



DAILY EDITORIAL ANALYSIS

TOPIC

**INDIA'S EFFORT TO REVISE ITS
MODEL BILATERAL INVESTMENT
TREATY (BIT)**

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INDIA'S EFFORT TO REVISE ITS MODEL BILATERAL INVESTMENT TREATY (BIT)

In News

The Ministry of Finance has finished reviewing the model Bilateral Investment Treaty (BIT) and has sent it to the Cabinet Secretariat

Bilateral Investment Treaty (BIT)

- It is a reciprocal agreement between two governments to encourage and safeguard private investment by investors of one country into the other.
- It lays down minimum standards for treatment of foreign investment, such as fair and equitable treatment (FET), protection against unlawful expropriation, and an Investor-State Dispute Settlement (ISDS) mechanism that allows investors to resort to international arbitration in case of violation of their rights.

India's Existing 2015 Model BIT

- The Indian government follows the BIT model approved in December 2015 and adopted in January 2016.
- In the wake of the costly *White Industries Australia Limited v Republic of India* (2011) arbitral award, the government took a cautious approach, carefully crafted to maintain its sovereign ability to regulate.
- The model has come under fire from various quarters, particularly because it mandated that domestic legal processes be pursued for five years to resolve disputes before international arbitration is sought.

Issues

- **Exhaustion of Local Remedies (ELR):** The most controversial provision requires foreign investors to exhaust local legal and administrative remedies in Indian courts for at least five years before turning to international treaty arbitration.
- **MFN Exclusion and Narrow Coverage:** The 2015 model lacked a Most Favoured Nation (MFN) clause, had a very narrow definition of "investment," and completely excluded taxation policies from arbitration.
- **Negotiation deadlock.** The rich countries found the model overly prescriptive.
 - ♦ Consequently, India has faced difficulties in entering new agreements, with over 70 countries terminating their existing BITs, resulting in a significant investment-protection gap.

Latest Developments and India's Approach

- India is reviewing its Model Bilateral Investment Treaty (BIT) after a decade of the 2015 model, as the Union Budget 2025-26 proposes a more investor-friendly structure to lure sustained foreign investment.
- The Ministry of Finance has completed the assessment and sent the revised model to the Cabinet Secretariat for approval.
- The new framework is expected to conclude talks on BITs with 4-5 nations, including Canada.
- The change is arriving amid weaker FDI trends, with net FDI inflows projected at \$12 billion in the first half of 2026.
- The new approach is expected to balance the protection of investors with the regulatory aims of India.

Do you know?

- India has concluded new-generation investment agreements with the United Arab Emirates (UAE), Uzbekistan and Israel.
- The India-UAE BIT provides for three years for pursuing local remedies rather than the five years under the 2015 Model.
- The India-Israel Bilateral Investment Agreement (BIA), which entered into force in July 2026, similarly provides for three years for pursuing local remedies.
- These agreements indicate greater flexibility in India's treaty practice since 2015.

Recommendations for new Model Bilateral Investment Treaty

- **Clarification on Most Favoured Nation (MFN) Clause:** The MFN clause, which has not been part of most Indian treaties historically, allows investors to seek better protections in other treaties.
 - ♦ Its scope should be explicitly stated if it is to be included in the new model.
 - ♦ The ambiguity of MFN clauses may be used by investors to get out of the norms of local courts, as was seen in *Emilio Agustín Maffezini v Kingdom of Spain*.
 - ♦ Therefore any MFN clause should expressly exclude dispute-settlement procedures in the new model.
- **Enforcement of Investor Obligations:** The new model should provide provisions for obligations of investors and scenarios where the state could raise counterclaims against an investor or an investment, as was done in the India-Uzbekistan BIT.
- **Dispute Resolution Simplification:** The new approach must legally incorporate the pragmatic three-year limit for local remedy exhaustion found in recent treaties.
 - ♦ The model should institutionalise effective pre-arbitration consultation and dispute prevention measures to resolve problems amicably before they are sent to expensive international tribunals.
- **Guarantee certainty in protections:** Language on “expropriation” and “Fair and Equitable Treatment” (FET) must be correct. This averts wide interpretations by arbitral tribunals, while maintaining the host State’s right to govern in the public interest.
- **Codify sustainable development:** Sustainable development and responsible investment cannot be vague policy statements.
 - ♦ Legal obligations imposed on investors need to be articulated in clear and actionable terms.

Conclusion

- The global investment regime is moving away from traditional investor protection and ISDS toward investment facilitation, cooperation, sustainable development, and well-defined investor rights, with UNCITRAL exploring reforms such as a permanent tribunal, an appellate mechanism, rules on damages, and stronger dispute prevention.
- In this shifting environment, India’s new Model BIT is not only a revision of its 2015 regime, but a strategic adjustment of India in the global investment system.
- Therefore, the aim should be to create a clear, balanced, and workable framework that safeguards genuine investor interests while protecting India’s regulatory space, learning from the experiences of the last decade and allowing for flexibility in individual treaty talks.

Daily Mains Practice Question

[Q] India’s effort to revise its Model Bilateral Investment Treaty (BIT) reflects the need to strike a balance between attracting foreign investment and preserving the State’s regulatory autonomy. Critically examine

Source: TH

