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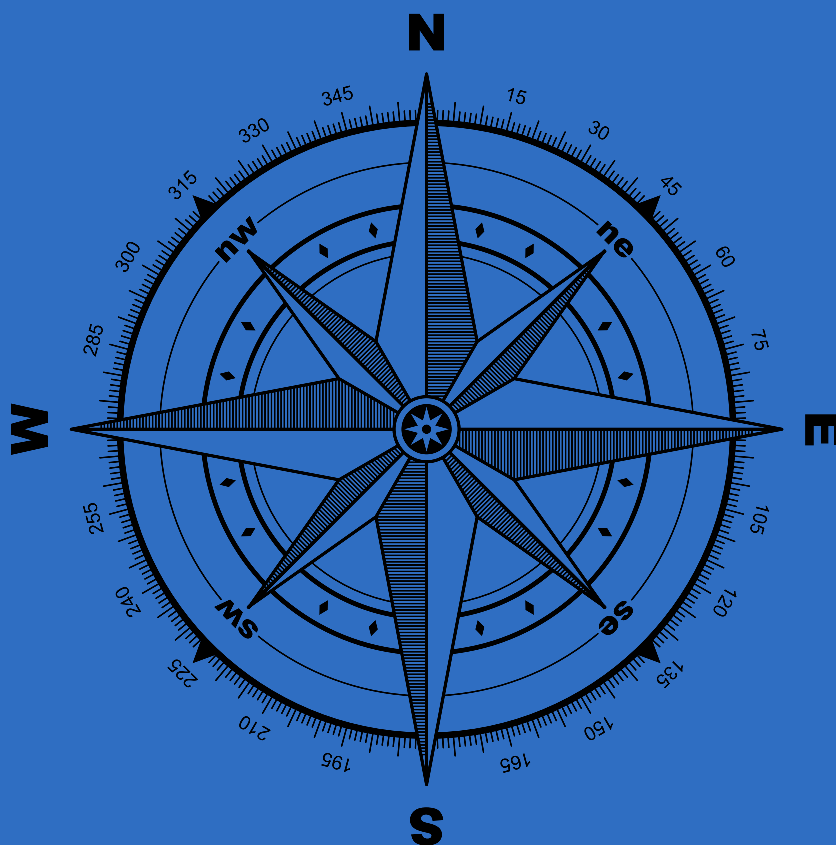

navigating through

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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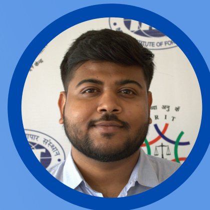

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India-Uzbekistan BIT: The Curious Case of Counterclaims

---- **Ms. Riya Panwar**
Advocate

India and Uzbekistan signed a bilateral investment treaty (BIT) on 27 September 2024 with the view to promote and protect foreign investments between the two countries. The BIT came into force on 15th of May 2025, hoping to provide a predictable environment for investors of both the nations. The signing of the BIT underscores the shared commitment of both countries to strengthening economic ties and fostering a more stable and resilient investment climate.[1] It is anticipated to encourage greater bilateral investment flows, contributing to the growth of businesses and the broader economies of India and Uzbekistan.

It has been widely discussed that International Investment Agreements (IIAs) generally have been a pillar to the economic development of a country, providing a legal framework that encourages investors to enter a country, offering protection and promoting fair treatment, which can reduce investment risks.[2] This allows global economic integration for states, as it ensures least friction between the investors and the host country. Not just the host country but the investors also reap the benefits of a larger market with no limitations.[3]

India's approach to bilateral investment treaties has evolved significantly over the past decade, marked by a strategic shift from a rigid adherence to its 2015 Model BIT towards negotiating more tailored, country-specific treaties.[4] While the Model BIT laid a strong foundation by emphasizing state sovereignty and regulatory space, India has increasingly recognized the need for flexibility to accommodate the specific economic dynamics, legal systems, and bilateral interests of its treaty partners. This calibrated move towards bespoke BITs may allow India to strike a more nuanced balance between investor protection and state policy objectives.[5] In the long term, this approach is expected to foster more meaningful and sustainable investment partnerships, reduce the risk of treaty-based disputes, and enhance India's credibility as a rule-based, investor-friendly jurisdiction that remains mindful of its development priorities.

