis.

Two months prior to the end of the year of the first application, the qualified company will submit a summary report to the immigration authority in a format to be outlined in the regulations. The annual report will detail all of the notifications that were submitted by the qualified company throughout the year.

Should the company need to continue to bring in ICT for the purposes clarified in the regulations, an application requesting an extension of "qualified company" status may be submitted. The immigration authority will determine the validity period of the extension of status.

The prerequisites for a successful status extension application include submission of an annual report and confirmation of compliance with all legal requirements in relation to the employment of ICT.

Problems in the Absence of a Solution

In the absence of a solution to this issue companies will continue to be unable to comply with the relevant legal requirements in employing ICT; they may be forced to choose between substantial economic damage and violation of the law.

Furthermore, the current regulations ensure that companies will continue to face difficulty in facilitating WPs for ICTs due to different requirements, timeframes and limitations in each country. This renders the ICT process increasingly difficult because of the different necessities and restrictions in each country.

Fees

The process will be subject to the following fees:

- "Qualified company" annual application fee:
  - Receipt of status fee;
  - Extension of status fee.
- ICT filing fee per entry of each transferee:
  - Payment of the filing fee will be made at the time of submission of the notification.

Note: it is recommended that the ICT filing fee be at a rate of 10-20% of the annual fee for a work permit for an ICT to that same country.

Recommended Time Frame

Submission of a request for receipt of status as a "qualified company" will receive a response within 30 days from the date of submission.

Submission of a request for extension of status as a "qualified company" will receive a response within 45 days from the date of submission.

Filing of a notification letter for the entry of an ICT will receive confirmation of approval between 12-48 hours from the time of physically or electronically submitting the request.

The ICT report must be submitted within 30 days of the transferee's departure from the country of destination.
WP for a spouse must be confirmed for approval 30 days following ICT approval.

Conclusion

The protocol will enable multinational enterprises to transfer ICTs to foreign locations efficiently, conveniently and in accordance with the law. This will create a winning solution between all parties: the country of destination, the country of origin, the employer and the employee and her family.

Computing and Information Privacy

Electronic submission of notifications should be encouraged through the use of temporary fraud defense systems and confidentiality and privacy of information protection. Authorities will want to monitor and control these systems in order to avoid information leaking by hackers.

Procedures and Transparency

As part of an effective public service free of corruption, transparency in management of procedures is encouraged.

Procedures and timetables will be published in print and on the internet to encourage transparency and will build reasonable expectations for the processing of applications.

This proposal will enable the business sector to plan its activities accordingly.

Disclaimer

This draft policy document does not constitute any legal relationship between the GCRT sub-committee and/or team, with any party that will decide to use any part of this draft protocol for their purposes. This draft protocol is free for use by anyone who would like to do so, provided they give the necessary credit to the sub-committee on the Global Corporate Relocation Treaty.

Contact

The procedure is published in order to encourage comments, suggestions and ideas of concerned subjects, including, HR, immigration officials, academics, lawyers, CPA's and other service providers in the field.

This document was prepared by a team of the Working Group of the GEI on the Global Corporate Relocation Treaty, co-chaired by Adv. Tsvi Kan-Tor and Graeme Kirk.

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