



Agreement on Social Security between the Government of The Republic of Korea and the Government of New Zealand: Approval for signature

Date: 21 ^{Feb} January 2019 **Report no.** REP 19/2/113
Security level: IN CONFIDENCE **Priority:** Medium

Action Sought

Hon Carmel Sepuloni Agree recommendations 27 February 2019
Minister for Social Development

Contact for telephone discussion

Name	Position	Telephone	1st Contact
Justine Cornwall	General Manager,	s 9(2)(k)	<input checked="" type="checkbox"/>
s 9(2)(a)	Policy Manager,		

Minister's office comments

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to (specify)

Comments
No feedback from the Minister

Date received from MSD

Date returned to MSD

21/2/19

25/2/19



Report

Date: 21 February 2019

Security Level: IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Social Development

Draft Cabinet paper seeking approval to sign the Social Security Agreement between South Korea and New Zealand

Purpose of the report

- 1 We are seeking your feedback on the draft Cabinet paper that seeks approval for the signing of a reciprocal *Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand* (the Agreement).

Recommended actions

It is recommended that you:

- 1 **agree** to provide feedback on the draft Cabinet paper by 27 February 2019
Agree/disagree
- 2 **note** that following your feedback, the draft Cabinet paper will be updated by 28 February 2019 for you to initiate Ministerial consultation between 28 February and 14 March 2019

Justine Cornwall
General Manager
Seniors and International Policy

21-2-2019

Date

Hon Carmel Sepuloni
Minister for Social Development

25/2/19

Date

Background

- 3 Social security agreements are bi-lateral treaties between governments which provide for the reciprocal payment of social security benefits and pensions. They allow the costs of benefits and pensions to be mutually shared between governments by modifying barriers in legislation that would otherwise prevent payment. They also allow qualifying periods of residence or contributions in one partner country to be counted as qualifying periods of residence or contributions in the other partner country.
- 4 In 2009 the Minister for Social Development approved negotiations for a social security agreement with South Korea after South Korea approached New Zealand. The text of the Agreement has now been negotiated and is ready to be signed.
- 5 Once Cabinet approval has been obtained, all the administrative and legislative steps that are required before the Agreement can be signed will have been completed.

The Privacy Commissioner has reported on the Agreement

- 6 Under the Social Security Act 2018 the Agreement cannot come into force unless the Privacy Commissioner has reported to the Minister for Social Development and the Minister of Justice about:
 - whether the agreement complies with New Zealand Privacy Act 1993 requirements and is in the public interest; and
 - the adequacy of privacy protection in South Korea
- 7 On 17 September 2017 the Privacy Commissioner presented a report to Ministers stating that he is satisfied that the Agreement is acceptable, and that it is reasonable for the Government to sign the Agreement and issue an Order in Council to bring it into effect.

The Minister of Foreign Affairs has decided that the Agreement is not subject to the parliamentary treaty examination process

- 8 Major bilateral treaties of particular significance are presented to the House for Select Committee consideration in accordance with the procedures set out in Standing Orders (SO 397-400). The Minister of Foreign Affairs has the authority to determine whether an agreement needs to be considered by a select committee.
- 9 The Minister of Foreign Affairs decided on 19 February 2019 that the Agreement need not be subject to the parliamentary treaty examination process as it is not a major bilateral treaty of particular significance.

Next steps

- 10 Following your feedback, the draft Cabinet paper will be updated by 28 February 2019 for you to initiate Ministerial consultation between 28 February and 14 March 2019.
- 11 Following feedback from Ministerial consultation, the paper seeking Cabinet approval to sign the Agreement can be considered at the Social Wellbeing Committee on 20 March 2019. The paper will need to be submitted to Cabinet Office by 10.00am, Thursday 14 March 2019.

- 12 Once Cabinet approval has been obtained, both countries will need to sign the Agreement at a time that is mutually convenient. The Minister of Foreign Affairs has the authority to sign international agreements but can grant another Minister the power to sign on his behalf. The Ministry of Social Development (MSD) will work with the Ministry of Foreign Affairs and Trade to arrange for both countries to sign the Agreement. Further advice on the signing process will be provided to you once Cabinet approval has been obtained.
- 13 There will be implementation costs of approximately \$2.112 million to be phased over 2019/20 and 2020/21. MSD has submitted a Budget 2019 bid for technology investment, which includes some funding for implementing legislative changes. Subject to this funding being agreed by Cabinet through the Budget 2019 process, MSD will look to use a portion to implement the changes required for the Agreement.
- 14 If the Budget 2019 bid is successful, the earliest that implementation processes can commence is November 2019. Due to the significant IT changes required to implement the Agreement, implementation processes are expected to take approximately 12 months to complete. This means that the earliest date that people could start using the Agreement would be mid-2021.
- 15 However, if the Budget 2019 bid is not successful or prioritisation against other Ministry and Ministerial priorities is not feasible, a Budget 2020 bid will be prepared, which would mean delaying implementation by a year. This means that the earliest date that people could start using the Agreement would be mid-2022. Further advice on the implementation processes will be provided to you in the near future.
- 16 Once the Agreement has been signed by both countries and implementation processes have been completed, the Parliamentary Council Office can prepare the Order in Council which will bring the Agreement into effect.