[[1] India and Republic of Uzbekistan sign Bilateral Investment Treaty in Tashkent, PIB Delhi, 27 SEP 2024. https://www.pib.gov.in/PressReleasePage.aspx?PRID=2059459

[2] Uttama, Nathapornpan Piyaareekul, International Investment Agreements Provisionsand Foreign Direct Investment Flows in the Regional Comprehensive Economic Partnership Region. https://www.mdpi.com/2227-7099/9/1/28

[3] Yaraslau Kryvoi, Counterclaims in Investor-State Arbitration, Minnesota Journal of International Law (2012).

[4] Talks on proposed India-UK bilateral investment treaty still on Official, The Week, May 6 2025. https://www.theweek.in/wire-updates/business/2025/05/06/del96-biz-india-uk-bit.html

[5] 'BIT, free trade agreement 2 separate pacts; should continue to remain so', Business Standard, 2024. https://www.business-standard.com/industry/news/bit-free-trade-agreement-2-separate-pacts-should-continue-to-remain-so-124122200353_1.html

India-Uzbekistan Bilateral Relations

India and Uzbekistan have, over years, engaged in cordial economic and investment relations, with cooperation steadily growing across sectors amounting to US$ 61 million.[6] Notable Indian investments by Indian companies include those in the field of pharmaceuticals, amusement parks, automobile components, and hospitality industry. Investments in various fields, including pharma and healthcare, textiles and auto components, agriculture and food processing, and mining and jewellery sector are in various stages of discussion.[7] Additionally, while Indian companies, like GMR have expressed interest in investment in airports, development of air corridor, Navoi cargo complex in Uzbekistan; Indian Universities like Amity University and Sharda University have opened campuses in Tashkent, Andijan, Jizzakh and Bukhara.

However, bilateral investment volumes have remained relatively modest, partly due to the absence of a modern legal framework offering comprehensive investor protection. The signing of the India-Uzbekistan BIT [IN-UZ BIT] can be expected to address that gap by providing legal certainty, enhancing investor confidence, and encouraging Indian businesses to explore opportunities in Uzbekistan's emerging markets. Likewise, Uzbek investors will benefit from a transparent and more investor friendly framework for operating in India. By reducing investment-related risks and establishing structured dispute resolution mechanisms, the BIT is poised to catalyze a new phase of mutually beneficial investment flows between the two countries.

IN-UZ BIT: A Milestone

One such milestone, therefore, has been the recent BIT with Uzbekistan. This particular BIT with Uzbekistan is not merely a copy-paste of India's 2015 Model BIT, which generally serves as - a template for future international investment agreements. Rather, the IN-UZ BIT extends to encompass elements in order to strike a balance between investors and host state rights and obligations. While the treaty offers substantial protection to investor; it becomes the first Indian BIT to explicitly incorporate a provision on Counterclaims, providing host state the right against investors. This development is particularly important against the backdrop of a broader global conversation on rebalancing investor rights and responsibilities.

Article 16: Third Party Funding and Counterclaims

Contrary to what was expected in lieu of the Model BIT, the India-Uzbekistan Investment Agreement might have changed the direction significantly with the introduction of 'counterclaims.' Counterclaims are usually sought by the respondent in response to a primary claim made by the investor. These are not merely to seek dismissal of the investor's claim but may serve as a needed right to the host state as well.

[6] Brief on India-Uzbekistan Bilateral Relations, Ministry of External Affairs (MEA) India, 2024. https://www.mea.gov.in/Portal/ForeignRelation/Uzbekistan-2024.pdf
[7] Ibid.

