



GENERAL QUESTIONS

1. What are the FDI statistics?

The Department for Promotion of Industry and Internal Trade (DPIIT) publishes periodic data on FDI inflow into India. The data relates to FDI equity inflow – i.e. investment coming into India in the form of equity capital investment in an Indian entity.¹

The break-up of the FDI equity inflow from BRICS member states from January 2000 to March 2026 is tabulated below:

FDI equity from BRICS states (January 2000 – March 2026)

State	Overall Rank	Equity FDI from 01.2000 till 03.2026 (in USD million)	% of India's total cumulative FDI equity inflow
UAE	7	25,586.17	~3.24%
Saudi Arabia	20	3,315.83	~0.42%
China	23	2,512.60	~0.32%
Russia	31	1,361.55	~0.17%
Indonesia	37	669.14	~0.08%
South Africa	38	646.38	~0.08%
Brazil	65	58.21	~0.007%
Egypt	89	11.50	~0.001%
Iran	127	1.00	~0.0001%
Ethiopia	166	0.005	~0.0000006%

A comparison of FDI inflows from BRICS and non-BRICS countries reveals several notable trends:

- The aggregate FDI equity inflow from BRICS member states to India has nominally increased in recent years, but this increase is entirely a function of UAE-driven flows and year-to-year volatility — not broad-based BRICS investment growth. UAE alone contributes USD 25,586.17 million — representing 74.98% of the entire BRICS bloc's inflow and ranking 7th globally. Other BRICS states together account for approximately 1.08% of total FDI equity inflow.
- The BRICS member states collectively account for approximately 4.32% of India's total cumulative FDI equity inflow from April 2000 to March 2026. By contrast, the top two non-BRICS countries – Singapore and Mauritius – account for nearly 49% of the same total.
- The decline of FDI from China, from an annual average of approximately USD 112 million in 2000-2022 and USD 42 million in 2023, to a near-negligible USD 0.06 million in Q1 2026 is attributable to India's foreign investment

screening regime under the Press Note 3 (2020) (PN3) — requiring government approval for FDI from countries sharing a land border with India — combined with broader Sino-Indian geopolitical tensions.

Of India's cumulative overseas (outward) foreign direct investment (OFDI) from 2000 to 2026,² capturing not only equity investments but also loans and guarantees extended, only the UAE and Russia feature among the top ten destination countries within the BRICS. The UAE ranks sixth (6% of total OFDI) while Russia ranks seventh (4% of total OFDI). The remaining BRICS member states attract an insignificant amount of India's OFDI.

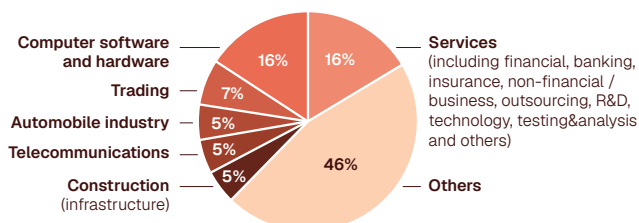
2. Which sectors receive the most FDI?

FDI has been concentrated in two sectors: (a) services, and (b) computer software & hardware, which account for roughly a third of the cumulative FDI equity inflow into India since 2000.

The standout development is the sharp rise of the computer software and hardware sector, which has now overtaken the services sector as the single largest sector for FY 2025-2026. After remaining largely flat for two consecutive years (2023-2024 and 2024-2025), inflows into this sector rose by approximately 79% year-on-year to USD 13.95 billion in 2025-2026 (24% of the total FDI equity inflow).

As per data released by the Indian Government, the sectors inviting the highest FDI equity inflow into India are:³

Inward FDI by sector (April 2000 to March 2026)



3. Which sectors are restricted for foreign investors?

India operates a negative-list FDI framework under which the majority of sectors are open to 100% FDI under the automatic route, but a defined set of sectors are either prohibited, subject to equity caps, restricted to the government approval route, or subject to sector-regulator conditions.

