Policy Insights

Improving the Legal Environment for Business and Investment in Central Asia

GLOBAL RELATIONS
Eurasia Competitiveness Programme

Improving the Legal Environment for Business and Investment in Central Asia

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at http://www.oecd.org/termsandconditions.

Foreword

Thirty years after the countries of Central Asia became independent, the process of redefining the state's role in the economy continues to occupy policy-makers across the region. The ultimate end has been long run, sustainable economic development, powered by private enterprise and the rule of law. This challenge confronts all five countries covered in this report: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

The arrival of COVID-19 to Central Asia and to the markets upon which many of the region's countries are dependent brought the need for the reforms to achieve long-term economic development discussed in this report into even clearer focus. With small private sectors, often characterised by high levels of informality, many economies in the region have been unable to create quality employment opportunities, leading large numbers of people to seek work abroad. Border closures and shutdowns of economic activity, while necessary to control the spread of the virus, stripped many governments in Central Asia of valuable sources of revenue, including trade and remittances, whilst foregrounding the challenge of how to manage a significant increase in labour market pressure on already beleaguered economies. The situation was similarly challenging for economies where large extractive sectors – often accounting for the biggest share of inward investment – have been the primary drivers of growth, given the falling value of and demand for their narrow range of export products.

These are not the only economic challenges to arise for Central Asia's governments in light of COVID-19, but they support the central argument of this report – that in the absence of sufficient framework conditions for private sector development and foreign direct investment (FDI), the region's economies will lack the resilience necessary to drive more sustainable and inclusive growth, and will remain overly vulnerable to deterioration in external conditions. Creating such conditions has been at the heart of the reform agendas of transition economies, and needs to be achieved with the establishment of a sound legal environment for business, where property rights are secure, entrepreneurship and innovation encouraged, job creation supported, and into which high-quality FDI is drawn.

Improving the Legal Environment for Business and Investment in Central Asia is the result of work conducted jointly by the Eurasia Division of the Global Relations Secretariat (GRS) and the Investment Division of the Directorate for Financial and Enterprise Affairs (DAF/INV) during 2019-2020. The European Union provided financial support for this work through the OECD policy component of the Central Asia Invest programme.

The purpose of this report is to provide targeted advice and identify priority reforms for the governments of Central Asia to improve their legal environment for business, tailored to the particular priorities and needs of each. The introduction surveys the progress made by the region in improving business climates, and the importance of the legal environment therein. The next five chapters provide detailed analyses of the legal environment for business and identify reform priorities for each country.

Focussing on a legal and regulatory approach to business and investment needs, the project has carried out a thorough assessment of ten dimensions of the legal environment considered by the OECD as crucial for a healthy business climate: legal and regulatory framework for investment; tax regulations; land legislation; registration procedures; contract enforcement and dispute settlement; the operational environment for business; trade facilitation; expropriation regimes; exit mechanisms; and public-private dialogue. There are important structural issues for Central Asia's economies, including competition and the governance of state-owned enterprises, which are not part of the present report. Reforms in these

areas, in parallel to improvements in the legal environment, will be instrumental in spurring private sector development.

The approach taken by the project can be split into four components:

1. The first was a questionnaire derived from two OECD tools, the Policy Framework for Investment and the SME Policy Index, which covered the ten above-mentioned dimensions of the legal environment. This questionnaire was issued to the government and to a local expert in each country, which gave the OECD a robust overview of the *de jure* conditions for business across each of the ten dimensions.
2. A second questionnaire, the FDI Regulatory Restrictiveness Index Questionnaire, was subsequently sent to all governments except Turkmenistan. This questionnaire gives an overview of the statutory restrictions on foreign investment in each of the project countries, allowing the inclusion of the surveyed countries into the OECD FDI Regulatory Restrictiveness Index.
3. Two public-private roundtables were held in each project country, during which the OECD discussed the findings of the questionnaire, received additional input and clarification, and heard from public and private sector stakeholders on legal and implementation challenges. Country-specific webinars organised during spring 2020 also allowed discussions of COVID-19 economic effects.
4. Private sector roundtables were held in Paris and in each project country, with both domestic businesses and international investors. They allowed the OECD to hear from businesses regarding market entry, operational and other legal challenges.

This analysis has allowed the OECD both to ascertain the key legal and regulatory barriers to private sector development and investment in Central Asia and to disseminate a number of key OECD instruments for the first time in the project countries. This has raised awareness of OECD methodologies and best practices, enabling governments to embed OECD experience in their ongoing reform efforts where appropriate.

On the basis of the data collection and analysis conducted, as well as on consultations with governments and with the private sector, the OECD has identified three key reform priorities for each country. These priorities take into account the *de jure* legal environment for business and the *de facto* operational reality for firms, domestic and international. The OECD has been careful to take into account ongoing reform processes in each country, as well as the activities of donors and other international organisations active in the region.

The OECD looks forward to working with the Central Asia governments on the identified reform priorities, continuing the OECD's deepening co-operation with a dynamic region. In 2020, the OECD began a series of capacity-building exercises with each country focusing on the priorities identified; these capacity-building exercises will continue throughout 2021. In 2022, the OECD will prepare a final report, summarising and monitoring improvements achieved over the course of the project.

Acknowledgements

This report presents the findings of the first phase of the OECD Improving the Legal Environment for Business in Central Asia project. This project was undertaken as part of the Policy Component of the EU-funded Central Asia Invest programme.

The report was prepared under the guidance of Mr William Tompson, Head the OECD Eurasia Division. The work was managed by Mr Grégory Lecomte, Senior Policy Analyst and Head of Unit, OECD Eurasia Division, and Mr Arnault Prêtet, Deputy Head of Unit, OECD Eurasia Division, and co-ordinated by Mr Luke Mackle, Policy Analyst, OECD Eurasia Division.

The main authors of the report are Mr Luke Mackle, Ms Amélie Schurich-Rey and Ms Talisa zur Hausen, Policy Analysts, OECD Eurasia Division. We are grateful to Mr Stephen Thomsen, Head of Unit, and Ms Iris Mantovani, Policy Analyst, OECD Investment Division, Directorate for Financial and Enterprise Affairs, for their contributions to the writing of this report and for the application of the OECD FDI Regulatory Restrictiveness Index to the project countries. Valuable analytical support was also provided by Mr Xavier Le Joncour, Ms Julia Ashikbayeva, and Mr Utsav Shah, formerly interns in the OECD Eurasia Division, as well as Ms Diana Karachanski, intern in the OECD Eurasia Division. Mrs Anna Chahtahtinsky, Ms Mariana Tanova, Ms Iulia Viscu, and Ms Eugenia Klimenka, Programme Assistants in the OECD Eurasia Division, provided unfailing administrative and logistical support. Ms Anastasia Pronina, Ms Elena Kosheleva and Mr Anatoly Sotchenko provided invaluable translation services for which we are grateful.

The report benefited greatly from the input of a number of local experts who undertook detailed surveys on a range of dimensions covered and to whom the authors are indebted: Ms Madina Nurakisheva in Kazakhstan, Mr Bakyt Omurzakov in Kyrgyzstan, Mr Nurali Shukrov in Tajikistan and Ms Nodira Kurbanbaeva and Mr Khamidulla Normuradov in Uzbekistan. The OECD Secretariat also received invaluable local support from Ms Veronika Grushevskaya in Tajikistan and Ms Ikbal Yusupova in Uzbekistan.

The project would not have been possible without the continued support of the OECD's many stakeholders and partners in government across Central Asia. At all levels of government, the OECD team was able to rely upon the willingness and commitment of their many interlocutors, and whilst it is not possible to name them all, the OECD Eurasia Division would like to offer particular thanks to the following.

In Kazakhstan, the OECD is grateful for the support of First Deputy Prime Minister and Minister of Finance Mr Alikhan Smailov Minister of National Economy Mr Ruslan Dalenov, Minister of Trade and Integration Mr Bakhyt Sultanov, Minister of Justice Mr Marat Beketayev, former Vice Minister of National Economy Ms Madina Zhunusbekova, Vice Minister of Justice Ms Akerke Akhmetova, Vice Minister of Justice Ms Natalia Pan, Vice Minister of Justice Mr Almat Madaliyev, Vice Minister of Trade and Integration Mr Kairat Torebayev, and Ms Mira Zhanabergenova and Mr Nurlan Kulbatyrov of Qaztrade.

In Kyrgyzstan, the OECD is grateful for the support of Minister of Economy Mr Sanjar Mukanbetov, Minister of Justice Mr Marat Dzhamankulov, former Deputy Minister of Economy Mr Eldar Abakirov and former Deputy Minister of Economy Mr Dastan Kadyrov, Deputy Minister of Justice Mr. Marat Kanulkulov, Deputy Minister of Justice Mr Manas Sarymsakov, Mr Daniar Imanaliev, Head of the Strategic Development, Economic and Financial Policy Division of the Presidential Administration, Ms Akilay Kozhomberdieva, Head of the Department on Regulation of Entrepreneurship and Mr Zulen Avhadjanov, Senior Specialist of the Department on Regulation of Entrepreneurship, Ms Aisulu Tokoeva, Senior Specialist of the Ministry of Justice, Ms Aynura Usenbekova, Expert of the Strategic Development, Economic and Financial Policy

Division of the Presidential Administration, and Mr Alymbek Orozbekov, Head of Economy and Investment Department of the Prime-Minister's Office.

In Tajikistan, the OECD is grateful to First Deputy Prime Minister Mr Davlatali Said, Deputy Prime Minister Mr Azim Ibrohim, Minister of Economic Development and Trade Mr Zavqi Zavqizoda, former Minister Mr Nematullo Hikmatullozoda and First Deputy Minister of Economic Development and Trade Mr Soleh Ashurboy, Minister of Justice Mr Rustam Shoemurod, Chairman of the State Committee for Investment and Property Management Mr Farrukh Hamralizoda, former Deputy Chair of the State Committee of Investment and Property Management Ms Nigina Anvari, First Vice Minister of Justice Ms Nigina Alizoda.

In Turkmenistan, the work was led and made possible by Minister of Finance and Economy Mr Muhammetgeldy Serdarov, as well as former Ministers Batyr Bazarov and Ezizgeldy Annamukhamedov. Ms Galina Romanova, Head of the State Finances and Economic Policy Department at the Ministry of Finance and Economy of Turkmenistan, was a constant voice of support throughout the project.

In Uzbekistan, we are grateful to a wide range of partners, notably First Deputy Prime Minister and Minister of Investment and Foreign Trade Mr Sardor Umurzakov, Minister of Justice Mr Ruslanbek Davletov, Vice Minister of Investment and Foreign Trade Mr Sukhrat Vafaev, Former Minister of Economy Botir Khodzhaev, Mr Alexei Sim, Department Head, and Mr Nurilla Abdushukurov, Senior Specialist of the Ministry of Investment and Foreign Trade.

The OECD would also like to thank Mr Jean Galiev, Ambassador of Kazakhstan to France and Ms Ayana Manassova and Ms Ryskul Iskakova from the Embassy; Mr Muktar Jumaliev, Ambassador of the Kyrgyz Republic to Brussels, France and the EU, and Mr Azamat Kadyraliev from the Embassy; Mr Jamoliddin Ubaidullo, Ambassador of Tajikistan to France, and Mr Manuchehr Jobir from the Embassy; Mr Shohkrat Jumaev, Ambassador of Turkmenistan to France, and Mr Sardor Rustambaev, Ambassador of Uzbekistan to France and Mr Bekhzod Paygamov, Economic Counsellor to the Ambassador.

This present iteration of the Improving the Legal Environment for Business and Investment in Central Asia report was greatly improved by the numerous comments received from colleagues within the OECD and in partner institutions. The authors are particularly grateful for comments and guidance from: Mr Alexander Böhmer, Head of the OECD South Asia-South East Asia Division (SASEA), Ms Annie Norfolk Beadle (SASEA), Ms Sarah Perret, OECD Centre for Tax Policy and Administration, Ms Peline Atamer, Team Leader for Kazakhstan and Mr Francesco Alonso, Policy Analyst and Deputy Head of Unit, OECD Eurasia Division. Valuable feedback was also provided by Mr Jean-François Marteau, Mr Waleed Haider Malik, Ms Clara Maghani, Mr Ivailo Izvorski, Ms Alma Nurshaikhova, Mr Vinayak Nagaraj, and Mr Sjamsu Rahardja of the World Bank; Ms Nodira Mansurova, Ms Ishii Rika, Mr Umidjon Abdullaev and Ms Feruzakhon Tolipova of the EBRD; Mr Jean-Sébastien Roure and Mr Pierre Bonthonneau of the International Trade Centre (ITC).

Throughout this project, the OECD met with numerous representatives of the private sector, both international and local, whose insights greatly enriched the present report and ensured that the OECD Eurasia Division's analysis was reflective of business experience and needs. The OECD Eurasia Division would like to recognise in particular the contributions of Mr Bogdan Gadenne-Feertchak, Director, and Mr Bertrand Peltier, Eurasia Project Officer, MEDEF International, and that of Mr Yann Schneller, Lawyer - International Arbitration and commercial litigation.

Finally, this report would not have been possible without the continued financial and diplomatic support of the European Union. The OECD is grateful to the European Union making this important piece of work possible, and for their insights and contributions provided by EU colleagues. Particular thanks are due to Mr Sven-Olov Carlsson, Ambassador of the EU to Kazakhstan, Mr Eduard Auer, Ambassador of the EU to Kyrgyzstan, Ms Marilyn Josefson, Ambassador of the EU to Tajikistan, Mr Diego Ruiz Alonso, Ambassador of the EU to Turkmenistan, and Mr Eduards Stiprais, former Ambassador of the EU to Uzbekistan. The OECD is also indebted to colleagues in the region's EU delegations, particularly Mr Johannes Stenbaek-Madsen and Ms Silvia Pietropaolo, Ms Charlotte Adriaen, Mr Carl Frosio, Mr Stefano Ellero, Mr Francesco Straniero, Mr François Bégeot and Mr Elbek Khodjaev.

Table of Contents

Foreword 3

Acknowledgements 5

Executive Summary 11

1 Introduction 15
- The COVID-19 and the economies of Central Asia 16
- The importance of legal environment for private sector development 21
- The legal environment for business in Central Asia: Progress and Challenges 24

2 Kazakhstan 33
- Chapter summary 33
- Economic overview 34
- Priority areas for reform: implementation of business legislation, dispute and trade facilitation 39
- Further progress and challenges in the legal environment for business in Kazakhstan 47

3 Kyrgyzstan 57
- Chapter summary 57
- Economic overview 58
- Priority areas for reform: the operational environment for SMEs, contract enforcement and tax administration 62
- Further progress and challenges in the legal environment for business in Kyrgyzstan 68

4 Tajikistan 77
- Chapter summary 77
- Economic overview 77
- Priority areas for reform: contract enforcement, economic justice and tax administration 80
- Further progress and challenges in the legal environment for business in Tajikistan 88

5 Turkmenistan 97
- Chapter summary 97
- Economic overview 98
- Priority areas for reform: investment regulation, business registration and the operational environment for SMEs 103
- Further progress and challenges in the legal environment for business in Turkmenistan 109

6 Uzbekistan 115
- Chapter summary 115
- Economic overview 116
- Priority areas for reform: implementation of investment regulation, legislative consolidation and tax administration 122
- Further progress and challenges in the legal environment for business in Uzbekistan 129

References 139

Tables

Table 1. Priority reform areas for the legal environment for business in Central Asia 13
Table 2. Dimensions of analysis 22
Table 3. Starting a business in Central Asia 26
Table 4. Overview of identified country-specific reform priorities 32
Table 5. Contract enforcement in Kazakhstan 42
Table 6. The insolvency framework in Kazakhstan 52
Table 7. Contract enforcement in Kyrgyzstan 66
Table 8. Starting a business in Kyrgyzstan 72
Table 9. Closing a business in Kyrgyzstan and in other Central Asia countries 73
Table 10. Contract enforcement in Tajikistan 85
Table 11. Ease of registering property in Tajikistan 91
Table 12. Starting a business in Tajikistan 91
Table 13. Domestic non-state enterprises, revenues, and employment in Turkmenistan 99
Table 14. Privatisation statistics in Uzbekistan, selected years 118
Table 15. Starting a business in Uzbekistan 130
Table 16. Resolving insolvency in Uzbekistan 132

Figures

Figure 1. Real GDP growth, % annual, 1996-2018 15
Figure 2. Central Asia GDP per capita (PPP) as a percentage of the OECD average 16
Figure 3. January-October 2020 change in exports to China 18
Figure 4. The decline in remittances and its impact on current account deficits 20
Figure 5. Intensity of structural reforms in Central Asia, 1996-2014 27
Figure 6. FDI Inflows in Central Asia, 1995-2018 (% of GDP) 28
Figure 7. The OECD FDI Regulatory Restrictiveness Index 29
Figure 8. FDI Index by sector in Central Asia in 2020 29
Figure 9. Public Ownership in Kazakhstan's Economy 35
Figure 10. Regulatory barriers in service and networks sectors 40
Figure 11. Appeals handled by the Business Ombudsman of Kazakhstan, 2016-2018 44
Figure 12. Kazakhstan and the OECD Trade Facilitation Indicators 46
Figure 13. OECD FDI Regulatory Restrictiveness Index: Kazakhstan 49
Figure 14. OECD FDI Regulatory Restrictiveness Index: sectoral restrictions in Kazakhstan 49
Figure 15. Administrative burden on start-ups in Kazakhstan 51
Figure 16. Remittances' fall in Q1 2020 and their rebound in Q2-3 61
Figure 17. OECD FDI Regulatory Restrictiveness Index: Kyrgyzstan 69
Figure 18. OECD FDI Regulatory Restrictiveness Index: sectoral restrictions in Kyrgyzstan 69
Figure 19. Kyrgyzstan in the OECD Trade Facilitations Indicators 74
Figure 20. OECD FDI Regulatory Restrictiveness Index: Tajikistan 81
Figure 21. OECD FDI Regulatory Restrictiveness Index: sectoral restrictions in Tajikistan 82
Figure 22. Total Tax and Contribution Rate of Central Asia countries 86
Figure 23. Tajikistan in the OECD Trade Facilitation Indicators 94
Figure 24. Declining levels of FDI inflows since 2009 98
Figure 25. OECD FDI Regulatory Restrictiveness Index: Uzbekistan 123
Figure 26. OECD FDI Regulatory Restrictiveness Index: sectoral restrictions in Uzbekistan 124
Figure 27. The increase in the volume of new legislation since 2017 125
Figure 28. Uzbekistan in the OECD Trade Facilitation Indicators 137

Boxes

Box 1. Legal Environment for Business Assessment: Methodology 23
Box 2. Calculating the OECD FDI Regulatory Restrictiveness Index 28
Box 3. State involvement in the economy of Kazakhstan 35
Box 4. COVID-19 economic support measures implemented by the government of Kazakhstan 38
Box 5. The Entrepreneurial Code of Kazakhstan 39
Box 6. Kazakhstan's Environmental Code and the OECD environmental regulatory framework 50
Box 7. Georgia's Innovation and Technology Agency 55
Box 8. Kyrgyzstan's digitalisation efforts in response to the COVID-19 crisis 61
Box 9. Stalled Corporatisation in Tajikistan: The Case of State Unitary Enterprises 89
Box 10. The Consultative Council on the Improvement of the Investment Climate 93
Box 11. Key Policy Roadmaps for Economic Development in Turkmenistan 100
Box 12. Currency Controls and Investment in Turkmenistan 102
Box 13. Regulatory consolidation case study: The Entrepreneurial Code of Kazakhstan 105
Box 14. Investment Office of the Presidency of the Republic of Turkey 105
Box 15. Business procedure simplification case study: one-stop shops in Georgia 108
Box 16. Privatisation of state-owned assets in Uzbekistan 118
Box 17. The Uzbek Anti-Crisis Fund 121

Executive Summary

COVID-19 has reinforced the need for longer-term economic reforms

Since exiting the transition recession of the 1990s, Central Asia has recorded impressive growth. The region's annual real gross domestic product (GDP) growth has averaged 6% since 1996, GDP per capita in purchasing power parity terms has risen at around 4.5% annually, and labour productivity has grown at almost 5% per annum.

However, **trend growth rates have now been slowing for more than a decade**. Prior to the outbreak of COVID-19, the region had already been profoundly affected by two powerful external shocks: the 2008-09 financial crisis and the 2014-15 fall in commodity prices. The region bounced back from these events, but GDP growth during the recovery periods was in each case lower than what had preceded the shocks.

At the root of the slowdown of growth during this decade has been the region's dependence on two volatile growth drivers, namely exports of minerals and labour. At the same time, more sustainable development has been undermined by the consistently low contribution of the region's domestic private sector to growth, investment and job creation. When the global economy was growing rapidly, Central Asia was able to tap into rising demand for labour and raw materials, particularly from Russia and China. Yet while export earnings and remittance inflows supported domestic consumption and raised living standards, they perhaps lessened the sense of urgency about building a more diversified and inclusive growth model, in particular by fostering non-extractive, private investment from international and domestic firms.

It is in this challenging context that COVID-19 arrived in Central Asia, the third major shock to hit the region in little more than a decade. Its economic fallout and prolonged slump in demand for many of the region's key exports has redoubled the importance of a new, private sector-driven growth agenda, guided by clear longer-term reform priorities.

This report focuses on ways to improve the legal environment for business

Strengthening the role of the private sector in economic development will require creating a strong, stable and transparent legal environment for business. If they are to invest and grow, foreign and domestic private firms need predictable rules, transparent interactions with the state and state-owned entities, and a level competitive playing field.

This report presents analysis of ten dimensions of the legal environment considered by the OECD as crucial for a healthy business climate: legal and regulatory framework for investment; tax regulations; land legislation; registration procedures; contract enforcement and dispute settlement; the operational environment for business; trade facilitation; expropriation regimes; exit mechanisms; and public-private dialogue. Many of the essential legal components of well-functioning and competitive market economies are already in place at different levels across the region, in legislation governing private property, investment and trade, but gaps, inconsistencies and implementation challenges remain, reducing legal certainty and creating barriers to entrepreneurship and investment.

Implementation gaps are a particular problem

The analysis of these ten dimensions shows that the formal statutory conditions for business have improved, but the legal environment in which firms operate remains complicated, changeable and often opaque. Governments have often reached for the low hanging fruit of reform – such as reducing administrative burdens for start-ups – while leaving more complicated or sensitive challenges unaddressed. As a result, there are sometimes large gaps between the *de jure* freedom to do business and the *de facto* operational environment, which is characterised by such problems as the unpredictability of tax systems, poor implementation of regulations, and licensing and permitting arrangements that can be complex, expensive, arbitrary and opaque.

Levels of FDI in Central Asia are thus well below what might be expected in economies with comparably liberal statutory frameworks for investment. This means that the region lags emerging market peers in investment attraction, particularly outside the extraction sector. Investment-related legislation is often quite open but its application remains particularly problematic for foreign investors. Investors continue to struggle with the challenges of transparency, information accessibility and corruption.

While both international businesses and domestic enterprises face many common issues, the OECD finds that domestic firms face particular challenges with the following:

- Despite efforts to modernise business regulation, much of the region continues to have **complicated and unconsolidated legal frameworks for entrepreneurial activity and small firms**, with often overlapping or contradictory regulations making regulatory compliance difficult.
- **Regulations are also subject to frequent change, with little input from or notice to the business community**, with amendments and new laws often implemented through decree. This also creates implementation challenges for the public administration, leading to inconsistent and unpredictable interpretation and application of the rules.
- Despite significant reforms in most countries, especially in digitalising tax administration, **tax policy and administration remains a widespread cause for concern for the business community across the region.** This not only constrains investment and growth but also impedes efforts to draw firms into the formal sector and widen the tax base.
- **Customs regulations and border procedures remain expensive and complicated,** reducing trade flows, and undermining the region's competitiveness as a transit hub and as a location for export-orientated manufacturing. Opaque administration and high tariffs impede regional integration, which in turn has adverse implications for both consumers and firms.
- **Dispute settlement remains a key concern** for firms, especially in domestic courts. While progress has been made in improving the efficiency of judicial procedures and in the development of alternative dispute resolution mechanisms, the quality, fairness and independence of judicial processes are questioned by private sector stakeholders. Many are particularly reluctant to go to court against state entities, for fear of repercussions.

A set of country-specific priorities has been identified by the OECD that could help drive private-sector reforms in the region

The table below shows priority areas for improving the legal environment for business identified in consultation with private sector representatives, experts and the government in each country. Addressing these priorities could be part of a more sustainable and private sector-driven growth agenda in the region, supporting current government reform programmes in co-operation with international partners. These priorities have been defined through analytical work, international benchmarking and consultations with international and local private and public sector stakeholders.

Table 1. Priority reform areas for the legal environment for business in Central Asia

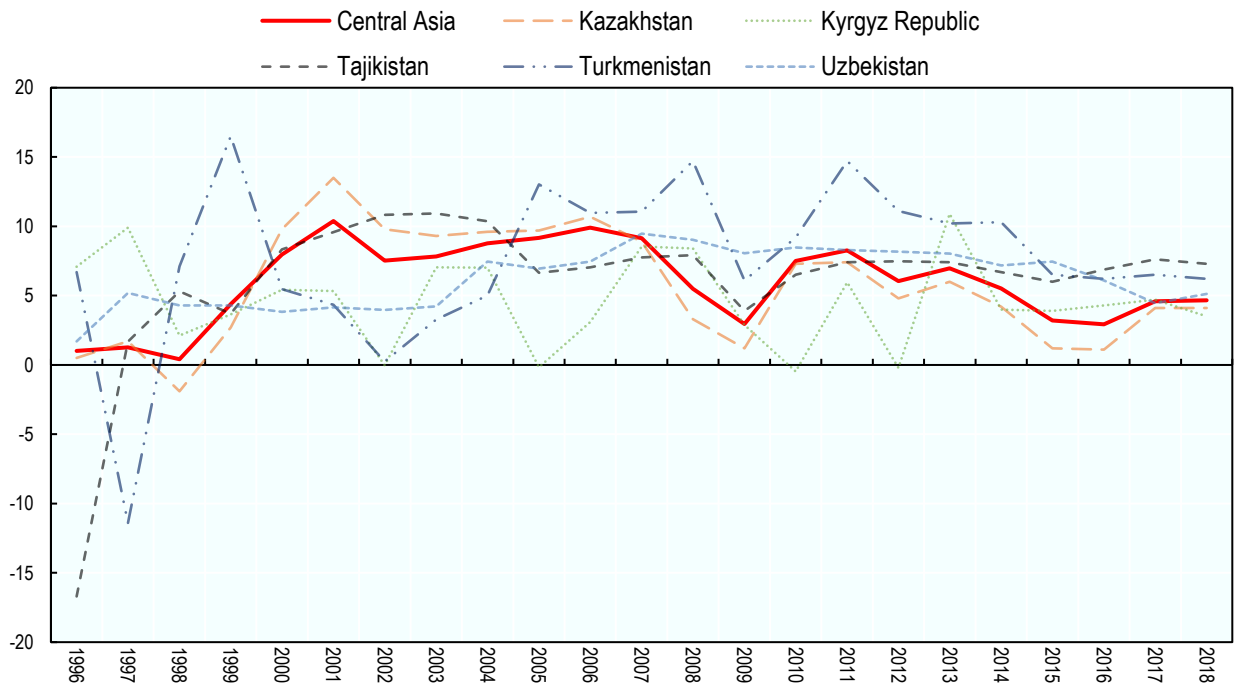
Kazakhstan	Kyrgyzstan	Tajikistan	Turkmenistan	Uzbekistan
Operational environment for firms:	**Operational environment for firms:**	**Legal and regulatory framework for investment:**	**Legal and regulatory framework for investment:**	**Legal and regulatory framework for investment:**
Implement consistently and thoroughly the new code for entrepreneurs	Streamline the legal environment for entrepreneurs and small businesses, especially legislation and service delivery	Ensure the implementation of existing laws for investment and entrepreneurial activity, and improve the accessibility of necessary information	Enforce, streamline, and publish all legislation on investment on the Ministry of Justice legal database to ensure transparency	Ensure proper implementation of the new investment law and remove sectoral restrictions
Contract enforcement:	**Contract enforcement:**	**Contract enforcement:**	**Operational environment for firms:**	**Operational environment for firms:**
Improve dispute settlement for all businesses operating in the country	Ensure transparent, fair and efficient contract enforcement for businesses	Improve the enforcement of contracts and arbitral decisions in domestic courts	Develop a simplified targeted legal framework and support for SMEs and small entrepreneurs	Streamline and consolidate business-related legislation and licenses for domestic firms and entrepreneurs
Trade facilitation:	**Taxation:**	**Taxation:**	**Business registration:**	**Taxation:**
Enhance trade facilitation and improve co-operation between agencies involved in export procedures	Simplify the tax code and tax administration for companies of all sizes	Make tax administration simpler, more consistent and more transparent	Streamline business registration and licensing, and introduce a one-stop shop	Ensure changes to tax requirements are predictable, and improve tax administration for small firms

1 Introduction

Across Central Asia, the transition from the Soviet system to market economies continues to occupy policy-makers, nearly thirty years after the countries of the region became independent. This entails the withdrawal of the state from direct management of most investment and production decisions, with the levers of central planning giving way to a market-based system governed by transparent, predictable, and coherent laws. The countries of Central Asia have endeavoured to lay the groundwork for long-term and sustainable economic development, based on private enterprise and the rule of law.

From a macroeconomic perspective, the Central Asian states have made significant progress. Since the recovery from the post-transition recession began in 1996, the region's real gross domestic product (GDP) has grown at an average annual rate of 6.0%, with GDP per capita in purchasing power parity terms rising by a robust 4.5% per year (Figure 1) (World Bank, 2020[1]). International investment, a cornerstone of economic development strategies in the countries of Central Asia, increased more than six-fold between 1997 and 2015 (OECD, 2018[2]). At the same time, labour productivity growth has averaged almost 5% and poverty rates across the region have halved (OECD, 2018[2]).

Figure 1. Real GDP growth, % annual, 1996-2018

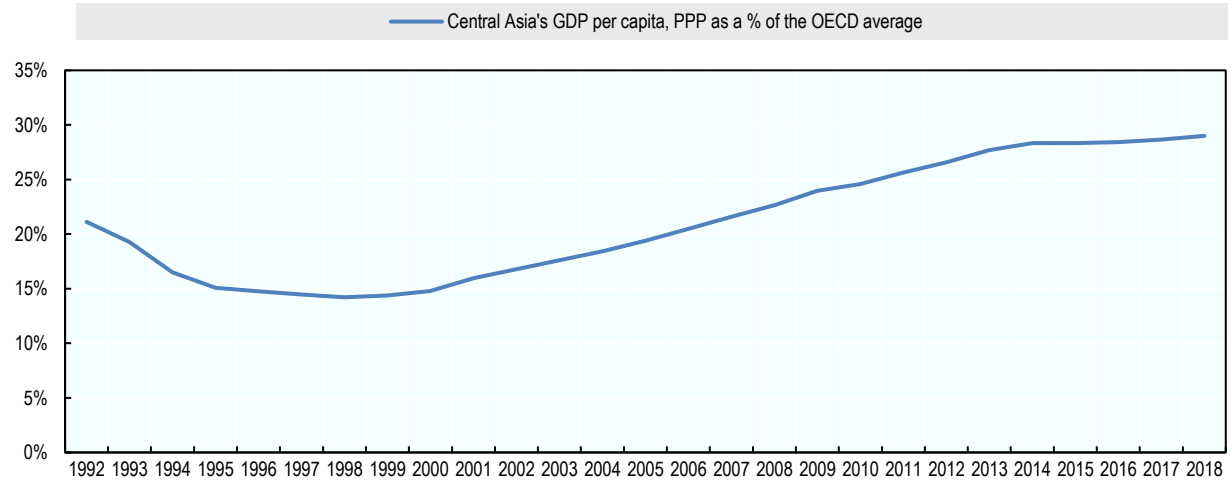


Source: (World Bank, 2020[1])

However, the trend rate of growth has been slowing for more than a decade: the region was subjected to powerful external shocks in 2008-09 and 2014-15 and in each case growth during the recovery following the shock was more subdued than what had preceded it. This is a worrying trend as Central Asia absorbs the economic impact of the COVID-19 pandemic, which is likely to be the most severe of all (OECD, 2020[3]).

Yet, whilst these figures are impressive, they can also be deceptive. The theory of convergence, for example, suggests that capital-scarce emerging economies' grow faster than capital-rich developed countries' because of diminishing marginal returns to investment. In addition, whilst growth in the Central Asia region has been strong, economic catch-up has been powered by growth models oriented towards resource extraction during periods of high commodity prices. Where international investment has been forthcoming, it has largely been limited to these extractive sectors, with non-extractive domestic investment largely state-driven. The risks of this model have been particularly evident in recent years, as the Central Asian economies' convergence towards the *per capita* income and productivity levels of the advanced industrialised economies has slowed sharply since 2014 (Figure 2). The commodities boom that began around the turn of the century enabled a period of rapid, sustained convergence but this process stalled when the commodity super-cycle ended in the middle of the 2010s.

Figure 2. Central Asia GDP per capita (PPP) as a percentage of the OECD average



Source: (World Bank, 2020[1])

If the countries of Central Asia are to ensure long-term, sustainable growth at rates that will allow convergence with the advanced economies, they will require more diverse sources of growth. The private sector must play a more active role in the economy for this to occur. To facilitate that role, governments must create robust policy, legal and regulatory environments that encourage entrepreneurship, innovation, investment, and firm growth.

The COVID-19 and the economies of Central Asia

The global COVID-19 pandemic has had a significant negative impact on the economies of Central Asia. As in other areas of the world, trade has been severely disrupted, social security systems have come under strain, consumption and investment plummeted and governments were required to make serious interventions to support the liquidity of households and businesses. Countries of Central Asia are also particularly vulnerable to a number of complications arising from COVID-19 as many structural issues in

the region's economies have been insufficiently addressed – namely the continued large role of the state in economic life, the concomitantly limited strength of private enterprise, and growth models that are often orientated towards rent maximisation over long-term development and investment.

For over a decade there have been indications that the commodity-driven and cyclical growth paths pursued by most Central Asia governments were running out of steam, drawing policy makers' attention to the need for alternative, sustainable policies. In the years following the 2008 global financial crisis and the end of the commodity super cycle in 2014-15, both periods where Central Asian economies' GDP fell more sharply than the world average, growth struggled to reach pre-crisis levels. As then, even when the immediate challenges relating to COVID-19 have been addressed and that compensatory GDP growth peaks shortly after, it is likely that regional growth will continue its downward trend in the years ahead.

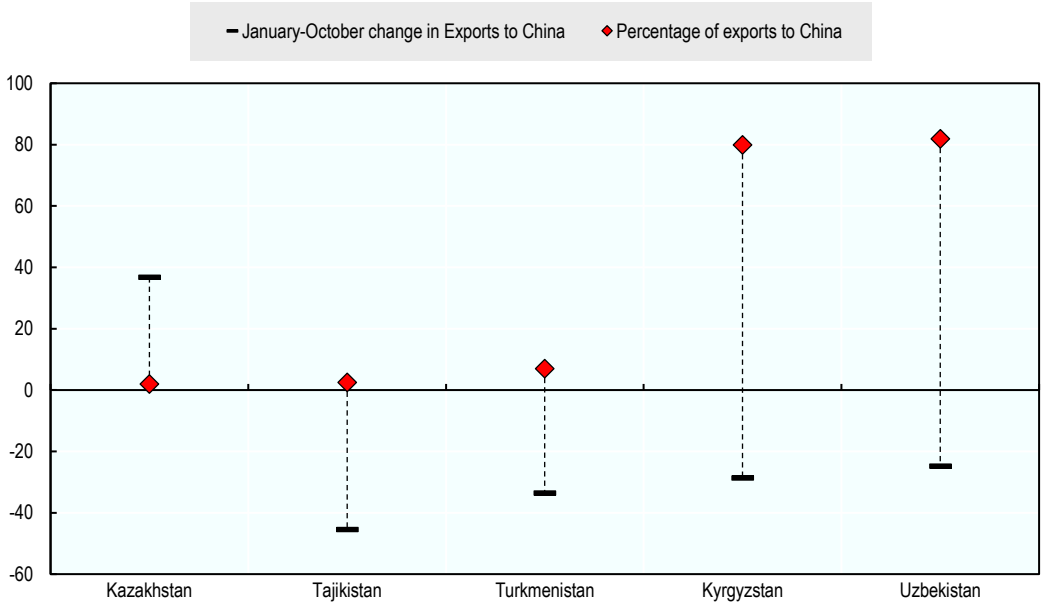
Central Asia's economies are expected to have contracted on average by 2.3% in 2020, with growth projected to return positive in 2021 (IMF, 2020[4]). The severity of the impact of the crisis on the region's economies has varied dramatically, reflecting the differing importance of volatile growth drivers such as commodities and migrant remittances, ranging from -12% in Kyrgyzstan to a more subdued deceleration to 1% in Tajikistan (Ibid.).

Efforts to limit the spread of COVID-19 will significantly increase trade costs

Being relatively small, and in most cases fairly undiversified, Central Asia economies depend heavily on foreign trade. The ratio of trade turnover to GDP across the region averages 65%, higher than the 58% OECD average (World Bank, 2020[5]). This is despite the fact that their location and landlocked position impose higher transport costs. As a recent OECD-ITF project demonstrated, these costs are in many instances increased by poor trade facilitation and inadequate connective infrastructure (ITF, 2019[6]). The distance penalties that affect producers in Central Asia are only partly a product of geography – they are also the consequence of policy. Prior to the crisis, governments in the region were working to address this, reducing physical infrastructure bottlenecks and improving border procedures and other aspects of trade facilitation. These gains, however, have been put at risk by the ongoing crisis.

As countries in Central Asia progressively closed their borders with neighbours and restricted internal movement of people and goods to stem the spread of COVID, value chains became disrupted. These value chains – as well as the availability of domestic goods and the concomitant question of food security – were further imperilled by border restrictions imposed by China, Iran and Russia. In particular, exports from most countries in Central Asia to China, a crucial destination for many exporters in the region, sharply decreased as the COVID-19 crisis unfolded (Figure 3). A number of high value adding sectors, such as petrochemicals and garments, may continue to be affected by both lower global demand and remaining restrictions on the movement of labour and goods. In the short- to medium-term, lower and more expensive trade have an impact on consumption, but equally important is that over the long-term it risks further reducing the manufacturing competitiveness of a region where connectivity and regulatory barriers already create significant costs.

Figure 3. January-October 2020 change in exports to China



Note: The chart details the relative importance of the Chinese market for Central Asian exports, and gives an indication of the impact of the decline of trade with China on public finances.
Source: (Customs Agency of the People's Republic of China, 2020[7])

Shrinking budget revenues will limit governments' ability to respond to the crisis

As domestic growth and export revenues fell, public finances have come under strain. The shock of the global drop in commodity prices – a trend already seen in 2016 – had a particularly strong impact on countries with large extractive sectors. The combination of reduced export earnings, particularly for hydrocarbon exporters such as Kazakhstan and Turkmenistan, and significant trade disruptions will narrow the fiscal space for governments to respond, limiting their ability to stimulate local demand, support businesses, and address long-term priorities.

Declines in domestic fiscal revenue are likely to have put a severe strain on public finances. Falling domestic consumption will hit VAT revenues and risks having a significant impact on state revenues at a time where governments look to provide fiscal stimulus packages and maintain support to their private sectors to mitigate the economic fallout. With high levels of employment informality and a small corporate tax base, indirect taxes comprise a substantial proportion of tax contributions to budgeted revenues in each country of Central Asia, with the regional average VAT contribution to government revenues of 35.75% significantly higher than the 20.4% OECD average (National accounts of Kazakhstan, the Kyrgyz Republic, Tajikistan and Uzbekistan) (OECD, 2020[8]). Declining economic activity and fiscal measures adopted by governments will also lead to significantly reduced tax receipts from personal and corporate income taxes, as well as through lower levels of customs duties.

The ability of Central Asian countries to implement similar emergency measures to those were undertaken by OECD members is constrained by limited budgets and far more expensive government borrowing. For example, Uzbekistan and Tajikistan's 10-year dollar denominated bonds had current yields of 4.75% and 7.125% respectively as of July 2020, while Kazakhstan and Mongolia's 5-year bonds are currently yielding 5.125% and 9.25% in summer 2020 - with growing uncertainty in the global economy, the cost of borrowing may continue increasing in the coming years (CBonds, 2020[9]).

Fiscal space in these countries is therefore likely to shrink further as the economic effects of the pandemic continue to be felt, with the possibility that governments will move to cut spending at a time where interventions will be necessary, or seek alternative sources of funding. Most countries of the region have received emergency financing from international donors, including the IMF and the EU, however higher public debt will also limit future spending capacities and public investment.

A number of countries face a serious risk of indebtedness

Before the COVID-19 outbreak, the level of international reserves and debt ratios were seen as broadly adequate and sustainable across the Central Asian region (IMF, 2020[10]). The sharp declines in commodity prices and remittances, as well as the cost of the fiscal support packages undertaken by governments have increased debt ratios, while expectations of further downside risks have put pressure on local currencies and sovereign spreads. The latest estimates suggest an increase in debt-to-GDP ratios in 2020 by 3 percentage points in Kazakhstan (to 23.1% of GDP), 7pp in Tajikistan (to 51.8%), 8pp in Uzbekistan (to 36.9%), and 15pp in Kyrgyzstan (to 69.2%) (IMF, 2020[10]). Moreover, as these figures are based on an assumption of recovery in 2021, they may increase further if other downside risks materialise. With higher costs of debt servicing and refinancing, the impact of increased debt will likely be felt for several years, reducing fiscal space at a time when governments will be looking for ways to support economic recovery.

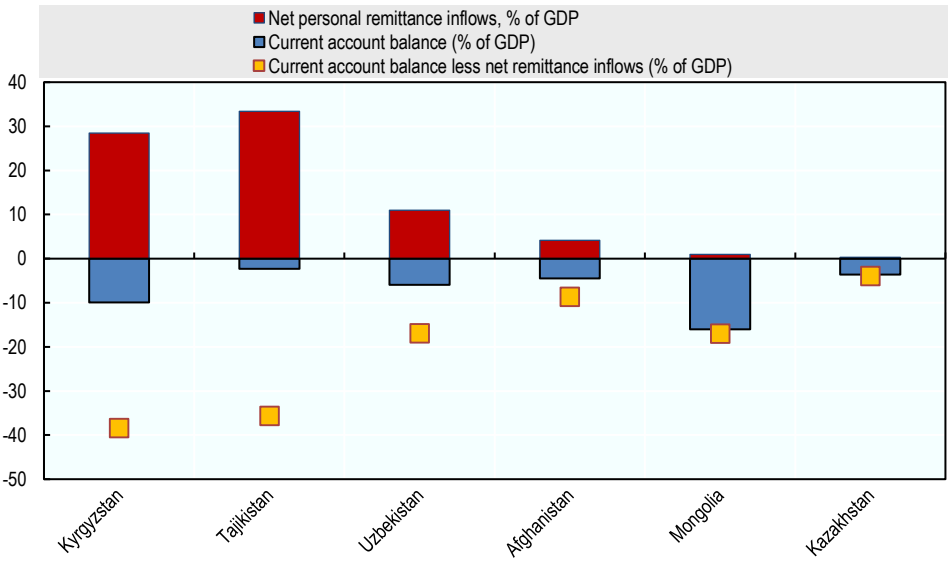
In addition, global financial conditions have tightened markedly, with large portfolio outflows, a strong decline in equity markets, in particular for energy sectors, and a rise in global risk sentiment, which has led to an increase in 10-year government bond yields and sovereign spreads (IMF, 2020[10]). This tightening might prove to be a significant challenge for the region's economic stability, particularly for countries with high levels of dollarised debt financed primarily by export revenues. Almost all of Tajikistan and Uzbekistan's debt, for instance, is dollarised (100% and 97% respectively), leaving them vulnerable to exchange-rate depreciation – for Tajikistan, which has significantly lower gold and international reserves than Uzbekistan, the challenge is particularly acute. Kazakhstan is somewhat less exposed since only 35% of the country's debt is denominated in dollars or euros (Reuters, 2020[11]).

Falling remittances will further squeeze consumption and government revenues

Russia's decision in March 2020 to close its borders to non-Russian citizens, though subsequently relaxed in respect of citizens of the Commonwealth of Independent States[1], highlighted the dependence of many Central Asia economies upon that country for employment. In Tajikistan and Kyrgyzstan, for example, where the domestic private sector has been unable to provide a sufficient quantity of quality jobs, labour migration has been an economic lifeline for many households, with remittances accounting for around 30% GDP in both countries (World Bank, 2019[12]) (EBRD, 2019[13]). Yet the countries to which labour has traditionally migrated – in particular, Russia and, to a lesser extent, Kazakhstan – are themselves highly dependent on the export of commodities. Recession in such economies will have an impact on the demand for labour, invariably affecting many households across Central Asia. By the end of Q3 2020, remittances from Russia to the Central Asian states had fallen on average by around 20%, with significant variation across the five countries– Kyrgyzstan had seen the largest decline at 35%, with Tajikistan the second worst affected with a 18% decrease in remittances received (Central Bank of Russia, 2020[14]).

[1] On 18 April, the Russian government issued a decree that automatically extended work permits and labour patents until 15 June, giving a temporary reprieve to migrants stuck in the country (Republic of Uzbekistan, 2020[271]).

Figure 4. The decline in remittances and its impact on current account deficits



Source: National banks of Kyrgyzstan, Tajikistan, Uzbekistan, Afghanistan, Mongolia and Kazakhstan

Even if *de jure* restrictions are eased or lifted, the longer-term economic consequences of a prolonged recession in key migrant destinations are severe for many of Central Asia's economies. Any significant fall in remittance revenues would therefore have serious implications for Central Asian economies' current account deficits (Fig. 4). In a region where household savings are low, this collapse also risks significant immediate consequences for many of Central Asia's most vulnerable, and the World Bank estimates that an additional 1.4 million people will likely fall into poverty in the region (World Bank, 2020[15]). The implications for households, businesses and governments are therefore severe, and underscore the need to develop better domestic economic resilience.

Pressures arising from COVID-19 underline the importance of improving the business environment in Central Asia

The challenges outlined above relating to the arrival of COVID-19 in Central Asia and in the markets upon which the region is dependent serve as a stark reminder of the importance of the reforms for the legal environment for business discussed in this report. Many of these policy issues – from the important role of commodity trade to the significance of migration for domestic labour market and household consumption – partly reflect the relative weakness and inability of countries' private sectors to assume a larger role in providing jobs and revenues and driving economic development. Addressing the widespread barriers to private sector development and investment, many of which are discussed in this report, can contribute to tackling the vulnerabilities of economic growth models in Central Asia, which for too long have remained overly concentrated, shared gains too unevenly, and been vulnerable to external shocks.

It is therefore essential that, in dealing with the immediate and medium-term social and economic consequences of the COVID pandemic, governments are able to maintain momentum of structural and legal reforms that will increase long-term resilience. The lack of business environment reforms that could have facilitated the emergence of a more robust private sector, healthier competition and greater levels of investment reduces governments' capacities to endure exogenous shocks and weather their domestic effects on unemployment, revenues and economic opportunities. It is on these reforms that this report focusses, with the aim to help governments of Central Asia develop their private sectors and increase investment.

The importance of legal environment for private sector development

There is a growing consensus amongst practitioners and academics that the legal environment and the institutions which comprise it that determine to a considerable extent a country's long-run economic performance (Acemoglu, Robinson and Johnson, 2005[16]; Rodrik, Subramanian and Trebbi, 2002[17]). A strong legal environment can stimulate private sector activity by giving security and predictability to property rights, creating the regulatory stability necessary for long-term decision-making, whilst ensuring that, free from excessive political control, capital and labour inputs are more effectively utilised (Acemoglu and Robinson, 2008[18]; North, 1990[19]).

A number of aspects of a country's legal environment can have a particularly strong impact on the health and competitiveness of its private sector. Both domestic businesses and international investors, for example, can be encumbered by overly complex and unpredictable business regulations and tax rules, poor access to land, cumbersome processes for obtaining permits or licences, weak or inefficient courts and a general lack of information and transparency.

Where deficiencies in these aspects of the legal environment can adversely affect the competitiveness of an economy by raising the cost of market entry and operational costs once a firm is established, their strength can act as a signalling mechanism, assuring entrepreneurs and investors of the rule of law and regulatory stability (Rodrik, Subramanian and Trebbi, 2002[17]). This is particularly important for economies with large extractive sectors where these sectors are their primary link to the international economy, with regulatory predictability and security from expropriation needed to justify extremely large capital expenditure and the long periods before returns on investment (Shafer, 1994[20]).

Yet small and medium firms are also very sensitive to the legal and regulatory conditions in which they operate. Indeed, in many respects they are even more sensitive to it, inasmuch as they lack the financial resources and political muscle that often enable large firms to provide public goods like security for themselves or to influence public policy and thus to shape the conditions in which they operate. That is why, for example, large, well-capitalised firms in the extractives sector can sometimes operate in extremely poor institutional environments. Moreover, many regulatory and other policy barriers may largely involve fixed costs. Thus, other things being equal, larger firms are better able to bear the costs of many regulations or procedures that would be disproportionately costly for their smaller competitors. In addition, unlike small and domestic businesses, larger firms may also be able to get around cumbersome legislation through direct business-to-government negotiation.

Defining the legal environment for business

Given its multidimensional nature, establishing a common understanding of the legal environment for business is a contentious endeavour. For the *Improving the Legal Environment for Business in Central Asia* project, the "legal environment" encompasses policy, administrative, regulatory and other legal areas that affect businesses operations. Accordingly, the project examines ten dimensions for analysis (Table 2), each of which is comprised of a number of sub-dimensions and associated indicators. These dimensions were analysed in a series of consultations with governments of the region, foreign investors, the domestic private sector, international partners and OECD experts.

Table 2. Dimensions of analysis

Dimension	Example sub-dimensions	Example indicators	Significance
Legal and regulatory framework for investment	Overall legal framework for investment	How does the government balance policy flexibility with regulatory stability and predictability for investors?	Can investors be certain that changes in government policy will not deteriorate the business climate?
	Intellectual property rights	Has the government ratified relevant international IPR conventions and enacted the necessary domestic legislation to ensure enforcement?	Can investors be confident that IPR relating to imported technology or goods will be reliably enforced?
Taxation	Income tax	Can small businesses use cash accounting for income tax purposes?	Is the administrative load adjusted in line with reduced capacities for smaller firms?
	VAT	Is there a revenue threshold under which small firms are not obliged to register for VAT?	Is the complexity of the tax regime reduced for smaller firms?
Land legislation	Overall framework for land use	How are land rights allocated and protected at the national and sub-national level?	How simple is the administrative process for foreign and domestic businesses to access land?
	Land market	Are there restrictions to selling or mortgaging land?	Are foreign firms able to purchase land and therefore be more inclined to invest in land improvements?
Registration procedures	Design and implementation	Is there a one-stop-shop for registration?	How easy is it for firms to register and obtain government services?
	Performance	What are the registration costs as percentage of GNI?	Does the cost of registration act as a deterrent to business formalisation?
Contract enforcement	Effectiveness of judiciary in enforcing contracts	Do national laws define the validity and enforcement of foreign arbitral awards?	Can foreign investors be confident that international agreements and judgements will be fairly enforced in domestic courts?
	Alternative dispute resolution	Do national laws recognise ADR mechanisms?	Can the cost of dispute resolution be lowered through alternative mechanisms?
Operational environment for SMEs	License procedures	Is there freely-available guidance on the licensing process for SMEs?	Do businesses have easy access to information that allows them to operate efficiently and legally?
	Monitoring and streamlining	Does the government have a systematic overview of all the different licensing authorities?	Are licenses identified for simplification or elimination those that are the most costly and least efficient?
Trade facilitation	Access to information	Is information on customs procedures available online?	Can foreign and domestic businesses easily access the most current tax rules to ensure legal compliance?
	Coordination with external agencies	To what extent to other agencies involved in customs-related processes exchange information and co-ordinate with each other?	Is there a risk of policy contradiction across government agencies, for example, between the tax and customs authorities?
Expropriation regime	Core principles	What are the explicit and well-defined limits on the ability of the government to expropriate?	Can businesses be certain that their investments will not be at risk from the government's expropriation guidelines?
	Compensation	How is compensation calculated?	If expropriated, can investors be certain that compensation will correspond to the fair market value of their investments?
Exit mechanism	Design and implementation	Are there early warning systems to help identify financially distressed firms?	Can costly market exit be avoided for businesses with potential to restructure?
	Performance and evaluation	What is the average cost of insolvency proceedings as a percentage of the estate?	Are creditors or debtors likely to be dissuaded from formal court proceedings due to cost?
Public-private consultations	Frequency and transparency	Is there a legal requirement to conduct PPCs to inform the private sector of business-related legislative changes?	Are foreign and domestic businesses likely to be kept informed regarding anticipated legislative requirements that affect them?

Dimension	Example sub-dimensions	Example indicators	Significance
	Private sector involvement	Is registration to PPCs open to all interested parties?	Can new market entrants be sure that their voice will also be heard by policy makers, and therefore ensure that incumbents do not have an outsized role in the policy making process?

Note: On average, each dimension has three sub-dimensions each with 10 indicators.

This report offers targeted advice to Central Asian governments on improving the legal environment for business

The purpose of this report is to offer targeted advice to the governments of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan on how to improve the legal environment to create a better and more attractive climate for business and investment.

Drawing upon original data collected in each of the project countries, with input from government and the private sector, the project has conducted an analysis of the legal environment for business across the region. Based on this analysis, the project has defined a number of country-specific recommendations, ranging from trade facilitation measures to tax administration, which can have a meaningful impact on the business climate in each country, lowering the cost of doing business and making their economies more attractive to international investors.

Box 1. Legal Environment for Business Assessment: Methodology

The analysis in this report rests on two complementary components. The first of these components comprises two questionnaires:

- The first questionnaire focusses on the ten dimensions noted above, drawing upon the OECD *Policy Framework for Investment*, *SME Policy Index*, and the *Trade Facilitation Indicators*;
- The second questionnaire is employed by the Investment Division of the OECD Directorate for Financial and Enterprise Affairs (DAF) for the purposes of the OECD *FDI Regulatory Restrictiveness Index*.

These questionnaires were issued to the governments of participating countries and to local experts, with their input collected and analysed by staff at the OECD's Global Relations Secretariat and DAF. Both questionnaires can be found in Annex A of this report.

The second methodological component of this project involved a series of private- and public-sector consultations. The project organised a workshop in each of the project countries, as well as roundtable meetings with local and international entrepreneurs in each of the countries and at business associations in Paris, and held bilateral meetings with individual policy-makers, entrepreneurs and investors from or active in the region.

Whilst many of the most important aspects of the legal environment for business are addressed in this report, a number of them – notably corporate governance, competition and SOE reform – are not. These areas fall outside the scope of this project, but if governments in the region really want to improve their business climates, then credible commitments to address these challenging policy areas are also necessary.

Similarly, while horizontal issues such as digitalisation and diversification are not treated as individual dimensions of analysis, they are nevertheless discussed where relevant to the ten areas outlined above. Digitalisation, for example, features prominently in discussions on trade facilitation, the operational environment for SMEs, information availability for investors and businesses, and taxation. Yet, while many governments in the region have redoubled efforts to expand the range of digital services available to firms

and citizens in light of COVID-19, the expansion and effectiveness of such services may be impeded by the lack of progress on other key reform areas not discussed in this report. In Kazakhstan, for example, a relatively low level of entry restrictions for inward investment into the telecommunications sector is contrasted with significant competition-related barriers in network sectors, as demonstrated by the country's above average score in the OECD Product Market Regulation Index (Figure 9). Reforms in network sectors could not only increase their attractiveness for investors, but, by lowering costs for consumers and raising service quality, would invariably improve the ability of governments to delivery on the many digital elements of the legal reforms discussed in this report and increase the overall digital connectivity of the country.

The legal environment for business in Central Asia: Progress and Challenges

Unlike Central Europe and the Baltic states, the countries of Central Asia had limited pre-socialist legal and institutional experience of market economies (Johnson, Kaufmann and Shleifer, 1997[21]; Gray and Hendley, 1995[22]). At the beginning of the 1990s, Hungary, for instance, could call upon its well-developed pre-socialist legal and institutional legacy as a framework for post-socialist development. Further, whereas Central Europe and the Baltics had deep economic linkages with developed European economies before – and even during – socialism, the same was not true for any of the Central Asian states.

Given this background, the initial speed and scale of the introduction of new market-oriented laws and institutions across the region in the first decades of their independence was remarkable. Many of the essential legal components required for well-functioning and competitive market economies - as open to foreign investment as domestic - were put in place, with laws passed that governed private property and its exchange, competition, anti-monopolistic activities, the licensing and operation of firms and the governing of investment. More recently, all governments of the region have tried to strip back bureaucratic hurdles and make it easier for citizens to pursue entrepreneurial activity by streamlining business legislation, lowering the number of licenses and permits, and creating one-stop-shops for businesses, as well as making it easier for firms to trade across borders. Registration, once an onerous and expensive task, is now relatively quick and affordable in most of the region, with Kyrgyzstan and Kazakhstan moving towards digitally delivered government-to-business services, thereby further reducing the barriers to establishing a business. Bankruptcy and exit mechanisms, too, have greatly improved, with governments having adopted procedures that are less punitive for entrepreneurs and more secure for creditors.

