

## **An International Migration and Development Initiative**

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Mr. Chairman, fellow panelists, delegates and participants, good morning. I serve as Chairman of Fragomen, Del Rey, Bernsen & Loewy, LLP, the largest global law firm specializing in immigration law. Our firm represents major corporations in immigration matters in virtually every country in the world. In addition, I serve as Chairman of the Board of Directors of the American Council on International Personnel which is a trade association comprised of 250 large global corporations. In my brief remarks, I first would like to discuss the global mobility needs of the international business community and then to comment upon the draft proposal.

Employers need access to qualified workers on all levels where those needs cannot be met domestically. Frequently, filling these manpower needs will require access to workers across international borders. This phenomenon of globalization of the labor market continues to grow in importance for a variety of reasons. The population is ageing and declining in much of the developed world. Many countries lack adequate workers in occupations requiring specific preparation such as advanced education in science, mathematics, engineering and technology. Global corporations purposefully strive to recruit a diverse workforce reflecting language proficiency and cultural acclimation appropriate to their geographical dispersion. There is a competition to recruit the brightest and the best particularly with strong quantitative skills. Global corporations transfer personnel to place the most qualified person in each position regardless of nationality while carefully planning human resource development. Within the employer community there is a high level of frustration with the current laws governing migration that restrict the ability of global employers to accomplish these human resource goals. National governance of international migration has traditionally been undermined by lack of coherence, poor implementation and lack of resources. National security concerns coupled with labor market protectionism create barriers to mobility that frequently are antithetical to the interest of the country and reflect a lack of realistic appraisal of the social and economic impact of labor migration. For instance, the failure to address widespread labor needs in lower skilled occupations is a principal cause of irregular migration flows.

Employers seek migration systems that grant access to needed human resources that are transparent, efficient and predictable. To achieve this ambitious goal, business recognizes that global leadership is necessary. Nation states who have authority for determining migration policy are ill-equipped to address this issue because migration by definition extends beyond the border of the country of destination. Moreover, businesses recognize that domestic political concerns result in immigration systems that only partially address the needs of the corporate employer. There is insufficient commonality between systems which results in a global corporation with extensive worldwide operations to have to cope with a voluminous body of laws, regulations and procedures to acquire appropriate status for employees. The focus of the global corporate community has been upon bilateral and multilateral treaties – usually with a primary focus upon trade - to homogenize and liberalize global mobility restrictions. But, trade treaties are narrow vehicles to address the myriad aspects of global migration. We appreciate that labor migration policy should be broader so that the full benefits of a well designed regimen may be enjoyed by both the country of origin and the country of destination.

I would like to compliment the International Organization for Migration (IOM) for taking the lead in proposing a framework for the formulation of coherent, comprehensive and global response to international migration issues. The proposed International Migration and Development Initiative (IMDI) would assure the proper structure for collaboration between countries of origin and destination and between governments, the private sector, and civil society to facilitate labor migration policy and program design. The key elements of the proposal are the capacity building functions and the assembly and dissemination of data. Essential activities should include the collection of information on national and regional migration legislation, regulations and administrative practices; assembly of reports on the efficacy of migration programs of states and regional authorities; commissioning studies on various programs; serving as a repository of best practices of government programs; developing model laws and implementation schemes based on experience in destination countries; offering consultative services to governments or regional authorities endeavoring to design or modify migration policy; and training governments and private sector in structure and implementation of migration policy.

There is virtually no reliable information available describing existing migration programs and evaluating their success. Moreover, governments experience significant administrative problems implementing and administering migration programs in a cost effective and efficient manner. The IMDI could play a key role in analyzing and evaluating programs. This information would be readily available and would provide the expertise to render consulting services.

As a companion effort in working with destination countries, the IMDI could heighten the awareness of the living conditions and labor protection accorded to foreign workers within their borders. Information could be provided which would be a composite of existing international standards and best practices utilized globally by governments working together with businesses and labor organizations.