Appendix

- 17 The Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand: Approval for signature Cabinet paper is attached along with the text of the Agreement.

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Responsible manager: s 9(2)(a) Manager, Seniors and International Policy

Chair
Cabinet Social Wellbeing Committee

AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF NEW ZEALAND: APPROVAL FOR SIGNATURE

Proposal

- 1 I seek Cabinet's approval for the signing of a reciprocal *Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand* (the Agreement).

Executive summary

- 2 In 2009, the Minister for Social Development approved negotiations for a social security agreement with the Republic of Korea (South Korea) after South Korea approached New Zealand. The Agreement has now been finalised and is ready to be signed.
- 3 Social security agreements typically cover old age pensions, invalidity benefits and survivor's benefits. However, New Zealand has limited the coverage under the Agreement to New Zealand Superannuation and Veteran's Pension because widow's, widower's and invalid's benefits were replaced with a more general benefit, or ceased to exist from 2013. The Ministry of Social Development (MSD) forecast minimal to no uptake of such benefits using agreement provisions to qualify, so their omission from the coverage of the Agreement will have little or no impact.
- 4 The main advantage of the Agreement is that it helps to facilitate ease of movement between South Korea and New Zealand. International mobility, as well as the provision of pensions, strengthens migrant communities, allowing them to better maintain ties to their home country. It also fosters financial independence resulting from increased access to pensions.
- 5 Once Cabinet approval has been obtained and the Agreement has been signed by both countries, the implementation processes can be scheduled and completed then the required Order in Council can be prepared to bring the Agreement into effect.

Background

- 6 Social security agreements are bi-lateral treaties between governments which provide for the reciprocal payment of social security benefits and pensions. They allow the costs of benefits and pensions to be mutually shared between governments by modifying barriers in legislation that would otherwise prevent payment. They also allow qualifying periods of residence or contributions in one partner country to be counted as qualifying periods of residence or contributions in the other partner country.
- 7 New Zealand has nine social security agreements in force. These are with: Australia; Canada; Denmark; Greece; Ireland; Jersey and Guernsey; Malta; the Netherlands, and the United Kingdom. A social security agreement with Italy was signed in 1998 but this needs to be ratified by the Italian Parliament before it can enter into force.

Comment

- 8 The Agreement, which is attached as Appendix 1, will provide seamless pension coverage for people who move between South Korea and New Zealand.
- 9 Social security agreements typically cover old age pensions, invalidity benefits and survivor's benefits. However, benefit coverage under New Zealand's recent social security agreements is limited to New Zealand Superannuation and Veteran's Pension because:
 - under the welfare reform changes introduced in 2013, the New Zealand widow's, widower's and invalid's benefits ceased to exist and payments for some of the circumstances these benefits covered were consolidated into wider benefit categories¹ that go beyond the normal benefit coverage contained in social security agreements.
 - the number of people applying for payments other than New Zealand Superannuation and Veterans' Pension in agreement partner countries is generally very low.
- 10 The Korean coverage under the Agreement is limited to the Korean National Pension.
- 11 The main provisions of the Agreement set out the following:
 - the authority to pay pensions in partner countries
 - provisions for information sharing between the parties so that correct pension entitlement can be determined
 - the residency/contribution requirements of each country for pension entitlement
 - rules establishing how each country will take into account residency or contributions in the other country to provide coverage to people who do not have sufficient residence or contributions to qualify for a pension
 - the formula for the proportional calculation that determines the pension rate each individual is to receive (the rate of payment of New Zealand Superannuation and Veteran's Pension in South Korea will be calculated on a proportional basis that depends on the length of residence in New Zealand between the ages of 20 and 65)
 - provisions by which each partner country can organise the implementation of the Agreement
 - provisions regarding the duration and termination of the Agreement.
- 12 Major bilateral treaties of particular significance are presented to the House for Select Committee consideration in accordance with the procedures set out in Standing Orders (SO 397-400). This process is usually initiated with a National Interest Analysis². The Minister of Foreign Affairs decided on 19 February 2019 that the Agreement need not be subject to the Parliamentary treaty examination process as it is not a major bilateral treaty of particular significance. A National Interest Analysis is therefore not required.

¹ For example, the New Zealand widow's benefit and domestic purposes benefit for widowed people with children aged under 14 became *sole parent support* which provides financial support for not only surviving spouses with children but also for sole parents who have been through a relationship breakdown. Payment of sole parent pension for those people who are not surviving spouses would not normally form part of the benefit coverage of a social security agreement.

² A National Interest Analysis addresses the reasons for New Zealand becoming party to the treaty, the implications for New Zealand becoming party, and the means of implementing the treaty.

