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# India is signing bilateral investment treaties again. What changed after the 2016 reset?

India is revisiting its bilateral investment treaty framework after terminating dozens of pacts a decade ago. New agreements show greater flexibility on when foreign investors can seek international arbitration.

Written by: **Ravi Dutta Mishra** 7 min read

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Prime Minister Narendra Modi with Sheikh Khaled bin Mohammed bin Zayed Al Nahyan, Crown Prince of Abu Dhabi, during the BRICS Summit. India signed a bilateral investment treaty with the UAE in 2024. (X/PMOIndia)

A decade after unilaterally terminating multiple bilateral investment treaties (BITs) signed between 2016 and 2017, India has kicked off a significant overhaul of its investment treaty network. There are now expectations that the government would seal 4-5 agreements by year-end.

Following the 2025-26 [Union Budget](#) announcement of undertaking the review of 2016 model BIT to make it more investor-friendly and attract sustained foreign investment, Finance Minister Nirmala Sitharaman on Monday said the new BIT template would be [approved by the Cabinet](#) “shortly”.

However, a number of fresh agreements, including with Saudi Arabia, Israel and the UAE, have already been signed keeping this new framework in mind.

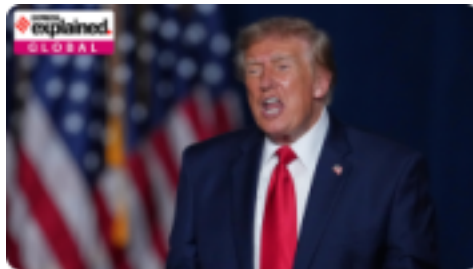
### So, what is a bilateral investment treaty?

A bilateral investment treaty or a BIT is an agreement between two countries which spells out the rules governing private investment in either nation from companies in the other. As such, they help promote, protect, and provide clarity to foreign investments.

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Amid sharp slowdown in net inflow of investments, the new pacts show the country's readiness to a higher degree of flexibility when it comes to exhaustion of local remedies (ELR) — a rule which requires a foreign investor to seek redress in the host state's domestic courts or administrative bodies before bringing an international claim.

While India agreed to a three year ELR rule in its BIT with the UAE in 2024, an investor from Saudi Arabia, as per the deal finalised last week can approach international arbitration in two years. The

deal comes amid expectation of Saudi investment in Indian refineries.

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## Cautious approach to BITs

This comes as trade partners have even sought a one year ELR rule under the treaty, but India has not agreed to such demands so far. After the conclusion of BIT with Saudi Arabia, a government official said India-Saudi Arabia BIT would provide legal certainty and “protect the interests of investors of either country in the territory of another”.

“The 2-years exhaustion of local remedies requirements provides investors enhanced access to the Investor State Dispute Settlement (ISDS) mechanism. At the same time, the agreement carefully balances investor protection with the State’s right to regulate in the public interest, thereby preserving sufficient policy space for sovereign governance,” the official said.

Investor State Dispute Settlement is a mechanism designed to protect foreign investments by allowing investors to bring claims against host states for alleged treaty violations.

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India’s insistence of a five-year ELR after terminating BITs in 2016-17 had been a major challenge flagged by foreign investors. Prabhash Ranjan, Professor at Jindal Global Law School said that India should have a uniform treaty practice on this issue. The model BIT should provide for a one to two year period for pursuing local remedies, and no more.

“Furthermore, the overall limitation period to bring an ISDS claim should not be too strict. It should be something that is workable for foreign investors,” Ranjan said.

## State vs investors

While several partners have criticized India’s decision to terminate scores of BITs unilaterally, balancing state and investors rights has been a key challenge for India and several other developing nations after a spate of adverse orders from international courts.

India was not the only country to terminate BITs in the past. Developing countries like South Africa and Indonesia also did the same to preserve policy space as the decisions by international tribunals were seen to be encroaching on domestic policy space.

José Miguel Ahumada and Ha-Joon Chang in their research report titled “A New International Economic Order” said that the Global South economies face significantly tighter constraints and often their efforts

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to establish regulatory frameworks that compel technology transfer from FDI to domestic productive networks are obstructed by the legal architecture of BITs and ISDS mechanisms.

Ahumada and Chang pointed out that there is compelling evidence that the tribunals tend to favor foreign corporations over state rights, impose substantial legal defense costs on states, establish strict limitations on national policy space, and generate a “regulatory chilling effect on host countries”.

“Indeed, recent actions by the rich economies are proving the limitations of the current system. The EU has withdrawn from the Energy Charter Treaty because its ISDS is considered incompatible with the Paris Agreements. Similarly, the United States and Canada removed ISDS clauses from the USMCA (United States–Mexico–Canada Agreement), and New Zealand has opted out of ISDS provisions in the CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership). In this sense, a new order should institutionalize this wave of exits and reestablish the national level as the primary scale for regulating FDI (foreign direct investment),” the reports said.

### **Arbitration at the heart of BIT debate**

RV Anuradha, Partner at Clarus Law Associates said that rule mandating specific time periods for “exhaustion of local remedies” can be a way for the government to effectively assess the nature of the dispute and try to resolve genuine investor grievances — thereby pre-empting the move to ISDS arbitration.

“But any provision such as this in our BITs will be effective only if there is a fast-tracking of investor disputes. Such fast tracking will need a statutory basis. Practically speaking, it would not be possible to deal with investor concerns based on the investor’s nationality. The judicial process will treat all investors on equal footing. A foreign investor cannot claim preference to be heard by Indian courts based on a BIT provision,” Anuradha said.

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What we need, therefore, is a **statutorily backed mechanism which is available for all investors — regardless of whether they are Indian or foreign investors, Anuradha said, adding that timely grievance redressal can in fact potentially have a dispute prevention/mitigation effect.**

**Before the 2016 model, India had signed bilateral investment treaties with 83 countries based on the model BIT of 1993, and as amended in 2003. Out of these, 74 were ratified. Among these 74 BITs, notice**

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**of termination was issued to 68 countries with request to re-negotiate based on the 2016 model, according to government data shared in the Parliament in March 2023.**

Since the revised 2016 model, India has signed BITs with Belarus, Kyrgyz Republic, Investment Cooperation and Facilitation Treaty (ICFT) with Brazil, the UAE and Uzbekistan, a Lok Sabha reply from April 2025 showed. In the BIT with the UAE, the window for exhaustion of local remedies was reduced to three years from five. A Bilateral Investment Agreement has also been signed between India Taipei Association and Taipei Economic and Cultural Centre, it said.

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