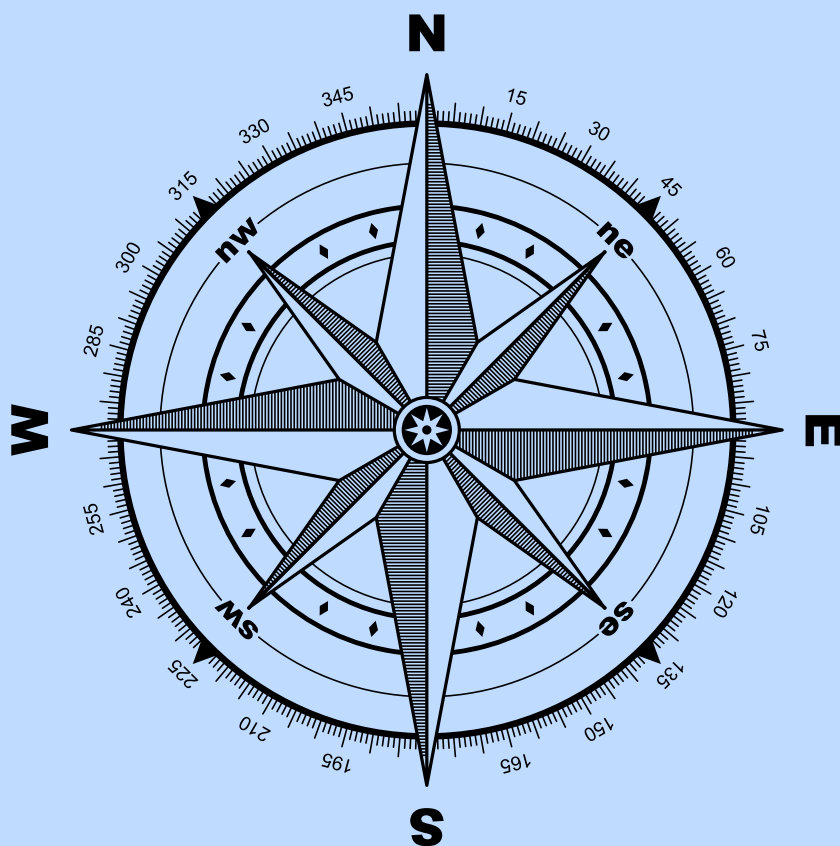




Centre for Trade and Investment Law

Investment Law **compass**



navigating through

GLOBAL INVESTMENT FRAMEWORK

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The Investment Law Compass is CTIL's monthly newsletter on the global investment framework and developments. Our vision is to inform professionals and policy makers on topics related to investment laws and treaty arbitration, thereby fostering informed decision-making.

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EU-Indonesia *Comprehensive Economic Partnership Agreement*



INTRODUCTION

On 23 September 2025, the European Union (EU) and Indonesia announced that they have finalised negotiations on a Comprehensive Economic Partnership Agreement (CEPA), which includes a companion Investment Protection Agreement (IPA).[1]

While the chief trade and investment terms are settled, one element remains unresolved: the mechanism for investor-state dispute settlement (ISDS or equivalent). The parties have agreed to leave that for further negotiation, with the aim of concluding it within a set period after entry into force. [2] The announcement marks a milestone in both trade and investment relations between the EU and Indonesia. It carries implications for businesses, legal regimes, and for other countries negotiating similar accords. Below are the main components of what's new, what this agreement could amount to as a model, and how the agreement brings together investment liberalisation and protection.

