

MOVEMENT OF NATURAL PERSONS (MODE 4)

Inception Workshop on “Strengthening the Impact of Trade on
Employment in the Philippines”

Century Park Hotel

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Bureau of Local Employment

Background

The General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO) recognizes that for certain services to be supplied internationally “movement of natural persons” is indispensable and hence, introduced the so-called mode 4 supply of services.



Legal Basis

GATS, Part I, Article 1 Scope and Definition, 2. For the purposes of this Agreement, trade in services is defined as the supply of a service:

*“[..] (d) by a service supplier of one Member, through presence of **natural persons** of a Member in the territory of any other Member”*

Natural Persons refer to the national and permanent resident of WTO Members Countries



Who are “Natural Persons of another Member”?

“natural person of another Member” means a natural person who resides in the territory of that other Member or any other Member, and who under the law of that other Member: (i) is a national of that other Member; or (ii) has the right of permanent residence in that other Member, in the case of a Member which: 1. does not have nationals; or 2. accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services...



GATS Four Modes of Supply

Mode of Supply	Illustration
Mode 1 – Cross-border supply	A user in Singapore receives services from the Philippines through its telecommunications or postal infrastructure. Such supplies may include consultancy or market research reports, tele-medical advice, distance training, or architectural drawings.
Mode 2 – Consumption of services abroad	Nationals of Singapore move to the Philippines as tourist, students, or patients to consume the respective services while in the Philippines.
Mode 3 – Commercial presence abroad	The services is provided by establishing in Singapore an affiliate, subsidiary, or representative office of a Philippine-owned and controlled company (bank, hotel group, construction company, etc).
Mode 4 – Movement of natural persons	A Filipino national moves and provides services within Singapore as an independent supplier (e.g. Consultant, health worker) or employee of a Philippine service supplier (e.g. Consultancy firm, hospital, construction company).



Elements of MNP

1. Temporary movement – Trade in Services (TIS) excludes access to the employment market, and measures regarding citizenship, residence or employment on a permanent basis.
2. Limited scope – applicable only in Free Trade Agreements (FTAs) categories of natural persons, and service sectors committed by individual WTO Member Countries.



Major categories of natural persons

1. Business visitors (BVs) – seeking to enter or stay in the territory of another Member State temporarily, whose remuneration and financial support for the duration of the visit is derived from outside of that other Member States.
2. Intra-Corporate Transferee (ICT) – is an employee of a juridical person established in the territory of a Member States, who is transferred temporarily for the supply of a service through commercial presence.
3. Contractual Service Supplier (CSS) – who is an employee of a juridical person established in the territory of a Member State temporarily in order to supply a service pursuant to a contract(s) between the employer and service consumer it has no commercial presence.



Major categories of natural persons

4. Investors – engaged in the activities to invest in business in the Philippines on behalf of a person or to manage business in the Philippines on behalf of a person.
5. Independent Professional (IP) – who is a self-employed and who enters the territory of another Member States temporarily in order to perform a service pursuant to a contract(s) between them and any service consumer located in the territory of the other Member State.
6. Specialist – persons working within a juridical person possessing specialised knowledge essential to the enterprise's areas of activity, techniques or management.



Major categories of natural persons

7. Installer and servicers – employee of a juridical person in the territory of other Member State for at least a who is assigned to install or service industrial machinery, equipment or both machinery and equipment, where such installation and/or servicing by the juridical person is part of the contract of purchase of the said machinery or equipment.



MNP vs Labor Migration

MNP	Labor Migration (OFWs and Immigrants)
Service suppliers only in sectors covered in the commitments of destination country or service consumer	Employees in any sector of the destination country
Employees of a Member's service supplier moving to a service consumer in another Member State to provide the services	Employees of any business in destination (government, non-government, domestic or foreign)
Cannot access labor market in destination countries. Cannot apply for citizenship or residency	Temporary contracts may lead to permanent employment and residency.



FTAs with Separate Agreement/Chapter on MNP

1. ASEAN Framework Agreement in Services (AFAS)
2. Philippines-Japan Economic Partnership Agreement (PJEPA)
3. ASEAN Australia-New Zealand Free Trade Agreement (AANZFTA)
4. Philippines-European Free Trade Association Free Trade Agreement (PH-EFTAFTA)



Philippine MNP Commitments

Free Trade Agreement	Categories of Natural Persons Commitments
GATS (1995)	No MNP Commitments; only the review of the Labor Market Test (Art. 40 of the Labor Code) within two years from accession .
AFAS (1995)	Modes 1 to 4 are included starting from the 1 st up to the 8 th Packages of Commitments under AFAS
PJEPA (2008)	(a) short-term BVs; (b) ICTs; (c) investors; (d) natural persons of the other Party who engage in professional services; (e) engage in supplying services, which require technology or knowledge at an advanced level or specialized skills belonging to particular fields of industry, on the basis of a contract; and (f) engage in supplying services as nurses, on the basis of a contract with public or private organizations