Benefits of the Agreement

- 13 The main advantage of the Agreement is that it will help to facilitate ease of movement between South Korea and New Zealand. International mobility, as well as the provision of pensions, strengthens migrant communities, allowing them to better maintain ties to their home country. It also fosters financial independence resulting from increased access to pensions.
- 14 A social security agreement may complement diplomatic linkages and provide practical steps to further governmental and people-to-people connections. A social security agreement could also further enhance people-to-people links through removing barriers to the flow of ideas, skills and capital associated with the two-way movement of people. It could potentially:
 - increase work opportunities for New Zealanders by making it easier for people to move to South Korea in retirement or to move in and out of New Zealand during their working lives without compromising their future New Zealand Superannuation entitlement
 - enable the international flow of skills and entrepreneurship, as it may provide more incentive for New Zealanders to work in South Korea, gain further work skills, and then return to New Zealand
 - stimulate migration and labour movement to New Zealand.
- 15 Passage of the Agreement will signify New Zealand's commitment to the bilateral relationship with South Korea. The Prime Minister announced that New Zealand and South Korea hoped to conclude the Agreement "in the near future" as part of a package of deliverables associated with President Moon Jae-in's state visit to New Zealand in December 2018.
- 16 Most New Zealanders in South Korea work in the education field, and they have shown considerable interest in a possible social security agreement with South Korea. An Arrangement on Education Cooperation between New Zealand and South Korea was signed in 2009.
- 17 The mutual assistance provisions in the Agreement for information sharing will allow South Korean officials to provide New Zealand officials with information about South Korean benefits being paid to New Zealand residents. This is a standard provision in all social security agreements. As the rate of New Zealand benefits is reduced by the rate of overseas state benefits, this will help New Zealand officials to determine the correct rate of New Zealand payment for New Zealand residents receiving South Korean benefits. This information has the potential to generate savings to New Zealand because it will facilitate the administration of our 'direct deduction' policy.
- 18 Under the direct deduction policy, the amount of any overseas benefit or pension a person receives is deducted from the amount of New Zealand benefit or pension on a dollar for dollar basis. Although people receiving a South Korean pension in New Zealand may be dissatisfied with this, to exempt South Korean pensions from direct deduction would compromise the direct deduction policy. Avoidance of the direct deduction policy is a significant issue for New Zealand. Information sharing arrangements within an agreement reduce the number of people avoiding direct deduction, by enabling Ministry of Social Development staff to access information about the benefit entitlement of people from agreement countries.
- 19 Potential savings also arise as social security agreements allow people from agreement countries to access previously inaccessible pensions, the amounts of which New Zealand can then directly deduct from New Zealand benefits and pensions. New access to overseas

benefits may also reduce the need for assistance until people qualify for New Zealand benefits. Finally, removing some of the financial barriers to international mobility allows people to retire overseas, which leads to reductions in New Zealand's health costs and the cost of New Zealand Superannuation which is paid at a proportional rate.

Financial implications

- 20 The Agreement will allow people from both countries to access previously inaccessible pensions, the amounts of which New Zealand can then directly deduct from New Zealand benefits and pensions.
- 21 The estimated financial impacts of the Agreement over the period from 2020/21 to 2023/24 and outyears are summarised in the following table:

Vote Social Development	\$m - increase/(decrease)			
	2020/21	2021/22	2022/23	2023/24 & outyears
Operating Balance Impact	(0.463)	(0.483)	(0.484)	(0.492)
Debt Impact	-	-	-	-
No Impact	0.069	0.037	0.005	(0.029)
Total	(0.394)	(0.446)	(0.479)	(0.521)

- 22 The impact on appropriations are summarised in the following table. The savings will be returned to the Crown through the Budget 2020 process.

Vote Social Development Minister for Social Development	\$m - increase/(decrease)			
	2020/21	2021/22	2022/23	2023/24 & outyears
Benefits and Other Related Expenses: New Zealand Superannuation	(0.394)	(0.446)	(0.479)	(0.521)
Total	(0.394)	(0.446)	(0.479)	(0.521)

- 23 There will be implementation costs of approximately \$2.112 million to be phased over 2019/20 and 2020/21. MSD has submitted a Budget 2019 bid for technology investment, which includes some funding for implementing legislative changes. Subject to this funding being agreed by Cabinet through the Budget 2019 process, MSD will look to use a portion to implement the changes required for the Agreement. However, if the Budget 2019 bid is not successful or prioritisation against other Ministry and Ministerial priorities is not feasible, a Budget 2020 bid will be prepared, which would mean delaying implementation by a year.
- 24 There are also on-going administration costs of \$0.062 million, which MSD is funding from within existing baselines.

