

PACER PLUS REGIONAL WORKSHOP ON TRADE IN SERVICES

Day 1 S3. Services & Relationship with
other Chapters



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Apia, Samoa
8-11 May 2023
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Overview

- I. Services & Investment
- II. Services & MNP

I. Relationship: Services & Investment

I. Relationship to Services

Key messages:

- Some service sector activities potentially covered by Services and Investment Chapter
- Services Chapter applies where foreign supplier establishes service sector business in another PACER Plus country ('mode 3')
 - This business is also a kind of investment
- PACER Plus addresses the relationship between Services and Investment Chapters

I. Relationship to Services

- PACER Plus **Services Chapter** – scope applies to “measures affecting trade in services”
- Covers different ways ‘modes’ of supplying a service:

trade in services means the supply of a service:

- (a) from the territory of one Party into the territory of another Party (‘Mode 1’);
- (b) in the territory of one Party to the service consumer of another Party (‘Mode 2’);
- (c) by a service supplier of one Party, through commercial presence in the territory of another Party (‘Mode 3’);
- (d) by a service supplier of one Party, through presence of natural persons of a Party in the territory of another Party (‘Mode 4’);

I. Relationship to Services

- Services Chapter applies to supply of service by service supplier of one Party, through commercial presence in another Party

commercial presence means any type of business or professional establishment, including one operating through:

- (a) the constitution, acquisition or maintenance of an enterprise; or
- (b) the creation or maintenance of a branch or a representative office; within the territory of a Party for the purposes of supplying a service;

- Requires creation or acquisition of enterprise / business in other Party
 - Requires investment in host Party

Mode 3 - Commercial presence

Supply of a service by a service supplier of one Member, through commercial presence, in the territory of any other Member



I. Relationship to Services

- PACER Plus **Investment** Chapter has broad scope – applies to wide range of assets / investments

investment means every kind of asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, ... Forms that an investment may take include:

(a) **an enterprise**;

...

(c) **shares, stock and other forms of equity participation in an enterprise**; ...

- **Investments** include an “enterprise” (business) and shares or equity in an enterprise
 - shares in / ownership of a service sector business - potentially “investments” covered by Investment Chapter
- But – ownership of a service sector business by a person of another Party also covered by Services Chapter

I. Relationship to Services

- Investor / service supplier of one Party who owns business in other Party – potentially covered by both Investment and Services Chapters
 - FTA addresses issue in relationship provision

Investment Chapter - Article 4: Relation to Other Chapters

1. This Chapter shall not apply to measures adopted or maintained by a Party affecting trade in services.

- **General rule:** INV Chapter not apply to rules / requirements affecting the establishment of service sector business by supplier of one Party in another Party
- INV 'market access' obligations: National Treatment; MFN - not apply to service sector businesses

I. Relationship to Services

- But – investment **protections** (Minimum Standard of Treatment, Expropriation) carved-back in for service sector investments

Article 4: Relation to Other Chapters

2. Notwithstanding paragraph 1, Article 9, Article 10, Article 12, Article 13, Article 14, and Article 17 shall apply, mutatis mutandis, to any measure affecting the supply of service by a service supplier of a Party through commercial presence in the territory of any other Party pursuant to Chapter 7 (Trade in Services), but only to the extent that any such measures relate to a covered investment and an obligation under this Chapter, regardless of whether such a service sector is scheduled in a Party's Schedules of Specific Commitments in Annex 7-A (Schedule of Specific Services Commitments).

- Apply to all sectors – not limited to sectors where Party has specific commitments

II. Relationship: Services & MNP

II. Relationship to MNP

Key messages:

- Services Chapter applies to mode 4 service supply – supply through presence of natural persons
- MNP Chapter contains commitments to allow the temporary entry of certain categories of business people
- MNP not same as Mode 4 service supply – Scope of MNP Chapter covers services suppliers but broader: investors, business visitors
- No Mode 4 commitments in Services Schedules – any M4 commitments made in MNP Schedules