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Technically, ICSID Convention alone permits treaty level counterclaims at the moment.[8] For instance, Article 46 allows for a balanced approach providing both investors and host states the right to bring a counterclaim arising directly out of the subject-matter of the dispute provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre.In contrast, the Article 16 of the IN-UZ BIT allows only host states to bring a claim. Moreover, only in two situations can a host state make a counterclaim:

- *Where there has been an express breach of the provisions of chapter II excluding Articles 11 and 12;*
- *Where the object and purpose of the said BIT has been breached.*

Chapter II of the BIT talks about the obligations of the states or the parties to the BIT. Implying, wherein an investor brings an action under this treaty it would be for the breach of duty on part of the host state which can be for a number of reasons such as, violation of customary international law; unjustified expropriation; transfer issues etc. Nowhere does chapter II cover the obligations of an investor for that matter making the provision somewhat infructuous. This is because a counterclaim to be admissible must satisfy the requirement of the Parties’ Consent and the Connection Requirement.

The latter requires the host state or the respondent to base their claim on a legal or factual matrix connected to the primary claim of the investor. That is to say, the counterclaim cannot be a standalone one. Although, tribunals exercise enough discretion to interpret or draw such a connection - it seems vague as the state cannot possibly raise a claim against an investor arising out of their own breach.[9]

Investor obligation being the cause of action of such a counterclaim can be made out from multiple sources such as domestic law of the host states or international law, wherein it is not possible to source the same directly from the investment agreement. For instance, obligations under customary international law or general principles of international law (such as the duty to prevent harm, good faith, or human rights standards) may also be invoked by the State to support a counterclaim.[10] The restriction of chapter II although closes that route as well.

The “object and purpose” being the second such scenario wherein a counterclaim can be brought, although vague, seems workable. At the least, it would cover the obligations of both the investor and the host state without prejudice to either of the parties, honoring the reason the treaty was entered into in the first place; thereby leaving some hope for the host state’s

[8] Dr Ruggeri Abonnat Elise, Counterclaims, Sept. 10 2024.
[9] Haley Brown et al., Counterclaims in International Investment Law, International Economic Law Clinic (2022).
[10] Burlington Resources, Inc. v. Republic of Ecuador, ICSID Case No. ARB/08/5.

host state's right to counterclaim. In practice however, it would be like drifting without intent, because, as per Article 31 of VCLT, objects and reason can be a key interpretative rule not an obligation giving rise to compensable liability. And even if we were to keep the express agreement regarding the same between the parties at precedence, the claim even though admissible will lack persuasive justification.

Interestingly, the Article immunes the host state from the applicability of the doctrine of res judicata in cases wherein a parallel adjudication is continuing with respect to the breach of an obligation under chapter II, under the treaty and in accordance with the laws of the host party. Thus, it can be implied that a counterclaim under the treaty does not preclude the host state from initiating any regulatory or legal action locally.

Even though this may seem as duplicity of proceedings keeping in view the restrictions imposed by Article 16.2, as opposed to the international tribunals, the domestic authorities might be more motivated to establish a solid rationale to hold the investors accountable. Which again is conceptually appealing but unworkable in practice.

Lastly, the provision also adds a 'non-waiver clause', protecting the defending party's right to raise jurisdictional objections in cases of counterclaims. Article 16.4 confirms that bringing a counterclaim shall not be deemed a waiver of jurisdictional objections by the defending party. Since the treaty testifies for the consent of the parties for arbitration in matters of dispute, doctrine of estoppel can be invoked by the tribunals when counterclaim is sought. The consent of the parties is a prerequisite for applicability of estoppel in jurisdiction matters as it can only impose what exists per se and not create it. Thus, an exclusion of that possibility expressly allows room for a proper and fair adjudication.

The India-Uzbekistan BIT's counterclaim clause is therefore, both groundbreaking and complex. While it reflects a clear intention to shift toward a more reciprocal framework of investment protection and investor accountability however, the lack of defined investor obligations undermine its practical utility. The true test will come when a tribunal is called upon to interpret and apply Article 16 - and the resulting jurisprudence will likely shape the contours of India's evolving investment treaty strategy for years to come.

