

IBA Global Employment Institute

Global Relocation Treaty On Highly-Skilled Migration & Intra-Corporate Transfers

(VERSION 1)

**GLOBAL RELOCATION TREATY ON HIGHLY SKILLED MIGRATION
AND INTRA-CORPORATE TRANSFERS
(Version 1)**

Explanatory note

This document sets out a proposal for a global treaty on relocation for two broad categories of migrant:

- skilled workers with a contract or binding offer of work in another country; and
- manager/specialist intra-company transferees.

The Agreement seeks to provide a broad normative framework for migration by these relatively limited but economically significant categories. It promotes the adoption of basic entry criteria and residence conditions, in the hope that Contracting States will be free to impose more generous provisions than those set out in the Agreement if they see fit.

At the same time, a treaty of this kind has no hope of widescale adoption and implementation if it fails to reflect the need of potential Contracting States to protect their national interests. The Agreement therefore envisages that Contracting States may decline to adopt certain provisions by entering specific reservations to them. Potential Contracting States could in this way sign up to most of the Agreement's provisions without agreeing to implement all of them. To the same end of protecting national social and economic interests, the Agreement also envisages:

- provisions to protect the resident labour market;
- the introduction of minimum salary levels; and
- the use of annual quotas.

The subject matter of this Agreement – highly skilled migration by those with a work contract and intra-company transferees – is not presently the subject of any global agreement. There are, of course, regional agreements on these issues, notably the relevant European Union Directives, whose provisions have

inspired much of this text.¹ Those, however, are obviously not global in their reach. It is hoped that this Agreement will help to promote global economic migration for the benefit of migrants, their employers and, perhaps most importantly, the host countries permitting the relocation in question.

The Agreement reflects the fundamental value attached to the enjoyment of family life and requires Contracting States to ensure that immediate family members are permitted to join the highly skilled workers or intra-company transferee during the period of relocation.

GLOBAL RELOCATION TREATY

Immigration document issued to a highly skilled worker with a work contract or binding offer of employment

1. Contracting States shall issue a visa, entry permit, residence permit or other immigration document to foreign national highly skilled workers with a work contract or binding offer of employment in accordance with the following criteria and minimum conditions.
2. A highly skilled worker with a work contract or binding offer of employment shall not be entitled to enter a Contracting State in that capacity unless previously issued with an immigration document in accordance with article 1.

Criteria for issuing an immigration document to a highly skilled worker with a work contract or binding offer of employment

3. Contracting States shall impose the following criteria for issuing an immigration document in accordance with article 1:
 - (i) The applicant must present a valid passport or other recognised identity card.

¹ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment; Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

- (ii) The applicant must present a valid work contract or binding job offer for highly qualified employment, as defined in article 18.
- (iii) The applicant must present evidence of the qualifications necessary to perform the work specified in the work contract or binding job offer, including any relevant professional qualifications.
- (iv) The work contract must be for a term of employment of not less than 12 months' duration.
- (v) The employer must have complied with any requirements under national law to recruit from the resident labour market before issuing the work contract or binding offer of employment. Evidence of compliance with any such requirements must be submitted in support of the foreign worker's application. National law may waive such requirements in respect of specific shortage occupations.
- (vi) The contract of work must be issued by an employer recognised by the national authorities to be a suitable sponsor according to criteria established in national law.
- (vii) The salary to be paid to the applicant under the contract of work must be not less than 1.5 times the average gross salary in the Contracting State concerned and not less than any minimum levels established in national law for particular occupations.
- (viii) Contracting States may disapply minimum salary requirements in respect of shortage occupations.
- (ix) The applicant must provide evidence of comprehensive sickness insurance for himself or herself and any dependants relocating with him or her to the Contracting State.
- (x) The applicant must meet any minimum level of linguistic competence established in national law.
- (xi) The applicant must pay any application fee prescribed in national law.

- (xii) The applicant must not fall for exclusion by reason of his or her conduct or antecedents or on any other grounds of public policy, public security or public health, as established in national law.