KEY FEATURES & INNOVATIONS

Substantial Market Access / Tariff Liberalisation

The trade component of the CEPA will eliminate tariffs on a very large share of goods. Over 98% of tariff lines will be liberalised, nearly 100% in value. Around 80% of liberalisation starts immediately upon entry into force; the remainder is phased in over several years. [3]

Major sectors benefiting include automotive, machinery, chemicals etc. from the EU side, and palm oil, textiles, footwear from Indonesia. For example, Indonesia's current high duties on motor vehicles (sometimes up to 50%) will be removed gradually, and many industrial product categories will become duty free within three to five years. [4]

Trade in Services, Investment, & Regulatory Predictability

The agreement gives broader opportunities for services providers, both EU providers in Indonesia and vice versa; clearer and fair licensing/regulation regimes will be required. There are commitments on digital trade, capital movements and transfers associated with investment and trade transactions. Regulatory transparency is embedded: new technical regulations will be subject to public comments and a minimum interval before coming into force.[5]

[1] EU and Indonesia conclude negotiations on IEU CEPA. https://www.eeas.europa.eu/delegations/indonesia/ieucepa-pressrelease_en

[2] Key elements of the EU-Indonesia Trade Agreement and Investment Protection Agreement. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/indonesia/eu-indonesia-agreements/key-elements-eu-indonesia-trade-agreement-and-investment-protection-agreement_en?

[3] Ibid.

[4] Ibid.

[5] Ibid.



Strong Sustainability and Supply Chain Focus

There is explicit inclusion of sustainable development and green transition goals. The CEPA incorporates environmental, climate, labour rights commitments, integrates aspects related to raw materials and energy, renewable energy, green and low-carbon goods. Indonesia being rich in raw materials necessary for critical and green technologies, the agreement seeks to ensure predictable supply. [6]

Investment Protection Agreement (IPA) with Regulatory Space

The IPA affirms protection for foreign investments (European in Indonesia and Indonesian in EU) against unfair treatment, discrimination, expropriation without fair compensation, and denial of justice. But crucially, the IPA also explicitly preserves Indonesia's (and EU's) right to regulate in public interest (labour, environment, health, etc.). [7]

Leaving ISDS for Later but with a Clear Timeline

Perhaps the most significant twist: investor-state dispute settlement (i.e. allowing investors to initiate disputes against the State in an arbitration or court-like body) is not fully agreed at this stage. Negotiations will continue after the IPA's entry into force, targeting a "modern, state-of-the-art system" for resolving investor-State disputes within three years. [8] This partial postponement suggests both sides want to get the foundational protection framework in place, but remain cautious about how ISDS or its replacement should function. It reflects wider debates globally about legitimacy, fairness, transparency, and limits of investor rights.

Balanced Outcome Sensitivities

Indonesia insists on "balanced, fair, and mutually beneficial partnership." Sensitive sectors are protected (e.g. rice, sugar, fresh bananas), agricultural geographical indications are safeguarded. For example, certain tariffs or quotas remain for sensitive products; the agreement protects both EU and Indonesian agricultural GIs (221 EU; 72 Indonesian). [9]

[6] EU and Indonesia conclude negotiations on IEU CEPA. https://www.eeas.europa.eu/delegations/indonesia/ieucepa-pressrelease_en

[7] Key elements of the EU-Indonesia Trade Agreement and Investment Protection Agreement. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/indonesia/eu-indonesia-agreements/key-elements-eu-indonesia-trade-agreement-and-investment-protection-agreement_en?

[8] *Ibid.*

[9] EU and Indonesia conclude negotiations on IEU CEPA. https://www.eeas.europa.eu/delegations/indonesia/ieucepa-pressrelease_en

IS IT A BESPOKE MODEL?

From this agreement, several features could serve as useful models for other countries (especially those in developing or middle-income brackets), or for future trade/investment treaties:

- **Phased liberalisation and tariff removal:** Immediate liberalisation for “low hanging fruit”, with gradual removal in more sensitive categories. This allows domestic industries to adjust.
- **Strong regulatory and sustainability safeguards:** Investment protection that explicitly preserves the State’s power to legislate/regulate in areas of public interest (environment, labour, health) helps balance private investor rights with public policy goals.
- **Transparent regime for non-tariff measures and technical regulations:** Public comment periods, advanced notice, alignment with international standards to reduce trade friction.
- **Saving ISDS negotiations until after protective frameworks are in place:** Some countries might prefer to first establish protection and liberalisation terms, before committing to a full ISDS system, thus giving more time to design mechanisms that balance investor and state interests.
- **Inclusion of geography, supply chain, and green technology elements:** Leveraging trade agreements to support green transition, clean tech, supplying critical raw materials, etc., can align trade/investment treaties with long-term global priorities.
- **Sensitive sector carve-outs / quotas / GI protections:** Recognising that not all sectors can or should be opened entirely is a realistic way to get political and social buy-in.