Expanding the Concept of Political Risk Insurance as a Catalyst for Investments – Report by UNCTAD

The 2025 UNCTAD report, Derisking Investment for the SDGs: The Role of Political Risk Insurance [PRI], presents a comprehensive analysis of how PRI can catalyze private investment in developing countries and LDCs. Despite rising global investment needs—from $2.5 trillion in 2014 to $4 trillion in 2023 — FDI flows to LDCs have declined, while investment in key sectors like agriculture and health has stagnated or dropped. Private capital remains hesitant due to persistent political, legal, and macroeconomic risks—further compounded by climate change, pandemics, and geopolitical tensions. PRI emerges as a key risk mitigation tool, offering coverage against expropriation, currency inconvertibility, political violence, and breach of contract. However, its current deployment is skewed: the vast majority of PRI is issued by public entities — primarily export credit agencies (ECAs) and multilateral insurers like Multilateral Investment Guarantee Agency (MIGA) and African Trade and Investment Development Insurance (ATI) — with minimal participation from private insurers in high-risk markets.
Regionally, most PRI is concentrated in Asia and Africa, but LDCs still receive a disproportionately small share. Sectorally, PRI is heavily skewed toward traditional infrastructure, fossil fuels, and manufacturing, with only 4% going to renewables — despite international climate commitments.

From 2014–2023, about 70% of PRI supported projects in developing countries (excluding LDCs), with LDCs receiving only about 15% of new coverage. Sectorally, PRI is heavily concentrated in traditional industries — manufacturing, infrastructure, non-renewable energy, and extractives — while renewable energy accounted for just 4% of total PRI coverage. This imbalance undermines international commitments to climate action and the SDGs, as PRI-supported projects continue to channel more finance toward fossil fuels than toward green infrastructure. Public providers like MIGA have begun shifting more coverage toward LDCs and renewable sectors, but progress remains slow and uneven.

UNCTAD identifies five major barriers to unlocking PRI's full development potential. First, the emerging global risk landscape increases underwriting complexity, especially for climate-related and cross-border supply chain risks. PRI providers must assess not only political events but also systemic and environmental vulnerabilities. Second, PRI products are often highly complex and expensive, particularly for SMEs and new investors. Lengthy approval procedures, rigid coverage structures, and non-transparent claims processes deter broader uptake. Third, a widespread lack of awareness persists — especially among local investors in LDCs — about the existence or applicability of PRI. Fourth, the absence of harmonized ESG criteria results in weak sustainability alignment: many ECAs issue PRI without applying any environmental or social screening, which can inadvertently support projects with negative development outcomes. Fifth, fragmentation among public and private insurers — each with distinct mandates and risk appetites — creates inefficiencies and missed opportunities for joint action, particularly on large-scale or high-impact investments.

Despite these obstacles, the report identifies growing interest in PRI innovations. Some providers have begun offering parametric insurance, force majeure clauses, and coverage for climate and carbon-market risks. Japan's NEXI and Spain's CESCE are cited as leading examples of insurers integrating green finance priorities into PRI operations. Spain's green investment policy insures up to 80% of political and commercial risk for climate-aligned projects, significantly increasing their bankability. Meanwhile, MIGA and the World Bank Group are piloting streamlined platforms for joint guarantees and blended finance to expand PRI into frontier markets.

The report emphasizes that political risk insurance (PRI) is essential for sustainable development, but its impact can be boosted through strategic reforms. In this regard, UNCTAD outlines a five-pronged reform agenda to enhance PRI's role in advancing the SDGs. First, it recommends tailoring PRI products to address emerging risks like climate shocks and supply chain disruptions, while public insurers should incentivize SDG-aligned investments through targeted pricing and updated investment treaties. Second, simplifying and automating PRI processes, leveraging technology, and harmonizing terms and conditions. This can significantly reduce costs and make PRI more accessible, especially for smaller investors and developing countries. Third, increasing awareness through outreach, education, and partnerships with investment promotion agencies, which is crucial to expanding PRI uptake. Fourth, the report also calls for aligning PRI underwriting with global ESG standards to improve project quality and support equitable development. And fifth, deeper collaboration among public insurers, multilaterals, and private firms through co-insurance, joint underwriting, and blended finance can pool resources and channel more investment into high-risk and underserved regions, enhancing PRI's role in promoting sustainable development.