The governing instruments are the Consolidated FDI Policy Circular of 2020, the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (NDI Rules) notified by the Department of Economic Affairs, and sector-specific legislation and regulatory conditions.

Sectors where FDI is entirely prohibited are lottery business; gambling and betting, including casinos; chit funds; nidhi companies;⁴ trading in transferable development rights;

¹ FDI equity inflow means the amount of foreign direct investment that comes into India in the form of equity capital investment in an Indian entity — i.e., money invested by a non-resident to acquire shares or other equity instruments of an Indian company.

² Department of Economic Affairs, Monthly Fact Sheet for March 2026, Overseas Direct Investment. Data from April 2000 to March 2026. URL: https://dea.gov.in/files/overseas_direct_investment_documents/Draft%20FactSheet%20of%20March%202026.pdf

³ Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry. Quarterly Fact Sheet, Fact Sheet on Foreign Direct Investment. Inflow from April 2000 to March 2026. URL: <https://www.dpiit.gov.in/static/uploads/2026/06/41192ca92c1de34eb064800fbffa0379.pdf>

⁴ A Nidhi company is a type of non-banking financial institution formed to promote savings and lend money exclusively among its members.

real estate business⁵ or construction of farmhouses; manufacturing of cigars, cheroots, cigarillos and cigarettes using tobacco or tobacco substitutes; atomic energy and railway operations; and foreign technology collaborations in any form, including licensing of a franchise, trademark, brand name, management contract are also prohibited for lottery business and gambling and betting activities.

For permissible FDI, there are two routes. The 'automatic route' permits investment by a foreign resident without the prior approval of the Government. In contrast, under the 'government route', investment by a foreign resident requires prior Governmental approval. Foreign investment in certain sectors, including defence, broadcasting and pharmaceuticals, is subject to the sectoral cap and conditionalities specified against such sector in Schedule I of the NDI Rules.⁶ In sectors or activities not listed in the sector-wise table or not prohibited, foreign investment is permitted up to 100% on the automatic route, subject to applicable laws or regulations, security and other conditionalities.

4. What are the top three risks for foreign investors?

The top three practical risks are:

- 1 There are restrictions on entities incorporated in the countries which share a land border with India, and amongst the BRICS members they impact China.

Under PN3, entities from countries sharing a land border with India, or whose beneficial owners are based in or citizens of such countries, may invest only through the Government route

On 17 April 2020, the Indian Government introduced PN3⁷ under its foreign exchange regulations. Any transfer of ownership of existing and future FDI in an Indian entity — directly or indirectly — resulting in the beneficial ownership falling within the restricted category will also require prior Government approval. Further clarity was provided in Press Note 2 (2026) (PN2)⁸, under which the concept of beneficial owner was aligned with the framework under the Prevention of Money Laundering Act, 2002.

- 2 Foreign investors must navigate mandatory pricing disciplines that govern both the entry and exit of investments in Indian companies.

Under the NDI Rules, the pricing framework operates as a two-sided protection:

- Price Floor (on acquisition): Where a non-resident investor acquires shares of an Indian company from an Indian resident, the consideration payable cannot be less than the fair market value of such securities. This protects against undervalued transfers out of India.
- Price Ceiling (on exit): Where a non-resident investor sells securities of an Indian company to an Indian resident, the consideration receivable cannot exceed the fair market value of such securities. This prevents the repatriation of disproportionate value abroad.

- 3 Taxation risk.

Foreign investors should carefully evaluate the impact of Indian tax laws, especially where investments are routed through offshore holding jurisdictions.

