

10 October 2020

Bilateral Investment Treaty Reform Coordinator
Regional Trade Agreements Division
Department of Foreign Affairs and Trade
RG Casey Building, John McEwen Crescent
Barton ACT 0221

By email: BITreformsubmissions@dfat.gov.au

Dear Secretary

The Australia-Papua New Guinea Business Council, formed in 1980, is a not-for-profit association of Australia-based businesses with interests in the business and economic relationship between Australia and Papua New Guinea. The Council works to promote trade and investment between Australia and Papua New Guinea and economic growth through business growth. It acts as a channel for communication to governments on policy issues germane to business and as a centre for networking and information for Australian companies working in, or looking to work in, Papua New Guinea.

The Council appreciates the opportunity to comment on the review of the Australia-PNG Bilateral Investment Treaty (Australia-PNG BIT). This submission will offer some comments on the need for the continued protection and promotion of Australian investment in Papua New Guinea.

Nature of the bilateral investment relationship.

The investment relationship between Australia and Papua New Guinea involves significant Australian direct investment in Papua New Guinea. According to the latest data on the Department of Foreign Affairs and Trade website Australian foreign investment in Papua New Guinea totals about AUD17m.

The recently agreed Comprehensive Strategic and Economic Partnership (CSEP) between Australia and Papua New Guinea includes an acknowledgement that the private sector is key to driving economic cooperation and development. To sustain and grow Australian investment in Papua New Guinea, it is imperative that current investor protections are preserved and potentially strengthened. The comments below are made in the context of changing legal and political risks associated with Australian investments in Papua New Guinea.

Australia-PNG BIT should continue.

The existing Aus-PNG BIT is of benefit to Australian investors operating in Papua New Guinea and encourages the flow of direct investment. The Council's strong view is that, in the circumstances of the unique relationship between Australia and Papua New Guinea, the Aus-PNG BIT should continue. The Council has not identified any issues with the current Aus-PNG BIT that warrant change. The need for stable investment regimes to facilitate development and prosperity, and to address impediments to trade in order to enhance business confidence and investor certainty, has been affirmed by the Governments of both countries in the CSEP. The Council considers there is potential risk in opening a process to replace or re-negotiate the Aus-PNG BIT which may impact investor certainty and stability.

Closing comments.

In summary, the Council's strong view and preference is that the current Aus-PNG BIT should continue in its current form. If however Australia and Papua New Guinea decide to amend, re-negotiate or replace the Aus-PNG BIT, robust investor protections and investor-state dispute resolution procedures must be retained and enhanced.

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Council representatives are available to meet if the Department wishes to further explore their views, or any other issues the Department considers germane to its review.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Baker', written over a horizontal line.

(Mark Baker)
President