Conditions

4. The holder of an immigration document issued in accordance with article 1:
 - (i) shall be entitled to enter, re-enter and reside in the Contracting State for the duration of the validity of the immigration document;
 - (ii) shall be entitled to work in the job for which the document was issued;
 - (iii) shall not undertake any work other than the work for which the immigration document was issued, unless otherwise provided in national law;
 - (iv) shall be entitled to apply for an extension of the immigration document's validity if the conditions for which the document was issued continue to be met, subject to any prescribed maximum periods established in national law and to the payment of any prescribed fee;
 - (v) shall be entitled to the same working conditions as those enjoyed by nationals of the Contracting State, including conditions of pay and dismissal, as well as health and safety requirements at the workplace;
 - (vi) shall have access to social security and other welfare benefits only insofar as provided in national law;
 - (vii) shall be liable to pay income tax and other taxes and dues on the same basis as the nationals of Contracting States.

Immigration document issued to an intra-corporate transferee

5. Contracting States shall issue a visa, entry permit, residence permit or other immigration document to an intra-corporate transferee (as defined in

article 18) in accordance with the following criteria and minimum conditions.

6. An intra-corporate transferee shall not be entitled to enter a Contracting State in that capacity unless previously issued with an immigration document in accordance with article 5.

Criteria for issuing an immigration document to an intra-corporate transferee

7. Contracting States shall impose the following criteria for issuing an immigration document in accordance with article 5:

- (i) The applicant must present a valid passport or other recognised identity card.
- (ii) The applicant or host entity must present evidence of the applicant's employment within the same undertaking or group of undertakings (as defined in article 18) for a period of at least six continuous months immediately preceding the date of application.
- (iii) The applicant or host entity must present a work contract and, if necessary, an assignment letter from the employer containing the following:
 - (a) details of the duration of the transfer and the location of the host entity or entities;
 - (b) evidence that the intra-company transferee is taking a position as a manager or specialist (as defined in article 18) in the host entity or entities in the Contracting State concerned;
 - (c) the remuneration as well as other terms and conditions of employment granted during the intra-corporate transfer;
 - (d) evidence that the intra-company transferee will be able to transfer back to an entity belonging to that undertaking or group of undertakings at the end of the intra-corporate transfer;

- (iv) National law may establish minimum remuneration criteria for intra-company transferees.
- (v) The applicant must present evidence that he has the professional qualifications and experience needed in the host entity to which he is to be transferred.
- (vi) Where applicable, the applicant must present documentation certifying that he or she fulfils the conditions laid down under national law to exercise any regulated profession to which the application relates.
- (vii) The applicant must provide evidence of comprehensive sickness insurance for himself or herself and any dependants travelling with him or her.
- (viii) The applicant must meet any minimum level of linguistic competence established in national law.
- (ix) The applicant must pay any application fee prescribed in national law.
- (x) The applicant must not fall for exclusion by reason of his or her conduct or antecedents or on any other grounds of public policy, public security or public health, as established in national law.

Conditions

8. The holder of an immigration document issued in accordance with article 5:
 - (i) shall be entitled to enter, re-enter and reside in the Contracting State for the duration of the validity of the immigration document;
 - (ii) shall be entitled to work in the job for which the document was issued;
 - (iii) shall not undertake any work other than the work for which the immigration document was issued, unless otherwise provided in national law;

- (iv) shall be entitled to apply for an extension of the immigration document's validity if the conditions for which the document was issued continue to be met, subject to any prescribed maximum periods established in national law and to the payment of any prescribed fee;
- (v) shall be entitled to the same working conditions as those enjoyed by nationals of the Contracting State, including conditions of pay and dismissal, as well as health and safety requirements at the workplace;
- (vi) shall have access to social security and other welfare benefits only insofar as provided in national law;
- (vii) shall be liable to pay income tax and other taxes and dues on the same basis as the nationals of Contracting States.

Validity of immigration documents issued under articles 1 or 5

9. An immigration document issued in accordance with articles 1 or 5:

- (i) shall cease to be valid on the date of expiry unless it is cancelled or its validity is extended;
- (ii) may be cancelled by the Contracting State if the holder ceases to meet the criteria governing its issue or on grounds of public policy, public security or public health, as established in national law public;
- (iii) shall be valid only in the Contracting State that issued it.

Eligibility for permanent residence

10. A foreign national who has held an immigration document or documents issued in accordance with articles 1 or 5 in the same Contracting State for a continuous period of five years shall be eligible for permanent residence in that State. Contracting States may impose additional requirements in national law as to salary, character and other criteria for permanent residence.

