

Economic Growth as a Result of Globalization: A Draft Proposal for a Global Corporate Relocation Treaty

This article discusses the general legal principles and standards for the relocation of experts and multinational managers between countries

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Global Corporate Relocation has increased dramatically in the last two decades. Current estimations, which have been accepted by industry leaders, show that more than 1.5 million experts and professionals are being relocated globally each year. The growing amount of relocations allows for the transfer of the knowledge and the know-how required for the performance of global multinational corporations and joint ventures while promoting foreign direct investment, encouraging GDP growth and facilitating the expansion of education.

Currently, each country exercises its own sovereignty over legislating its laws and regulations relating to the entry and work of foreign experts and managers. The proposed Global Corporate Relocation Treaty ('GCRT') aims to establish the right of a multinational corporation to relocate experts according to its commercial needs while simultaneously facilitating growth and the creation of new jobs both in the country of origin and in the country of destination.

The proposed GCRT will establish general legal principles and standards for the relocation of experts and multinational managers between countries through the use of additional protocols to bilateral or multilateral agreements, such as free trade agreements between countries.

Current Situation

The difficulties faced by multinational corporations wishing to relocate experts stem from the abovementioned sovereignty currently exercised by each country with respect to its corporate relocation laws. In the effort to prevent the entry of a large number of immigrants who may in turn unduly burden the welfare system, some countries keep their regulations unpublished. As a result, around the world there remains an uncertainty regarding the legal procedures that are required for obtaining work related visas for foreign experts. The GCRT will solve these problems.

Take, for example, a multinational corporation which won a contract for the construction of a power plant in a certain country. The implementation of the contract requires the corporation, as a 'sine qua non', to relocate some highly qualified engineers who possess a unique knowledge to the relevant country. At present, the corporation bears the risk that the immigration authorities of the relevant country will not allow the entrance and employment of the engineers. In such a case, the fulfillment of the corporation's contractual obligations may be prevented altogether, and the corporation will therefore be required to pay considerable compensation that may even surpass the expected gains from the (unfulfilled) contract. The GCRT minimizes the risk that the corporation will not be allowed to relocate the necessary personnel, thereby encouraging the parties to reach an agreement.

The GCRT enables the signatory countries to ensure the protection of their core legitimate interests, the most important of which are security related, such as the prevention of terrorist activity;

public security interests, such as the prevention of crime; and public health interests, such as defending against contagious diseases and epidemics.

Advantages to All Countries

Global Corporate Relocation simply means the global relocation of experts. This is a routine business process in the context of which senior managers, managers, experts or other essential professionals are relocated from their countries of residence and posted in another country (the 'Target Country') for a limited period of time, in the course of and for the purpose of their work.

Corporate relocation enables the realization of the commercial and business opportunities that develop and exist in a country which is not the expert's country of nationality or residence. It is presumed that if an expert's posting in the Target Country is prevented, the business enterprise or the business-like project will suffer significant damage; the execution of the enterprise or the project might even be completely frustrated. The expectation is that such a result would do damage to all of the relevant parties: the business entity which seeks to send the expert, the expert, his country of residence and the Target Country as well.

Globalization, the computer and communications revolution, and the geopolitical changes that have taken place in the last two decades, mainly in Eastern Europe, the Middle East, and in the Inter-Pacific region, have caused more and more multinational companies to divide their overall operations—development, manufacturing, marketing, *etc*—among a number of countries, in accordance with the various countries' comparative advantages and financial considerations. These developments have created a permanent and growing need for the relocation of experts in order to ensure the proper activity of the global business system.

Corporate relocation brings about some significant gains to all the relevant parties, among which the most important are: (a) the creation of a substantial amount of new jobs in the Target Country and in the country of origin; (b) indirect economic benefits that arise by the transfer of knowledge to the Target Country; (c) indirect social benefits stemming from the creation of new jobs which results in an improvement in the level of both technological education and wages; and (d) contribution to the technological and practical ability of the Target Country, since relocated experts leave behind a great deal of their professional know-how when they return to their home country.



At the very same time, corporate relocation does not involve the economic and social costs which characterize the employment of unskilled or quasi-professional foreign workers. Among the reasons for this are: (a) employing a foreign expert is much more costly than employing local experts, thus reducing the incentive to employ a foreigner if not necessary; (b) the experts are a relatively small group, usually no more than one per cent of the entire foreign population in a given country (notwithstanding this small number, the experts grant the Target Country a disproportionate amount of benefits as compared to other groups of foreigners); and (c) the experts, as a group, do not tend to stay in the Target Country for a long period of time and they do return to their countries of origin by the end of their assignments.

According to accepted estimates on global corporate relocation, the relocation phenomenon in

2005 involved approximately 500,000 people in the USA alone (as opposed to approximately 750,000 in 2001). In 2005, global corporate relocation to other countries involved approximately one million people as opposed to 500,000 in 1997. The phenomenon of relocation outside of the USA has grown at an average annual rate of approximately 10 per cent.

The Current Deficiencies in Global Corporate Relocation

Currently, neither the companies nor the experts themselves have a sufficient level of certainty regarding their ability to relocate experts according to business needs, even though the member states of the General Agreement on Trade in Services ('GATS') accepted certain undertakings of a declarative nature regarding the entry of managers and professional experts into their territory.

The lack of transparency and the uncertainty regarding the procedures for corporate relocation in the various countries impact negatively on commercial certainty and the stability of the international business environment. Corporate managers have trouble knowing in advance whether they can post their experts in specific Target Countries. In addition, essential experts, investors or business people are occasionally prevented from entering a certain Target Country for the purpose of work, even after the signing of an agreement. As a result, the possibility of the agreement's realization is frustrated and can lead towards expensive and unnecessary disputes as well as legal action.