II. Relationship to MNP

Services - Article 2: Scope

1. This Chapter applies to measures affecting trade in services adopted or maintained by a Party.

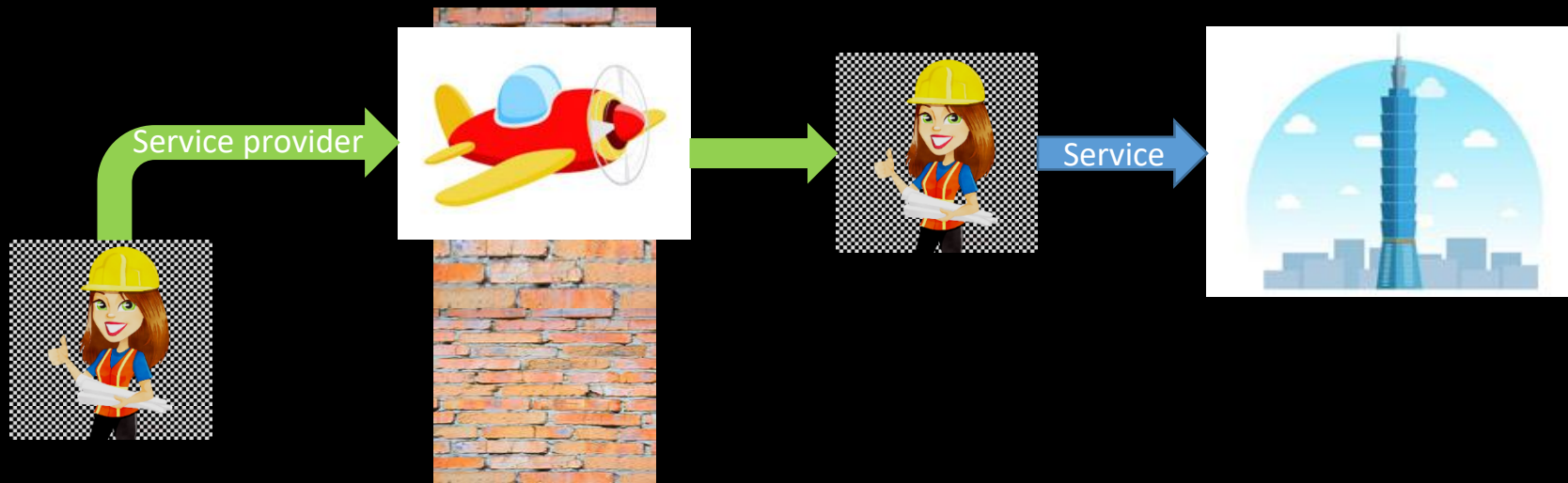
Article 1: Definitions

trade in services means the supply of a service:

- (a) from the territory of one Party into the territory of another Party ('Mode 1');
- (b) in the territory of one Party to the service consumer of another Party ('Mode 2');
- (c) by a service supplier of one Party, through commercial presence in the territory of another Party ('Mode 3');
- (d) by a service supplier of one Party, through presence of natural persons of a Party in the territory of another Party ('Mode 4');

II. Relationship to MNP

- PACER Plus Services Chapter applies to **Mode 4** service supply
 - Supply of service through presence of natural persons of a Party in territory of another Party
- Requires people from one Party to travel to another Party to provide service in that other Party



II. Relationship to MNP

CHAPTER 8: MOVEMENT OF NATURAL PERSONS

Article 2: Objectives

1. The objectives of this Chapter, ... are to:

- (a) provide for rights and obligations additional to those set out in Chapter 7 (Services) and Chapter 9 (Investment) in relation to the temporary entry of natural persons;
- (b) facilitate the temporary entry of natural persons;

Article 3: Scope

1. This Chapter shall apply, as set out in each Party's ... Schedules of Commitments on MNP, to measures affecting the temporary entry of natural persons of a Party into the territory of any other Party.

II. Relationship to MNP

MNP Chapter

- Mode 4 supply requires travel / temporary migration but Services Chapters not focused on migration – no commitment to allow entry
- Commitments to allow temporary entry made in **MNP Chapter**
- **Objectives**: provide for rights & obligations in addition to Services and Investment in relation to temporary entry
- **Scope**: applies to requirements affecting temporary entry of natural persons of one Party into territory of any other Party
- Key commitment – promise to grant temporary entry to certain categories of persons covered by commitments in MNP Schedule
 - But – must meet any conditions / limitations in MNP Schedule
 - Must meet all eligibility requirements & follow immigration procedures

II. Relationship to MNP

CHAPTER 8: MOVEMENT OF NATURAL PERSONS

Article 4: Grant of Temporary Entry

1. Each Party shall set out in Annex 8-A a schedule containing the specific commitments it undertakes for each of the categories of natural persons specified therein. These schedules shall specify the conditions and limitations governing those commitments, including the requirements and length of stay, for each category of natural persons included in each Party's schedule of specific commitments.
2. If a Party makes a commitment under paragraph 1, that Party shall grant temporary entry to natural persons of another Party provided that those natural persons:
 - (a) follow the prescribed application procedures for the immigration formality ...; and
 - (b) meet all relevant eligibility requirements for entry to the granting Party.