5. What key measures have been adopted to attract FDI?

Significant regulatory measures targeted at promoting foreign and domestic investment over the last decade include:

- To promote FDI, since 2015, the Government has progressively increased sectoral caps and expanded the scope of the automatic route across several sectors, more recently in defence, insurance and telecom. Most sectors — except for certain strategically important sectors such as satellites, print media, broadcasting — are open for 100% FDI under the automatic route.⁹
- The Reserve Bank of India has, with effect from 1 July 2026, issued a framework for financing of acquisitions of shares by banks in India. A key outcome of these amendments is the introduction of a structured and permissive framework for acquisition finance by banks operating in India, marking a clear departure from the Reserve Bank of India's long-standing restrictions on bank funding of corporate acquisitions. Under this regime, acquisition financing may be availed of by Indian companies to acquire control in domestic or foreign non-financial companies (subject to FEMA and downstream investment restrictions).
- Gujarat International Finance Tec-City (GIFT City), near Gandhinagar, is India's first and only International Financial Services Centre (IFSC). It provides incentives, such as tax holidays, liberalised foreign exchange operations and simplified compliance.
- The Government has decriminalised 183 provisions across 42 national acts to enhance the ease of living and ease of doing business in India.¹⁰
- In 2020, India notified the UAE as a reciprocating territory under Section 44A of the Code of Civil Procedure, 1908, allowing for decrees of notified UAE courts to be executed directly in India.¹¹ This, however, does not extend to arbitral awards rendered in the UAE.
- Adoption of the Insolvency and Bankruptcy Code, 2016 for the streamlined resolution of distressed assets.

6. Is there a "one-stop shop" for foreign investors?

Several national and regional (state)-level institutions facilitate foreign investment and simplify the approvals process.

Foreign Investment Facilitation Portal serves as online one-stop shop for facilitation Government approvals
Invest India is a national investment promotion and facilitation agency
Regional one-stop shops

- DPIIT within the Ministry of Commerce and Industry is the principal department responsible for India's FDI policy framework. It also administers the Foreign Investment Facilitation Portal (FIFP), which is the Government's online single-point interface for facilitating FDI proposals that require government approval.
- Invest India is a national investment promotion and facilitation agency under DPIIT. It acts as a first point of reference for global and domestic investors and provides facilitation support across the investment lifecycle. Invest India also supports the National Single Window System (NSWS) — an online platform through which investors can identify, apply for and track approvals from

⁵ The term does not include development of townships, construction of residential or commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014.

⁶ Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, Schedule-I. URL: https://rbi.org.in/scripts/bs_viewcontent.aspx?ld=5083#S1.

⁷ Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry. Press Note 3 (2020 Series). URL: <https://www.dpiit.gov.in/static/uploads/2025/07/c7586a2dee61bf88f73512a46d8a9ab1.pdf>.

⁸ Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry. Press Note 2 (2026 Series). URL: <https://www.dpiit.gov.in/static/uploads/2026/03/b9da5830b052c2f2d788593e97d07c63.pdf>.

⁹ For further information on the sector: <https://www.makeinindia.com/policy/foreign-direct-investment>.

¹⁰ Press Information Bureau, Ministry of Commerce & Industry. Government initiatives to improve Ease of Doing Business (11 February 2025). URL: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2101785®=48&lang=2>.

¹¹ Ministry of Law and Justice. Notification (17 January 2020). URL: <https://egazette.gov.in/WriteReadData/2020/215535.pdf>.

multiple national Ministries / Departments and regional (state) Governments. Unlike FIFP, which is focused on processing FDI applications requiring Government approval, NSW provides broader investor facilitation across multiple specific approvals.

- Several regions (states) have also established their own investment promotion agencies or single-window facilitation portals to assist investors with regional (state)-specific approvals, land allocation, incentives and local regulatory requirements. These include Guidance Tamil Nadu, Karnataka Udyog Mitra, Industrial Extension Bureau (iNDEXTb) - Gujarat, Invest Punjab and Invest UP.