Accompanying these domestic reforms has been a steady enthusiasm for internationalisation, with each of the countries adhering to a number of the international organisations and instruments that enable and govern foreign trade. For example, with the exception of Tajikistan, all the countries of Central Asia have ratified the Convention of the International Centre for Settlement of Investment Disputes, and all but Turkmenistan are signatories to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Kazakhstan, Kyrgyzstan and Tajikistan have joined the World Trade Organisation, with Uzbekistan an observer, and all the countries of the region have joined the World Intellectual Property Organisation.

With the attraction of FDI a priority across Central Asia, each country in the region has developed a relatively sound legal framework for investment

The countries in the region – and indeed throughout much of the former Soviet Union – have much in common in terms of their reform trajectories. Legislative and institutional innovations have frequently been copied from one country to the next, sometimes with the assistance of the same development partners. On paper, countries in the region generally have a modern legislative framework governing investment, often with new investment laws or the equivalent and with a new or revamped investment promotion agency. They have all made significant efforts to improve their rankings in the World Bank's Doing

Business indicators. Similarly, the four countries included in the OECD FDI Regulatory Restrictiveness Index have relatively few restrictions on foreign investment.

The countries of Central Asia have reformed their investment climates along parallel trajectories, albeit at varying speeds. Significant legislative renewal has taken place throughout the region, and on paper each country is endowed with a fairly modern framework for the regulation of investment. Uzbekistan has a new Law on Investment and Investment Activities (2019); Tajikistan has a Law on Investment from 2016; and Kazakhstan introduced an Entrepreneurial Code in 2016 which superseded the 2003 Investment Law. Only in Kyrgyzstan is the Investment Law (2003) from the earlier 2000s, with Turkmenistan's Law on Foreign Investment (1993) the most dated investment legislation in the region.

While a vigorous reform agenda can bring about rapid change and provide an important signal to potential investors, in many cases, the pace of legislative change has been so rapid as to raise compliances cost for investors significantly. Reforms are necessary and valuable in many areas, but regulatory change imposes costs and repeated changes can cause uncertainties and compliance costs. Regulatory stability has value in itself and should be included in the cost/benefit analysis for new regulation (OECD, 2017[23]).

To compensate for the uncertainty for investors from frequent regulatory changes and for the higher perceived risk from investing in the region, some governments in Central Asia have frequently had recourse to stabilisation clauses which guarantee regulatory stability for an investor for a predefined period in the event that subsequent regulatory reform has an impact on its operations. For Kazakhstan, such clauses are only available for strategic or priority investment projects. In Uzbekistan, the Investment Law guarantees regulatory stability for a period of ten years.

Specific commitments for regulatory stability should not, however, be seen as a permanent substitute for a broadly sound legislative and regulatory environment. They can unnecessarily delay the impact of any legislative reform, such as for environmental regulations. An alternative – and more flexible – approach might be to include a provision on indirect expropriation in the investment law which provides certain guarantees to the investor that regulatory changes will not erode significantly the value of its assets. This guarantee is often clearly circumscribed and excludes measures related to e.g. health, public order or the environment. Indirect expropriation is currently not clearly covered in the domestic investment legislation in much of the region.

Legislative reform has been matched by institutional innovations

Many countries comprising the former Soviet Union have established a Business Ombudsman to resolve disputes, building on, for example, the successful example of the Korean Ombudsman. This includes Russia, Georgia and Ukraine, but now also Kazakhstan, Kyrgyzstan and Uzbekistan. An ombudsman is a useful tool in many contexts and this is equally true when it comes to resolving investor grievances. But success is not always assured and it can take time to develop a reputation for objectivity. A key challenge is in choosing a person for the role with sufficient political influence (or soft power) while at the same time being seen by investors as impartial. The recent appointment in Kyrgyzstan of the former UK ambassador in Bishkek represents an interesting experiment for which it is too soon to assess the impact.

Another institutional innovation has been the Foreign Investors Councils (FIC), as well as Councils for Improving the Investment Climate. The most recent FIC was created in Uzbekistan in 2019 with the assistance of the EBRD. These Councils are usually chaired at a high level and meet a few times each year, with the participation of government officials, development partners and the private sector, including chambers of commerce. They can provide a useful platform for maintaining the impetus for business climate reform, but based on the experience of such councils worldwide, much of the work usually takes place in more technical working groups.

When investor grievances turn into disputes, a third institution established in all four countries, namely International Arbitration Centres (IAC), can help. Such Centres are usually affiliated with the local Chamber of Commerce and Industry and offer both mediation and arbitration.

However, necessary structural reform and implementation have slowed across the region over the last five years

While there have been a number of reforms to the legal and administrative environment for business, these have generally concerned the easier to address — though still significant — realms of registration and licensing. Indeed, with a number of indicators in the World Bank's *Doing Business* report, several countries in Central Asia now outperform OECD members, particularly as regards starting a business (Table 3) (World Bank, 2020[24]).

Table 3. Starting a business in Central Asia

Country	Rank on Starting a Business	Improvements in ranking since 2017	Procedure (number)	Time (days)	One stop-shop for registration
Kazakhstan	22	+23	4	5	Online and physical
Kyrgyzstan	42	-12	4	10	No
Tajikistan	36	+49	3	7	No
Uzbekistan	8	+17	3	3	Online and physical
OECD high income	**52**	**-**	**4.9**	**9.2**	**-**

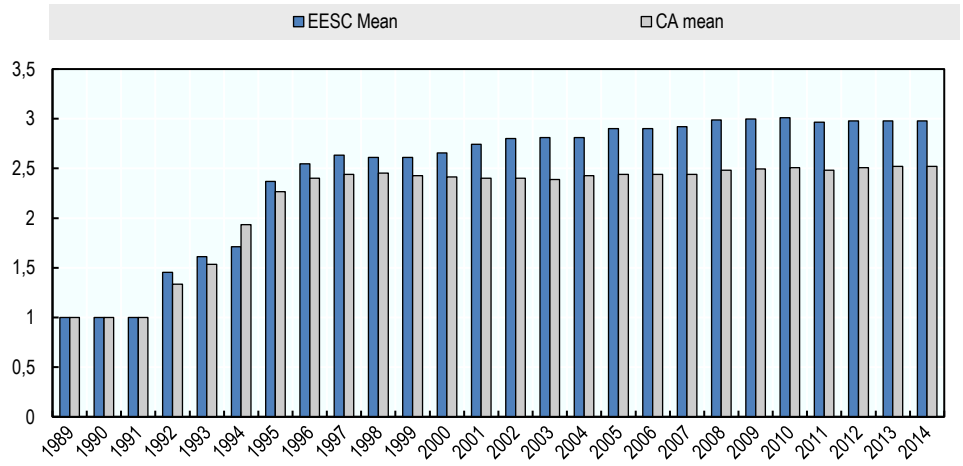
Note: The OECD average for 2017 has not been included due to membership enlargement.
Source: (World Bank, 2020[24])

Though Central Asian countries have made some impressive strides, important challenges remain. Unpredictable tax policies, predatory tax administrations and frequent business inspections combine to hamper business activities across the region. In addition, businesses have repeatedly told the OECD how, in attempting to adhere to the regulations of their markets, they risk being undercut by informal firms.

A more fundamental problem is that any improvements to the operational environment for business in Central Asia – and there have been many in recent years – take place within legal environments that, in a broader sense, still lack certain fundamental pillars of a market economy, including open competition and good governance. Another issue is that implementation failures and weak state capacities mean that promising *de jure* reforms undertaken by the authorities fail to improve the *de facto* experience of economic actors on the ground. State intervention in Central Asia economies remains extensive, limiting firm entry and development, especially in regulated sectors. The OECD economy-wide Product Market Regulations (PMR) indicators measure the regulatory barriers to firm entry and competition in a broad range of key policy areas. Kazakhstan is the only country taking part in the exercise in the region. The OECD PMR show that there is still a very high state control on the economy in the country, with the state holding major equity shares in companies in regulated sectors and owning the national gas, railway and airway companies (OECD, 2018[25]). In Uzbekistan, SOEs maintain a similarly dominant role in the economy, with enterprises that often perform sector supervision and regulatory functions (Abdullaev, 2020[26]). This practice has also been observed in other economies of the region.

Underpinning this challenging legal environment for private sector activity has been a lack of meaningful structural reforms with respect to some of the key pillars of a market economy, in particular large-scale privatisation, competition, and governance. The EBRD in their *Transition Indicators* (1989-2014), for example, suggest that the countries of Central Asia, on average, have done relatively little to reform key institutions, and regulatory/legal arrangements between the period of intensive reforms in the early 1990s and the end of the commodity super-cycle in 2014 (Figure 5).

Figure 5. Intensity of structural reforms in Central Asia, 1996-2014



Source: (EBRD, 2014[27])

It is perhaps significant that the intensity of reforms declined as the Central Asian economies began to recover in the mid-1990s and then picked up again in the wake of the economic shocks of 2014-15. This is a common pattern globally: when external conditions are favourable to growth, the pressure for reform declines, only to rise again when conditions are less favourable (Helbling et al., 2004[28]). The problem is that reforms that emerge in response to crises or negative shocks are often pursued in haste and with limited resources, leading to a higher failure rate (Tompson, 2009[29]). The challenge, then, is to sustain reforms through the good times in order to engineer sustained, long-term improvements in performance.

These issues – stalling structural reform and poor implementation – are compounded by a lack of capacity in the public sector and judiciary, corruption and widespread informality. These impede firms' day-to-day operations, deter investment and reduce the appetite of enterprise to engage with public institutions. The OECD has identified country-specific priorities that reflect the heterogeneity of legal and institutional challenges in the region.

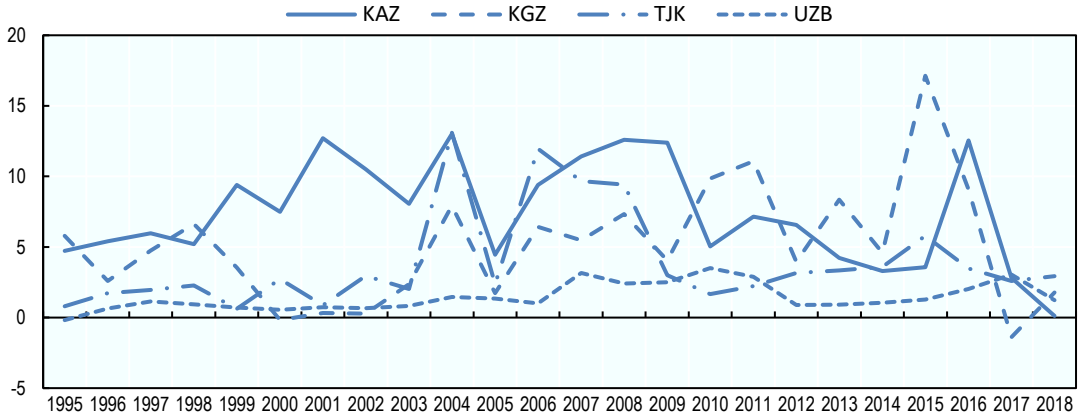
Whilst there are a number of common legal and regulatory challenges across the region, they manifest themselves in different forms in each country. Therefore, while it is important to recognise regional priorities on which Central Asian countries may be able to co-operate, policies to improve the legal environment for business must be targeted to local conditions.

Weak implementation and unaddressed structural reforms have undermined investment attraction

Despite notable legal and policy improvements, FDI into Central Asia remains low

Despite notable improvements and innovations, the region continues to have difficulty in attracting foreign investment – particularly into non-extractive sectors. FDI as a percentage of GDP in the region is low both by historical standards and relative to many other countries, particularly for investments outside of the extractive sector which dominates inflows in some countries in the region (Figure 6).

Figure 6. FDI Inflows in Central Asia, 1995-2018 (% of GDP)



Source: (World Bank, 2020[1])

Investment inflows to individual countries in Central Asia also originate in relatively few countries. An additional factor that might exacerbate this difficulty is the lack of progress in regional integration, despite encouraging signs recently which could offer potential investors a regional market of 66 million people.

The region scores between the OECD and non-OECD averages in the OECD FDI Regulatory Restrictiveness Index

In spite of genuine progress in developing the legal framework conditions for investment and private sector development, the region is still not living up to its potential in terms of foreign direct investment (FDI) attraction. Indeed the region is *underperforming* on investment attraction relative to Central Asia's performance in the OECD FDI Regulatory Restrictiveness Index (Box 2 and Figure 7). Similarly, whilst there are exceptions – notably in media, transport, agriculture and certain business services – there are now relatively few sectoral restrictions that remain in Central Asia (Figure 8).

Box 2. Calculating the OECD FDI Regulatory Restrictiveness Index

The OECD FDI Regulatory Restrictiveness Index covers 22 sectors, including agriculture, mining, electricity, manufacturing and main services (transport, construction, distribution, communications, real estate, financial and professional services). Restrictions are evaluated on a 0 (open) to 1 (closed) scale. The overall restrictiveness index is a weighted average of individual sectoral scores.

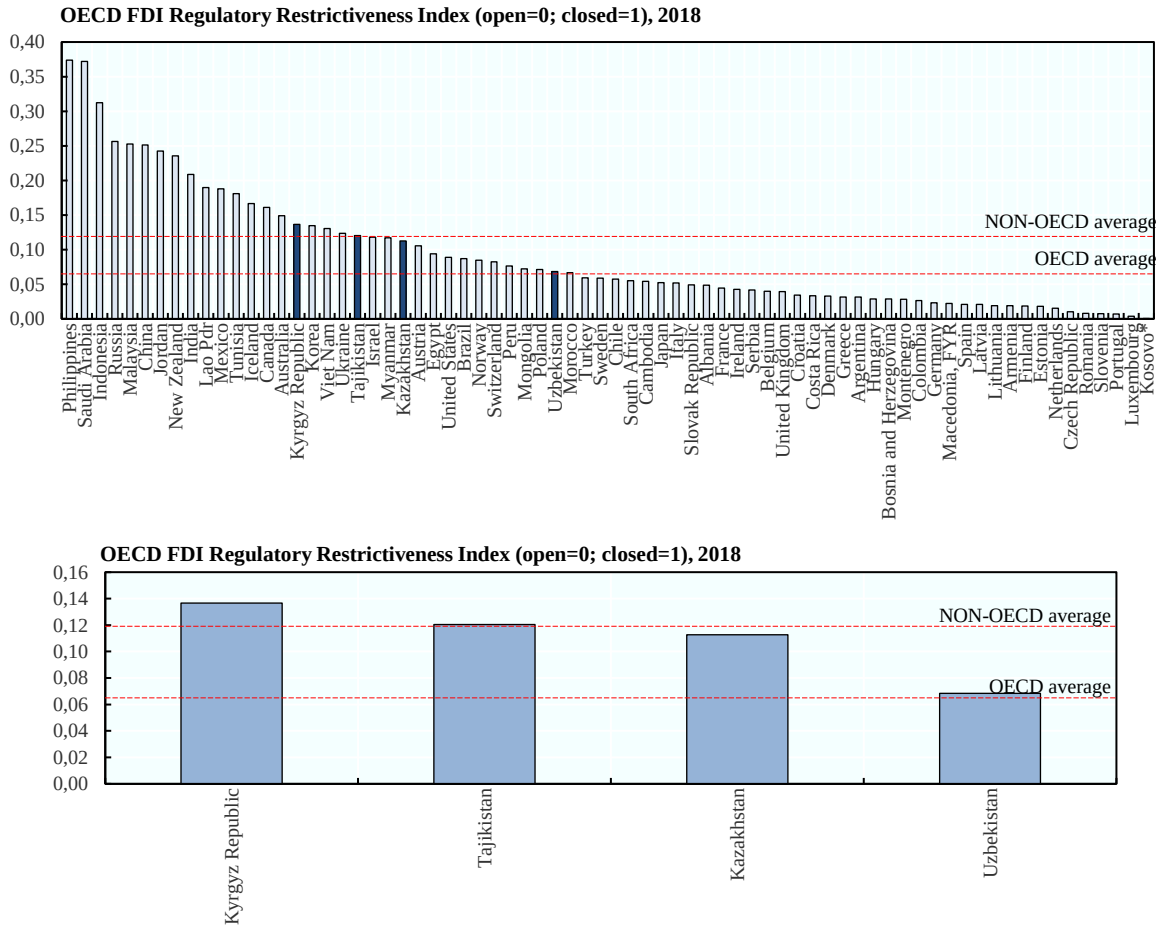
For each sector, the scoring is based on the following elements:

- the level of foreign equity ownership permitted;
- the screening and approval procedures applied to inward foreign direct investment;
- restrictions on key foreign personnel; and
- other restrictions such as on land ownership, corporate organisation (e.g. branching).

The measures taken into account by the index are limited to statutory regulatory restrictions on FDI, typically listed in countries' lists of reservations under Foreign Trade Agreements (FTAs) or, for OECD countries, under the list of exceptions to national treatment. The FDI Index does not assess actual enforcement and implementation procedures. The discriminatory nature of measures, i.e. when they apply to foreign investors only, is the central criterion for scoring a measure. State ownership and state monopolies, to the extent they are not discriminatory towards foreigners, are not scored. Preferential treatment for special-economic zones and export-oriented investors or for investment from a treaty-covered country is also not factored into the FDI Index score.

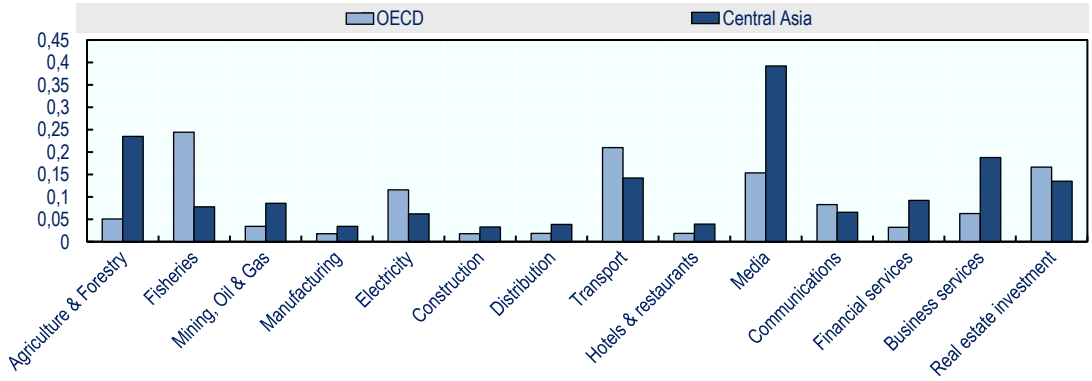
Source: For more information on the methodology, see (Kalinova, Palerm and Thomsen, 2010[30]). For the latest scores, see www.oecd.org/investment/index.

Figure 7. The OECD FDI Regulatory Restrictiveness Index



Source: OECD FDI Regulatory Restrictiveness Index

Figure 8. FDI Index by sector in Central Asia in 2020



Source: OECD FDI Regulatory Restrictiveness Index

The root causes of the region's underperformance are complex and relate not only to geographical remoteness and small market size but also to the prominent role of state-owned enterprises in the economy and the lack of confidence in the court system's ability to adjudicate disputes. While structural transformation and improvements in the rule of law take a long time to bear fruit, the region can nevertheless build on its performance *in Doing Business* and its relative openness to foreign investment to provide a framework which will allow the economies in the region to live up to their potential as destinations for foreign investment.

Certain policy areas, such as land legislation and intellectual property, remain particularly problematic for foreign investors

Land is often the property of the state in Central Asia, with privatisation of plots increasingly prevalent and leases available for variable durations depending on the nature of the property and the acquirer. Land is usually regulated through a Land Code, and the quality of land administration varies greatly from one country to another. Out of 190 countries in the World Bank's *Doing Business* rankings, Kyrgyzstan (7th) and Kazakhstan (24th) perform relatively well in registering property, while Uzbekistan (72nd) and Tajikistan (77th) are in the middle of the ranking (World Bank, 2020[24]). Other indicators corroborate this picture, with 7% of investors in the World Bank Enterprise survey of Uzbekistan citing land issues as the major business constraint, compared to less than 1% in Kyrgyzstan. Land allocation issues in Uzbekistan are also the main subject of complaints to the Business Ombudsman.

Foreign ownership of land is a complex issue in many countries, closely tied to questions of national sovereignty. Restrictions on foreign ownership of land are common in CIS countries and throughout much of Asia, particularly but not exclusively for agricultural land. Reforms in this area can be contentious, as seen in Kazakhstan in 2016. In many cases, foreigners can own land used for business purposes (e.g. Kazakhstan) or can lease it for long period of time (e.g. Tajikistan). The exception is land used for agriculture or forestry where restrictions are considerable across the region. Foreign ownership of agricultural land is prohibited in all countries surveyed in the FDI Regulatory Restrictiveness Index (Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan), and in Kyrgyzstan and Tajikistan, leases are not permitted.

Ownership restrictions, together with restrictive conditions on leases, come at a cost in terms of raising the productivity of the agricultural sectoral which is fundamental to relieve rural poverty and to promote the economic transformation of the economy more generally. If handled properly, the promotion of sustainable investment in the sector can help to ensure broad-based economic growth, support rural development and raise the competitiveness of local agricultural products in international markets.

Another piece of the land puzzle is the question of property rights. Secure and well-defined land rights encourage new investments and the upkeep of existing investments, as well as sustainable land management. There is commonly insufficient legal protection against terminations or revocations of land use rights by the state. Conflicts concerning land confiscation arise most frequently at the provincial level.

The protection of intellectual property rights is uneven

The overall legal framework for intellectual property (IP) rights has improved throughout the region, in part through ratification of the World Intellectual Property Organisation (WIPO) treaties, but also through WTO accession whether recent or still to come. In spite of that, enforcement remains a challenge, as judges tend to lack specialised knowledge on IP rights. One option would be to create a special court for handling IP rights, but another more direct option might be to improve the capacity of judges, as has been done in Kyrgyzstan, for example.

In Kazakhstan, there is no dedicated public institution responsible for managing IP disputes. In Uzbekistan this is handled by the Intellectual Property Agency. Tajikistan also lacks a dedicated IP agency, with the

result that responsibility for IP protection is spread across several agencies. Kyrgyzstan created a patent agency in 2017.

Uzbekistan is the only one of the five project countries on the Special 301 Watchlist of the US Trade Representative, although it is credited with increasing the political attention paid to IP protection, as well as progress towards a new national IP strategy. Tajikistan was removed from the list in 2019.

Complex business-related legislation, taxation and dispute settlement are common issues in the business environment in the region

Complex and unpredictable regulatory requirements, compounded by weak enforcement and rule of law, may not only deter firm and investment growth, but may also inadvertently lock the nascent private sector into informality, with businesses seeking to minimise interaction with public agencies. At the same time, improvements in the legal and institutional environment that are not accompanied by increased enforcement capacities may enable businesses to avoid perfectly legitimate regulations and taxes.

Therefore, despite improvements in the *supply side* of the legal environment – namely streamlined legislation and improved *de jure* institutions – significant enforcement issues contribute to stunted firm development. Law-abiding firms risk large fines and informal payments through the discretionary actions of enforcement agencies, with other firms eschewing all interactions with the formal economy, actively self-confined to the informal sector with limited scope for growth. Improving the *de jure* legal and regulatory environment for businesses is, of course, important, but it must be accompanied by tangible improvements to the *de facto* operational environment, as well as with improvements to government enforcement capabilities.

The modernisation of judicial systems has improved the procedural efficiency of courts, but businesses continue to express concerns over judicial independence and the enforcement of court decisions, while the use of Alternative Dispute Resolution mechanisms (ADR) remains limited.

Tax regulations and administration are another key concern for the business community, with firms often subject to inconsistent interpretations and struggling to keep pace with changes on tax codes.

Administrative burdens on firms remain high in Central Asia despite recent efforts to modernise, simplify and digitalise procedures. Businesses still struggle with multiple laws and regulations that make compliance costly and time-consuming, creating incentives for firms to operate informally. Enforcement is too often lacking, particularly in the regions, due to a combination of a lack of capacities from public administrations, inconsistent decision-making, and poorly motivated staff. This often leads to informal payments and the revocation of licenses.

Taxation, one of the dimensions analysed as part of this project, is a telling example in this regard. Taxation remains a challenge in each of the five countries, but the exact nature of the challenge, and therefore the legal and policy response required, varies:

- In Kyrgyzstan, the prevalence of individual entrepreneurs, for whom a more beneficial tax rate applies than for SMEs, suggests inveterate economic informality.
- In Kazakhstan, VAT thresholds may create disincentives for firms to develop or may create incentives for them to develop in an informal manner.
- In Tajikistan, periodic pressures on public finances can beget predatory behaviour from a tax administration looking to find alternative revenue streams for the government.
- In both Tajikistan and Uzbekistan, VAT may act as a brake on formalisation: threshold requirements for SMEs create problems for supply chains, with formalised firms undercut by informal firms, and international firms, with stricter accounting requirements, are unable to source local suppliers.

In parallel to the challenges faced by local firms, conversations with a range of international investors in Central Asia suggest that specific taxation issues caused by non-compliance in matters such as double-taxation and environmental penalties cause particular burdens for large, foreign firms.

Since the early 1990s, Central Asian countries have come up a long way with the development of modern judicial systems based on civil law. They have established new institutions and renovated the court systems, improving the efficiency of procedures and developing ADR (World Bank, 2019[31]). Business Ombudsmen have been recently appointed in all countries with the exceptions of Tajikistan and Turkmenistan (RFERL, 2019[32]) (Council of Europe, 2019[33]).

Despite these efforts, the perceived lack of independence and impartiality of the judiciary and poor enforcement of court decisions remain major issues for businesses, particularly when the state or SOEs are involved. Improper influence, corruption and lack of respect for due procedures are some of the main reported issues by companies (EBRD, 2019[34]).

To address those issues, reform efforts should be focused on a first set of country-specific priorities to improve the legal environment for business in Central Asia (Table 4).

Table 4. Overview of identified country-specific reform priorities

	Kazakhstan	Kyrgyzstan	Tajikistan	Turkmenistan	Uzbekistan
Suggested priority area 1	**Operational environment for firms:**	**Operational environment for firms**:	**Legal and regulatory framework for investment**:	**Legal and regulatory framework for investment:**	**Legal and regulatory framework for investment:**
	Implement consistently and thoroughly the new code for entrepreneurs	Streamline the legal environment for entrepreneurs and small businesses, especially legislation and service delivery	Ensure the implementation of existing laws for investment and entrepreneurial activity, and improve the accessibility of necessary information	Enforce, streamline, and publish all legislation on investment on the Ministry of Justice legal database to ensure transparency	Ensure proper implementation of the new investment law and remove sectoral restrictions
Suggested priority area 2	**Contract enforcement:**	**Contract enforcement:**	**Contract enforcement:**	**Operational environment for firms:**	**Operational environment for firms:**
	Improve dispute settlement for all businesses operating in the country	Ensure transparent, fair and efficient contract enforcement for businesses	Improve the enforcement of contracts and arbitral decisions in domestic courts	Develop a simplified targeted legal framework and support for SMEs and small entrepreneurs	Streamline and consolidate business-related legislation and licenses for domestic firms and entrepreneurs
Suggested priority area 3	**Trade facilitation:**	**Taxation:**	**Taxation:**	**Business registration:**	**Taxation:**
	Enhance trade facilitation and improve co-operation between agencies involved in export procedures	Simplify the tax code and tax administration for companies of all sizes	Make tax administration simpler, more consistent and more transparent	Streamline business registration and licensing, and introduce a one-stop shop	Ensure changes to tax requirements are predictable, and improve tax administration for small firms

Notes: Provisional results under discussion with countries.
More details are provided in the country chapter

2 Kazakhstan

Chapter summary

After a decade of fast growth fuelled by high commodity prices, the combined impact of lower global oil demand and price volatility triggered a sharp slowdown in 2015-16. In 2017-18, the economy grew at a more modest rate of 4.1%, still driven largely by oil output and increases in commodity prices, which underpinned rising domestic consumption and positive spill over effects on the non-oil manufacturing and services sectors. Growth moderated in 2019 due to stagnating oil production, low foreign investment, and subdued domestic demand. As in other countries in the region, the impact of the COVID-19 pandemic on Kazakhstan's economy has been severe, with a contraction of 2.7% in GDP in 2020 before an expected return to growth of 3% in 2021.

The diversification of the economy is the main objective currently pursued by the government, with extractive sectors continuing to be the primary target of inward investment. Attracting and securing FDI inflows to non-extractive sectors can support diversification, particularly by facilitating the transfer and accumulation of technologies and knowledge in innovative sectors. Fluctuating oil prices and production partly account for a sharp decrease in FDI in recent years, with inflows falling from 12.4% of GDP in 2009 to an average of 5.7% over 2010-2017 and to 0.1% in 2018.

Over the past few years, incremental progress has been made regarding the improvement of the business climate, notably by reforming the legal and regulatory framework for investment. The country's World Bank "Doing Business" ranking rose from 74th in 2010 to 25th in 2020, a clear acknowledgement of these efforts. However, effective implementation of modern regulatory reforms is needed to give substance to these *de jure* improvements. Limited private foreign and domestic investment in the non-oil sector reflects both the broader issue of the significant state presence in the economy, and issues regarding consistent regulatory enforcement, dispute settlement and taxation.

In the first half of 2020, the COVID-19 pandemic led to reduced state revenues and required government intervention to support businesses and households, further reducing fiscal space. Given the structural challenges facing the Kazakh economy, prospects for resilience will rely on the ability of the social safety net to sustain household consumption and the capacity of the banking sector to provide liquidity to businesses. As Kazakhstan is experiencing new series of lockdown, the capacity of the government to sustain support measures will be challenged and further weigh on revenues and business activities.

The following reform priorities for improving the legal environment for business could support the government in its efforts to attain higher levels of investment and more sustainable growth: 1) consistent and thorough implementation of the new code for entrepreneurs to improve the operational environment for small firms; 2) improvements in access and functioning of dispute settlement mechanisms for all businesses to guarantee effective contract enforcement; and 3) better trade facilitation and improved co-operation among agencies involved in export procedures.

Economic overview

Limited diversification and private sector weakness constrain economic development

In the first decade of the century, Kazakhstan had one of the fastest growing economies in the world, fuelled by rising prices for commodities that the country has in abundance. However, the 2008-09 global financial crisis, followed by the drop in oil and hard minerals prices in 2014-15, demonstrated the vulnerability of Kazakhstan's economy to fluctuations in global markets, reinforcing the need to diversify economic activity, employment and exports (OECD, 2018[35]). Growth slowed sharply in 2015-16 following drop in global commodity prices before recovering in 2017-18 to 4.1%. The COVID-19 pandemic led to a contraction of 2.7% in 2020, with growth expected to return positive in 2021 (IMF, 2020[4]). Growth following the shocks of 2008-09 and 2015-16 was more subdued than in the years preceding them. It is important that policy-makers work to prevent the COVID shock from resulting in a further reduction of long-term trend growth.

While there has been considerable economic and institutional reform since the early 1990s, reducing the role of the state in the economy and spurring private sector development remain crucial issues for the government if it is to improve the business climate. Private investment and the development of entrepreneurship and innovation have been hindered by high levels of state intervention and the extensive presence of state-owned and -controlled entities in the economy (Box 3). In October 2017, SOEs represented 46.9% of all large and 56.5% of medium-sized enterprises (NCE "Atameken", 2019[36]). This, combined with shortcomings in the competition framework, such as a lack of transparency and enforcement of competition law and the subordination of the competition authority to the Ministry of National Economy, has restricted somewhat the role of the private sector in the Kazakh economy (OECD, 2018[35]; OECD, 2016[37]).

The vast majority inward FDI stock remains concentrated in resource extraction, accounting for nearly three quarters of the total FDI stock in 2018. Beyond the oil and gas sector, the government has identified potential for more FDI in alternative natural resource sectors such as agriculture and mining (OECD, 2018[38]; Kazinvest, 2020[39]). Despite a range of *de jure* improvements to the investment climate, Kazakhstan continues to struggle to attract investment to non-resource sectors, particularly in tradable sectors. FDI has increased, albeit at a slower pace, compared to previous decades and represented on average 5.7% of GDP over 2010-2017; in 2018, FDI inflows fell to only 0.1% of GDP (World Bank, 2019[40]).

While a modest growth in the manufacturing share of inward FDI can be observed in recent years, most FDI outside the extraction sector has gone to other activities, including real estate, retail trade and (often non-tradable) services. Yet Kazakhstan needs to develop the production of other competitive tradable goods and services if it is to reduce its exposure to commodity-price fluctuations, stabilise the exchange rate, generate more – and more productive – employment, and foster structural change.

Box 3. State involvement in the economy of Kazakhstan

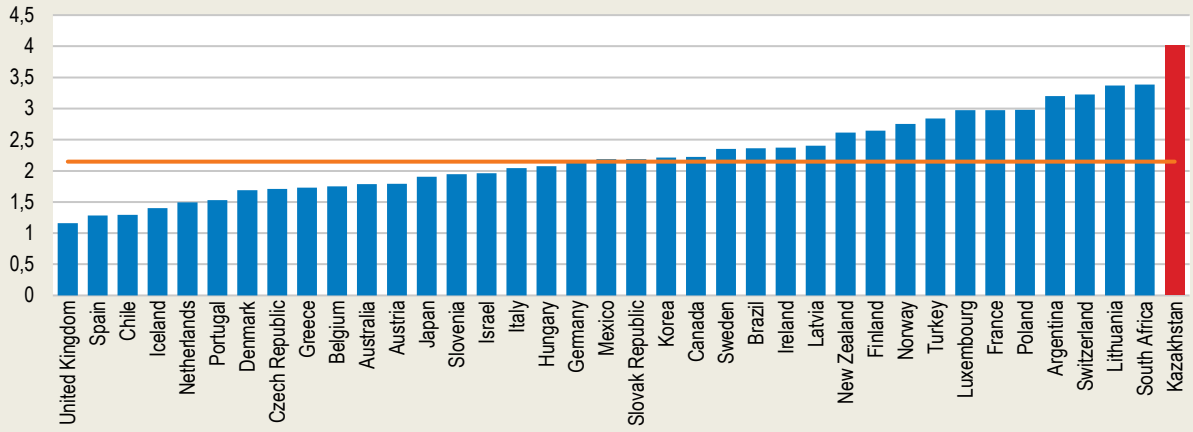
The *OECD Product Market Regulation Indicators* (PMR) measure the incidence of regulatory barriers to competition via distortions induced by state involvement and various barriers that can hamper entry of domestic and foreign firms and products into the market. Indicators are updated every five years in an internationally comparable way to provide guidance on how to make regulation more competition-friendly, learn from international best practices, and track reform progress.

The OECD PMR report for Kazakhstan published in 2019 finds its regulatory stance to be less friendly to competition than most economies mainly due to the distortion of the competitive playing field in favour of SOEs and at the expense of private firms. The high level of public ownership (Figure 9) is not *per se* a major problem, but it creates real difficulties in view of the weaknesses the PMR exercise identifies with respect to the governance of SOEs.

The state owns at least one company in the majority of key fields of activity (16 of the 25 considered by the study), including in a number of manufacturing sectors and financial services. The government also holds equity stakes in the main company in most of the key network sectors (gas, electricity, rail, air and water transport). Most direct state ownership is exercised via the National Welfare Fund Samruk-Kazyna, mainly in network sectors, and its subsidiaries (OECD, 2017[41]). Moreover, Kazakhstan ranks significantly below the OECD average regarding governance of SOEs, as they benefit from special legal frameworks and can receive more favourable treatment at the expense of the private sector.

Figure 9. Public Ownership in Kazakhstan's Economy

Index scale 0 to 6 from least to most restrictive, 2018



Source: OECD 2018 PMR Database (OECD, 2018[25]).

Kazakhstan's problematic banking sector is an impediment to growth

Following the 2008 and 2014-15 crises, the low resilience of the Kazakh banking sector has weighed on the development of the private sector. Businesses in non-extractive sectors suffer from limited access to finance due to the relatively small size of capital markets and the weakness of the banking sector. The liquidity of the national currency remains a challenge, reflecting the high level of dollarisation and tight

monetary policy of the National Bank of Kazakhstan (NBK), as well as the underdevelopment of local money markets (Agris and Nino, 2017[42]).

While international companies and SOEs are mainly financed through FDI and by the state, domestic private sector companies rely on the local banking sector as primary source of funding. The share of credit-constrained MSMEs compared to those needing a loan is extremely high at around 67%, compared to 54% in the CIS excluding Kazakhstan (Agris and Nino, 2017[42]). In addition, borrowing has declined in recent years, with particular constraints on firms outside Almaty and Astana. Complex procedures, high interest rates and stringent collateral requirements are among the main factors that have discouraged firms from obtaining credit (EBRD, 2019[43]).

The SME sector's contribution to growth remains below its potential

The emergence and growth of small and medium-sized enterprises (SMEs) are crucial to economic diversification and private-sector development objectives. However, the contribution of SMEs remains underdeveloped, with many firms engaged in subsistence rather than transformative entrepreneurship and innovative activities. The relatively low percentage of income stemming from new or significantly improved products is indicative (OECD, 2017[23]).

According to official statistics, SMEs in Kazakhstan account for only 26.8% of value-added and 31% of employment, compared to figures around 57% and 60-70% in most OECD economies. In addition, the vast majority of SMEs in Kazakhstan operate in low value-added sectors and only 5.2% are exporters, compared to more than 10% in Kyrgyzstan and Tajikistan and the 22.8% average in Eastern Europe and Central Asia (OECD, 2018[35]).

Some government initiatives to improve the business environment have had limited success

The government repeatedly stated its determination to create an investor-friendly regulatory framework to encourage foreign participation in the domestic economy and streamline the business environment for domestic firms. Key reform priorities have been set out in the *Kazakhstan 2050 Strategy* and in the *National Plan 100 Concrete Steps*. Through these strategies the government has outlined its intention to position Kazakhstan amongst the top 30 global economies by 2050, including by improving the business environment, upgrading technology, modernising the judicial system and law enforcement, and stimulating industrialisation. There have been significant improvements in some of the fundamentals of the business environment, as evidenced in the country's progress in the World Bank *Doing Business* indicators for issuing permits and firm registration, trading across borders, and access to finance (World Bank, 2020[24]).

In 2017, Kazakhstan developed a National investment strategy jointly with the World Bank with a view to increasing total FDI inflows by 25% by 2022, paying special attention to attracting new investors, retaining existing ones, and encouraging reinvestment. The strategy covers new co-ordinating measures to improve the investment climate, privatisation plans and broader economic investment policy.

Kazakhstan improved the simplicity and coherence of its business regulation through the 2016 introduction of the Entrepreneurial Code (EC), and has strengthened protections for entrepreneurs with the establishment of two business ombudsmen. The EC explicitly guarantees protection of investors' rights and property, in particular against expropriation and unlawful government conduct, and consolidated the main pieces of legislation that affected SMEs and entrepreneurs. The Investment Ombudsman and the Commissioner for the Protection of Entrepreneurs' Rights (business ombudsman) support companies that face explicit or implicit demands for bribes or other forms of unfair treatment and can intervene in dispute resolution.

The government has also introduced physical and online one-stop shops (OSS). In recent years, more than 300 public service centres – Kazakhstan's physical OSS – have been opened across the country to deliver government services to citizens and businesses (Prime Minister Office of Kazakhstan, 2019[44]). Kazakhstan has also developed a national digital platform egov.kz for businesses and citizens, where more than 237 online services are available. According to official data, 30 million services were provided online in 2018 and an app has also been created to support the development of e-government (Republic of Kazakhstan, 2020[45]).

Despite *de jure* improvements to the business environment, better implementation is required to make these a *de facto* reality that can benefit firms. Restrictions remain in the legislation for investors, such as exceptions to national treatment in certain sectors, restrictions to the employment of foreign staff and transfer of property (World Bank, 2019[40]).

Responding to the economic challenges of COVID-19 requires both short-term action to meet the crisis and continued reforms to sustain long-term growth

At the onset of the COVID-19 pandemic in Central Asia, general macroeconomic indicators in Kazakhstan indicated solid performance (4.1% of GDP growth in 2019 and unemployment at 4.9%); likewise, public finances appeared relatively sound, with low levels of debt (21% of GDP). However, as in other countries of the region, the crisis has had a severe impact on Kazakhstan's economy, with a contraction of 2.7% in 2020 before a modest return to growth in 2021 (IMF, 2020[4]).

The drop in commodity prices occasioned by the combination of COVID-19 and disagreements between OPEC and some other major oil exporters necessitated a radical overhaul of the Republican budget in early 2020: as adopted, the budget was based on an average annual Brent oil price of 50-55 USD per barrel). By the end of the first quarter, Brent had fallen below 30 USD/barrel. The government responded with expenditure cuts of USD 1.25 bn, and plans to raise taxes on mining and extractive companies (Republic of Kazakhstan, 2020[46]).

The services sector, mainly composed of SMEs, has also suffered. The hit has been particularly severe for retail trade, tourism, and catering, which together are estimated to employ over 1.6 million workers. These sectors were severely affected by the initial containment measures and subsequent lockdowns. As end of July 2020, an estimated 4.5m people had benefitted from public income support of KZT 42,500 to compensate for loss of income; in a country with a total labour force of 9.2m, such a high level of requested support gives an indication COVID-related employment pressures (Kazakhstan Today, 2020[47]). At the beginning of June, the government expected the unemployment rate to increase to 6.1% by the end of the year from the official rate of 4.8% in the first quarter of 2020 (Republic of Kazakhstan, 2020[48]).

Kazakhstan took early measures to prevent the spread of the virus and support its economy when COVID-19 first hit the country

Kazakhstan was the first Central Asian country to record confirmed COVID-19 cases beginning of March 2020 – this despite the introduction of a range of travel restrictions and other measures over the preceding weeks. The government acted quickly to minimise the spread of the virus, declaring a state of emergency, closing all borders to entry of non-citizens, and introducing quarantine and confinement measures in the main cities of Nur-Sultan and Almaty. Air and rail traffic was largely suspended and educational institutions, public places, and non-essential stores were closed. In order to ensure food safety and prevent runs on grocery stores, exports of key food products were banned, while imports of food were maintained, and a cap on food prices was introduced.

By mid-March, as the prospect of increased pass-through inflation due to the depreciation of the tenge and the fall in oil exports (mainly to China and the EU) and prices rose, the National Bank of Kazakhstan introduced measures to limit domestic inflation. It raised the policy (refinancing) rate to 12% (from 9.25%),

its highest point since February 2017, and expanded the interest rate corridor to +/- 1.5%, from the previous corridor of +/- 1%; the deposit rate was left unchanged at 9% (National Bank of Kazakhstan, 2020[49]). In addition, the government introduced foreign exchange controls for SOEs to further support the tenge.

The government also designed an anti-crisis package to cushion the economic impact of the COVID-19 pandemic on the national economy. Measures are to support both businesses, in particular SMEs, and households. The state will finance an extension of the social safety net by providing wage and unemployment subsidies, and food baskets to the most vulnerable populations. In addition, businesses are granted liquidity support, loan guarantees, and temporary tax reliefs to sustain operations and shield employment (Box 4).

Box 4. COVID-19 economic support measures implemented by the government of Kazakhstan

In mid-March 2020, Kazakhstan adopted an anti-crisis package amounting to 10 billion USD (4.4 trillion tenge), equivalent to 9% of GDP. Additional tax breaks and local support were also provided but were not budgeted in the initial package. Likewise, additional measures to support SMEs were drafted by the State Commission, together with the National Chamber of Entrepreneurs. Main measures covered:

Support to workers and social assistance

- The National Fund of Social Security grants wage subsidies, channelled through firms to employees of MSMEs on unpaid leave (42 000 Tenge a month, or 86 EUR, until the end of the emergency situation). Employees who lost their jobs because of the confinement will be compensated at 40% of their former salary for a duration up to 6 months.
- In addition, children and adults from low-income families receiving Targeted Social Assistance (TSA), disabled people, and parents engaged in caring for a disabled child will receive food baskets.

Support to firms

- Firms with a drop in turnover above 40% can get cash support to cover part of their fixed costs (up to 80%), full compensation of fixed costs are provided to firms forced to temporarily close due to the lockdown.
- Payments of VAT and payroll taxes have been deferred and several loan guarantee schemes have been set up to provide additional liquidity to both SMEs and large firms. Public budget rules have been relaxed to encourage frontloading of public consumption and payments to private firms.
- State-guaranteed loans with delayed repayment schedules were designed to provide businesses with liquidity. Subsidised lending has been provided under the state program “Economy of Simple Things” (KZT 1 trillion) which increased the reserve of state-issued credit by KZT 400bn, and reduced associated interest rates from 13-15% to 6%. According to official statistics, more than 1.6 million people and 11.5 thousand SMEs benefited from a deferral of payments of loans, and new preferential loans totalling USD 870 m (360 bn tenge).

Source: (OECD, 2020[50])

Kazakhstan needs to balance planning for economic recovery while mitigating the ongoing threat to public health

After weeks of strict lockdown and quarantine in spring, the government began to ease restrictions on movement and business activity by mid-May. Progressive reopening was expected to limit the negative impact of the pandemic on the country’s economy, by partially relieving the burden on financially

constrained households and businesses. Indeed, recovery support measures to stimulate business activity, support employment and increase incomes were closely followed with the announcement of the “Comprehensive Economic Growth Recovery Plan", which provided for an expansion of the financing schemes set up during the earlier staged of the crisis.

Following surges in new cases in the country in the second part of 2020, the government reintroduced a nationwide confinement in July before changing its approach towards regional assessments of the COVID-19 situation and containment measures in the autumn. The continuing threat of further outbreaks and confinement measures will challenge the ability of the government to prolong its support and of the economy to quickly recover.

Priority areas for reform: implementation of business legislation, dispute and trade facilitation

Priority 1: Consistently and thoroughly implement the new code for entrepreneurs

SMEs continue to face significant obstacles when doing business, particularly with internationalisation, trade, corruption, and informality, the latter possibly reflecting a difficulty or disincentive for firms to comply with regulations (EBRD, 2019[43]).

However, the government has stated that it hopes for SMEs to play a more important role in supporting its economic diversification and job creation agenda. To support the development of SMEs, the government has designed and implemented several strategies and pieces of legislation, including the Roadmap 2020 and the Entrepreneurial Code (Box 5). In addition, it has set up institutions such as DAMU and the Entrepreneur Service Centres to ensure effective implementation of the reform agenda (OECD, 2018[51]).

Box 5. The Entrepreneurial Code of Kazakhstan

The Entrepreneurial Code (EC) was established in October 2015 and integrated all six main pieces of entrepreneurship- and investment-related legislation regulating the relationship of the state with private economic activity. The EC:

- regulates all domestic and foreign business activities (including investment);
- systematises the rights of business entities and the regulation of state-business interaction;
- codifies the circumstances allowed for unscheduled inspections; and
- systematises all forms of dispute resolution, and regulates the role and supervision of the Business Ombudsman.

In addition, the EC has been harmonised with the Civil Code to ensure consistency between different legal texts. The EC does not, however, apply to relations between firms and the customs agency, to subsoil use and the licensing thereof, or to the activities of the prosecutor’s office, the Ministry of Justice or intelligence and national security.

Source: Entrepreneurial Code of Kazakhstan; (OECD, 2018[51])

The creation of Public Service Centres has simplified G2B services

Through the EC and other changes to the regulatory requirements for business, the government has simplified the *de jure* operating environment for firms. In addition, the government has begun to create new public agencies responsible for reform implementation and delivering more streamlined government

services to the private sector. For example, sector-based self-regulatory organisations (SROs) have been created to supervise the implementation of licensing procedures (OECD, 2018[51]). Similarly, newly created "Public Service Centres", a network of OSS for licensing and permits, have been established. Importantly, the physical centres have been accompanied by a programme of digitalisation and the creation of an online platform. A number of procedures may now be completed online at the www.e.gov.kz portal.

The effective impact of these measures on the administrative burden on firms, however, has yet to be assessed. In particular, businesses have indicated that some key licenses have been left outside the scope of the OSS, and that they lacked information on new licenses required at the OSS. Ensuring that businesses are consulted and given information ahead of time is essential to enable businesses to comply with changing requirements.

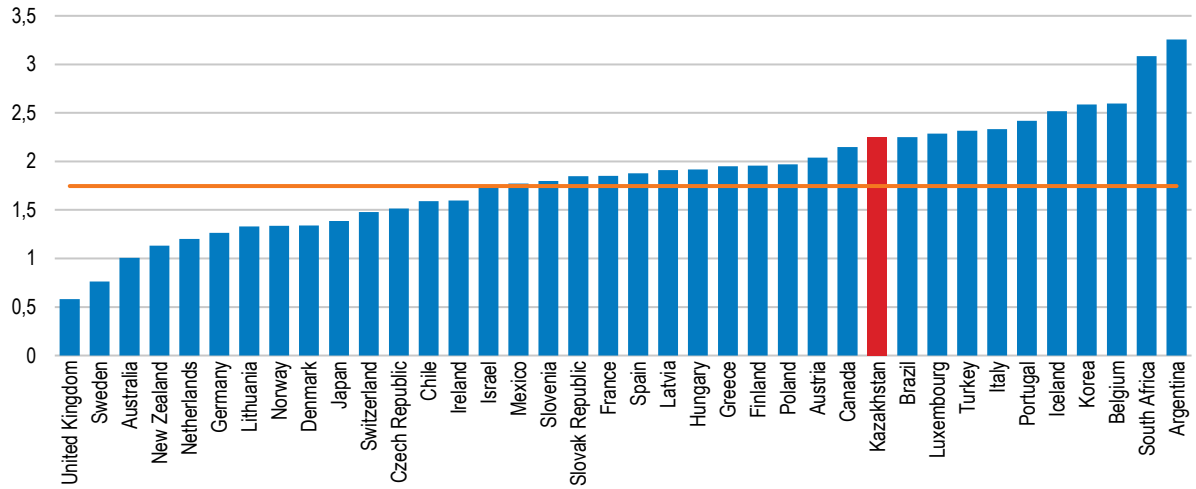
The EC mandates regular use of RIA, but the regulatory landscape remains unpredictable and the impact of changes on firms unclear

The EC has established the requirement for the government to undertake Regulatory Impact Assessments (RIA) before the introduction of any regulatory change that falls within the scope of the EC (Art.83 EC). A summary of these assessments and consultations is published online with open access, representing the main channel of information for SMEs to learn about licence and permit changes that may affect them.

Nevertheless, Kazakhstan's licensing framework remains complex, fragmented and unpredictable, with the short validity period – many licenses continue to be issued on a one-year basis – creating additional cost and time burdens for firms (OECD, 2017[23]). Despite the procedure for license issuance (including the necessary time to review an application and the requirements for license extension) being set out in the law "On Permissions and Notifications" (Art.30-35, 39, 41, 42), investors continue to express concerns about license requirements that are sometimes non-transparent and established without prior notice. In addition, some legal issues remain for certain regulated sectors, types of goods and licenses, among other such as network and energy sectors (Fig. 10).

Figure 10. Regulatory barriers in service and networks sectors

Index scale 0 to 6 from least to most restrictive, 2018



Source: OECD 2018 PMR Database (OECD, 2018[25]).

Businesses continue to report difficulties in obtaining certain types of licenses and permits, as well as risks of revocations, particularly regarding mining, environment and construction permits. Indeed, the environmental permitting and licensing has been long considered a key issue by businesses due to a system that is perceived to deviate from OECD best practice. These permits are provided by the Committee of Environmental Regulation and Control under the Ministry of Energy, its local departments, and local executive authorities. Despite recent efforts to move to an integrated environmental permit framework based on Best Available Techniques (BAT) Kazakhstan's system is mainly based on conventional permits for emissions and a significant number of them are granted annually (UNECE, 2019[52]). In addition, the system of environmental permits and payments is sometimes focused more on raising revenues than on promoting compliance (OECD, 2019[53]).

Local businesses interviewed by the OECD emphasised the perceived unpredictability of – and hence distrust in –the impartiality of licensing bodies, complaining in particular about apparently arbitrary rejections with weak justifications. This might reflect insufficient public capabilities to examine and make decisions on licensing and permits, especially at the local level. Steps are being taken to remedy the situation, in particular by the Ministry of Justice through a national legal outreach policy, in co-operation with the World Bank. The programme aims at improving the dissemination of new laws and regulations within public bodies to enhance coherent implementation and increase business awareness.

Kazakhstan needs to effectively implement the Entrepreneurial Code, paying particular attention to consistency across regions and corruption risks

Consistent, fair and transparent enforcement is crucial to support growth of SMEs in Kazakhstan. If the EC is effectively implemented, it can serve to stabilise government regulation of the private sector and bring greater predictability to the legal environment for business. Yet the OECD frequently heard of public agencies not fully adhering to the EC, in large part due to a lack of capacities or accountability, as well deeply centralised public-sector decision making. The government could significantly improve the implementation of the EC by ensuring regular training of civil servants, at both the national and regional levels, and by empowering officials to take responsibility for decision making.

In addition, an assessment of the impact of the self-regulatory organisations, online OSS, and streamlined licensing procedures should be carried out to determine whether these important reforms are delivering their anticipated results and to identify shortcomings. Continuous improvement in this area is crucial (OECD, 2016[54]).

Several licenses and permits merit review, in particular environmental permits (OECD, 2018[35]). Public administrations could also develop a stronger culture of remediation, as there is a tendency to issue immediate penalties (*e.g.,* in respect to flaring) (OECD, 2019[53]). A policy of remediation may encourage firms to adjust operations to remain in line with their regulatory requirements.

In this regard, the government could introduce a monitoring and evaluation system for the Entrepreneurial Code, to measure the effectiveness, results, and impacts of the legislation and its enforcement by regulatory and implementation bodies. As an *ex post* evaluation, a regulatory Impact analysis could be conducted to evaluate socio-economic outcomes, particularly for SMEs. The outcomes of such an assessment should be widely shared and could form the basis for a public-private dialogue on further steps to be taken. It is critical not only that monitoring and evaluation be conducted but that its results feed into the policy process.

New ties between central and regional levels of government during the COVID-19 crisis could be used to reinforce consistent implementation of business regulations. Regional and sub-regional authorities have been entrusted with the implementation of several crisis response measures. This could be used as an opportunity for the government to improve the regional consistency of the implementation of the new code for entrepreneurs, assess how crisis response measures have relaxed administrative pressures for local

SMEs and improve accountability at all levels of government. Best-practices observed locally during the lockdown, could then be extended on a permanent basis if they proved helpful in reducing the administrative burden on businesses.

One of the key regulatory and financial instruments used by OECD member economies to support firms and workers during the COVID-19 pandemic has been the development of short-term work schemes (STW). Under these schemes, the government provides income support to companies most affected by the COVID-19 for the purpose of maintaining employment levels. Details of the mechanism vary across countries in terms of wage threshold and the percentage of the salary covered by the state. For instance, Germany's *Kurzarbeit* scheme covers up to 60% of net earnings and 100% of social contributions of employees for lost work hours in firms that had to reduce hours of more than 10% of the workforce. STW have helped temporarily support employment and SMEs in most OECD countries, despite their immediate cost for public finances (OECD, 2020[50]; OECD, 2020[55]). Kazakhstan could consider the development of such schemes to support employment in SMEs in the short-term.

Priority 2: Improve dispute settlement and the reliability of contract enforcement

The legal framework for contract disputes is clearly set out in Article 27 of the Civil Code (CC) which stipulates that both foreign investors and domestic businesses can seek dispute settlement either in Kazakhstan's courts or at international arbitration, with Kazakhstan's courts required by law to enforce contractual arbitration clauses (Art. 501, 502, 503 CC) (Republic of Kazakhstan, 2005[56]), as well as arbitration awards. Kazakhstan is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Recent efforts have focused on the procedural efficiency of the court system, which has been significantly streamlined. The Astana City Court and the Supreme Court are the only courts in Kazakhstan that consider investment dispute cases, and the government has established a Specialised Judicial Board under the Supreme Court for disputes related to the performance of mutual obligations under investment contracts between large investors and government bodies (OECD, 2018[35]). The Board is composed of seven judges of the Supreme Court, specialised in investment-disputes, and it acts as a Court of first instance (International Tax and Investment Center, 2016[57]).

In addition, the legality of a wide range of ADR mechanisms for disputes between two private parties has been codified in the Entrepreneurial Code and the Law on Mediation.

Contract enforcement has become less expensive but reliability concerns remain

The efficiency of judicial processes in Kazakhstan, as measured by the World Bank *Doing Business* indicators, is above the Central Asian and European average (Table 5). Nevertheless, international investors report that the quality of first instance court judgments in commercial law remains weak, with judgments of higher and specialised courts markedly better than first instance courts. Investors remain concerned about the reliability of domestic courts to adjudicate on disputes between private parties and the state or SOEs.

Table 5. Contract enforcement in Kazakhstan

	Kazakhstan	Europe and Central Asia
Time (days)	370	496.4
Cost (% of claim value)	22	26.6
Quality of judicial processes index (0-18)	16.0	10.3

Source: (World Bank, 2020[1])

Foreign investors also report poor adherence to contracts with public agencies, with the enforcement of contractual obligations subject to influence from public finance constraints. According to investors, the perception that the public entities are not upholding contractual commitments on account of pressures arising from domestic economic conditions may undermine business confidence and damage the government's reputation as a reliable partner, reducing Kazakhstan's attractiveness as an investment destination.

