

# REGIONAL MOVEMENT OF NATURAL PERSONS & LABOUR MOBILITY WORKSHOP

**Apia, 11-14 September 2023**

Session 3: PACER Plus MNP Chapter



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# Overview

1. MNP Chapter: Scope and objectives
2. Grant of temporary entry
3. Who do commitments apply to?
4. Visa requirements & procedures
5. Qualifications & recognition
6. Dispute Settlement
7. Review

# 1. MNP Chapter: Scope & Objectives

## 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;
- (c) establish transparent criteria and streamlined immigration formality application procedures for the temporary entry of natural persons to whom this Chapter applies; and
- (d) protect the integrity of the Parties' borders, and protect the domestic labour force and permanent employment in the territories of the Parties.

# 1. MNP Chapter: Scope & Objectives

## MNP Chapter Objectives:

- (a) provide for rights and obligations in relation to temporary entry of natural persons;
- (b) facilitate temporary entry of natural persons;
- (c) establish transparent and streamlined criteria for temporary entry

AND also:

- (d) protect integrity of Parties' borders, protect domestic labour force and permanent employment in the Parties
- Not purely 'market access' – also recognises importance of ability to control borders and domestic policy sensitivities

# 1. MNP Chapter: Scope & Objectives

## CHAPTER 8: MOVEMENT OF NATURAL PERSONS

### Article 3: Scope

1. This Chapter shall apply, as set out in each Party's schedule of specific commitments in Annex 8-A (Schedules of Commitments on Movement of Natural Persons), to measures affecting the temporary entry of natural persons of a Party into the territory of any other Party.

- Chapter applies to “measures affecting temporary entry of natural persons of a Party”
- Commitments are set out in each Party's Schedule
  - Commitments apply to categories of people set out in Schedule
  - Subject to any limitations / conditions in Schedule

# 1. MNP Chapter: Scope & Objectives

- Chapter applies to “measures affecting temporary entry of natural persons of a Party”
- What does **temporary entry** mean?

**temporary entry** means entry into the territory of a Party by a natural person covered by this Chapter, without the intent to establish permanent residence; and

- Temporary entry – not *permanent* migration
- What are “measures affecting” temporary entry?

**measure** means any measure of a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

- Very broad – *any* measure – not just formal laws etc – includes decision, procedure, policy

# 1. MNP Chapter: Scope & Objectives

## Article 3: Scope

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

- Scope Article includes important **qualifications**
- Confirms MNP Chapter / commitments not apply to persons seeking access to employment market (job seekers) or permanent employment
  - E.g. temporary entry to supply a service – not to compete in domestic employment market for permanent jobs
- *Temporary* entry for certain categories of business persons
- MNP Chapter not apply to any requirements related to citizenship or permanent residence

# 1. MNP Chapter: Scope & Objectives

## 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.<sup>1</sup>

- Important principle - Parties retain broad flexibility to impose immigration measures
- Confirms nothing in Agreement (whole of PP) prevents Party imposing immigration measures



# 1. MNP Chapter: Scope & Objectives

## Immigration measures

- Flexibility for measures including those necessary to protect integrity of territory and ensure orderly movement of people
  - Not limited to these measures
- Broad flexibility – but discipline:
  - Measures not applied so as to “nullify or impair the benefits” of another Party under the Agreement
  - Not undermine benefits of another Party under PP
  - E.g. not change visa requirements to undermine specific commitments to allow entry of contractual service suppliers in Schedule

## 2. Grant of temporary entry

### 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.

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## 2. Grant of temporary entry

- Key obligation in MNP Chapter = promise to grant temporary entry to certain categories of business people
- Subject to important conditions:
  - Only for specific categories of persons
  - Subject to conditions and limitations in schedule
  - Follow all application procedures; and
  - satisfy all eligibility requirements
- Parties commit to allow temporary entry (grant visa) provided person within scope of commitments & satisfies all eligibility requirements
- Duration of stay limited to commitments in Schedule

### 3. Who do commitments apply to?

- Temporary entry commitments only apply to categories of people set out in a Party's schedule
- Some variation between Parties but common categories:
  - Business visitors (including investors);
  - intra-corporate transferees;
  - independent executives;
  - contractual service suppliers
- Most Parties make commitments additional on additional categories:
  - Installers and servicers; Skilled or semi-skilled workers
- Some make commitments to allow transfer (parent-branch) of management / graduate trainees (with degrees):
  - Nauru; Samoa; Tuvalu

## 4. Visa requirements & procedures

- MNP Chapter contains commitments related to:
  - Processing of immigration applications
  - Providing information to applicants on status of the application
- Commitments only apply in relation to categories of persons that a Party makes commitments on in Schedule
- Commitments are *best endeavours* – not strict / absolute obligation
- Recognises capacity constraints – different levels of development
- Applies to “immigration formalities” – defined:

**immigration formality** means a visa, permit, pass or other document or electronic authority granting a natural person of a Party the right to enter, reside or work in the territory of the granting Party.

