Pitfalls in International / Expatriate Employment Contracts

Globally operating companies and their HR departments usually structure international / expatriate employment contracts in a way that best serves their short-term business interests, often leaving the expatriate employees' rights and interests behind. Expatriate employees rotating amongst different countries throughout their careers therefore face higher risks, as if they had simply stayed in the company's headquarters. Here are a few points that you should be aware of, if your company headquarters wants to assign you to an overseas location or change your current overseas location to a different one:

1. **Insist on having an ongoing 'dormant' labour contract with headquarters during the time of your overseas assignment:** Some companies will try to terminate your labour contract with the headquarters and simply replace it with a local labour contract under the laws of the overseas location you are assigned to. You should not let that happen, as having two contracts with your employer (headquarters and local labour contract) gives you 'dual protection', and makes it much harder for employers to terminate both of your valid labour contracts. This is regardless of whether the headquarters contract remains in full force during your overseas assignment, or is set 'dormant' (and 'revives' once the overseas assignment ends).

2. **Make sure your severance and pension benefits are clearly stated.** Only with a valid labour contract with the headquarters can you avoid misunderstandings about the accumulation of pension and severance rights over the (many) years of your employment: Even if local labour laws will sometimes entitle you to severance payments, this will only be true for the duration of your local overseas employment, but not for your overall employment with the global company. In other words, merely subsequent local labour contracts with a global employer may not accumulate severance and pension rights over time (e.g. if you work for a global company for 20 years, and have been assigned 3 or 4 different overseas work locations during that time).

3. **Avoid employer's 'cherry-picking' between headquarters and local labour contract:** But even if you have two valid labour contracts, it is important that the relationship between those contracts is clear. Often times, global companies and their HR departments will include a clause saying that if there is a conflict between local labour laws and the clause in your headquarters contract, the headquarters contract will prevail. Such clause is invalid. On the contrary, you should insist on a clause in your headquarters contract saying that (except for pension/severance and other long-term benefits), local labour laws apply, however that only if local labour law is less protective then the headquarters' laws shall apply.

4. **Avoid general relocation-clauses:** Global employers like utmost flexibility to send you from one to another overseas location as their business needs see fit. For the employee this may mean being assigned a less responsible location and/or a less challenging assignment. On a personal level, it means changing environment and culture on short notice. Even though under most internal company rules, global HR departments are responsible to offer a smooth transition, they are often lacking the capacity and policies

(and sometimes the will) to do so. Therefore, it is important that you specify a relocation/re-assignment clause in your labour contract with the headquarters as much as you can. For example: 'The Company may assign Employee to a different location according to its business needs at any time' is much less protective than saying e.g. 'The Company may only assign Employee, with a 6-month notice, to another location provided that such location is comparable in responsibility and in the same kind of environment'.

5. **Look carefully at termination clauses, particularly termination without cause:**

   The same applies for termination clauses. Again, global companies will often try to include a clause that your (local) employment can be terminated at any time and without cause. Even though they would mostly grant a 3-6 months' notice period, such general rule is invalid in case it contradicts local labour laws. Factually, it also puts the employee at a great disadvantage as with such clause employers have an – albeit illegal – trigger to terminate you for no reason. Therefore it is recommended that general termination clauses with the company headquarters have at least a 6-moths' notice period, and can only be made for cause.

A final word on negotiation: It is important that those risks are understood, ideally before the employment contract(s) are signed. If you haven't, and are now faced with a situation in which the company wants to relocate or terminate you against your will, things often get emotional (especially if you have been with a global employer for many years). It is therefore recommended that you de-emotionalize such situation by using a third party negotiator or lawyer who can address legal, factual and other issues with your superior/and the HR department in a professional and unemotional manner. This not only makes life more difficult for employers and their HR departments, who are dealing with these cases many times, but it also guarantees a better outcome for you!