These features may help make treaties more acceptable domestically (reducing backlash), legally durable, and aligned with sustainable development goals.

Political sensitivity in Indonesia: Some sectors remain sensitive (agriculture, food, environment, etc.), and domestic political pressures may push back against liberalisation in those sectors or pressure to ensure environmental protections are not diluted.

Global and geopolitical context: The EU-Indonesia agreement is part of the EU's broader strategy to diversify and strengthen trade and investment in the Indo-Pacific region. This treaty will be compared with other Asia-Pacific trade agreements in scope and protections and may shape expectations on other partners. **[11]**

CONCLUSION

The EU-Indonesia CEPA with its accompanying IPA represents a modern, calibrated trade-and-investment deal. It seeks to combine ambitious liberalisation with solid protection and regulatory safeguards, while deferring some of the more difficult parts (such as ISDS) for later negotiation. For many countries, especially those balancing the promise of foreign investment with concerns about sovereignty, regulation, and sustainable development, this agreement offers a useful template.

What happens next in how ISDS is resolved, how ratification proceeds, and how both sides implement the agreement, will determine not just the impact on EU-Indonesia trade and investment flows, but also the degree to which this becomes a replicable model in international treaty practice.

[11] EU and Indonesia conclude negotiations on IEU CEPA.
https://www.eeas.europa.eu/delegations/indonesia/ieucepa-pressrelease_en

INDIA PROPOSES MAJOR TWEAKS TO FOREIGN INVESTMENT RULES FOR EXPORTS



Source: Canva

INTRODUCTION

India is undertaking fresh reforms in its investment regulatory regime that could have wide-ranging effects for foreign investors, e-commerce platforms, export entities, financial markets, and the regulatory environment. Two developments in particular stand out: a proposed change to foreign investment rules for e-commerce/digital platforms tied to exports, and regulatory reforms aiming to make entry easier for foreign institutional investors (FPIs). Together, these reflect a push by the Indian government to balance protection, liberalisation, and competitiveness.

KEY DEVELOPMENTS

Proposed Amendments to Foreign Investment Rules for Exports (E-Commerce Platforms)

India's Directorate General of Foreign Trade (DGFT) is considering revisions to the rules governing foreign e-commerce platforms. Under existing rules, foreign e-commerce platforms can typically only act as intermediaries, connecting Indian sellers with buyers, rather than buying goods themselves. The draft proposals would allow such platforms to directly purchase goods from Indian sellers and export them overseas. [1]

The stated goal is to increase export participation among small Indian businesses, where current contribution to exports remains under 10%. By allowing platforms like Amazon to handle exports directly (under a "dedicated export entity" model), the government hopes to facilitate scaling, reduce compliance burdens for small sellers, and boost foreign exchange earnings. The proposals reportedly include safeguards and penalties for non-compliance, likely aimed at protecting local businesses from unfair competition and ensuring regulatory oversight. The draft document remains under review, and final approval is awaited from the Union Cabinet.

[1] India proposes to ease investment rules in possible win for Amazon.

<https://www.reuters.com/business/retail-consumer/india-proposes-tweaks-foreign-investment-rules-exports-possible-win-amazon-2025-09-25/?>

REGULATORY CHANGES EXPEDITING FOREIGN PORTFOLIO INVESTOR (FPI)

In parallel, India's regulators – SEBI (Securities and Exchange Board of India) and RBI (Reserve Bank of India), are planning to streamline entry processes for foreign investors. The aim is to reduce registration-times significantly (from nearly six months in some cases to roughly 30–60 days), especially for investors who are already regulated in their home jurisdictions.