## 4. Visa requirements & procedures

### Article 5: Requirements and Procedures Relating to Movement of Natural Persons

1. In relation to the natural persons covered by Article 3, each Party shall endeavour to:

- (a) establish or maintain immigration formalities, which can be granted prior to arrival ... to allow natural persons of another Party entry into and temporary stay in its territory;
- (b) expeditiously process complete applications for immigration formalities received from natural persons of another Party, including ... extensions;

- Endeavour to maintain visas which can be granted prior to arrival
- Endeavour to process visa applications *expeditiously*

## 4. Visa requirements & procedures

### Article 5: Requirements and Procedures Relating to Movement of Natural Persons

1. In relation to the natural persons covered by Article 3, each Party shall endeavour to:
- (c) on request, and within a reasonable period after an application by a natural person of another Party requesting temporary entry is lodged, notify the applicant of:
    - (i) receipt of the application;
    - (ii) the status of the application; and
    - (iii) the decision concerning the application, including:
      - (A) if approved, the period of stay and other conditions; or
      - (B) if refused, the reasons for refusal and any avenues for review.

- Endeavour to provide information on status of application on request within reasonable period:
  - Receipt of application; status; decision

## 5. Qualifications & recognition

### Article 4: Grant of Temporary Entry

3. Temporary entry granted pursuant to this Chapter does not replace the requirements needed to carry out a profession or activity according to the domestic laws and regulations, and any applicable mandatory codes of practice made pursuant to domestic law, in force in the territory of the Party authorising the temporary entry.

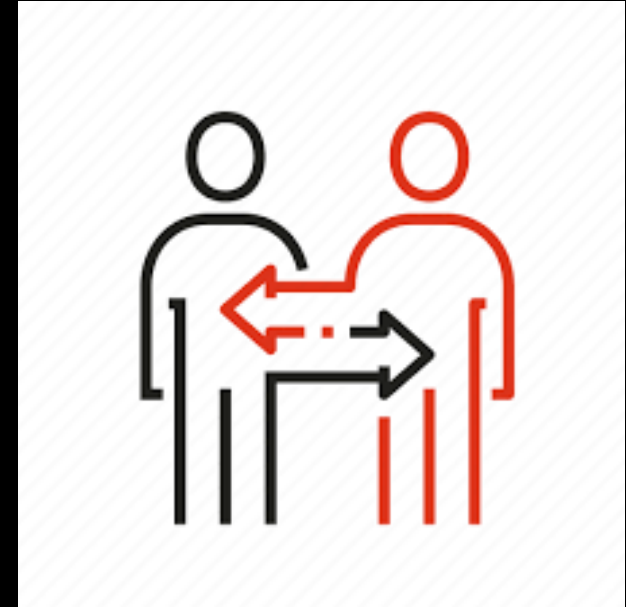
- Persons granted temporary entry under MNP Chapter – may still need to comply with professional requirements / licenses to practice profession



# 5. Qualifications & recognition

## What is recognition about?

- Many professions / services – suppliers must meet criteria for authorisation: education, experience, licenses
- Recognition - country recognises education / licenses granted by another country as satisfying their own requirements
- Generally reciprocal basis under mutual recognition agreement / arrangement (MRA)
  - Each country agrees to recognise qualifications / licenses granted by other country



## 5. Qualifications & recognition

### Article 6: Mutual Recognition

If the requirements for an immigration formality include requirements relating to authorisation, licensing or certification of natural persons, Article 11 of Chapter 7 (Trade in Services) shall apply, mutatis mutandis, to such authorisation, licensing or certification, but that obligation shall only apply to a Party in relation to the commitments they have made under Article 4.

- If visa requirements include requirements relating to licensing / authorisation – Party must comply with Recognition obligation in PP Services Chapter
- Only applies where Party made commitments in Schedule

## 5. Qualifications & recognition

- Under PACER Plus – no requirement to recognise qualifications / experience gained in another Party
- Key requirement: if Party agrees MRA with another country – must give other Parties to *opportunity* to negotiate comparable MRA
- Other requirements:
  - Can't grant recognition in discriminatory way or disguised restriction on trade
  - Parties required to encourage professional bodies to explore possibility of recognition

## 6. Dispute Settlement

- MNP Chapter modifies general approach to dispute settlement under PACER Plus
- Ability of a Party to bring a dispute against another party relating to a refusal to grant temporary entry unless:
  - (a) the matter involves a **pattern of practice** of the granting Party; and  
(not just a single refusal – must be a “pattern of practice”)
  - (b) the natural persons affected have **exhausted all available domestic remedies**  
(affected person must pursue domestic avenues (review / appeal / judicial review) before Party can bring claim under FTA)

# 7. Review

## Article 9: Review of Commitments

The Parties shall review commitments for the temporary entry of natural persons, with the first review taking place within three years of entry into force of this Agreement and periodically thereafter as determined by the Joint Committee, with the aim of improving the overall commitments undertaken by the Parties under this Chapter so as to progressively liberalise the movement of natural persons among the Parties.

- Along with general reviews – Art 9 requires a review of commitments on temporary entry (first within 3 years)
- Aim to improve commitments and progressively liberalise MNP
- **Opportunity** for Parties to address any issues – seek better commitments

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Thank you