WORKSHOP ON IMPROVING THE LEGAL ENVIRONMENT FOR BUSINESS IN CENTRAL ASIA

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BETTER POLICIES FOR BETTER LIVES

Foreign investment:
Progress, reform and key barriers

Legal framework for investment

Initial findings in Kyrgyzstan

Key FDI figures

	2017	2018
Net FDI inflows (USD millions)	-107	47
%GFCF	-4.6	2.1
Total FDI stock (USD millions)	3,960	3,917
%GDP	51.4	48.4
Greenfield FDI pledges	61	135
Realised greenfield FDI	1	3

Key reforms

- **The Kyrgyz Patent Law adopted in 2017** to improve the protection of IP rights.
- **The Business and Entrepreneurship Development Council was created in 2017** to strengthen co-operation between the country's legislative bodies and private sector.
- **The National Council for Sustainable Development was established in 2018** to ensure the implementation of the **National Development Strategy (NDS)** for 2018-2040 "Taza Koom – Zhany Door" ("Transparent Society – New Epoch")
- A new concept of fiscal policy that aims to equalise the tax burden across businesses of all sizes was established under **the Development Programme for the Period 2018-2022.**
- In June 2019, the government introduced **the Strategy on the Development of the State Tax Service** for the year's 2019-2021 that acknowledges the need to modernise tax administration.
- A **Business Ombudsman** has also been established in 2019 with the support of the EBRD

Foreign investment:
Key legal aspects for foreign investors

Legal framework for investment

Some preliminary findings in Kyrgyzstan

General legal framework for investment

- Investment in Kyrgyzstan is guided principally by the 2003 **Law on Investments (LoI)**.
- Business surveys indicate that **regulatory instability and a lack administrative transparency** may act as indirect entry barriers.

Expropriation

- **Art. 6 of the LoI** guarantees protection from **expropriation** and **sets out compensation** as the fair market price, including future lost profit.
- Despite this, a number of ISDS cases brought against Kyrgyzstan allege **indirect expropriation**

Non-discrimination

- Statutory discrimination on foreign investment remains high relative to OECD countries, but in line with non-OECD countries
- **Sectoral restrictions** are primarily in air transport, media, real estate and certain legal services
- Foreign investors are also affected by discriminatory measures on their **access to land** for agriculture and tourism, and in public procurement.
- There are **no formal screening procedures.**

Arbitration

- **The LoI allows for international arbitration** but requires that companies first seek an amicable solution through mediation.
- A lack of economic courts means that commercial disputes are referred to **general civil courts**.
- The **International Arbitration Court** at the CCI was established in 2002 and the **Ombudsman** in 2019.

OECD FDI REGULATORY RESTRICTIVENESS INDEX

The OECD FDI Regulatory Restrictiveness Index

A tool for benchmarking performance, showcasing reform and estimating impact

Statutory restrictions: All discriminatory measures affecting foreign investors, covering both market access and national treatment:

- **Screening** above a threshold or foreign equity share
- **Equity restrictions** by sector or overall, for acquisitions or greenfield projects
- Restrictions on **key personnel:** managers, directors, experts
- **Operational restrictions:** land ownership/use, profit/capital repatriation, branching, reciprocity, discriminatory minimum capital requirements, etc.

What is not covered?

- Degree of implementation
- Public ownership
- National security
- Special treatment accorded to a group of investors