Human rights implications

- 25 This proposal does not raise issues in relation to the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Legislative implications

- 26 Under section 380 of the Social Security Act 2018 an Order in Council is required to give effect to the Agreement.
- 27 Where a social security agreement contains mutual assistance provisions relating to the exchange of information, an Order in Council cannot be made unless the New Zealand Privacy Commissioner has presented a report to the Minister for Social Development and the Minister of Justice. The report must consider the following matters:
- whether the exchange of information provisions in the agreement comply with the privacy principles set out in the New Zealand Privacy Act 1993; and
 - the adequacy of privacy protection in the country with which New Zealand is proposing to enter into an agreement.
- 28 The Privacy Commissioner presented this report to the Minister for Social Development and the Minister of Justice on 17 September 2017 stating that he was satisfied that the proposed agreement is acceptable, and that it is reasonable to sign the agreement and issue the Order in Council.
- 29 Once Cabinet approval has been obtained, both countries will need to sign the Agreement at a time that is mutually convenient. The Minister of Foreign Affairs has the authority to sign international agreements but can grant another Minister the power to sign on his behalf. The Ministry of Social Development will work with the Ministry of Foreign Affairs and Trade to arrange for both countries to sign the Agreement.
- 30 Once the Agreement has been signed by both countries and implementation processes which are expected to take approximately 12 months have been completed, the Parliamentary Council Office can prepare the Order in Council which will bring the Agreement into effect.

Regulatory impact and compliance cost statement

- 31 The Treasury Regulatory Quality Team has determined that the decisions sought in this paper are exempt from the Regulatory Impact Analysis requirements on the basis that they will have no or only minor impacts on businesses, individuals and not-for-profit entities. No compliance costs are associated with the Agreement.

Gender implications

- 32 The Agreement will be of benefit to both men and women. There are no specific gender implications.

Disability perspective

- 33 The Agreement does not cover payment of disability and surviving benefits. However, the lack of coverage of these benefits should have minimal impact as the Ministry of Social Development estimates that few, if any, people would need access to these benefits.

Publicity

34 There will be information available on the Agreement on the Work and Income website.

Consultation

35 The Ministry of Foreign Affairs and Trade, Veterans' Affairs New Zealand and the Treasury have been consulted on this paper.

Proactive release

36 Due to potential international implications, I propose not to proactively release this paper immediately. The paper will be released once the Agreement has been signed by both Governments.

Recommendations

37 It is recommended that the Committee:

- 1 **note** that subject to any minor and technical changes that may arise as a result of legal verification, officials have finalised the texts of the Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand
- 2 **approve** the text of the Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand which is attached to the paper
- 3 **agree** that New Zealand sign the Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand
- 4 **note** that the Minister of Foreign Affairs has determined that the Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand is not a major bilateral treaty of particular significance and therefore is not subject to the Parliamentary treaty examination process under Standing Order 397
- 5 **note** that the New Zealand Privacy Commissioner has presented a report to the Minister of Social Development and the Minister of Justice stating that he is satisfied that Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand provides adequate privacy protection and that it is reasonable to sign the Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand and issue an Order in Council
- 6 **note** that once Cabinet approval has been obtained, the Ministry of Social Development will work with the Ministry of Foreign Affairs and Trade to arrange for both countries to sign the Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand
- 7 **note** that once the Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand has been signed by both countries, funding has been secured, and implementation processes which are expected to take approximately 12 months have been completed, the

Parliamentary Council Office can prepare the Order in Council which will bring the Agreement into effect

- 8 note** that the Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand will generate gross fiscal savings of \$0.394 million in 2020/21, rising to \$0.521 million in the 2023/24 and outyears
- 9 note** the following impacts on appropriations and that these savings will be returned to the Crown through the Budget 2020 process

Vote Development Minister for Social Development	Social	\$m - increase/(decrease)			
		2020/21	2021/22	2022/23	2023/24 & outyears
Benefits and Other Related Expenses: New Zealand Superannuation		(0.394)	(0.446)	(0.479)	(0.521)
Total		(0.394)	(0.446)	(0.479)	(0.521)

- 10 note** that it is estimated that implementation costs will be approximately \$2.112 million in 2019/2020 and 2020/21, and that funding for these costs is subject to a Budget 2019 bid which if successful will mean that the earliest date that people can start using the Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand will be mid-2021
- 11 note** that if the Budget 2019 bid is not successful or prioritisation against other Ministry or Ministerial priorities is not feasible, a Budget 2020 bid will be prepared, which would mean delaying implementation of the Agreement by a year. This would mean that the earliest date that people can start using the Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand will be mid-2022
- 12 note** that there are also on-going administration costs of \$0.062 million, which MSD will fund from within existing baselines
- 13 invite** the Minister for Social Development to instruct the Parliamentary Counsel Office to prepare the required Order in Council that will give effect to the Agreement on Social Security between the Government of the Republic of Korea and the Government of New Zealand in New Zealand law once implementation processes have been completed.

