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The New India-Israel Bilateral Investment Treaty Enters into Force: Taking Stock

Client Updates

On 4 July 2026, the new India-Israel Bilateral Investment Treaty (BIT) entered into force, fundamentally transforming the legal framework governing investments made by investors from India and Israel investing in the other's territory, an investment market valued at approximately USD 360 million[1]. In this update, we shall provide a brief overview of the main changes the new BIT introduced to the framework governing India-Israel investments and the impact on future disputes related to such investments.

BITs are treaties between two states which enshrine protections for each state's investors regarding their investments in the territory of the other state. While each BIT provides a precise definition of what constitutes a protected "investment", the latter will often require some sort of contribution in the other party's territory of a certain duration and with some risk which the investor takes in seeking financial gain.

As an international treaty, the legal obligations enshrined in a BIT providing protections for foreign investments are not as such subject to either party's domestic law. In the case of many BITs, these obligations are also potentially enforceable through arbitration procedures, which is an important feature of the BIT framework, particularly for investors investing in states where the domestic court system may be less reliable or effective.

As for the new India-Israel BIT, it was adopted in the context of India's policy over the past decade to terminate and/or renegotiate its pre-existing BITs after facing several investment arbitration proceedings, some of which resulted in awards very unfavourable to India. Indeed, India's goal was to overhaul the legal frameworks governing foreign investments, replacing these with frameworks more favourable to the state and less favourable to the investor therein.

This is indeed the case for Israeli investors in India under the new framework. In 2017, India terminated its BIT with Israel, which they had concluded in 1996. While the 1996 BIT seemingly continued to provide protections to investments established or acquired prior to its termination, **the new BIT would appear to have definitively put an end to the 1996 BIT's continuing effect**.

In line with India's abovementioned policy, **the new India-Israel BIT is much less investor-friendly than the 1996 BIT**. In particular, there are significant changes to the substantive protections for investments. For example:

- Rather than the 1996 BIT's general obligation upon Israel and India to respectively accord the other state's investors fair and equitable treatment – which arguably encompassed an obligation to respect an investor's legitimate expectations regarding their investment in the host state – the new BIT provides an ostensibly **closed list of prohibitions** under that category of protection: denial of justice in judicial and administrative proceedings; fundamental breach of due process; targeted discrimination on manifestly unjustified grounds; and manifestly abusive or manifestly arbitrary treatment.
- The new BIT **does away with the most favoured nation clause**, which under the 1996 BIT required the host state to provide the other state's investors treatment no less favourable than that it committed to provide to nationals of any third state.
- The new BIT **contains several general exceptions to obligations stipulated in the BIT**, including an exception on grounds of protecting "public morals" or "public order", arguably creating a broad basis for justifying measures ostensibly contrary to the BIT.
- While the 1996 BIT did include a clause containing a general exception to obligations under the BIT regarding measures taken for the protection of "essential security interests or in circumstances of extreme emergency", the new BIT goes a step further as **it frames the security exception in self-judging terms** ("measures that [the Party] considers necessary", rather than simply "measures necessary").
- The Annex of the new BIT reinforces invocations of the security exception by stipulating that **arbitral tribunals established under the BIT framework are precluded from reviewing security exception invocations**.

Perhaps the most significant changes in comparison to the 1996 BIT are found in **the new BIT's framework governing recourse to investor-state arbitration and the process thereof**. Under the 1996 BIT, the disputing investor and state were required to seek an amicable settlement through negotiations for six months. If these efforts failed, and unless the parties agreed to submitting the dispute to domestic judicial or administrative bodies or to international conciliation, the dispute could be referred to arbitration. Conversely, the investor-state dispute settlement framework under the **new BIT can be assessed to be rather cumbersome**. In particular:

- The new BIT introduces a requirement to begin **exhausting local remedies** – that is, first exhausting available avenues of recourse before domestic judicial and administrative bodies in order to obtain remedies in relation to the same subject-matter for which a breach of the BIT is claimed – within a year of actual or constructive knowledge of the impugned measure(s) and the loss or damage to the investment resulting therefrom. The new BIT also requires that these be pursued **for at least three years** before transmitting a notice of a dispute to the host state (albeit the BIT does create an exception to the exhaustion of local remedies requirement when such would be futile).

- Only after the investor completed the three-year period attempting to resolve the dispute through local remedies, and transmitted the notice of a dispute to the host state, the disputing parties may start the mandatory **six-month** period during which they should use their **"best efforts" to resolve the dispute through other means, before the investor may submit a claim to arbitration**, provided no more than six years have passed since the investor knew, or should have known, of the impugned measure and loss or damage to their investment therefrom and no more than a year has passed since the exhaustion of local remedies (in instances where these were indeed exhausted).

It follows that there are very tight timeframes to which both Indian investors in Israel and Israeli investors in India will need to adhere if they are to successfully submit a claim to arbitration. It further follows that investors intent on submitting a dispute to arbitration will need to be prepared to engage in years of domestic litigation as well.

As should be apparent, the new India-Israel BIT has fundamentally transformed the treaty framework governing the investments of Indian investors in Israel and Israeli investors in India. In particular, to the extent access to and protection resulting from investor-state arbitration were important considerations for an investor in setting up and structuring their investment, the entry into force of the new BIT should require a reassessment of the opportunities and risks in relation to that investment. Additionally, those investors intent on making the most out of the (more limited) protections available through arbitration under the new BIT are best advised to seek and maintain expert legal counsel – particularly if and when conditions implicating the investment in the host state change – to ensure that the strict conditions under which recourse to arbitration under the BIT is available are met.

While we have attempted to provide a general overview of the new India-Israel BIT, this overview presents only the tip of the iceberg of the various intricacies in the BIT. Nevertheless, **we stand ready at GNY to assist you in understanding the intricacies of investment agreements – whether the new India-Israel BIT or indeed any other investment agreement of relevance to your investment wherever in the world – as well as protect and promote your interests through investment agreements**. Indeed, protection under an investment agreement can make a significant difference to an investor's ability to recover losses if conditions in the host state change.

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[1] According to International Monetary Fund (IMF) data, available at https://data.imf.org/en/Dashboards/DIP%20Dashboard.

Key Contacts

Nuna Lerner
Partner

Nir Keidar
Partner

Dr. Myriam Feinberg
Senior Associate

Dr. Ori Pomson
Associate