FDI Index: sectoral coverage

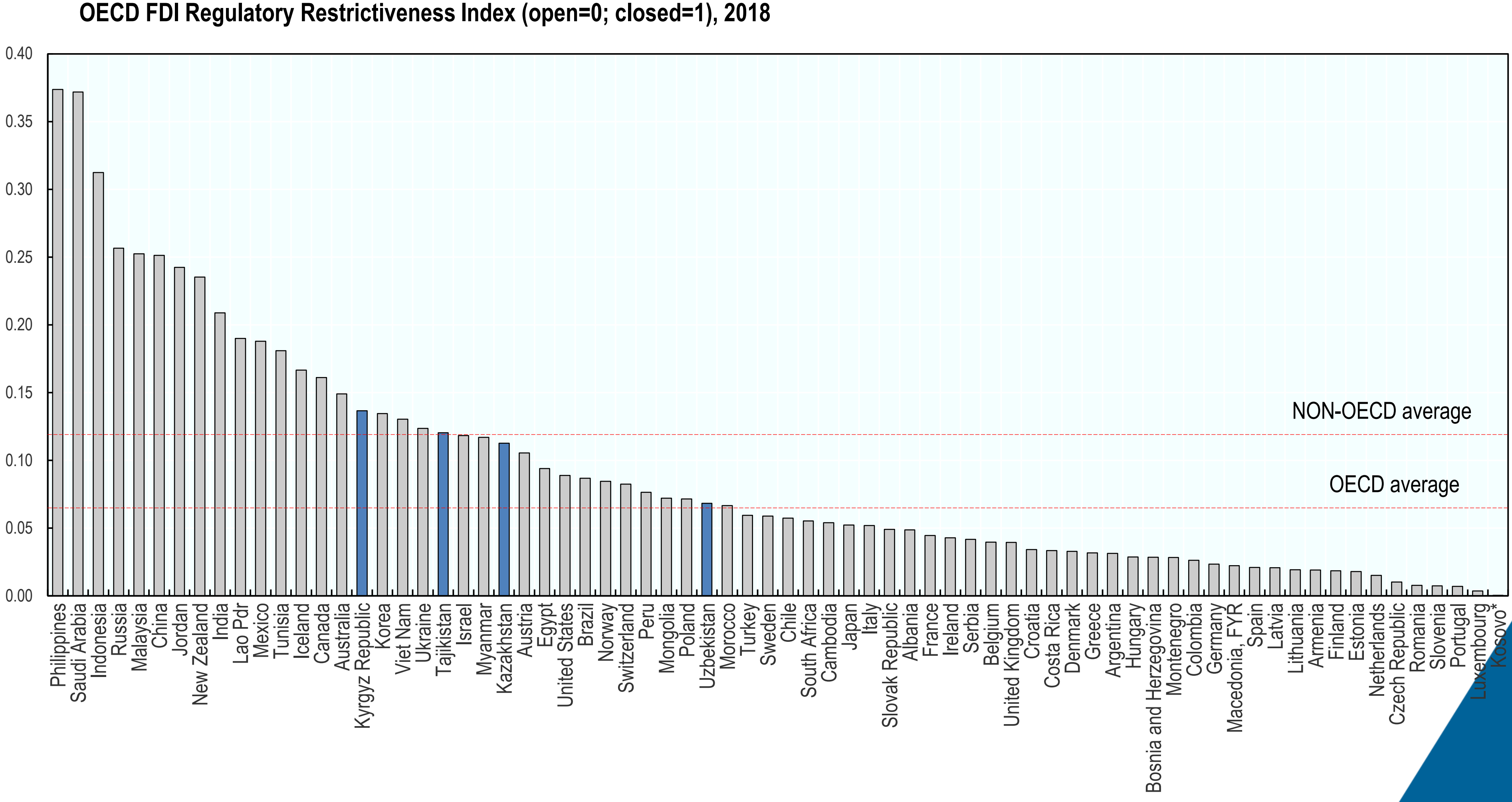
1. Agriculture
2. Forestry
3. Fishery
4. Mining & Quarrying (incl. oil extract.)
5. Manufacturing - *Food & Other*
6. Manufacturing - *Oil Ref. & Chemicals*
7. Manufacturing - *Metals, Machinery and Other Minerals*
8. Manufacturing - *Electric, Electronics and Other Instruments*
9. Manufacturing - *Transport Equipment*
10. Electricity (generation, distribution)
11. Construction
12. Distribution – Wholesale
13. Distribution - Retail
14. Transport (surface, water, air)
15. Hotels & restaurants
16. Media (broadcasting and other media)
17. Communication (fixed & mobile telecoms)
18. Financial services - Banking
19. Financial services - Insurance
20. Financial services - Other financial services
21. Business Services (accounting, legal, architecture, engineering)
22. Real estate

