

Model Bilateral Investment Treaty (BIT) of India

Mains: GSIII - Economy

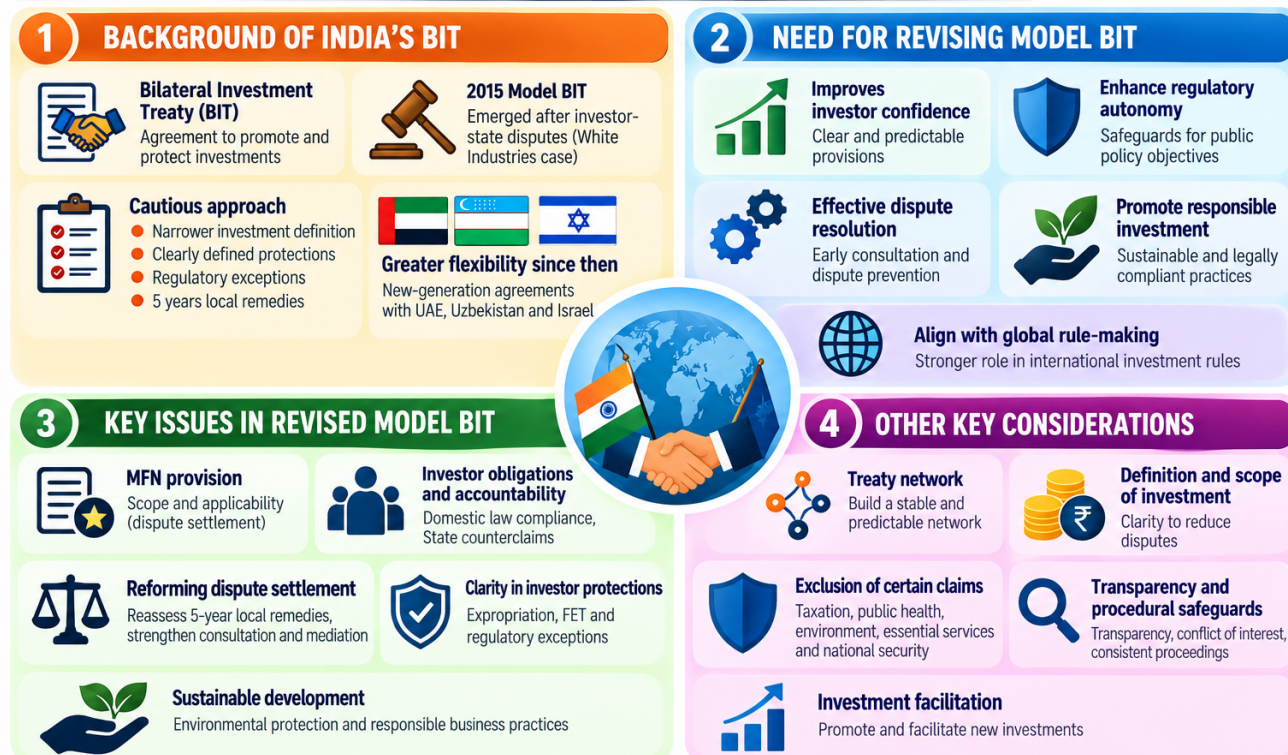
Why in News?

India is revamping its 2015 Model BIT to make it more investor-friendly and align it with evolving global investment practices, as announced in the Union Budget 2025-26. The revised model reportedly awaits Cabinet approval.

What is the Background of India's Bilateral Investment Treaty (BIT)?

- **Bilateral Investment Treaty (BIT)** - It is an agreement between two countries to promote and protect investments made by investors of one country in the other.
- India's 2015 Model BIT emerged following concerns over investor-state disputes, particularly the White Industries Australia Limited vs Republic of India award (2011).
- It adopted a cautious approach through
 - Narrower definition of investment,
 - Clearly defined investor protections,
 - Regulatory exceptions and
 - A requirement to exhaust local remedies for at least five years before initiating arbitration.
- Since then, India has adopted greater flexibility through new-generation investment agreements with the UAE, Uzbekistan and Israel.