Hon Carmel Sepuloni
Minister for Social Development

_____ / _____ / _____

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**AGREEMENT ON SOCIAL SECURITY BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF KOREA AND
THE GOVERNMENT OF NEW ZEALAND**

APPENDIX ONE

The Government of the Republic of Korea and the Government of New Zealand (hereinafter referred to as the “Contracting Parties”),

Being desirous of regulating the relationship between their two countries in the field of social security,

Have agreed as follows:

PART I General Provisions

ARTICLE 1 Definitions

1. For the purpose of this Agreement:

- (a) “national” means, as regards the Republic of Korea (hereinafter referred to as “Korea”), a national of Korea as defined in the Nationality Law, and as regards New Zealand, a citizen of New Zealand;
- (b) “legislation” means the laws and regulations specified in Article 2 of this Agreement;
- (c) “competent authority” means, as regards Korea, the ministry in charge of enforcing the legislation mentioned in Article 2 of this Agreement, and as regards New Zealand, the department for the time being responsible for administration of the Social Security Act 1964;
- (d) “competent institution” means, as regards Korea, the National Pension Service, and as regards New Zealand, the institution of the Government of New Zealand that is responsible for the implementation of this Agreement;
- (e) “period of coverage” in relation to Korea means any period of contributions that has been recognised and completed under the legislation of Korea, and any other period recognised as equivalent to a period of contribution under that legislation;

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- (f) “benefit” means, as regards Korea, the old age benefit under the National Pension Act, and as regards New Zealand, either of the following benefits:
 - (i) New Zealand superannuation;
 - (ii) veteran’s pension;
- (g) “day” means a calendar day;
- (h) “month” means a calendar month, but for the purpose of aggregating periods of New Zealand working age residence, if an aggregated period exceeds a whole number of months by at least 15 days, the number of months in that period shall be rounded up to the next whole number;
- (i) “New Zealand” means the islands and territories within the Realm of New Zealand; but does not include the self-governing state of the Cook Islands, the self-governing state of Niue, or Tokelau, or the Ross Dependency;
- (j) “residence” in relation to New Zealand means a period of residence (and, if applicable, presence) that would qualify a person for a New Zealand benefit;
- (k) “social security purposes” means the administration of the legislation as set out in Article 2 of this Agreement;
- (l) “New Zealand working age residence”, in relation to a person:
 - (i) means a period when the person had residence in New Zealand after the person attains age 20 and before the person attains age 65;
 - (ii) includes a period after the person attains age 20 and before the person attains age 65 when the person was employed outside New Zealand and while so employed the person’s employer made respective Income Payments;
 - (iii) includes a period after the person attains age 20 and before the person attains age 65 when the person was with a spouse or partner who was employed outside New Zealand and that spouse or partner’s employer made respective income payments;
 - (iv) includes a period when the person, after the person attains age 20 and before the person attains age 65 where the person was deemed by New Zealand’s competent institution to meet the criteria set out in section 79(2) of the Social Security Act 1964; and
 - (v) for a Korean national, includes any periods of lawful residence in New Zealand;

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- (m) “income payments” in relation to New Zealand means:
 - (i) PAYE income payments, as that term is used in the Income Tax Act 2007;
 - (ii) source deduction payments, as that term is used in the:
 - A. Income Tax Act 2004, from which the person, employer, or other relevant person must withhold an amount of tax under the PAYE rules as defined in that Act;
 - B. Income Tax Act 1994, from which the person, employer, or other relevant person must make a tax deduction under the PAYE rules as defined in that Act;
 - C. Income Tax Act 1976, from which the person, employer, or other relevant person must make a tax deduction under Part 11 of that Act; and
 - D. Income Tax Assessment Act 1957, from which the person, employer, or other relevant person must make a tax deduction under Part 2 of that Act;
- (n) “third country” means a country other than Korea or New Zealand.

2. Any term not defined in this Article shall have the meaning assigned to it in the applicable legislation.

ARTICLE 2

Applicable Legislation

- 1. This Agreement shall apply to the following legislation:
 - (a) as regards Korea, the National Pension Act;
 - (b) as regards New Zealand:
 - (i) Part 1 of the New Zealand Superannuation and Retirement Income Act 2001;
 - (ii) the Social Security Act 1964;
 - (iii) the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990;
 - (iv) the Veterans’ Support Act 2014;
 - (v) section 5 of the Civil Union Act 2004; sections 29 and 29A of the Interpretation

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Act 1999; and

(vi) the Orders in Council and Regulations made under those Acts.

2. Unless otherwise provided in this Agreement, the legislation referred to in paragraph 1 of this Article shall not include treaties or other international agreements on social security that may be concluded between one Contracting Party and a third country, or legislation promulgated for their specific implementation.

3. This Agreement shall also apply to future legislation which amends, supplements, consolidates or supersedes the legislation specified in paragraph 1 of this Article.