11. National law shall also establish the conditions in which family members of highly skilled workers and intra-company transferees become eligible for permanent residence.

Quotas

12. This Agreement shall not affect the right of Contracting States to set annual numerical limits or other quota controls on the issuance of immigration documents to highly skilled workers with a work contract or binding offer of employment or to intra-corporate transferees.

Family members

13. Contracting States shall issue a visa, residence permit or other immigration document to the family members (as defined in article 18) of persons issued with an immigration document in accordance with articles 1 or 5.

14. An immigration document issued in accordance with article 13 shall be valid for the same duration as the immigration document issued to the relevant highly skilled worker or intra-company transferee and shall be subject to extension in line with the status of the highly qualified worker or intra-corporate transferee.

15. Family members of working age shall be entitled to work in the Contracting State, subject to criteria and restrictions established in national law.

16. The children of a person issued with an immigration document in accordance with articles 1 or 5 or of that person's spouse or partner shall be eligible for access to the education system of the relevant Contracting State on the same basis as nationals of the Contracting State.

17. Family members of a person issued with an immigration document in accordance with articles 1 or 5 shall have access to social security and other welfare benefits only insofar as provided in national law.

Definitions

18. For the purposes of this Agreement, the following definitions apply:

- (i) the “family members” of a person comprise:
 - (a) the spouse of that person;
 - (b) the partner with whom that person has contracted a registered partnership;
 - (c) the partner with whom that person enjoys an enduring relationship, the criteria for which shall be established in national law;
 - (d) the direct descendants (including legally adopted children) of that person or his or her spouse or partner who are under the age of 18;
 - (e) any other persons deemed to be family members for these purposes in national law;
- (ii) “group of undertakings” means two or more undertakings recognised as linked under national law in the following ways: an undertaking, in relation to another undertaking directly or indirectly, holds a majority of that undertaking’s subscribed capital; controls a majority of the votes attached to that undertaking’s issued share capital; is entitled to appoint more than half of the members of that undertaking’s administrative, management or supervisory body; or the undertakings are managed on a unified basis by the parent undertaking;
- (iii) “highly qualified employment” means the employment of a person who:
 - (a) is or will be treated as an employee under national law and is exercising genuine, effective and paid work for, or under the direction of, someone else, and

- (b) has the required adequate and specific competence, as proven by higher professional qualifications and as provided for in national law;
- (iv) “host entity” means the entity to which an intra-corporate transferee is transferred in the territory of a Contracting State;
- (v) “intra-corporate transfer” means the temporary secondment for occupational purposes of a foreign national manager or specialist (as defined in the present article) who, at the time of application for an intra-corporate transferee immigration document under article 5 of this Agreement, resides outside the territory of the relevant Contracting State, from an undertaking established outside the territory of the Contracting State, and to which the foreign national is bound by a work contract prior to and during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established in that Contracting State;
- (vi) “intra-corporate transferee” means a foreign national who resides outside the territory of the Contracting State at the time of making an application under article 5 of the Agreement and who is subject to an intra-corporate transfer;
- (vii) “manager” means a person holding a senior position, who primarily directs the management of the host entity, receiving general supervision or guidance principally from the board of directors or shareholders of the business or equivalent; that position shall include: directing the host entity or a department or subdivision of the host entity; supervising and controlling work of the other supervisory, professional or managerial employees; having the authority to recommend hiring, dismissing or other personnel action;
- (viii) “national law” means the law, regulations and other regulatory provisions of the Contracting State to whom application is made under articles 1 or 5;
- (ix) “specialist” means a person working within the group of undertakings possessing specialised knowledge essential to the host entity’s areas of activity, techniques or management. In assessing such knowledge, account shall be taken not only of knowledge specific to the host

entity, but also of whether the person has a high level of qualification including adequate professional experience referring to a type of work or activity requiring specific technical knowledge;

Concluding provisions

19. Upon ratification of this Agreement, Contracting States may enter reservations in respect of any its provisions.

Transposition into national law

20. The Contracting States shall bring into force the laws and other provisions of national law necessary to comply with this Agreement within 12 months of its ratification.

21. This Agreement shall not affect the right of Contracting States to adopt or retain more favourable provisions for persons to whom it applies in respect of the criteria and conditions set out above.

Entry into force

22. This Agreement shall enter into force as follows: ...

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NOVEMBER 2015