INDIA'S BILATERAL INVESTMENT TREATY (BIT)



What is the Need for Revising the Model BIT?

- **Improves Investor Confidence** - Clear and predictable provisions can reduce uncertainty and encourage foreign investment.
- **Enhance Regulatory Autonomy** - Appropriate safeguards can preserve the State's ability to pursue legitimate public policy objectives.
- **Effective Dispute Resolution** - Early consultation and dispute-prevention mechanisms can reduce prolonged and costly arbitration.
- **Promote Responsible Investment** - Enforceable investor obligations can promote sustainable and legally compliant business practices.
- **Align with Global Rule-Making** - A coherent model can strengthen India's role in shaping international investment rules.

What are the Key Issues in the Revised Model BIT?

- **Most Favoured Nation (MFN) Provision** - Clearly defining the scope of MFN clauses, particularly their applicability to dispute settlement.
 - India can learn from considering Maffezini vs Spain and Plama Consortium vs Bulgaria.
- **Investor Obligations and Accountability** - Incorporating enforceable investor obligations on domestic law compliance, including State counterclaims.
- **Reforming Dispute Settlement** - Reassessing the 5-year local remedies requirement in light of the 3-year period under India-UAE and India-Israel agreements.
 - Strengthen consultation, mediation and dispute prevention in line with UNCITRAL's ISDS reforms.
- **Clarity in Investor Protections** - Clearly define

- Expropriation,
- Fair and Equitable Treatment (FET) and
- Regulatory exceptions to minimise disputes and protect State autonomy.
- **Sustainable Development** - Incorporate clear investor obligations on environmental protection and responsible business practices to promote sustainable investment.

What are the Other Key Considerations for the Revised Model BIT?

- **India's Treaty Network / Investment Protection Gap** - India terminated several older BITs after adopting the 2015 Model BIT, creating a need to build a stable and predictable treaty network with major investment partners.
 - This is relevant to India's objective of attracting long-term FDI.
- **Definition and Scope of "Investment"** - The 2015 Model BIT adopted a relatively narrow, enterprise-based definition of investment.
 - The revised model could clarify the scope of protected investments to reduce interpretational disputes and provide greater certainty.
- **Exclusion of Certain Safeguards** - Clearly specify areas such as taxation, public health, environment, essential public services and national security, where regulation should receive appropriate protection.
 - This complements your existing "Regulatory Autonomy" point.
- **Transparency and Procedural Safeguards** - Include provisions on transparency of arbitration, disclosure of conflicts of interest and consistency in arbitral proceedings.
 - This is particularly relevant given international discussions on ISDS reform.
- **Investment Facilitation** - Move beyond merely protecting existing investments towards facilitating new investments, including cooperation, information-sharing and simplified procedures.
 - This reflects the broader shift in international investment agreements from protection alone towards investment facilitation.

What measures can be taken?

- **Adopt a balanced framework** - The revised model should provide meaningful investor protection without restricting the State's ability to regulate in the public interest.
- **Ensure drafting precision** - Clearly define MFN, FET, expropriation and dispute settlement provisions to minimise interpretational disputes.
- **Strengthen investor accountability** - Incorporate legally enforceable obligations and provide appropriate mechanisms for State counterclaims.
- **Promote early dispute resolution** - Encourage consultation, mediation and other dispute-prevention mechanisms before arbitration.
- **Allow treaty-specific flexibility** - Use the Model BIT as a guiding framework while accommodating the economic and strategic priorities of individual treaty partners.
- **Engage in global rule-making** - Participate actively in international discussions on investment facilitation, sustainable development and ISDS reform.

Conclusion

- India's revised Model BIT provides an opportunity to incorporate lessons from a

decade of treaty experience while responding to evolving global investment practices.

- A clear, balanced and flexible framework can strengthen investor confidence, preserve regulatory autonomy and promote sustainable investment.
- By combining consistent principles with treaty-specific flexibility, India can improve its investment environment and contribute to shaping international investment law.

Reference

[The Hindu| Model Bilateral Investment Treaty \(BIT\) of India](#)