Recent efforts under the Supreme Court's "Seven Pillar Strategy" have been targeting this issue, by focusing on the quality of court decisions to raise both the quality and coherence of judgements, and the trust of businesses and citizens in the judicial bodies. As a first step, the Supreme Court has developed a decision template to guide the process of drafting judgements and increase its reliability. In addition, the reform also targets the skills and capacity of judicial staff through the development of a new system of judicial recruitment and oversight under the High Judicial Council (Republic of Kazakhstan, 2015[58]). The focus is set on the selection and retention of competent judges, and enhanced training on drafting judgements in accordance with international standards.

To improve dispute resolution between private businesses and state entities, the Ministry of Justice has also reported that it has started to review laws pertaining to administrative dispute resolution. However, in order to address this issue in full and improve the legal environment for businesses, the introduction of an administrative code could be considered.

Judicial corruption and integrity continue to undermine business confidence. Some of the major issues in this regard are: judicial staff lacking employment security due to an absence of tenured positions and low remuneration; political supervision of court judgements by chiefs of courts or public prosecutors; and lack of automated case management (OECD, 2017[59]). Such problems may dissuade foreign investors from entering Kazakhstan, and may discourage domestic firms from pursuing dispute resolution through formal avenues.

While automated case management has been implemented, it has been reported that the Supreme Court, under its "Seven Pillar Programme", has also started to address some of these issues, in particular regarding remuneration, which was substantially increased in local courts in 2019.

Despite recent reforms, dispute settlement outside of courts is not yet widely used

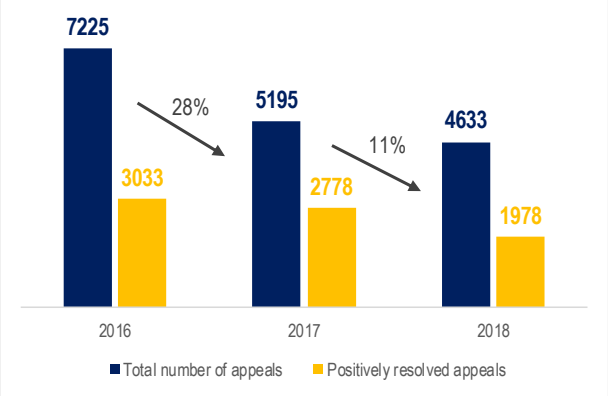
The Law on Arbitration, which governs dispute settlement for both domestic and international businesses, has brought national legislation in line with the United Nations Commission on International Trade Law (UNCITRAL) Model on International Commercial Arbitration, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the European Convention on International Commercial Arbitration. However, there are a number of shortcomings in the legal regulation for initiating and managing arbitration procedures, particularly as regards the impartiality of the necessary institutions and the transparency in their relations to the parties, be they public or private.

As a result, there have been cases of arbitration processes being instigated where there was a serious risk of conflict of interest due to undisclosed connections between the arbitration institution and one of the parties. This risks being particularly troublesome where one of the parties is a public body, whether an agency or an SOE. For the resolution of disputes between government organisations and local companies, government organisations need to obtain the consent of the relevant ministry. Given the high share of SOEs among medium and large enterprises, this requirement hinders arbitration processes (NCE "Atameken", 2019[36]). The OECD notes that mediation, though foreseen in the legislation as a valid means of dispute resolution, is not yet used (2017[23]). For investors to have clarity and certainty, it is imperative that the right to initiate arbitration proceedings is codified in the contract *ex ante* and not introduced when parties are already in dispute. At the same time, as in other CIS countries, the ability of the Supreme Court to overturn arbitration rulings on the pretext of malpractice "oversight" undermines the legal certainty of the process, reducing its appeal to international and domestic firms.

In 2017, the OECD (2017[23]) noted that mediation, despite being provided for in the legislation as a valid means of dispute resolution, was not yet widely used. The Supreme Court has since prioritised ADR and mediation under the seven pillar strategy, launching pilot court annexed and out-of-court mediation programmes early 2019, complemented by outreach activities to increase the awareness of citizens on mediation. Based on the results of the pilot programmes, a harmonisation of the current mediation regime is planned.

The government has created a Business Ombudsman, the Commissioner for Protection of the Rights of Entrepreneurs of Kazakhstan under the National Chamber of Entrepreneurs. This institution could play an important role in out-of-court dispute settlement (OECD, 2018[51]). It receives complaints from businesses about unfair treatment by government authorities, including instances of maladministration and unfair law enforcement, such as repetitive audits or inspections, unreasonable fines and penalties, or threats and acts of retaliation by officials. The Commissioner also sends recommendations to state bodies and can recommend prosecution of the relevant state authority. From 2016 to 2018, the Ombudsman received 17,053 appeals (Figure 11), 46% of which received full or partial outcomes. The decreasing trend in the number of appeals is attributed to a positive dynamics of lower number of complaints submitted to the Ombudsman each year (NCE "Atameken", 2019[36]). However, it could also be attributable to a diminishing impact and of an initial backlog of complaints. Disputes are concentrated in such areas as land, tax, law enforcement, and public procurement, the rest being mainly related to administrative barriers, investments or loans (Ombudsman for the Protection of the Rights of Entrepreneurs of Kazakhstan, 2019[60]).

Figure 11. Appeals handled by the Business Ombudsman of Kazakhstan, 2016-2018



Source: (Ombudsman for the Protection of the Rights of Entrepreneurs of Kazakhstan, 2019[60]).

However, general rule of law concerns remain, particularly regarding enforcement of international arbitration rulings in domestic courts (EBRD, 2015[61]; World Justice Project, 2019[62]; OECD, 2017[23]). Despite a legal requirement to do so, enforcement problems have been known to arise. To support dispute resolution, the government has expanded ADR services. In what was a first in Central Asia, it established the Astana International Financial Centre to support international arbitration through an English-law governed International Arbitration Centre (IAC) for civil and commercial disputes. However, the IAC has so far been used too rarely to assess its effectiveness in handling disputes. In addition, for the IAC to contribute to the creation of a wider arbitration culture in Kazakhstan, the government should ensure that best practices are shared with domestic courts and that investors and businesses routinely have sufficient certainty that local jurisdictions will enforce IAC awards.

Strengthening judicial independence would increase investor confidence

Faced with significant capacity constraints in the judicial system, the government should prioritise the development of existing local training centres for judges and public servants and encouraging participation in IO-led capacity-building sessions (Council of Europe, 2019[33]). Strengthening judicial independence should also be a priority: political influence in the selection of judges undermines business confidence in the impartiality of the judiciary, and the government should endeavour to minimise its role therein. In addition, increasing levels automation and ensuring independent case management, introducing the impossibility of *ex parte* communications during cases, cancelling supervisory procedures of final court judgments and better regulating the public prosecution office could help to create a more impartial and transparent judicial environment (OECD, 2017[59]).

In addition, current pilot projects (e-court services, monitoring of performance) run by the Ministry of Justice and aimed at increasing the levels of automation and independence in case management should be properly assessed and, if successful, scaled.

A lack of specialised staff impedes more effective intellectual property rights enforcement

The protection of intellectual property (IP) rights is an essential element of a good investment climate and can play a key role in helping to attract investors with proprietary technologies. The legal framework for IP rights in Kazakhstan has improved greatly over time, notably through harmonisation of international best practices as part of Kazakhstan's accession to the WTO and ratification of World Intellectual Property Organisation (WIPO) treaties. Six of the main IP laws were amended in 2015-16. Investors and businesses remain concerned about enforcement, however (US Department of State, 2019[63]).

Despite extensive legal provisions for guaranteeing IPR (the Civil Code, the Law on Patents, and the Law on Copyrights and Neighbouring Rights), enforcement proceeds through civil and criminal courts where judges lack specialised IPR knowledge. No designated public institution seems to be responsible for managing IPR disputes, nor is there evidence that public organisations that do have a role in IPR-related disputes have clearly defined responsibilities and functions.

In the post-COVID era, improved dispute settlement can support attracting new investors, preserving incumbent ones, and protecting state assets

The negative trend of inward FDI, already visible prior to the COVID-19 pandemic, is likely to remain over the medium-term with global FDI flows expected to have fallen by 30% in 2020 (OECD, 2020[64]). Possible divestments of investors from emerging markets are likely to exacerbate competition for investments, which bears the risk of a regulatory race to the bottom. In pursuing its reform trend of recent years, Kazakhstan should use the recovery phase as an opportunity to further improve dispute settlement and reliability of contract enforcement to retain and attract investment for long-term economic resilience. An improved and strong contract enforcement regime will guarantee investors a stable, predictable, and reliable investment environment, allowing the Kazakh economy to benefit from strategic investment, and protecting its key assets from predatory behaviour. In its support to economic recovery, Kazakhstan's authorities have reasserted the major role to be played by the AIFC in supporting dispute settlement and contract enforcement for investors.

Priority 3: Enhance trade facilitation and improve co-operation between agencies involved in export procedures

Kazakhstan joined the World Trade Organisation (WTO) in 2015, its accession being indicative of a broader process of trade liberalisation. In recent years, the government has continued to develop the legal

architecture for customs and trade, through both domestic regulation and adherence to international bodies and agreements.

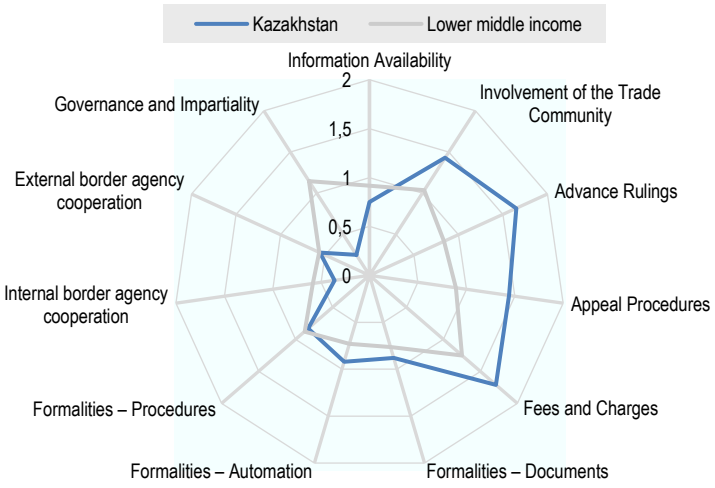
Having been granted an observer status under WTO's Government Procurement Agreement (GPA) in 2016, Kazakhstan recently submitted an application to join the agreement; negotiations are now underway. Furthermore, Kazakhstan's membership of the Eurasian Economic Union (EEU) and prior integration into the Eurasian Customs Union (Belarus-Kazakhstan-Russia), as well as its active membership in the Central Asia Regional Economic Cooperation (CAREC) could enhance intra- and inter-regional economic integration. As in other countries of the EEU, it is unclear how existing trade and investment agreements have been and will be reconciled with its treaty obligations.

Kazakhstan lags behind the OECD average on most dimensions of the OECD Trade Facilitation Indicators

Nevertheless, hard and soft infrastructure issues impede the improvement of regional connectivity. Entrepreneurs report the worsening quality of logistics efficiency and transport infrastructure, in particular high utilities costs and expensive business infrastructure (NCE "Atameken", 2019[36]).

Against the background of the country's landlocked location and the legacy of Russia-orientated hard infrastructure, significant connectivity improvements could be made through trade facilitation, in particular by improving the effectiveness of border crossing procedures and raising levels of intra-agency co-operation (ITF, 2019[6]). Despite significant improvements over time, Kazakhstan continues to underperform on customs and border procedures relative to OECD countries, which is reflected in the country's performance in the *OECD Trade Facilitation Indicators* (TFI) (Fig. 12). Poor trade facilitation arrangements serve to increase the "distance penalties" that producers in Kazakhstan already face as a result of their location and the constraints imposed by physical infrastructures.

Figure 12. Kazakhstan and the OECD Trade Facilitation Indicators



Source: (OECD, 2019[65]).

Despite improvements in border crossing procedures, businesses report a high level of unpredictability, particularly as regards an increasing variability of border crossing times. Unpredictability is particularly detrimental to trade, as shippers tend to value consistency and predictability, as well as speed, when it comes to crossing times. For instance, at the Khorgos border point between China and Kazakhstan, while inspection and loading times have sharply declined, customs and queuing still impose substantial delays (ITF, 2019[6]).

Kazakhstan needs to improve the co-ordination of internal and external agencies involved in customs procedures

Companies also complain of what they see as arbitrary practices and interpretations of the customs code on the part of officials. Corruption in customs also remains a problem, and may be to some extent account for by the low levels of external and internal border agency co-operation. Indeed, the current "silo" structure of border agencies operation might favour corruption and bribery to understate exports, excessively invoice imported products, or ease the supply of counterfeit goods (Transparency International, 2018[66]).

The introduction of fully automated customs procedures and the harmonisation and digitisation of all customs- and trade-related documentation through the *Automated System of Customs and Tax Authorities* ASTANA-1, which is fully compliant with the WTO, European Union and UNCTAD Customs standards, in January 2020 have been important steps to bring down the time and cost of trade. Their effects on businesses will have to be assessed in the coming years. In the meantime, improved co-ordination between customs and the Risk Management System inspections could provide additional improvements by avoiding overlapping or artificially lengthy procedures.

Comprehensive trade facilitation reform would therefore benefit the country, and help better connect it to the global economy. The OECD (2017[23]) estimates that a reform across the 11 surveyed areas could reduce trade costs by about 13% on average in upper middle-income countries such as Kazakhstan, while the World Bank has estimated that if Kazakhstan were to implement the reforms associated with its entry to the WTO there would be a 30% reduction in the costs of trade facilitation. Based on recent streamlining exercises of regulatory frameworks, such as the EC, the government could clarify the customs code. The government should also train border officials to improve the consistency of enforcement. Both would help eliminate inconsistent or unlawful interpretations enabled by complex formalities and procedures.

As elsewhere in Central Asia, internal co-operation – the extent to which various government agencies involved in the processing of customs and inspection processes co-ordinate their activities and share data – remains a significant shortcoming in Kazakhstan's customs and borders management. The government should enhance internal agency co-operation by improving internal co-ordination across public institutions, particularly those that conduct inspections of goods and issue certificates or permissions. Developing interconnected transit information systems with other countries in the region and harmonising customs documents and requirements would also support external border agency co-operation.

As the COVID-19 crisis began to unfold, governments of the region tightened customs procedures and in some cases closed borders. The negative fallout on trade due to the impacts of the pandemic on regional and global demand has further exacerbated existing trade connectivity issues in the medium-term, and revealed additional bottlenecks due to limited regional co-operation. As governments manage their recovery, increased policy dialogue across Central Asia should be a core feature: only coordinated actions can prevent additional costs to businesses and consumers arising from erratic protectionist policies (OECD, 2020[67]; OECD, 2020[50]). Kazakhstan could play a leading role in the region, moving forward on its trade facilitation agenda to help restore confidence across the region.

Further progress and challenges in the legal environment for business in Kazakhstan

Kazakhstan has a relatively strong formal legal framework for investment but implementation remains inconsistent

The government has developed a broadly sound legal framework for investment and has implemented series of reforms to foster investment and entrepreneurial activities. Most recently, the *2018-2022 National Investment Strategy* outlined new measures to improve the investment climate, privatisation plans and

broader economic investment policy, with the aim of increasing total FDI inflows by 25% by 2022 (OECD, 2017[23]).

Investment activity is regulated by the Entrepreneurial Code, introduced in 2016, which superseded the 2003 Law on Investments and a range of other business-related legislation. The Code provides businesses and investors with more detailed guarantees on protection of rights and property, particularly against expropriation and unlawful official conduct. It provides for increased consistency and transparency of the applicable rules, for the protection of different categories of investment alongside regulatory stability assurances, and for stability of contracts between investors and the state (OECD, 2017[23]).

The EC is supplemented by the Law on Legal Acts (Subsection 8 Para. 4. Art. 18), which stipulates that any legal amendments or drafts must be put forward for public discussion on an online portal before being submitted to the relevant government institutions for consideration and agreement (Republic of Kazakhstan, 2019[68]). The Foreign Investor Council (FIC) is also seen as a welcome development by investors in discussing and addressing specific investment concerns.

Nevertheless, the extent to which information on legal requirements is readily available to firms and the extent to which public institutions are transparent in their business-related decision-making remain unclear. For instance, the FIC, the main consultation body for foreign investors, does not publicise the summaries and official documents of its working groups. In addition, information relating to sectoral restrictions for international investors is not freely available, and a lack of English-language information, despite the recent creation of an online portal, may act as an informal barrier to entry for foreign investors.

Sectoral restrictions on FDI remain

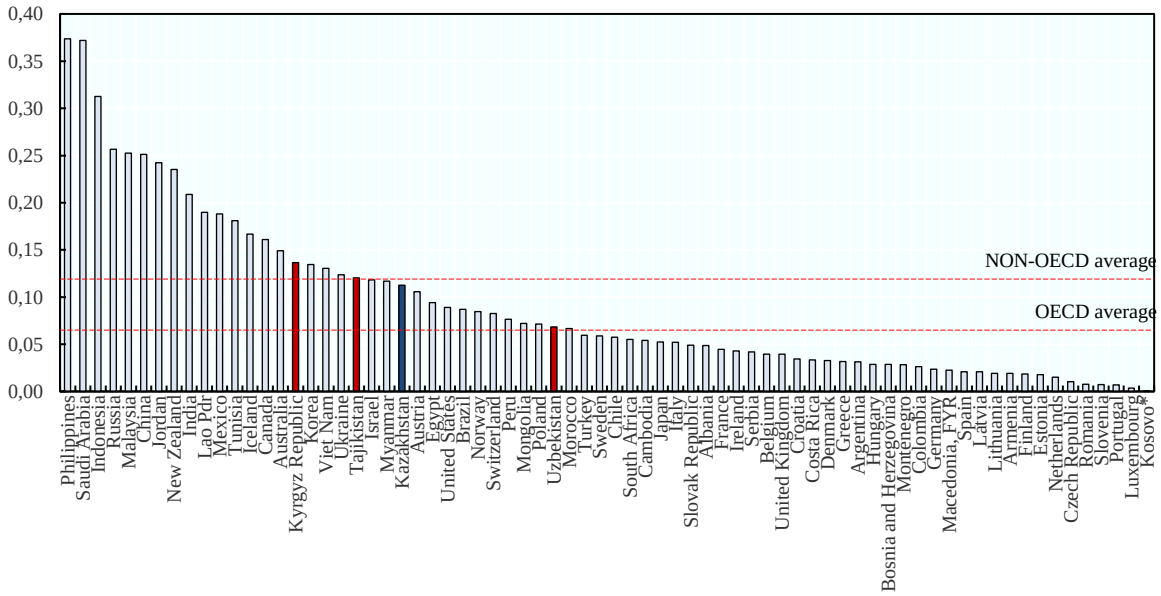
Even though Kazakhstan has a relatively open statutory regime for foreign investors, it maintains a number of sectoral restrictions for foreign investors that account for the country scoring above the OECD average in the FDI Regulatory Restrictiveness Index (Figure 13).

Some service sectors remain restricted, notably media, air transport, banking and insurance, and fixed telecommunications, although existing equity restrictions in air transport and fixed telecoms were removed in early 2016 partly as part of WTO accession. Foreign investors in resource sectors also face restrictions relating to the use of agricultural and forested land. While foreign land users are not entitled to own land, private ownership of land plots is permitted if related to business activities. Further liberalisation is expected as a result of WTO accession, including allowing operations of branches of foreign-owned banks. Once these reforms are accomplished, Kazakhstan will be close to the OECD average in terms of restrictiveness. Foreign participation in privatisation is not restricted.

In addition, business still face burdensome conditions with regards to the employment of key foreign personnel, applying horizontally across most economic sectors, although this is also becoming simplified as a result of WTO accession. Indeed, Kazakhstan's visa policy has been seen as presenting an unnecessary obstacle to investment, as specific conditions include labour market tests for foreign managers and specialists hired in Kazakhstan in the framework of intra-corporate transfer; limitations on the number of foreigners for each category of corporate employees; regulatory quotas for work permits; and preferential treatment of domestic suppliers in the subsoil sector (OECD, 2018[35]).

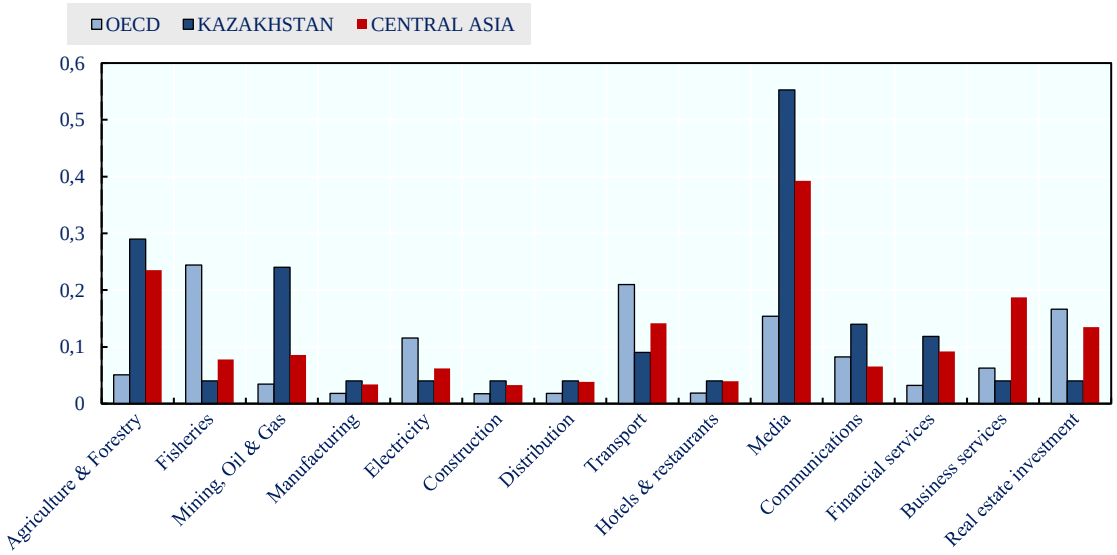
In the post-COVID investment landscape characterised by reduced interest of investors for emerging markets, in addition to the improvement dispute settlement and reliability of contract enforcement, the removal of remaining sectoral restrictions will be key for ensuring stable financing for valuable assets. In particular, removing remaining barriers could help retaining incumbent investors, and as it reinforces the transparency of the investment regime, attract new investors. This also includes environmental issues (Box 6).

Figure 13. OECD FDI Regulatory Restrictiveness Index: Kazakhstan



Note: Open=0, closed=1
Source: (OECD, 2019[69]).

Figure 14. OECD FDI Regulatory Restrictiveness Index: sectoral restrictions in Kazakhstan



Note: Open=0, closed=1
Source: (OECD, 2019[69]).

Box 6. Kazakhstan's Environmental Code and the OECD environmental regulatory framework

In March 2018, the government launched an ambitious process of amending the 2007 Environmental Code (EC). The current system of environmental damages payments in Kazakhstan is indicative of the ways in which the regulatory system can discriminate against certain economic players despite legal guarantees of parity. In 2018, the OECD noted that the existing system of payments had an excessive focus on raising revenues rather than preventing and addressing damages. Numerous foreign investors in Kazakhstan have echoed the perceived discriminatory nature of the payments system, and the system has not moved further towards OECD standards in this regard.

Whilst the monetary compensation system exists for numerous sectors, the administration of this system is understood to be particularly punitive for firms in the oil and gas sector due to regulations around flaring. In an earlier report, the OECD stated that "*the use of multiplied taxes and the indirect method for calculating monetary damages, with their focus on revenue raising, makes it impossible to gauge reliably the relation between pollution payments and marginal pollution reduction costs. A particularly acute illustration [relates to] damages from gas flaring at upstream oil and gas facilities.* It is advised that that the government dispenses with a system of purely monetary compensation for environmental damage, and creates incentives for innovation and investment, while establishing avenues for remediation.

Sources: (Republic of Kazakhstan, 2017[70]) (OECD, 2017[41]) (OECD, 2019[53])

Strong legal protections against direct expropriation exist, but a number of state actions are tantamount to indirect expropriation

All investors are legally protected against direct expropriation ("nationalisation and requisition") by the Entrepreneurial Code, which stipulates that investors can obtain damages as compensation for illegal government action or inaction (Art. 276). Assets can only be seized in exceptional cases, justified on specific grounds (mainly linked to national security), and with due compensation paid in full. Also, though the EC allows the state to nationalise or requisition property only in emergency cases, it does not clearly define such cases, nor does it define the method for calculating compensation.

The law is less clear about cases of indirect expropriation where the investor still holds the property title but where government measures have an impact on the property that is considered to be tantamount to expropriation. The lack of clear statutory protections against indirect expropriation may therefore cause instances to arise where regulatory changes create grounds for license or permit revocations, denying businesses recourse to compensation (OECD, 2017[23]). In the case of environmental licensing, businesses have reported cases where violations arising from unexpected regulatory changes have been used as leverage in negotiations with the government (OECD, 2017[23]).

Kazakhstan is a signatory to several international investment agreements (IIAs) which protect covered investors against expropriation without compensation and against discrimination, and grant access to investor-state dispute settlement mechanisms (ISDS). Under Kazakh IIAs, the state may not expropriate unless for public interest purposes, on a non-discriminatory basis and under due process of law and with prompt, adequate and effective compensation (the so-called Hull formula). Unlike the EC, Kazakh IIAs do explicitly cover indirect expropriation, although they do not clarify which regulatory changes would not amount to expropriation, such as for public safety, health and the environment. This ambiguity could leave Kazakhstan vulnerable to challenges by investors in the event that regulatory changes affects the profitability or viability of their operations.

Legal requirements for businesses are generally transparent and easily available

Access to and availability of information are generally fair, but still lag behind the OECD average in the information availability dimension of the OECD TFIs. In particular, the establishment of one-stop shops (OSS), both online and physical, contributes to better information sharing amongst businesses, and simplifies administrative procedures. For instance, the State Revenue Committee's OSS provide professional advice on how to open a business, register as taxpayers, and pay taxes. Other information relating to trade and customs procedures, or disputes and tariffs, can be found on the website of the relevant authorities (Appeals Commission of the Ministry of Finance, ministries of Finance and National Economy of Kazakhstan).

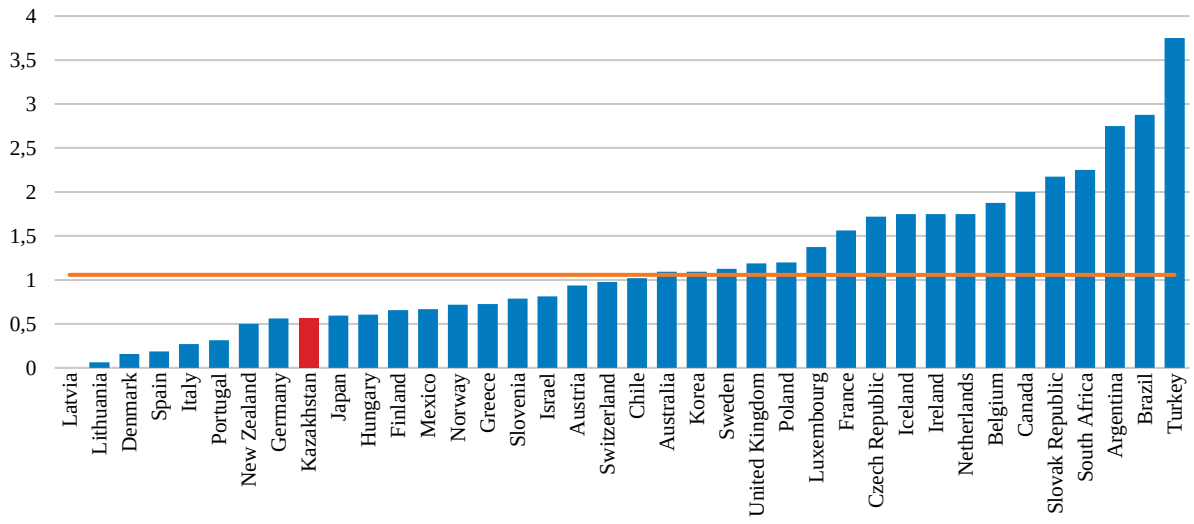
Business registration has become far simpler

Kazakhstan has made significant progress in the ease of starting a business, including the elimination of registration fees for SMEs, the shortening of registration time at the public registration office, and the elimination of the obligation to register at the local tax office (World Bank, 2019[71]). Administrative burdens for SMEs have been measured far below the OECD average (Figure 15) (OECD, 2018[25]).

The government has established both online and offline OSS for business registration. Online registration is available on the egov.kz public service portal whilst offline registration can be completed at local government services centres. The online registration of businesses also allows one to open a corresponding bank account and sign the necessary social security contracts for employees, thus streamlining procedures. In addition, business support centres have been established in the country's rural regions to provide free support packages to comply with legal and administrative requirements. This includes consultations on how to prepare and file tax returns, develop business plans, apply for funding, register a new business, or market a business (OECD, 2017[23]).

Figure 15. Administrative burden on start-ups in Kazakhstan

Index scale 0 to 6 from least to most restrictive, 2018



Source: OECD 2018 PMR Database (OECD, 2018[25]).

Preventative measures to help firms in distress and exit mechanisms for businesses remain underdeveloped

Kazakhstan made significant progress in the area of bankruptcy procedures and "resolving insolvency" in the DBI rankings, jumping from 63rd place in the in 2015 to 37th place in 2019 (World Bank, 2019[71]).

Table 6. The insolvency framework in Kazakhstan

Indicator	Kazakhstan	Europe & Central Asia	OECD High Income
Recovery Rate (cents on the dollar)	38.9	38.6	70.5
Time (years)	1.5	2.3	1.7
Cost (% of estate)	15%	13.2%	9.3%

Source: (World Bank, 2019[40]).

However, there exist no early warning systems which would allow public authorities to identify entrepreneurs at risk, nor does the law provide for assistance for entrepreneurs or businesses in financial distress. Hence, government intervention is limited to cases where entrepreneurs self-identify as needing assistance. Similarly no SME-specific bankruptcy measures exist, nor free-of-charge or sponsored consultations, legal or accounting services for businesses in difficulty. Finally, there are no specialised bankruptcy courts.

Most of the above-mentioned measures have only been implemented recently, requiring more time to assess their impact and implementation. The government is taken additional steps, for instance to improve information availability for creditors regarding the financial health of debtors.

The impact of the COVID-19 pandemic might lead to a surge in the number of distressed enterprises, and even in the number of bankruptcies. Initial support measures by the government targeted at supporting SMEs and entrepreneurs could therefore set the basis for an early warning system to detect businesses in need of assistance, as well as the toolkit for providing timely and adequate response to allow sustained –even though reduced- operation. Once recovery from the slowdown has started, a careful assessment of these measures should be carried out to make use of best practice.

Land ownership and tenure remains problematic for investors, particularly for agricultural purposes

Land in Kazakhstan is owned by the state but can be transferred, sold or lease to individuals or legal entities. Most leases are for 49 years, down from 99 years in early legislation. The Land Code adopted on 20 June 2003 (last amended in 2019) establishes the foundations, conditions and limits for modifying or terminating ownership of land and land-use rights, describes the rights and responsibilities of landowners and land-users and regulates land relations. Land reform in Kazakhstan, as in some other parts of the former Soviet Union, has been a slow and at times difficult process, particularly concerning agricultural land.

Foreign nationals and legal entities (defined as those with majority control) are allowed to own land for business related purposes (production or non-production facilities and land to service such facilities), but foreign ownership of agricultural and forest land was not, and is still not, permitted. In order to reduce the share of unused land and enhance the better use of cultivated agricultural land, the government amended the 2003 Land Code in 2015 to allow foreign tenancy of land for up to 25 years (from 10 years previously) and the purchase of land for agricultural purposes by private residents. However, in 2016, due to public dissatisfaction with the amendments, they were suspended by a five-year moratorium, until 2021. Since 2018, work has been underway to revise the amendments and develop mechanisms to ensure the amendments' original aim, that is, to eliminate the barriers to more effective agricultural land use.

The right of the state to expropriate land applies only in circumstances set out in the Land Code. For instance, the state may expropriate land if it is being used contrary to its legal designation or in violation of the law, or where the state has an exceptional need for the land and where a compromise has been made between the state and the land user. Conflicts concerning land confiscation arise at the *akimat* level. The Land Code assumes that compensation can be either monetary or in-kind (equivalent land). In practice, *akimats* do not always offer equivalent land.

Kazakhstan should further streamline and improve consistency in tax legislation and administration

The introduction of the Tax Code has simplified tax legislation but several remaining exceptions still weigh on businesses' operations

The tax system has undergone important reforms in recent years. Firms in Kazakhstan paid a total tax and contribution rate (TTCR) - profit tax, social contributions and property tax - of 29.4% of commercial profits in 2019. Firms have reported that the tax administration burden has decreased with the support of digitalisation of procedures according to international surveys and interviews with the OECD. The rate of electronic tax filing has improved from 65% in 2010 to 99% in 2019 according to the World Bank (World Bank, 2019[40]).

In particular, the standard VAT rate is 12%, with a zero rate applicable to a number of goods and services. These include the export sales of crude oil, natural gas and gas condensate, international transportation services, goods fully used for activities in SEZs, services (financial, insurance, and medical), sale and lease of land and land use rights, and medical devices and equipment.

A new Special Tax Regime (STR) introduced in the TC has simplified tax procedures and lowered the burden for SMEs and certain other types of firm. SMEs with an income below USD 175,000 and with less than 30 employees benefit from a simplified regime, with only one annual declaration and a number of tax deductions. SMEs pay a single tax at 3% of their income. There exists thresholds for being eligible for VAT payment based on Kazakhstan's "Monthly Accounting Index" that represented USD 197,000 for SMEs (and USD 75,000 for individual entrepreneurs) in 2019-20. SMEs however do not benefit from a simplified filing procedure for VAT payment. Amongst other improvements, the STR addresses this gap for SMEs.

However, as part of the economic diversification agenda, Kazakhstan continues to use a number of tax incentives to attract investment (OECD, 2017[23]) into non-oil sectors. This results in a complex tax regime with many exemptions, particularly in the area of corporate income tax (CRT) and value added tax (VAT), though the impact of these measures on investment attraction has not been assessed. In this regard, the OECD and others have advised government to revise and streamline tax incentives on the basis of a cost-benefit analysis (OECD, 2017[23]). In addition, the TC continues to create problems for certain sectors and types of investors. In particular, the mining taxation could be revised and aligned with international practices (OECD, 2018[38]).

The current mining taxation regime remains a concern to firms in the sector: Kazakhstan is the only country using mineral reserves as a tax base, contrary to the more common profits-based approach (OECD, 2018[38]).

Building on current progress, the tax system should be further simplified

During OECD consultations with investors, firms have complained about the overly bureaucratic approach of tax officials toward businesses, especially large ones, with repetitive tax inspections and varied interpretations of rules acting as a barrier to doing business. The government itself has acknowledged the need to improve consistency in tax administration, particularly as regards the interpretation of tax requirements by the private sector and the public authorities (OECD, 2017[23]).

In the “100 Steps” plan, the government has recognised the need to further reform some elements of the country’s tax policy and administration, including the integration of the customs and tax systems, the creation of centres to assist with tax declarations, and the introduction of a risk management function in the tax administration (Republic of Kazakhstan, 2015[72]). This latter point is particularly useful for investors and domestic firms, as it would entail that, following the first physical submission of a tax declaration, a secondary inspection would not be allowed for the following three years, lessening the administrative burden on firms as well as the opportunities for corruption. To date, however, except for the risk management function which has been introduced by the State Revenue Committee in 2019, these measures have yet to be implemented.

The government has automated tax procedures for firms with the support of the World Bank. Almost all taxes can be paid online (including income tax, social tax, social contributions, property, and land) and users met by the OECD provided positive feedback. The tax IT system also included risk management and e-invoicing features (World Bank, 2020[24]) The government also conducts regular assessments of how SMEs’ tax administration requirements can be simplified, mainly through the business.gov.kz online portal and through SME surveys carried out by the Economic Research Institute under the Ministry of National Economy. The government also conducts regular assessments of how SMEs’ tax administration requirements can be simplified, mainly through the business.gov.kz online portal and through SME surveys carried out by the Economic Research Institute under the Ministry of National Economy.

Finally, particular attention should be paid to the impact of tax measures such as deferral, exemptions, and reductions implemented as part of the response package to the COVID-19 pandemic. Recovery planning will require a thorough assessment of the impact of these measures in order to identify the measures that could have a positive impact in the long-run and could be kept without complicating further the tax system.

Dialogue mechanisms with businesses have been established with regular consultations with private companies

Consultations with private companies, both foreign investors and domestic businesses, are subject to legislation set out in the Entrepreneurial and Customs Codes. The legislation stipulates that companies are to be involved in the preparation and drafting of laws through electronic (e.goz.kz) and physical consultations (roundtables, conferences), the procedures and timelines of which are precisely defined. The government also established a Council for Improving the Investment Climate chaired by the Prime Minister. It consults investors and suggest reforms that can help address their concerns and improve the country’s business climate (OECD, 2017[23]).

The major instrument for public-private dialogue with international investors is the FIC under the head of state and composed of MNCs’ country heads. The FIC meets on a regular basis to discuss issues in the business climate, including the legal environment for business, taxation, and judicial reforms.

For domestic businesses, the National Chamber of Entrepreneurs (NCE) is the main association with mandatory adherence. It hosts an International Arbitration Centre, as well as the Business Ombudsman. There are also business associations in different sectors, such as the Union of Farmers and the Association of Commercial and Industrial Enterprises of Kazakhstan. The NCE is part to all consultation processes, however its independence from the government raises questions.

The conditions for innovative entrepreneurship must be improved

Particular attention should also be devoted to the specific needs of high growth entrepreneurs. Since the creation of the National Innovation Fund in 2003 which became the National Agency for Technological Development (NATD) in 2012, Kazakhstan has been supporting innovation, notably through the establishment of supportive legislation (2004 Law on State Support of Innovation Activity, and 2018 Law on the Development of the Venture Capital Market), the development of public research institutes as well

as the establishment of technoparks in Astana, Shymkent, and Ust-Kramenogorsk. In 2019, the NATD became “Qaztech ventures”, a public agency devoted to supporting innovative and technological entrepreneurship and the development of a venture capital market. Its activities cover mainly venture financing, support for private business incubators and technology consulting. Under the business incubation tool, the funds provides financial support to business incubators both for operating expenses and for projects of these incubators. Under the consulting tool, B2B technology brokerage services and technological expertise for assessing projects are provided.

However, the impact of the agency has not been assessed so far, while the condition for innovative entrepreneurship remain insufficiently developed in Kazakhstan, as most SMEs still engage in subsistence rather than in transformative entrepreneurship (OECD, 2018[35]; OECD, 2017[73]). While reforms aimed at improving the legal environment for businesses will improve the framework conditions for innovation, further steps are needed to unleash its potential. In particular, the government could, in a systematic manner, carry out ex-post evaluations of existing initiatives, especially grant programmes (including the profiles of beneficiaries, their needs and challenges). In addition, the definition of a national strategy to increase co-ordination between public and private research institutions and raise innovation financing, could contribute to creating better conditions for innovative entrepreneurship. For instance, Qaztech could play a greater role in helping the development of supportive legislation, notably regarding taxation, and infrastructure (such as innovation clusters and incubators). The Georgian Innovation and Technology Agency could serve as a regional peer’s experience (Box 7).

Box 7. Georgia’s Innovation and Technology Agency

The Georgian Innovations and Technologies Agency has been set up in 2014, with the mission to develop a supportive ecosystem for all types of innovations and technologies in the country; to promote the commercialisation of knowledge and innovations; to stimulate their use in all fields of the economy; to create an environment for the growth of innovations and high-tech products and the development of high-speed internet nationwide.

The main competencies of the agency cover a broad spectrum, including the development of the legal framework for innovation, provision of finance, supervision of the construction of technoparks or innovation centres to foster the development of new technologies, and helping the dialogue between academia and industry.

Source: (Georgia's Innovation and Technology Agency, 2020[74])

3 Kyrgyzstan

Chapter summary

Since 2014-15 commodity crash, Kyrgyzstan's economy has grown at an average annual rate of 4%, reaching 4.5% in 2019 following a 15% increase in output from the country's largest gold mine, Kumtor. The impact of COVID-19 on growth has been severe, with the economy estimated to have contracted by 12% in 2020, though a return to growth is projected for 2021. Migrant remittances continue to support domestic consumption and partly compensate for the deceleration of mining activities prior to 2019. The economic slowdown in Russia had a severe impact on labour mobility, and remittances in the first three quarters of 2020 down 35% on the corresponding period in 2019. Foreign Direct Investment (FDI) in non-extractive sectors remains low, with limited FDI into the financial and manufacturing sectors.

To mitigate the impact of the pandemic on the economy and society, the government and the National Bank of Kyrgyzstan moved quickly to implement a number measures, with strict restrictions placed on the movement of people and goods. However measures to support the economy were relatively limited owing in part to the narrow fiscal space available to the government. In order to tackle the economic cost of the crisis, the country received emergency financial support from the IMF and numerous other international financial institutions and donors.

Diversification of economic activity and of FDI is a long-term priority for the government, as the economy remains vulnerable to external shocks affecting remittances and gold. The government has outlined ambitions to attract FDI to other sectors and develop the private sector. Whilst there has been progress in several areas, such as the regulatory framework for business and investment, the development of the private sector is still hindered by a fragmented legal environment. Significant restrictions remain in certain sectors, particularly mining, agriculture and real estate. Many regulations remain unconsolidated and at times contradictory. Enforcement is weak and there is a general lack of transparency and consistency in the justice system, with contract enforcement remaining problematic despite recent developments in alternative dispute resolution (ADR). Tax administration and changes to legislation can be unpredictable, with frequent modifications to tax requirements complicated by inconsistent interpretation of the tax code.

The government could improve the business climate and attract higher levels of foreign investment by: 1) streamlining and consolidating regulations, licenses and permits for small firms and developing one-stop shops; 2) simplifying and stabilising the tax regime and improving tax administration; and 3) ensuring transparent, fair and efficient contract enforcement in local courts and through the further developments of ADR. Some of the simplification short-term measures to counter the COVID-19 effects could be reassessed and applied in standard administrative procedures, including digital tools.

Economic overview

Economic growth has been driven by mining and remittances

Kyrgyzstan recorded an average annual growth rate of about 4% during 2014-19. A slow-down in early 2018 reflected the sharp decline in output from the Kumtor gold mine, which shrank by 30% in the first half of the year, while a sharp increase in gold production boosted GDP growth to 4.5% in 2019 (IGF, 2018[75]) (World Bank, 2020[1]). The impact of the COVID crisis on Kyrgyzstan's economy has contributed to a projected contraction of 12%, the biggest drop in Central Asia (IMF, 2020[4]).

In 2018, Kumtor's output amounted to 8.6% of GDP and 18.4% of aggregate industrial output (World Bank, 2019[76]). Following a period of deteriorating relations between Kumtor's majority owner, Centerra, and the government, which holds a 26% stake in the company, it was reported that mining operations might be wound down. A potential extension of the lifetime of the mine and the development up of new sites, for example Jerooy, could cushion a possible fall in Kumtor's output (Eurasianet, 2019[77]). Despite COVID-19, Kumtor continued operations in 2020, with a declared output 37% higher in the first quarter of 2020 compared to the same period in 2019, with gold prices up by 13.7% year-on-year.

Despite the large role of the extractive sector in the country's economy, the non-mining private sector is contributing to a rebalancing of the economy towards services and industries, such as textiles and tourism. The service sector now represents more than half of GDP, with small firms and individuals predominating. Small and medium enterprises (SMEs) and individual entrepreneurs accounted for 41.5% of GDP (34.6% excluding agriculture) and 20% of employment in 2018. The gap between employment and GDP shares reflect in part the scale of the informal economy, which is estimated to account for 25% of GDP and is dominated by unincorporated entrepreneurs. While both the number and share of employment of SMEs declined in 2019, the volume of gross value-added increased by 10.8% compared to the same period in 2018 – largely because of growth in the wholesale and retail trade sectors, according to the National Statistical Committee.

The government has created a special legal status for "individual entrepreneurs" (EBRD, 2019[34]). While many workers with this status are indeed self-employed, it is important to recognise that a large number are in fact employers rather than individuals, with it having been observed that individual entrepreneurs have employed up to 75 employees in certain sectors. Such entrepreneurs generate an estimated 21% of GDP, and their number has been growing annually, increasing by 2.8% in 2019.

Growth and consumption are also heavily dependent on remittances, especially from Russia. Labour remittances amounted to 33% of GDP in 2018 (EBRD, 2019[34]), and, following Russia's recovery from the 2014-15 commodity shock, inflows have risen from USD 1.7 billion in 2015 to USD 2.7 billion in 2018 (World Bank, 2019[78]). As shown with the 2014-15 crisis, Kyrgyzstan's reliance on labour migration makes the economy vulnerable to shocks in external labour markets, with the impact of COVID on the Russian economy having an immediate impact on remittance inflows into Kyrgyzstan – in the first three quarters of 2020, remittances from Russia were down 35% on the previous year (Central Bank of Russia, 2020[14]). The collapse in demand for labour due to COVID-19 was compounded by a range of supply-side shocks, including travel bans on foreign nationals: an estimated 600 000 Kyrgyz migrants were left stranded in Russia, creating significant economic and logistical pressures for the Kyrgyz government.

Kyrgyzstan has a generally liberal trade regime; it is a member of the WTO and, since 2015, of the Eurasian Economic Union (EEU). However, it has only implemented part of its commitments towards the WTO's Trade Facilitation Agreement, which prevents the country from fully benefiting from its WTO membership (UNESCAP, 2019[79]). Notwithstanding, Kyrgyzstan's external trade turnover increased during the period January-November 2019 by 2.6% compared to the same period in 2018 (Kalikova & Associates, 2019[80]). Kyrgyzstan also benefits from the EU's "Generalised Scheme of Preferences Plus" (GSP+). Under GSP+, the EU grants Kyrgyzstan full removal of tariffs on over 66% of products, including items with a high export

potential such as textiles (European Commission, 2019[81]). Nevertheless, Kyrgyzstan has not yet reaped the full benefits of the GSP+ since the country's main export products of metals and other mineral resources, which accounted for 57% of total exports in 2018, are not covered by the programme. Non-mineral exports include textiles, agricultural products and vehicles. Kyrgyzstan's main export markets are Kazakhstan (20%) and Russia (14%), with Switzerland and the UK also accounting for a large share due to gold purchases by firms incorporated in those territories, while the EU only represents 3% of exports, excluding the UK (Observatory of Economic Complexity, 2021[82]).

Foreign direct investment (FDI) in Kyrgyzstan has fluctuated in recent years and, despite improvements in the regulatory environment, levels of investment remain low. In 2017-18, greenfield investment pledges continued to outnumber realised projects, indicating that obstacles to concluding investment remain (UNCTAD, 2019[83]). Net FDI inflows reached USD 660m in 2016 before turning negative in 2017 and rising again to USD 47m in 2018 (Santander, 2020[84]). At the same time, total FDI stock declined from 51.4% to 48.4% of GDP in 2017-18, due partly to lower investment in Kumtor amid ongoing uncertainty over its future. Over the period 2005-2017, the largest share of FDI went to the manufacturing industry, primarily to the processing of natural and raw materials, which accounted for 37% of the total FDI. Geological prospecting and the exploration of mineral resources received 27% of total FDI. The financial sector is the third largest destination for FDI, accounting for 19% of the total (Komendantova et al., 2018[85]).

The government has made private sector development a priority, yet a number of issues remain

The government has outlined its long-term ambition to develop the private sector and attract greater levels of investment in a number of strategic documents, notably in the National Development Strategy 2018-40 (NDS). The NDS outlines a number of measures that this report recommends but that have yet to be introduced or fully implemented. These include digitalisation of business registration and licensing. The government has made regulatory and legal changes with a view to simplifying and improving the legal and operational environment for business. For example, it has piloted one-stop-shops in Bishkek and Chui, and has introduced limited e-filing for tax declarations. Frequent revisions of the tax code (TC) have occurred and a new TC is being drafted.

In addition to policy commitments and legal changes, the government has made a number of institutional developments. In 2014, it created an Investment Promotion Agency, following close co-operation with the OECD in this area (OECD, 2018[2]; Kyrgyz Republic, 2019[86]). In 2017, the government created a patent agency, which was a serious step towards improving intellectual property rights, a longstanding area of concern for investors. In 2019, the government established a Business Ombudsman with the support of the EBRD. The Ombudsman, headed by the former Ambassador of the United Kingdom to Kyrgyzstan, is tasked with protecting the legitimate rights of both local and foreign entrepreneurs in the country.

SME development is a policy priority for the government, and in its strategy for 2018-2040 it emphasised their role as employers, their contribution to GDP, and the social benefits they generate (Kyrgyz Republic, 2018[87]). The government has also recently passed substantial amendments to its business regulation. In addition to the government's *100 Days of Reforms* programme, which is aimed at the reduction of red-tape and administrative barriers to doing business, amendments were made to a series of the laws, including *On State Support of SMEs, On Inspections of SMEs* and *On Protection of Entrepreneurs' Rights* (Hasanova, 2019[88]).

Kyrgyzstan, by virtue of its dynamic parliamentary system, faces issues of political volatility and therefore at times lack of institutional continuity. This volatility can impede implementation of important laws and reforms, as well as projects with development partners, as new players may lack the awareness of or capacity for challenging reform priorities. Investors interviewed by the OECD similarly cited issues with tax administration and contract enforcement. Companies frequently draw attention to gaps between *de jure* requirements and *de facto* requests and procedures.

A 2019 survey of businesses in Kyrgyzstan conducted for the OECD also showed that firms identify informality of competitors as a major barrier to development. Excessive administrative burdens or intrusive inspections, especially from the tax administration, may discourage firms from engaging in formal economic activity, which, in turn, distorts competition. Firms operating in the formal sector have comparably heavier tax and regulatory burdens than competitors in the informal economy. Corruption, which is linked to the questions of judicial independence, contract settlement, customs procedures, and inspections, also remains an important horizontal obstacle for all firms (OECD, 2020[89]; World Bank, 2019[90]).

The impact of COVID-19 on trade and remittances had a severe impact on Kyrgyzstan's economy

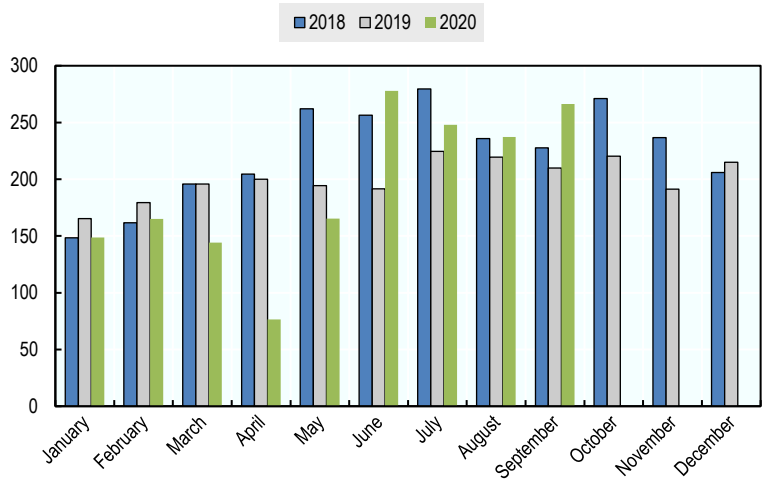
The impact of COVID-19 on Kyrgyzstan's economy has been the most severe of any in Central Asia, with a contraction of 12% expected for 2020 before growth returns positive in 2021 (IMF, 2020[4]). Immediate travel and trade restrictions in the country and the decreased regional flows of people and goods, as well as the associated issue of falling remittances, will continue to have a negative impact on the economy until conditions normalise. Falling remittances and reductions of activities in the domestic trade and service sectors is expected to severely hit both formal and informal firms and workers, lowering production and consumption and ultimately leading to higher unemployment and bankruptcies.

The closure of the border with China risks creating particular challenges for the country, both through pressures on the supply of basic goods as well as a number of crucial inputs into Kyrgyzstan's value-adding sectors, such as light manufacturing and garments. Early data is indicative of the scale of the challenge facing the country's private sector and policy makers: in the first ten months of 2020, imports from China, which in 2018 accounted for 52.5% of all imported goods, had fallen by 46%, while exports to China had fallen by 45% over the same period (Customs Agency of the People's Republic of China, 2020[7]). Reduced trade, including with Central Asia counterparts, led to a 20% drop in border revenues in the early part of 2020. Compounding this, transport disruption is likely to contribute to headline inflation of 12% by the end of 2020 (IMF, 2020[91]).

As part of the measures to contain COVID-19, most countries in the region have implemented at least partial border closures. These closures are seriously undermining the ability of Kyrgyz labour migrants to work abroad, at least in the short- and medium-term, and have hit remittances flows (Figure 16). Reflecting the immediate consequences of containment measures for labour migrants, remittance inflows had fallen by 62% in April compared to the equivalent month in 2019. By the end of Q3 2020, remittance inflows from Russia were down 35% on the preceding year (Central Bank of Russia, 2020[14]). The implications for household consumption and the nation's current account deficit are severe.

Yet, even when restrictions are lifted by host countries, any prolonged economic downturn in countries such as Russia and Turkey risks carrying over lower demand for Kyrgyz labour into the medium- and long-term. Therefore, whilst the immediate rebound of remittances in May-June was a welcome relief to the many households dependent upon labour migration, there remains a significant risk of further downturn in key labour markets for Kyrgyz migrants.

Figure 16. Remittances' fall in Q1 2020 and their rebound in Q2-3



Source: (National Bank of Kyrgyzstan, 2020[92])

There is a risk that the next waves of COVID-19 in Kyrgyzstan could further prolong the social and economic cost for the country. A sharp rise of cases in June following a month of relative case stability reinforced how precarious the health situation remained, with the situation further deteriorating in July. It is important that the government continues to pursue safe and inclusive avenues for policy delivery, including expanded digital services businesses and citizens (Box 8).

Box 8. Kyrgyzstan's digitalisation efforts in response to the COVID-19 crisis

The COVID-19 pandemic intensified the need for reliable, widespread online information and government services. This need accelerated the government's ongoing digitalisation programme. Although mobile connections remain limited, there is an upward trend in overall mobile connections, with broadband connections in urban areas rising while prices are decreasing.

Prior to the crisis, 2019 was declared "the Year of Regional Development and Digitalisation of Kyrgyzstan", which was aimed at enhancing digital innovation support and funding. The government aimed to push for cost-effective online services through its Digital Kyrgyzstan strategy, and had established *Tunduk* in 2018. Following the model of similar institutions in Estonia, *Tunduk* aims to develop an automated single window for government services and, as of May 2020, had made 191 services available online.

In response to COVID-19, *Tunduk* became a key platform through which the government could deliver services to support citizens. The platform allowed citizens to fill an online application to receive humanitarian aid in the form of food baskets. To prevent having to visit government buildings, 85 additional services were integrated into the government platform and new features were put in place, such as the introduction of a digital notary system, the expansion of the electronic fiscal system and the issuance of an electronic permit for vehicles and residents in Bishkek in order to regulate movement during the curfew.

Source: (OECD, 2020[50])

As with the movement of people, containment measures also make trade more difficult and more expensive, with additional sanitary control procedures for firms at border crossings slowing the flow of trade, especially of consumer goods. In addition, the importance of loosely-regulated local markets (*bazaar*) and the informal economy could aggravate the spread of the virus. The shutdown of markets and the decrease in physical interactions will sharply reduce commercial activities, with a significant impact to be expected daily and informal workers.

Despite significant fiscal constraints, the government and the National Bank of Kyrgyzstan adopted a number of short-term economic measures to support private sector activity during the crisis. These measures were adopted in a three-month business support package, which included an extension of the deadline to submit tax declarations and social contributions, and the suspension of audits and administrative sanctions. The package also introduced a ban on bankruptcy procedures for businesses until January 2021, and deferred loan, rent and utility repayments. The government has negotiated a suspension of debt repayments in line with a G20 moratorium on LDC economies' debt obligations, with the vast majority of this owed by Kyrgyzstan to China, namely to the country's EximBank.

The parliament's proposal to tackle the COVID-19 crisis and cushion its effect on Kyrgyzstan's private sector was outlined in the 'Act on New Economic Freedom and Development'. The Act suggested a range of changes to Kyrgyzstan's regulatory and business environment. This package couples immediate recovery support with longer-term structural changes:

- reduction of social contributions, introduction of a social tax, reduction of the number of taxes and inspections;
- simplified business operations through the reduction of licenses, a ban on increase in the number of licenses;
- enhanced access to finance with preferential financing for SMEs and patent-holders in export-oriented, processing and food security sectors; and
- other economic measures including a lowered minimum credit threshold, revision of tariffs; launch of new infrastructure projects; adoption of a new investment code; enhanced protection of private property rights and guarantees for investors; and extension of privatisation process.