FDI Index: scoring methodology

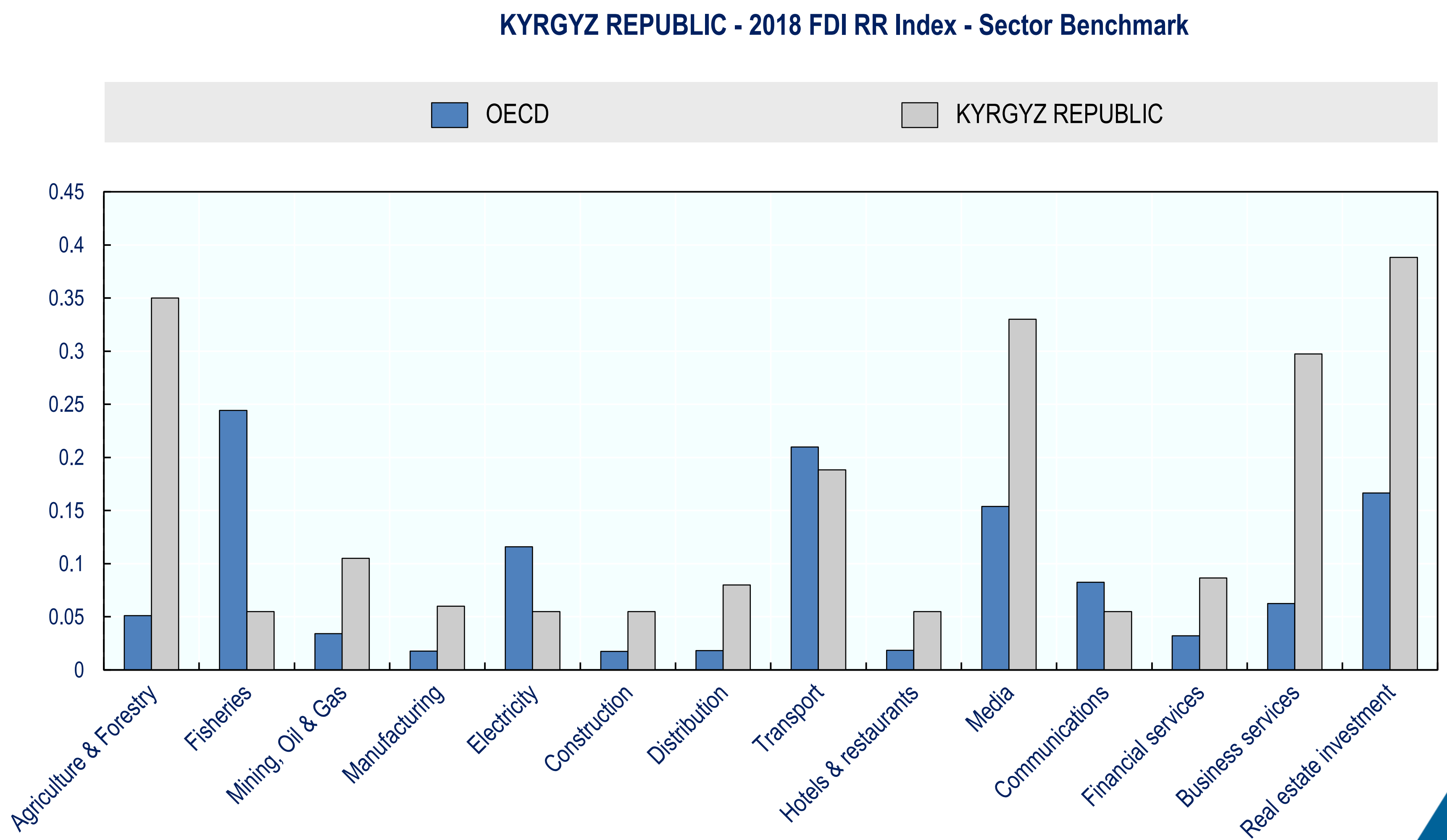
- Simple average of 22 sectors, equal weights are simpler, easy to use and don't vary by country or over time
- Scores for each measure based on *experts' assessments* of the importance of restrictions for FDI
- Other possibilities for weighting but little impact on country scores
- Horizontal measures (e.g. screening) have the greatest impact on overall scores

Sources: Hardin and Holmes (1997), Golub (2003), Koyama (2009). See Kalinova, Palerm and Thomsen (2010) for the latest methodology