Much needs to be done to enhance the impact of migration on development. Remittances have become such an important financial phenomenon that significant advancements are already occurring as a result of competition. The IMDI can play an important role in working with regulators in destination locations to assure low rates for remittance services and proper development of sophisticated financial products where appropriate. The more difficult chore will be to enlist the countries of origin in directing the contribution of remittances to poverty alleviation. Similarly, transfer of knowledge programs that are predicated upon circular migration will require the voluntary participation of the individual since the destination country will usually not force repatriation. Shared work schemes are realistic for seasonal migrants but only if alternative seasonal work is available in the country of origin. The business community should be solicited to craft creative cross border programs to further these concepts.

The business and legal sectors can play a major role as an active participant with IMDI on a number of levels. Firms specializing in immigration law are in an unique position to assist the IMDI in gathering and organizing comprehensive information about the immigration systems of the world. For instance, our firm is about to complete a book on global migration which will cover the migration laws and regulations of numerous countries. Coverage will include all temporary visa alternatives, policies regarding long term stays, procedures and qualifications for acquiring permanent status, and

naturalization opportunities. Information is provided by leading attorneys within each country. The book will be published by the Law Division (West Publishing) of the Thomson International Group and will be widely disseminated. Practitioners are also versed in the practical application of the law which is important since in many countries the law does not regulate immigration but rather government directives and practices. Lawyers can also provide information about misapplications of the law as well as policy dysfunctionality. For instance, a great challenge even for developed countries is to keep immigration laws up to date so that modern business structures are addressed such as the on-site/off-shore model utilized by software development consulting firms. The business sector similarly has extensive experience with the application of the law as a major customer of governmental migration services. The business and legal communities can analyze best practices reflected in programs designed and developed by various countries from the vantage point of whether the program facilitates mobility. The concepts which work most successfully can be extrapolated from a variety of different countries' immigration programs and can serve as a basis for building a comprehensive approach to migration. Successes and failures can be catalogued and disastrous approaches avoided. The end result can be a highly useful core of policies and procedures that have been vetted and proven to be sustainable. Model immigration laws can be built from this foundation which transcend the parochial interest of particular countries. Treaties can be proposed to deal with cross-border or regional issues where parties have an inherent commonality of interest.

The business and legal sectors can also be important partners politically by building consensus across borders to facilitate multi-state initiatives. The mandate of the IMDI and its very establishment can be enhanced through widespread support of the principal stakeholders in the immigration process. We are enthusiastic about supporting the creation of the IMDI to further the interest of corporations in facilitating liberal migration policies.

The business community has been under utilized as an ally in supporting the objective of migration policy and its relation to development such as in areas of shared work schemes, ethical recruitment and entrepreneurial programs involving the diaspora community. Moreover, minimum standards of labor practices toward migrant workers must be imposed by countries of destination on companies employing persons outside their country of origin. (Perhaps these policies may be part of a more comprehensive approach and include protection of citizens employed by foreign based corporations in the workers' home country. But this seems more an issue of domestic employment law.) These standards are impossible as a condition of employment of the worker in the host country. Moreover, countries could be encouraged to adopt minimum standards of social benefits available to the worker and these benefits can be provided by the employer as appropriate under domestic law.

Finally, a brief observation on migration and development. The most important aspects of development are achieved only over a period of time when economic opportunity has reached a level where the return of workers from abroad is a realistic personal objective. Shared work schemes assume suitable employment opportunities in the country of origin as do programs of circular migration. Similarly, entrepreneurial plans inherently require an underlying sensible business opportunity and so can be nurtured but not imposed. As a number of successfully developing countries demonstrate there are selective areas where economic development can be achieved relatively quickly in the global economy and then the incentive for repatriation is natural. The greatest success seems to have

been achieved where a high productivity investment in education produces competitive graduates. The IMDI working with the private sector and civil society should encourage acceleration of a natural economic evolution through innovative migration initiatives as well as enhancement of the educational system.