Priority areas for reform: the operational environment for SMEs, contract enforcement and tax administration

Priority 1: Streamline business-related legislation and ensure predictable enforcement

The government has made important efforts to simplify licenses and permits for firms, with recent reforms having reduced the number of licenses from 490 to 98, even if this figure still remains above regional averages, with around 60 licenses and permits for businesses in Tajikistan and Uzbekistan. The average number of working days businesses are under inspection has also fallen from 30 to 15, with a three-year moratorium in place until 2021 on license and permit inspections for new firms, extended in light of the COVID-19 pandemic.

Furthermore, the NDS 2018-22 Development Programme calls for an online portal that would coordinate all license-issuing state agencies. To that end, the International Finance Corporation (IFC) is working with the State Committee of Information Technologies and Communications of the Kyrgyz Republic (SCITC) to implement the e-licensing system, egov.kg, which is supported by the country's *Tunduk* platform (IFC, 2019[93]).

The main legislation governing matters related to licensing and permits is the *Law on Licensing and Permits System in the Kyrgyz Republic* and the *Law on Mining* regarding mining licenses (Kyrgyz Republic, 2013[94]; Kalikova & Associates, 2019[95]). The law establishes the rules for licensing, including listing activities that

require licensing and the rules for charging fees. Clear deadlines are set to address requests and the *silence is consent* principle is applied. Where the licensing authority denies the applicant a license, the applicant may appeal the decision. In case of suspected corruption or conflict of interests, an independent review procedure should be initiated in accordance with existing regulations (Kyrgyz Republic, 2016[96]). The law is publicly available on several governmental websites and information on licences is subject to mandatory posting on official websites of licensors.

There remain numerous licenses and obtaining them can be expensive

Despite recent improvements, the number of licenses remains significant, information can be difficult to find and compliance can sometimes be overwhelming for smaller firms. Licensing procedures need to be obtained from different government authorities with limited digitalisation of most procedures and no consolidated one-stop shop (OSS). Businesses also express concern regarding inconsistent decisions on licenses, which sometimes appear to be arbitrary. There is no established procedure for monitoring the compliance of licensing authorities during the review of an application. Corruption in the provision of licenses, particularly in the mining and construction sectors, has also generated uncertainty for businesses. The 2019 BEEPS data confirmed regularly occurring informal payments, with half of respondent firms saying they had been asked to provide gifts for construction-related permits and more than a quarter doing so for operating licenses (OECD, 2018[51]).

The government has not implemented a physical nor digital full-fledged OSS and businesses still need to visit many different ministries and public agencies for various procedures. Different public structures for service delivery have been established with the support of international organisations but they remain fragmented and only provide part of the needed services. For instance, the Ministry of Justice has created an OSS for business registration and the SCIT has developed a web portal with a series of services and information, but with limited backroom digitalisation, these platforms are not linked and do not therefore address the issue of working in silos.

Business inspections have also been a significant concern for businesses and a reform priority for the government. Until the moratorium on inspections, businesses often complained about disruptions to business activities linked to excessive and unpredictable inspections, which could lead to significant fines (UNCTAD, 2016[97]; US Department of State, 2018[98]). With the moratorium on inspections due to end in January 2021, it is unclear what provisions have been made to improve transparency thereafter. Further, sanitary inspections related to COVID-19 have become a new avenue for intrusive and repeated interventions from public agencies in private sector activity, with the recently established Ombudsman noting a substantial increase in complaints from firms against public agencies in the months following the outbreak.

Streamlining licenses and establishing one-stop shop for licenses could simplify procedures for businesses

The government should continue to streamline the number of licenses and permits for businesses. It should concentrate on simplifying the licenses that are considered the most complex and difficult to obtain for businesses, including construction, import and mining. The government could also consider collecting, simplifying and revising key regulations, permits and licenses into one single piece of legislation that would gather all rules that entrepreneurs and businesses need to comply with. For instance, Kazakhstan has implemented a Code for Entrepreneurs that compiles all key legislation for businesses which allows firms to refer to a single, up-to-date piece of legislation (OECD, 2018[51]). The Code includes references to state support for SMEs, including regulatory and procedural simplifications, and the introduction of a Business Ombudsman. The Code was complemented by a 2020 Business Roadmap and most challenges are now reported by businesses in enforcement and impact evaluation for Kazakhstan.

The creation of a cross-government OSS would significantly simplify procedures for businesses and avoid multiple interactions with different agencies. In this regard, further integration of existing centres into a single OSS should be a policy priority, with the government encouraged to leverage successful initiatives, such as the registration platform created by the Ministry of Justice. A number of OECD and non-OECD countries have expanded the development of mobile OSS platforms and creative solutions to bring digital services to remote populations, such as the use of public service busses in France that bring information and services to different remote villages and towns (Government of France, 2019[99]). Given the lack of internet penetration in Kyrgyzstan's rural communities yet the high level of cellular phone usage, the government might prioritise mobile-delivered digital services to increase the number of people that can benefit. Since the government has already established a main online platform at www.egov.kg, this platform could be the focus of future changes and developments so as to avoid duplication. Georgia's Public Service Halls represent an example on how OSS could facilitate the access to and implementation of business regulations (OECD, 2020[89]).

In response to the COVID-19 pandemic, OECD countries have attempted to speed up digitisation efforts. Korea has encouraged physical companies to start online businesses (OECD, 2020[100]). Governments have also made efforts to increase information channels through business platforms and associations. India has for instance expanded its business platform to include information and support on COVID-19. Business associations are also explaining new laws and public mechanisms to ensure businesses fully understand how the support would work. In France, the main businesses association, MEDEF, has published online guides for each new regulations passed by the government to better inform their members on a dedicated webpage (MEDEF, 2020[101]).

Priority 2: Simplify the tax code and tax administration

The government has made tax reform a policy priority, as recently articulated in its *Development Programme 2018-2022* and in the *Strategy on the Development of the State Tax Service (2019-2021)*, both of which acknowledge the need to modernise the country's tax administration and harmonise the tax burden between businesses of all sizes. The tax system has undergone significant reform since the introduction of a new tax code in 2008 that reduced the number of taxes, tax rates and tax administrative procedures (Kyrgyz Republic, 2008[102]; IFC, 2017[103]). The introduction of a digital filing system in 2012, along with other reforms including payment terminals and e-wallets, has reduced physical interactions with the tax authorities (IFC, 2017[103]).

Considering the importance of the topic and its immediate consequence on business cash flows, one of the immediate measures taken by the government to tackle the COVID-19 outbreak consisted in postponing by six months the submission date of tax declarations for businesses. It further extended the payment of taxes during the state of emergency, restricted field tax audits until January 2021, and removed tax sanctions and penalties until July 2020. These immediate responses were proposed by business associations in Kyrgyzstan, with a majority of businesses having faced liquidity shortages. The simplification of online tax administration also remains a priority for the government.

Tax rates in Kyrgyzstan are relatively low, with different tax regimes for small firms

Overall corporate taxation rates in Kyrgyzstan as calculated by PWC and the World Bank are lower than in other Central Asia countries. The total tax rate, including profit taxes, property taxes and social contributions, is estimated at less than 30% of total commercial profits (PWC/World Bank, 2018[104]). In addition to the general state registration procedure as a sole proprietor, Kyrgyzstan has introduced a simplified regime for firms (IFC, 2017[103]). Companies operating under the simplified, presumptive tax regime are not subject to corporate income tax, but are charged a single tax rate (IFC, 2017[103]).

Kyrgyzstan also has a patent-based tax regime for individual entrepreneurs, many of which tend to remain under the patent system rather than move to the generalised simplified regime. Under the patent system, entrepreneurs need to purchase a patent and then extend its validity period, which varies from 30 to 180 days. The patent holder does not need to report to tax authorities and is neither required to keep records of income and expenses nor to pay income tax (OECD, 2020[89]).

Kyrgyzstan has defined a VAT registration threshold at som 8 million (USD 115,000). Under this threshold, companies can still choose to register for VAT, which allows firms to collect VAT on their supplies and deduct the VAT paid on their inputs, thereby helping them to work with more partners that would like to deduct input VAT. However, many businesses report that VAT compliance requirements remain cumbersome (IFC, 2017[105]).

Tax administration and policy remain complex and unpredictable, and could be further simplified and digitalised

Despite recent reforms, the tax system is still considered by many businesses to be complex, too changeable and compliance too expensive. Since 2015, the TC has been amended 56 times. Frequent changes have reduced the transparency of the tax system and made it harder for SMEs to comply with the latest changes, also acting as a disincentive to formalisation (UNCTAD, 2016[97]). In interviews conducted by the OECD, large investors also complain about unstable tax policies, especially in the mining sector. Further tax stabilisation is needed to create certainty for business development, as well as more support for the business community to comply with the legislation.

While the SME simplified regime and the patent regime have reduced compliance costs for entrepreneurs and SMEs, it has also discouraged businesses from officially growing above a certain threshold, with many preferring to stay in the simplified regime or in the patent system. Kyrgyzstan could consider revising both regimes to address possible disincentives to growth, for instance encouraging all SMEs and entrepreneurs to report to tax authorities on a biannual or annual basis. Improving the digitalisation of the tax administration and increasing the uptake of e-filing could markedly improve transparency and lower compliance costs for firms.

The COVID-19 crisis had a negative impact on tax revenues, which makes further tax breaks and deferments difficult. In March 2020 the government calculated 28 bn soms (USD 450m) were lost in tax revenues and customs duties, business suspension, and a lack of raw materials. Measures such as waiving or deferring employer and self-employed social security contributions and payroll related taxes, especially in hard-hit sectors, have been implemented by OECD countries and could be carefully considered (OECD, 2020[106]).

Priority 3: Ensure predictable, fair and efficient contract enforcement

The justice system remains a key obstacle for business and investment

The legal framework for hearing contractual disputes is clearly set out in the Civil Procedure Code, which stipulates that the system of dispute settlement is accessible to all investors, including SMEs and foreign investors, either in Kyrgyz courts or at international arbitration (Kyrgyz Republic, 2017[107]). The Law on Investments requires that companies first seek an amicable solution through consultation and negotiation for at least three months before resorting to international arbitration (UNCTAD, 2016[97]) (Kyrgyz Republic, 2003[108]). If the parties opt for arbitration, it is not necessary for them to resort to domestic courts first. Kyrgyzstan has a specific arbitration law, based largely on the United Nations Commission on International Trade Law (UNICTRAL) model law on international commercial arbitration; though Kyrgyzstan has signed the ICSID Convention, the country has not yet ratified it, so it has not come into force (Aceris Law LLC, 2018[109]).

Alternative dispute resolution (ADR) mechanisms to solve investment and commercial disputes are also recognised by national legislation. The Law on Arbitration Courts sets out the procedure for the formation of extrajudicial bodies, and regulates their activities for the resolution of disputes (Kyrgyz Republic, 2002[110]), while the Law on Mediation provides the legal framework for voluntary mediation and conciliation including for commercial disputes (Kyrgyz Republic, 2017[111]). A number of public and private organisations offer mediation services, including the Chamber of Commerce and Industry (CCI).

Informal traditional courts (*Aksakals,* or courts of elders) are also permitted by law to apply customary norms that do not contradict formal laws (Kyrgyz Republic, 2002[112]; 2017[107]). In rural areas these courts often act without supervision, and are often called to hear cases related to land rights, adjudicating the division of property between spouses, disputes between landowners and use of farmlands and pastures. However, elders usually lack the technical expertise required to resolve complex disputes.

Contract enforcement through the courts is protracted and costly

Economic justice and contract enforcement remain key issues for businesses. Unlike other countries in the region, the Kyrgyz Republic has not established specialised economic courts. Nor does the civil procedure legislation define the concept of a small claim or put in place a simplified procedure for small claims. In 2018, close to 4,000 economic and commercial cases were heard in general civil courts, of which only 151 were concerning SMEs (Supreme Court of the Kyrgyz Republic, 2019[113]).

Contract enforcement indicators are mixed but suggest relatively low procedural efficiency and poor case management (Table 7). Although there are laws setting overall time standards for key court events in civil cases, these time standards are poorly respected and are missed in more than 50% of cases. In addition, there are no laws on the number of adjournments that the court can grant. The cost of procedures in court represents 47% of the claim on average, which is high by international standards. Moreover, there are no electronic tools in place that would increase the transparency and efficiency of the court system (World Bank, 2020[24]). Enforcement is also a concern with the rate of court decision enforcement estimated at only 30% in 2016 (IDLO, 2016[114]).

Table 7. Contract enforcement in Kyrgyzstan

	Kyrgyzstan	Europe and Central Asia
Case Management (0-6)	1.0	3.0
Estimated cost of enforcing contract	47% of claim	26.3% of claim
Length of time to enforce contract	410 days	496.3 days
Cost of pre-trial and trial procedures	25% of claim	N/A

Source: (World Bank, 2019[115])

The court system is perceived to lack independence and fairness

The court system is perceived as an obstacle for business, both by local entrepreneurs and foreign investors. A 2019 report found that fewer than 10% of businesses believe that the court system is fair and free of corruption (IMF, 2019[116]). A 2018 study found that 95% of tax disputes in court were settled in favour of the authorities (International Court of Arbitration of the Kyrgyz Republic, 2019[117]). A 2016 report found that corruption in the courts and political influence on judicial decisions was identified as one of the major problems affecting economic justice by foreign investors (UNCTAD, 2016[97]). Businesses interviewed by the OECD over 2019-20 mentioned that courts lack independence and that cases involving the government were unlikely to be won by private parties.

The high incidence of investor-state disputes taken to international arbitration indicates a lack of trust in the domestic judicial process. Relations between the government and the country's largest foreign investor, Centerra Gold, which have been marked by frequent contract renegotiations, lawsuits, prosecution of expatriate staff and withdrawal of licenses, also cast an unfavourable light on the court system, and business environment more generally (IMF, 2019[116]).

These issues are reflected in the World Justice Project (WJP) rule of law assessment, where Kyrgyzstan ranks 85th out of 126 countries, owing to poor enforcement of court decisions and improper influence during judicial proceedings (World Justice Project, 2019[118]). Procedures for the selection and appointment of judges in Kyrgyzstan also weaken the independence and effectiveness of the judiciary system (OECD, 2018[119]). Judges continue to be appointed for a probationary period during which they are liable to come under political pressure, while life tenure would strengthen their independence. The selection of judges is carried out by the Council for the Selection of Judges (CSJ) and the Disciplinary Commission, which are not independent from political influence, as two-thirds of the CSJ members are composed of members of Parliament. The President is also involved in the selection process and approves the candidates proposed by the CSJ. Improper influence on judges is also reported to be exerted by the executive and legislative branches of power (OECD, 2018[119]).

ADR mechanisms have been established

Kyrgyzstan established an International Arbitration Court (IAC) at the CCI in 2002. Support from a number of donors, including USAID, the OSCE, the Asian Development Bank, the Eurasia CA Foundation, the Soros Foundation-Kyrgyzstan, and the Norwegian Government helped the institution develop into an independent body that provides prompt and high-quality resolution of business disputes through independent professional arbitrators. The IAC offers both mediation and arbitration, and is often preferred by companies over domestic courts (IMF, 2019[116]).Its list or arbitrators includes 187 experts, of whom 75 are international arbitrators from 22 countries (Chamber of Commerce and Industry of the Kyrgyz Republic, 2021[120]), with the IAC having heard more than 1,000 cases since 2002. (International Court of Arbitration of the Kyrgyz Republic, 2019[117]).

In addition, the National Centre for Mediation is a non-governmental organisation (NGO), registered with the Ministry of Justice in 2012, whose membership includes over 40 mediators working across various fields in all seven regions of the Kyrgyz Republic (National Center for Mediation, 2019[121]).

The creation of Business Ombudsman is a welcome addition to institutional protections available to entrepreneurs in Kyrgyzstan

A Business Ombudsman was established in 2019 with the support of the EBRD, which should support the protection of business rights. The Ombudsman, currently led by the former Ambassador of the United Kingdom to Kyrgyzstan, began operations early 2020. Initial consultations with the Ombudsman confirm many of the observations made throughout the *Legal Environment for Business* project, particularly as regards improper and frequent inspections from licensing and tax authorities, and the inveterate challenge of corruption. Following the outbreak of COVID-19, the Ombudsman noted that additional regulations enacted to raise physio-sanitary standards had created further opportunities for abuse from public agencies, further highlighting the importance of this newly-formed institution.

Kyrgyzstan needs to make further improvements to the justice and ADR systems

The NDS sets out the reform of the judiciary system as a priority, and more must be done to guarantee the independence, authority and enforcement of the judicial system. The OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN) provides recommendations to improve the integrity of the justice system, including but not limited to: taking all necessary measures aimed at the prohibition of *ex parte*

communication with the judges; ensuring implementation in practice of an automated case assignment system; guaranteeing security of tenure for judges; protecting judges from undue influence from legislative and executive powers during cases; and revising the procedure for the formation of the CSJ, in particular by limiting the participation of parliament in the appointment of its members (OECD, 2018[122]).

The IAC at the CCI has been effective in supporting arbitration and mediation, and could further expand its activities with more capacity building activities for arbitrators, more use of internationally recognised arbitrators, and support from the government and from the judicial system. The Casablanca International Mediation and Arbitration Centre (CIMAC) in Morocco provides a good example of a strong arbitration court with international arbitrators, with which co-operation could be sought. Enforcement of arbitration awards is also crucial to guarantee the success of the IAC, making economic court reforms all the more so important. Kyrgyzstan could also consider becoming a party of the ICSID Convention by submitting all relevant documents to provide an additional arbitration option to investors.

The development of the activities of the Business Ombudsman can be strengthened by the use of good practices on transparency and efficient claim process, such as Ukraine's Business Ombudsman Council that is also supported by the EBRD (Business Ombdusman Council of Ukraine, 2020[123]). Both Ukraine and Kyrgyzstan follow the model of a Business Ombudsman established by the government, business associations and international organisations (Business Ombudsman Council of Ukraine; OECD, 2020[124]). As the Business Ombudsman is expanding its activities in Kyrgyzstan, the institution could also follow the example of Ukraine by creating a simple, electronic and physical complaint system, preparing regular reports and proposing recommendations on frequent issues faced by businesses for discussion with the Prime Minister and cabinet. The Ombudsman can play a key role during the COVID-19 and its aftermath to voice concerns of businesses and ensure fair treatment in reliefs, payment delays and possible penalties.

Further progress and challenges in the legal environment for business in Kyrgyzstan

Kyrgyzstan has a generally open FDI regime, but concerns over implementation and sectoral restrictions remain

The Kyrgyz government has developed a relatively solid legal and regulatory framework to guide the conduct of business and investment activities. The main national legislation governing investment is the 2003 *Law on investments in the Kyrgyz Republic*, which codifies the restrictions, rights and responsibilities of investors, both foreign and domestic (Kyrgyz Republic, 2003[108]). Additional laws and regulations on land relations, civil procedures, public-private partnerships, free zones, as well as sector laws further specify this framework (UNCTAD, 2016[97]).

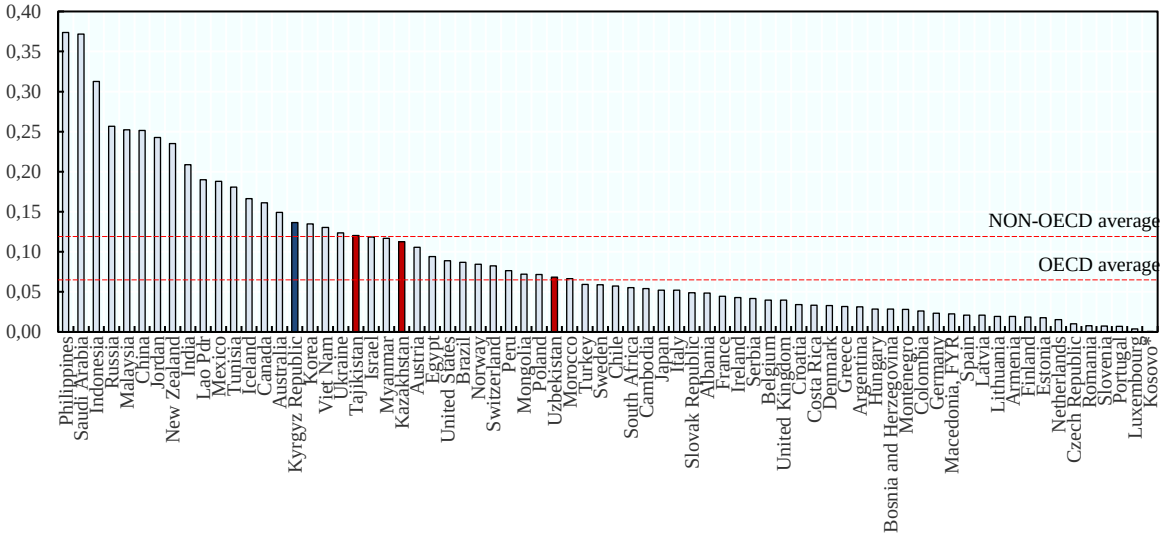
While the regulatory framework is broadly in place to protect investors' rights, according to a survey carried out by the International Business Council in Kyrgyzstan in 2016, the major issue remains the application of these laws (IBC, 2016[125]). This poses a significant challenge to investors, both domestic and foreign. Lack of administrative transparency, unstable taxation, corruption and the unreliability and inefficiency of the judicial system were some of the most significant barriers to hamper foreign investment, as confirmed by OECD interviews with investors. Dispute settlement in the local judicial system and enforcement of arbitration awards in domestic courts have proven difficult.

Despite a relatively open FDI regime, sector restrictions remain

The statutory regime for foreign investors in Kyrgyzstan is relatively open and non-discriminatory, with no economy-wide restrictions on foreign equity, key personal or pre-establishment screening measures.

Some operational restrictions do discriminate against foreign investors across industries, particularly as regards land ownership and use, which is limited to fixed-term leasehold, or in some sectors prohibited. This and other sector-specific measures are such that the Kyrgyzstan scores significantly higher than the average OECD economy in terms of regulatory restrictiveness to FDI, but in line with the average for non-OECD economies and other Central Asian peers (Figure 17).

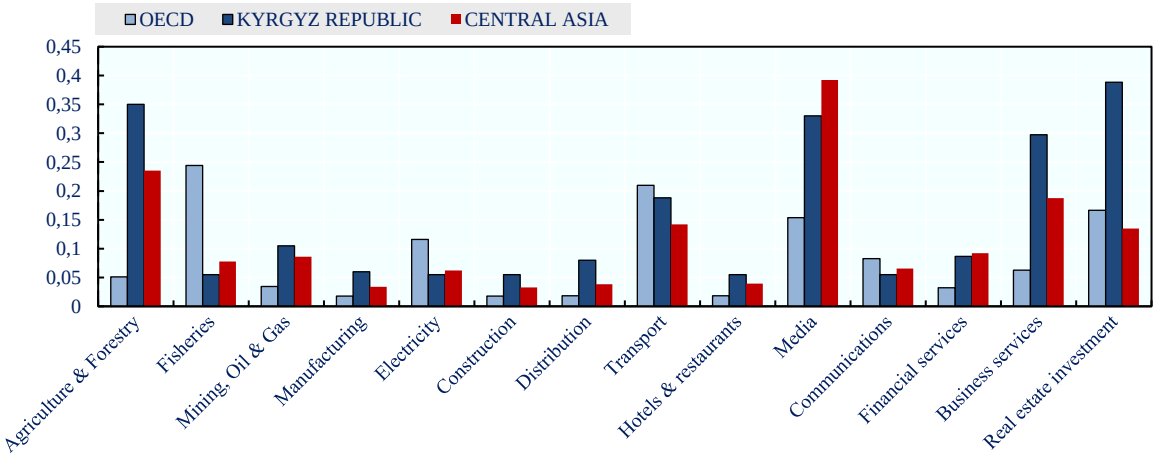
Figure 17. OECD FDI Regulatory Restrictiveness Index: Kyrgyzstan



Note: Open=0, closed=1
Source: OECD FDI Regulatory Restrictiveness Index

The main sectors that stand out as exceptionally restrictive relative to OECD countries include agriculture and forestry, with foreign equity limited to 20% as a result of restrictions on land use; media and real estate, with foreign equity limited to less than 50%; and a range of services (e.g. legal, auditing, hospitality), for which local incorporation is required (Figure 18). Business services and real estate stand out even with respect to Central Asian peers, and may reduce the country's relative attractiveness to foreign investors seeking investment opportunities in the region.

Figure 18. OECD FDI Regulatory Restrictiveness Index: sectoral restrictions in Kyrgyzstan



Note: Open=0, closed=1
Source: OECD FDI Regulatory Restrictiveness Index

The country seems to have underperformed in FDI attraction relative to its stage of economic development and regulatory openness (OECD, 2020[126]). While the regulatory framework is broadly in place to protect investors' rights, according to a survey carried out by the International Business Council (IBC) in Kyrgyzstan in 2016, the major issue remains the application of these laws (IBC, 2016[125]). This poses a significant challenge to investors, both domestic and foreign. Lack of administrative transparency, unstable taxation, corruption and the inefficiency of the judicial system were some of the most significant barriers to hamper foreign investment as confirmed by OECD interviews with investors. Dispute settlement in the local judicial system and enforcement of arbitration awards in domestic courts have proven difficult.

Access to investment- and business-related legislation remains limited

The government has endeavoured to improve the transparency of the legal environment for businesses through the creation of its online investment portal. While all information pertaining to investor interests, rights and obligations should be published and readily available, according to the 2003 *Law on Investments*, there remain some notable gaps.

For instance, the investment portal does not provide information on resolution of economic disputes. Moreover, foreign investors need to review myriad sectoral laws and regulations to understand the market access and treatment conditions applicable specifically to them, which are not collated in the portal. Information in both Russian and English is sparse and where translations exist, there are often significant asymmetries between the English and Russian or Kyrgyz language versions. More importantly, investors face inconsistent definitions in law, for instance on the foreign ownership threshold between the Law on Investment (defined at one third of a company's stock) and the Land Code (at 20% of the charter capital). Clarifying any inconsistencies and establishing a foreign investment negative list clearly delimiting the sectors where foreign investment is prohibited or conditioned and outlining which discriminatory conditions apply, would increase clarity and transparency for potential investors.

Though some relevant information for foreign investors and legislation on taxation and labour laws is collated on the investment portal, the information available is only partial, with, for example, no information on dispute resolution and on potential restrictions on investors on the online investment portal, despite important restrictions pointed out in the OECD FDI Index (UNCTAD, 2016[97]) (OECD, 2020[126]). In addition, there are significant asymmetries between the English and Russian/Kyrgyz language versions. Furthermore, investors face inconsistent definitions in law, for instance on the foreign ownership threshold between the Law on Investment (defined at one third of a company's stock) and the Land Code (at 20% of the charter capital) (UNCTAD, 2016[97]).

Additionally, websites like that of the Investment Promotion and Protection Agency lack key details like information on where the applicant must go to find the relevant forms and submit the application. Overall, information on licensing in both Russian and English is sparse. One reason for this may be that there is no OSS for investors and for local companies, meaning that the licensing authorities are diverse and complex.

Kyrgyzstan has a strong expropriation regime

Kyrgyzstan's constitutional and legal safeguards against expropriation appear to be relatively robust and well-defined compared to those of other countries along the Belt and Road Initiative (UNCTAD, 2016[97]) (World Bank, 2019[127]). Forced seizure or nationalisation of private property are allowed only by decision of a court, or in cases provided by law in order to protect national security, public order, public health and morals, or the rights and freedoms of others. The legality of such an exemption is subject to mandatory review by the court (Kyrgyz Republic, 2010[128]; Kyrgyz Republic, 1996[129]).

The *Law on Investments* further protects investments against expropriation (i.e. "nationalisation, requisition or other equivalent measures leading to the forced withdrawal of investor funds or depriving him of the opportunity to use the results of investments"), except when such expropriation is carried out in the public

interest on the basis of non-discrimination and in compliance with the proper legal order, and is made with payment of timely, appropriate and real compensation for damage, including lost profits. Compensation should be equivalent to the market value of the expropriated investment on the date of expropriation, plus any losses caused by expropriation (Kyrgyz Republic, 2003[108]). However, the Law does not specify the exact procedures for calculating compensation, including the factors and methods that can be used (e.g. purchase price, resale value, depreciation, goodwill etc.).

Investors can also make use of other legal instruments available in Kyrgyzstan to settle situations concerning expropriation. If there is no prior agreement in place, the two sides will first resort to mediation to resolve the disagreement, then to arbitration in the national courts (US Department of State, 2018[98]). If one of the two sides does not agree to recourse in the Kyrgyz courts, the dispute shall be settled in an international arbitration court (Kyrgyz Republic, 2003[108]).

The framework for land governance and relations has been effectively reformed

Land governance and relations underwent significant reform in the Kyrgyz Republic, since independence. The Land Code adopted in 1999 (last amended in 2019) establishes the foundations, conditions and limits for modifying or terminating ownership of land and land-use rights, describes the rights and responsibilities of landowners and land-users, and regulates land relations (Kyrgyz Republic, 1999[130]). The Code governs agricultural land, settlement areas (towns, urban areas and rural settlements), industrial land, forests, specially protected natural territories and reserve land. A number of other laws, decrees and regulations related to different types of land and land use further govern land relations.

The Kyrgyz Republic is the only country in Central Asia to recognise private ownership of land, following a constitutional amendment in 1998. Private land includes land owned or leased by individuals or legally registered to private enterprises or associations. State land that cannot be purchased or leased includes forestland, pastureland, specially protected natural territories, land of border areas, and some land reserves. Landowners in Kyrgyzstan have the right to exclusive possession of land and can freely transfer the land by sale, lease, mortgage or gift. Leasehold of both private and state land can be unlimited or temporary, with the possibility to extend land use terms after its expiration. Leaseholds for pastureland and agricultural land retained by the State are limited to five years, while leaseholds for commercial and industrial land generally range from five to 50 years, depending on the extent of land and investment.

Foreign nationals, legal entities, and firms established in Kyrgyzstan with foreign shareholding in excess of 20%, cannot own land on a freehold basis. Agricultural land cannot be owned, leased, or sub-leased by foreigners or foreign-controlled entities (i.e. owning over 20% of equity) even if they are incorporated in Kyrgyzstan (Art. 5, 7) (Kyrgyz Republic, 1999[130]). Foreign investors are, however, eligible for temporary leaseholds (up to 50 years) on non-agricultural land, regardless of local incorporation. Such discriminatory treatment of foreign investors with respect to land use rights is common in the region and in developing countries more generally, as reflected in the relatively higher scores of the OECD FDI Regulatory Restrictiveness Index. In practice, foreign investors may face additional difficulties in leasing land if they are not locally incorporated, as the identification and registration numbers specific to local companies required for tax purposes may serve as *de facto* barriers to unincorporated foreign legal entities.

Complete and up-to-date information on land, including maps, can be found in the portal of the National Integrated Cadastral System, in Kyrgyz, Russian and English.[2] According to the Kyrgyz State Registration Service website, registering land requires 5-10 working hours and costs the equivalent of EUR 6-12. The low cost of land registration is reflected in Kyrgyzstan high ranking in the World Bank's 2020 *Doing Business* indicator on the ease of registering property, where the country is placed 7th out of 190. Moreover, less than 1% of firms surveyed in the 2019 World Bank Enterprise Survey of the Kyrgyz Republic listed

[2] http://www.cadastre.kg/svc-portal/main/index.do

access to land as the top business environment constraint, providing strong evidence that the legal framework for land is conducive to a healthy business environment.

The adoption of new laws in favour of intellectual property rights has improved the regulatory framework, but doubt arise regarding enforcement in courts

Kyrgyzstan has taken concrete steps to improve its legal protections for intellectual property and has enacted a number of legislative acts in recent years. The government is a signatory of both the World Intellectual Property Rights Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The government has also drafted a State Programme for the development of IP rights for the period 2017-21. This programme, which outlines the objective to move towards a "knowledge economy", includes a detailed, budgeted roadmap of actions.

One of the most significant legal changes of the past decade in terms of improving protections for IP rights in Kyrgyzstan was the adoption of the Law on *Kyrgyzpatent* in 2017. The law provided for the creation of a national patent agency tasked with managing property rights and related disputes in the country. The resulting agency, *Kyrgyzpatent*, has a well-developed and professional website, available in English, Kyrgyz and Russian, providing information pertaining to patents and IP rights in Kyrgyzstan.

There are no dedicated courts for intellectual property rights disputes. However, the government's Intellectual Property Service has provided training to judges as part of the *Law School on Intellectual Property Issues* project.

Meetings with foreign investors in the region has identified IP protection to be an issue. Lack of controls at customs and Pressure for Kyrgyzstan to adopt EEU standards with patenting and trademarks have been reported and the lack of trust in the judicial system raises concerns regarding IP enforcement.

Starting a business in Kyrgyzstan has become easier

The government has made important efforts on business registration. This is reflected by the World Bank's Doing Business indicators, on which Kyrgyzstan ranks 35th for starting a business (Table 8) (World Bank, 2020[24]). A one-stop-shop for registration has been implemented by the Ministry of Justice, which transmits information to other governmental bodies, including the National Statistical Committee, the State Tax Inspectorate, and the Social Fund (OECD, 2020[89]). OSS are located around Kyrgyzstan but businesses complain about their geographic distribution (World Bank, 2019[115]). However, additional documents required to operate the business, including licenses, certificates and permits, still need to be collected in multiple state agencies and underline the lack of a comprehensive OSS. The COVID-19 crisis and the limitations of interpersonal interactions could also encourage the country to move to fully digital solutions for registration.

Table 8. Starting a business in Kyrgyzstan

Indicator	Kyrgyzstan	EU and CA
Ranking in doing business on starting a business	35	56 (average)
Time required (days)	10	12.9
Number of administrative steps	4	5
Registration costs (% of GNI per capita)	Close to 0%	4.6
Minimum capital requirement (% of GNI per capita)	0.0	2.3

Source: (World Bank, 2020[24])

Closing a business is easier than in other countries of the region, but remains difficult

Kyrgyzstan fairs better than other Central Asia countries when it comes to cost and time to close a business, but still lacks a robust framework for bankruptcy despite the provision in the Civil Code and the law on bankruptcy (Table 9) (Kyrgyz Republic, 1997[131]) (World Bank, 2019[115]). Implementation is also difficult as there is a lack of specialised bankruptcy courts with decisions on insolvency are taken by local courts of arbitration (US Department of State, 2018[98]).

Table 9. Closing a business in Kyrgyzstan and in other Central Asia countries

	Recovery rate (cent on the USD)	Time (years)	Cost (% of the estate)
Kazakhstan	39.8	1.5	15.0
Kyrgyzstan	40.6	1.5	9.5
Tajikistan	29.6	1.7	17.0
Uzbekistan	37.6	2	10.0

Source: (World Bank, 2020[1]; Kyrgyz Republic, 1997[132]).

The government does not provide specific support to distressed businesses. Additionally, government strategies and legislation do not refer to a second chance for entrepreneurs. Information, tools and trainings could be put in place for entrepreneurs who are starting afresh and for those expressing financial distress.

A number of active platforms exist for public-private dialogue between for both domestic and international firms

One of the major instruments for dialogue with investors is the Investment and Business Development Council (IBDC), established in 2017 with the support of the EBRD, which acts as a consultative and advisory body co-ordinated by the government. The council is chaired by the Prime Minister and its membership is comprised of representatives from government, development partners, business associations, and the International Business Council (EBRD, 2019[34]) (IBDC, 2017[133]) (UNCTAD, 2016[97]). Its aim is to improve the investment climate and ensure that proposed measures are adequately implemented.

Additionally, in 2018, the government established the National Council for Sustainable Development to ensure the adoption and implementation of the National Development Strategy, including on business and investment topics. The council can liaise with government bodies, international organisations, working groups, and experts to this end. The decisions taken by the Council are subsequently published on the presidential website (Kyrgyz Republic, 2019[134]).

Several councils have been set up to support public-private dialogue on the business climate. Business associations representing the interests of local firms and SMEs can also take part in the National Council for Sustainable Development and in the Business and Entrepreneurship Development Council. The latter was created by the Parliament in 2017 to strengthen co-operation between the country's legislative body and the private sector. It consists of members of parliament, cross-sectoral businesses, and business associations that meet regularly to discuss legislation and measures to improve investment and promote entrepreneurship (US Department of State, 2018[98]).

Business associations are active channels of communication with the government and gather around 20% of all businesses, such as the CCI, the IBC, JIA and the Union of Banks (EBRD, 2019[34]). The CCI plays a crucial role in collecting views, voicing the concerns of businesses to the government, supporting new legislation and implementing services for their members. It organises surveys to gather feedback that are publicly shared. It also hosts the IAC (Chamber of Commerce and Industry of the Kyrgyz Republic, n.d.[135]). The IBC promotes the creation of an attractive investment climate and gathers large companies, in particular those active in the natural resource sectors. JIA has been increasingly representing the interests of young entrepreneurs and businesses from all regions.

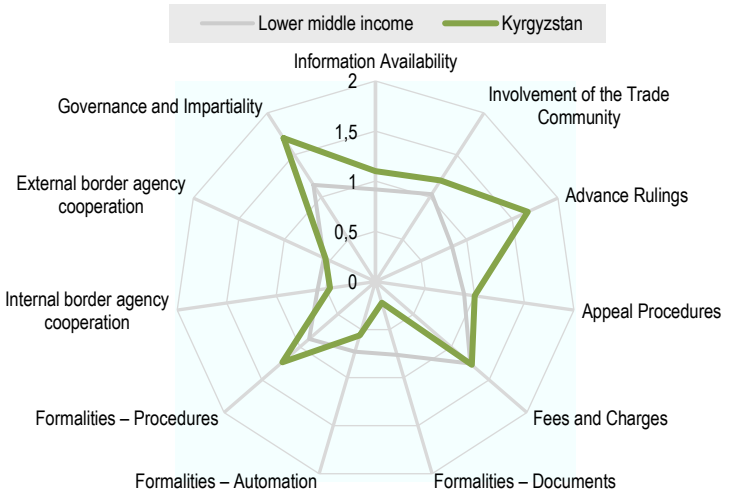
Conditions for regulatory consultations are clearly defined by the law on *Normative Legal Acts of the Kyrgyz Republic* (Kyrgyz Republic, 2009[136]). Legal acts affecting legal entities or entrepreneurial activity are subject to public discussion by posting on the official website of the regulatory body. In the absence of an official website, the rule-making body publishes the legal acts through mass media (Kyrgyz Republic, 2014[137]). From May 2018 to April 2019, notifications were published for over 130 public discussions on draft regulations that could affect businesses. The private sector does not have the right to adopt or initiate drafts of regulatory legal acts. In practice, business representatives are able to voice their proposals for improving the legislation during public-private platforms and regular exchanges.

Most of the public-private consultations still happen in physical meetings. The COVID-19 pandemic pushes key stakeholders to explore digital ways of communications, including digital platforms and videoconferences that could be generalised after the crisis. This could foster participation from players that are outside Bishkek.

Kyrgyzstan is ahead of the Central Asia average in the OECD Trade Facilitation Indicators but lags behind OECD average on almost all policy areas

The *Law on Customs Regulation* is the main domestic law regulating customs (Kyrgyz Republic, 2019[138]). In the OECD Trade Facilitation indicators, Kyrgyzstan is ahead of the Central Asia average in almost all policy areas, but significantly lags behind OECD average scores (Figure 19). Many of Kyrgyzstan's less effective policy areas reflect excessive administrative burdens and a lack of transparency. Regarding formalities and the number of documents, Kyrgyzstan remains behind the Central Asia average with 6 documents asked for export and 12 for imports (World Bank, 2019[115]). Overall, importing has proven more complex than exporting in terms of documents, costs and overall procedures (Ibid.). Kyrgyzstan has introduced automated procedures for customs, however there is no single window for customs in place.

Figure 19. Kyrgyzstan in the OECD Trade Facilitations Indicators



Source: (OECD, 2019[65]).

Corruption issues are observed in customs procedures. High risks are present in estimating the value of customs duties and inaccurate import declarations of goods (OECD, 2018[122]). Automation of customs procedures and better selection of internal investigation units can support improvements in addressing corruption in customs.

Kyrgyzstan has been a member of the WTO since 1998. Although Kyrgyzstan has very low tariff barriers, non-tariff barriers can be burdensome, owing to costs and delays in trade clearance (UNCTAD, 2016[97]).

The country's accession to the EEU in 2014 has had limited effects on trade flows and its impact of on the business climate remains unclear. In terms of imports, cheaper goods from other EEU countries have reached the local market. A number of major industrial foreign firms, highly dependent on the import of specialised technical inputs, have noted that EEU rules have superseded existing Bilateral Investment Treaties and therefore increased the import costs, since tariffs have risen on products sourced outside the EEU area. This should make sourcing locally more competitive, but this is complicated in practice by a lack of suitable local suppliers. Membership of the EEU has not yet led to a significant increase in exports partly due to regulatory and technical difficulties (US Department of Commerce, 2019[139]; Yeliseyeu, 2019[140]). Business associations and exporters mentioned that regulations, documents and standards have become more complex with the EEU, for instance on sanitary and physio-sanitary standards (Investment Council of Kyrgyzstan, 2019[141]).

Though the EU granted GSP+ to Kyrgyzstan in 2016, Kyrgyz exporters are not fully benefiting from the scheme. The programme guaranteed either reduced or zero tariffs on certain commodity exports from Kyrgyzstan. However, the GSP+ status was only used for 4% of total exports to the EU, as most exports still consist of gold and mining products. Furthermore, only half of currently eligible products effectively use the GSP+ status, far from its full potential according to EU data (Chekirova, 2019[142]; Kabar news, 2019[143]; European Commission, 2019[81]).

Several international organisations have been supporting improvements in customs and trade. The EU Border Management Programme in Central Asia (BOMCA) project, led by a consortium from Lithuania, has been helping the government improve their trade and customs procedures, including reviews of legislation and capacity building measures (EU/BOMCA, 2019[144]). In Kyrgyzstan, BOMCA has been recently supporting the automation of customs procedures, and the promotion of GSP+ requirements to help Kyrgyz companies benefit more from the scheme.

4 Tajikistan

Chapter summary

In 2019, real GDP grew by 7.5%, slightly faster than the average of 6.7% recorded over the last decade, and GDP per capita stood at USD 344.70 at PPP exchange rates. Growth continues to be driven by an unstable economic model based on the export of raw materials and surplus labour. FDI inflows continue to be concentrated in extractive sectors and their volume is therefore linked less with improvements in the country's business environment than in global demand for extractive goods. In the wake of the global COVID-19 pandemic these sources of growth and investment will be seriously affected, and growth is estimated to have decelerated sharply in 2020, to just 1.6%.

Diversification is hampered by a challenging business climate, particularly for the emerging private sector development. The private sector struggles to create a sufficient number of quality jobs to support an expanding labour force, with only 5.6% of the country's working age population employed in the formal private sector. Nevertheless, the government has developed a relatively robust legal framework for business and investment activity, with relatively few regulatory barriers to foreign investment. At the same time, it has adopted legislative changes to improve the business climate, notably by simplifying customs procedures.

The implementation of business-related legislation remains challenging due to poor governance, and a lack of institutional capacity and skills. At the same time, both domestic and foreign businesses are encumbered by extensive registration and licensing requirements, with a complex and unpredictable set of tax requirements further undermining the business climate.

The government could make significant improvements to its legal environment for business by addressing a number of issues that hamper business operations and development: 1) ensuring effective and predictable implementation of business-related legislation; 2) improving access to economic justice by guaranteeing the enforcement of contracts and international arbitral awards, and 3) simplifying tax procedures and improving the transparency and accountability of the tax administration.

Economic overview

Growth has been strong, but economic diversification and the contribution of the private sector are limited

Tajikistan's economy has grown strongly since the country began to recover from the transition recession and civil war in the late 1990s. Since the turn of the century, real GDP growth has averaged 7.7% per annum according to official data, slowing only slightly over time, with the average over the last decade falling to around 6.7%. The combined impact of lower remittances, suppressed domestic economic activity and falling trade due to the pandemic has cause growth to slow to 1.6% in 2020, with a return to stronger growth anticipated for 2021 (IMF, 2020[4]). The share of the population living below the poverty line fell from 83% to 29.5% between 2000 and 2017, though the World Bank anticipates that the impact of COVID-

19 will slow the rate of poverty reduction – and perhaps cause a reversal in the short- to medium-term - in the country substantially (World Bank, 2018[145]) (World Bank, 2020[15]). The country remains the poorest of the Central Asian states in *per capita* terms, and the economy relies heavily on the export of a limited range of extractive products and remittances from surplus domestic labour.

In recent years, growth has been driven largely by public investment and remittance-fuelled consumption. Public investment has been concentrated in the Roghun hydroelectric power plant (World Bank, 2019[12]). Migrant remittances, which fell sharply following the 2008 financial crisis and again during the 2014-15 Russian recession, rebounded in 2017-18 to around 30% of GDP (World Bank, 2019[12]) (EBRD, 2019[13]). However, as shown by the experience of previous exogenous demand shocks, it is likely that the 2020 COVID-19 pandemic will have significant and enduring consequences for remittance- and extractive-fuelled growth, with demand for labour and raw goods likely to fall, squeezing public finances at a time where the government will be required to mitigate the domestic economic fallout of the global pandemic.

The role of the private sector in Tajikistan's economy – particularly the formal private sector – is limited, which in turn decreases the availability of quality formal jobs and the size of the tax base. As of 2019, there were 608,322 registered firms in Tajikistan, though only 330,991 were active. The vast majority of active firms (89.2%) are registered as individual entrepreneurs and work either on a patent basis (35.9%) or in low-productivity *dehkan* farming (52.3%) (Republic of Tajikistan, 2019[146]). In 2018, domestic credit to the private sector stood at just 12.3% of GDP, down from 22.7% in 2015 and significantly below regional peers like Kazakhstan (26%) and Kyrgyzstan (24%), with the private sector contributing only 15% of total investment (Strokova and Ajwad, 2017[147]; World Bank, 2019[148]). Only 5.6% of the working age population are formally employed in the private sector, mostly in low-productivity sectors (World Bank, 2019[12]). As in other countries of the region, competition remains a challenge to the development of the private sector and a healthy business climate. With poor implementation of competition laws, monopolistic practices of SOEs and the prevalence of state unitary enterprises, and the lack of clarity concerning the applicability of competition and procurement laws to these firms, competition is one of the most important structural challenges in Tajikistan's economy.

Against a backdrop of high levels of public investment, public debt continues to rise, narrowing the government's fiscal space. Public debt reached 51.7% GDP in 2017, up almost 7 percentage points on the previous year and well above the government's own 40% debt-to-GDP ceiling, which the government is looking to raise to 60% GDP (World Bank, 2017[149]). In addition, 80% of the country's debt is owed to one creditor – China's Export-Import Bank – which may increase the government's vulnerability to cede concessions in areas such as mining (OECD, 2019[150]; Hurley, Morris and Portelance, 2018[151]).

FDI inflows have been inconsistent and exports driven by commodities

In 2018, the total foreign direct investment (FDI) stock in Tajikistan stood at USD 2.76 billion (UNCTAD, 2019[152]). Annual FDI inflows over the last 20 years have averaged about 4.4% of GDP, but they have been closer to 3% over the last decade. The majority of inflows come from China and Russia (UNCTAD, 2019[152]).

The export basket was long dominated by raw aluminium but its share has fallen sharply over the last decade. In 2017, it accounted for only 23% of total exports, down from 68% a decade earlier. Nevertheless, ores, metals and precious metals constituted roughly 75% of exports in 2017 (Observatory for Economic Complexity, 2021[153]). This leaves the economy exposed to swings in mineral and metals prices – the more so because the Russian Federation is subject to many of the same vulnerabilities, so remittance income tends to move in tandem with commodity prices. While trade data from the Tajik authorities for 2020 was not available at the time of writing, mirror data from China suggests that exports to its neighbour and significant trade partner had fallen by around a third in the first ten months of the year (Customs Agency of the People's Republic of China, 2020[7]).

The government has defined a roadmap of reforms to improve the business environment

Against a backdrop of low levels of domestic private sector development, the government has defined the attraction of foreign investment and the creation of a legal and regulatory environment that enables it as national policy priorities. In addition, the government has explicitly linked the attraction of FDI to its long-term economic development strategy, as set out in the 2016 National Development Strategy of Tajikistan to 2030 (NDS) (Republic of Tajikistan, 2016[154]). The strategy clearly states the need for Tajikistan to diversify its sources of FDI, with a greater focus on "south-south" co-operation and integration. It outlines a number of priorities, including: developing legislation to improve quality and safety standards; simplifying tax administration; establishing an Ombudsman for entrepreneurs; expanding the list of VAT-exempt imported industrial goods; and rationalising tariffs for transport services and infrastructure use.

In addition, the government has undertaken to create a business ombudsman and better align investment with regional development priorities, as outlined in its *300 Days of Reform* programme (Republic of Tajikistan, 2019[155]).

Concrete improvements to the legal environment have been made – evidenced by Tajikistan rising 10 places in the 2019 World Bank *Doing Business Indicators* (DBI), placing it among the Bank's top ten reformers – and the government has taken a number of steps towards a long-term strategy for improving the business climate. For example, the National Development Strategy to 2030 (NDS) denotes the improvement of the business climate and the attraction of FDI as central pillars of its long-term vision, setting out a coherent, non-extractive dependent vision for the country's economy (Republic of Tajikistan, 2016[154]).

Whilst there is a risk of duplication in certain areas – such as the single window for investors and licensing procedures, which could be merged with a number of other information platforms that the plan proposes – the priorities outlined, if addressed and properly implemented, could significantly improve the business climate. Both plans also include a clear delineation of responsibilities for government agencies, indicating a concrete approach to the implementation phase of high-level strategic plans.

The government has also looked to improve trade relations with its neighbours. In 2019, Uzbekistan and Tajikistan agreed on the organisation of simplified customs procedures and the introduction of the Simplified Customs Corridor that followed that decision, led to a significant improvement in the World Bank's *Trading Across Borders* pillar in its *Doing Business Indicators* (World Bank, 2020[24]).

The COVID-19 pandemic has put significant strain on public finances and the labour market

As in other countries of the region, the impact of the COVID-19 pandemic on the economy of Tajikistan has been severe, leading growth to decelerate to 1.7% in 2020 (IMF, 2020[4]). The closure of Russia's borders had an immediate impact on remittance flows to the country, which, at around 30% GDP in 2019, have made Tajikistan one of the most remittance-dependent economies in the world. It is worth noting that the export of surplus labour to countries such as Russia is representative of the historic inability of Tajikistan's private sector, impeded as it is by an unfavourable business climate, to produce a sufficient number of jobs for a young and rapidly expanding labour force. The consequences of this surplus labour being locked into an economy that cannot, under current conditions, absorb it, brings with it serious economic and social risks.

Trade, another of the economy's key drivers, is also likely to be affected. Three quarters of Tajikistan's exports are primary metals, the demand for which – especially in China, one of the country's top trade partners – has fallen significantly. Compounding the fall in demand are the trade barriers that have emerged as countries seek to stem the spread of COVID-19. Even though certain countries, such as Russia, have kept their borders open to certain types of trade, many of Tajikistan's key markets have closed off their frontiers, with the unpredictability of internal Central Asian border management in the face

of the pandemic complicating trade further. Not only does the disruption in trade have serious implications for government finances in the immediate term, it risks seriously imperilling the value chains upon which Tajikistan's fragile manufacturing industries depend. Indeed, in the first ten months of 2020, imports from and exports to China had fallen by 45.5%, creating significant pressures on the supply of basic goods as well as inputs into value-adding sectors such as garments (Customs Agency of the People's Republic of China, 2020[7]).

Reduced revenues from trade and remittances will not only have an impact on the ability of the government to mitigate the economic impact of the pandemic on the domestic private sector but may also complicate the government's ability to service a highly-dollarised external debt. At a rate of 66% out-of-pocket health expenditure in Tajikistan is among the highest in the world, creating the risk that the social cost of the pandemic will be passed onto workers in an already precarious economic situation (WHO, 2020[156]). Lastly, a high degree of economic informality, with only 5.6% of the working age population in formal private sector employment, complicates the ability of the government to administer support to firms and entrepreneurs that need it.

In the past when the government has come under financial strain businesses have complained of predatory behaviour from the tax administration and other public authorities with a remit to impose and collect fines on businesses and citizens. It is important that, during period where a fragile private sector is likely to be under significant pressure, conditions for business are not allowed to deteriorate to an extend where many cease trading. This is especially important in the immediate need for the country to provide jobs to many of its citizens that would otherwise be working abroad.

Priority areas for reform: contract enforcement, economic justice and tax administration

Priority 1: Ensure the implementation of existing laws for investment and entrepreneurial activity, and improve the accessibility of necessary information

The government must ensure better implementation of the laws it has on its books, with these already providing a relatively sound *de jure* legal framework for business and investment activity. Where there are remaining restrictions that are discriminatory, the government should work to remove these. There is little need to rewrite these laws; remaining shortcomings can be addressed through consultations with the private sector and international experts.

To ensure that businesses have effective recourse at reasonable cost where laws are not effectively enforced, or to ensure that businesses can clarify concerns or doubts regarding their legal requirements, the government should prioritise its business-to-government interfaces, ensuring these are staffed by well-trained and knowledgeable personnel.

In addition, the government should work to avoid duplication of information across multiple online platforms, moving to consolidate information and decommissioning redundant sites. Improving the horizontal co-operation between public agencies is key in this regard, and the government should consider developing an oversight mechanism that helps ensure information is shared between and accessible by different public agencies.

Tajikistan has a relatively robust formal legislative framework for investment

Underpinning the government's strategic documents is a relatively robust legislative framework for investment and entrepreneurial activities. In 2016, a new Law on Investment (LoI) superseded an earlier iteration from 2007, outlining key provisions for, and protections afforded to, both foreign and domestic investors (Republic of Tajikistan, 2007[157]; 2016[154]). A number of guarantees codified in the 2016 Law on

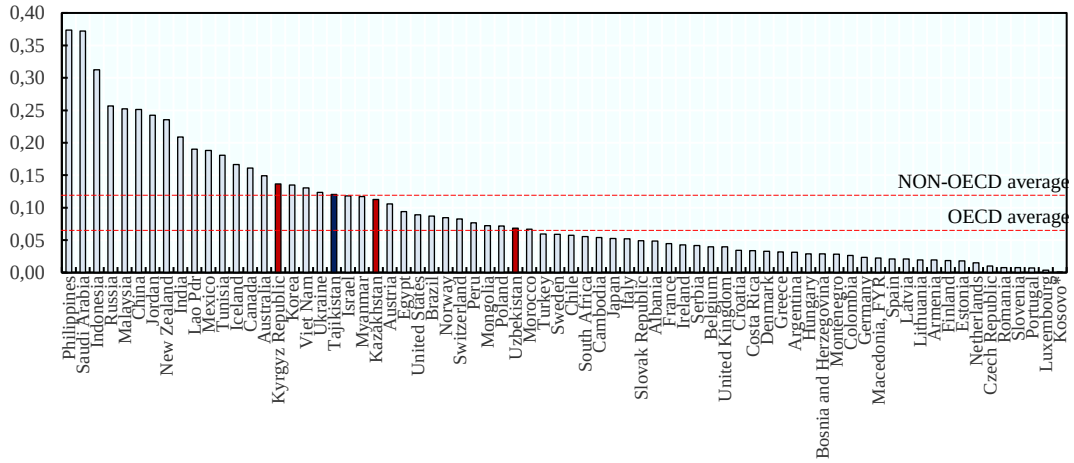
Investment, are in line with investment policy good practice, including: non-discrimination and equality before the law for foreign and domestic investors (Art. 7); guarantees from direct expropriation; a definition of, and provisions for compensation for indirect expropriation (Art. 14); guarantees of access to freely convertible currency (Art. 11); access to information held by the government for investors (Art. 13); and a commitment to develop a single window for investor-related queries (Art. 23) (Republic of Tajikistan, 2014[158]).

The Law on Investment is supplemented by a number of additional laws, including but not limited to: the 2012 Law on Investment Agreements, the 2013 Law on Production Sharing Agreements, and the 2011 Law on Free Economic Zones. Taken together, they provide the general legal framework for domestic and international investment activities and constitute a relatively strong set of legal guarantees for investors (Republic of Tajikistan, 2007[157]; Republic of Tajikistan, 2013[159]; Republic of Tajikistan, 2007[160]; Republic of Tajikistan, 2011[161]).

Tajikistan's FDI regime is relatively open, with some sector restrictions in services

Tajikistan's FDI regime is open and non-discriminatory in principle, having no economy-wide regulatory restrictions on foreign equity, employment of foreign personnel or screening requirements on foreign investments. Investors can repatriate profits, invested capital and loans, provided they comply with all national fiscal obligations. As in other countries in the region, the main discrimination against foreign investors pertains to land use rights, which are restricted to a limited-term leasehold, or in some sectors altogether prohibited. Additional equity restrictions and local incorporation requirements to some extent limit foreign activity in certain sectors. Nevertheless, Tajikistan's score against the OECD FDI Regulatory Restrictiveness Index is close to the average for non-OECD countries, and in line with other regional peers and economies at similar levels of development (Figure 20).

