*THE INTERNATIONAL BAR ASSOCIATION*

*GLOBAL EMPLOYMENT INSTITUTE*

# *Short & Urgent Visits*

## *A Draft Policy Document and Recommended Best Practices*

By: The Working Group on the Global Corporate Relocation Treaty

Final Draft Proposal

## Background

Many countries require foreign experts to obtain a work permit in order to engage in work activities in the country of destination. However, the majority of countries do not provide expedited means for these experts to gain entry to a country on short notice for the purposes of urgent work.

The proposed solution enables foreign experts to gain entry, on an urgent and short-term basis, in order to work in the country of destination. It maintains the discretion of the host country's authorities and agencies to monitor security and national matters (i.e. government policy, criminal law, etc.) with regard to incoming foreign experts, including the discretion to prevent the entry of any expert.

## Purpose of the Document

The draft document has been prepared by the Working Group of the International Bar Association (IBA) Global Employment Institute (GEI) for matters regarding the Global Corporate Relocation Treaty as a white paper or draft policy document.

The purpose of the document is to be used by any interested country or organization, as well as for a basis for discussion.

## Description of the Problem

Many companies, from all areas of the business sector, make use of equipment, technology, production lines or facilities which have been either designed, manufactured or assembled in foreign countries. In order to maintain or repair equipment, companies, on short notice, are required to bring in foreigners with specialized knowledge and appropriate qualifications. Similar circumstances can be found in cases such as faults, due diligence for mergers, acquisitions or IPO's, proposals, planning, research and development projects, etc.

Additionally, there may also be a need for urgent, short-term entries in industries such as media and entertainment, sports, culture, finance, NGO’s, educational institutions and more, for which the process for obtaining a work permit for foreign experts requires, on average, several months.

As most short-notice entries are for the purpose of work, many companies cannot afford to wait for the issuance of a work permit. As such, the current regulations and laws compel and/or force companies to act in non-compliance.

**The Proposed Solution**

The proposed solution reconciles the ability of the destination country to monitor and control the entrance of visitors with the need of the business sector to transfer foreign experts on a short-term or urgent basis.

**The Stages of the Proposed Solution**

Stage A – Obtaining the status of a "qualified company".
Stage B – Notice of intent to bring a foreign expert.
Stage C – Arrival and stay of the foreign expert.
Stage D - Reporting the departure of the foreign expert.
Stage E – Annual summary report and a request to extend status.

**Stage A - Obtaining the Status of a "Qualified Company"**

All local companies who believe they may require the services of a foreign expert on a short-term and urgent basis will be required to apply for status as a **“qualified company”** with the local immigration authority. This status will be available to companies from all fields, including government entities, NGO’s, etc., in which the possibility of this need is expected.

The application for **"qualified 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 why and in what circumstances the company will have a need for the immediate arrival of foreign experts on a short-term basis. The structure of the application and the documents required will be published in the regulations.

The application for status as a **“qualified company”** may be subject to a government fee.

The validity of the status as a **"qualified company"** will be issued for a period of one year from the date the status is granted. Barring any compliance issues, the company may apply for an unlimited number of extensions of this status.

The regulations will allow any foreign expert to work up to 30 cumulative calendar days per year, with no limit on the number of visits during the year.

*Note: A country may specify a different validity period for the status of “qualified company” in the regulations, or limit the expert's number of entries or length of stay.*

Approval of a foreign expert to enter the country of destination under this status will not prevent him from applying for a standard work permit. Such an application for a work permit will be subject to compliance with all other relevant legal requirements.

**Stage B – Notice of Intent to Bring a Foreign Expert**

Should an urgent need arise for a foreign expert to enter the destination country for the purpose of employment, the qualified company will send a notification to the local immigration authority. A separate notification must be submitted for each entry of the given expert.

The notification will state that it is being filed in accordance with the regulations for the urgent entry of foreign experts. It will briefly describe the identity of the foreign expert, the qualified company, the necessity for the short visit and any additional relevant information, such as, the qualified company's obligations to meet residence and medical insurance tax laws.

Upon receipt of the notification and following a security check, the country's immigration authority will issue the qualified company an approval with a reference number by email.

The expert will have the ability to enter the country of destination immediately with a copy of the approval and, if required, present it at the port of entry.

**Stage C – Arrival and Stay of the Foreign Expert**

The foreign expert will be issued a business visitor visa upon arrival in the country of destination and will be eligible to work only on behalf of the qualified company. The foreign expert will be subject to the same security clearance measures as those entering on a tourist visa.

The foreign expert will be able to remain in this status in the country of destination for up to 30 cumulative calendar days per year, with no limit on the number of visits annually. The one year period of validity will begin from the approval date of the first application in relation to any foreign expert.

*Note: Regulations regarding wages and taxation will be published by each country.*

**Stage D - Reporting the Departure of the Foreign Expert**

Within 30 days of the expert's departure, the qualified company shall provide the immigration authorities with a written report, to include details of the visit and any relevant documentation, of which will be specified in the regulations.

**Stage E – Annual Summary Report and a Request to Extend Status**

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 foreign experts 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 extension of status application include submission of an annual report and confirmation of compliance with all legal requirements in relation to the employment of foreign experts.

**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 foreign experts; they may be forced to choose between substantial economical damage and violation of the law.

Furthermore, the current regulations prevent companies' lawyers from having the ability to grant the "comfort letters" required in order to comply with SOX regulations. Companies therefore employ foreign experts on visas that do not permit employment.

**Fees**

The process will be subject to the following fees:

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

*Note: it is recommended that the foreign expert filing fee be at a rate of 10-20% of the annual fee for a work permit for a foreign expert to the 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 a foreign expert will receive confirmation of approval between 12-48 hours from the time of physically or electronically submitting the request.

The foreign expert report must be submitted within 30 days of the expert’s departure from the country of destination.

**Conclusion**

The proposed procedure will enable local companies to admit foreign experts for a short period of time in accordance with the laws and regulations of the destination country.

This procedure attempts to balance the legitimate interests of the country in controlling foreign entry and the legitimate needs of the business sector in addressing circumstances that suddenly arise within a short timeframe.

**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.

This draft protocol indicates that foreign experts will be subject to the same security clearance measures as those entering on a tourist visa. The local government maintains the right to deny entry to anyone it deems unfit.

**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 Working Group of the GEI on the Global Corporate Relocation Treaty, 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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# Short Visits

*The Stages of the Proposed Solution*