4. Notwithstanding paragraph 3 of this Article, this Agreement shall not apply to the laws or regulations which extend existing legislation of one Contracting Party to new categories of beneficiaries, if the competent authority of that Contracting Party notifies the competent authority of the other Contracting Party in writing, within six months from the date of the entry into force of such laws or regulations, that no such extension to the Agreement is intended.

ARTICLE 3

Personal Scope

This Agreement applies to any national of either Contracting Party who:

(a) is or has been subject to the legislation of Korea; or

(b) has a period of New Zealand working age residence;

and, where applicable, to other persons in regard to the rights derived from the person described above; and

(c) in the case of New Zealand benefits only, is a resident or a former resident of New Zealand.

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ARTICLE 4

Equal Treatment

Unless otherwise provided in this Agreement, in accordance with Article 3, all persons to whom this Agreement applies shall be treated equally by a Contracting Party in regard to the rights and obligations that arise under the legislation of that Contracting Party or as a result of this Agreement.

PART II

Special Provisions relating to Korean Benefits

ARTICLE 5

Totalisation and Benefits

1. Where a person has completed at least 12 months of coverage under the legislation of Korea, but does not have sufficient periods of coverage to satisfy the requirements for entitlement to old-age benefits under the legislation of Korea, the competent institution of Korea shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of New Zealand working age residence which do not coincide with periods of coverage already credited under the legislation of Korea.

2. Where periods of New Zealand working age residence are taken into account to establish eligibility for benefits under the legislation of Korea in accordance with paragraph 1 of the Article, the benefits due shall be determined as follows:

- (a) the competent institution of Korea shall first calculate the pension amount equal to the amount that would have been payable to the person if all the periods of coverage credited under the legislation of Korea and periods of New Zealand working age residence had been completed under the legislation of Korea. To determine the pension amount, the competent institution of Korea shall take into account the person's average standard monthly income while covered under the legislation of

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Korea;

- (b) the competent institution of Korea shall then calculate the partial benefit to be paid in accordance with the legislation of Korea based on the pension amount calculated according to the preceding subparagraph, in proportion to the ratio between the duration of the periods of Korean coverage and the total duration of the periods of Korean coverage and New Zealand working age residence.

3. Notwithstanding Article 4 of this Agreement, lump-sum refunds shall be decided in accordance with the legislation of Korea.

PART III

Special Provisions Relating to New Zealand Benefits

ARTICLE 6

Totalisation for New Zealand Benefits

1. Where this Agreement applies to a person and there is a period of New Zealand residence that is:

- (a) less than the period necessary to give a person entitlement to the benefit claimed under the legislation of New Zealand; and
 - (b) equal to or greater than one continuous year of New Zealand working age residence,
- then the period of Korean coverage for that person shall be deemed to be a period of New Zealand residence.

2. For the purpose of determining entitlement to a New Zealand benefit under paragraph 1 of this Article, the competent institution of New Zealand shall, subject to paragraph 3 of this Article:

- (a) consider a period of Korean contributions after reaching age 20 to be a period when the person had residence in New Zealand; but
- (b) shall only consider periods of Korean contributions after reaching age 50 for the

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purpose of satisfying the requirement that a person had residence in New Zealand for five years after reaching that age.

3. If a period of New Zealand working age residence and a period of Korean coverage overlap, only the period of New Zealand working age residence shall be taken into account.

ARTICLE 7

Effect of Residence in Korea

1. A person shall be considered, for the purpose of an application, to be ordinarily resident and present in New Zealand on the date that he or she applies for a New Zealand benefit under this Agreement if, on that date, he or she:

- (a) is ordinarily resident in Korea, and present in either Korea or New Zealand; and
- (b) has the intention of remaining resident in Korea for at least 26 weeks; and
- (c) has had a continuous period of New Zealand working age residence of at least one year.

2. For the purpose of the payment of any New Zealand benefit under this Agreement, a person shall be considered to be ordinarily resident in, and not absent from, New Zealand, if he or she:

- (a) is ordinarily resident in Korea, and present in Korea or New Zealand; and
- (b) has had a continuous period of New Zealand working age residence of at least one year.

3. For the purposes of this Article:

- (a) if a person who is ordinarily resident in Korea is temporarily absent from Korea for a period that does not exceed 26 weeks, that absence shall be considered as not interrupting the person's ordinary residence or presence in Korea;
- (b) if a person who is ordinarily resident in Korea is absent from Korea for a period that exceeds 26 weeks, that person's ordinary residence in Korea shall be considered to

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have ceased on the date of departure from Korea;

(c) a person is considered to be ordinarily resident in Korea on the date of the person's departure from New Zealand if:

- (i) the person leaves New Zealand with the intention of becoming and remaining resident in Korea for at least 26 weeks; and
- (ii) the person begins to be resident in Korea within 26 weeks of that departure.

4. For the purposes of subparagraphs (a) and (b) of paragraph 3 of this Article, a period when a person is temporarily in New Zealand shall not be considered a period when the person is temporarily absent from Korea.