7. What are the current trends in BIT drafting?

India's approach to drafting BITs is in a transitional phase, with BIT negotiations calibrated to the trade partner. According to media reports, India is considering a departure from the Model BIT 2016 approach for "strategically important countries" with which India is seeking closer economic integration.¹²

Recent treaties offer the best available signal of India's possible direction:

- Most notable is India's insistence on decoupling foreign investment protections from foreign trade, restricting FTAs to the legalisation of international trade relations and issues related to trade. For instance, the UK-India Comprehensive Economic and Trade Agreement (CETA), which entered into force on 15 July 2026, does not contain a comprehensive investment protection chapter. Instead, the UK and India have agreed to continue discussions for a separate BIT to replace the 1994 UK-India BIT that India terminated in 2017.
- India also remains keen on preserving regulatory discretion. This is clear from the India-UAE BIT, with no fair and equitable treatment and most-favoured nation clauses, a robust carve-out for tax measures,¹³ and the right of the State to regulate.¹⁴ In the same vein, the India-Kyrgyzstan and India-Uzbekistan BITs are closer to India's Model BIT 2016.
- On dispute resolution, across its new trade agreements, India has continued to exclude investor-state arbitration, channeling any disputes through state-to-state mechanisms.
- In contrast, on the BIT front, the India-UAE BIT and India-Israel BIT retain investor-state dispute settlement mechanisms with several important adjustments, including restricting the period for exhaustion of local remedies to three years. However, BITs entered into with Belarus and Kyrgyzstan retain India's Model BIT 2016's core five-year local-remedies requirement.¹⁵

India appears to be approaching BIT drafting cautiously, with an emphasis on ensuring that investment protection frameworks create a balanced, mutually beneficial outcome

8. Which government bodies negotiate and draft BITs?

Several governmental agencies are involved in the process of negotiating and drafting BITs:

- The negotiation and drafting of BITs are led by the International Investment Treaties & Framework Section of the Investment Division of the Department of Economic Affairs (DEA), Ministry of Finance. This section is responsible for negotiations, inter-ministerial coordination and conclusion of BITs.¹⁶

- The DEA also consults other departments such as the Department of Legal Affairs, Ministry of Law & Justice and the Ministry of External Affairs (MEA) during such negotiations. The Legal and Treaties Division of the MEA renders legal opinions on all international law issues, and, in its capacity as legal advisors, is also a part of the delegation negotiating BITs.
- Correspondence about BITs with other States is routed through the MEA's Economic Diplomacy Division.

While business associations do not have a formal negotiating seat, they can meaningfully contribute through public consultations on model treaty texts and written submissions to the DEA or the MEA. Additionally, chambers and associations like the Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI), Associated Chambers of Commerce and Industry of India (ASSOCHAM), and law firms may give opinions to the government in relation to BITs.

9. Which government bodies handle investment disputes?

Handling of disputes arising out of BITs or multilateral investment agreements requires coordination amongst several ministries, departments and agencies of the Indian Government.

An Inter-Ministerial Group (IMG) is constituted to handle each investment treaty dispute and is typically chaired by the Ministry to which the dispute pertains¹⁷

The MEA handles and assists the Government on aspects of international law and forms a part of the IMG. The International Investment Treaties & Framework Section of the Investment Division of the DEA, Ministry of Finance and the Department of Legal Affairs, Ministry of Law & Justice also play a crucial role in handling investment disputes.

10. How are investment awards enforced by the state?

There currently exists a regulatory lacuna in India for enforcement of investment treaty arbitral awards. The uncertainty stems from four key factors:

- India is not a party to the Washington Convention, and therefore the automatic recognition and enforcement provided in Article 54 of the Washington Convention is not available in India.
- The Indian Arbitration Act only deals with enforcement of international commercial arbitration and does not provide for awards arising out of international investment arbitration.
- India has adopted the New York Convention subject to a commercial reservation. As a result, in India, the New York Convention enforcement is available only for awards arising out of legal relationships considered "commercial" under Indian law.