Key features under consideration include harmonising documentation norms between SEBI and RBI (for example, aligning bank account norms or documentation requirements), introducing simpler verification processes for low-risk, regulated foreign funds, and using digital platforms / portals to automate or speed up regulatory approvals. These changes follow concerns about decline or volatility in foreign investment inflows, weak corporate earnings, and global economic uncertainties. Loosening regulatory friction is seen as a tool to make Indian markets more attractive.



RELATED REFORMS

Insurance Sector Foreign Investment Rules

The Ministry of Finance issued draft amendments to the Insurance Companies (Foreign Investment) Rules, 2015. Under proposed changes, some regulatory clauses would be removed, the fixed 74% foreign investment cap (in certain contexts) may be replaced by whatever limit is set under the Insurance Act 1938, and automatic route approvals may be made subject to verification by IRDAI (Insurance Regulatory & Development Authority of India). [2]

SEBI Reforms for REITs & InvITs

As of September 1, 2025, amendments have been notified in SEBI's REIT (Real Estate Investment Trust) and InvIT (Infrastructure Investment Trust) Regulations. These include relaxing minimum investment thresholds for privately placed InvITs, adjustments in the definition of "public" in relation to listing/offering, and allowing more flexibility in distributing cash flows from holding companies. These changes aim to improve accessibility, investor friendliness, and liquidity for these instruments. [3]

[2] India – AKP Corporate & Compliance. <https://conventuslaw.com/press-releases/india-akp-corporate-compliance-digest-september-01-2025/>

[3] Weekly Round-up on Tax and Corporate Laws. <https://www.taxmann.com/post/blog/weekly-round-up-on-tax-and-corporate-laws-1st-to-6th-september-2025?>

WHY DO THEY MATTER?

- Allowing e-commerce platforms to handle exports may strengthen small seller participation in global trade, reduce intermediaries, improve logistics/control, and integrate Indian manufacturing or supply-side more closely with global demand. This could help with value addition in India rather than merely domestic sales.
- Simplified registration and documentation for FPIs lowers entry costs, reduces delay and uncertainty, which are major disincentives for institutional foreign capital. In times of global volatility, streamlined access becomes more important.
- Regulatory friction is often cited as one of the main non-tax barriers to investment; these reforms help address that.
- The draft e-commerce export rule proposals show the government is still cautious. There are likely safeguards, penalties, perhaps limitations to dedicated export entities to ensure that local businesses aren't unfairly disadvantaged. Similarly, in insurance, keeping oversight (via IRDAI), setting limits under existing Acts, suggests regulatory caution. These are important from a political and legal standpoint; reforms likely reflect negotiation between competitiveness and protection.
- Instruments such as REITs/InvITs, allowing lower thresholds, more flexible cash flow rules, facilitate deeper institutional investment into infrastructure and real estate – areas critical for long-term growth.

WHY DOES IT SUGGEST FOR FUTURE?

These developments suggest India is doubling down on several key directions:

- Modernisation of legal/regulatory frameworks to keep pace with the digital economy, platform-led commerce, exports, global supply chains.
- Greater openness to foreign capital, but with more nuanced regulation: relaxing caps, simplifying thresholds, but retaining oversight to protect public interest.
- Efforts to improve ease of doing business in regulatory and financial markets—not just infrastructure or physical business environment, but rules, approvals, registration, dispute risk, etc.
- Sector by sector reform: insurance, e-commerce, financial markets, REITs/InvITs, public utilities or power/nuclear (as seen from other parallel reforms) are being targeted for updates.
- Balancing liberalisation with investor protection and regulatory sovereignty: rules aren't being removed wholesale; rather, many reforms include built-in regulatory checks, phased/draft status, public stakeholder consultation, etc.