5. A person who is ordinarily resident in Korea who has not reached the age of entitlement to New Zealand superannuation shall be considered not qualified for or entitled to receive a veteran's pension.

ARTICLE 8

Rates of New Zealand Superannuation and Veteran's Pensions Payable in Korea

1. Subject to paragraphs 3 and 4 of this Article, the rate of New Zealand superannuation or veteran's pension payable to a person ordinarily resident in Korea who is entitled to receive it under Article 6 of this Agreement shall be calculated according to the following formula:

$$\text{Amount payable} = \frac{\text{Number of whole months of New Zealand working age residence} \times \text{maximum benefit rate}}{\text{Number of whole months in 45 years}}$$

2. For the purposes of paragraph 1 of this Article:

- (a) all periods of New Zealand working age residence shall be aggregated; and
- (b) the maximum benefit rate is:
 - (i) for a single person, the weekly rate before the deduction of income tax of New

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Zealand superannuation or veteran's pension payable to a single person who is not living alone; or

- (ii) for a person who is married, in a civil union, or in a de facto relationship, the weekly rate before the deduction of income tax of New Zealand superannuation or veteran's pension payable to a person whose spouse or partner is also entitled to New Zealand superannuation or a veteran's pension.

3. In calculating the amount of benefit payable under this Article, no account shall be taken of any benefit payable under Korea's social security scheme or under the social security laws of a third country.

4. A person who is entitled to receive New Zealand superannuation or a veteran's pension under Article 6 of this Agreement whose spouse or partner has not reached the age of entitlement for New Zealand superannuation is not entitled to elect to receive the alternative rate of New Zealand superannuation or veteran's pension payable to a person who is married, in a civil union, or in a de facto relationship whose spouse or partner is not entitled to receive New Zealand superannuation or a veteran's pension.

ARTICLE 9

Advance Payment of Benefits and Payment of Supplementary Benefits and Allowances

1. If a person who is ordinarily resident in New Zealand becomes entitled to receive a New Zealand benefit under Article 6 of this Agreement, the competent institution of New Zealand shall also pay to that person any supplementary benefit or allowance under the legislation of New Zealand to which the person is qualified.

2. If a person who is ordinarily resident in Korea becomes entitled to receive a New Zealand benefit under this Agreement:

- (a) the person is not entitled to receive any supplementary benefit or allowance under the legislation of New Zealand; and

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- (b) no payment shall be made in advance of any number of installments of that New Zealand benefit, or part of it not yet due.

ARTICLE 10

Effect of Korea's Taxation of Korean Benefits

1. Paragraph 2 of this Article applies to a person who:
 - (a) is ordinarily resident in New Zealand;
 - (b) is receiving a Korean benefit from which any tax is levied by Korea; and
 - (c) is also receiving a New Zealand benefit.

2. Where this Article applies, the amount of the person's Korean benefit to be deducted from the person's New Zealand benefit is the amount of the Korean benefit after it is reduced by the Korean tax levied on it.

ARTICLE 11

Residence in a Third Country

1. Paragraph 2 of this Article applies to a person who:
 - (a) is ordinarily resident in New Zealand; and
 - (b) is entitled to receive a New Zealand benefit solely through the application of Article 6 of this Agreement; and
 - (c) either:
 - (i) departs from New Zealand with the intention of residing in a third country for a period of more than 26 weeks; or
 - (ii) resides in a third country for a period of more than 26 weeks.

2. A person referred to in paragraph 1 of this Article is not entitled to receive New Zealand superannuation or a veteran's pension while absent from New Zealand or Korea unless that

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person is entitled to receive that benefit under a social security agreement between New Zealand and the third country.

PART IV

Miscellaneous Provisions

Article 12

Administrative Arrangement

1. The competent authorities of the Contracting Parties shall conclude an Administrative Arrangement that sets out the measures necessary for the implementation of this Agreement.
2. The competent institutions shall agree to technical specifications for the operation of this Agreement.

ARTICLE 13

Exchange of Information and Mutual Assistance

1. Subject to the respective laws of the Contracting Parties, the competent institutions shall exchange information for social security purposes, including such information as is necessary for the competent institutions to give effect to the provisions of this Agreement. Such information will not be used for any other purpose.
2. Paragraph 1 is subject to the respective privacy laws of the Contracting Parties, in particular, for New Zealand, the terms and conditions set out in section 19C of the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990. To this effect both Contracting Parties agree that:
 - (a) in exchanging personal data or personal information for the purposes of this Agreement, the competent institutions of both Contracting Parties shall implement

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appropriate technical and organisational security measures to protect the personal data or personal information against accidental or unlawful destruction or loss, alteration, unauthorised disclosure or access;

- (b) the competent institutions of both Contracting Parties shall have in place appropriate procedures and safeguards so that any person who may be authorised by the respective laws of the Contracting Parties to have access to the personal data or personal information exchanged, shall respect the confidentiality, privacy and security of such personal data or personal information;
- (c) in the event that one Contracting Party requests the other Contracting Party to provide information on the management of the personal data or personal information being exchanged, the other Contracting Party shall assist the first Contracting Party by providing the relevant information; and
- (d) both competent institutions shall inform each other should there be changes to the data protection and/or privacy laws, and/or social security laws of the Contracting Parties affecting the confidentiality, privacy and/or security of personal data or personal information.

