

Explained: India's Bilateral Investment Treaty Overhaul: Balancing Investor Protection and Regulatory Sovereignty

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What happened?

India has been quietly rewriting the template for its Bilateral Investment Treaties (BITs). The Finance Ministry confirmed that the India-UAE BIT came into force on 31 August 2024, replacing the 2013 Bilateral Investment Promotion and Protection Agreement, and reduced the local remedies exhaustion period for investors from five years to three (Outlook Business, 2024; Deccan Chronicle, 2024). Finance Minister Nirmala Sitharaman went further in her Union Budget 2025–26 speech on 1 February 2025, stating in Parliament: "To encourage sustained foreign investment and in the spirit of 'first develop India', the current model BIT will be revamped and made more investor-friendly" (ETV Bharat, 2025).

Why it matters?

This isn't a technical footnote as it connects directly to India's investment numbers. Net FDI inflows into India fell sharply from a peak of USD 44 billion in FY21 to USD 7.65 billion in FY26, according to Reserve Bank of India data, while India's own outward FDI more than tripled from USD 11 billion to USD 33.29 billion over the same period (Business Standard, 2026). That reversal means BITs are no longer just about attracting foreign capital into India as they're increasingly about protecting Indian companies investing abroad too, which raises the stakes for getting the treaty template right in both directions.

Background

India's BIT overhaul has two distinct origins that are often conflated but shouldn't be. The first is the White Industries case: in November 2011, a tribunal found India in breach of the

India-Australia BIT over prolonged judicial delays in enforcing a commercial arbitral award, the first known investment-treaty ruling against India (IISD, 2012; Practical Law, n.d.). The second and separate set of pressures came later, from the Vodafone and Cairn Energy disputes, which centred on retrospective taxation claims rather than judicial delay, and added further political urgency to treaty reform (Mondaq, 2025). Together, these episodes pushed India toward a full rethink: a draft Model BIT was published for comment in March 2015, the Union Cabinet approved the final text on 16 December 2015, and the government issued a joint interpretative statement clarifying key provisions in February 2016 (CASI, 2016; Oxford Investment Claims, 2017). Based on this new, more restrictive model, India terminated BITs with 77 countries, including EU member states it asked to renegotiate (Global Arbitration Review, 2026; Business Standard, 2026). Only a small number of countries: Belarus, Kyrgyzstan, Brazil, Taiwan, and Uzbekistan all went on to sign new investment treaties under this framework (Business Standard, 2026).

What are the implications?

The UAE and Israel BITs show India loosening two specific restrictions from its 2016 Model BIT for select partners. First, both reduce the mandatory local-remedies exhaustion period from five years to three before investors can pursue international arbitration — a reduction, not a full removal of the requirement (Business Standard, 2026; ARIA, 2024). Second, both widen the definition of protected investment to include portfolio investments such as shares and bonds, which the 2016 Model BIT had excluded (Deccan Chronicle, 2026; Business Standard, 2026). The India-Israel Bilateral Investment Agreement, signed 8 September 2025 and effective from 4 July 2026, adds a further nuance: it treats immovable property as a protected investment but specifically excludes land and real-estate rights from the treaty's national treatment obligation, so an Israeli investor gets protection but not the same land-ownership rights an Indian investor would hold (Business Standard, 2026; Kashmir Observer, 2026). By contrast, the India-Uzbekistan BIT — signed 27 September 2024 and in force since 15 May 2025 — retains most of the 2016 model's restrictive architecture but introduces Article 16, which allows the host state to lodge a counterclaim against an investor for breaching their treaty obligations during arbitral proceedings, the first explicit provision of its kind in Indian BIT practice (Herbert Smith

Freehills Kramer, 2025; Legal 500, 2026). Together these treaties suggest a tiered approach: India appears willing to offer more investor-friendly terms to select partners while keeping its default template cautious.

What next?

Sitharaman's Budget 2025–26 commitment to a fully revamped, more investor-friendly Model BIT is still pending release as of 2026 (ETV Bharat, 2025; Freshfields, 2026). Worth tracking is whether that revised model extends the UAE- and Israel-style concessions more broadly, and whether India's recent free trade agreements — the UK CETA, the EFTA TEPA, and the UAE CEPA, all of which currently exclude Investor-State Dispute Settlement (ISDS) in favour of state-to-state mechanisms only — eventually get paired with parallel BIT negotiations, as Freshfields' 2026 review of India's investment treaty landscape notes (Freshfields, 2026).

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