

India-UAE Bilateral Investment Treaty 2024, Latest News

November 25, 2024 • vajiramandravi.com

The Bilateral Investment Treaty (BIT) between India and the United Arab Emirates (UAE) represents a pivotal development in India's investment treaty framework, replacing the earlier Bilateral Investment Promotion and Protection Agreement (BIPPA).

Key Features of the India-UAE BIT

Following are the key features of India-UAE Bilateral Investment Treaty 2024:

1. Exhaustion of Local Remedies

- The period for foreign investors to exhaust local remedies before accessing international arbitration has been reduced from 5 years to 3 years.
- This change ensures quicker access to Investor-State Dispute Settlement (ISDS) mechanisms, addressing concerns over India's lengthy judicial processes.
- **Impact:** Reduces subjective interpretations by ISDS tribunals.

2. Treatment of Investments

- Article 4 explicitly defines circumstances constituting treaty violations, such as denial of justice or fundamental breaches of due process.
- It excludes references to customary international law (CIL), reducing arbitral discretion and offering greater clarity.

3. Exclusion of Most-Favoured-Nation (MFN) Clause

- The treaty omits the MFN provision, which is significant for ensuring non-discrimination in international economic relations.

4. Taxation Issues

- Actions related to taxation are excluded from the BIT's scope.
- **Impact:** Investors cannot challenge potentially abusive tax measures, enhancing state regulatory powers at the cost of investment protection.

5. Limitation on ISDS Tribunal Jurisdiction

- Article 14.6(i) restricts ISDS tribunals from reviewing the merits of domestic court decisions.
- **Ambiguity:** This clause could allow states to block ISDS claims for cases adjudicated domestically.

6. Disallowance of Third-Party Funding

- External financiers cannot fund ISDS claims, potentially limiting investors' ability to pursue claims without sufficient financial resources.

7. Fraud and Corruption Exclusion

- ISDS mechanisms are unavailable if there are allegations of fraud or corruption against the investor, reinforcing ethical standards in investment claims.

India-UAE Bilateral Investment Treaty 2024 Implications

The India-UAE Bilateral Investment Treaty (BIT) seeks to strengthen economic ties by offering a stable legal framework that fosters investment between the two nations. From April 2000 to June 2024, the UAE contributed around \$19 billion to India, accounting for about 3% of total foreign direct investment (FDI) inflows.

The introduction of this treaty comes at a time when India's previous investment agreements have faced challenges, resulting in a decline in active bilateral treaties and a decrease in FDI inflows—specifically, a 24% drop in equity inflows and a 15.5% reduction in total FDI between April 2023 and September 2024.

Experts note that while the BIT may attract more investments from the UAE, it could also lead to an increased risk of arbitration claims against India, as the treaty shortens the period for exhausting local remedies. This highlights India's effort to strike a balance between protecting foreign investors and maintaining its sovereign right to regulate.

What is BIT?

A Bilateral Investment Treaty (BIT) is an agreement between two countries aimed at promoting and safeguarding investments made by investors in each other's territories.

Investor-State Dispute Settlement (ISDS) is a legal framework that enables foreign investors to challenge host government actions impacting their investments in an international tribunal.

In the event of a BIT violation:

1. **Right to Arbitration:** The aggrieved investor can initiate international arbitration proceedings against the host state, as outlined in the BIT.
2. **Notice of Dispute:** The investor formally notifies the host state of the alleged BIT breach.
3. **Arbitration Initiation:** If the dispute remains unresolved, the investor may proceed with arbitration, typically through institutions like the International Centre for Settlement of Investment Disputes (ICSID) or an ad hoc tribunal.
4. **Arbitration Process:**

- **Appointment of Arbitrators:** Both parties select one or more arbitrators.
- **Submission of Claims:** Parties present their arguments and supporting evidence.
- **Hearings:** Oral hearings may be conducted for argument presentation.
- **Final Decision:** The tribunal delivers a binding award, which may include compensation for the investor's losses.

India-UAE Bilateral Investment Treaty 2024 FAQs

Q1. What is the bilateral agreement between India and UAE?

Ans. The India-UAE Bilateral Investment Treaty (BIT) is an agreement to promote and protect cross-border investments.

Q2. What is the BITs Treaty in India?

Ans. BITs in India are agreements ensuring protection for foreign investors while balancing the host country's regulatory sovereignty.

Q3. What is the 2024 India-UAE BIT text?

Ans. The 2024 India-UAE BIT text establishes a legal framework focusing on investment protection, dispute resolution, and regulatory safeguards.

Q4. What is the purpose of the Bilateral Investment Treaty?

Ans. The purpose of a BIT is to encourage and safeguard investments between two countries through a stable legal framework.

Q5. What are the advantages of bilateral treaties?

Ans. Bilateral treaties provide investment protection, foster economic ties, reduce risks, and enhance investor confidence.

Q6. What are the principles of BIT?

Ans. The principles of BIT include non-discrimination, fair and equitable treatment, protection against expropriation, and dispute resolution mechanisms.

Source: <https://vajiramandravi.com/current-affairs/india-uae-bilateral-investment-treaty-2024/>

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