3. The competent institution collecting the personal details shall inform the data subjects about the exchange of information with the other competent institution, as well as of their rights under the respective privacy laws of both Contracting Parties.

ARTICLE 14

Exemption from Fees and Certification of Documents

1. Where the legislation of a Contracting Party provides that any document which is submitted to the competent authority or competent institution of that Contracting Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the competent authority or competent institution of the other Contracting Party in the application of this Agreement or of the legislation of the other Contracting Party.

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2. Documents and certificates which are presented by the competent authority or competent institution of either Contracting Party for the application of this Agreement or of the legislation of the other Contracting Party shall be exempted from the requirements for authentication by diplomatic or consular authorities or any other similar formalities.

3. Copies of documents which are certified as true and exact copies by the competent authority or competent institution of one Contracting Party shall be accepted as true and exact copies by the competent authority or competent institution of the other Contracting Party, without further certification.

ARTICLE 15

Language of Communications

1. The competent authorities and competent institutions of the Contracting Parties may correspond directly with one another as well as with any person, wherever that person may reside, whenever it is necessary to do so for the application of this Agreement or the legislation to which this Agreement applies. The correspondence may be made in any official language of either Contracting Party.

2. An application or document may not be rejected by a competent authority or competent institution of a Contracting Party solely because it is in an official language of the other Contracting Party.

ARTICLE 16

Submission of Claims, Notices or Appeals

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Contracting Party which should, for the purposes of that legislation, have

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been filed within a prescribed period with a competent authority or competent institution of that Contracting Party, but which is instead filed within the same period to a competent authority or competent institution of the other Contracting Party, shall be considered to have been filed on time with the competent authority or competent institution of the first Contracting Party.

2. If, after the entry into force of this Agreement, a person files a written application for benefits with the competent institution of a Contracting Party under the legislation of that Contracting Party, the application shall also protect the rights of that person to corresponding benefits under the legislation of the other Contracting Party, provided that the person at the time of application:

- (a) requests that it be considered as an application under the legislation of the other Contracting Party, or
- (b) provides information indicating that periods of coverage or working age residence in New Zealand have been completed under the legislation of the other Contracting Party.

3. In any case to which paragraph 1 or 2 of this Article applies, the competent authority or competent institution to which the claim, notice or appeal has been submitted shall indicate the date of receipt of the document and forward it without delay to the competent authority or competent institution of the other Contracting Party.

ARTICLE 17

Payment of Benefits

1. The competent institution of a Contracting Party may pay benefits in accordance with this Agreement in the currency of that Contracting Party.

2. In the event that a Contracting Party imposes currency controls or other similar measures that restrict payments, remittances or transfers of funds or financial instruments to persons

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who are outside the territory of that Contracting Party, it shall, without delay, take appropriate measures to ensure the payment of any amount that must be paid in accordance with this Agreement to persons described in Article 3.

ARTICLE 18

Resolution of Disagreements

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the competent authorities or the Contracting Parties.

PART V

Transitional and Final Provisions

ARTICLE 19

Transitional Provisions

1. Any period of coverage or period of New Zealand working age residence completed before the date of entry into force of this Agreement, and any other relevant events that occurred before that date, shall be taken into consideration in determining the right to a benefit under this Agreement. The competent institution of Korea shall only take into account periods of New Zealand working age residence which occurred after the establishment of the Korean National Pension scheme.
2. This Agreement shall not establish any right to receive payment of a benefit for any period before the date of the entry into force of this Agreement.
3. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.

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4. Benefits determined before the entry into force of this Agreement may be newly determined upon application if a change in such benefits results solely from the provisions of this Agreement. If the new determination under the preceding sentence of this paragraph results in no entitlement or entitlement to a lesser amount of pension that paid for the last period prior to the entry into force of this Agreement, the same amount of pension as previously paid shall continue to be paid.

5. The provisions of Part II and Part III shall apply only to benefits for which an application is filed on or after the date this Agreement enters into force.

ARTICLE 20

Entry into Force

This Agreement shall enter into force on the first day of the third month following the month in which each Contracting Party has received from the other Contracting Party written notification that it has complied with all requirements for the entry into force of this Agreement.

ARTICLE 21

Period of Duration and Termination

1. This Agreement shall remain in force and effect until the last day of the twelfth month following the month in which written notice of its termination is given by either Contracting Party to the other Contracting Party.

2. If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained. The Contracting Parties shall make arrangements dealing with rights in the process of being acquired.

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IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in duplicate at(place) on(date), in the Korean and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF
NEW ZEALAND