In sum, India is in a period of active regulatory reform, especially in investment laws and associated domains. The proposed easing of foreign investment rules for e-commerce and the export-linked model, faster and smoother entry for FPIs, and updates in insurance investment and REITs/InvITs all point to an environment seeking to attract more global capital, integrate domestic enterprise with international value chains, and reduce regulatory friction. For foreign investors, these are encouraging signs: more access, fewer delays, clearer rules. For domestic stakeholders, especially small businesses, there is potential upside but also need for vigilance—to ensure that reforms are equitable, do not favour large players unduly, and support inclusive growth.



UNCITRAL Tribunal Dismisses Telecom Claim Against India

The United Nations Commission on International Trade Law (UNCITRAL) tribunal has dismissed a long-running investment arbitration brought against India by foreign investors in the telecommunications sector, marking a significant victory for New Delhi in one of its most high-profile disputes.

BACKGROUND

The case traces back to the infamous 2G spectrum scandal, a controversy that rocked India's telecom industry in the late 2000s. The Indian Supreme Court, in a landmark 2012 ruling, cancelled 122 telecom licences issued in 2008 after finding irregularities in their allocation. The cancellation sent shockwaves across the market, wiping out billions of dollars in foreign and domestic investments. Several international investors affected by the cancellations sought to challenge India's actions through investment treaty arbitration. One such claimant was Khaitan Holdings (Mauritius) Limited, which had invested in S Tel, a joint vent-

-ure that held telecom licences annulled by the Supreme Court's ruling. The company initiated arbitration under the India - Mauritius Bilateral Investment Treaty (BIT), alleging that India's measures were arbitrary, violated fair and equitable treatment standards, and unlawfully expropriated its investment.

TRIBUNAL ANALYSIS

After years of proceedings, the tribunal unanimously dismissed the claims in September 2025. While the detailed award remains confidential, sources indicate that the tribunal found India's conduct defensible, given that the licence cancellations stemmed from judicial intervention rather than executive action. This distinction proved critical, as India had consistently argued that the judiciary's decisions, particularly those aimed at rectifying corruption and upholding the rule of law, should not be construed as breaches of its treaty

obligations. The ruling reinforces the complex relationship between domestic court decisions and international investment law. By accepting that India's Supreme Court decision was a legitimate exercise of judicial oversight, the tribunal rejected the investors' attempt to internationalise the losses arising from the scandal.

IMPLICATIONS

This outcome marks another success for India in fending off investor-state disputes tied to its telecom sector. In recent years, New Delhi has sought to recalibrate its approach to investment treaties, terminating several older BITs and negotiating new ones on more balanced terms. The decision may bolster India's confidence in defending itself against investor claims, particularly in sensitive sectors involving allegations of corruption or regulatory misconduct.

The dismissal also underscores a broader trend in investment arbitration: tribunals are increasingly cautious about second-guessing domestic judicial processes, especially when those processes are rooted in anti-corruption measures. For investors, the award serves as a reminder that treaty protections may not extend to risks inherent in politically or legally sensitive markets. While further details of the award are awaited, the ruling represents a landmark affirmation of India's position and could shape the contours of future disputes involving judicially mandated regulatory actions. A detailed analysis of the judgment will be covered in the next edition

CALL

FOR CONTRIBUTIONS

Are you passionate about international investment law and treaty arbitration? Do you have insights, analyses, or case studies that could enlighten our readers? Investment Law Compass invites you to contribute to our upcoming editions.

We are dedicated to creating a dynamic platform for professionals, scholars, and enthusiasts to share their knowledge and perspectives on the ever-evolving landscape of investment law. By contributing, you'll join a vibrant community of experts committed to fostering a deeper understanding of global investment frameworks.

Submission Guidelines:

- Contributions should focus on investment law, arbitration, policy analysis, or related areas.
- Articles should be between 500-800 words.
- Submissions must be original, well-researched, and properly cited.
- All submissions will undergo editorial review to ensure quality and relevance.

How to Submit: Send your articles to [compass_ctilnewsletter@iift.edu] with the subject line "Newsletter Contribution." Please include a brief bio in your email.

Let's navigate the intricate world of investment law together. We look forward to your insightful contributions.

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