II. Relationship to MNP

- General obligations: MFN, domestic regulation – apply to M4 service supply
- No exclusion for M4 from Services Chapter obligations
- But – in practice - Parties have not made Mode 4 commitments in Services schedules
- Commitments in Schedules (for National Treatment & Market Access) limited to modes 1-3
- No Mode 4 Commitments in Services Schedules
- Instead – most Parties make NT & MA commitments on Mode 4 supply in their Schedules to the **MNP Chapter**

**ANNEX 7-A: SCHEDULE OF SPECIFIC SERVICES COMMITMENTS (CHAPTER 7)
SCHEDULE OF THE COOK ISLANDS**

1. The inscription ‘none’ means that, for the listed sector or sub-sector, no limitations to the obligations of national treatment are maintained. The inscription ‘unbound’ means that no commitments are taken with respect to a particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.

Modes of supply: (1) Cross-border supply

(2) Consumption abroad

(3) Commercial presence

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
II. Sector-Specific Commitments			
<p>1. BUSINESS SERVICES</p> <p>A. Professional Services</p> <p>a) Legal Services (CPC 861)</p> <p>b) Accounting, auditing and bookkeeping services (CPC 862)</p> <p>c) Taxation services (CPC 863)</p>	<p>1) None</p> <p>2) None</p> <p>3) None</p> <p>1) None</p> <p>2) None</p> <p>3) None</p> <p>1) None</p> <p>2) None</p> <p>3) None</p>	<p>1) None</p> <p>2) None</p> <p>3) None</p> <p>1) None</p> <p>2) None</p> <p>3) None</p> <p>1) None</p> <p>2) None</p> <p>3) None</p>	

**ANNEX 8-A: SCHEDULE OF COMMITMENTS ON MOVEMENT OF NATURAL PERSONS (CHAPTER 8)
SCHEDULE OF SOLOMON ISLANDS**

1. Solomon Islands' commitments under Article 5 (Market Access) and Article 6 (National Treatment) of Chapter 7 (Trade in Services) and under Chapter 8 (Movement of Natural Persons) apply only in relation to the categories of persons set out below. In accordance with Article 5 (Market Access), Article 6 (National Treatment), and Article 8 (Specific Commitments) of Chapter 7 (Trade in Services), Solomon Islands specifies below any terms, conditions, limitations or qualifications.

Category of natural person	Sector or subsector	Conditions and Limitations (including duration of stay)
II. Category-specific commitments		
<p><u>Independent Service Supplier</u></p> <p>Independent service supplier means a self-employed natural person of another Party who is a service supplier entering the territory of the Solomon Islands pursuant to a contract with an enterprise in the territory of the Solomon Islands, is sponsored by the enterprise in the Solomon Islands, who has a qualification resulting from three or more years of formal post-secondary school education and has the appropriate experience to provide the service.</p>	<p>All sectors listed in Solomon Islands' schedule under Annex 7-A (Schedule of Specific Services Commitments).</p>	<p>Period of stay of up to 90 days within any one year period. Stay beyond 90 days, up to a maximum of two years, is conditional on the non-availability of Solomon Island citizens or permanent residents with the requisite skills and professional experience available for such employment.</p>

II. Relationship to MNP

- **Example:** Solomon Islands
- Services MA and NT only apply to Mode 4 service supply – to categories of people covered by commitments in MNP Schedule
 - subject to any terms or limitations in the MNP Schedule
- E.g. Solomon Islands makes commitments on M4 supply by Independent Service Suppliers
 - But must satisfy conditions – including sponsorship & experience
 - Only applies in sectors committed in Services Schedule
 - Duration of stay generally limited to 90 days

II. Relationship to MNP

Temporary entry vs permanent migration & employment

- In MNP Chapters Parties make commitments to allow temporary entry for certain business visitors / investors and service suppliers
 - Include entry for service suppliers to supply service
- But – no commitments on permanent migration / citizenship
- No commitment to allow access to employment market (job-seekers)

MNP Chapter - Article 3: Scope

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of another Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

II. Relationship to MNP

Immigration measures

- MNP Chapter confirms broad freedom to maintain immigration measures
- Provided not used to undermine the benefits of Agreement
 - E.g. if government changed immigration rules to prevent any foreign service suppliers from entering in sector where it made commitments in MNP Schedule

MNP Chapter - Article 3: Scope

3. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry or temporary stay of natural persons of any other Party in its territory, including those measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided such measures are not applied in a manner so as to nullify or impair the benefits accruing to any other Party under this Agreement.

Quiz

PACER Plus - Services - Relationship



Thank you