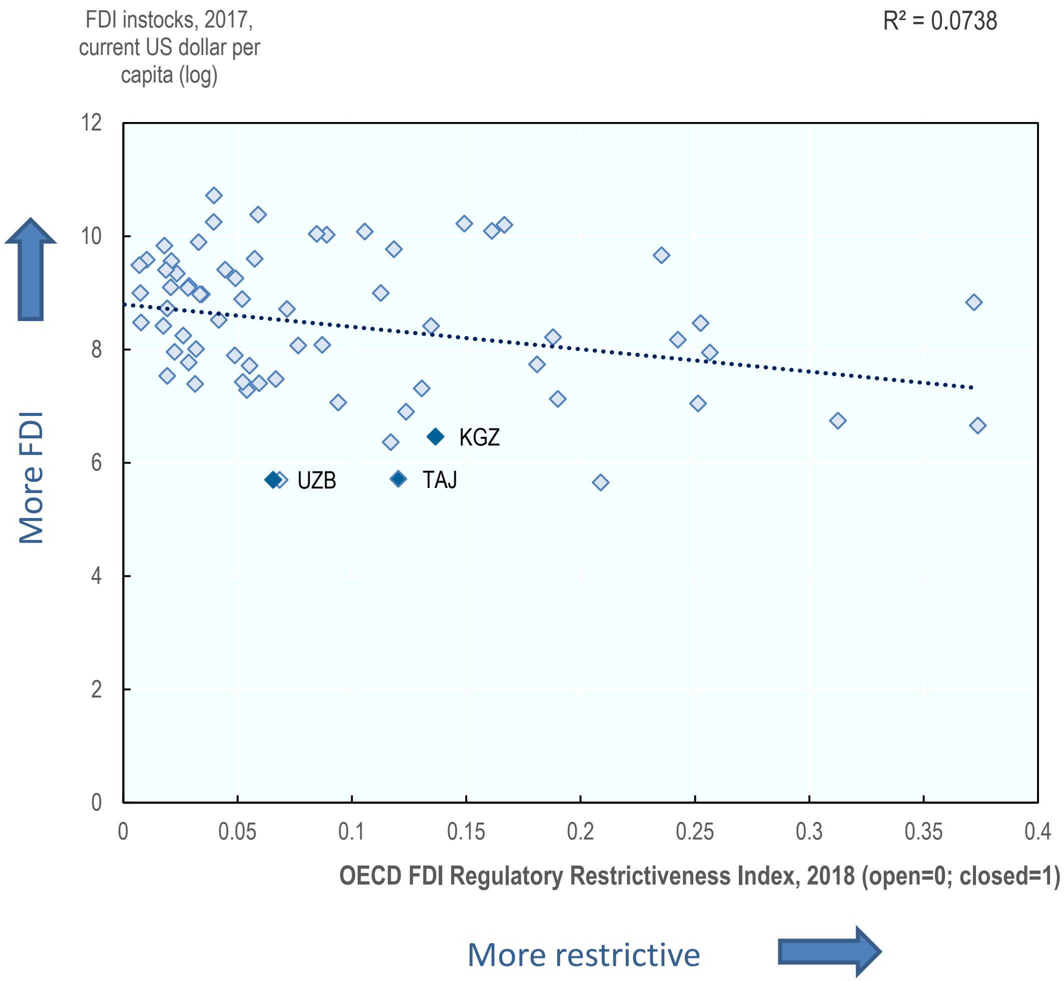
FDI Index results by country



FDI Index results by sector



More restrictive economies tend to attract less FDI



Source: OECD, IMF and UNCTAD

Mistura and Roulet (2019) show:

- A 10% FDI liberalisation as measured by the *Index* could increase FDI inward stocks by 2.4% on average
- If the most restrictive economies were to achieve OECD levels of average openness, their FDI stocks could increase by up to 95%
- Foreign equity restrictions and screening policies (excluding national security) are found to significantly deter FDI
- The effect is estimated to be greater in the **services** sector, partly reflecting the greater relative incidence of restrictions

Based on an augmented gravity model with fixed effects for 60 countries, 1997-2016

Thank You

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For further information

Policy Framework for Investment

www.oecd.org/investment/pfi.htm

Investment Policy Reviews

www.oecd.org/investment/countryreviews.htm

FDI Index

www.oecd.org/investment/fdiindex.htm

MNE Guidelines

mneguidelines.oecd.org