

# REGIONAL MOVEMENT OF NATURAL PERSONS & LABOUR MOBILITY WORKSHOP

**Apia, 11-14 September 2023**

Session 3: PACER Plus MNP Chapter



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# Overview

- I. MNP & Services
- II. MNP & Investment
- III. MNP & Arrangement on Labour Mobility

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# **I. Relationship: MNP & Services**

# I. Relationship: MNP & Services

## 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
  - MNP commitments not limited to service sectors
- No Mode 4 commitments in Services Schedules – any M4 commitments made in MNP Schedules

# I. Relationship: MNP & Services

## Services - Article 2: Scope

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

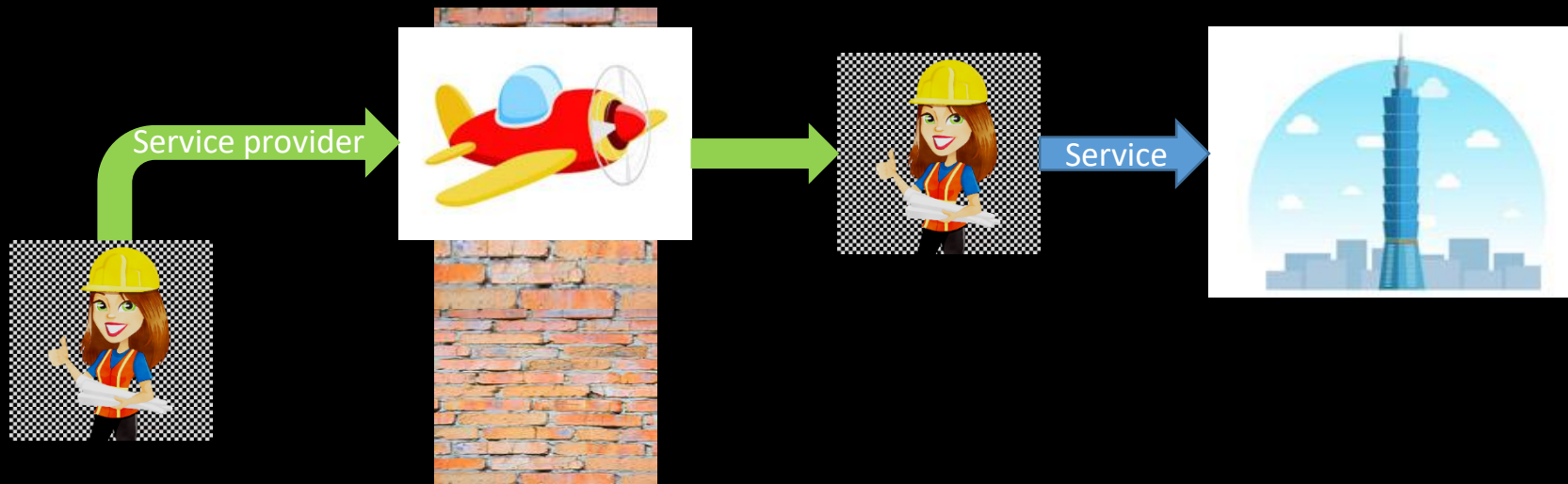
### Article 1: Definitions

**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');

# I. Relationship: MNP & Services

- 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



# I. Relationship: MNP & Services

## 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.

# I. Relationship: MNP & Services

## 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



# I. Relationship: MNP & Services

## 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.

# I. Relationship: MNP & Services

- PACER Plus Services obligations 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
<b>II. Sector-Specific Commitments</b>			
<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.

<b>Category of natural person</b>	<b>Sector or subsector</b>	<b>Conditions and Limitations (including duration of stay)</b>
<b>II. Category-specific commitments</b>		
<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>

# I. Relationship: MNP & Services

- **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

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## **II. Relationship: MNP & Investment**

## II. Relationship: MNP & Investment

### 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

- MNP objectives include providing rights and obligations additional to Investment (and Services) Chapters in relation to temporary entry
  - Facilitate temporary entry

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## II. Relationship: MNP & Investment

- Main relationship between MNP & Investment is that Parties make specific commitments to allow temporary entry for people who are:
  - Investors
  - Key staff sent to establish or manage a foreign-owned business
- Includes intra-corporate transferees and independent executives (varies between Parties)
- Persons must satisfy any eligibility / visa requirements and specific limitations or conditions in Schedules



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

1. Samoa's 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), Samoa specifies below any terms, conditions, limitations or qualifications.