Philippine MNP Commitments

Free Trade Agreement	Categories of Natural Persons Commitments
AANZFTA (2010)	(a) BVs; (b) ICTs; (c) Investors; (d) Specialized skills belonging to particular fields of industry; and (e) Professionals under the twinning and bridging program in higher education.
AAMNP (2012)	a) BVs; (b) ICTs; (c) Investors; (d) Specialized skills belonging to particular fields of industry; and (e) Professionals under the twinning and bridging program in higher education.
AFTA (2013)	No committed categories, definition only of categories of natural persons
PH-EFTAFTA (2016)	(a) BVs; (b) ICTs; (c) CSS; (d) Installers and Servicers



Phil Legal Framework on the Entry and Employment of Foreign Nationals

1. **Philippine Constitution of 1987**, Article XII, National Economy and Patrimony, Section 11 (public utilities), 12 (preferential use of Filipino labor), and 14 practice of profession
2. **Labor Code of the Philippines**, as amended, Article 40, Paragraph 2 (Labor Market Test)
3. **Commonwealth Act No. 108, as amended by PD 715 or Anti Dummy Law**

Foreign nationals are allowed only in technical positions in enterprises where foreign equity participation is limited by law or Constitution to a maximum of 40%



Phil Legal Framework on the Entry and Employment of Foreign Nationals

4. Republic Act No. 8981 or the PRC Modernization Act of 2000

Section 7(j): “X x x That the Commission may, upon recommendation of the Board concerned, authorize the issuance of a certificate of registration/license or a special temporary permit to foreign professionals who desire to practice their professions in the country under reciprocity and other international agreements; consultants in foreign-funded, joint venture or foreign-assisted projects of the government, employees of Philippine or foreign private firms or institutions pursuant to law, or health professionals engaged in humanitarian mission for a limited period of time.”



Phil Legal Framework on the Entry and Employment of Foreign Nationals

5. **Article 39(h) of EO 226 or the Omnibus Investments Code of 1987**

“X x x. A registered enterprise shall train Filipinos as understudies of foreign nationals in administrative, supervisory and technical skills and shall submit annual reports on such training to the Board.”

6. **Section 40 of Republic Act No. 7916 or the PEZA Law**

Limits the number of foreign nationals in technical, advisory and supervisory to a maximum of 5% of the enterprise' total workforce



Comparison of Deployment of Filipinos versus Inflow of Foreign Workers

Indicator	2012	2013	2014
Deployment of Filipinos abroad	1,802,031	1,836,345	1,832,668
Entry of Foreign workers	20,966	22,740	24,338
% of Foreign Workers vs Filipinos deployed	1.16%	1.23%	1.33%

Source: POEA and DOLE Regional Offices



Top 3 Industries issued an AEP

	2013	2014	2015
Top 1	Real Estate, Renting and Business Activities (28.1%)	Real Estate, Renting and Business Activities (30.42%)	Manufacturing (20.4%)
Top 2	Manufacturing (18%)	Manufacturing (17.8%)	Wholesale and Retail Trade; Repair of Motor Vehicles, Motorcycles and Personal and Household Goods (10.3%)
Top 3	Construction (5.2%)	Construction (6.48%)	Information and Communication (7.4%)



Top 3 Occupations issued an AEP

	2013	2014	2015
Top 1	Administrative, Executive & Managerial Workers (56.5%)	Administrative, Executive & Managerial Workers (54.6%)	Administrative, Executive & Managerial Workers (43.5%)
Top 2	Technicians & Associate Professionals (30.18%)	Technicians & Associate Professionals (29.52%)	Technicians & Associate Professionals (31.1%)
Top 3	Plant and Machine Operators and Assemblers (4.76%)	Plant and Machine Operators and Assemblers (5.48%)	Professionals (23.7%)



Top 3 Nationalities issued and AEP

	2013	2014	2015
Top 1	Chinese (23.8%)	Chinese (26.7%)	Chinese (32.1%)
Top 2	Korean (17.9%)	Korean (18.1%)	Japanese (14%)
Top 3	Japanese (16.8%)	Japanese (15%)	Korean (12.7%)



Implications and Value-Added

Inbound

1. Makes the Philippine economy more competitive as it allows opportunities for natural persons of FTA Partner countries to temporarily visit and work in the country to supply services which is essential in contributing to the growth and strengthening of services sector through inflow of foreign investments.
2. Opens the Philippine economy to potential foreign investment



Implications and Value-Added

3. Makes the Philippine business environment more conducive to foreign investors – contributes to ease of doing business and facilitates establishment of foreign business.
4. Spill over effects:
 - a. Creation of jobs
 - b. Technology transfer
 - c. Formation of a diverse working environment



Implications and Value-Added

Outbound

1. Facilitates Filipino investors and businesses in establishing commercial presence in FTA Partner countries.
2. Enable Filipino companies to mobilize their professionals and specialists to FTA Partner countries with greater ease



Implications and Value-Added

3. Encourages technology, technical know-how transfer when Filipinos return since movement is temporary.
4. Offers Filipino job opportunities in FTA Partner countries and also source professionals and skilled workers from them to meet with local skilled manpower requirements.



-End of Presentation-

Thank you!

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