Figure 20. OECD FDI Regulatory Restrictiveness Index: Tajikistan



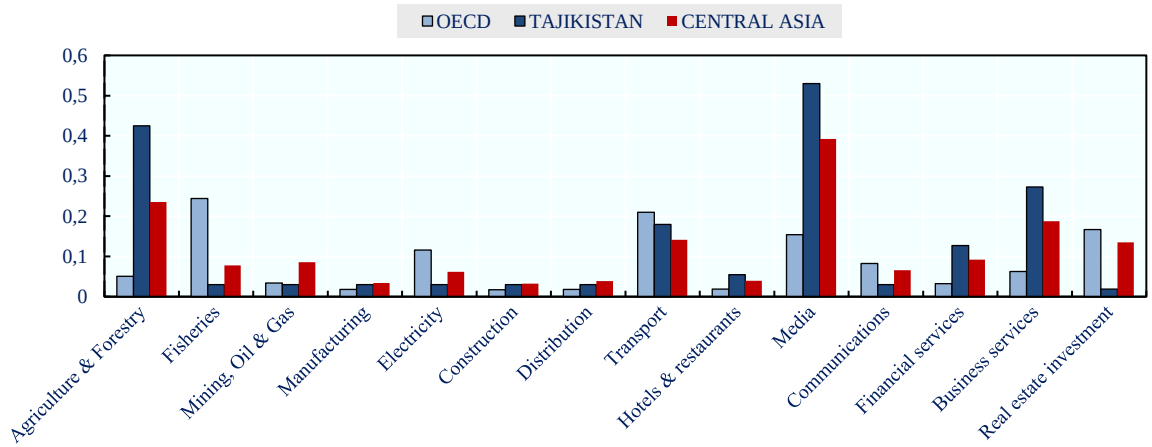
Note: Open=0, closed=1
Source: OECD FDI Regulatory Restrictiveness Index

The sectors in which legal restrictions remain considerably more stringent than in OECD countries (but similar to the rest of the region) include agriculture and forestry, media, financial services, and legal services (Figure 21). The 2012 Land Code (discussed in greater detail below) prevents foreign investors from engaging in any type of lease (or sublease) of land for agricultural use. Banking and insurance are subject to a host of operational restrictions including requirements on reciprocity, local incorporation and

nationality for board members and executives. No foreign equity is permitted in legal establishments, and under 50% of foreign equity is permitted in media companies. These restrictions are somewhat more stringent than the average for Central Asia, and may hamper Tajikistan's attractiveness relative to its regional peers.

These restrictions, whilst significant, are unlikely to account for consistently low levels of FDI attraction in the country. Indeed, relative to its statutory openness to investment Tajikistan underperforms against its regional peers and OECD member countries with investment attraction. This discrepancy is suggestive of a gap between the legal regime, and its implementation, bringing into focus the need for consistent and predictable enforcement of the laws on the country's books.

Figure 21. OECD FDI Regulatory Restrictiveness Index: sectoral restrictions in Tajikistan



Note: Open=0, closed=1
Source: OECD FDI Regulatory Restrictiveness Index

Information availability may further complicate entry to a market where formal screening mechanisms continue to exist

In addition to improving the implementation of its laws, the government should improve access to business- and investment-related legislation. Whilst the government has undertaken measures to place many of the key pieces of legislation relevant to the private sector online, it has done so in an unsystematic manner. At present, multiple online portals exist at varying stages of implementation and with different focusses, some being more relevant to domestic firms while others to international firms. Across these online platforms, the location of key documents, their consistency, and the ease with which they can be accessed is often unclear and therefore insufficient to guarantee that businesses have the information they need to make informed decisions.

In 2020 a new portal was established with the support of GIZ and OSCE. This portal (www.businessportal.tj) is a significant improvement over previous iterations, with key pieces of legislation available in English, Russian and Tajik, as well as information relating to potential investment projects. The portal is primarily concerned with international investment rather than domestic enterprise, nevertheless its creation adds welcome extra clarity to the legal framework for business. The government should ensure that the portal is used and marketed by key investment-orientated institutions, that data is collected regarding its usage that can improve its impact, and that it avoids being "siloed" or replicated by other public bodies.

The lack of information may cause particular barriers to international investors since the government is one of the few in Central Asia to maintain a screening mechanism for FDI, including in its Free Economic Zones (FEZs). The State Committee for Investment and Property Management is responsible for the screening process, which can be lengthy and non-transparent. In the absence of clear information regarding FDI requirements and the timetable for requests, businesses may be more inclined to rely on personal connections with senior officials, which would tend to favour market incumbents whilst reducing the pressure on the government to improve the transparency and consistency of its investment regime. It has been noted by firms and development organisations in Dushanbe that the process for Chinese firms entering Tajikistan differs, creating further uncertainty for potential investors regarding competition and market entry requirements.

With the likelihood of heightened caution amongst international investors against the uncertainty surrounding the impact of COVID-19 on the global economy, it is more crucial than ever to ensure that investors have access to reliable information and certainty that their property rights will be enforced and investment protected from expropriation risks.

Protections against direct expropriation exist, but indirect expropriation remains a concern

Protection against, and regulation of, expropriation is codified in the 2016 Law on Investment, which sets out the conditions under which the government is entitled to expropriate privates property. Expropriation is limited to cases where it is in the "interests of the government", a rather open-ended formulation. Most cases of expropriation relate to cases where the authorities have identified procedural violations in privatisations or have determined that a property has been used for criminal activities (US Department of Commerce, 2019[162]).

The Law on Investment and the majority of bilateral investment agreements guarantee compensation in the currency of the original transaction at the yearly average value of the investment, but how this is calculated is unclear, as are the implications of land valuation on the investment. In addition, despite legislation allowing for legal recourse in domestic courts, there is little evidence that expropriated businesses have had access to due process (Republic of Tajikistan, 2016[154]). In addition, investors report that the government has used the revocation of licenses and arbitrary tax charges as leverage to negotiate the ceding of control over firms (US Department of Commerce, 2019[162]). Cases where investors have been denied access to infrastructure essential for business operations, such as telecommunication channels, have also been reported as instances of attempted indirect expropriation.

Priority 2: Improve the enforcement of contracts and arbitral decisions in domestic courts

International investors have raised the need for greater certainty regarding the enforcement of international arbitration awards. The failure of Tajikistan's judicial system to implement foreign arbitral awards sends a signal to foreign investors that agreements with the government, even those codified in international law, may not be respected by the authorities. It is imperative, therefore, that the government instils confidence amongst international investors by respecting its international commitments. The use of mediation institutions, such as an ombudsman, could be an effective conduit between international firms and the presidential administration, helping to avoid or at least de-escalate conflicts before arbitration becomes necessary.

For domestic firms, a lack of automation and random case assignment leaves the court system vulnerable to interference and corruption. Similarly, domestic firms would benefit from an independent ombudsman through which concerns could be raised directly to the presidential administration and relevant line ministries without fear of reprisal.

Dispute settlement for foreign investors is not systematically enforced, despite numerous legal assurances in domestic law and international treaties

Dispute settlement, for both domestic and international businesses, is governed by the Economic Procedural Code, the Law on Investment, the Law on Arbitration Courts and the Law on International Arbitration Courts (Republic of Tajikistan, 2008[163]) (Republic of Tajikistan, 2015[164]) (Republic of Tajikistan, 2008[165]). Whilst the country has economic courts that are authorised to hear disputes from both domestic and international businesses, there are no specialist courts to hear disputes relating to land or intellectual property rights (IPR) disputes, nor are there small-claims courts or simplified procedures for SMEs (World Bank, 2020[24]). There is, however, an international arbitration court attached to the Chamber of Commerce and Industry (CCI), and at the time of writing the government is drafting a law on mediation, with other forms of alternative dispute settlement, such as pre-trial agreements, already provided for in the law (Republic of Tajikistan, 2015[164]).

Nevertheless, international investors continue to complain about a lack of transparency in the justice system, and the concomitant problem of unpredictability in contract enforcement and dispute resolution in domestic courts. Many international firms have taken to including clauses in bilateral investment treaties (BITs) that mandate the use of international courts for dispute resolution, yet there have been instances where domestic courts have failed to implement these decisions.

Tajikistan is a signatory to the Recognition and Enforcement of Foreign Arbitral Awards Convention (1958 New York Convention), which governs international arbitration disputes (UNCTAD, 2016[166]). Yet whilst domestic legislation recognises the validity of rulings by international courts of arbitration, foreign investors report difficulty in ensuring that decisions are enforced in the country, even when covered by a bilateral IIA. The large role of SOEs in the country's economy may compound the enforceability issue, since domestic judicial institutions may be reluctant to enforce a private, international claim against a publicly owned enterprise. The example of the 2013 ruling by a Swiss court against the state-owned Tajik Aluminium Company (TALCO), which local courts refused to enforce, is illustrative. This decision also led to the Russian company Rusal leaving the Tajik market and offloading its remaining assets in the country (Hryniuk, 2018[167]). The US State Department also notes that over the past decade numerous foreign firms have reported to embassy officials in Dushanbe that they have difficulties in utilising VAT exemptions on imported items despite these provisions being contractually secured by the government (US Department of Commerce, 2019[162]).

The quality of domestic judicial processes can be improved

The 2008 Economic Procedural Code (last amended in 2020) defines the jurisdiction of economic disputes (Republic of Tajikistan, 2008[163]), accessible to all investors, regardless of organisational or legal form, ownership, size or location. Specialised economic courts are responsible for commercial disputes and other cases related to entrepreneurial and economic activities. Cases subordinate to economic courts are considered in the first instance by economic courts of the regions and the city of Dushanbe, with the exception of cases referred to the jurisdiction of the Supreme Economic Court. There are no specialised courts for land disputes or small claims courts, which are dealt with by the courts of general jurisdiction and the economic courts.

Duration and costs of procedures in Tajikistan are in line with the Europe and Central Asia (ECA) average according to the World Bank (Table 10). Time standards for disputes are established by individual laws, and generally inscribed in the Civil Code (Republic of Tajikistan, 2008[168]). According to the U.S. Department of State, commercial disputes are usually resolved in less than one year (US Department of State, 2016[169]).

Table 10. Contract enforcement in Tajikistan

	Tajikistan	Europe and Central Asia
Time (days)	430	496.4
Cost (% of claim value)	25.5	26.6
Quality of judicial processes index (0-18)	7.5	10.3

Source: (World Bank, 2020[24])

However, the quality of the judicial process is ranked lower than the ECA average. In particular, cases are not randomly assigned to judges and there are no limits on the number of adjournments that can be granted. Tajikistan also lags behind in terms of digitalisation of court procedures. Companies have the possibility of paying court fees online, but not of filing complaints online; judgements are not published online, and there is no electronic case management (World Bank, 2019[71]).

ADR mechanisms need further development

Courts have traditionally been the only formal mechanism to handle commercial disputes in Tajikistan. Negotiation and mediation in the country are strongly associated with peace building and conflict resolution but are not a business norm. Legislation provides for arbitration courts and the enforcement of arbitral awards decisions, including for economic disputes (World Bank, 2020[24]). However, interviews with judges of economic courts suggest that the arbitration court mechanism is not involved in the commercial sphere. An institute for international commercial arbitration linked to the Chamber of Commerce and Industry of Tajikistan has been established, with the authority to consider both domestic and international disputes, but is still in its infancy. No framework for mediation currently exists, although a draft law on mediation is under development.

The judiciary in Tajikistan, despite ongoing structural reform, continues to suffer from limited financing and capacity, and advancing ADR mechanisms could dramatically ease the burden on judges and formal courts. In advancing this agenda, the establishment of an ombudsman that fairly and independently represents the views of businesses would help protect business rights and could play an important role in out-of-court dispute settlement.

A lack of reliable data impedes an objective assessment of Tajikistan's judicial efficiency

In the absence of reliable statistics regarding the outcome of court findings, it is difficult to analyse the performance of economic justice procedures in Tajikistan, and therefore to offer targeted recommendations. Accordingly, it is important that the government allows the National Committee of Statistics to collect, process and publish data relevant to such matters to allow the government and its international partners understand where efforts should be focussed.

Priority 3: Make tax administration simpler, more consistent and more transparent

The complexity of the tax administration creates problems for both domestic and international businesses. For international businesses, widespread informality in the local economy renders it difficult to integrate Tajik firms into its supply chains since such firms are often unable or unwilling to provide the necessary documentation for larger firms' tax reporting requirements.

It is possible that with a lasting domestic economic downturn caused by the COVID-19 pandemic many of the extant taxation challenges in Tajikistan will be exacerbated. With a highly-dollarised external debt, returning labour migrants from Russia, falling revenues from the export of commodities, and suppressed local demand, it is likely that the government will face intense pressure on its public finances. If such a scenario were to materialise, it is important that the country's fragile private sector is not subject to

additional contributions and requirements by the tax administration at a time where its resources are weakest, leading to firms migrating to the informal economy or closing altogether. Businesses have reported that they have faced increase scrutiny from the tax administration in times where the government has come under fiscal pressure. The private sector needs protection from predatory practices if it is to drive economic recovery and provide the jobs that would allow the country to become more resilient in the future.

Consultation is underway on how to improve Tajikistan's tax regime

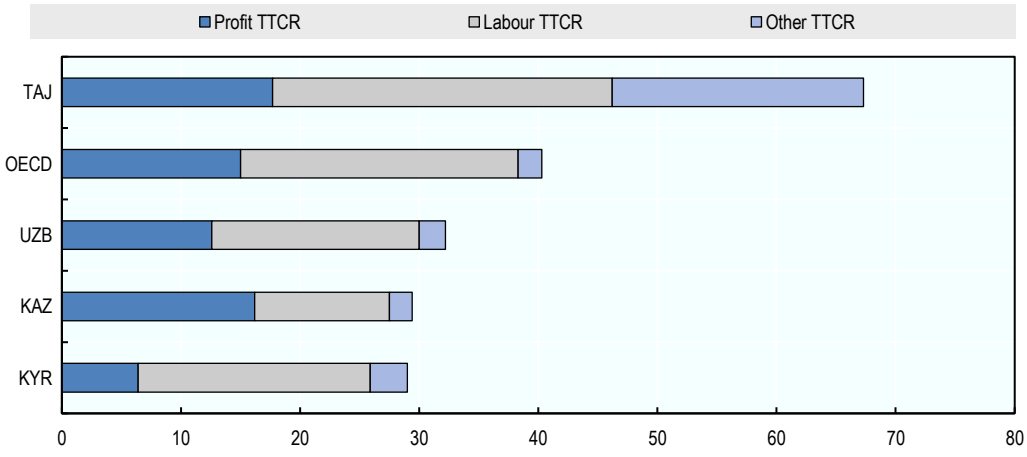
The government has reported that it is currently working on a new Tax Code (TC), with the consultation process beginning in 2019 under the management of the First Deputy Prime Minister. An online consultation platform, which can be found at www.kodeks2020.tj, has been established to allow the private sector to put forward suggestions and make queries regarding the new proposals. While improvements to the TC are welcome, it should be noted that the TC has been changed ten times since 2015, with regular amendments making it difficult for firms to ensure compliance. This is compounded by poor availability of taxation laws, both online and offline, and varying interpretation of such laws at the national and regional levels.

Tax rates are changeable and high, creating large fiscal burdens for firms

As well as being one of the major causes of business inspections, taxation and interactions with the country's tax administration are major sources of complaints from businesses in Tajikistan, particularly SMEs. In a recent report by the World Bank, the cost of tax compliance of firms is high, whilst the collection efficiency of the tax administration is low (World Bank, 2019[170]). While it is advisable to interpret the results of business surveys with caution, it is notable that respondents to the 2015 EBRD Business Enterprise Survey echoed the observations of the Bank in its report (EBRD, 2015[171]).

Firms in Tajikistan pay a total tax and contribution rate (TTCR - an indicator that calculates the total tax burden, including social security contributions, on a company's profits based on the OECD definition of a tax) of 67%, which is the tenth-highest in the world and significantly higher than both the Central Asia and OECD averages (Figure 22) (PWC/World Bank, 2018[104]). All firms are subject to corporate income tax (CIT), which is levied at 23% of taxable income, with a lower level of 13% for "production" enterprises. In addition to CIT, enterprises are obliged to make social tax payments at 25% of each salary paid, withholding tax at 12%, plus a range of other "minor taxes", such as the road tax. Customs duties range from 0 to 15% on an *ad valorum* basis (with values set by the customs service), and the VAT rate is 18%.

Figure 22. Total Tax and Contribution Rate of Central Asia countries



Source: (PWC/World Bank, 2018[104])

Businesses with annual turnover of less than 1 million TJS (103,000 USD) are eligible for a simplified tax regime. Taxpayers who pay tax under the simplified regime are exempt from income tax (but not withholding tax), road tax, and VAT (with the exception of VAT on imports and reverse-charge VAT). Businesses that are eligible for the simplified regime may also use cash accounting, and newly registered firms are exempt from audits for a period of three years. For firms with gross annual income under TJS 25 million, the number of audits is reduced to one every two years. It is not clear whether this applies to out-of-cycle tax inspections.

Tax administration is cumbersome, raising compliance costs for firms

Businesses require an important amount of time to comply with the country's tax requirements, which is significantly worse than in other Central Asian countries and the OECD average according to the World Bank (Ibid.). These factors constitute powerful incentives for entrepreneurs to avoid operating in the formal sector. Since 2012, the number of annual payments to the tax administration has fallen from 69 to six, but businesses continue to complain about burdensome inspections and punitive sanctions for infractions.

A lack of risk management systems for the tax administration creates opportunities for out-of-cycle and repeated inspections, whilst also increasing the administrative load on both the tax administration and local businesses. This places a constraint on business activities and, because of the abundance of "minor taxes", creates uncertainty over the health of public finances (World Bank, 2019[170]; IMF, 2019[172]).

The administration of customs duties have been reported to disadvantage certain firms, whilst creating opportunities for unfair competition from informal firms. While the application of *ad valorum* customs duties is relatively common practice, there is a lack of transparency surrounding the calculation of item values, with valuations subject to regular change. For example, businesses that rely on imported products for retail goods or as inputs into production chains have raised concerns that the values set by the customs authorities for goods are disproportionately high, making imported goods non-competitive against locally produced or illegally imported alternatives.

Despite the availability of certain procedures online, firms nonetheless report that they were required to report in person to local tax administrations on a monthly basis. This creates a large administrative and productivity cost for firms, particularly SMEs, and illustrates that while certain digitalisation measures have been implemented, these relate primarily to creating interfaces rather than meaningful digitalisation and automation of backroom processes.

In the face of the COVID-19 crisis, OECD countries have provided important tax relieves to distressed companies and deferred social contribution and VAT payments (OECD, 2020[106]). Similar measures in Tajikistan would put additional strain on public finances, but if an important support plan to fight the pandemic were designed, such measures could be included and receive financial support from international financial institutions.

The administration of VAT may contribute to economic informality

In Tajikistan, VAT constitutes 40% of the annual tax base, or around 10% of GDP, and therefore reductions in consumption can have significant and immediate implications for the country's public finances (World Bank, 2019[170]). As a result, SMEs have increasingly reported a need to make irregular "advance payments" to the tax administration in order to compensate for anticipated revenue shortfalls, further reducing the predictability of the business environment. In light of the significant fall in consumption likely to be precipitated by the COVID-19 pandemic, it is possible that requests for such irregular payments will increase at precisely the time where the private sector is most squeezed. Moreover, businesses have little scope to pursue complaints against inspectors for arbitrary payments or out of cycle payments.

The efficacy of the VAT rebate system is another source of concern for both foreign investors and domestic enterprises. Both international and domestic firms have repeatedly reported difficulty obtaining VAT

refunds, owing to the short reporting period allowed and the unwillingness for the government to pay refunds not processed in time.

Some formal VAT-registered businesses have complained that they face competition from informal businesses that are not registered for VAT and therefore do not charge VAT. Further analysis should be carried out to assess whether additional measures to incentivise informal businesses to become formal would be needed, and how the tax administration's verification and enforcement capacity could be reinforced.

Many of the informal firms in Tajikistan may remain outside of the formal economy due to perceptions that they will be subject to onerous inspections from the tax administration if formal, depriving the private sector of growth opportunities and thereby narrowing the tax base of the government. The government should consider, therefore, improving the oversight of the tax administration, creating a platform that would allow businesses to report and corroborate the validity of inspections, and increasing the administrative penalties for tax inspectors who contravene inspection laws.

Weak tax administration may have also an impact on the creation of sustainable global value chains in Tajikistan

In conversations with international investors in Dushanbe and abroad, the OECD repeatedly heard how aspects of the Tax Code impeded their ability to develop their businesses and to integrate local suppliers into their operations. In particular, due to prevalent economic informality, larger international firms struggle to find local suppliers due to the inability of local firms to furnish the necessary documents that would allow international firms to submit complete and error-free tax declarations.

Where local suppliers were formal, SMEs sometimes declined contracts that would increase their revenues above the VAT threshold in order to minimise interactions with the tax administration. An inability to find local suppliers has led to a number of large investors importing goods that are available in Tajikistan, thus impeding the development of local value chains and the development of the domestic private sector more broadly.

At the same time, the changes to the Tax Code (Art. 312) have increased the number of goods exempted from VAT and customs duties in an effort to attract greater investment and technology transfers into priority sectors, including agriculture and hydroelectricity (Republic of Tajikistan, 2012[173]). Similarly, the Law on Investment (Art. 6; 17) allows for tax incentives, in particular the reduction or exemption of certain taxes and duties, to be used as investment incentives in International Investment Agreements (IIAs), though it is not clear whether businesses have availed of these (Republic of Tajikistan, 2016[174]).

Further progress and challenges in the legal environment for business in Tajikistan

The government has yet to establish a consolidated legal base for business activity, but has taken steps to simplify the legal requirements of firms

For the past two decades, the main legal provisions governing entrepreneurial activity for both domestic and foreign businesses have been set out in the Law on State Protections and Support for Entrepreneurship (LPSE). The LPSE is complemented by the Civil Code (CC) and the Tax Code (TC). In addition, there are a number of pieces of subsidiary legislation that provide the legal basis for activities such as licensing and disputes.

The government has undertaken measures to simplify registration and improve licensing and permitting processes and has promised further improvements in a number of recent strategic documents, including

the NDS. These measures have reduced the administrative burden facing firms, particularly helping SMEs that lack the internal capacity to process high levels of administrative tasks without detracting from their overall productivity.

Despite these efforts to improve its business- and investment-related legislation, the government's approach is often unsystematised, conducted through bylaws and amendments, or through narrow technical implementation projects with international donors. Similarly, whilst the government does collect data on business- and investment-related activities in the country, these data are collected by individual public agencies and is not codified into a single database that could help the government make data-driven policy decisions. Clear separation of the regulatory and commercial functions of State Unitary Enterprises (SUE) is also needed, together with a strong legal framework governing their activities, to ensure a sound regulatory framework and create a level playing field (Box 9).

Box 9. Stalled Corporatisation in Tajikistan: The Case of State Unitary Enterprises

Tajikistan still has a large number of so-called "State Unitary Enterprises" (SUE), referred to in Russian as "GUP" (*Gosudarstvennoe unitarnoe predpriyatiye*), which operate in almost all sectors of the economy. The prevalence of these SUEs is problematic for a number of reasons and risks seriously undermining the government's longstanding efforts to strengthen competition in, and the competitiveness of, Tajikistan's economy. Their continued large role in the country's economic life risks creating negative spill-over effects for investment, private sector development and productivity.

Broadly speaking, SUEs are SOEs that have yet to be corporatised. As a legal form, SUEs emerging in the early 1990s as a transitional ownership model, the intention being that they would either be corporatised (often as a prelude to privatisation) or converted to "treasury enterprises" which would operate as state bodies under tight financial controls. In most countries, the legal framework for SUEs was never fully specified, since it was never intended to be more than a transitional organisational form. Not only have SUEs have endured across the region but new ones continue to be established – see the recent examples of the Customs Single Window (2019) and TajAgroPromExport (2020).

There are a number of issues with SUEs that are relevant to the LEB reforms discussed in this report:

- Property rights remain unclear, with SUE managers having cash flow rights but, ostensibly, no "control" rights, since the exploitation of whatever property assigned to them is established by charter. At the same time, SUE managers have "economic authority" over state assets assigned to or acquired by the SUE. "Economic authority" is an ill-defined legal concept that allows managers great freedom to operate enterprises for their own benefit, as opposed to operating for the realisation of government policy, as the Law on SOEs (LoS) requires. Indeed, the vagueness of Art. 12.(c) of the LoS is indicative of this legal uncertainty, stating that "*SUE property may be formed… from sources not prohibited by law"*. The legal framework for the operation of such firms, and the regulation governing their activities, is therefore vague, highly permissive and subject to interpretation.
- SUEs often have authority to issue licenses and permits relating to their areas of activity, the necessity of these documents being not clearly reflected in other legislation. This complicates the political economy of SUE management and reform, since SUEs can be extremely profitable for both the controlling managers and the various line ministries to which they are subordinated, which receive a proportion of the administrative fees collected.
- Oversight and corporate governance are weak. Reporting and accountability structures are non-transparent, established in SUE-specific charters that are not available to the public, and it is therefore difficult to assess the performance and viability of such enterprises. It is unclear to what extent corporate governance requirements of private competitors are replicated for SUEs.

Sources: (Republic of Tajikistan, 2020[177]; World Bank, 2014[178]; Customs Committee of Tajikistan, 2019[179])

Tajikistan has taken steps to improve intellectual property protection, but co-ordination between oversight and enforcement agencies could be improved

Tajikistan has taken concrete steps to improve legal protections for intellectual property, leading the United States in 2019 to remove the country from its Special 301 Report, which monitors IP enforcement in international markets (Office of the United States Trade Representative, 2019[175]). Amongst the reasons for its removal from the list was the amendment of Article 441 of the customs code to provide *ex officio* authority for customs officials, allowing them to inspect and detain goods suspected of counterfeit, and a presidential decree aimed at facilitating the use of licensed software in government agencies (Office of the United States Trade Representative, 2018[176]).

These measures follow from the development of a National Strategy for the Development of Intellectual Property 2014-2020 and a commitment in the NDS to strengthen IP protections for domestic and international businesses (Republic of Tajikistan, 2016[154]) (Republic of Tajikistan, 2014[158]). Regarding the protection of IPR in FDI-related technology transfers, the primary vessel for protection is the World Intellectual Property Organisation (WIPO), as Tajikistan is a signatory to 17 of the organisation's treaties. Nevertheless, responsibilities for IPR protections remain split across numerous public agencies, and in the absence of a consolidated and empowered IP agency, monitoring and implementation of IPR-related legislation is problematic.

Land administration remains an obstacle for investment

Land in Tajikistan is the exclusive property of the State, charged with guaranteeing its efficient use in the interests of the people. Private land use rights are recognised by the State, and the rights to use land under and around buildings are assumed to be transferable. The 2012 Land Code governs the framework for land use in Tajikistan, distinguishing between primary and secondary users, which can be both individuals and legal entities (Republic of Tajikistan, 2012[180]). Primary land users can access land for limited-term, perpetual-term or life-long inheritable use. Secondary land use is possible through leasing from primary users. Land use by foreigners is governed by a specific clause, which imposes a limit of 50 years for primary leasing and prevents them from engaging in any type of lease of land for agricultural use.

Land administration remains an obstacle for investors, both domestic and foreign. Land registration procedures are very time-consuming and centralised, with few local offices issuing land use rights certificates, resulting in considerable delays (UNCTAD, 2016[166]). Registering property can take up to 33 days in Tajikistan, compared to 21 on average in Europe and Central Asia, although the costs associated with registering property are in line with the rest of the region at 2.8 of the value of the property (Table 11) (World Bank, 2020[24]). The country's overall ranking in terms of ease of registering property is 77th out of 190, in the WB Doing Business index, with the quality of land administration index particularly low, scoring 7 out of 30. Shortcomings of land administration are primarily related to:

- inefficient registration system: cadastral plans and land certificate titles are recorded in separate paper-based databases by separate agencies, with no common identification numbers or comprehensive computerised geographic information system (e.g. for checking legal boundaries);
- lack of transparency: only intermediaries and interested parties can obtain information on land ownership or consult maps of land plots, and there is no independent mechanism for filing complaints related to land registration;
- inadequate geographic scope: not all private land plots are mapped or formally registered at the immovable property registration agency.

Table 11. Ease of registering property in Tajikistan

Indicator	Tajikistan	Europe and Central Asia
Procedures (number)	4	5.5
Time (days)	33	20.8
Cost (% of property value)	2.8	2.7
Quality of land administration index (0-30)	7.5	20.4

Source: (World Bank, 2020[24])

Additional challenges relate to the *de facto* implementation of the land code. For instance, holders of any category of land use rights (except holders of land plots where houses are built) cannot in practice alienate land use rights to other private parties, which affects the availability of land on the market and the capacity to raise credit through mortgages, particularly for SMEs. Moreover, the existence of a State monopoly for notary services increases the cost of land use transactions, and insufficient legal protection against terminations or revocations of land use rights by the State may further deter investors.

It has become easier to start a business but there is still no working one-stop-shop

Since 2000, the number of administrative steps required for opening a business have fallen from 14 to four and the total number of business permits has decreased from 400 to 60. It is not clear, however, whether the permits that have been eliminated were those that most impeded development. The cost of registration remains significantly higher in Tajikistan than in EU and other Central Asian countries (Table 12).

A One-Stop-Shop for business registration has been established at the State Registration of Legal Entities and Individual Entrepreneurs and can be accessed online (or physically at the tax office) for registration (Ijozat, 2019[181]). It was reported that 10% of businesses used the online procedure in 2018, but there is no data to support these figures, nor to examine how the platform was accessed and whether they obtained the information they sought. Indeed, in conversations with representatives of the local private sector, there were no businesses that said they had used this platform.

Table 12. Starting a business in Tajikistan

Indicator	Tajikistan	EU and CA
Ranking in doing business on starting a business	60	-
Time required (days)	11	12.9
Number of administrative steps	4	5
Registration costs (% of GNI per capita)	18.0	4.6

Source: (World Bank, 2020[24])

Despite the recent moratorium on inspections, licensing and inspections continue to create an undue burden

Licensing procedures are governed by the Law on Licensing of Separate Activities, which outlines 65 areas of economic activity that require licensing permits, plus an additional 9 areas that relate to economic activity "of special designation", though it is not clear what the former refers to. Licensing decisions must be processed within 30 days, but there is no application of the "silence-is-consent" rule if a decision is not made in this time.

The government has explicitly recognised in a number of its key strategic documents the burden imposed on firms by excessive inspections. In 2018, a two-year moratorium on business inspections was introduced and subsequently extended until 2021 (Republic of Tajikistan, 2018[182]). The explicit aim of the moratorium is to lighten the administrative burden on firms and reduce opportunities for corruption. According to official figures, the number of yearly inspections has significantly decreased according, falling from 186,000 to 96,000, with the number of agencies and inspecting bodies also reduced from 31 to 25.

The moratorium's impact on the business climate is limited. The cessation of inspections extends only to goods-producing businesses, a definition that applies to only 1,930 of 320,991 legally registered and active entities in Tajikistan (Republic of Tajikistan, 2019[146]). Even with these firms, inspections are permitted should a licensing or permit-issuing agency suspect a risk to a consumer, while the moratorium does not extend to tax inspections – long a source of concern for firms in the country (Republic of Tajikistan, 2018[182]). Further, the government has issued moratoria on inspections in the past – the government decreed, for example, three separate moratoria on business inspections in 2011, 2012 and 2013 – yet these *ad hoc* measures do not address the underlying causes of repeat inspections – unclear and changeable rules, short-term needs to bolster public finances, and corruption. As of March 2020, it is not clear whether additional moratoria on inspections or reforms to the inspection agencies will be forthcoming in light of the economic downturn caused by COVID-19.

Closing a business is time-consuming and prohibitively expensive

Despite a relatively good rating in the *closing a business* dimension of the World Bank's Doing Business Indicators, firms and entrepreneurs complain that the practice of closing a business remains a challenge, to the extent that some have preferred to continue paying taxes on non-active firms rather than go through the process of closing them down. Indeed, according to the government's own statistics, of the 608,322 firms registered in 2019, 330,991 were active, with only 25,822 formally ceasing trade (Republic of Tajikistan, 2019[146]).

The legal concept of bankruptcy is relatively new to Tajikistan, and it was only in 1992 that the country's first law on bankruptcy and insolvency, the Law on Insolvency (Bankruptcy), was introduced. Despite this, Tajikistan has a relatively robust legal framework for bankruptcy, with sound legislation for insolvency and exit mechanisms for investors. Where challenges are found with exit mechanisms for investors and entrepreneurs it is to do with a lack of implementation capacity. In addition, there are no early warning systems in place – there is a legal provision for creditors to identify troubled entrepreneurs, but it is not clear whether this has been implemented – nor does the law provide for assistance for entrepreneurs or businesses in financial distress.

Platforms exist for business-to-government dialogue, including for SMEs

The major instrument for public-private dialogue between international investors and the government is the Consultative Council on the Improvement of the Investment Climate under the President of the Republic of Tajikistan, established in 2007 (Box 10).

In addition to the high-level platform afforded to international investors, the government has a number of PPD platforms through line ministries and regional authorities. The need for the government to heed the opinion of the private sector whilst working on business-related legislation is formalised by law, with the agreement of the private sector ostensibly needed before legislation can pass (Art. 36, 59, 62) (Republic of Tajikistan, 2017[183]). It is not clear, however, from what pool of businesses representation is selected, or whether the private sector is primarily represented at such sessions through more institutionalised platforms such as the CCI.

Box 10. The Consultative Council on the Improvement of the Investment Climate

Established in 2007, the Council aims to improve the development of investment-related legislation and the business climate more broadly by ensuring a dialogue platform between the government and international investors.

The Council is made up of both permanent representatives of the public sector and non-permanent representatives from donor organisations and the private sector. The Council meets between two and four times a year, and brings together the government, the donor community, and the private sector.

It is possible to submit a proposal on the website, which is available in English and Tajik. How such proposals are handled is not clear, but the site gives instructions on potential submissions and a description, in Russian, of how the Council selects submissions for consideration.

Sources: (Consultative Council on Improvement of Investment Climate under the President of the Republic of Tajikistan[185]; Republic of Tajikistan, 2016[186]).

The CCI is the primary body for representing the country's private sector, comprising 630 members, 22% of which are large enterprises, 45% medium enterprises, 28% small enterprises, and 5% other-sized firms. Membership of the CCI offers several benefits, including information regarding offers from abroad, participation in meetings with delegations from other countries, general business advice, representation and protection of the members' rights in the state structure, and access to the CCI's services (arbitration, certification, exhibitions and fairs, translations, market research, legal, visa support, and business education and training) (Chamber of Commerce and Industry of the Republic of Tajikistan, 2019[184]). A number of other business associations are also active, including the National Association of Small and Medium Businesses, which regularly review government proposals and participate in government- and IO-organised dialogue platforms. Further, the EU through the Central Asia Invest programme is currently working on a long-term project to increase the capacity of business organisations.

The Concept on the System of Regulatory Impact Analysis, ratified by the parliament in 2015, established a public-private consultation (PPC) framework, to be accessible to all companies, which prioritised the involvement of SMEs (Republic of Tajikistan, 2015[187]). In addition to platforms created through the Concept, large working groups and meetings have been held by the government at various levels, with one such meeting, relating to changes to the tax code, receiving over 4000 proposals and comments (Asadov, 2014, p. 19[188]). However, the impact of this involvement is unknown, chiefly because of the lack of an established government methodology on dealing with external inputs.

It is worth noting that one of the major issues reported by both domestic and international firms in Tajikistan is the lack of consistent implementation of laws and regulations. With the correct level of participation, PPD platforms can play a key role in alerting the relevant government authorities of implementation-related issues. The government may wish, therefore, to increase the involvement of a broader range of stakeholders in certain PPD platforms, including parliament, public agencies and additional business associations, as well as private firms speaking for themselves. This would foster more direct communication between the private sector and responsible parties in government.

Tajikistan lags behind its regional peers when it comes to trade facilitation

Trade remains an integral component of Tajikistan's economy, and one that is likely to be severely disrupted by the global COVID-19 pandemic. Tajikistan's largest trading partner is China, to which it exports a narrow range of goods, demand for which is likely to fall as the economic ramifications of the pandemic continue to be felt. At the same time, preventative measures taken by neighbouring countries,

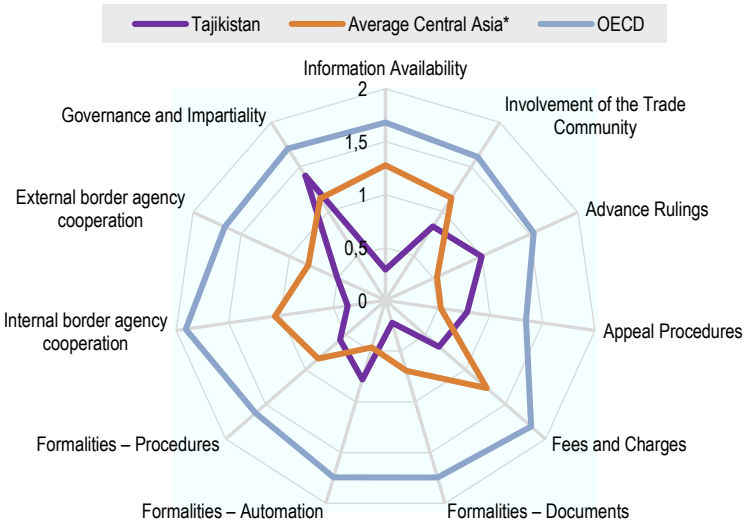
including China, to close or restrict border crossings, will have a serious impact on fragile local value chains, as well as potentially serious implications for food security.

Tajikistan has been a member of WTO since 2013 and has a dedicated department at the Ministry of Economy and Trade tasked with streamlining its domestic legislation in line with WTO requirements. Significant legal reforms were necessary for Tajikistan's legislation to be aligned with WTO standards, particularly regarding the standardisation and automation of customs clearance procedures as part of the *Trade Facilitation Agreement* that entered into force in 2017, and Tajikistan ratified in 2019 (Kasimov, 2018[189]). Despite accession, Tajikistan has only partly implemented the commitments to which it is a signatory under the TFA. In 2019, 55.9% of the Government's category A commitments (application of substantive TFA provisions from the date of the TFA's entry into force) had been implemented, with 0% of commitments under categories B (provisions to be implemented after a transitional period following the entry into force of the TFA) and C (provisions to be implemented after a transition period and requiring assistance of capacity building) (WTO, 2021[190]).

Tajikistan has introduced several laws to support digitalisation, including the *Law on Digital Signatures* and the *Law on Electronic Documents*. In 2020, the government launched a long-anticipated online single-window for customs documentation relating to export-import transactions (www.swcustoms.tj). The single window will give importers and exporters access to 22 different permitting documents from 11 different government agencies and organisations. In theory, the single window should allow each public agency involved in customs procedures to access documentation for any given transaction in one place, implying that there has been back-office work undertaken to allow interoperability of government ICT systems. It is not clear, however, whether the single-window entirely eliminates the need for in person visits, nor whether it allows firms to process tax-related documentation (for example, concerning VAT). The portal's establishment nevertheless adds welcome extra clarity to an area about which investors frequently raised concerns.

The mixed picture of customs and trade procedures in Tajikistan is reflected in the country's performance in the OECD Trade Facilitation Indicators (Figure 23), which show Tajikistan falling below the Central Asian average on most indicators, and significantly below the OECD average on all of them.

Figure 23. Tajikistan in the OECD Trade Facilitation Indicators



Source: (OECD, 2019[65])

Nevertheless, it is possible that Tajikistan will, with the next update of the TFIs, improve in a number of key areas, due to the country's ongoing alignment with WTO requirements and participation with international partners in regional trade facilitation programmes (GIZ, 2019[191]; EU/BOMCA, 2019[192]; WTO/Trade Facilitation Agreement Facility, 2019[193]). Reforms in the areas of formalities (simplification and harmonisation of documents, automation and streamlining of procedures) and information availability, which ties into the broader need for improved access to information and more effective government services, can bring significant benefits for trade and export-oriented firms (OECD, 2019[65]).

5 Turkmenistan

Chapter summary

Since independence, Turkmenistan's economy has grown on the back of hydrocarbon exports, with the country holding the fourth largest natural gas reserves in the world. This natural-resource led development has come at the expense of export diversification, while strong state control over the economy has hindered private-sector development.

Turkmenistan is highly reliant on hydrocarbon exports to China, in particular natural gas. Early data from China suggests that the country will see a significant decline in economic output, which may have serious ramifications for Turkmenistan's hydrocarbon exports. While the official figures show average GDP growth above 6% per annum, external observers point to other indicators, including the divergence between official and market exchange rates, investor complaints about corruption and arbitrary official actions, restrictive trade policies, and declining public spending. These suggest serious underlying structural problems. Hydrocarbon prices and demand have been severely hit by the COVID-19 pandemic, contributing to a deceleration of growth to 1.8% in 2020. The direct effects of the pandemic on the national economy and public finances are still to be assessed, but could be profound on account of changes in both internal and external economic conditions.

Low energy prices since mid-2014 have reduced government revenues. After a brief decline following the 2015-16 global fall in commodity prices, exports seem to have recovered, in part due to a limited resumption of gas exports to Russia. Although international gas contracts tend to be negotiated on a long-term basis, there is a possibility that, with significant decreases in demand in key export markets as well as a general fall in many commodity prices in early 2020, Turkmenistan may come under pressure to renegotiate previous agreements. The country's currency still appears to be under considerable downward pressure. Despite a 19% devaluation of the manat in 2014, difficulties in obtaining foreign currency have increased, while public subsidies for utilities have been cut and public sector wage arrears have reportedly risen.

Complicated and often opaque bureaucratic procedures, convertibility issues and the extensive state role in the economy all weigh heavily on private business activity. Nevertheless, non-state activities represent around 60% of GDP, with foreign companies accounting for about half of this share. The formal legal basis for investment and business is relatively developed, but implementation difficulties render the *de facto* situation challenging for all firms.

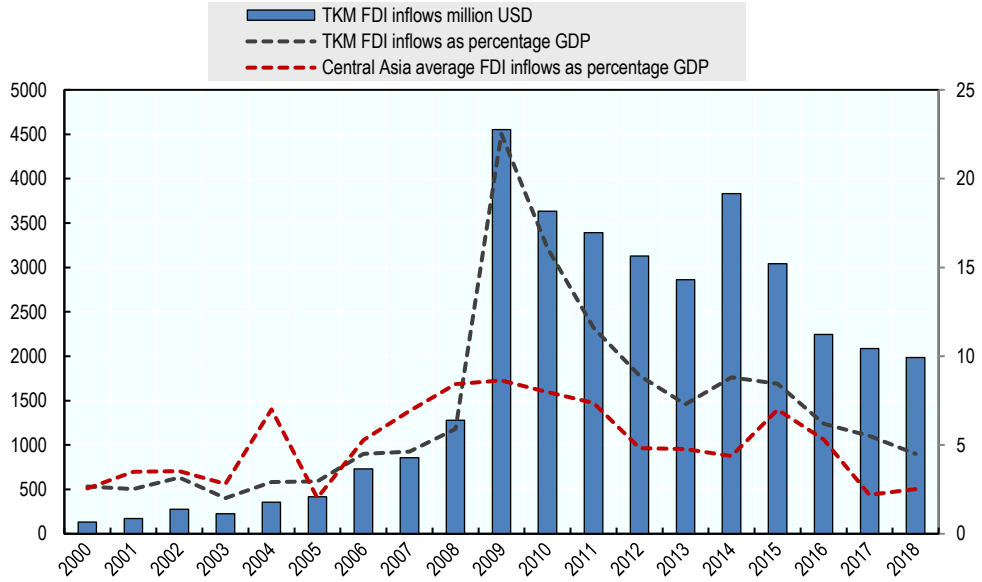
The government could significantly improve the legal environment for business by pursuing the following priorities: 1) streamlining and enforcing all business and investment-related legislation, and ensuring its publication on the Ministry of Justice online legal database; 2) simplifying the process for business registration, and introducing a "one-stop shop"; and 3) simplifying the operational environment for SMEs by addressing cumbersome licensing and permit procedures

Economic overview

FDI inflows have declined over the past decade and are concentrated in the extractive sector

In the first two decades of independence, foreign direct investment (FDI) in Turkmenistan rose substantially, with a particularly dramatic increase in the first decade of the 2000s against the backdrop of high gas prices (Fig. 24). FDI inflows peaked in 2009-10, despite the global crisis, and held up fairly well until the commodity super-cycle ended in 2014-15. Inflows have steadily fallen since, though FDI as a percentage of GDP has broadly followed the regional trend. Nevertheless, Turkmenistan performs above the regional average. Given the size of the economy and the concentration of FDI in the extractives sector, significant variation in the annual flows is to be expected – even a single large project can make a huge difference over a particular period. As will be seen, the real cause for concern is the sectoral composition of FDI inflows rather than the level.

Figure 24. Declining levels of FDI inflows since 2009



Source: (UNCTADstat, 2020[194])

Given the relatively small domestic private sector, foreign investment plays a particularly important role in the economy: non-domestic companies and joint ventures produce an estimated 30% of GDP (EBRD, 2019[195]), generating twice as much revenue per employee as their domestic counterparts (Table 12). Indeed, its role may be even greater than the data suggest, since the FDI share of GDP would look rather larger if the exchange rate were brought closer to what appear to be market levels. Most FDI comes from a small number of countries, led by China, Russia, Kazakhstan, and Uzbekistan (Santander, 2020[196]). FDI is highly concentrated in the oil and gas sector, which accounts for 82% of FDI and one-third of the revenues of foreign companies and joint ventures (EBRD, 2019[195]).

For several years Turkmenistan has stated its intention to diversify its economy, in part by attracting FDI outside of the hydrocarbon sector. Despite efforts to raise awareness of Turkmenistan as an investment destination, *e.g.*, by organising investment forums in the country, the overvaluation of the manat, uncertainty of payment, and conflicts over expropriation of foreign investors have deterred non-extractive investment (Abdimomunova et al., 2018[197]).

The private sector remains small

The role of the private sector remains limited, due to a challenging business climate, complicated by bureaucratic and often non-transparent procedures, convertibility issues, and the extensive state presence in the economy. According to official data, there are about 8,000 non-state enterprises in Turkmenistan, only 1.1% of which are large enterprises. There are also about 76,000 individual entrepreneurs. Domestic non-state companies account for the largest share of employment but make a rather modest contribution to GDP (15.2%), compared to individual entrepreneurs (15.5%) and foreign companies (30.2%) (Table 13) (EBRD, 2019[195]).

These discrepancies are partly attributable to the sectoral profiles of local firms. The majority of non-state domestic enterprises operate in agriculture, construction, and manufacturing, while individual entrepreneurs are mainly engaged in trade, transport, and real estate. Foreign companies mostly operate in the hydrocarbon sector.

Table 13. Domestic non-state enterprises, revenues, and employment in Turkmenistan

	Number	%	Employment th. persons	Revenue billion manat	Revenue % of GDP
SMEs	8,029	98.9			
Micro-enterprises	*6,505*	*80.1*	-	-	-
Small enterprises	*890*	*11.0*	-	-	-
Medium enterprises	*634*	*7.8*	-	-	-
Large enterprises	88	1.1	-	-	-
Total enterprises	**8,117**	**100.0**	**124**	**19.2**	**15.2**
Individual entrepreneurs	76,317	-	76	19.6	15.5
Foreign enterprises	581	-	81	38.2	30.2
Joint ventures	62	-	-	-	-

Note: Turkmenistan defines a state-owned enterprise as an enterprise that is 100% state-owned, a narrower definition that would be used by most OECD countries or such institutions as the EBRD.
Source: (EBRD, 2019[195]).

The development of the private sector has been established as an important goal in recent national strategies (Box 11), with the government having aimed to reach 70% non-gas GDP from the private sector by 2020. Currently, the State Statistics Committee of Turkmenistan estimates this share at 69.5%, but this results in part from the use of a narrow definition of state-owned enterprises (100% state-ownership, thereby excluding many firms with smaller state stakes, including JSCs) and reliance on calculations using revenues only instead of value-added. It is thus impossible to compare this figure with external estimates or data from other countries (EBRD, 2019[195]).

Box 11. Key Policy Roadmaps for Economic Development in Turkmenistan

The national development plan for 2018-2024

In 2017, Turkmenistan announced a series of reforms aiming at counteract the pressures generated by lower revenues from natural gas prices in 2016 and 2017. The Elders Council adopted this strategy in 2017 to nurture small and medium enterprises, and create the conditions for the emergence of private farmers as primary guarantors of food security.

The programme for socio-economic development of the country for 2019-2025

The programme updates the 2018-24 development plan, and establishes the reorganisation of the industrial and service sectors towards the production of high value-added goods, the reduction of state ownership through further privatisation, and the transformation of State enterprises into joint stock companies with upgraded management systems. A "State programme on support of small and medium entrepreneurship for 2018-24" and a "Law on Free Economic Zones" have been approved in follow-up.

Sources: Government of Turkmenistan; (Republic of Turkmenistan, 2017[198])

Exports are highly concentrated in terms of both commodities and destinations

While Turkmenistan's total trade is higher relative to GDP than the OECD average (117.9% and 75.3% respectively), its export basket, and the range of countries to which it exports, is very narrow. Hydrocarbons consistently constitute over 90% of total exports, with China accounting for more than 80% of the country's exports in 2017. By contrast, Turkey, the second largest export destination, accounted for only 5.6% of Turkmenistan's exports. The sources of Turkmenistan imports are more diversified, with 30% of its goods from Turkey and 11% from China. Other important sources of imports include Germany (12%) and Russia (10%), with the single largest import category being industrial machinery (36%) (Observatory for Economic Complexity, 2021[199]).

The consequences of this relatively concentrated export basket have been particularly apparent in recent years. A sharp deterioration in the terms of trade during 2014-16, as the global commodity "super-cycle" ended, entailed a drop in export volumes, which was magnified in value terms by the terms-of-trade shift: during 2012-18, total exports of goods and services fell from almost 60% of GDP to around 22%. This, in turn, necessitated a substantial reduction in imports, which had significant implications for domestic investment and consumption. These developments gave new impetus to the authorities' desire to diversify economic activity and exports so as to reduce the country's vulnerability to such external shocks.

The government has been pursuing a policy of import-substitution and export-diversification. In 2018, the authorities introduced custom duties for specific industrial goods and subsidies for certain agricultural and manufactured exports, as well as the promotion of import-substitution in textiles, food and construction materials. In addition, the government has undertaken a series of steps in recent years to reduce the concentration of external trade, with the overarching objectives outlined in its Foreign Economic Activity Development Programme for Turkmenistan for 2020-25 (Republic of Turkmenistan, 2020[200]). One notable advance resulting from this high-level strategy document is a more active engagement with the WTO; the country became the 25th WTO observer in July 2020 (WTO, 2020[201]). While these policies may have helped reduce the trade deficit, a more market-based approach may reduce the risk of creating inefficiencies engendered by resource misallocation.

Overvaluation of the manat may impede export diversification

Countries that export large volumes of natural resources frequently face challenges in managing exchange-rate volatility due to commodity-price fluctuations and the often very large capital inflows that development of the resource sector may entail (IMF, 2019[202]). The over valuation of the local currency in response to such factors can act as an implicit tax on firms in tradable non-resource sectors, thereby reducing their competitiveness, limiting export diversification, and impeding the growth of exports (Gyulumyan, 2014[203]). In Turkmenistan, where the government has an explicit policy goal of economic diversification and increasing the level of exports, the current manat exchange rate may undermine the government's long-term development ambitions. A number of external observers reckon the manat at present to be significantly overvalued (World Bank, 2019[204]; EBRD, 2019[195]; IMF, 2019[205]), a view reinforced by the fact that the parallel market rate for the manat in 2019 was more than five times the official rate, which has been pegged since 2016 and supported by strict foreign exchange controls.

The authorities have in the past shown a readiness to address exchange-rate overvaluation. For example, in 2008, the central bank unified a hitherto parallel exchange rate, which had created an unofficial rate 4-5 times lower than the official rate (IMF, 2008[206]). However, it pegged the manat-dollar rate at 2.84 in August 2008, and the rate has only been adjusted twice since, with modest depreciations in 2015 and 2016 (Trading Economics, 2020[207]). Over time, this has undercut the competitiveness of domestic tradables producers, while complicating trade and profit repatriation for foreign investors (EBRD, 2019[195]). Relaxing foreign exchange controls could strengthen the competitiveness of tradables and improve investor confidence.

The global COVID-19 pandemic is likely to have serious implications for Turkmenistan's public finances

Growth is expected to have decelerated to 1.8% in 2020, with a more modest expansion of 4.6% projected for 2021. Turkmenistan is by far the Central Asian economy most dependent on Chinese demand for its hydrocarbon products, with almost all of the country's gas exports now going to China. Indeed, of the 50bcm of natural gas imported by China annually from Central Asia, 30bcm comes from Turkmenistan, with Turkmengaz, a Turkmen SOE, and China's CNPC – the sole foreign onshore firm operating in Turkmenistan – controlling the entirety of these supplies (BP, 2019[208]) (The Oxford Institute for Energy Studies, 2019[209]). With such a limited export portfolio, and equally limited range of export destinations, any drop in demand from China will have immediate and serious consequences for the Central Asian state's finances, undermining its ability to commit to expensive but necessary long-term market adjustments as well as undertaking export-orientated investment, such as the TAPI project. Initial data from China suggests that imports of natural gas from Turkmenistan have fallen by 29% in the first ten months of 2020, implying a significant and immediate reduction of trade revenues.

On 8 May 2020, the President gave an address in which he anticipated the current crisis to be more severe for public finances than the 2008 and 2014-15 crises, and signalled that the state budget and budgets for SOEs would be revised downwards (Turkmen Portal, 2020[210]). In the same address, the president requested all deputy-prime ministers to formulate cost-saving plans. Early indications of wage reductions for employees of a number of SOEs suggest that these budgetary revisions have are being implemented immediately, with the cost of the crisis being passed onto workers. Such shortfalls will negatively affect the both government's ability to address immediate COVID-19 consequences and its capacity to address long-standing structural issues in the economy.

Turkmenistan remains the only country in Central Asia not to have officially recognised a case of COVID-19 on its territory. Should the pandemic spread to the country, it is ill-equipped to pursue many of the policy interventions seen in neighbouring countries due to underdeveloped critical infrastructure. With one of the highest costs of internet in the world and, despite commitments to digitalise a range of public services, a

public administration and private sector that remains decidedly analogue, the ability of Turkmen businesses to support workers through containment measures – such as teleworking – is very limited (ITU, 2019[212]).

Since the beginning of the COVID crisis, many of the measures taken by the government have reinforced long-standing issues surrounding currency controls and convertibility, thus risking further undermining investor confidence at a time where the international investment environment will be increasingly competitive (Box 12). There is uncertainty over when and under which circumstances these measures will be lifted.

Box 12. Currency Controls and Investment in Turkmenistan

The government continues to impose restrictive conditions on currency convertibility. At the same time, the government maintains a fixed exchange rate of 3.5 manat to the dollar, which many observers consider to be significantly overvalued – indeed, the unofficial rate, widely traded on the country's black market, stood at around 22 manat/USD in October 2020. The combination of these two currency policies undermines the attractiveness of the country for foreign investment whilst lowering the competitiveness of export-orientated or would-be export-orientated domestic firms.

The situation in Turkmenistan regarding the government's strict currency policies has some similarities to that of Uzbekistan prior to its 2018 liberalisation, where profits earned in the local currency were extremely difficult to repatriate. Investors therefore face barriers in realising return on investments due to conversion difficulties, despite the freedom to do so being provided for in law. Certain sectoral regulations allow firms to bypass these difficulties, such as oil, where the Petroleum Law allows firms to receive a share of profits in crude oil, which investors can ship to other Caspian states to sell.

In the wake of the COVID outbreak, these restrictions have intensified as the government has sought to mitigate the adverse external impacts of lower oil prices and demand. In May 2020, the President signed a resolution ("On the Reserve Foreign Currency Fund") whereby state-owned firms would be required to sell 100% of foreign currency earnings to the Stabilisation Fund, an instrument first established in 2008, which would be held at the Central Bank. It is not clear if the same conditions apply to private and international firms operating in Turkmenistan. The resolution, in effect a presidential decree of the type which contributes to a general sense of regulatory unpredictability, dictates that all foreign earnings would be repaid to the firm at the official rate, implying an almost six-fold decrease in dollar terms of earnings.

Not only do these new measures further complicate an already difficult environment for currency conversion, but they significantly lower the competitiveness of domestic firms, particularly those that are export-orientated and aspiring to integrate into value chains. The controls may alleviate foreign currency shortfalls within Turkmenistan – attested to not only by conversion difficulties but on the withdrawal restrictions placed on domestic bank cards – but in the longer term such measures are counterproductive, and risk undermining other longstanding reform ambitions of the government.