Indian courts noted that investment treaty arbitrations are not "commercial" arbitrations governed by the Indian Arbitration Act

Indian courts have noted, in proceedings seeking anti-arbitration injunctions against an investment treaty arbitration, that investment treaty arbitrations are not "commercial" arbitrations governed by the Indian Arbitration Act because they emanate from treaties and not from

¹² Mishra R, India may drop local remedies clause in new BITs as UK trade pact nears (24 October 2023). URL: <https://www.livemint.com/news/india/india-shifts-stance-in-bit-talks-with-uk-seeks-faster-investor-state-dispute-resolution-in-new-treaty-11698164336568.html>. At the speech of the Union Budget 2025–26, India's Minister of Finance said that "[t]o encourage sustained foreign investment and in the spirit of 'first develop India', the current Model BIT will be revamped and made more investor-friendly." Ministry of Finance. Budget 2025–2026: Speech of Nirmala Sitharaman, Minister of Finance (1 February 2025), p. 17, para. 102. URL: https://www.indiabudget.gov.in/doc/bspeech/bs2025_26.pdf.

¹³ India-UAE BIT, Article 2.4(ii).

¹⁴ India-UAE BIT, Article 2.

¹⁵ India-Belarus BIT, Article 15.2; India-Kyrgyzstan BIT, Article 15.2.

¹⁶ Department of Economic Affairs, Ministry of Finance. Investment Division. URL: <https://dea.gov.in/our-organizations/investment-digital-economy-division>.

¹⁷ Ministry of External Affairs. Tenth Report of the Committee on External Affairs. India and Bilateral Investment Treaties (10 September 2021), para. 2.6. URL: <https://elibrary.sansad.in/server/api/core/bitstreams/8cdf7a1e-5095-486b-b948-c72e2d2a93e1/view>.

a commercial contract. Although, in those cases, it has also been held that Indian civil courts may exercise jurisdiction under the Code of Civil Procedure, 1908 in rare and compelling cases especially where the cause of action has a real nexus to the territory of India.¹⁸

As the issue has not arisen for consideration before Indian courts, it remains to be seen whether Indian courts would entertain enforcement of an investment arbitration award.

That said, some headway on this issue has been made in India's Model BIT 2016,¹⁹ which provides that a claim submitted to arbitration under the treaty shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention. This drafting may be relied on to preclude Indian courts from refusing to treat investment treaty awards, rendered pursuant to such treaties, as a "commercial" award. The India-UAE BIT, India-Kyrgyzstan BIT, India-Uzbekistan BIT and India-Belarus BIT have adopted this specific treaty language.²⁰

India is reported to have voluntarily complied with the White Industries award – which was the first adverse award against the country.

11. Do pre-arbitration negotiations lead to resolution of disputes?

There is no publicly available information on pre-arbitration negotiations with investors. That said, there have been instances where, although the investors issued notices of disputes, they did not ultimately proceed to arbitration.

There have been publicly reported instances of settlement following an unfavourable arbitral award against India, as was the case in Nissan, Vedanta, Vodafone and Cairn. While the settlement agreements are not publicly available, certain information has been published by the investors regarding settlement pursuant to the Taxation Laws (Amendment) Rules, 2021:

- Vedanta Resources Ltd. reported that it filed an application seeking withdrawal of the claim and termination of the arbitral proceedings pending before the Permanent Court of Arbitration, in PCA Case No 2016-05, pursuant to the legislation nullifying the retrospective income tax.²¹
- Vodafone noted that it had reached a final agreement with the Indian Government and its demands for outstanding tax (including interest and penalties) have been withdrawn in full.²²
- In November 2021, Capricorn (previously Cairn) entered statutory undertakings with the Government of India enabling the refund of retrospective taxes collected from Capricorn in India.²³

Of the 31 disputes that proceeded to arbitration against India to date, 2 have been discontinued, 5 are pending, 11 have been settled, while 13 have resulted in an award.

