

Making a case for India's revised 'bilateral investment treaty' model to ensure investor protection

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Synopsis

India aims to boost economic growth by attracting more foreign investment. Budget 2025 highlights the need for a stable investment climate and a modern regulatory framework. A key focus is rebooting India's Bilateral Investment Treaty model. The revised approach will emphasize investment facilitation, ensuring streamlined processes and timely dispute resolution for all investors.



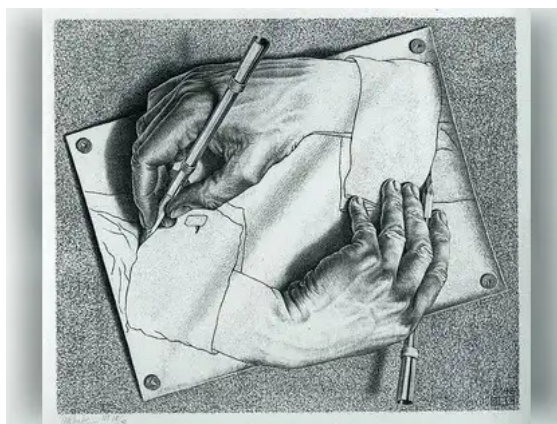
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With global headwinds threatening domestic economic growth and stability, [India](#) needs to be more self-reliant. Attracting and enhancing the flow of foreign inbound investments is integral to achieving this goal. Budget 2025 recognised the need for a stable investment environment and ease of doing business, while emphasising the requirement for a trust-based 21st c.-appropriate regulatory framework, and streamlining of regulations, certifications and licences.

Rebooting India's model [bilateral investment treaty](#) (BIT) was another key theme of the budget. This is also an opportunity to reimagine BITs, as one that addresses '[investment facilitation](#)' along with assuring '[investment protection](#)'.

India has had mixed experience with BITs. Like many other countries in the 1990s-2000s, it, too, rapidly signed over 80 BITs, only to end up terminating most by 2015, with growing risks of such agreements increasing over time. These risks were primarily due to the invocation of a key provision of BITs that allows [foreign investors](#) the right to sue the government before foreign arbitral tribunals for any perceived violation of the terms of the agreement.

This special tool of [investor-state dispute settlement](#) (ISDS) is available only to foreign investors, and not domestic investors who may pursue remedies only in domestic courts or [arbitral fora](#). GoI is not alone in its concern of

ISDS. The US has questioned its very legitimacy and need. Brazil has stayed away from ISDS and, instead, focused on 'investment facilitation', including in its recent agreement with India. India's revised model BIT of 2015 didn't eliminate ISDS, but took rigid positions on the scope of protection under the latter and conditions for invoking it. It has had few takers.

As GoI addresses the twin objectives of dismantling internal barriers through domestic reforms and attracting foreign investment, India must ensure its BIT model is balanced and effectively addresses investor concerns, while preserving regulatory autonomy in key areas. A good starting point would be to ask what investors seek, and address that in the BIT.

India's BIT should provide legally binding assurances of:

- Non-discrimination - equality of treatment of domestic and foreign investors.
- Protection against expropriation of investments.
- Investment facilitation, with the concept including legal and administrative measures that facilitate the flow of investments. This would range from having streamlined processes for enabling investors to apply for licences, permits and approvals for establishing and expanding investments, to those needed for day-to-day operations. Many states have already put in place laws providing for single-window clearance systems. Some also have specific laws for special investment regions (SIRs) to promote industrial development through dedicated legal frameworks and administrative structures.
- Establish, by law, a mechanism of dedicated investment facilitators at national and state levels. These can resolve investor concerns in a timely manner and minimise disputes. For disputes that do arise, a fast-track dedicated forum would play an important role in enhancing investor confidence.

Developing our own BIT model is crucial. The size of India's market and open FDI regime are welcoming signals. But, beyond that, we need a mechanism that can assure stability, transparency and access to remedies for all investors, domestic or foreign.

Focus should be on investor protection within the country, and better design of regulatory action that is susceptible to disputes, such as any change in law, or any decision that modifies or cancels permissions and licenses granted. Pre-emptive steps would include assessing how any potential government action or change in law may adversely affect an investor, and how to mitigate such impact.

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