The solution proposed by the GCRT to these problems is also global: the GCRT establishes binding principles and standards in the area of global corporate relocation through a multilateral Global Corporate Relocation Treaty which will be open to signature by any interested country.

The proposed draft GCRT establishes general principles and standards for the simplification and expediting of relocation of experts and essential workers, with adhering countries being able to add additional undertakings beyond the base level created by the treaty through additional protocols that will also be open for signature, either bilaterally or multilaterally.

The Principles and Main Directives of the Proposed Draft GCRT

Section 1 of the proposed treaty sets forth its goals. The treaty's first goal is to establish the entitlement of business entities located within the territory of the contracting parties to relocate their experts among the contracting parties—a right which does not currently exist. The treaty's second

goal is to establish principles and guidelines for the relocation of the experts acting on behalf of such business entities, with an emphasis on the issuance of a work visa for the expert.

The proposed treaty relates only to the relocation of experts among the contracting parties. The proposal does not deal with the relocation of workers who are not experts, with refugees or with other groups such as the employees of international organizations, clergymen, etc. These subjects can be arranged through additional protocols which can be added to the treaty, or included in other frameworks.

Section 2 of the proposed treaty defines the various groups of persons who will be considered to be experts for the purpose of the treaty.

Section 3 of the proposed treaty establishes the general framework of the contracting parties' undertakings. In order to serve the purpose of achieving certainty as a condition for the strengthening of commercial certainty and of the stability of the international business environment, this section provides that the posting of an expert will occur within a reasonable period of time. In addition, this section establishes that the process of issuing a work visa or a visitor's visa and of posting an expert within the territories of the contracting parties will be transparent and fair. At the same time, the general framework of the contracting parties' undertakings allows the parties to exercise discretion in protecting their legitimate interests.

Section 4 of the proposed treaty makes it simpler for the Target Country to ascertain that the foreign expert will indeed be arriving in its territory for the declared purpose and that the expert is not entering with the purpose of settling there or for immigration.

The purpose of this section is achieved through establishment of a requirement for the sponsorship of a local *bona fide* entity; normally a corporation, or other recognized institute within the Target Country that has a relevant connection to the expert.

Section 5 of the proposed treaty describes most of the details which are to be included in an application for a work visa or visitor's visa for an expert. These details consist of the nature of the connection between the applicant and the sponsor in the Target Country, the facts indicating that the applicant is an expert, and the special need for the foreign expert to fill the relevant position. Successful application will obligate the Target Country to honor its undertaking pursuant to

Section 3. Nevertheless, Section 5 allows the Target Country to establish additional details which each applicant may be required to include in his application.

Section 6 of the proposed treaty is intended to stress the right of the contracting parties to ensure the protection of their core legitimate interests. These interests are:

- 1 Security interests, the protection of which can be expressed, for example, in the need to prevent the entry of a person who is suspected of a connection to a terrorist organization or to terrorist activity.
- 2 Interests regarding public security, which can be expressed in the need to prevent the entry of a person with a criminal background or a person who is suspected of being a criminal.
- 3 Interests regarding public health, the protection of which can be expressed in the need to prevent the entry of a person with a serious contagious or incurable disease.

Section 7 of the proposed treaty establishes the cases and the purposes for which a contracting party will issue a work visa or a visitor's visa. It also provides that the visa will be issued subject to the provisions of the treaty—first and foremost of which is that the applicant is defined as an expert in Section 2, and the existence of a relevant connection between the expert and the sponsor. Additionally, this section provides that the issuance of the visa is subject to conditions that may be established by each contracting party taking into consideration its legitimate interests. A work visa or visitor's visa will be issued for a limited period of time which will be established by each contracting party, taking into consideration the business reality on the one hand and the contracting party's social-economic policy and its immigration policy on the other hand.

Section 8 of the proposed treaty anchors the principle according to which the work visa or the

visitor's visa for the expert will allow multiple entries—*ie* it will allow the expert to enter and to depart the Target Country during the period of the visa's validity, without any need to request a new visa upon each entry into the country. This principle is based on the recognition of the financial—business reality, which occasionally requires the expert to depart the Target Country and to re-enter a number of times during the period of the visa's validity.

Section 9 of the proposed treaty stresses the need for an established time frame for the process of issuing a visa as a necessary condition for commercial certainty, on the assumption that the completion of the process within a reasonable period of time is one of the conditions for the attainment of this goal. The issuance of a work visa within 60 days constitutes a reasonable and attainable target, taking into consideration the various countries' accumulated experience.

Section 10 of the proposed treaty allows an expert who holds a work visa—as opposed to an expert who holds only a visitor's visa—to bring his close family members with him/her to the Target Country for the period during which the visa is valid, while automatically allowing his/her spouse a work permit for the full duration of the expert's own visa.

Final Remark

The preparation of the proposed GCR Treaty was chaired and coordinated by Tsvi Kan-Tor and Amit Acco, and was presented in several international forums such as the Global Immigration Conference of the International Bar Association ('IBA'). Members of the IPBA who wish to support the initiative are welcome to attend the Employment and Immigration Law First session at the Sydney 2006 conference 'Workers without Borders—Global Employment under the Free Trade', where the writer, Amit Acco will serve as a panelist, or contact Tsvi Kan-Tor at tsvi@ksvisa.com or Amit Acco at amit@ksvisa.com.