Source: (Turkmenistan Today, 2020[211])

Priority areas for reform: investment regulation, business registration and the operational environment for SMEs

Priority 1: Ensure enforcement of the Law on Investment and improve information availability

The Law on Investment (LoI), amended in 2015, is the main piece of legislation governing investment activity. Even though it establishes equal rights for all investors, it does not specify non-discrimination, as do other regional investment laws. It also establishes the main rights and duties of investors, such as use of property as pledge, and the obligations of the investor to declare to the authorities the volumes and sources of investments made. Regarding obligations of the State, the Law establishes the procedures for state investment, requiring feasibility studies and economic grounding for decision-making (Republic of Turkmenistan, 1992[213]). The OECD has been informed that the Foreign Economic Activity Development Programme for Turkmenistan contains a commitment to improve investment legislation and to consolidate investment-related legislation into one act. The Organisation has not yet managed to obtain a copy of the Programme or to study the proposed changed to the law and its timeline.

The current LoI protects investors against abrupt regulatory changes (Art.19), providing that if legislation restricting investors' rights were to be adopted, the relevant provisions cannot be enforced earlier than 10 years from the date of publication. The legislation also guarantees the investor's right to claim compensation. However, neither the amount nor the method of calculation is specified. Finally, the legislation prevents officials and state bodies from interfering in investment activities unless provided for by law, and it establishes a vague protection against direct and indirect expropriation (Art.22).

Turkmenistan is the only country in the region that has two separate investment laws for domestic and international firms, despite the fact that the LoI states that conditions for both be the same. The Law on Foreign Investment (LoFI), amended in 1993, further clarifies this framework, establishing the procedure for establishing a company and providing for non-discrimination against businesses with foreign participation (at least 20% foreign capital) (Republic of Turkmenistan, 1992[214]). In particular, the property rights of foreign investors cannot be worse than that those of legal entities and citizens of Turkmenistan, and activities are only limited to meet the requirements of sanitary, ecological and other standards set out in the legislation. The legislation also protects against nationalisation of property (Art.21), allows for arbitration by agreement of the parties, and stipulates that the rules of international agreements take precedence. Finally, the Law on Enterprises, introduced in 2000, and the Law on Business Activities also briefly touch upon foreign investment (Republic of Turkmenistan, 1999[215]).

Whilst the provisions in these pieces of legislation are relatively thorough, the lack of consolidation makes ascertaining investors' rights difficult, and creates opportunities for differing interpretations.

> *The limited availability of legislation and a large, unconsolidated body of by-laws make it difficult for firms to ensure legal compliance*

Implementation of investment and business-related legislation is weak. Limited access to relevant information, the use of arbitrarily introduced bylaws, and reliance on verbal directives by local authorities, creates uncertainty for the private sector (US Department of State, 2019[216]).

Turkmenistan lacks a systematic, comprehensive and up-to-date system for sharing information and conducting public-private consultation mechanisms for investment-related legislation. Only the LoI and the LoFI are available online for investors in Russian and Turkmen on the Ministry of Justice's Centre of Legal Justice and on the OSCE's Database for Legislation of Turkmenistan (Republic of Turkmenistan, 2019[217]). In addition, most laws make reference to bylaws that are not publicly available and are frequently introduced in the form of presidential decrees (Abdrakhmanova et al., 2016[218]). The latter, if publicised online, are not categorised by subject, making cross-referencing burdensome.

Effective implementation of the investment-related regulatory framework is also hindered by the fact that the governance of most foreign investment projects relies on project-specific government decrees. In addition, local enforcement authorities have been known to enforce certain verbal directives without any documentation to support their actions (US Department of State, 2019[216]).

The lack of information availability is particularly cumbersome for foreign investors, who face a series of market entry barriers that are opaque, subject to political influence and not applied to domestic counterparts. For example, the principle of non-discrimination features both in the LoI and LoFI. In practice, however, foreign companies are subject to inter-ministerial approval, which can act as a lengthy and cumbersome screening. There is a misunderstanding within the government of international definitions of discrimination in respect to investment, with alternative procedures – such as the screening mechanism required of foreign investors – regarded as non-discriminatory.

Investors believe the government uses various legal means to discriminate against them during the screening process, including excessive and arbitrary tax examinations, denial of license extensions, visa issuance troubles, and customs clearance complications. Due to the opacity of many of these processes, it is impossible for investors to enter Turkmenistan without establishing a direct contact in the government, something usually initiated through the Turkmen embassy in the investor's home country. In addition, foreign investors are often required to take on management staff from the government, regardless of their professional suitability.

Finally, FDI might be deterred from non-hydrocarbon sectors, as the government has not yet allowed fully owned foreign operations in any sector other than energy.

Turkmenistan needs to streamline, consolidate, and publish all investment-related legislation on the legal database of the Ministry of Justice

Consistent, fair and transparent enforcement of investment-related legislation is crucial to support private sector development and economic diversification in Turkmenistan. In this regard, the public availability and reliability of legal and regulatory information is key.

The government should consider modernising and consolidating investment legislation. Based on the recent regulatory consolidation undertaken by Kazakhstan (Box 13), Turkmenistan could streamline and consolidate all existing entrepreneurship and investment-related legislation into a single code. All investment-related laws and bylaws, and any relevant presidential decrees, should also be made publicly available in Turkmen, Russian, and English, on the legal database of the Ministry of Justice. Due attention should also be paid to the regular updating of the website, and to its widespread cross-referencing on relevant government and business association webpages. Given that many new legal amendments have implications for, but do not explicitly mention, other pieces of legislation, the government should ensure that where a new piece of legislation or regulation is introduced it makes clear the implications for investors and businesses.

Box 13. Regulatory consolidation case study: The Entrepreneurial Code of Kazakhstan

In October 2015, the government established the Entrepreneurial Code (EC), which has integrated the 6 main pieces of entrepreneurship- and investment-related legislation. The EC has become a cornerstone of the country's effort to ease business operation as one single and publicly available document regulates all domestic and foreign business activities (including investment), systematised the rights of business entities and the regulation of state-business interaction, provides for the only cases in which unscheduled inspection is permitted, systematises all forms of dispute resolution, and regulates the role and supervision of the ombudsman.

The EC has been harmonised with the Civil Code, to ensure consistency between many bodies of Kazakh law, and have spurred further regulatory changes in related areas such as business inspections.

Sources: Entrepreneurial Code of Kazakhstan; (OECD, 2018[51])

In addition, the government could consider the creation of an investment promotion agency to provide potential investors with a trusted and non-political gateway into the country following for instance the example of Turkey (Box 14). To do this, the government would need to invest in capacity-building to ensure adequate technical, and administrative skills related to investment management. This would ideally involve both training public officials and recruiting from the private sector.

Box 14. Investment Office of the Presidency of the Republic of Turkey

The Investment Office of the Presidency of the Republic of Turkey (IOP) promotes and facilitates investment opportunities in Turkey by providing assistance to investors during the entire timespan of their investment.

The IOP acts as a one-stop shop: it provides investors with up-to-date information on investment-related regulations and taxation, and liaises between foreign investors, the local business and academic community, and all national and local government bodies. In addition, it provides business facilitation services at all stages of the investment process, directly providing market analysis, site selection support, and helping in registration and licensing procedures.

Source: (Investment Office of the Presidency of Turkey, 2020[219])

Priority 2: Streamline business registration and licensing, and introduce a one-stop shop

Personal connections are still playing a key part in business success and survival in Turkmenistan. The biggest hindrances cited by the business community relate to long and complex registration, licensing, and taxation procedures, while complaints about the expropriation of domestic businesses remain common (Abdrakhmanova et al., 2016[218]). Turkmenistan is not covered by the World Bank's Doing Business indicators, which makes comparison difficult. Nevertheless, examination of the relevant legislation and conversations with domestic and international businesses suggest that registration procedures, in particular, are probably the lengthiest and most expensive in Central Asia.

Business registration legislation is dated and hard to access

Registration of businesses is covered by the Law on Enterprises (2000), the Law on Joint Stock Companies (1999), and the Civil Code (1998), and conducted by the Registration Department of the Ministry of Finance and Economy.

Registration of domestic enterprises is centrally administered by the Ministry of Finance and Economy on the basis of submissions made by its affiliates in Ashgabat and the country's regions. For domestic firms, the registration process usually takes six weeks, with four of these taken up by registration at the State Committee for Statistics, though by law registration with the statistical authorities should take no more than five working days.

For international firms, the registration process is altogether different. International businesses' applications must be approved by a resolution of the Interdepartmental Commission for Protection from Economic Risks at the Agency for Protection from Economic Risks at the Ministry of Finance and Economy. No data regarding processes and costs are available. The process should take no less than six months, and begins with an approach to the local diplomatic representation of Turkmenistan in the applicant's home country. A letter is subsequently dispatched to the Ministry of Foreign Affairs, which reviews the statement of interest and decides whether to issue a visa to the relevant party to visit the country. A decision on whether the proposed enterprise can be registered for operations in Turkmenistan will ultimately be decided by the Commission, whose workings, rules and decisions are not public, and which constitutes a major source of uncertainty for potential investors. Whilst many of the commission's aims are laudable, such as ensuring anti-money laundering/counter-terrorist financing adherence in line with FATF requirements, the process greatly exceeds the statutory two-week approval process (Art. 16 of the Law on Enterprises) and is a significant entry barrier for foreign firms.

Given the above, companies commonly report that the registration process for foreign businesses is lengthy, unpredictable and opaque, despite *de jure* provisions in the Law on Enterprises stating that in the case of refusal, the registering authority must return to the applicant the documents submitted for registration, with a written explanation of the reasons for refusal (US Department of State, 2019[216]; Republic of Turkmenistan, 2000[220]).

Turkmenistan does not have a one-stop shop for business registration, though such a platform is currently under consideration by the government, nor do the authorities maintain a website with up-to-date information regarding business registration. As in other countries of the region, COVID-19 has added renewed impetus to Turkmenistan's digitalisation ambitions. The Ministry of Finance and Economy is currently developing an electronic document management system, with the hope of introducing an online single-window registration platform. The plans would foresee the single window being interoperable with the registration processes of the Union State Register of Legal Entities of Turkmenistan, as well as with the relevant statistical, taxation and pension authorities.

Though fewer licenses are required in Turkmenistan than regional peers, the country lacks a robust licensing framework and inspections remain onerous

The legislation for licensing and permits is still unconsolidated, subject to abrupt changes, including by decrees, as well as to significant exceptions. It is not clear to what extent licensing requirements for the private sector differ from those for SOEs, with this being a possible source of unfair competitive advantage for the latter over the former. The Law on Licenses (LL), introduced in 2008 and amended in 2017, lists 47 types of licenses to be delivered by relevant line ministries, defining procedures, timeframes and fees. Licensing is ultimately regulated by the Cabinet of Ministers.

One of the basic principles of the legislation on licensing is the uniformity of the procedure for obtaining a license, even though no information is provided on individual licenses or where to submit the application. Application documents are available for download on the Ministry of Justice website, but there is no information on where the application should be sent (Republic of Turkmenistan, 2019[221]).

The LL also provides for exemptions from the requirements to obtain licenses for state enterprises, businesses operating in free economic zones, and joint educational institutions. These exceptions might create distortions and grant undue advantages to SOEs. In addition, the duration of validity varies according to the type of license but generally may be no less than three years, while the duration may be reduced but not more than one year. However, no further details on the conditions for such a reduction are given.

According to the LL, there are time limits established for the verification of applications, the issuance of decisions, and the issuance of licenses. However, there are no data surrounding the extent to which this rule is followed.

The LL establishes an appeals procedure in case the denial of a license is deemed unjustified, allowing for "an independent examination". Applicants are entitled to compensation if the examination concludes in their favour. In practice, however, reasons for rejection or termination of licenses, despite being defined by law, are often criticised as arbitrary and have been the root of international investor-state disputes. This practice was exemplified by the 2011 ICSID case between the Russian telecommunications corporation MTS and the government, with the latter claiming USD 800m due to an arbitrary license revocation and subsequent expropriation of the investor (UNCTAD, 2011[222]). More recently, in 2017, the Turkish hospital in Ashgabat was reportedly denied a license extension and shut down, but no clear, legal reasons for the denial were made known (Ferghana News Agency, 2018[223]).

According to the LL, relevant ministries and their departments can carry out both scheduled and unscheduled inspections, and the licensing authority has the right to inspect any person other than license seekers or licensees to identify any persons engaged in activities subject to licensing without a license. However, the conditions for initiating such inspections are not established. The effect of such an opaque and unpredictable inspection framework is difficult to assess, as there is little information on business inspections from third parties.

Finally, there are neither established rules on what might justify an inspection nor any limit on the number or frequency of inspections in the law, nor indeed rules governing who may be inspected. In addition, there is no horizontal oversight body below the Cabinet of Ministers, no risk management system in place to assist the inspection agencies, and no ombudsman to which businesses can turn when they feel unfairly scrutinised.

Efforts to simplify the operational environment should take into account connectivity and capacity constraints.

The removal of redundant and cumbersome business registration and licensing legislation could be part of a broader simplification of the investment-related regulatory framework into a single Code (Box 13), or articulated through a dedicated SME strategy. The government is considering the development of a single online platform to inform businesses on all procedures, address requests, and fulfill all procedures online (Box 8). The establishment of such a platform should be a priority for the government, but it is essential that the development of such a digital OSS take into account the *de facto* connectivity limitations facing entrepreneurs and small firms. Only 0.09% of inhabitants have a fixed broadband subscription and where only 21% of the population are regular internet users – compared to 38% in Kyrgyzstan and 52% in Uzbekistan (ITU, 2019[224]) (ITU, 2019[225]). The commitment of financial resources to online and digital solutions may thus be premature, unless there are major improvements in digital connectivity, though the

move towards remote working in many countries in light of the COVID-19 pandemic demonstrates the value of ICT-enabled flexibility in times of crisis.

Indeed, the government itself has expressed its frustration that low levels of digital connectivity hinder the inclusion of banking services into their digital proposals, which, given the intention to incorporate license and permit fee paying into the OSS, would severely restrict the impact of the platform. Whilst digitalisation should be part of any plans going forward, the government would be well served by focusing its efforts on physical service centers throughout the country, perhaps drawing on the experiences of Georgia (Box 15), and ensuring these are sufficiently well-resourced.

Box 15. Business procedure simplification case study: one-stop shops in Georgia

Physical one-stop shops, Public Service Halls, have simplified business procedures in Georgia. In 2012, Georgia introduced one stop shops (OSS) for SMEs in 14 provinces, ranking 6th in ease of starting a business in WB Doing Business. "Public Service halls" gather different line ministries and agencies to provide more than 300 different administrative procedures, including one-day procedures to obtain a registration certificate.

In addition, Georgia has set up a unified portal (my.gov.ge) providing about 400 e-services for citizens and entrepreneurs, available 24/7. The website is the main channel for electronic communication with different public entities, and the largest source of publicly available information.

Sources: (Georgia's Unified E-Services Portal, 2020[226]; Georgia's Public Service Halls, 2020[227])

In addition, the government must ensure that regulations and procedures are enforced for all businesses. To this end, the establishment of sector based self-regulatory organisations (SROs) to supervise the implementation of licensing procedures could be considered based on the recent experience of Kazakhstan (OECD, 2018[51]).

Private sector involvement throughout the policy making process could help ensure that proposals meet real business needs. In particular, there could be a statutory requirement for lawmakers to involve the private sector, including SMEs and international businesses, in a clear and coherent process of consultation. The creation of a Business Ombudsman with oversight for inspection agencies and regulations would also provide a strong public-private dialogue mechanism and could play an important role in dispute settlement. Recent parliamentary discussions in Turkmenistan indicate that there is a willingness to establish a business ombudsman in the country, though no concrete plans for the creation of such an institution have yet been announced.

Priority 3: Simplify the operational environment for SMEs

A regulatory framework for firms and SMEs has been established, but investors and firms report enforcement and transparency issues

The Law on State Support for Small and Medium Enterprises (LoSME) introduced in 2009 serves as the basis for SME regulation, supplemented by the State Programme on Support of SMEs 2018-2024 (Republic of Turkmenistan, 2009[228]). The LoSME guarantees various forms of support to SMEs, including access to finance through state-owned banks (UNECE, 2013[229]), technology, training, and internationalisation. Further, SMEs enjoy many simplified procedures, notably regarding accounting, taxation, and insurance. In addition, they benefit from some guarantees regarding regulatory stability, as they are allowed to apply legislation in force at time of registration for five years should any legislative change arise that would lead to prohibitions and restrictions on their activities. The law also protects SMEs

from “unreasonable” interference from the state and guarantees market value compensation in the event of expropriation (Republic of Turkmenistan, 2009[228]).

The National Development Plan for 2018-2024 establishes the goal of nurturing SMEs and a State Programme on Support of Small and Medium Entrepreneurship for 2018-2024 has even been approved (EBRD, 2019[195]). However, the EBRD has expressed scepticism about implementation of these programmes, noting that similar programmes have been introduced with little effect in the past and that they lack substantial implementation plans; there are also questions about the capacity of state institutions to implement some of the measures (EBRD, 2019[195]). In addition, SMEs do not have differentiated business registration or licensing processes, nor bankruptcy proceedings, and, despite commitments from the government to develop such services, very few services are available online.

A simplified legal framework and support for SMEs and small entrepreneurs could help stimulate entry and growth

The government should dedicate specific attention to the needs of SMEs when simplifying the investment regulatory framework.

The government could also develop SME-targeted public instruments, for instance an entrepreneurship fund such as DAMU in Kazakhstan, or a dedicated service centre such as the Georgian Innovation and Technology Agency. Such an agency or agencies could support SMEs and entrepreneurs regarding access to finance and infrastructure, and legal advice. In addition, they could contribute to public-private dialogue, notably supporting the government in the development of the legal framework for innovation.

Finally, as noted above, an ombudsman with oversight for inspection monitoring could help ensure reliable and accountable enforcement, while enabling SMEs and entrepreneurs to signal unfair treatment and seek redress.

Further progress and challenges in the legal environment for business in Turkmenistan

Turkmenistan has taken steps to protect intellectual property, but more effective enforcement is needed

As elsewhere in Central Asia, the protection of property rights (IPR) remains a concern for investors and local businesses in Turkmenistan, despite strong *de jure* protections, and both WIPO and Eurasian Patent Organisation (EAPO) membership (US Department of State, 2019[216]). There are numerous laws governing specific aspects of IPR in Turkmenistan, creating an unconsolidated legal base. For example, among the main tests are The Law on the Protection of Scientific Research, the Law on Authors Rights and Associated Rights, the Law on The Rightful Protection of Algorithms, and the Patent Law (Republic of Turkmenistan, 1993[230]). It is not clear where aspects of certain laws supersede the provisions or others, nor whether the most recent versions of these laws are available online. In addition, Turkmenistan is not a signatory to a number of WIPO treaties, including the Copyright Treaty, Internet Treaties, and the Patent Law Treaty.

In 2012, the government set up a new State Agency for Intellectual Property under the (then) Ministry of Economy and Development to align the national IPR system with international standards and guarantee the effective protection of IPR (UNECE, 2013[229]). In 2015, the country introduced the Action Plan for the Development of an Intellectual Property System for 2015-2020, in part with the aim of attracting foreign investment. However, there has been little progress with IPR protection since 2016 (Office of the United States Trade Representative, 2018[231]).

In practice, IPR enforcement is weak, while infringement and theft are common (US Department of State, 2019[216]). Legislation does allow for pre-trial as well as judicial settlement of intellectual property disputes, but no data are published that would show the effectiveness of such processes. Enforcement is hampered by a lack of effective administrative and civil procedures, and the absence of criminal penalties for violations – though certain sanctions are envisaged in various pieces of legislation (UNECE, 2013[229]). Since 2000, Turkmenistan has been on the United States Trade Representative (USTR) Special 301 Watch List. The State Department reviews annually the state of IPR around the world each year, and distinguishes between a "Priority Watch List" and the general "Watch list". In 2018, Turkmenistan was among 36 countries on the general watch list, due to lack of progress since the country's accession to the Berne Convention on IPR in 2016 and failure to implement its IP laws. The report urges Turkmenistan to provide *ex officio* authority for its customs officials and improve enforcement (Office of the United States Trade Representative, 2018[231]). Strengthening IPR protection could encourage investors to undertake technology transfers that would enable productivity gains in Turkmenistan.

Legal protections against expropriation exist, but investors remain concerned over discretion in their application

While the Constitution establishes the inviolability of property (Art.12), expropriation under certain conditions is nevertheless allowed for in the LoI, the LoFI, and the Law on Property (Republic of Turkmenistan, 2016[232]). In addition, the LoI guarantees non-discrimination regarding expropriation, and the investor's right to demand, once the event justifying the expropriation has expired, the return of the expropriated property if compensation is returned (Republic of Turkmenistan, 1992[214]).

The LoI and LoFI establish the general conditions for direct expropriation of property, which must follow the issuance of a legislative act grounded on extraordinary circumstances. In addition, companies operating in free economic zones cannot be nationalised (Republic of Turkmenistan, 2017[198]). However, although property may be confiscated only following a court decision, critics argue that the state has interfered in the management of companies in the free economic zones in ways detrimental to their operations (US Department of State, 2019[216]). In addition, indirect expropriation is not defined in law.

For foreign investments, the LoFI states that compensation should be equivalent to the market value at the time of the decision to requisition the property, made immediately in foreign currency, and if requested, transferred abroad (Republic of Turkmenistan, 1992[214]). However, in 2016, Yimpaş, the largest shopping and business centre in Ashgabat was expropriated without compensation, with the 2017 expropriation of the Turkish Hospital in Ashgabat likewise uncompensated.

If investors have an arbitration clause in their investment contract, expropriation cases can be heard in arbitration courts. However, there is very limited recognition of foreign court judgements, which is granted on a case-by-case basis despite statutory guarantees that such rulings be enforced in the country. Appeals can only be submitted to the Supreme Court of Turkmenistan (Abdrakhmanova et al., 2016[218]). Currently, only nine out of 19 bilateral investment treaties in force in Turkmenistan mention indirect expropriation, and only two define it (UNCTAD, 2019[233]). If the investor does not have an international arbitration clause or a bilateral investment treaty allowing for international arbitration, he must either contest the decision through the domestic courts or domestic arbitration. If the investor chooses to appeal the decision, the appeal must be made to the Supreme Court of Turkmenistan (UNCTAD, 2019[233]). Though some of the 13 cases taken to international arbitration prior to 2020 could be seen as involving indirect expropriation, other cases, such as the alleged expropriation of the Turkish Hospital in April 2017, were not taken to international arbitration.

Preventive measures and exit mechanisms for businesses in distress remain underdeveloped

The 1993 Law on Bankruptcy (LoB) and the 2000 Law on Enterprises (Republic of Turkmenistan, 2000[220]) (Republic of Turkmenistan, 1993[234]) protect certain rights of creditors, such as the satisfaction of creditors' claims in the case of the debtor's unwillingness or inability to pay, and include provisions for reorganisation procedures and remediation. The LoB also recognises false bankruptcy and allows for criminal liability in such circumstances. However, the law remains vague on the conditions for initiating bankruptcy procedures, the notice to creditors of the opening of a case, or the effect of bankruptcy on the positions of secured creditors (EBRD, 2010[235]).

Bankruptcy cases are dealt with by economic or arbitration courts, but negotiations can take place first. However, the extent of usage of bankruptcy procedures is difficult to quantify, as data are not publicly available (EBRD, 2010[235]). Turkmenistan is not covered by the World Bank's *Doing Business* indicators, which makes comparative assessment difficult.

The law provides for a number of alternative measures to bankruptcy, including preventive and remedial measures, even if the LoB does not define any early warning signs. For instance, upon agreement of both parties, the debtor may be permitted to initiate reorganisation procedures such as the provision of financial aid for the modernisation and restructuring of the company, under the supervision of an external expert appointed by the court. Alternatively, remediation may be agreed by both parties, entrenching an obligation to ensure the satisfaction of all creditors upon completion of the rehabilitation. Remediation may be granted for up to 18 months and extended for a further six months by the court, and be stopped at any moment if deemed "inefficient" by the court, without clear definition of such a case (Republic of Turkmenistan, 1993[234]).

However, second-chance measures are not mentioned in government strategies, plans or current legislation, nor does the government offer training to entrepreneurs who are starting afresh or, even information on any of its government websites on the topic. In addition, there are no special proceedings for SMEs.

Tax policy is changeable and unconsolidated, with differing sectoral requirements

Legal entities incorporated in Turkmenistan are treated as tax residents, and are subject to a range of taxes that are relatively well established by the country's legislation (Republic of Turkmenistan, 2005[236]). The rate of CIT depends on whether a firm is a domestic resident or a branch of a foreign legal entity, with a rate of 20% applied for the latter and 8% for the former. The rate of CIT for SMEs is significantly lower, at 2% of gross income less allowable deductions. Entities where the government has an ownership share greater than 50% are subject to the 20% rate. Firms are liable to pay VAT at 15%, with a zero-rate applying to exports and international transport services. As frequently is the case, there are divergences between the general tax regime and the requirements of firms operating in the hydrocarbon sector, with firms operating under the Petroleum Law often exempt from VAT requirements (Hines and Varanese, 2001[237]; PWC, 2019[238]; PWC, 2020[239]).

As in other countries of the region, SMEs are able to benefit from a simplified tax regime, as stipulated by the *Law on State Support to Small and Medium Sized Enterprises* (Republic of Turkmenistan, 2009[240]). The law establishes an SME according to its number of employees (with the exact number depending on the sector in which the firm is active), and determines that such firms benefit from simplified accounting and tax requirements. According to Art. 170 of the Tax Code, SMEs are exempted from pay profit tax, and Art. 95 exempts them from VAT. In addition, Art. 138 stipulates that "privately-owned legal entities" are not considered property tax payers.

In addition to tax requirements as set out in the Tax Code, a number of payments are stipulated outside of the general tax legislation, often by specific presidential decree. This can lead to difficulties in ascertaining

a company's total tax burden, particularly as tax requirements for different sectors - such as petroleum and other hydrocarbon extraction – already vary. For example, branches of foreign entities are, as with local entities, subject to contributions to the Agriculture Development Fund and, for firms in Ashgabat City, to the Ashgabat City Development Fund. The rate of contribution to the former is 3% of annual income and to the latter 0.5% annual income. Neither of these funds are codified in the general tax legislation, but are nevertheless administered by the country's tax authorities (Republic of Turkmenistan, 1999[241]; PWC, 2020[239]).

Tax administration creates administrative burdens and unpredictability for firms

Tax reports are generally filed quarterly within the month following the reporting quarter (PWC, 2019[238]). Tax procedures are not digitalised, and companies need to either visit tax authorities or send by mail at the place of their registration to pay taxes in local currency (Republic of Turkmenistan, 2004[242]). However, the introduction in January 2019 of the requirement for accounting practices following the International Financial Reporting Standards (IFRS) for all legal entities, including branches and representative offices of international companies, may lead to an improvement of tax administration.

Turkmenistan's tax legislation contains provisions that arguably foster discriminatory behaviour on the part of the tax administration. According to the Tax Code (Art. 34), the tax service has the right to demand advanced payment from a taxpayer if the service suspects intended tax evasion. The law does not define the "sufficient grounds" that may lead to suspicion of tax evasion, nor does it seem to limit the number of inspections that tax authorities can otherwise carry out. At the same time, only half of the salary of the tax officer is paid by the State, the other half consisting of 50% of the penalties and fines collected by the officer (Art. 71), a practice that (Republic of Turkmenistan, 2004[242]).

In 2020, the government tested a new electronic tax administration platform ("E-Salgyt"); it has informed the OECD that it intends to scale up this platform and develop it into a genuine one-stop-shop for taxation.

The tax regime may discriminate against foreign investors

Foreign investors complain of discrimination and arbitrary taxation (US Department of State, 2019[216]). In some cases, this is statutory. The tax regime provides for higher taxation of foreign investors (20% income tax) compared to local investors (8%, with a lower rate of 2% for SMEs), while tax authorities have been known to carry out excessive and arbitrary tax inspections. VAT is generally payable at the rate of 15%, except for contractors and subcontractors operating under the umbrella of the Petroleum Law, which are exempt from this tax for business activities related to hydrocarbons (Republic of Turkmenistan, 2008[243]).

Special decrees granting taxation exemptions and other privileges to specific investors have been issued on a case-by-case basis, though since the adoption of the most recent Tax Code in 2004 such practices seem to have been significantly reduced (PWC, 2019[238]). In addition, members of free economic zones benefit from various tax breaks, generally, including exemption from VAT payments on input goods used for export-orientated production, property and income taxes for the first 10 years, unless it is income received from the production of excisable goods.

Contract enforcement is expensive, lengthy, and unpredictable

Despite a comprehensive legal framework (LoI, LoFI, and the Law on Property) laws have been neither effectively nor consistently implemented, as external actors find that personal relations with officials can often play a decisive role in how and when regulations are implemented (Abdrakhmanova et al., 2016[218]).

The LoI establishes that disputes are to be resolved by the relevant courts, and grants investors the right to include an arbitration clause in their investment contracts. In addition, the law provides stability in the legislative framework: in the event of a change in legislation negatively affecting an investment, the relevant

provisions cannot be enforced earlier than 10 years from their date of publication. Protection of investors is also guaranteed on a non-discriminatory basis.

There have been several instances since 2017 where companies have been unable to enforce contracts, where the government has refused to pay compensation to companies despite court rulings, or where the government has disputed the amount of compensation owed, making an attempt at claiming the sum futile. The U.S. Department of State even cites instances where officials falsified documents to win arbitration cases (US Department of State, 2019[216]).

Arbitration and alternative dispute resolution remain poorly developed and ineffective

With the exception of severely limited instances where arbitration may be used, there are no alternative dispute resolution (ADR) mechanisms for resolving disputes between two private parties in Turkmenistan. There is no legal basis for mediation, and international arbitration is only possible for cases between the state and private entities. The government is sometimes prepared to include an international arbitration clause in contracts with foreign companies, though it prefers to settle disputes in Turkmenistan (Abdrakhmanova et al., 2016[218]).

The Law on International Commercial Arbitration allows for the resolution of disputes through local arbitration courts, which consider 13 categories of disputes, both pre-contractual and post-contractual, including taxation, legal foundations, and bankruptcy issues. Appeals must be made with the Supreme Court of Turkmenistan and cannot be considered abroad (Republic of Turkmenistan, 2014[244]).

Turkmenistan has signed 28 bilateral investment agreements and benefits from the EU-Turkmenistan Interim Agreement that came into force in 2010 (UNCTAD, 2019[233]). In addition, the CCI has set up an international arbitration court in 2015, but no information is available so far on its use.

The country is also a party to the 1995 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), but it is not a member of the 1958 Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). The LoFI (Art.4) stipulates that if an international agreement or contract lays out different rules from those of Turkmenistan's legislation, the rules of the international agreement or contract are used instead. There is no evidence that Art. 4 of the LoFI has been applied, though. Similarly, the LoFI also stipulates that where an investment agreement has different provisions on dispute resolution to Turkmenistan's legislation, the investment agreement's rules take precedence.

Nevertheless, the government has been known to refuse to apply certain rulings and, according to Art. 47 of the Law on International Commercial Arbitration, it is legally entitled to refuse in certain instances. For example, Turkmenistan did not recognise the 2016 order of an ICSID tribunal to pay the UK company Garanti Koza LLP (controlled by Turkish nationals) for compensation for denial of free and equitable treatment over the breach of expropriation standards under the 1995 United Kingdom-Turkmenistan Bilateral Investment Treaty (International Institute for Sustainable Development, 2019[245]).

Strengthening public-private dialogue for regulatory development could lead to better regulatory outcomes for the state and firms

Public-private dialogue (PPD) platforms and channels for domestic businesses and foreign investors to be involved in policymaking are expanding in all countries of Central Asia. The Chamber of Commerce, usually with some state involvement, has become the primary vehicle on policy and business matters. In contrast, most countries of the region, supported by development partners such as the EBRD, now have a statutory requirement for foreign investors to be involved in policy-making, which also serves as a means of highlighting implementation issues. For instance, until recently, PPD in Uzbekistan was very underdeveloped, but significant reforms by the Ministry of Justice have improved the consultation process, ensuring greater private sector involvement and inter-agency oversight.

In Turkmenistan, PPD and business involvement in the policy process remain limited. The Law on Legal Acts allows for the involvement of scientific organisations, citizens, and businesses in the drafting of legislation (Republic of Turkmenistan, 2017[246]). In addition, state bodies, organisations and citizens have the right to submit proposed legal acts for consideration by authorised bodies which may accept them as basis for drafting legal acts. However, this regulation is not publically available, and there is neither clear regulation to govern the processing of such submissions nor any evidence on when, whether and in what circumstances it occurs. In practice, there seems to be no public consultation process on draft bills, as the government does not involve the private sector in the drafting of its legislation, nor does it publish draft laws for public comment or provide for non-state actors to participate in parliamentary deliberations (US Department of State, 2019[216]).

In addition, the representation of private sector interest is unclear, as the two main representative institutions, the Union of Industrialists and Entrepreneurs (UIE) and the CCI, seem to be weakly involved in policymaking. However, there is evidence of policy dialogue between the government and the EBRD, representing in particular the interests of MSMEs (EBRD, 2014[247]).

The UIE is a public organisation subsidised by the government that formally plays a role in approving public support for individual businesses, such as concessional loans, access to land or infrastructure. It represents the interests of more than 20,000 entrepreneurs, organises conferences and fora in the country and abroad, and is involved in the development of large infrastructure project (The Union of Industrialists and Entrepreneurs of Turkmenistan, 2019[248]). However, the union is strongly aligned with the state, on which it relies for support, and may not therefore be well placed to act as a voice of business in policy discussions (EBRD, 2019[195]).

Compared to other countries in the region, the CCI in Turkmenistan has a much broader remit, receiving soft loans from the national budget to be disbursed to member firms, having involvement in infrastructure projects, and plays a role in firms' access to land. Membership is voluntary and includes private companies as well as ministries and public agencies; it is also open to foreign investors (Chamber of Commerce and Industry of Turkmenistan, 2020[249]). The CCI is considered a non-state entity, but its role as opposed to that of the Union is not wholly clear (EBRD, 2019[195]).

Trade in Turkmenistan remains impeded by soft infrastructure connectivity challenges

Turkmenistan's small number of trade agreements (just 5 as compared to an average of 31 for OECD countries) limits trade growth and only the country's vast natural resources shield it from significant issues on this front (EBRD, 2019[195]). The difficulty of obtaining visas, as well as the small number of airlines travelling to the country, continue to limit the potential gains from the very substantial investments in transport infrastructure the country has made in recent years, such as the completion of the Turkmenbashi Sea Port and the establishment of free economic zones (EBRD, 2019[195]).

Customs and border clearance procedures further stifle trade. Custom duties are often preferential towards state-owned enterprises, for example wool carpets produced at state factories are exempt from customs duties, while private firms pay duties per square meter (Bertelsmann Stiftung, 2018[250]). In addition, customs procedures are lengthy and bureaucratic as customs clearance rules lack transparency and offer opportunities for bribes (Ibid.).

Turkmenistan is not part of the OECD Trade Facilitation Indicators instrument

Turkmenistan is the only Central Asian country not part of the *OECD Trade Facilitation Indicators* (TFI), which analyse all aspects of border procedures, benchmarking national performance against 162 other countries. In 2021, as part of the upcoming second phase of the *Connectivity in Central Asia* project, the OECD will carry out an assessment of trade connectivity in the region, including Afghanistan. The project will offer targeted recommendations and capacity-building to reduce regulatory divergences and improve trade facilitation, and update the TFI indicators which offers Turkmenistan the opportunity to join.

6 Uzbekistan

Chapter summary

Following growth of 5.6% in 2019, the economy slowed sharply in 2020, with real GDP growth slowing to 0.7% as the pandemic hit. In recent years, growth has been largely driven by state-led investment, with the impact of foreign direct investment (FDI) still limited. Private consumption growth remains low.

Since 2017, the government has been pursuing a reform programme aimed at increasing the level of FDI and the contribution of the private sector to economic development. Central to these reform efforts is the improvement of the legal environment for business. Amongst the most significant changes are the liberalisation of prices and foreign currency exchange, the removal of a number of redundant licenses and permits, the creation of a business ombudsman, foreign trade opening and a major overhaul of the tax system.

Nevertheless, the competitiveness of the country continues to be hampered by the excessive state presence in the economy and complex administrative procedures; despite recent improvements, the contribution of the private sector to growth and job creation is still limited. The 1998 investment law was replaced in early 2020; consistent and effective implementation of the new law will be critical to attracting needed investment and stimulating private-sector growth.

Unpredictable contract enforcement undermines domestic and international business confidence. For domestic firms, the complexity of the legal environment creates barriers to and disincentives for growth. The complexity and predictability of tax policy and administration also remain a significant challenge. A new tax code was introduced in January 2020, however it is too early to determine whether it addresses previous concerns.

Like other countries in Central Asia. COVID-19 has had a severe impact on Uzbekistan's economy, and will reduce the fiscal space available to undertake reforms. For the economy to withstand the negative effects of this shock, the government will have to strike the right balance between immediate relief measures to speed up the recovery and continued reform efforts to sustain the country's growth potential and the diversification of its economy.

The government could make significant improvements to the legal environment for business, and further advance the framework conditions for sustained long-term growth, by prioritising the following reforms: 1) predictable enforcement of the new investment law and rationalising the remaining sectoral restrictions, while improving the capabilities of the administration and the consistency of implementation across government agencies; 2) consolidating all business-related legislation for domestic businesses and entrepreneurs, ensuring harmonisation, avoiding duplication and contradictions, whilst guaranteeing equal and predictable implementation across the country; and 3) introducing a policy of remediation into tax administration, ensuring that small firms are not excessively penalised for failing to stay abreast of a rapidly changing legal landscape, while updating the simplified tax regime for SMEs.

Economic overview

Prior to the COVID outbreak, economic growth had been strong

In 2019, Uzbekistan's economy had continued its recent trend of strong growth, expanding 5.6%. As in other countries of the region, COVID-19 had immediate and severe consequences for the economy's growth prospects, with a deceleration to 0.7% in 2020 resulting from lower investment, trade and consumption. Growth will likely return positive in 2021, but ensuring that expansion is sustained and sustainable over the medium- to long-term will require a larger contribution from the country's private sector, necessitating effective implementation of a range of on-going reforms and the creation of greater legal certainty.

Economic growth in recent years has been supported by an active programme of economic reforms, including price and foreign exchange liberalisation. Currency liberalisation has removed a key bottleneck for investors and trading companies, however restrictions remain through regulations surrounding capital movements. The previous regime of currency controls was one of a number of barriers to profit repatriation by foreign investors, another being restrictions set out in capital movement regulation, which remain unchanged. The USD-Uzbek som exchange rate has remained largely constant since the national currency's nominal depreciation of 60% in 2017.

Following a decade of single-digit inflation, consumer price inflation (CPI) reached 18.8% in 2017 before falling back to 14.3% in 2018, which has limited the impact of wage growth but not affected an increase in private consumption (State Committee of the Republic of Uzbekistan on Statistics, 2019[251]). Caution is required when interpreting the inflationary rise over in recent years since the government itself has openly recognised shortcomings in its inflation data. SMEs in Uzbekistan accounted for 75% of total employment and 59% of GDP in 2018 (State Committee of the Republic of Uzbekistan on Statistics, 2019[251]). The state retains ownership or a significant stake in a large number of the country's SMEs, and the large number of SMEs is not necessarily representative of the size of Uzbekistan's private sector. Recent reforms should alleviate some of the pressure that curtailed SME growth prior to 2017.

Levels of FDI remain low but trade has risen since reforms began in 2016

Despite ongoing reforms and efforts to open up the country to foreign investors, foreign direct investment (FDI) inflows remain comparatively low, at 1.2% of GDP in 2018, though recent trends suggest that FDI is beginning to pick up. The total FDI stock in 2018 was USD 9.7bn (23.4% GDP), one of the lowest levels in Central Asia. FDI inflows stood at USD 412m in 2018, up from USD 98m in 2017; this increase is likely due in part to the devaluation of the som and related reforms (UNCTAD, 2019[252]). Announced greenfield investments rose substantially in 2018 with USD 5.1bn committed, significantly up from the USD 1.3bn committed in 2017 (UNCTAD, 2019[252]).

Since 2016, exports have risen from USD 7bn to USD 11bn. Owing to a previously state-driven industrialisation strategy, Uzbekistan has one of the more diversified export baskets in Central Asia. The country's main exports are largely mineral goods, especially gold, supplemented by textiles and food products. Russia, China, Turkey and Kazakhstan are the four largest export destinations after Switzerland (Observatory for Economic Complexity, 2021[253]). The doubling of credit to the private sector since 2017 has helped fuel a surge in imports, enabling overdue investment in new equipment and technology and contributing to an increase in the trade deficit from USD 1.5bn in 2017 to USD 5.3bn in 2018 (US Department of Commerce, 2019[254]). Most of this credit was directed to SOEs, with it being used to update aging machinery and capital equipment.

Significant reforms are underway to level the playing field in Uzbekistan

The guiding strategic document for the reform process is the *National Development Strategy for 2017-21* (NDS), which sets out the government's plans to liberalise the economy, reduce the role of the state, strengthen governance and increase the role of the private sector and foreign investment (Republic of Uzbekistan, 2017[255]). The NDS was supplemented by the operational *2019-21 Reform Roadmap*, (Republic of Uzbekistan, 2018[256]). Both documents and a wide array of presidential decrees, laws and bylaws, are indicative of the breadth and depth of the reform agenda.

Uzbekistan was one of the top reformers in 2019 on the World Bank "Doing Business" (DB) Indicators, especially through improvements in protecting minor investors and tax. However, the country still ranks 69th overall, as issues such as licenses and permits (construction), trade and tax remain largely unresolved (World Bank, 2020[24]). In 2019, the government began a major reform of the Tax Code, with changes intended to simplify tax policy and administration. The new code was introduced in January 2020, and its introduction follows a major overhaul of the country's tax system (Republic of Uzbekistan, 2019[257]). The government also introduced a number of new and updated pieces of legislation for investment and privatisation activity in 2020, including a new Law on Investment (LoI), replacing its previous 1998 iteration.

In September 2017, the government converged the official exchange rate with the black-market rate and abolished the surrender requirements of hard currency that had been earned through exports, immediately addressing one of the key barriers to growth for both domestic and foreign firms in the country. Further, with the resumption of WTO accession negotiations and the resolution of longstanding issues with regional neighbours, the government has already made headway with improving its intra- and inter-regional connectivity (European Union, 2019[258]).

To address the role of the state in the economy, the government has begun to implement a broad programme of corporatisation as it prepares for the privatisation of a number of state-owned enterprises (SOEs) (Republic of Uzbekistan, 2018[259]). One of the fundamental challenges for policy-makers and investors in understanding the extent of the state's presence in the economy is a question of measurement and classification, with legislation classifying only state-unitary enterprises as SOEs (Republic of Uzbekistan, 2006[260]). The narrow definition used by authorities means that many other types of firms with direct or indirect state involvement are not included in official statistics, creating a potentially misleading impression of the state's involvement in the economy. For example, while the government reports that there are 257 directly owned joint-stock companies in Uzbekistan, a recent ADB study found that a further 329 JSCs were owned indirectly by the state, suggesting that almost three quarters of all such firms in the county were controlled, wholly or partially, by the state (Abdullaev, 2020[26]). Whilst it is encouraging to see the state recognise its control beyond the strict definition used by the authorities by including LLCs and JSCs in their calculations, there remain challenges in ensuring that analyses of state ownership are reflective of the *de facto* reality in the economy.

In the course of this project, the OECD frequently encountered estimates that were at odds with other accounts of state ownership in the country's economy. State ownership is not a dimension of analysis for this project, and detailed assessment of the size of the state/quasi-state sector is beyond the scope of this work. However, its implications are relevant for many of the areas addressed here, and in particular for the recommendations given in such areas as competition.

According to the State Assets Management Agency (SAMA), close to 2700 enterprises with state participation were registered in Uzbekistan in 2020, representing 55% of GDP (State Asset Management Agency of Uzbekistan, 2020[261]). A 2013 World Bank labour market survey found that there were nearly double the number of people employed by SOEs than private firms (37% to 20%), with around 34% of the population self-employed. This suggests that state enterprises at that time accounted for competition – including in key network sectors into which the government hope to attract greater levels of investment. In a number of sectors SOEs have both supervisory and regulatory functions over companies operating in

the given sector, which distorts competitions and creates a conflict of interest in their functions (Abdullaev, 2020[26]). Ensuring that policy-makers have a clear idea of the extent of state ownership is crucial to assessing the relative importance of the many reform areas currently being pursued.

Box 16. Privatisation of state-owned assets in Uzbekistan

After being initiated in the 1990s, privatisation efforts in Uzbekistan were mainly focused on small to medium-size SOEs, while major SOEs remained out of scope defined by the 1992 "Law on denationalisation and privatisation" (Abdullaev, 2020[26]). Indeed, selected SOEs were entirely excluded from the privatisation process by the government. These included major companies in mining (Navoi and Almaly Mining and Metallurgy Complexes), telecommunications (Uzbektelecom JSC), oil, gas, and energy (Uzbekneftegas Holding Company, Uzbekenergo JSC, Uzbekgidroenergo JSC), agriculture (Uzpakhtasanoateksport JSC, Uzdonmahsulot JSC), transport (Uzbekistan Airways, Uzbekistan Railways, airports), manufacturing, and two commercial banks (the Halq Bank and the National Bank of Uzbekistan) (Republic of Uzbekistan, 2017[265]).

In 2017, the government revived its privatisation efforts. The first steps focused on improving and streamlining the privatisation process. In 2020 the government stepped up its privatisation programme as part of the "Strategy for the ownership, management and reform of enterprises with state participation for 2020–2025". The Strategy detailed the government's intention to transfer about 1400 state assets to private investors. A presidential decree in March 2020 mandated the end of state ownership in more than 500 markets. The decree followed the sale of 299 state enterprises for a total of UZS 348 bn (USD 34m) (OECD, 2020[3]) (Republic of Uzbekistan, 2020[266]). A further presidential decree in October 2020 formalised the privatisation of over 630 SOEs, including 32 of the largest state companies, such as Uzbekneftgaz, the Navoi Mining and Metallurgy Combine, Uzbekistan Railways, Uzbekistan Airways and Uzautosanat, the state-owned car manufacturer (Republic of Uzbekistan, 2020[267]).

The process is implemented by the SAMA, which has defined privatisation plans and timelines for 2020-21. In June 2020, the government also set up a dedicated investment company, UzAssets, with authorised capital of UZS 20bn (USD 2m) provided mainly by the Fund for the Management, Transformation and Privatisation of State Assets under the SAMA (IMF, 2020[10]). Its mandate covers the preparation of state-owned or partly state-owned companies for sale by conducting analyses of their operations and forecasts of their development, and reaching out to potential investors, notably through the organisation of road-shows ahead of the firms' listing on stock markets. In 2020, UzAssets will receive the total shares of ten SOEs, followed by another forty state assets in 2021. It is worth noting that the rationale for the creation of UzAssets and its precise responsibilities remain unclear, particularly given the relatively similar mandate of the SAMA related to the preparation of assets for privatisation.

Table 14. Privatisation statistics in Uzbekistan, selected years

	2005	2009	2010	2011	2015	2016	2017	2019
Privatised enterprises	980	135	96	95	848	609	542	299
Privatisation proceeds (m USD)	68.2	23.6	14.0	21.8	36.7	51.0	28.1	34

Source: (Abdullaev, 2020[26]), completed by the OECD for 2019 based on State Committee for Statistics of the Republic of Uzbekistan data.

The government has already begun taking practical steps in implementing its privatisation agenda with technical assistance from IFIs, including the EBRD, the ADB, and the World Bank (World Bank, 2019[262]): tariffs have been raised to improve the economic viability of a number of utilities SOEs; legislation has been passed allowing the privatisation of non-agricultural land plots (Republic of Uzbekistan, 2019[263]); and, in 2019 a government resolution was issued that approved the selling of state shares in the chemical, hydrocarbon, mechanical engineering, banking and insurance sectors (Republic of Uzbekistan, 2019[264]).

Indeed, the government review of the vertically integrated national air company (NAK) is indicative of the government's SOE reform intentions, with a presidential decree already reorganising the functions of NAK into new legal entities with a plan to engage in PPPs for the operation of the previous monopoly's assets (Republic of Uzbekistan, 2018[259]).

Post-COVID-19 economic recovery planning has brought a new momentum to the privatisation process that might provide a crucial impetus to the private sector, by reducing the presence of the State, and freeing up space for innovation (Box 16).

The government has undertaken a number of institutional reorganisations to support business climate reforms

To support the implementation of privatisation, tax reform and investment-related initiatives, the government has also undertaken significant institutional reorganisations, creating new agencies and increasing the autonomy of some existing institutions. These reorganisations represent a concerted effort to ensure that empowered and efficient institutions support the reform agenda on private sector development:

- To support privatisation, the government has established the SAMA, which replaced the now dissolved State Committee on Privatisation, Demonopolisation and the Development of Competition (Republic of Uzbekistan, 2019[268]).
- In addition, the government has created the Capital Markets Development Agency (CAMA), which is working with SAMA on its privatisation strategy.
- To improve the attraction of FDI, the government has established the Ministry of Foreign Investment and Trade (MFIT), and tasked the Ministry of Economy and Poverty Reduction (MEPR) with improving the country's investment climate (Republic of Uzbekistan, 2019[269]).
- To help develop the domestic private sector, the MEPR has created the Agency for the Development of Small Businesses and Entrepreneurs. The MEPR is also responsible for non-agricultural land reforms and the development of the country's urbanisation strategy.
- To tackle the long-standing issue of corruption, the government has established a new body to co-ordinate a horizontal approach for the development, co-ordination and implementation of anti-corruption policy through interdepartmental commissions at the national level (Republican Inter-agency Commission) and across the country's regions (territorial inter-agency commissions). Nevertheless, there is a need for significant reforms to the judiciary, and in particular to the practice of supervisory reviews of final judgments and the appointment process of judges (OECD, 2019[270]).
- A business ombudsman has been appointed under the aegis of the Presidential Administration.

Nevertheless, implementation remains a challenge, with the pace of legal change often too fast for the capacities of line ministries and regional administrations. In addition, most of the impulse for change continues to stem from presidential decrees, reflecting the highly centralised system of policy making in the country. Businesses, too, have difficulty keeping abreast of changes to the legal environment, particularly SMEs, which often lack the resources to adjust to changing regulatory requirements.

The COVID-19 has had a severe impact on a number of key economic drivers

As in other countries of Central Asia, Uzbekistan's economy has been deeply affected by the COVID-19 pandemic, with growth decelerating to 0.7% in 2020 (IMF, 2020[4]). Despite efforts over the past decade, Uzbekistan remains a highly concentrated economy characterised by a high degree of informality, which might exacerbate the asymmetric effects of the global and regional economic shock induced by COVID-19. According to the Ministry of Labour, only 5.7 million people are employed in the formal sector out of 19 million in the labour force, leaving a large number of people beyond the scope of measures put in place by the government to mitigate the impact of the crisis on workers and firms.

On the demand side, aggregate demand – both local and regional – will strongly fall in the short and medium term, except for local food products. Long-term dynamics of demand will crucially rely on the timing and scope of government measures, and in particular its ability to create public demand, and sustain private demand through the provision of social benefits to compensate for falling income of households, and provision of liquidities to households and firms. A second lockdown was likely to be installed in July 2020 that will further hit demand. The services sector will also suffer a strong hit, in particular tourism and catering that are most affected by the crisis and border closures.

On the supply-side, as in other countries in the region, the disruption of trade linkages and the reduction of freight due to containment measures will exacerbate existing connectivity issues, and might have a meaningful impact on the main exporting industries, in particular manufacturing and fresh agricultural products. Further, the reduction in consumption and activity also affects local supply chains, and will negatively impact all businesses, in particular SMEs and entrepreneurs. While Uzbekistan has been very active in attracting investment – and has continued to be during the crisis – decreasing global FDI will also affect current and possible projects in the country.

The government took immediate action to support households and firms

As the pandemic reached Central Asia, the government announced swift, immediate economic and social support measures to mitigate the impact of COVID-19 on the economy (Box 17). The crisis package also contained measures to ease the administrative burden of firms so as not to drag further on their activity: a moratorium on tax audits was announced, accrual of interest on tax debt of enterprises and fines in connection with overdue debts on export-import operations have been suspended. Finally, the government has called for a swift implementation of trade facilitation measures to increase the product pass through the "green corridors" for the export of agricultural products, and to increase cargo transportation flows. An extension of such measures to support the recovery will be needed.

After starting to reopen the economy in April, the government announced mid-May a new stimulus package to support businesses and households. The plan provides for an extension of most economic, tax, and social measures adopted during the outbreak, while it outlines eight key directions for achieving economic stability in the long-term: ensuring economic and financial stability; poverty reduction and employment growth; acceleration of banking system reforms; increase in FDI; increasing the export potential and securing foreign exchange earnings; strengthening competitiveness in industry; development of small businesses; widespread introduction of digital technologies (Republic of Uzbekistan, 2020[271]). Early July 2020, the government announced a new confinement and quarantine measures that were lifted after the summer. Next waves of the COVID-19 might exacerbate the current weaknesses, and complicate the implementation of the stimulus packages.

Looking at the medium-term, the key issue will relate to the sustainability of public finances. Decreased state income, increased expenses, and limited ability to raise debt, as access to international financial markets remains constrained, will be major challenges Uzbekistan has to overcome for a sustained and quick recovery.

Box 17. The Uzbek Anti-Crisis Fund

On March 20th, the President announced the creation of an Anti-Crisis Fund endowed with UZS 10 trn (USD 1 bn) equivalent to 1.5% of GDP to mitigate the impact of the pandemic. The Fund is financed through soft loans from IFIs. Key expenses included:

- the extension of loan repayment period for the tourism and catering, transport and logistics sectors;
- the provision of interest-free loans through banks to industries most exposed to coronavirus, in particular entrepreneurs and companies engaged in foreign trade;
- deferred tax payments for up to 6 months granted to businesses;
- an allocation of UZS 200 bn to the Public Works Fund to support employment, and the construction of additional infrastructure; and
- an allocation of UZS 500 bn to the State Fund for Entrepreneurship Support to assist business entities creating jobs.

Additional measures to support businesses and households were also adopted, such as:

- SMEs and individual entrepreneurs who have suspended their activities and whose revenue has been reduced by more than 50% compared to the first quarter of 2020, have been granted tax deferrals until October 1.
- Most vulnerable sectors (tourism and accommodation) have been exempt from paying land tax and corporate property tax, and granted a reduced social tax (1%).
- For corporate income tax, the accrued and deferred interest on loans is not included in the tax base for the period of deferment. In addition, the requirement to calculate tax based on the results of the previous quarter has been removed.
- The submission deadline for several tax declarations has been extended from April to October (e.g., for personal income tax, property tax, and land tax on individuals).
- A moratorium on tax audits has been implemented until the end of 2020, as well as on bankruptcy procedures induced by the pandemic until October 1, 2020.
- Penalty fees and enforcement of debt repayment have been suspended until the end of 2020.
- VAT calculation and payment for businesses with a turnover below UZS 1bn has been shifted to a quarterly frequency until the end of 2020.
- Excise tax and customs duties are set at zero for the import of 20 types of basic consumer goods, and penalties related to foreign trade suspended until October.
- The accrual and collection of rental payments for the use of state property by business entities that have been forced stop their activities have been suspended.

Source: (KUN.uz, 2020[272]) (EBRD, 2020[273])

Priority areas for reform: implementation of investment regulation, legislative consolidation and tax administration

Priority 1: Ensure proper implementation of the new investment law and remove sectoral restrictions for foreign investors

The government has repeatedly stated its desire to increase inward FDI, and has undertaken a serious programme of legal reform to help achieve this. This ambition was rearticulated in the 2018 update to the *State Programme for the Realisation of the Strategy on Five Priority Areas for Development of the Republic of Uzbekistan 2017-2021,* and builds upon the NDS and other strategic documents (Republic of Uzbekistan, 2017[274]).

In 2020, a new *Law on Investment and Investment Activities* was enacted, replacing and expanding earlier laws from 1998 on foreign investment and on investor protection, among others. An investment law can help provide transparency and clarity in a country's investment regime, stipulating the conditions for market access, as well as the protection of investment and the settlement of disputes. Many governments, particularly among OECD members, regulate investment through laws of more general application, but over 100 countries have enacted a specific investment law as a signalling device to potential investors.

The new law is designed to systematise existing laws and by-laws and to level the playing field for foreign and domestic investors. As such, it applies to both foreign and domestic investors, although it excludes many forms of investment, such as those carried out under production sharing agreements, concession contracts and public-private partnerships, as well as in special economic zones. It is therefore unlikely to apply to many high-value natural resources and infrastructure investment projects, among others, where project-specific contractual arrangements with the state are commonplace. At the same time, it is unclear whether laws governing these other areas of activity (such as PPPs or SEZs, or project-specific contracts with the state) can supersede clauses in the LoI, thereby providing the government a loophole for expropriation or nationalisation. The question of legal hierarchy is one that the government must clarify for businesses, domestic and international alike, so that they can have certainty over the legal finality of acts such as the LoI. For investments falling within the scope of the LoI, the new law retains a broad set of generous protections, many of which apply equally to foreign and domestic investments. It includes a general principle of non-discrimination and guarantees of national treatment, protection from nationalisation (although not indirect expropriation) and transferability of funds abroad.