The report concludes that PRI has the potential to act as a powerful policy instrument—beyond risk management — to actively direct capital toward high-impact, SDG-compatible projects in underserved markets. By reorienting PRI toward development objectives, strengthening ESG accountability, and improving product design and access, policymakers can transform PRI into a cornerstone of global sustainable investment architecture. This is particularly critical in fragile states and LDCs, where investor hesitation remains highest and the need for resilient infrastructure, green energy, and inclusive growth is most urgent. In sum, PRI must evolve from a niche risk mitigation tool into a strategic enabler of equitable, climate-aligned economic transformation.

[Readers can find the complete here]
Derisking investment for the Sustainable Development Goals, Policy Review, UNCTAD, 24 April 2025, https://unctad.org/system/files/official-document/diaepcb2025d1_en.pdf.

Trump's Executive Order on Deep Sea-Bed Minnig and Possible Implications for International Investment Law

The Executive Order titled "Unleashing America's Offshore Critical Minerals and Resources" outlines a comprehensive policy to position the United States as a global leader in the exploration, development, and processing of seabed mineral resources. Recognizing the strategic importance of critical minerals for national security, economic resilience, clean energy, and technological advancement, the order responds to growing concerns over U.S. dependence on foreign adversaries—particularly China—for vital resources such as cobalt, nickel, copper, manganese, titanium, and rare earth elements. These minerals are essential for defense systems, infrastructure, semiconductors, batteries, and renewable energy technologies. The order highlights that the United States holds jurisdiction over one of the largest ocean areas globally and must capitalize on this by unlocking its seabed resource potential.

To this end, the Executive Order sets forth key policy goals. These include rapidly developing domestic capabilities for seabed mineral exploration and processing, enhancing investment in deep sea science and technology, streamlining permitting processes without compromising environmental standards, and improving interagency coordination. The order emphasizes creating a robust domestic supply chain by building new processing infrastructure and encouraging private sector participation. It also positions the U.S. as a responsible partner in seabed development for other countries, especially within their Exclusive Economic Zones (EEZs), and seeks to counter China's dominance in global seabed mining by fostering strategic alliances and commercial partnerships.

The implementation framework is detailed and actionable. Within 60 days, the Secretary of Commerce, through National Oceanic and Atmospheric Administration [NOAA], is instructed to expedite licensing for exploration and commercial recovery of minerals in areas beyond national jurisdiction under the Deep Seabed Hard Mineral Resources Act. Simultaneously, the Secretary of the Interior must streamline permitting within the U.S. Outer Continental Shelf under the Outer Continental Shelf Lands Act. Both processes must ensure efficiency, predictability, and competitiveness for American companies. The agencies are also required to report on private sector interest, investment opportunities, and potential for seabed mineral processing—whether on U.S. soil or U.S.-flagged vessels.

In parallel, the order calls for a coordinated effort to map and characterize priority seabed areas with mineral potential, especially those within U.S. jurisdiction. The Secretaries of Defense and Energy are tasked with assessing the feasibility of using the National Defense Stockpile for materials derived from seabed mining and considering long-term offtake agreements. These agencies are also directed to revise regulations and leverage financial and procurement tools, such as the Defense Production Act, to build domestic processing capacity.

International engagement is another critical element of the strategy. The Secretary of Commerce, in coordination with the Departments of State, Interior, and Energy, is instructed to identify and approach partner countries interested in seabed development. The aim is to support exploration, extraction, processing, and environmental monitoring in their jurisdictions, while also exploring the possibility of establishing a benefit-sharing mechanism for mineral development in areas beyond national jurisdiction.

Financial and developmental support is also prioritized. Institutions such as the U.S. International Development Finance Corporation, the Export-Import Bank, and the U.S. Trade and Development Agency are asked to identify financial tools to assist both domestic and international seabed resource projects. This multi-agency coordination is intended to create a favorable environment for private investment, innovation, and technological leadership.

The order defines key terms such as "mineral" and "seabed mineral resources" and includes standard legal provisions stating that it must be implemented in accordance with applicable laws and does not create enforceable rights or obligations.

In sum, the Executive Order marks a significant policy shift toward unlocking the potential of offshore mineral resources as a strategic asset. It seeks to facilitate investment in deep sea-bed mining and ensure the US' long-term economic and geopolitical resilience by reducing reliance on foreign mineral supply chains, fostering innovation, and building international partnerships grounded in responsible and transparent seabed development.