<b>Category of natural person</b>	<b>Sector or subsector</b>	<b>Conditions and Limitations (including duration of stay)</b>
<b>II. Category-specific commitments</b>		
<p><u>Business visitors</u></p> <p>Business visitor means a natural person of another Party who is:</p> <p>...</p> <p>(b) an investor of another Party, as defined in Chapter 9 (Investment), or a duly authorized representative of an investor of another Party, seeking temporary entry into the territory of Samoa to establish, expand, monitor, or dispose of an investment of that investor;</p> <p>...</p>	<p>All sectors</p>	<p>Period of stay of a maximum of 60 days per year.</p>

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

1. Niue’s 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) and with Chapter 8 (Movement of Natural Persons), Niue specifies below any terms, conditions, limitations or qualifications.

<b>Category of natural person</b>	<b>Sector or subsector</b>	<b>Conditions and Limitations (including duration of stay)</b>
<b>II. Category-specific commitments</b>		
<p><u>Intra-Corporate Transferees</u></p> <p>Intra-corporate transferee means an employee of an enterprise of another Party that has established in Niue through a branch, subsidiary or affiliate, who is transferred to fill a position in the branch, subsidiary or affiliate of the enterprise in Niue, and who corresponds to the following categories:</p> <ul style="list-style-type: none"> <li>- Executives</li> <li>- Managers</li> <li>- Specialists</li> </ul>	<p>All sectors listed in Niue’s schedule under Annex 7-A (Schedule of Specific Services Commitments) and Annex 9-A (Schedule of Commitments on Investment).</p>	<p>Period of stay of two years. This may be extended for one year, if there are no Niue citizens or permanent residents with the requisite skills and professional experience for such employment.</p>

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# **III. Relationship: MNP & Arrangement on Labour Mobility**

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## III. Relationship: MNP & ALM

- MNP Chapter contains commitments to allow temporary entry for certain categories of persons
  - Provided they satisfy all eligibility criteria and other requirements
- Binding treaty commitments
- In general – commitments for professionals / highly skilled workers
  - Not low skilled workers
- Pacific Parties make commitments on “skilled and *semi*-skilled workers”
  - But this category still requires a post-secondary / university degree

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

1. Vanuatu's 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), Vanuatu specifies below any terms, conditions, limitations or qualifications.

<b>Category of natural person</b>	<b>Sector or subsector</b>	<b>Conditions and Limitations (including duration of stay)</b>
<b>II. Category-specific commitments</b>		
<p><u>Skilled and semi-skilled workers:</u></p> <p>Skilled or semi-skilled worker means a natural person of a Party who enters the territory of Vanuatu in order to work temporarily under an employment contract with an enterprise in Vanuatu, and who has <u>qualifications resulting from three or more years of formal post-secondary school education</u> and appropriate experience for that employment.</p>	<p>All sectors</p>	<p>Conditional on the non-availability of suitably qualified natural persons of Vanuatu.</p> <p>Period of stay up to one year.</p>

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## III. Relationship: MNP & ALM

- Arrangement on Labour Mobility (ALM) is part of the PACER Plus outcome but not part of the treaty text
- Covers: “temporary movement of workers of a Participant to another Participant for the purpose of temporary employment”
- Broader focus than MNP Chapter commitments – not limited to skilled workers
  - Not limited to services suppliers; professionals; investors
- Covers low and semi-skilled workers, including under existing labour mobility program - Australian Seasonal Worker Programme (SWP), and New Zealand Recognised Seasonal Employer policy (RSE)

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## III. Relationship: MNP & ALM

- ALM & MNP Chapter different focus but both concerned with temporary movement of people to perform economic activity in other Party
- Cross-over in relation to qualifications and recognition
  - MNP commitments generally subject to conditions relation to qualifications
  - Services Recognition obligation applies to authorisation / licensing requirements if condition for entry under MNP commitments
  - ALM also calls for support to facilitate recognition of qualifications
- Broader context: ALM review - issues related to labour mobility have potential to impact on MNP commitments & Mode 4 (immigration formalities, recognition, conditions)
  - Possible that issues raised in context of ALM may be suitable to address in context of MNP Chapter (and vice versa)

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Thank you