The new law also addresses an issue faced by investors in certain former Soviet republics, notably the attempts by some parts of central and regional governments to nullify licences for foreign investment projects under the pretext of violations of environmental or other regulations. It also insulates covered investors against detrimental regulatory changes by providing regulatory stability for a period of ten years from the time of the initial investment. While stabilisation guarantees are common in the region, they are far less common in other regions of the world as they can severely tie the hands of governments. An alternative – and more flexible – approach might be to include a provision on indirect expropriation in the law itself, subject to certain clear exceptions.

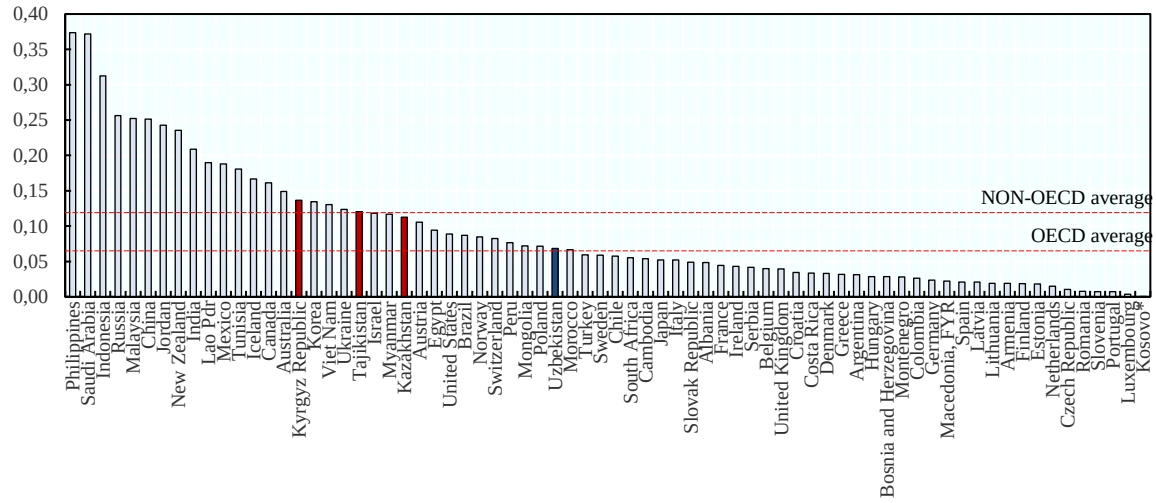
The new law introduces a four-stage process for resolving disputes concerning foreign investments. While there is some ambiguity in the drafting of the relevant provisions, the new law appears to list these four stages as mandatory and consecutive steps. An investor may only seek to commence international arbitration proceedings against the state if it has first attempted to resolve a dispute through negotiations, mediation and litigation in the Uzbek courts. The new law envisages the possibility of investor-state arbitration under investment treaties or contracts but stops short of providing open-ended consent of the state to arbitrate all investment disputes.

In other areas, the law outlines a “one-stop shop” concept for the government’s investment promotion activities and clearly sets out the role of the ombudsman to protect the rights and legitimate interests of investors – another common feature in the region and elsewhere.

There are few statutory restrictions on foreign investment

The OECD FDI Regulatory Restrictiveness Index demonstrates that Uzbekistan is relatively open to foreign investment, with the country in line with OECD average for statuary restrictions and outperforming other countries in the region included in the FDI Index, such as Kazakhstan, Kyrgyzstan and Mongolia (Fig. 25).

Figure 25. OECD FDI Regulatory Restrictiveness Index: Uzbekistan



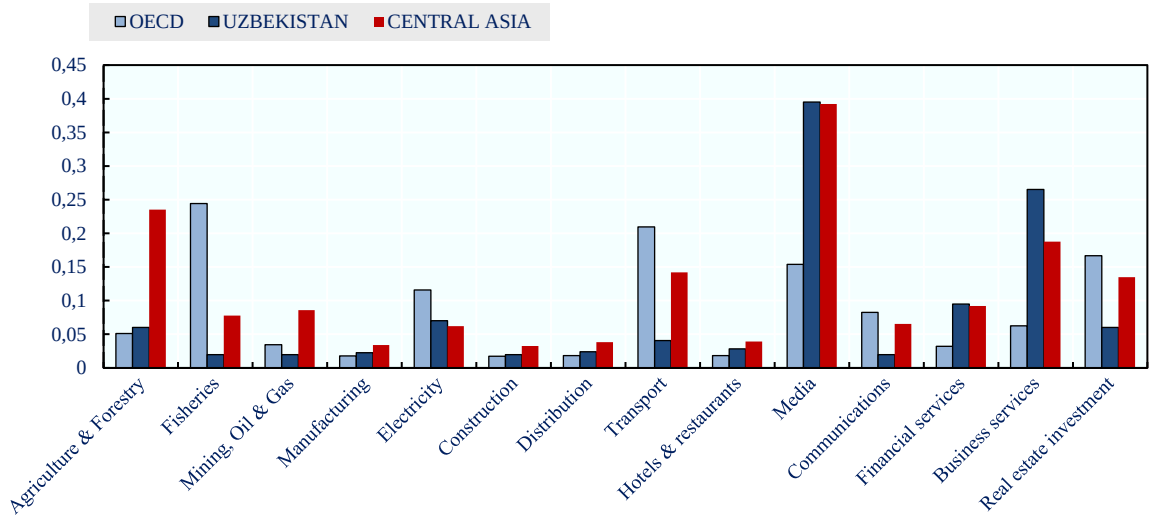
Note: Open=0, closed=1
Source: OECD FDI Regulatory Restrictiveness Index

Restrictions remain for mass media, telecommunications, power generation, business services and other sectors and are particularly high in media, financial and business services (Figure 26). Some sectoral restrictions are typical of governments concerned about national security but others could be re-evaluated to assess whether their intended impact justifies the possible deterrent effect they might have on inflows. This is particularly the case in the financial and business service sectors. Beyond the immediate impact on inflows, governments should also consider how restrictions affect downstream industries and consumers. At the very least, the government should communicate restrictions clearly on the online investment portal. As sectors currently dominated by SOEs are to be opened up, conditions for foreign investors’ participation in the privatisation process will also need to be clearly defined and communicated. The EBRD is currently working with the government on a new law on privatisation, with the Bank encouraging the government to ensure the law improves transparency surrounding the privatisation process and the participation of international investors therein.

Sectoral FDI incentives are numerous in the industrial, hospitality, pharmaceuticals and natural-resource sectors and mostly consist of tax benefits. Companies operating in Special Economic Zones (SEZ) also benefit from tax incentives, as well as customs benefits and services. There are currently twelve SEZs in the country, some having a sectoral focus (pharmaceuticals, sport, agriculture and tourism) (Dentons, 2019[275]). Whilst the laws for SEZs may be fairly clearly established, uncertainty arises concerning the interaction of national laws with these demarcated jurisdictions. This issue is not limited to Uzbekistan; across the region the issue of “legal hierarchy”, i.e., understanding definitively how national legislation

interacts with SEZ rules, creates uncertainty in the legal environment for business. Plans to reform these zones, better define their objectives and reassess incentive packages have been discussed but have not yet materialised according to the CCI.

Figure 26. OECD FDI Regulatory Restrictiveness Index: sectoral restrictions in Uzbekistan



Note: Open=0, closed=1
Source: OECD FDI Regulatory Restrictiveness Index

Uzbekistan needs to ensure enforcement of its new investment legislation

De jure protections for investors are relatively strong in Uzbekistan, and, on paper, most sectors of the economy are open to investment. With the introduction of the new LoI, the focus of the government should be on ensuring effective implementation of the legal provisions offered to investors.

As it continues to open up additional sectors of the economy to foreign investors, the government should prioritise ensuring that the LoI and related legislation are properly enforced. This should involve a concerted effort to raise the capacity of government agencies and to develop the capabilities of the MFIT to help with implementation and investor needs. In particular, Uzbekistan has recently created an Investment Promotion Agency under the MFIT that could be the entry point for investors and inform them of regulatory requirements and recent changes, as well as helping them meet these requirements (OECD, 2020[276]). Stability of stakeholders is an essential feature of effective investment relations that is regularly cited by investors.

Effective IPAs in OECD members, such as Turkey and Ireland, are active generators of investment and knowledge centres for investors, beyond promotion and image building activities (Investment Office of the Presidency of Turkey, 2020[219]). Uzbekistan's IPA could go beyond information provision and deliver a list of advisory and aftercare services for investors, including on regulatory aspects by co-ordinating with other agencies, especially tax authorities and licensing bodies, to avoid multiplicity of contacts and contradictory administrative procedures.

The government should also strive to further remove sectoral restrictions for investors, including in the financial and business service sectors. It could also communicate restrictions clearly on the online investment portal. As sectors currently dominated by SOEs are to be opened up, conditions for foreign investors' participation in the privatisation process will need to be clearly defined and communicated.

In the post-COVID era, a strong and transparent investment regime will be key to attract new investors, preserve incumbent ones, and protect state assets

Over recent years, and despite ongoing reforms, inward FDI flows have been on a downward trend in Uzbekistan and across the Central Asia region, putting strain on the countries' development strategies. The long-term economic impact of COVID-19 might further exacerbate that dynamic as global FDI flows are expected to fall by 30% in 2020 (OECD, 2020[64]). Recovery planning therefore requires strengthened investment regimes to channel FDI to the right sectors, avoiding to lose strategic assets for long-term economic resilience.

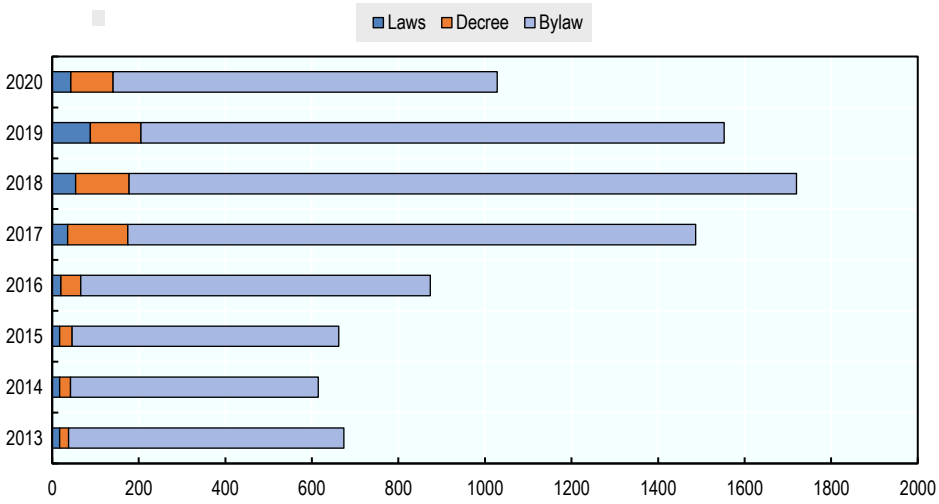
It is possible that the post-COVID investment landscape will be characterised by reduced interest of investors for emerging markets, which in turn increases the risk of predatory behaviour towards strategic assets, the more so that debt servicing pressures increase (OECD, 2020[50]). Now that the government has embarked on an accelerated privatisation programme, investment policy in Uzbekistan needs to protect the economy from predatory and aggressive acquisitions of critical assets.

Only a strong investment regime and careful screening of investors, will allow attracting the right FDI to build long-term growth: first, through proper implementation of the new investment law and the removal of remaining sectoral restrictions to retain incumbent investors, and ensuring steady financing for viable assets. Second, by reinforcing the investment regime and its transparency to attract new investors by guaranteeing them a stable and reliable investment environment. This is even more relevant now as the government embarked on an accelerated privatisation programme.

Priority 2: Streamline and consolidate business-related legislation and licenses for domestic firms and entrepreneurs

In parallel to improvements in the FDI framework, the government has made substantial changes to the legal environment to support the development of the domestic private sector. Nevertheless, the sheer pace of change is often too great for domestic firms to manage and for the public administration to implement, creating uncertainty and undermining business confidence. Frequent personnel changes in administrative structures may have contributed to a slower rollout of new regulation than the government desired. For example, over 2017-19, the increase in government orders, laws and presidential decrees over the preceding three years has been dramatic (Figure 27).

Figure 27. The increase in the volume of new legislation since 2017



Source: OECD calculations based on Uzbekistan's online legislation platform www.lex.uz

The scale of change and scope of the government's reform ambitions imply several critical challenges. The first is ensuring that the range of new primary and secondary legislation does not create an incoherent and contradictory legal environment for business and investment. The government should therefore aim to consolidate all new changes into one single piece of legislation, such as achieved by Kazakhstan through the introduction of its 2015 Entrepreneurial Code. A single coherent piece of legislation could supersede any remaining and hitherto contradictory bylaws. Another option to avoid "legislation inflation" would be the use of "One-in, X-out" or regulatory guillotine approaches, such as those adopted with some success in several OECD members (OECD, 2017[277]; Jacobs, Cordova & Associates, 2006[278]; World Bank/IFC, 2008[279]). Korea has simplified its regulations in the late 1990s using such approaches. The simplification process was led by the Prime Minister's Office that managed to cut all norms by half within one year with the involvement of key ministries. The UK introduced a "One-in, Two-out" method that helped curb the "legislative inflation" by forcing public agencies to remove two existing rules when introducing new regulation that has a compliance cost for the UK (United Kingdom, 2015[280]). This method generally helps countries to remove obsolete regulation and contribute to regulatory offsetting, even though they focus on the quantity rather than on the impact and quality of regulations (OECD, 2019[281]).

A second issue pertains to the fact that the government does not, at the time of writing (December 2020), have a single, clear definition of SMEs. The government has started to draft a new SME law, in which the question of adequate definitions might be addressed, with the support of international organisations including the EBRD and the OECD. Better data on the country's SMEs, and on the private sector more broadly would help the government to refine and improve its business legislation, ensuring that it reflects the reality of firms and the ways in which they manifest and operate across Uzbekistan.

The third key issue concerns the reliable implementation of business-related legislation. Business associations, like investors, routinely told the OECD of non-implementation either of laws that had been passed or of hold-ups in implementing presidential decrees. While the MoJ has changed its legislative drafting process, with a more inclusive approach now practiced with line ministries, agencies and businesses, it is important that key institutions, such as the Ministry of Finance, and business associations beyond the CCI, be consulted on legal changes that will affect them. At the same time, significant changes to legislation must proceed in tandem by the requisite training of public servants. As expectations from the private sector regarding government service change, it is imperative that capacities in implementing agencies are able to meet demand and that civil servants at operational level are empowered to make decisions in accordance with the law.

Finally, the economic support measures rolled out by the government in response to the COVID-19 pandemic are likely to exacerbate further these issues if not carefully streamlined during recovery planning. The government has supported businesses through several targeted measures, necessary to weather the crisis, yet which could further overcrowd the legal and operational landscape for businesses if not addressed properly. Recovery planning should therefore be used to review the measures, so as to keep or improve the ones that proved most useful for business support, and to remove the ones justified only by the urgency of the crisis.

Two mechanisms could be used to support the enforcement process. First, full digitalisation of procedures, in particular for licenses and permits, could be implemented to complement the new physical one-stop shops established in the country. Most important procedures need to be included in the online and physical OSS. Georgia provides a strong example of integration of all key regulatory and administration procedures into OSS through a single front office for all requests and close co-ordination from different agencies located at the same place (OECD, 2018[282]). Secondly, the Business Ombudsman's reports, which encompass the feedback from companies are crucial to identifying and addressing the most important bottlenecks. Regular exchanges with public agencies and transparent reporting on the Ombudsman's website could support this process with an involvement and monitoring of business associations. Ukraine has set up effective and transparent investigation and reporting processes at its Business Ombudsman

Council about spotting issues, suggesting solutions and monitoring recommendations implemented by the government with a strong track record (Business Ombudsman Council of Ukraine; OECD, 2020[124]).

In particular, the government could lever the digital experience and lessons-learnt during the COVID-19 crisis response to further accelerate its digitalisation programmes. Several OECD governments have been doing so to make public services available online, or toCOVID-19 provide direct support to businesses to help develop their online business activities, such as Korea (OECD, 2020[100]).

Priority 3: Ensure changes to tax requirements are predictable, and improve tax administration for small firms

Despite improvements to the tax code (TC) in 2019, companies in Uzbekistan still consider taxation to be one of the biggest barriers to private sector development and investment in the country (World Bank/EBRD, 2019[283]). The government is currently undertaking a major tax reform, with a new TC to be introduced in 2020. A draft was published for consultation in September 2019, but the latest iterations have not been shared. Digitalisation of taxation has begun, marking a significant step in the modernisation of tax administration. Filing of returns and payment of taxes, including VAT, can now be carried out online (Republic of Uzbekistan, 2019[284]).

Tax rates have decreased recently and remain low, but ongoing taxation reforms create uncertainty for investors

The new TC, which entered into force on 1 January 2020, has brought with it a number of significant changes to the tax requirements of domestic and foreign firms in Uzbekistan. A number of previously burdensome requirements have been removed from the tax code, such as payments to various state trust funds, while legislation for others has been moved to specific bylaws (Law on State Duty, Law on Subsoil), or integrated into other legislation (Law on the State Budget). To improve transparency and efficiency, electronic tax returns are required for all firms from January 2020, with any excessively paid tax to be returned by the Central Bank with interest. The TC also brought in a range of exemptions for priority sectors, with income tax set at zero for agricultural producers, social enterprises, and firms producing goods for export where export volume is greater than 15% of turnover (Republic of Uzbekistan, 2020[285]).

Corporate income tax has been raised from 12% to 15% for regular enterprises and to 20% for banks, while VAT has been reduced from 20% to 15% (Republic of Uzbekistan, 2020[285]). More broadly, tax rates have been significantly simplified, with the dividend tax falling to 5% from 10%, a fixed single income tax rate of 12% replacing a variable rate between 7. (Republic of Uzbekistan, 2020[285]).

Of equal importance to the rate change is the way in which taxes are now calculated, with the previous method of basing tax liabilities on sales turnover replaced with a method based on profits. In addition, a large number of social payments and fees have been removed for employers and employees. These two measures have significantly eased the tax burden on firms and workers.

The new TC also brought with it a simplified regime for SMEs, addressing some longstanding barriers to growth and formalisation. The government created a turnover-based threshold for SMEs to determine eligibility for a simplified tax regime. The simplified regime applies to firms that have income below UZS 1 billion (USD 125,000). The regime includes quarterly payments at a rate of 4% of income (President of Uzbekistan, 2018[286]). Firms under the simplified regime are exempted from VAT payment, but can choose to register for VAT voluntarily.

The new TC also standardises tax exemptions for foreign investors. Any JSCs with greater than 15% foreign ownership – or 33% foreign ownership for other types of firm – are exempted from income and property tax for three years for investments between 0.3-3m USD, five years for investments between 3-10m USD, and seven years for investments greater than 10m USD. In addition, all firms eligible for these exemptions are also relieved of customs duty requirements for two years for the purposes of property

importation. Two further changes made to the previous TC in 2019 remain in force and affect sectors which, given their privatisation potential, are of interest to investors. Excess profit tax was abolished in cement-related sectors, and excise tax rates on the production of oil products have been cut dramatically, while the excise rate for the production of natural gas has fallen from 25 to 15% in 2019 (PWC, 2020[287]).

The TC also updated tax privileges for firms located in one of the country's 21 free economic zones (FEZs), which remain overwhelmingly concentrated in the east of the country. These zones are open to domestic and international investors alike. All firms located in FEZs are exempt from land tax in addition to income and property tax, with an exemption of three years for investments of 0.3-3m USD, five years for investments of 3-5m USD, seven years for investments of 5-10m USD, and ten years for investments greater than 10m USD. The government has also undertaken efforts to improve the information availability for firms interested in the country's FEZs, and has launched a dedicated online platform at www.sez.gov.uz in English, Russian and Uzbek.

More predictability and digitalised procedures are needed

More predictability regarding tax requirements would support business development. Prior to the introduction of the new TC in 2020, the country's tax legislation had been modified several times in recent years, which has led international investors to regularly complain of a lack of predictability (IMF, 2019[288]). Whilst platforms such as the Foreign Investor Council provide an opportunity for large international firms to have a voice at the table during consultations, foreign investors nonetheless complained of a lack of information regarding future requirements. Similarly, as of the end of 2019, domestic firms still had little knowledge of the future Code, despite a host of online and face-to-face public-private consultations. The government needs to ensure that the impact of recent changes are thoroughly assessed before again changing tax requirements, ensuring that private sector experience is taken into account in the formulation and timing of changes, allowing them to adapt.

The current version of the simplified tax regime for small firms could be further revised. Whilst many businesses remained under on the simplified regime, an influx into the standard regime of around 22,000 firms that could qualify for the simplified process has been observed, thereby showing loopholes in the regime and creating huge challenge for the tax administration. The exemption of VAT payments for SMEs into the simplified regime seem to have created difficulties in engaging with suppliers and customers that pay VAT. Further revisions of the simplified regime and of the VAT system are needed.

Automation of tax administration has been completed in Kazakhstan with virtually all tax reporting now submitted electronically (OECD, 2017[289]). Uzbekistan could further automate tax procedures for SMEs following this example, thus removing physical interactions with the tax administration and cutting red tape.

Tax measures introduced as part of the COVID-19 business support package need to be reviewed and progressively removed not to create additional uncertainty

During the COVID-19 crisis, the government has unveiled a series of temporary fiscal measures to ease business operations. Measures mainly related to tax deferrals for most affected SMEs and individual entrepreneurs, moratoria on tax audits and bankruptcy procedures, a deferral of the scheduled increase of tax rates, extended tax declaration submission deadlines, eased VAT calculation and payment requirements for SMEs, and the suspension of excise tax and customs duties for the import of selected basic consumer goods.

If these measures are useful tools to relieve the administrative burden of firms during the economic slowdown, they should keep their temporary relief nature, and not be extended beyond that period, or at least not without careful scrutiny. In particular, moratoria on tax inspections cannot compensate for an in-depth reform of tax administration, of which automation is a large component, following the example of Kazakhstan on that regard.

Further progress and challenges in the legal environment for business in Uzbekistan

Uzbekistan has a strong but unconsolidated legal framework for business

The government has developed a strong legal framework for entrepreneurship in recent years by revising and modernising a number of key laws and procedures. This has led to improvements in Uzbekistan's DB rankings, in particular on starting a business (World Bank, 2019[290]).

However, legislation remains disparate, unconsolidated and often contradictory, owing to frequent amendments to different pieces of legislation. Businesses complain of inconsistent implementation, particularly at the regional level; indeed, regional variations in the application and implementation of laws are such that the MoJ has identified legal certainty for citizens and firms as one of its priority areas for action.

The establishment of an SME agency under the Ministry of Economy and Poverty Reduction (MEP) could help simplify the legal and operational environment for domestic firms by providing a robust institutional and policy framework. The government has asked the OECD to provide input to the country's new SME law, which the MEP is currently drafting. In addition, the Business Ombudsman has, following consultations with the private sector, recommended over fifty changes to the legal environment for entrepreneurship, signalling a government approach that is less prescriptive and more responsive to business needs.

Availability of business-related legislation is improving but discrepancies create uncertainty in the business environment

Most legislation is available online at the website of the Chamber of Commerce and Industry (www.lex.uz) or on a dedicated government portal (www.regulation.gov.uz). In addition, as with all new legislation, important new texts such as the LoI and the TC have been placed on the dedicated online platform for discussion and are submitted to *ad hoc* working groups for examination. The Ministry of Justice (MoJ) informed the OECD that it examines, takes into account and publishes all comments made by users on the online platform during the consultation period (Republic of Uzbekistan, 2012[291]). Whether accepted or not, they are attached to all legislation before submission to the Cabinet of Ministers (CabMin) for its consideration. The CCI has been in particular involved in this law-making process.

The use of these online platforms by the government is inconsistent, and therefore they cannot be considered sufficient measures to increase transparency in the business environment. Some regulations are not posted for consultation, while the decisions of consultations are not always made public. There is concern, for example, that some private firm-specific resolutions have not been published, and therefore it is not clear whether these firms enjoy unfair advantages over competitors, and on what basis such advantages are granted if so. A recent example of this is a decree that ended preferential lending by banks, which despite being implemented by the government, has yet to be made public.

Information online is supposed to be equally available in Russian, Uzbek and English, but major discrepancies exist in terms of availability in the various languages. In 2019, the government established a dedicated online portal for foreign investors and local firms seeking foreign investment. The portal is designed to provide all relevant information, including on legislation and Special Economic Zones. Whilst the site does function, the creation of yet another online platform reflects the lack of a consolidated approach to information access and risks creating duplication and inconsistencies. The vast majority of investors interviewed by the OECD had not relied on any of the government portals to access information, opting for traditional bilateral dialogue with the government.

During the COVID-19 pandemic, access to information by businesses is a key element of the efficacy of government support measures. For businesses to be able to access to help and benefits they might be

entitled to, the availability of centralised and up-to-date information platforms is crucial. OECD countries have used public awareness campaigns, channelled through the communications of government and business-dedicated institutions. In the medium-term, these channels could be levered by business intermediary organisations (BIOs) and one-stop-shops in Uzbekistan to reinforce the availability and timeliness of information for businesses.

The government has significantly simplified the process for opening a business

The registration process for domestic entrepreneurs in Uzbekistan has been significantly improved, with a shift towards online registration and the use of digital platforms (Table 15) (World Bank, 2019[290]). Businesses can register physically at one of the Public Service Centres, located in Tashkent and with branches in each region, or through the online registration platform www.fo.birdacha.uz. Minimum capital requirements have been abolished in March 2019 to establish a Joint Stock Company (JSC) or a Limited Liability Companies (LLC) (Dentons, 2019[275]). Renewal procedures every three years involving an apostille could also be discontinued.

Table 15. Starting a business in Uzbekistan

Indicator	Uzbekistan	Europe and CA
Ranking in doing business on starting a business	12	-
Time required (days)	4	12.9
Number of administrative steps	3	5
Registration costs (% of GNI per capita)	3.1	4.6

Source: (World Bank, 2020[24])

Licenses and permits continue to be streamlined, with the Business Ombudsman taking a more proactive role in inspection oversight

As part of the ongoing reform process, the government is currently undertaking a review of its license and permit requirements, whilst the introduction of the Business Ombudsman has, for the first time, created a single player with oversight of all business inspections.

In April 2018, the two presidential decrees –"On Measures to Further Reduce and Simplify Licensing and Licensing Procedures in the Field of Entrepreneurial Activity" and "On Improving Business Conditions" acknowledged that many licenses and permits did not meet modern standards and had become obsolete. Moreover, they recognised that the process of license issuance was excessively slow and that government bodies' interaction remained too limited. The decrees called for a reducing the number of activities requiring a license and the time required to obtain licenses, removing time limits on most licenses, and authorising applicants to carry out licensed activities if the public authorities failed to meet the established deadlines for processing licence applications (Republic of Uzbekistan, 2018[292]).

Access to information regarding license and permit requirements has been significantly improved by the introduction of an online platform (www.license.gov.uz) that has collated all information and gives the opportunity for firms to apply for licenses, and permits online. The platform also defines the statutory response time and costs for each document.

The creation of a Business Ombudsman in 2017 (formally, the Commissioner for Protection of Rights and Legitimate Interest of Entrepreneurs under the President), has also significantly strengthened the oversight of license and permit inspections. All government agencies that issue licenses and permits must register their yearly schedule of inspections with the Ombudsman and must inform the Ombudsman of any unscheduled inspections. Following an inspection, the relevant agency is required to upload all

documentation, where it can be reviewed by the Ombudsman. As of December 2019, the Ombudsman had also been granted authority to intervene in civil and economic disputes between government agencies and private entrepreneurs.

Nevertheless, a range of issues relating to licensing and permitting persists. Conversations with public agencies and the private sector suggested that regulation for new industrial activities, such as renewable energy and environmental standards, was lacking, leading to an unpredictable operational environment for both domestic and foreign firms. Frequent updates of laws and procedures have made it harder for businesses to follow – and comply with – the latest developments.

The government should conduct a thorough review of all license and permit requirements. This would provide a basis on which to streamline or remove those requirements that act as barriers to private sector growth. Such a review would also help the government to identify regulatory gaps in priority investment areas, such as renewable energy and would help simplify and clarify procedures in areas such as construction and environment. As the government continues to manage the role of state in the economy with a view to increasing the competitiveness of its private sector, it should ensure that license and permit requirements are equitably applied to all firms, including those with state involvement.

As in other countries of the region, land ownership remains a barrier to investors

Secure and well-defined land rights encourage new investments and the upkeep of existing investments as well as sustainable land management. Investors need to be confident that their land rights are properly recognised and protected and that they are protected against forced evictions without compensation. Tenure security does not necessarily require private ownership or a formal title. Simple land use rights, such as lease rights, can provide tenure security if they are clear, of specific duration and the contract cannot be unilaterally broken.

Land legislation in Uzbekistan includes several laws, decrees and orders of the President, decrees of the Cabinet of Ministers, as well as other normative acts, which has led to some inconsistencies and disagreements. It is currently planned to amend the Land Code and the discussion of the draft law has been completed. In the past two years, several normative acts have been adopted to achieve transparency in land management. The adoption of decisions on the seizure of land for state and public needs is allowed only after an open discussion with interested parties whose land is planned to be withdrawn, as well as an assessment of the benefits and costs.

Land is property of the state, but certain non-agricultural land plots have been allowed to be privatised over time which is a significant step in the reform of the business climate. A presidential decree on measures to fundamentally improve the processes of urbanisation UP-5623 (January 2019) allowed resident legal entities from July 1, 2019 to privatise land plots on which buildings and structures, industrial infrastructure facilities belonging to them, as well as adjacent land plots in the amount necessary for carrying out production activities. Such land can be sold, leased and pledged. The decree was followed by a law on privatisation of non-agricultural land plots which entered into force on 1 March 2020 (ZRU-522, August 2019). Certain land plots can still not be privatised, including those containing mineral deposits or provided to residents of free economic and small industrial zones.

Measures have been taken to strengthen accountability for land use violations. Specific grounds have been established for the seizure of land and public needs based on the experience of other countries. Seizure is permitted only for the specific purposes and must be compensated at market value although this is not defined in the law.

Foreign participation in the privatisation process of non-agricultural land is, however, possible only through local incorporation. Foreign investors and foreign-owned companies established in Uzbekistan are allowed to hold lease titles to land, but they are subject to different rules regarding the needed authorisation by the state in relation to leasing such lands. Foreign investors and foreign-owned companies require approval

by the Cabinet of Ministers, while domestically-owned legal entities require approval only from district and cities *khokim* (governor). The dual process, and the existence of specific regulations on granting land plots to foreign legal and individuals (e.g. in Tashkent; see the Decree of the Cabinet of Ministers on granting land plots to foreign legal and natural persons in Tashkent), suggest discriminatory treatment against foreign investors and is reflected in the OECD FDI Regulatory Restrictiveness Index.

According to the World Bank's Doing Business index, Uzbekistan ranks 72nd out of 190 in terms of registering property. A presidential decree from 2018 seeks to improve the country's ranking in Doing Business. Land can be registered through a single window, regardless of the location or owner of the land. An Enterprise Survey of local and foreign enterprises in Uzbekistan by the World Bank found that 7% of firms surveyed listed access to land as the top business environment constraint – a non-negligible share which is above the rate found in peers but also not strong evidence of a fundamental problem with access to land, as it comes far behind tax rates, the informal sector, electricity, access to finance, transport and an inadequately educated workforce (World Bank/EBRD/EIB, 2019[293]). Significantly, land allocation issues are also the principal complaint addressed by the Business Ombudsman.

Closing a business has been simplified in Uzbekistan

Bankruptcy procedures in Uzbekistan, regulated by the Law on Bankruptcy, have led to slightly faster and better recovery that in other Central Asia countries (Table 16). The strength of the overall insolvency framework is also rather weak, for instance not allowing the continuation of contracts supplying essential goods and services to the debtor (World Bank, 2019[290]).

Table 16. Resolving insolvency in Uzbekistan

	Uzbekistan	Europe and Central Asia
Time (years)	2	2.3
Cost (% of estate)	10	13.2
Quality of judicial processes index (0-18)	6.0	10.3
Strength of insolvency framework index (0-16)	8.0	11.1

Source: (World Bank, 2019[290])

Currently, there is little evidence of support offered by the government to entrepreneurs or businesses in distress. In April 2017, the president did introduce a decree to expand the support mechanisms for economically insolvent enterprises, but the decree was rendered invalid in May 2018 (Republic of Uzbekistan, 2017[294]) (Republic of Uzbekistan, 2018[295]). Moreover, training courses that are provided by the CCI, for example, are not specifically targeted at failing businesses or entrepreneurs.

The impact of the COVID-19 pandemic might lead to a surge both in the number of distressed enterprises, and bankruptcies. Support measures implemented by the government to support SMEs and entrepreneurs should be carefully assessed once recovery from the slowdown will have started, and the moratorium on bankruptcies will have been lifted. Best-practices could then be used to set the basis for an early warning system to detect businesses in need of assistance, as well as the toolkit for providing timely and adequate response to allow sustained –even though reduced- operation.

Procedural efficiency with contract enforcement has improved in recent years

The Economic Procedural Code defines the means of settling contractual disputes. Cases are to be examined by inter-district, district (city) courts, while cases in which one of the parties in a foreign non-resident or concerning the recognition and enforcement of decisions of foreign courts and arbitrations are considered by the economic courts of the Republic of Karakalpakstan, regions and the city of Tashkent

(article 32). When considering a case, the economic court does not have the right to review a decision of a foreign court on its merits, although it may refuse to recognise a foreign court's decision on procedural grounds or if the execution of the decision will damage the sovereignty, security or contradict the basic principles of the Uzbek legislation. According to one legal practitioner, however, "the enforcement of foreign arbitral awards in Uzbekistan is still unpredictable because Uzbek courts seem to interpret and apply the New York Convention using a "pick and choose" approach (Sharipov, 2019[296]).

The World Bank's *Doing Business* indicator on contract enforcement covers the time and costs to resolve a commercial dispute, as well as the quality of judicial processes. It ranks Uzbekistan 22nd out of 190 countries (up from 41st a year earlier) with disputes settled in 225 days at a cost of 20.5% of the claim value and with a quality of the judicial process at 8.5 out of 18. Although this last measure is up from 6.0 a year earlier, it still points to weaknesses in judicial processes and administration. While a decree of the president from July 2018 is intended to address some of these shortcomings, more still needs to be done in the area of case management, including reasonable timelines (UNDP/USAID, 2019[297]).

Beyond efficiency considerations, further efforts are needed to raise trust in the Uzbek courts among the investor community. According to the Index of Economic Freedom, the judiciary is nominally independent but subservient to executive law enforcement bodies in practice. Corruption is seen to be pervasive, and contractual arrangements are not always respected. This view is also echoed in the Investment Climate Statement of the US State Department (US Department of State, 2019). To address some of these concerns, the selection and appointment of judges is now done by a newly-appointed institution.

Alternative dispute resolution mechanisms are expanding

The 2006 Law on Arbitration Courts introduced the possibility of non-state arbitration courts. Together with the 2018 Law on Mediation provide for alternative dispute resolution (ADR) mechanisms to resolve investment or commercial disputes. Decisions of the arbitral tribunal are final, with no possibility of appeal except on procedural grounds. An International Arbitration Court at the Chamber of Commerce and Industry was established in 2011 but has reportedly not yet been fully implemented. It was followed in 2018 by the Tashkent International Arbitration Centre equally under the CCI which provides for services for the prevention of disputes between investors and the state.

Alternative dispute resolution (ADR) mechanisms are gaining traction and legitimacy, and are regulated by law (*Civil Procedural Code* and *Commercial Procedural Code*). ADR include arbitration courts, also known as Third-Party Courts, and several specialised arbitration commissions that can be used to solve commercial cases. Businesses can apply to arbitration courts only if they have a relevant dispute-settlement clause in their contract or a separate arbitration agreement (US Department of State, 2018[298]). The decisions by arbitration courts are binding, but they can be appealed in general domestic courts within thirty days of the verdict, which undermines the very aim of arbitral awards, since these are not supposed to be subject to appeal.

The *Law on Mediation* introduced in 2018, establishes the legal framework for the use of mediation during a dispute. The law establishes the guarantee of voluntary mediation, allows for the independent selection of the mediator by the parties, and prohibits the interference of state bodies during the mediation process. This extends to the confidentiality of mediation. When a dispute is resolved by a mediation agreement, the paid state duty is refunded (Republic of Uzbekistan, 2018[299]).

In July 2018, a new law established the legitimacy of arbitration courts in Uzbekistan and, following a similar pattern to Kazakhstan with the Astana International Financial Centre, the government has created the Tashkent International Arbitration Centre (TIAC). The TIAC has drawn international arbitrators from across the CIS and Eastern Europe. Preliminary conversations with law firms in Tashkent indicate that a number of firms have consented, or been encouraged to choose TIAC as primary platform for dispute resolution in new contracts.

Despite a number of international investment agreements, contract enforcement remains a challenge for international investors

The newly created MIFT is responsible for the preparation, co-ordination and signing of international treaties on investment co-operation. To date, Uzbekistan has signed 53 bilateral investment agreements, 45 of which are in force. Uzbekistan has signed bilateral free trade agreements with Russia and all Central Asian countries. The signed 1994 agreement with the United States has not been ratified and those with several other countries have not yet entered into force (US Department of State, 2018[298]). Uzbekistan has also signed double taxation agreements with 48 countries. In addition, the country is part of several international investment treaties, including: the US-Central Asia TIFA (2004) and the EC-Uzbekistan Cooperation Agreement (1999) (UNCTAD, 2019[300]).

Uzbekistan has also ratified and acceded to the ICSID Convention, which requires member countries to recognise and enforce decisions issued by arbitral tribunals under the ICSID system for dispute resolution (ICSID, 2019[301]).

Despite provisions in many investment agreements giving investors recourse to international arbitration for dispute settlement directly with the host state, the scope of investor protections and access to arbitration under these treaties is coming under increasing public scrutiny and questioning. There are numerous reports of Uzbek courts rejecting efforts by foreigners to enforce arbitral awards on spurious jurisdictional grounds, despite legal commitments to uphold foreign awards. For instance, the Court of First Instance, Appeal Court and ultimately the Supreme Court have claimed, under the Economic Procedural Code (EPC), that they lack jurisdiction to recognise and enforce arbitral awards involving a foreign-registered investor that does not have its headquarters, place of residence or registered office in Uzbekistan (Wolters Kluwer, 2019[302]).

Integrity in the domestic justice system remains a concern but judicial processes are improving

Despite businesses observing generally positive trends in their interactions with the justice system – as evidenced through an increase of court cases won by the private sector against the state – there nevertheless remain weaknesses with due process and improper influence in the justice system (World Justice Project, 2020[303]; OECD, 2019[270]). Reforms have begun, for example with the establishment of the Supreme Judicial Council, the creation of a new agency tasked with supporting courts, and the introduction of the practice of publishing rulings (OECD, 2019[270]). However, with the time and cost of contract enforcement in Uzbekistan still higher than most other Central Asia countries surveyed in the World Bank *Doing Business* Indicators, there clearly remains significant work to be done (World Bank, 2020[24]).

Improving the quality of economic justice has been a priority for the government for several years, however efforts have generally targeted procedural aspects of the courts' operations – such as automation – rather than judicial effectiveness and independence. Economic disputes, including intellectual property claims, can be heard in the lower-level Economic Court and appealed to the Supreme Court (US Department of State, 2018[298]). Uzbekistan has created expedited procedures for small claims and entrepreneurs for which hearings should not exceed 20 days. This procedure is recent and its impact on procedural efficiency has not yet been assessed (Dentons, 2019[275]; World Bank, 2019[290]).

Nevertheless, there are a number of practices that continue to undermine the judiciary. The practice of supervisory review of final judgements, for example through prosecutorial protest, undermines legal certainty and contradicts rule of law, as well as the appointment process of judges – a mandatory two terms before life appointment, a status achieved by only 3% of judges – creates significant corruption risks (Ibid.). This weakens legal certainty and invariably undermines business confidence in the justice system.

The selection, capacity and workload of judges is an area of continuing concern for both businesses and the administration (OECD, 2019[270]). Appointment procedures have improved but political bodies still exert influence. The MoJ has increased training opportunities for serving MoJ officials and officials of the judiciary, but representatives from the MoJ, the private sector, and law firms concede that the workload of judges and court staff is too high, leading to poorer than desired performance.

It should be noted that international partners have highlighted poor quality and vague regulation being a further impediment to effective enforcement. Non-specific wording can leave regulations too open to interpretation, and therefore easier for courts to rule in the state's favour. These issues are further compounded by the previously mentioned lack of consolidated legislation, which creates additional scope for misinterpretation.

Protection from expropriation is codified in law, but some concerns remain

The new Law on Investment and Investment Activities from December 2019 provides for the protection of investments in article 21. Investment and other assets of investors are not subject to nationalisation or to expropriation except in cases of natural disasters or other emergencies. A decision to expropriate is made by the Cabinet of Ministers subject to the following requirements: limited to the minimum size of investment necessary to resolve the situation at hand; non-discriminatory; with adequate and timely compensation; and subject to appeal. Article 15 also guarantees the rights of investors in terms of interference of state bodies and officials in investments carried out in accordance with the law. State bodies may not use the fact of a violation of the law as a basis for interference or restriction of other, not related to investment, legal activities of investment entities.

Dispute with foreign investors frequently revolve around asset seizures, expropriations or liquidations, lengthy forced production stoppages and pressure to sell of stakes in joint ventures (US Department of State, 2018[298]). But while investors have historically reported concerns about continued expropriation, often through indirect means, few of the investors interviewed by the OECD cited any recent problems. Where issues of this nature persist, they seem primarily concerned with investment at the regional level.

The government is working to improve IPR protection

Despite recent attempts to prioritise the protection of intellectual property rights (IPR) in national strategy documents and policy roadmaps, the implementation of IPR provisions remains a challenge for the government and investors (Republic of Uzbekistan, 2018[304]). In 2019, for example, the United States kept Uzbekistan on the US Special 301 List, which details countries that have failed to consistently enforce IPR protections. The US authorities did acknowledge recent improvements, but cited the absence of key aspects of an adequate IPR regime – including *ex officio* powers for border officials to authorise Customs to detain goods with *prima facie* evidence of IPR infringement without the need for a specific complaint – in retaining Uzbekistan on the US Special 301 List.

In November 2016 the government established the Agency for Intellectual Property at the Ministry of Justice, and it has since introduced two pieces of legislation with further reforms to intellectual property protection (Republic of Uzbekistan, 2018[304]), (Republic of Uzbekistan, 2017[305]). In 2018, the government joined the Geneva Phonograms Conventions and implemented legislation that authorised the country's accession to the WIPO Internet Treaties. This represented a meaningful step towards real copyright protection in the entertainment industry. At present, Uzbekistan's Agency for Intellectual Property is working with WIPO to develop a long-term new strategy for intellectual property protection (US Department of State, 2018[298]).

The primary issue is one of enforcement, rather than legal protections. The absence of specialist IP judges and the need to hear IP cases through standard economic courts, which often lack technical knowledge of IPR matters, remains a challenge for the implementation of IPR infringements in Uzbekistan, leaving

foreign firms reliant upon international arbitration to settle IPR disputes. Companies importing consumer (and especially luxury) goods consistently cite the lack of enforcement of IPR by customs officials as a problem. This reflects in particular the limited use of a list of authorised importers and providers of goods to identify parallel (or *grey*) commerce – referring to the trade of non-counterfeit goods however imported from a country without the permission of the IPR owner – and potential illegally imported products.

A number of platforms exist for domestic and international public-private dialogue

Public-private consultations on laws and regulations are governed by the *Guidelines on the Procedure for the Preparation, Legal and Technical Clearance and Legal Expertise of Draft Regulatory Acts* (Republic of Uzbekistan, 2012[306]), and the *Regulation on Measures to implement a system for assessing the impact of legislation on business* (Republic of Uzbekistan, 2014[307]). In 2017, both were amended to further develop platforms for public discussions through workshops and round tables, and publishing texts of projects and analytical materials on an official website (Republic of Uzbekistan, 2017[308]). The process was then developed again with the introduction of the online www.regulation.gov.uz website, administered by the MoJ, on which all proposed legislation must be put up for discussion, with comments from the public included in any final submission to the Cabinet of Ministers. All proposals must be online for a period of no less than 15 days, and the period of time during which the legislator accepts proposals should be stated clearly.

Traditional platforms for PPD, such as the Chamber of Commerce and Industry, continue and are active in the drafting and consideration of new business-related legislation. The CCI of Uzbekistan has reported that it was systemically consulted on draft regulations. However, it remains unclear how other business and sector associations are involved and considered in dialogue platforms.

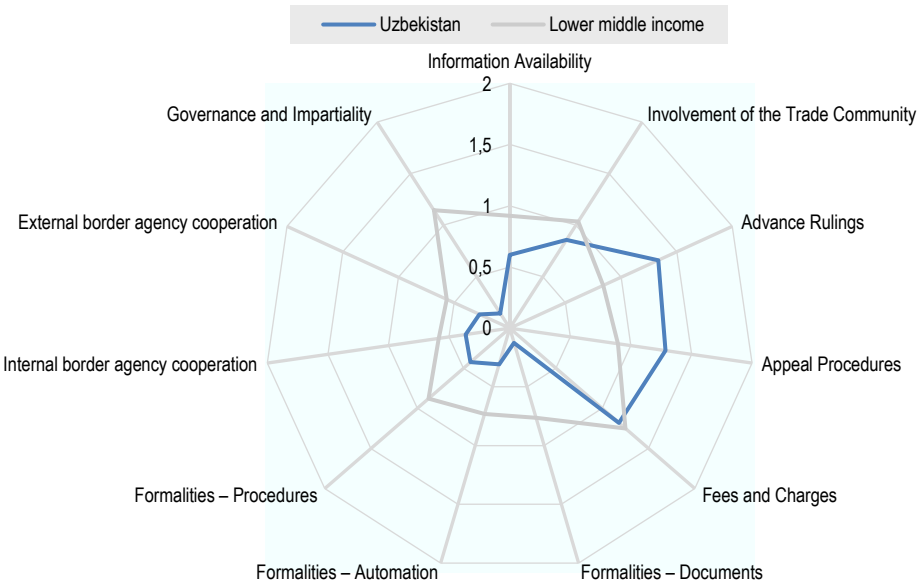
Drawing on its experience in Georgia and Ukraine, the EBRD has been helping the government with the creation of the Foreign Investor Council (FIC), a high-level public-private dialogue (PPD) platform organised under the aegis of the presidential administration. This new platform, convened for the first time in November 2019, and is to serve as the principal forum for high-level PPD between foreign investors and the state. While the FIC model has proven useful to investors in other countries, particularly as regards addressing implementation challenges, there is a risk of incumbency bias in policymaking, since it is not clear how members are selected, nor whether potential market entrants will have the same level of access and visibility as those that already have a market presence. Nevertheless, during a period of rapid economic reform, it is encouraging that the government has committed to ensuring representation of the private sector at the highest level of policy-making, which could help ensure that future decisions taken by the government take into account the needs of businesses already present in the country, as well as the expectations of those that wish to enter.

Uzbekistan lags the regional average on OECD trade facilitation and could benefit greatly from improved border procedures

Uzbekistan lags both the OECD and regional averages on the OECD's trade facilitation indicators (TFIs, Figure 28). The latest World Bank DB indicators also show that procedures remains long and complex (World Bank, 2019[290]). Co-operation between national agencies involved in import and export procedures and with similar agencies of neighbouring countries remain low, even by regional standards (OECD, 2019[65]).

However, it is important to note that the latest update of the TFIs dates from 2017. The next edition may show significant progress, due to the current pace of reforms and the intensifying trade and political relations with neighbours. The OECD will carry out a project with the government starting in 2021 to support improvements in trade facilitation.

Figure 28. Uzbekistan in the OECD Trade Facilitation Indicators



Source: (OECD, 2019[65])

The resumption of WTO accession discussions in 2019 should lead to improvements, and the resolution of long-term border disputes with Kyrgyzstan and Tajikistan will also make it easier for Uzbek-based firms to trade. However, barriers imposed by regional administrations – such as the mandatory transit through certain areas and associated compulsory fees – continue to impede the development of the country as an attractive investment destination.

The call for swift progress on trade facilitation reforms issued by the government as part of the initial package of measures to respond to the COVID-19 pandemic, regarding the further development of "green corridors" for fresh agricultural products, and the easing of cargo transportation, should be used as a stepping-stone for increased reform in this area. In particular, the development of facilitated channels for customs clearance, and increased border agency cooperation, both internal and with border countries, could benefit from best-practices developed during the pandemic.

References

Abdimomunova, L. et al. (2018), *Investing in Central Asia: One Region Many Opportunities*, Boston Consulting Group, Boston, https://www.bcg.com/Images/BCG-Investing-In-Central-Asia-report-ENG_tcm26-212857.pdf. [197]

Abdullaev, U. (2020), "State-Owned Enterprises in Uzbekistan: Taking Stock and Some Reform Priorities", *ADBI Working Paper Series*, No. 1068, Asian Development Bank Institute, Tokyo, https://www.adb.org/sites/default/files/publication/560601/adbi-wp1068.pdf. [26]

Acemoglu, D. and J. Robinson (2008), "The Role of Institutions in Growth and Development", *Commission on Growth and Development Working Paper*, No. 10, World Bank Group, Washington DC, http://dx.doi.org/10.5202/rei.v1i2.14. [18]

Acemoglu, D., J. Robinson and S. Johnson (2005), "Institutions as a Fundamental Cause of Long-Run Growth", in Aghion, P. and S. Durlauf (eds.), *Handbook of Economic Growth*, Elsevier, http://economics.mit.edu/files/4469. [16]

Aceris Law LLC (2018), *International Arbitration in Kyrgyzstan*, Aceris Law LLC, Paris, https://www.acerislaw.com/international-arbitration-kyrgyzstan/. [109]

Agris, P. and S. Nino (2017), *Assessing Progress and Challenges in Developing Sustainable Market Economy*, Kazakhstan diagnostic paper, EBRD, London, https://www.ebrd.com/publications/country-diagnostics/kazakhstan. [42]

Asadov, S. (2014), "The Policy Process in Government in Tajikistan: Recent Dynamics, Challenges and Opportunities", No. 28, University of Central Asia Institute of Public Policy and Administration, Bishkek, https://www.ucentralasia.org/Content/Downloads/UCA-IPPA-WP28-PolicyProcessTajikistan-Eng.pdf (accessed on 29 April 2019). [188]

Bertelsmann Stiftung (2018), *BTI 2018 Country Report - Turkmenistan*, Bertelsmann Stiftung's Transformation Index (BTI), Bertelsmann Stiftung, Gütersloh, https://www.ecoi.net/en/file/local/1427440/488357_en.pdf. [250]

BP (2019), *BP Statistical Review of World Energy: 68th Edition*, BP Statistical Review of World Energy, No. 68, BP, London, https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2019-full-report.pdf. [208]

Business Ombdusman Council of Ukraine (2020), *Business Ombudsman Council's official website*, https://boi.org.ua/en/ (accessed on 15 March 2020). [123]

Business Ombudsman Council of Ukraine; OECD (2020), *Defending businesses and* [124]

entrepreneurs in Eastern Europe and Central Asia (OECD On the level), OECD Publishing, Paris, https://oecdonthelevel.com/2020/01/30/defending-businesses-and-entrepreneurs-in-eastern-europe-and-central-asia/.

CBonds (2020), *CBonds (database)*, http://cbonds.com/ (accessed on 31 January 2021). [9]

Central Bank of Russia (2020), *Трансграничные переводы физических лиц (резидентов и нерезидентов) (database)*, https://www.cbr.ru/statistics/macro_itm/tg/ (accessed on 31 January 2021). [14]

Chamber of Commerce and Industry of the Kyrgyz Republic (2021), *International Arbitration Court at the Chamber of Commerce and Industry of the Kyrgyz Republic*, CCI of the Kyrgyz Republic, Bishkek, http://www.cci.kg/podderzhka-biznesa/mezhdunarodnyjj-tretejjskijj-sud.html. [120]

Chamber of Commerce and Industry of the Kyrgyz Republic (n.d.), *Official Website of the CCI*, CCI of the Kyrgyz Republic, Bishkek, http://en.cci.kg/. [135]

Chamber of Commerce and Industry of the Republic of Tajikistan (2019), *Goals and Objectives*, Official Presentation, CCI of Tajikistan, Dushanbe. [184]

Chamber of Commerce and Industry of Turkmenistan (2020), *Official Website of the CCI*, CCI of Turkmenistan, Ashgabat, http://www.cci.gov.tm/index.php/en/ (accessed on 10 February 2020). [249]

Chekirova, G. (2019), *The European Market Remains a Dream for Kyrgyz Exporters*, EUCAM Commentary, No. 32, Europe Central Asia Monitoring, Groningen, https://eucentralasia.eu/2019/01/the-european-market-remains-a-dream-for-kyrgyz-exporters/. [142]

Consultative Council on Improvement of Investment Climate under the President of the Republic of Tajikistan ((n.d.)), *General Information - Consultative Council*, http://investmentcouncil.tj/en/council/index.php (accessed on 25 April 2019). [185]

Council of Europe (2019), *Action Document for EU-Central Asia Rule of Law Programme*, Council of Europe, Strasbourg, https://rm.coe.int/ca-project-one-page-summary/16809fb95a. [33]

Customs Agency of the People's Republic of China (2020), *Preliminary Release: China's Total Export and Import Values by Country/Region*, Customs Agency of PRC, Beijing, http://english.customs.gov.cn/Statistics/Statistics?ColumnId=1. [7]

Customs Committee of Tajikistan (2019), *On the Creation of a Single Window*, https://www.carecprogram.org/uploads/Session-6-TAJ-Presentation-on-Single-Window-ru.pdf. [179]

Dentons (2019), *Doing business in Uzbekistan*, Doing Business Guide, Tashkent, https://www.dentons.com/en/insights/guides-reports-and-whitepapers/2020/february/26/doing-business-in-uzbekistan-guide. [275]

EBRD (2020), *EBRD Country Diagnostic Series*, EBRD, London, https://www.ebrd.com/publications/country-diagnostics. [309]

EBRD (2020), *Responding to the Coronavirus Crisis: Update on Uzbekistan*, EBRD, London, https://www.ebrd.com/documents/admin/uzbekistan-coronavirus-policy-response.pdf?blobnocache=true. [273]

EBRD (2019), *EBRD-World Bank Business Environment and Enterprise Performance Survey* [43]

(BEEPS), World Bank/EBRD, https://www.ebrd.com/what-we-do/economic-research-and-data/data.html.

EBRD (2019), *Kyrgyz Republic Diagnostic*, EBRD Country Diagnostics, EBRD, London, https://www.ebrd.com/documents/policy/country-diagnostic-paper-kyrgyz-republic.pdf?blobnocache=true. [34]

EBRD (2019), *Transition Report 2018-19*, Transition Report, EBRD, London, https://2018.tr-ebrd.com/. [13]

EBRD (2019), *Turkmenistan Diagnostic*, EBRD Country Diagnostics, EBRD, London, https://www.ebrd.com/documents/policy/country-diagnostic-paper-turkmenistan.pdf?blobnocache=true. [195]

EBRD (2015), *BEEPS V Country Profile: Tajikistan*, Business Environment and Enterprise Performance Survey (BEEPS) V Country Profile, EBRD, London, https://beeps-ebrd.com/wp-content/uploads/2015/04/tajikistan.pdf. [171]

EBRD (2015), *Business Environment and Enterprise Performance Survey (BEEPS) V: Kazakhstan*, https://beeps-ebrd.com/wp-content/uploads/2015/09/kazakhstan.pdf. [61]

EBRD (2014), *Strategy for Turkmenistan*, EBRD, London, https://www.ebrd.com/downloads/country/strategy/turkmenistan.pdf. [247]

EBRD (2014), *Transition Report 2014*, Transition Report, EBRD, London, https://www.ebrd.com/news/publications/transition-report/transition-report-2014.html. [27]

EBRD (2010), *Commercial Laws of Turkmenistan - An Assessment by the EBRD*, EBRD, London, https://www.ebrd.com/downloads/sector/legal/turkmen.pdf. [235]

EU/BOMCA (2019), *Border Management Programme in Central Asia official website*, EU, Brussels, https://www.bomca-eu.org/en/ (accessed on 13 September 2019). [192]

EU/BOMCA (2019), "The Central Asian Customs Officers Trained on Modernized Customs Procedures", *Border Management Programme in Central Asia Official Website*, https://www.bomca-eu.org/en/news/248-the-central-asian-customs-officers-trained-on-modernized-customs-procedures. [144]

Eurasianet (ed.) (2019), *Kyrgyzstan: Filling the Kumtor hole (27 March)*, https://eurasianet.org/kyrgyzstan-filling-the-kumtor-hole. [77]

European Commission (2019), *European Union's GSP+ scheme*, European Commission, Brussels, http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155235.pdf. [81]

European Union (2019), *European Union Supports Uzbekistan's Accession to WTO*, Press Release, No. 190314_2, 14 March, EU, Brussels, https://eeas.europa.eu/delegations/burkina-faso/59579/european-union-supports-uzbekistan%E2%80%99s-accession-world-trade-organization-wto_en. [258]

Ferghana News Agency (2018), "Врачебная тайна. Каких высот достигла туркменская медицина при президенте-стоматологе", *Ferghana News Agency*, https://www.fergananews.com/articles/10081. [223]

Georgia's Innovation and Technology Agency (2020), *GITA Official Website*, GITA, Tbilisi, [74]

https://www.gita.gov.ge/eng.