This EO will increase the demand for deep sea-bed mining for critical minerals, particularly in areas beyond national jurisdiction (the "Area"). In light of this, Compass provides a brief overview of the legal framework surrounding deep sea-bed mining and its relation with international investment law.

Legal Framework Under UNCLOS

The United Nations Convention on the Law of the Sea (UNCLOS) provides the legal basis for deep-sea mining activities. It designates the Area as the "common heritage of mankind," prohibiting any single nation from claiming sovereignty over these resources. In this regard, UNCLOS establishes a tripartite system involving; 1) Contractors: Entities seeking to explore or exploit seabed resources; 2) Sponsoring States: Nations that sponsor contractors by issuing a sponsorship certificate, ensuring compliance with UNCLOS provisions; and 3) International Seabed Authority (ISA): The body responsible for regulating activities in the Area.

Sponsoring States are obligated to enact domestic legislation aligning with UNCLOS and to ensure that contractors adhere to environmental and operational standards. The ISA, in turn, grants exploration and exploitation licenses based on these sponsorships. In light of this, it is important to note that the US is not a party to the UNCLOS.

Investment Arbitration Implications

There are potential implications for investment arbitration disputes arising from deep-sea mining activities. A notable example is the Odyssey v. Mexico case, where a deep-sea mining project within Mexico's jurisdiction led to arbitration proceedings. This case underscores the tension between investment protections and environmental regulations.
When it comes to deep-sea bed mining beyond natural jurisdictions, it raises the key question of whether investment treaties can supplement gaps in UNCLOS (United Nations Convention on the Law of the Sea), especially in providing recourse to investor-State dispute settlement (ISDS). A critical issue is the nature of the sponsorship certificate issued by a sponsoring State to a contractor. Since this certificate is not a contractual agreement, its revocation or suspension by the State could lead to disputes. While UNCLOS provides mechanisms for dispute resolution, including recourse to the Seabed Disputes Chamber and commercial arbitration under Articles 187 and 188, the applicability of investment arbitration in such scenarios remains a gray area.

To establish jurisdiction under investment treaties, a deep-sea mining investor must show three elements: (i) a qualifying investment, (ii) made in the territory of the host (sponsoring) State, (iii) by a foreign investor. Deep-sea mining investments typically include physical assets, IP, financial claims, and shares—elements commonly protected under broad definitions in investment treaties. UNCLOS Article 153(2)(b) requires these investors to incorporate in their sponsoring States, which can satisfy both the investment and control criteria.

The major jurisdictional challenge lies in the territoriality requirement, as mining activities occur in "the Area"—a region beyond national jurisdiction. However, investment tribunals may apply either of two theories to bridge this gap. The "unity of investment" doctrine allows tribunals to consider the entire economic operation holistically—meaning if essential phases like refining or marketing occur in the sponsoring State, the territorial link may be met. Alternatively, some case law, such as Inmaris v Ukraine suggests territoriality is satisfied if the investment provides economic benefits (e.g., taxes, royalties) to the host State, a theory that may prove useful given the fee-based structures in many national seabed mining laws (such as Tuvalu, Nauru, Tonga, Fiji etc.).

A further complication is the nationality of the investor. UNCLOS and national seabed mining laws require companies to be nationals of their sponsoring State, raising questions about whether these entities are genuinely "foreign" for investment treaty purposes. However, two counterarguments may support jurisdiction:

- explicit references to ICSID arbitration in national laws or contracts may signal consent to treat an investor as foreign, and, as seen in cases such as ***BSG resources v Guinea*** and ***LETCO v Liberia***.
- Foreign shareholders in a locally incorporated sponsored entity could claim protection under most BITs, which often recognize shareholdings as a qualifying investment.

In essence, while deep-sea mining does not neatly fit into traditional investment treaty frameworks, a combination of broad treaty definitions, flexible jurisdictional interpretations, and the economic structure of mining operations could enable investors to access ISDS mechanisms despite the legal complexities.

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