

राजेश खुल्लर
संयुक्त सचिव
Rajesh Khullar IAS
Joint Secretary



सत्यमेव जयते

भारत सरकार
वित्त मंत्रालय
आर्थिक कार्य विभाग
नॉर्थ ब्लॉक, नई दिल्ली-110001
Government of India
Ministry of Finance

Department of Economic Affairs
North Block, New Delhi-110001
Tel. : 23093881 Fax : 23092024
E-mail : khullarrk@yahoo.com

22nd June 2011

D.O. No. 26/5/2011-IC

Please dismiss URGENTLY

For Danilali, Dr Upadhyay.



Dear *Sh. Sen*

I write to you with a request for obtaining comments from your esteemed members regarding the utility and effectiveness of Bilateral Investment Promotion and Protection Agreements (BIPAs).

As you may be aware, Department of Economic Affairs is entrusted with the mandate to negotiate BIPAs with countries having potential for bilateral investment flows. Since the beginning of the 1990's India's economic engagement with the world has been marked by a surge in both trade and investments. The Government sought to promote Foreign Direct Investments (FDI) as a means to supplement domestic savings, increase productivity and facilitate transfer of modern technology. Overtime, with the increase in Overseas Direct Investments (ODI) by Indian entrepreneurs, BIPAs have also emerged as a tool for ensuring fair and equitable treatment to Indian investments abroad.

Starting with the United Kingdom in 1994, India has signed BIPA's with 81 countries, of which 70 have been enforced. The list of the countries and the texts of the Agreements may be accessed at :

http://finmin.nic.in/the_ministry/dept_eco_affairs/icsection/icsec_index.asp.

The critical pillars of BIPAs includes:-

- 1) National Treatment, i.e. treatment at par with domestic investment and Most Favoured National Treatment, i.e. treatment at par with other foreign investors.
- 2) Right to transfer of returns, without unreasonable delay and in freely convertible currency

- 3) Right against expropriation, except for a public purpose, in accordance with law, on a non-discriminatory basis and on payment of compensation.
- 4) BIPA's also provide for elaborate dispute resolution mechanism between the investor and foreign government, including recourse to International Arbitration.

Based on our experience over the last seventeen years, the Department of Economic Affairs, Ministry of Finance has initiated a review of our model text of BIPA, which forms the starting point for bilateral negotiations, so as to include the evolving issues in international investments laws and cover the concerns of the various stakeholders more effectively. Simultaneously, we are conducting a study to assess the utility and effectiveness of BIPA both to the foreign investors in India and the Indian investors abroad. We propose to utilize the outcome of this study in revising our model text of the Agreement and also to decide the priority of the Government for negotiations with suggested countries in future.

For this purpose, we have devised a questionnaire (annexed) and placed the same at the Foreign Investment Promotion Board website [fipbindia.com].

I shall be grateful if the questionnaire is circulated and given wide publicity among your members with a request to provide us the feedback preferably by 15th July 2011. The questionnaire can also be filled in online.

with regards

Yours sincerely



(Rajesh Khullar)

Mr. Atindra Sen
Director General
Bombay Chamber of Commerce & Industry
Mackinnon Mackenzie Building
3rd floor 4, Shoorji Vallabhdas Road
Ballard Estate, Mumbai-400001

TO BE FILLED IN BY INDIAN ENTITIES INVESTING ABROAD

**Questionnaire to study the Utility and Effectiveness of
Bilateral Investment Promotion and Protection Agreement (BIPA)**

Name of Organization-

Type- (Please tick appropriate box)

a) Company

b) Partnership

c) Joint Venture

d) PSU

e) Corporation

f) Venture Capital Fund

g) Trusts

h) Others, specify

Q.1 Has your organization undertaken any kind of Overseas Investment?

Yes	No
-----	----

Q.2 If Yes, by what means?

(for details of the scheme refer www.rbi.org.in)

- a) Automatic Route
- b) Approval Route

Q.3 If Yes, in which country/ies, please specify-

--

[For OFFICE USE only—Has India signed BIPA with countries mentioned above?]

Yes	No
-----	----

Q.4 Mode of Overseas Investment-

- a) Acquisition of a firm
- b) Expansion of an existing firm
- c) Greenfield investment

Q.5 Are you aware of existence, provision & benefits of BIPA?

High	Medium	Low	Not Aware
------	--------	-----	-----------

Q.6 Did you take into account provision of BIPA while investing overseas?

Yes	No
-----	----

Q.7 Approximate percentage of equity shares held by your organization in overseas company-

Q.8 Have the overseas investments been denied fair and equitable treatment in the foreign country/ies in any manner?

Yes	No
-----	----

Q.9 Has there been dispute with the foreign partner(s)?

Yes	No
-----	----

Q.10 If Yes, the status of the dispute.

--

Q.11 Do you consider BIPA useful?

Yes	No
-----	----

Q.12 Which countries do you want India to negotiate & sign BIPA with?

(refer to http://finmin.nic.in/the_ministry/dept_eco_affairs/icsection/icsec_index.asp for list of countries with which BIPA has been enforced and the countries with which BIPA has been signed but not enforced)

Further comments, if any

--

**TO BE FILLED IN BY INDIAN ENTITIES
HAVING INVESTMENT FROM ABROAD**

**Questionnaire to study the Utility and Effectiveness of
Bilateral Investment Promotion and Protection Agreement (BIPA)**

Name of Organization-

Type-(please tick appropriate box)

- a) Company
- b) Partnership
- c) Joint Venture
- d) PSU
- e) Corporation
- f) Venture Capital Fund
- g) Trusts
- h) Others, specify

Q.1 Do you have any direct foreign investment?

Yes	No
-----	----

Q.2 If Yes, percentage of equity shares held by foreign investor/s-

Q.3 If Yes, from which country/ies?

[For OFFICE USE only— Has India signed BIPA with the countries mentioned in Q.3?]

Yes	No
-----	----

Q.4 Are you aware of existence, provisions & benefits of BIPA?

High	Medium	Low	Not Aware
------	--------	-----	--------------

Q.5 Did your foreign collaborator take into account provision of BIPA while entering into JV?

Yes	No
-----	----

Q.6 Has your foreign collaborator ever complained of being denied fair and equitable treatment in any manner?

Yes	No
-----	----

If the answer to Q.6 is Yes, please provide brief description of the case.

Q.7 Has there been dispute with the foreign partner(s)?

Yes	No
-----	----

Q.8 If Yes, the status of the dispute

Q.9 Has your foreign collaborator considered taking action under the Dispute Resolution Mechanism of BIPA?

Yes	No
-----	----

Q.10 Has your company/foreign collaborator found BIPA to be useful?

Yes	No
-----	----

Q.11 Which countries do you want India to negotiate & sign BIPA with?

(refer to http://finmin.nic.in/the_ministry/dept_eco_affairs/icsection/icsec_index.asp for list of countries with which BIPA has been signed and enforced and the countries with which BIPA has been signed but not enforced)

Further comments, if any

--