Review of India’s Model Bilateral Investment Treaty (BIT)

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Bilateral Investment Treaty (BIT) Latest News

- The Union Finance Ministry is reviewing India’s **2015** Model Bilateral Investment Treaty (BIT) to make it more investor-friendly while safeguarding India’s sovereign interests.
- The revised Model BIT is expected to be placed before the Union Cabinet soon.
- The review gains significance amid **rising** Overseas Direct Investment (**ODI**) by Indian firms, changing global investment patterns, and **declining** net Foreign Direct Investment (**FDI**) into India.

Why the Model BIT is Being Reviewed

- The government is reassessing the 2015 Model BIT based on the –
  - Experience from past investment treaty negotiations.
  - Global best practices in investment protection.
  - Increasing outward investments by Indian companies.
  - Need to attract higher-quality FDI without compromising regulatory autonomy.

- Unlike earlier years when India primarily sought to protect foreign investors, negotiations must now also safeguard Indian companies investing abroad.

A New Dimension – Protecting Indian Investors Overseas

- According to the Economic Affairs Secretary, rising Overseas Direct Investment (ODI) has fundamentally changed India's negotiating priorities.
- **Key implications:**
  - Indian companies are increasingly investing in foreign markets.
  - Future BITs must provide investment protection for Indian enterprises abroad.
  - Certain investor-protection clauses, earlier viewed cautiously, may now be retained to secure Indian investments overseas.
- This marks India's transition from being primarily a capital-importing economy to one that is also a **significant capital exporter**.

What is a Bilateral Investment Treaty (BIT)?

- A BIT is an agreement between two countries to –
  - Promote and protect investments made by investors of each country.
  - Guarantee fair and equitable treatment.
  - Protect against unlawful expropriation.
  - Enable Investor-State Dispute Settlement (**ISDS**) through international arbitration when disputes arise.
- **BIT vs trade agreement:**
  - Under BIT, an investor can directly sue the host government through arbitration. However, disputes under trade agreements are settled between governments (State-to-State).
  - BITs focuses on investment protection, while trade agreements focuses on trade in goods and services.
  - BITs involve greater legal exposure for sovereign governments, while trade agreements provide greater diplomatic flexibility.

Key Issues in the Existing 2015 Model BIT

- One of the most debated provisions is the **Local Remedies Clause**, which requires foreign investors to exhaust domestic legal remedies for five years before approaching international arbitration.
- **Concerns:**
  - Considered restrictive by several developed countries and foreign investors.
  - Has slowed India's ability to conclude new BITs.
  - Many countries have been reluctant to accept the existing Model BIT.
- The government is now reviewing not only this provision but several other clauses and is considering a **negative-list approach.**
  - Under this, only critical sovereign concerns would remain non-negotiable while greater flexibility is offered elsewhere.

FDI and ODI Trends

- **Gross FDI:** Increased from $82 billion (2020-21) to a record $95 billion (2025-26).
- **Net FDI:** Declined sharply to nearly $44 billion (2020-21), and less than $1 billion (2024-25), while recovering to about $7 billion (2025-26).
- **ODI:** Indian companies' overseas investments increased substantially. For example, from $11 billion (2020-21) to $28 billion (2024-25), and further to $34 billion (2025-26).
- The fall in net FDI has also been driven by large-scale repatriation of foreign investments, exceeding $105 billion during 2024-25 and 2025-26.

Reasons Behind Declining Net FDI

- According to Chief Economic Adviser V. Anantha Nageswaran,
  - Global supply-chain localisation has intensified.
  - Developed countries are promoting **onshoring** of manufacturing.
  - Indian firms increasingly invest abroad to establish a local presence rather than export alone.
  - Rising ODI reflects the **growing competitiveness** and global expansion of Indian businesses.
- **Government's stand on enforcement agencies:**
  - Responding to concerns that agencies such as the Enforcement Directorate (ED) discourage investment, the government stated –
    - Gross FDI has continued to reach record levels.
    - Enforcement actions are becoming more transparent and procedure-driven.
    - Frivolous or excessive actions are being curtailed.
    - Investors primarily seek stable policies, predictable regulation and attractive returns, all of which India aims to provide.
  - The government also emphasised the need for greater investor outreach to address any remaining concerns.

Significance and Challenges for India

- **Significance of revision:**
  - Helps modernise India's investment treaty framework.
  - Improves India's attractiveness as an investment destination.
  - Protects growing overseas investments by Indian companies.
  - Supports India's long-term Balance of Payments (**BoP**) stability.
  - Balances investor confidence with regulatory sovereignty.
  - Strengthens India's **integration** into global investment and production networks.
- **Challenges ahead:**
  - Balancing investor protection with sovereign regulatory powers.
  - Making BITs acceptable to developed countries while safeguarding national interests.
  - Preventing excessive investor litigation under ISDS.
  - Reversing the decline in net FDI amid changing global investment patterns.

- Ensuring policy certainty** without compromising public-interest regulation.

Source: IE