JURISDICTION-SPECIFIC QUESTIONS

12. What other reasons, beyond those mentioned in the Report, led India to terminate so many BITs?

The Report captures India's primary reasons for terminating its BITs. In addition to those, India's decision was motivated by balancing investment protection with India's regulatory powers, and the deficiencies in the old generation BITs that necessitated a relook.

Fundamentally, the old generation BITs and their jurisprudential development were viewed as encroaching on India's policy space and sovereign rights, particularly on taxation matters.

A core structural concern behind India's decision to terminate BITs was the way arbitral tribunals interpreted broadly drafted substantive clauses in investment treaties

Particularly, arbitral tribunals interpreting FET clauses consistently read into them a legitimate expectations doctrine, holding that changes to a regulatory or legal framework could constitute a breach — irrespective of public interest justification. The removal of unqualified FET in India's Model BIT 2016 and its replacement with a narrowly defined customary international law minimum standard (limited to denial of justice, fundamental breach of due process, targeted discrimination, and manifestly abusive treatment) was a direct response to this jurisprudential risk.

An underappreciated structural reason is India's growing role as an outward investor. India's outbound foreign investment has consistently grown. The earlier generation BITs were negotiated when India was largely a capital-importing state. India's termination of its old generation BITs was coupled with a request to renegotiate, now from a position of greater economic strength and its growing position as a capital exporter. At the same time, India remains a major recipient of foreign investment and a rapidly growing economy. Against this backdrop, India's Model BIT 2016 and India's newer BITs appear to recalibrate, rather than eliminate, investor protection by placing greater emphasis on preserving the State's regulatory space while continuing to offer investors a defined, albeit narrower, set of substantive protections.

13. Has India's policy affected FDI inflows in practice?

There does not appear to be a direct causal relationship between India's Model BIT 2016 and FDI inflow into the country. India is a complex economy, and in practice, investment decisions depend on a wide variety of factors. An isolated factor is not sufficient to draw conclusions on foreign investment practices in general.

Overall, India's gross FDI inflows have increased in the post-Model BIT 2016 period: from approximately USD 55.56 billion in FY 2015-2016 to USD 80.61 billion in FY 2024-2025, although the rate of growth has been uneven. The implication is that India's Model BIT 2016 may matter less as a standalone instrument and more as part of a broader signalling framework.

In February 2025, the Indian Government confirmed that it is in the process of revamping the Model BIT 2016 to make it more investor-friendly and attract foreign players.

¹⁸ Union of India v. Vodafone Group Plc United Kingdom & Anr., 2018 SCC OnLine Del 8842 ¶¶90-91; Union of India v. Khaitan Holdings (Mauritius) Ltd. & Ors., 2019 SCC OnLine Del 6755 ¶¶28, 29, 35-36.

¹⁹ India's Model BIT 2016, Article 27.5.

²⁰ India-UAE BIT, Article 28.5; India-Kyrgyzstan BIT, Article 27.5; India-Uzbekistan BIT, Article 29.5; India-Belarus BIT, Article 27.5.

²¹ Vedanta Resources Limited. Vedanta Takes Steps to Settle All Disputes Related to Imposition of Retrospective Tax (15 December 2021). URL: <https://www.vedantaresources.com/uploads/investor-overview/circulars-and-prospectus/retrospective-tax-related-disputes-settlement-15-dec-2021.pdf>.

²² Vodafone Group Plc. Supplementary Prospectus – €30,000,000,000 Euro Medium Term Note Programme (22 May 2023). URL: https://investors.vodafone.com/~/_media/Files/VV/Vodafone-IR/documents/debt-investor/bonds-outstanding/vg-plc-emtn-fy23-prospectus-supplement.pdf.

²³ Capricorn Energy PLC. Full Year Results Announcement for the year ended 31 December 2021 (8 March 2022). URL: <https://www.capricornenergy.com/media/rc0fu1ec/full-year-results-final.pdf>.