Georgia's Public Service Halls (2020), *Public Service Halls Official Website*, http://psh.gov.ge/. [227]

Georgia's Unified E-Services Portal (2020), *Mygov.ge Official Website*, http://mygov.ge. [226]

GIZ (2019), *Trade Facilitation in Central Asia Project*, GIZ, Bonn, https://www.giz.de/en/worldwide/62251.html. [191]

Government of France (2019), *Maison des services au public website*, Government of France, Paris, https://www.maisondeservicesaupublic.fr/content/car-des-services-publics-itinerants. [99]

Gray, C. and K. Hendley (1995), "Developing Commercial Law in Transition Economies: Examples from Hungary and Russia", *Policy Research Working Papers*, No. 1528, World Bank Group, Washington DC, https://doi.org/10.1596/1813-9450-1528. [22]

Gyulumyan, G. (2014), "Turkmenistan: Diversifiying the Turkmen Economy", World Bank Group, Washington DC, http://documents1.worldbank.org/curated/en/887311468111849090/pdf/ACS12651-WP-P148086-OUO-9-Box391453B.pdf. [203]

Hasanova, S. (2019), "Strengthening Competitiveness of Small and Medium-Sized Enterprises and Enhancing their Integration into Regional and Global Value Chains in Kyrgyzstan", *UNESCAP Working Papers*, UNESCAP, Bangkok, https://www.unescap.org/sites/default/files/Strenghthening%20competitiveness%20of%20SMEs_final_English%20version_Savia.pdf. [88]

Helbling, T. et al. (2004), "Fostering Structural Reforms in Industrial Countries", in *World Economic Outlook: April 2004*, IMF, Washington DC, https://www.elibrary.imf.org/doc/IMF081/07991-9781589063372/07991-9781589063372/Other_formats/Source_PDF/07991-9781452718743.pdf. [28]

Hines, H. and B. Varanese (2001), *Turkmenistan's Oil and Gas Sector: Overview of the Legal Regime for Foreign Investment*, Journal of Energy and Natural Resources Law, No. 19(1), Routledge, Abingdon, http://dx.doi.org/10.1080/02646811.2001.11433215. [237]

Hober, K. and Y. Kryvoi (eds.) (2016), *(2016). Law and Practice of International Arbitration in the CIS Region. Kluwer Law International BV.*, Wolters Kluwer, Alphen aan den Rijn, http://www.cisarbitration.com/2017/08/25/new-book-the-law-and-practice-of-international-arbitration-in-the-cis-region/. [218]

Hryniuk, O. (2018), *The Enduring Saga of Tajikistan's TALCO Dispute*, CIS Arbitration, CIS Arbitration (online), http://www.cisarbitration.com/2018/01/15/the-enduring-saga-of-tajikistans-talco-dispute/ (accessed on 31 January 21). [167]

Hurley, J., S. Morris and G. Portelance (2018), "Examining the Debt Implications of the Belt and Road Initiative from a Policy Perspective", *CDG Policy Paper*, Center for Global Development, Washington DC, https://www.cgdev.org/sites/default/files/examining-debt-implications-belt-and-road-initiative-policy-perspective.pdf. [151]

IBC (2016), *Impulses for Improvement of the Investment Climate*, International Business Council, Bishkek, https://docs.google.com/viewer?url=http%3A%2F%2Fibc.kg%2Fuploads%2Fpublications%2F1520918597.pdf&embedded=true. [125]

IBDC (2017), *Investment and Business Development Council*, IBDC, Bishkek, http://www.investmentcouncil.kg/index.php/sekretariat-soveta/biznes-assotsiatsii. [133]

ICSID (2019), *Member States*, https://icsid.worldbank.org/en/Pages/about/Member-States.aspx (accessed on 13 May 2019). [301]

IDLO (2016), "Strengthening Court Decision Enforcement", 17 March, https://www.idlo.int/what-we-do/initiatives/strengthening-court-decision-enforcement. [114]

IFC (2019), *Statement of Work: Development of the e-licensing system for the State Agency of Communications under the State Committee of Information Technologies and Communications of the Kyrgyz Republic*, IFC, Washington DC, https://wbgeconsult2.worldbank.org/wbgect/download?uuid=a77d8f1d-d2a7-4bd3-95e6-57b230f4f584. [93]

IFC (2017), "An Assessment of Tax Compliance Costs for Businesses in the Kyrgyz Republic", World Bank Group, Washington, DC, http://documents.worldbank.org/curated/en/838801540542077964/Assessment-of-Tax-Compliance-Costs-for-Businesses-in-the-Kyrgyz-Republic. [105]

IFC (2017), *Assessment of Tax Compliance Costs for Businesses in the Kyrgyz Republic*, IFC, Bishkek, https://www.ifc.org/wps/wcm/connect/6c947428-a6f8-4a0a-80ee-710a8f1fcb0d/IFC+KG+Tax+Compliance+Report_Eng.pdf?MOD=AJPERES&CVID=mlxDk2b (accessed on 1 July 2019). [103]

IGF (2018), *IGF Mining Policy Framework Assessment: Kyrgyzstan*, Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (, https://www.iisd.org/publications/igf-mining-policy-framework-assessment-kyrgyzstan. [75]

Ijozat (2019), *One stop shop for registration*, http://ijozat.tj/. [181]

IMF (2020), *Confronting the COVID-19 Pandemic in the Middle East and Central Asia*, Regional Economic Outlook: Middle East and Central Asia, IMF, Washington DC, https://www.imf.org/en/Publications/REO/MECA/Issues/2020/04/15/regional-economic-outlook-middle-east-central-asia-report. [10]

IMF (2020), *IMF Executive Board Approves a US$120.9 Million Disbursement to the Kyrgyz Republic to Address the COVID-19 Pandemic*, Press Release, No. 20/115, 26 March, IMF, Washington DC, https://www.imf.org/en/News/Articles/2020/03/26/pr20115-kyrgyz-republic-imf-executive-board-approves-disbursement-to-address-covid-19-pandemic. [91]

IMF (2020), *World Economic Outlook: A Long and Difficult Ascent*, World Economic Outlook, IMF, Washington DC, https://www.imf.org/en/Publications/WEO/Issues/2020/09/30/world-economic-outlook-october-2020. [4]

IMF (2019), *IMF Staff Completes 2019 Article IV Mission to Turkmenistan*, Press Release, No. 19/112, 4 October, IMF, Washington DC, https://www.imf.org/en/News/Articles/2019/04/10/pr19112-turkmenistan-imf-staff-completes-2019-article-iv-mission. [205]

IMF (2019), *IMF Staff Concludes Article IV Consultation Visit to Tajikistan*, Press Release, No. 19/369, 10 September, IMF, Washington DC, https://www.imf.org/en/News/Articles/2019/10/09/pr19369-tajikistan-imf-staff-concludes-article-iv-consultation-visit-to-tajikistan. [172]

IMF (2019), *Kyrgyz Republic: Selected Issues*, Country Reports, No. 19/209, IMF, Washington DC, https://www.imf.org/en/Publications/CR/Issues/2019/07/03/Kyrgyz-Republic-Selected-Issues-47086. [116]

IMF (2019), *Republic of Uzbekistan: 2019 Article IV Consultation*, Country Reports, IMF, Washington DC, http://dx.doi.org/10.5089/9781498314442.002. [288]

IMF (2019), "Understanding Export Diversification: Key Drivers and Policy Implications", *IMF Working Papers*, No. 19/105, IMF, Washington DC, http://dx.doi.org/10.5089/9781498313087.001. [202]

IMF (2008), *IMF Executive Board Concludes Article IV Consultation with Turkmenistan*, Press Release, No. 09/107, 14 August, IMF, Washington DC, https://www.imf.org/en/News/Articles/2015/09/28/04/53/pn09107. [206]

International Court of Arbitration of the Kyrgyz Republic (2019), *Official website of the International Court of Arbitration*, International Court of Arbitration of the Kyrgyz Republic, Bishkek, http://www.arbitr.kg/web/index.php. [117]

International Institute for Sustainable Development (2019), "Garanti Koza LLP v. Turkmenistan, ICSID Case No. ARB/11/20", *International Treaty News*, https://www.iisd.org/itn/2019/06/27/icsid-tribunal-constituted-by-virtue-of-an-mfn-clause-holds-turkmenistan-liable-for-fet-breach-for-requiring-investors-to-produce-smeta-a-cost-estimate-required-by-turkmen-law-ksenia-koroteeva/. [245]

International Tax and Investment Center (2016), *Kazakh Supreme Court Specialized Board on Investor Disputes*, https://www.iticnet.org/blog/2016/01/07/kazakh-supreme-court-specialized-board-on-investor-disputes. [57]

Investment Council of Kyrgyzstan (2019), *Official Website*, Investment Council on Kyrgyzstan, Bishkek, http://www.investmentcouncil.kg/index.php/en/. [141]

Investment Office of the Presidency of Turkey (2020), *Investment Office of the Presidency of Turkey Official Website*, Investment Office of the Presidency of Turkey, Ankara, https://www.invest.gov.tr/en/pages/who-we-are.aspx. [219]

ITF (2019), *Enhancing Connectivity and Freight in Central Asia*, International Transport Forum Policy Papers, No. 71, OECD Publishing, Paris, https://doi.org/10.1787/0492621a-en. [6]

ITU (2019), *Fixed-broadband subscriptions (database)*, https://www.itu.int/en/ITU-D/Statistics/Documents/statistics/2019/Fixed_broadband_2000-2018_Dec2019.xls (accessed on 31 January 2021). [225]

ITU (2019), *ITU Key 2005-2019 Indicators (database)*, ITU, Geneva, https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx. [212]

ITU (2019), *Percentage of Individuals Using the Internet (database)*, ITU, Geneva, https://www.itu.int/en/ITU-D/Statistics/Documents/statistics/2019/Individuals_Internet_2000-2018_Dec2019.xls. [224]

Jacobs, Cordova & Associates (2006), *Effective and Sustainable Regulatory Reform: The Regulatory Guillotine in Three Transition and Developing Countries*, Jacobs, Cordova & Associates, Washington DC, https://www.researchgate.net/publication/240611736_Effective_and_Sustainable_Regulatory_ [278]

Reform_The_Regulatory_Guillotine_in_Three_Transition_and_Developing_Countries.

Johnson, S., D. Kaufmann and A. Shleifer (1997), "The Unofficial Economy in Transition", *Brookings Papers on Economic Activity*, No. 2, Brookings Institute Press, Washington DC, https://doi.org/10.2307/2534688. [21]

Kabar news (2019), *Kyrgyzstan's business ombudsman promises to work closely with business community*, http://kabar.kg/eng/news/kyrgyzstans-business-ombudsman-promises-to-work-closely-with-business-community/. [143]

Kalikova & Associates (2019), *Business in the Kyrgyz Republic: Legal Aspects 2019*, Business in the Kyrgyz Republic, Kalikova & Associates, Bishkek, http://www.k-a.kg/sites/default/files/business_in_the_kr_legal_aspects_2019_eng.pdf. [80]

Kalikova & Associates (2019), *Licenses and Permits in the Kyrgyz Republic*, HG.org, https://www.hg.org/legal-articles/licenses-and-permits-in-the-kyrgyz-republic-4901 (accessed on 8 July 2019). [95]

Kalinova, B., S. Palerm and S. Thomsen (2010), "OECD's FDI Restrictiveness Index: 2010 Update", *OECD Working Papers on International Investment*, No. 2010/03, OECD Publishing, Paris, https://doi.org/10.1787/5km91p02zj7g-en. [30]

Kasimov, I. (2018), "Speech of Kasimov Inoyatullo, Counsellor on WTO Issues and Permanent Mision of the Republic of Tajikistan to the UNOG", in *Fourth Annual Session of the Steering Committee on Trade Capacity and Standards*, https://unece.org/fileadmin/DAM/trade/SCTCS_2018/PPTs/5.06_Tajikistan.pdf. [189]

Kazakhstan Today (2020), "Более 2,9 млн человек получили вторую выплату «42 500 тенге»", *Kazakhstan Today* 16 May, https://www.gov.kz/memleket/entities/enbek/press/news/details/bolee-29-mln-chelovek-poluchili-vtoruyu-vyplatu-42-500-tenge?lang=ru. [47]

Kazinvest (2020), *Kazinvest Official Website: Regulated Sectors - Agriculture*, Kazinvest, Nur-Sultan, https://invest.gov.kz/doing-business-here/regulated-sectors/agro/. [39]

Komendantova, N. et al. (2018), "Industrial Development of Kyrgyzstan: Investment and Financing", *Working Paper Series*, No. 3, International Institute for Applied Systems Analysis, Laxenburg, https://www.unido.org/sites/default/files/files/2018-12/Industrial_Development_Kyrgyzstan-Investment_and_financing.pdf (accessed on 16 July 2019). [85]

KUN.uz (2020), "Anti-Crisis Fund Expenditures Announced", *KUN.uz*, https://kun.uz/en/news/2020/07/21/anti-crisis-fund-expenditures-announced-uzbekistan-airways-to-receive-406-billion-soums-and-uzbekistan-airports-101-billion-soums (accessed on 31 January 2021). [272]

Kyrgyz Republic (2019), *Information on the National Council*, http://www.president.kg/ru/apparat_prezidenta/sovety_pri_prezidente/informaciya_nacionalnogo_soveta. [134]

Kyrgyz Republic (2019), *Investment Promotion and Protection Agency of the Kyrgyz Republic - official website*, Government of the Kyrgyz Republic, Bishkek, https://export.gov.kg/ru. [86]

Kyrgyz Republic (2019), *Law of the Kyrgyz Republic on Customs Regulation*, [138]

http://cbd.minjust.gov.kg/act/view/ru-ru/111908?cl=ru-ru.

Kyrgyz Republic (2018), *National Strategy of the Development of the Kyrgyz Republic for the Period 2018-2040*, http://donors.kg/en/strategy/5174-national-development-strategy-of-the-kyrgyz-republic-for-2018-2040. [87]

Kyrgyz Republic (2017), *Civil Procedure Code of the Kyrgyz Republic*, http://cbd.minjust.gov.kg/act/view/ru-ru/111521?cl=ru-ru#st_30. [107]

Kyrgyz Republic (2017), *Law of the Kyrgyz Republic on Mediation*, http://cbd.minjust.gov.kg/act/view/ru-ru/111668. [111]

Kyrgyz Republic (2016), *Regulation on the Procedure for Organising and Conducting an Internal Investigation in State Bodies and Local Authorities in the Kyrgyz Republic*, http://cbd.minjust.gov.kg/act/view/ru-ru/99666. [96]

Kyrgyz Republic (2014), *Resolution of the Government of the Kyrgyz Republic on the Conclusion of the Government of the Kyrgyz Republic on the Draft Law of the Kyrgyz Republic on Nationalisation*, http://cbd.minjust.gov.kg/act/view/ru-ru/97075 (accessed on 15 July 2019). [137]

Kyrgyz Republic (2013), *Law on Licensing and Permits System in the Kyrgyz Republic*, http://mtd.gov.kg/zakon-kyrgyzskoj-respubliki-o-litsenzionno-razreshitelnoj-sisteme-v-kyrgyzskoj-respublike/ (accessed on 8 July 2019). [94]

Kyrgyz Republic (2010), *Constitution of the Kyrgyz Republic*, http://cbd.minjust.gov.kg/act/view/ru-ru/202913. [128]

Kyrgyz Republic (2009), *Law on Normative Legal Acts of the Kyrgyz Republic*, http://cbd.minjust.gov.kg/act/view/ru-ru/202591 (accessed on 12 July 2019). [136]

Kyrgyz Republic (2008), *Tax Code*, http://cbd.minjust.gov.kg/act/view/ru-ru/202445 (accessed on 1 July 2019). [102]

Kyrgyz Republic (2003), *Law of the Kyrgyz Republic on Investments in the Kyrgyz Republic*, http://cbd.minjust.gov.kg/act/view/ru-ru/1190 (accessed on 5 July 2019). [108]

Kyrgyz Republic (2002), *Law of the Kyrgyz Republic on Aksakals Courts*, https://cis-legislation.com/document.fwx?rgn=381. [112]

Kyrgyz Republic (2002), *Law of the Kyrgyz Republic on Arbitration Courts in the Kyrgyz Republic*, http://cbd.minjust.gov.kg/act/view/ru-ru/1092. [110]

Kyrgyz Republic (1999), *Land Code of the Kyrgyz Republic*, http://cbd.minjust.gov.kg/act/view/ru-ru/8. [130]

Kyrgyz Republic (1997), *Law of the Kyrgyz Republic on Bankruptcy (Insolvency)*, https://cis-legislation.com/document.fwx?rgn=281. [132]

Kyrgyz Republic (1997), *Law on Bankruptcy*, http://cbd.minjust.gov.kg/act/view/ru-ru/574?cl=ru-ru (accessed on 15 July 2019). [131]

Kyrgyz Republic (1996), *Civil Code of the Kyrgyz Republic*, http://cbd.minjust.gov.kg/act/view/ru-ru/4. [129]

MEDEF (2020), *Dossier Spécial Covid-19*, MEDEF, Paris, [101]

https://www.medef.com/fr/dossiers/dossier-special-coronavirus.

National Bank of Kazakhstan (2020), *Base Rate Raised to 12%*, Press Release, No. 7, 10 March, National Bank of Kazakhstan, Almaty, https://nationalbank.kz/cont/PR%20march%202020.pdf. [49]

National Bank of Kyrgyzstan (2020), *Money Transfer Statistics*, https://www.nbkr.kg/index1.jsp?item=1785&lang=RUS. [92]

National Center for Mediation (2019), *Official Website of the National Center for Mediation*, National Center for Mediation, Bishkek, https://www.mediationkg.com/. [121]

NCE "Atameken" (2019), *National Report on Entrepreneurship in Kazakhstan*, NCE "Atameken", Nur-Sultan, https://atameken.kz/en/projects/category/nacional-nyj-doklad#. [36]

North, D. (1990), *Institutions, Institutional Change and Economic Performance*, Political Economy of Institutions and Decisions, Cambridge University Press, Cambridge, http://dx.doi.org/doi:10.1017/CBO9780511808678. [19]

Observatory for Economic Complexity (2021), *Tajikistan Country Profile*, Observatory for Economic Complexity, Cambridge MA, https://oec.world/en/profile/country/tjk. [153]

Observatory for Economic Complexity (2021), *Turkmenistan Country Profile*, Observatory for Economic Complexity, Cambridge MA, https://oec.world/en/profile/country/tkm/ (accessed on 21 August 2019). [199]

Observatory for Economic Complexity (2021), *Uzbekistan Country Profile*, Observatory for Economic Complexity, Cambridge MA, https://oec.world/en/profile/country/uzb. [253]

Observatory of Economic Complexity (2021), *Kyrgyzstan Country Profile*, Observatory for Economic Complexity, Cambridge MA, https://oec.world/en/profile/country/kgz. [82]

OECD (2020), "COVID-19 and International Trade: Issues and Actions", *OECD Policy Responses to Coronavirus (COVID-19)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/5b0fd8cd-en. [67]

OECD (2020), "COVID-19 Crisis Response in Central Asia", *OECD Policy Responses to Coronavirus (COVID-19)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/5b0fd8cd-en. [50]

OECD (2020), "COVID-19: SME Policy Responses", *OECD Policy Responses to Coronavirus (COVID-19)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/5b0fd8cd-en. [100]

OECD (2020), "Emergency Tax Policy Responses to the Covid-19 Pandemic", *OECD Policy Responses to Coronavirus (COVID-19)*, OECD Publishing, Paris, https://oecd.dam-broadcast.com/pm_7379_119_119695-dj2g5d5oun.pdf. [106]

OECD (2020), "Evaluating the Initial Impact of COVID Containment Measures on Economic Activity", in *OECD Economic Outlook*, OECD Publishing, Paris, https://doi.org/10.1787/0d1d1e2e-en. [3]

OECD (2020), *Investment Promotion in Eurasia: A Mapping of Investment Promotion Agencies*, OECD Publishing, Paris, http://www.oecd.org/eurasia/competitiveness-programme/Investment-Promotion-in-Eurasia-A-Mapping-of-Investment-Promotion-Agencies-ENG.pdf. [276]

OECD (2020), *OECD International Direct Investment Statistics 2019*, OECD Publishing, Paris, https://doi.org/10.1787/g2g9fb42-en (accessed on 31 January 2021). [126]

OECD (2020), "OECD Investment Policy Responses to COVID-19", *OECD Policy Responses to Coronavirus (COVID-19)*, OECD Publishing, Paris, https://read.oecd-ilibrary.org/view/?ref=129_129922-gkr56na1v7&title=OECD-Investment-Policy-Responses-to-COVID-19. [64]

OECD (2020), *Revenue Statistics 2020: Tax revenue trends in the OECD*, OECD Publishing, Paris, https://doi.org/10.1787/8625f8e5-en. [8]

OECD (2020), *Supporting Firm Creation and Growth through Business Development Services in Kyrgyzstan*, OECD Publishing, Paris, https://www.oecd.org/eurasia/competitiveness-programme/central-asia/Supporting-Firm-Creation-and-Growth-through-Business-Development-Services-in-Kyrgyzstan-ENG.pdf. [89]

OECD (2020), "Supporting People and Companies to Deal with the COVID-19 virus: Options for an Immediate Employment and Social Policy Response", *OECD Policy Responses to Coronavirus (COVID-19)*, OECD Publishing, Paris, http://www.oecd.org/coronavirus/policy-responses/supporting-people-and-companies-to-deal-with-the-covid-19-virus-options-for-an-immediate-employment-and-social-policy-response-d33dffe6/. [55]

OECD (2019), *Addressing Industrial Air Pollution in Kazakhstan: Reforming Environmental Payments Policy*, OECD Green Growth Studies, OECD Publishing, Paris, https://doi.org/10.1787/0e04ea86-en. [53]

OECD (2019), *Anti-corruption reforms in Uzbekistan*, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, OECD Publishing, Paris, https://www.oecd.org/corruption/acn/OECD-ACN-Uzbekistan-4th-Round_Monitoring-Report-2019-ENG.pdf. [270]

OECD (2019), *OECD FDI Regulatory Restrictiveness Index (Edition 2019)*, OECD Publishing, Paris, https://doi.org/10.1787/d22baa23-en. [69]

OECD (2019), *OECD Trade Facilitation Indicators (database)*, OECD Publishing, Paris, http://www.oecd.org/trade/topics/trade-facilitation/. [65]

OECD (2019), "ONE-IN, X-OUT, Regulatory offsetting in selected OECD countries", *OECD Regulatory Policy Working Papers*, No. 11, OECD Publishing, Paris, https://www.oecd-ilibrary.org/docserver/67d71764-en.pdf?expires=1611768873&id=id&accname=ocid84004878&checksum=A521DFCD4E015968347E4214B4677C54. [281]

OECD (2019), "Strategic Infrastructure Planning for Sustainable Development in Tajikistan", in *Sustainable Infrastructure Development for a Low-Carbon Transition in Central Asia and the Caucasus: Hotspot Analysis and Needs Assessment*, OECD Publishing, Paris, https://doi.org/10.1787/d1aa6ae9-en. [150]

OECD (2018), *Anti-corruption reforms in Kyrgyzstan*, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, OECD Publishing, Paris, https://www.oecd.org/corruption/acn/OECD-ACN-Kyrgyzstan-4th-Round-Monitoring-Report-2018-ENG.pdf. [119]

OECD (2018), *Anti-corruption reforms in Kyrgyzstan*, 4th Round of Monitoring of the Istanbul [122]

Anti-Corruption Action Plan, OECD Publishing, Paris, https://www.oecd.org/corruption/acn/OECD-ACN-Kyrgyzstan-4th-Round-Monitoring-Report-2018-ENG.pdf.

OECD (2018), *Enhancing Competitiveness in Central Asia*, OECD Publishing, Paris, http://dx.doi.org/10.1787/20765762. [2]

OECD (2018), *Monitoring Georgia's SME Development Strategy 2016-2020*, OECD Publishing, Paris, https://www.oecd.org/eurasia/competitiveness-programme/eastern-partners/Monitoring-Georgia's-SME-Development-Strategy-2016-2020.pdf. [282]

OECD (2018), *OECD Product Market Regulation Indicators (database)*, OECD Publishing, Paris, https://www.oecd.org/economy/reform/indicators-of-product-market-regulation/. [25]

OECD (2018), *Reform of the Mining Sector in Kazakhstan: Investment, Sustainability, Competitiveness*, OECD Publishing, Paris, https://www.oecd.org/eurasia/countries/Kazakhstan_Mining_report_ENG.pdf. [38]

OECD (2018), *Reforming Kazakhstan: Progress, Challenges and Opportunities*, OECD Publishing, http://dx.doi.org/10.1111/j.1744-540X.2013.00720.x. [35]

OECD (2018), *SME and Entrepreneurship Policy in Kazakhstan*, OECD Studies on SMEs and Entrepreneurship, OECD Publishing, Paris, https://doi.org/10.1787/9789264301450-en. [51]

OECD (2017), *Anti-corruption reforms in Kazakhstan*, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, OECD Publishing, Paris, https://www.oecd.org/corruption/acn/OECD-ACN-4th-Round-Report-Kazakhstan-Progress-Update-July-2018-ENG.pdf. [59]

OECD (2017), *Multi-dimensional Review of Kazakhstan: Volume 2. In-depth Analysis and Recommendations*, OECD Development Pathways, OECD Publishing, Paris, https://doi.org/10.1787/9789264269200-en. [41]

OECD (2017), *OECD Investment Policy Reviews: Kazakhstan 2017*, OECD Investment Policy Reviews, OECD Publishing, Paris, https://doi.org/10.1787/9789264269606-en. [23]

OECD (2017), *OECD Reviews of Innovation Policy: Kazakhstan*, OECD Reviews of Innovation Policy, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264270008-en. [73]

OECD (2017), *Regulatory Policy in Korea: Towards Better Regulation*, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, https://doi.org/10.1787/9789264274600-en. [277]

OECD (2017), *Revenue Statistics in Asian Countries: Trends in Indonesia, Japan, Kazakhstan, Korea, Malaysia, the Philippines and Singapore*, http://dx.doi.org/10.1787/9789264278943-en. [289]

OECD (2016), *Competition Law and Policy in Kazakhstan*, OECD Publishing, Paris, http://www.oecd.org/daf/competition/OECD2016_Kazakhstan_Peer_Review_ENG.pdf. [37]

OECD (2016), *Enhancing Public Service Delivery for the Private Sector in Kazakhstan*, OECD Publishing, Paris, http://dx.doi.org/10.1787/93d10cf7-en. [54]

Office of the United States Trade Representative (2019), *301 Special Report*, USTR, Washington DC, https://ustr.gov/sites/default/files/2019_Special_301_Report.pdf. [175]

Office of the United States Trade Representative (2018), *301 Special Report*, USTR, Washington [176]

DC, https://ustr.gov/sites/default/files/files/Press/Reports/2018%20Special%20301.pdf.

Office of the United States Trade Representative (2018), *Special 301 Report*, USTR, https://ustr.gov/sites/default/files/files/Press/Reports/2018%20Special%20301.pdf. [231]

Ombudsman for the Protection of the Rights of Entrepreneurs of Kazakhstan (2019), *Annual Report 2019*, Ombudsman for the Protection of the Rights of Entrepreneurs of Kazakhstan, Nur-Sultan, https://ombudsmanbiz.kz/details/ndownload.php?fn=31&lang=rus. [60]

President of Uzbekistan (2018), *Decree of the President of the Republic of Uzbekistan on the Concept of Improving the Tax Policy of the Republic of Uzbekistan*, https://cis-legislation.com/document.fwx?rgn=119377. [286]

Prime Minister Office of Kazakhstan (2019), *Over 15 million public services rendered by Government for citizens in the first half of 2019*, https://www.government.kz/en/news/press/bolee-15-mln-gosuslug-okazano-pravitelstvom-dlya-grazhdan-v-i-polugodii-2019-goda-a-ospanov. [44]

PWC (2020), *Tax Summary: Turkmenistan*, Tax Summaries, PWC, London, https://taxsummaries.pwc.com/turkmenistan. [239]

PWC (2020), *Tax Summary: Uzbekistan*, Tax Summaries, PWC, London, https://taxsummaries.pwc.com/republic-of-uzbekistan. [287]

PWC (2019), *Tax Summaries*, PWC, London, https://www.pwc.com/gx/en/services/tax/worldwide-tax-summaries.html. [238]

PWC/World Bank (2018), *Paying Taxes 2019*, Paying Taxes, World Bank Group, Washington DC, https://www.doingbusiness.org/en/reports/thematic-reports/paying-taxes-2019. [104]

Republic of Kazakhstan (2020), *Employment measures planned to reach 1 million 220 thousand people in 2020*, https://primeminister.kz/en/news/v-2020-godu-merami-sodeystviya-zanyatosti-planiruetsya-ohvatit-1-mln-220-tys-chelovek-mintruda-25396. [48]

Republic of Kazakhstan (2020), *Republic of Kazakhstan of March 20, 2020 No. 126*, https://primeminister.kz/ru/decisions/20032020-126. [46]

Republic of Kazakhstan (2020), *State Corporation 'Citizen Government' Online One Stop Shop*, https://egov.kz/cms/ru (accessed on 7 July 2020). [45]

Republic of Kazakhstan (2019), *Law on Legal Acts*, http://adilet.zan.kz/eng/docs/Z1600000480. [68]

Republic of Kazakhstan (2017), *Law on Subsoil and Subsoil Use*, http://adilet.zan.kz/rus/docs/K1700000125. [70]

Republic of Kazakhstan (2015), *100 Concrete Steps to 2025*, https://zerde.gov.kz/en/activity/100-steps/. [72]

Republic of Kazakhstan (2015), *Law on the High Judicial Council (No. 436-IV)*, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2018)050-e. [58]

Republic of Kazakhstan (2005), *Civil Code of Kazakhstan*, http://adilet.zan.kz/eng/docs/K940001000_. [56]

Republic of Tajikistan (2020), *О создании государственного унитарного предприятия* [177]

"Таджагропромэкспорт", http://base.spinform.ru/show_doc.fwx?rgn=125361.

Republic of Tajikistan (2019), *300 Days of Reform to Support Entrepreneurship and Improve the Investment Climate*, https://investcom.tj/en/newseng/590-round-table-on-supporting-industrial-entrepreneurship-improvement-of-investment-climate-within-framework-of-300-days-of-reforms.html. [155]

Republic of Tajikistan (2019), *Socio-Economic Indicators of the Republic of Tajikistan January-December 2019*, https://www.stat.tj/en/news/publications/the-publication-social-economic-situation-in-tajikistan-for-january-december-2019-was-released. [146]

Republic of Tajikistan (2018), *Decree of the President of the Republic of Tajikistan on the Moratorium on all Types of Inspections of Business Entities in the Manufacturing Sphere*, https://cis-legislation.com/document.fwx?rgn=104407. [182]

Republic of Tajikistan (2017), *Law on Normative Acts*, https://cis-legislation.com/document.fwx?rgn=97969. [183]

Republic of Tajikistan (2016), *Law on Investment*, https://cis-legislation.com/document.fwx?rgn=84794. [174]

Republic of Tajikistan (2016), *National Development Strategy of Tajikistan to 2030*, http://investcom.tj/uploads/strategiya_2030_en.pdf. [154]

Republic of Tajikistan (2016), *National Development Strategy of the Republinc of Tajikistan for the Period up to 2030*, http://investcom.tj/uploads/strategiya_2030_en.pdf (accessed on 25 April 2019). [186]

Republic of Tajikistan (2015), *Concept on the System of Regulatory Impact Analysis in the Republic of Tajikistan*, http://www.adlia.tj/show_doc.fwx?rgn=125878 (accessed on 29 April 2019). [187]

Republic of Tajikistan (2015), *Law on International Commercial Arbitration*, http://base.spinform.ru/show_doc.fwx?rgn=74321. [164]

Republic of Tajikistan (2014), *National Strategy for the Development of Intellectual Property 2014-2020*, https://cis-legislation.com/document.fwx?rgn=69527#A45R0V334Y. [158]

Republic of Tajikistan (2013), *Law on Investment Agreements*, https://cis-legislation.com/document.fwx?rgn=59050. [159]

Republic of Tajikistan (2012), *Land Code*, https://www.medt.tj/documents/main/normativno-pravovie-akti/zakonodatelnie-akti/ru/02509-ru.pdf. [180]

Republic of Tajikistan (2012), *Tax Code*, https://cis-legislation.com/document.fwx?rgn=54848 (accessed on 2020). [173]

Republic of Tajikistan (2011), *Law on Free Economic Zones*, https://cis-legislation.com/document.fwx?rgn=43138. [161]

Republic of Tajikistan (2008), *Civil Procedure Code of the Republic of Tajikistan*, http://www.asia-realty.ru/co-zakon-tajikistan.php?Id=348 (accessed on 26 April 2019). [168]

Republic of Tajikistan (2008), *Economic Procedural Code*, https://cis-legislation.com/document.fwx?rgn=21131. [163]

Republic of Tajikistan (2008), *Law on Arbitration Courts*, http://tpp.tj/put2011/pdf/rules/17.pdf. [165]

Republic of Tajikistan (2007), *Law on Investment*, https://www.wto.org/english/thewto_e/acc_e/tjk_e/WTACCTJK21A1_LEG_7.pdf. [157]

Republic of Tajikistan (2007), *Law on Production Sharing Agreements*, https://cis-legislation.com/document.fwx?rgn=16597. [160]

Republic of Turkmenistan (2020), *Внешнеэкономическая стратегия Туркменистана: инновационный алгоритм*, https://turkmenistan.gov.tm/?id=21453. [200]

Republic of Turkmenistan (2019), *Law on Licensing*, The Ministry of Adalat of Turkmenistan Official Website, http://www.minjust.gov.tm/ru/php/ygtyarnama.php (accessed on 23 August 2019). [221]

Republic of Turkmenistan (2019), *Ministry of Justice Homepage*, http://www.minjust.gov.tm/ru/php/home.php (accessed on 8 August 2019). [217]

Republic of Turkmenistan (2017), *Law on Free Economic Zones*, http://www.minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=15171. [198]

Republic of Turkmenistan (2017), *Law on Legal Acts*, http://www.minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=15163. [246]

Republic of Turkmenistan (2016), *The Constitution of the Republic of Turkmenistan*, https://www.osce.org/ru/odihr/262471?download=true. [232]

Republic of Turkmenistan (2014), *Law on International Commercial Arbitration*, http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=15025. [244]

Republic of Turkmenistan (2009), *Law on State Support for Small and Medium Enterprises*, http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=6963. [228]

Republic of Turkmenistan (2009), *Law on State Support of Small and Medium Sized Enteprises*, https://cis-legislation.com/document.fwx?rgn=28818. [240]

Republic of Turkmenistan (2008), *Law on Hydrocarbon Resources*, http://www.minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=6070. [243]

Republic of Turkmenistan (2005), *Tax Code*, https://cis-legislation.com/document.fwx?rgn=6768. [236]

Republic of Turkmenistan (2004), *Tax Code of the Republic of Turkmenistan*, http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=8381. [242]

Republic of Turkmenistan (2000), *Law on Enterprises*, http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=649. [220]

Republic of Turkmenistan (1999), *Decree on the State Agricultural Development Fund of Turkmenistan*, https://cis-legislation.com/document.fwx?rgn=23007. [241]

Republic of Turkmenistan (1999), *Law on Joint Stock Companies*, http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=580. [215]

Republic of Turkmenistan (1993), *Law on Bankruptcy*, https://cis-legislation.com/document.fwx?rgn=5192. [234]

Republic of Turkmenistan (1993), *Law on Patents*, http://www.turkmenlegaldatabase.info/documents/catId/4.html. [230]

Republic of Turkmenistan (1992), *Law on Foreign Investment in Turkmenistan*, http://www.turkmenlegaldatabase.info/documents/catId/4.html. [214]

Republic of Turkmenistan (1992), *Law on Investment Activity in Turkmenistan*, http://www.minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=254. [213]

Republic of Uzbekistan (2020), *Decree on the Next Measures to Support Households and Business during Coronavirus Pandemic*, https://president.uz/ru/lists/view/3482. [271]

Republic of Uzbekistan (2020), *Presidential Decree 81/20 "О мерах по дальнейшему сокращению присутствия государства в экономике, коренному реформированию предприятий с государственным участием и внедрению в их деятельность современных методов корпоративного управления"*, https://regulation.gov.uz/ru/document/14177. [266]

Republic of Uzbekistan (2020), *Presidential Decree No. 6096*, https://cis-legislation.com/document.fwx?rgn=127623 (accessed on 2020). [267]

Republic of Uzbekistan (2020), *Tax Code*, https://cis-legislation.com/document.fwx?rgn=20583. [285]

Republic of Uzbekistan (2019), *Draft Tax Code*, https://regulation.gov.uz/ru/document/7232-nalogovy_kodeks_respubliki_uzbekistan (accessed on 20 January 2020). [257]

Republic of Uzbekistan (2019), *Electronic Tax Services*, https://my.soliq.uz/main/?lang=ru (accessed on 14 May 2019). [284]

Republic of Uzbekistan (2019), *Law No. ZRU-522 "On privatization of non-agricultural land plots"*, https://lex.uz/docs/4834550 (accessed on 2020). [264]

Republic of Uzbekistan (2019), *On Further Measures for the Implementation of the Mechanisms for Attracting FDI into the Economy No. 4300*, https://lex.uz/docs/4312750 (accessed on 2020). [263]

Republic of Uzbekistan (2019), *Presidential Decree 5630 On the Dissolution of GKK*, https://lex.uz/docs/4160396. [268]

Republic of Uzbekistan (2019), *Presidential Decree 5643 On Measures to Improve the Management in the Sphere of Investment and Foreign Trade*, https://lex.uz/docs/4182349. [269]

Republic of Uzbekistan (2018), *Decree of the President of the Republic of Uzbekistan on Introducing Changes and Amendments, as well as Recognizing as Invalid some Decisions of the President of the Republic of Uzbekistan and the Government of the Republic of Uzbekistan*, http://lex.uz/docs/3747818 (accessed on 17 May 2019). [295]

Republic of Uzbekistan (2018), *Decree of the President of the Republic of Uzbekistan on Measures to Further Reduce and Simplify Licensing and Licensing Procedures in the Field of Entrepreneurial Activity, as well as Improving Business Conditions*, http://www.lex.uz/ru/docs/3676962 (accessed on 13 May 2019). [292]

Republic of Uzbekistan (2018), *Decree of the President of the Republic of Uzbekistan on the Approval of the Innovation Development Strategy of the Republic of Uzbekistan for 2019-* [304]

2021, https://cis-legislation.com/document.fwx?rgn=109926 (accessed on 13 May 2019).

Republic of Uzbekistan (2018), *Law of the Republic of Uzbekistan on Mediation*, http://lex.uz/docs/3805229?query=%D0%BC%D0%B5%D0%B4%D0%B8%D0%B0%D1%86%D0%B8%D0%B8 (accessed on 16 May 2019). [299]

Republic of Uzbekistan (2018), *Presidential Decree 5584 On Measures to Improve Civil Aviation*, https://www.lex.uz/ru/docs/4082764. [259]

Republic of Uzbekistan (2018), *Reform Roadmap 2019-21*, https://cis-legislation.com/document.fwx?rgn=109926. [256]

Republic of Uzbekistan (2017), *Decree of the President of the Republic of Uzbekistan on Measures to Further Expand the Support Mechanisms for Economically Insolvent Enterprises, as well as to Stimulate the Organisation of New Production Facilities Based on Real Estate Commercial Banks*, http://lex.uz/docs/3178661?query=%D0%91%D0%90%D0%9D%D0%9A%D0%A0%D0%9E%D0%A2%D0%A1%D0%A2%D0%92%D0%9E (accessed on 17 May 2019). [294]

Republic of Uzbekistan (2017), *Decree of the President of the Republic of Uzbekistan on the Action Strategy for the Further Development of the Republic of Uzbekistan*, http://www.lex.uz/ru/docs/3107042 (accessed on 13 May 2019). [305]

Republic of Uzbekistan (2017), *National Development Strategy 2017-21*, https://tashkenttimes.uz/national/541-uzbekistan-s-development-strategy-for-2017-2021-has-been-adopted-following-discussion. [255]

Republic of Uzbekistan (2017), *Order of the Minister of Justice of the Republic of Uzbekistan on Introducing Amendments and Additions to the Order "On the approval of the Methodological Instructions on the procedure for preparing, legal and technical clearance and legal expertise of draft regulatory legal acts introduced by state and economic authorities, local state authorities to the Cabinet of Ministers of the Republic of Uzbekistan"*, http://lex.uz/docs/3094948?ONDATE=16.01.2017%2000#3095182 (accessed on 21 May 2019). [308]

Republic of Uzbekistan (2017), *Presidential Decree No. PP-3067 "On measures for further improvement of the process of sale of state property"*, http://lex.uz/pages/getpage.aspx?lact_id=3239695. [265]

Republic of Uzbekistan (2017), *State Programme for the Realisation of the Strategy on Five Priority Areas for Development of the Republic of Uzbekistan 2017-2021*, https://www.minjust.uz/en/activity/state-programms/97066/ (accessed on 2020). [274]

Republic of Uzbekistan (2014), *Regulation of the Cabinet of Ministers of the Republic of Uzbekistan on Measures to Implement a System for Assessing the Impact of Legislation on Business*, http://lex.uz/docs/2509057 (accessed on 21 May 2019). [307]

Republic of Uzbekistan (2012), *On amendments and additions to the law of the Republic of Uzbekistan "On regulatory legal acts"*, https://www.lex.uz/acts/2105726 (accessed on 2020). [291]

Republic of Uzbekistan (2012), *Order of the Minister of Justice on Approval of Guidelines on the Procedure for the Preparation, Legal and Technical Clearance and Legal Expertise of Draft Regulatory Acts Introduced by State and Economic Authorities, State Government Bodies in the Cabinet of Ministers of the Republic of Uzbekistan*, http://lex.uz/docs/1999246 (accessed [306]

on 21 May 2019).

Republic of Uzbekistan (2006), *Law on State Owned Enteprises*, https://nrm.uz/contentf?doc=372435_polojenie_o_gosudarstvennyh_predpriyatiyah_(prilojenie_n_1_k_postanovleniyu_km_ruz_ot_16_10_2006_g_n_215)&products=1_vse_zakonodatelstvo_uzbekistana. [260]

Reuters (2020), *Reuters-Eikon sovereign risk database*, Reuters, London, https://www.reuters.com/markets/bonds. [11]

RFERL (2019), "Former British Ambassador Becomes Kyrgyzstan's Business Ombudsman", *Radio Free Europe/Radio Liberty*, https://www.rferl.org/a/former-british-ambassador-becomes-kyrgyzstan-s-business-ombudsman/30008229.html. [32]

Rodrik, D., A. Subramanian and F. Trebbi (2002), "Institutions Rule: The Primacy of Institutions over Geography and Integration in Economic Development"*, NBER Working Paper Series*, No. 9305, NBER, Cambridge MA, https://www.nber.org/papers/w9305. [17]

Santander (2020), *Kyrgyzstan: Foreign Investment*, Santander, Boadilla del Monte, https://santandertrade.com/en/portal/establish-overseas/kyrgyzstan/investing-3 (accessed on 31 January 2021). [84]

Santander (2020), *Turkmenistan: Foreign Investment*, Santander, Boadilla del Monte, https://en.portal.santandertrade.com/establish-overseas/turkmenistan/investing-3 (accessed on 31 January 2021). [196]

Shafer, M. (1994), *Winners and Losers: How Sectors Shape the Developmental Prospects of States*, Cornell Studies in Political Economy, Cornell University Press, https://www.jstor.org/stable/10.7591/j.ctv2n7fn1. [20]

Sharipov, Y. (2019), "Enforcement of Arbitral Awards in Uzbekistan: Challenges and Uncertainties", *Kluwer Arbitration Blog*, Published online, http://arbitrationblog.kluwerarbitration.com/2019/11/11/enforcement-of-arbitral-awards-in-uzbekistan-challenges-and-uncertainties/. [296]

State Asset Management Agency of Uzbekistan (2020), *Privatization as a Driver of Economic Reform*, SAMA, Tashkent. [261]

State Committee of the Republic of Uzbekistan on Statistics (2019), *2019 Macroeconomic Indicators (database)*, https://stat.uz/en/. [251]

Strokova, V. and M. Ajwad (2017), *Tajikistan Jobs Diagnostic: Strategic Framework for Jobs*, Jobs Series, No. 1, World Bank Group, Washington DC, https://openknowledge.worldbank.org/bitstream/handle/10986/26029/112666-WP-WBTJKJobDENGcompletewebopt-PUBLIC.pdf?sequence=9&isAllowed=y. [147]

Supreme Court of the Kyrgyz Republic (2019), *Supreme Court of the Kyrgyz Republic Homepage*, Supreme Court of the Kyrgyz Republic, Bishkek, http://sot.kg/. [113]

The Oxford Institute for Energy Studies (2019), "Central Asian Gas: Prospects for the 2020s"*, OIES Paper*, No. 155, The Oxford Institute for Energy Studies, Oxford, https://doi.org/10.26889/9781784671525. [209]

The Union of Industrialists and Entrepreneurs of Turkmenistan (2019), *Union of Industrialists and* [248]

Entrepreneurs of Turkmenistan's official website, The Union of Industrialists and Entrepreneurs of Turkmenistan, Ashgabat, https://tstb.gov.tm/.

Tompson, W. (2009), *The Political Economy of Reform: Lessons from Pensions, Product Markets and Labour Markets in Ten OECD Countries*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264073111-en. [29]

Trading Economics (2020), *Turkmenistani Manat 2001-2020 (database)*, Trading Economics (online), https://tradingeconomics.com/turkmenistan/currency. [207]

Transparency International (2018), *Customs Corruption in Kazakhstan: A Trade Mirror Analysis*, Transparency International, Berlin, https://knowledgehub.transparency.org/product/customs-corruption-in-kazakhstan-a-trade-mirror-analysis. [66]

Turkmen Portal (2020), "Туркменистан в связи со сложной обстановкой в мире сократит расходование Госбюджета с сохранением социальных обязательств и поддержки предпринимателей", *Turkmen Portal*, https://turkmenportal.com/blog/27364/turkmenistan-v-svyazi-so-slozhnoi-obstanovkoi-v-mire-sokratit-rashodovanie-gosbyudzheta-s-sohraneniem-socialnyh-obyazatelstv-i-podderzhki. [210]

Turkmenistan Today (2020), "Состоялось заседание Кабинета Министров Туркменистана", *Turkmenistan Today*, http://tdh.gov.tm/news/articles.aspx&article22700&cat11. [211]

UNCTAD (2019), *Country Fact Sheet Kyrgyzstan*, World Investment Report, UNCTAD, Geneva, https://unctad.org/system/files/non-official-document/wir20_fs_kg_en.pdf. [83]

UNCTAD (2019), *Country Navigator: Turkmenistan*, UNCTAD, Geneva, https://investmentpolicy.unctad.org/country-navigator/223/turkmenistan (accessed on 31 January 2021). [233]

UNCTAD (2019), *General Profile: Tajikistan*, UNCTAD, Geneva, https://unctadstat.unctad.org/countryprofile/generalprofile/en-gb/762/index.html. [152]

UNCTAD (2019), *General Profile: Uzbekistan*, UNCTAD, Geneva, https://unctadstat.unctad.org/countryprofile/generalprofile/en-gb/860/index.html. [252]

UNCTAD (2019), *Uzbekistan: Bilateral Investment Treaties (BITs)*, Investment Policy Hub, UNCTAD, Geneva, https://investmentpolicy.unctad.org/international-investment-agreements/countries/226/uzbekistan (accessed on 13 May 2019). [300]

UNCTAD (2016), *Investment Policy Review of Kyrgyzstan*, Investment Policy Reviews, United Nations, Geneva, http://dx.doi.org/10.18356/1422c5a4-en (accessed on 2 July 2019). [97]

UNCTAD (2016), *Investment Policy Review of Tajikistan*, Investment Policy Reviews, UNCTAD, Geneva, http://dx.doi.org/10.18356/1ab8f890-en. [166]

UNCTAD (2011), *MTS v. Turkmenistan (I)*, Investment Policy Hub, UNCTAD, Geneva, https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/404/mts-v-turkmenistan-i-. [222]

UNCTADstat (2020), *UNCTAD Stat (database)*, UNCTAD, Geneva, https://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx?sCS_ChosenLang=en (accessed on 31 January 2021). [194]

UNDP/USAID (2019), *Doing Business Enforcing Contracts - Uzbekistan*, USAID, Washington [297]

DC, https://www.uz.undp.org/content/dam/uzbekistan/docs/Publications/economicgovernance/Doing_Business_Enforcing_Contracts_ROL_2019/un_doc_uzb_DB_Enforcing_Contracts-Uzbekistan_eng.pdf.

UNECE (2019), *Environmental Performance Reviews: Kazakhstan*, Environmental Performance Reviews, No. Third edition, UNECE, Geneva, http://dx.doi.org/10.18356/3f11007e-en. [52]

UNECE (2013), *Policy Assessment and Recommendations: Turkmenistan*, Promoting Green Innovation, United Nations, Geneva, http://www.unece.org/fileadmin/DAM/ceci/publications/Assessment_Turkmenistan.pdf. [229]

UNESCAP (2019), *Implementation of WTO TFA in Central Asia and opportunities from e-commerce and paperless*, https://www.unescap.org/sites/default/files/1%20Edil%20Kalashev_Session%204.pdf. [79]

United Kingdom (2015), *2010 to 2015 Government Policy: Business Regulation (Appendix 4)*, UK Government, https://www.gov.uk/government/publications/2010-to-2015-government-policy-business-regulation/2010-to-2015-government-policy-business-regulation. [280]

US Department of Commerce (2019), *Kyrgyz Republic - Market Challenges*, Country Commercial Guides, US Department of Commerce, Washington DC, https://www.export.gov/article?id=Kyrgyz-Republic-Market-Challenges (accessed on 1 August 2019). [139]

US Department of Commerce (2019), *Tajikistan - Market Overview*, Country Commercial Guides, US Department of Commerce, Washington DC, https://www.export.gov/article?series=a0pt0000000PAuwAAG&type=Country_Commercial__kav. [162]

US Department of Commerce (2019), *Uzbekistan - Market Overview*, Country Commercial Guides, US Department of Commerce, Washington DC, https://www.export.gov/article?series=a0pt0000000PAv7AAG&type=Country_Commercial__kav. [254]

US Department of State (2019), *Investment Climate Statement: Kazakhstan*, Investment Climate Statements, US Department of State, Washington DC, https://www.state.gov/reports/2019-investment-climate-statements/kazakhstan/. [63]

US Department of State (2019), *Investment Climate Statement: Turkmenistan*, Investment Climate Statements, US Department of State, Washington DC, https://www.state.gov/reports/2019-investment-climate-statements/turkmenistan/. [216]

US Department of State (2018), *Investment Climate Statement: Kyrgyz Republic*, Investment Climate Statements, US Department of State, Washington DC, https://www.state.gov/reports/2018-investment-climate-statements/kyrgyz-republic/. [98]

US Department of State (2018), *Investment Climate Statement: Uzbekistan*, Investment Climate Statements, US Department of State, Washington DC, https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm?year=2018&dlid=281718#wrapper. [298]

US Department of State (2016), *Investment Climate Statement: Tajikistan*, Investment Climate Statements, US Department of State, Washington DC, https://2009- [169]

2017.state.gov/e/eb/rls/othr/ics/2016/sca/254493.htm (accessed on 25 April 2019).

WHO (2020), *World Health Organization Global Health Expenditure (database)*, WHO, Geneva, http://apps.who.int/nha/database. [156]

Wolters Kluwer (2019), *Enforcement of Arbitral Awards in Uzbekistan: Challenges and Uncertainties*, http://arbitrationblog.kluwerarbitration.com/2019/11/11/enforcement-of-arbitral-awards-in-uzbekistan-challenges-and-uncertainties/. [302]

World Bank (2020), *COVID-19 and Human Capital*, World Bank Group, Washington DC, http://dx.doi.org/10.1596/978-1-4648-1643-7. [15]

World Bank (2020), *Doing Business 2020*, World Bank Group, Washington DC, http://dx.doi.org/10.1596/978-1-4648-1440-2. [24]

World Bank (2020), *Trade to GDP (database)*, World Bank Group, Washington DC, https://data.worldbank.org/indicator/NE.TRD.GNFS.ZS?locations=KZ-KG-TJ-UZ-TM-OE-EU (accessed on 1 January 2021). [5]

World Bank (2020), *World Development Indicators (database)*, World Bank Group, Washington DC, https://databank.worldbank.org/source/world-development-indicators (accessed on 31 January 2021). [1]

World Bank (2019), *Country Partnership Agreement for the Republic of Tajikistan FY19-FY23*, World Bank Group, Washington DC, http://dx.doi.org/10.1596/31734. [12]

World Bank (2019), "Doing Business", in *Doing Business 2019: Training for Reform*, World Bank Group, Washington DC, http://dx.doi.org/10.1016/j.jebo.2017.07.011. [40]

World Bank (2019), *Domestic Credit to Private Sector (database)*, World Bank Group, Washington DC, https://data.worldbank.org/indicator/FS.AST.PRVT.GD.ZS?end=2018&locations=OE-KZ-KG-TJ-GE-US&start=2018&view=bar (accessed on 31 January 2021). [148]

World Bank (2019), *Economic Profile: Kazakhstan*, Doing Business 2019: Training for Reform, World Bank Group, Washington DC, https://openknowledge.worldbank.org/bitstream/handle/10986/31895/DBinKazakhstan2019.pdf?sequence=1&isAllowed=y. [71]

World Bank (2019), *Economic Profile: Kyrgyz Republic*, Doing Business 2019: Training for Reform, World Bank Group, Washington, DC, https://openknowledge.worldbank.org/bitstream/handle/10986/30765/WP-DB2019-PUBLIC-Kyrgyz-Republic.pdf?sequence=1&isAllowed=y (accessed on 4 July 2019). [115]

World Bank (2019), *Economic Profile: Tajikistan*, Doing Business 2019: Training for Reform, World Bank Group, Washington DC, https://www.worldbank.org/en/news/factsheet/2018/11/01/doing-business-2019-tajikistan-ranking#:~:text=In%20absolute%20terms%2C%20Tajikistan%20improved,Business%202019%3A%20Training%20for%20Reform. [31]

World Bank (2019), *Economic Profile: Uzbekistan*, Doing Business 2019: Trainng for Reform, World Bank Group, Washington DC, http://documents1.worldbank.org/curated/en/195921541589470772/pdf/131866-WP-DB2019-PUBLIC-Uzbekistan.pdf. [290]

World Bank (2019), *Economy Profile: Kyrgyz Republic*, Doing Business 2019: Training for Reform, World Bank Group, Washington DC, https://openknowledge.worldbank.org/bitstream/handle/10986/30765/WP-DB2019-PUBLIC-Kyrgyz-Republic.pdf?sequence=1&isAllowed=y. [90]

World Bank (2019), "Investment Protection Along the Belt and Road", *MTI Discussion Paper*, World Bank Group, Washington DC, http://dx.doi.org/10.1596/31247. [127]

World Bank (2019), *Kyrgyz Republic Economic Update*, World Bank Group, Washington DC, https://openknowledge.worldbank.org/handle/10986/33122. [76]

World Bank (2019), *Nurturing Tajikistan's Growth Potential*, Country Economic Memorandum for Tajikistan, World Bank Group, Washington DC, http://documents.worldbank.org/curated/en/283081560956198220/pdf/Tajikistan-Country-Economic-Memorandum-Nurturing-Tajikistan-s-Growth-Potential.pdf. [170]

World Bank (2019), *Personal Remittances Received (current US$): Kyrgyz Republic (database)*, World Bank Group, Washington DC, https://data.worldbank.org/indicator/BX.TRF.PWKR.CD.DT?locations=KG (accessed on 31 January 2021). [78]

World Bank (2019), *Support to Public Financial Management and State-Owned Enterprises Reforms to Benefit Uzbekistan's Citizens and Economy*, Press Release, No. 2019/ECA/121, 24 May, World Bank Group, Washington DC, https://www.worldbank.org/en/news/press-release/2019/05/24/uzbekistan-institutional-capacity-building-project.print. [262]

World Bank (2019), *The World Bank in Turkmenistan: Country Snapshot*, World Bank Group, Washington DC, http://pubdocs.worldbank.org/en/938041571374548893/Turkmenistan-Snapshot-Oct2019.pdf. [204]

World Bank (2018), *Poverty in Tajikistan*, World Bank Group, Washington DC, https://www.worldbank.org/en/news/infographic/2018/10/26/poverty-in-tajikistan. [145]

World Bank (2017), *Heightened Vulnerabilities Despite Sustained Growth*, Tajikistan Country Economic Update, No. Fall 2017, World Bank Group, Washington DC, https://openknowledge.worldbank.org/handle/10986/29101. [149]

World Bank (2014), "Tajikistan: Fiscal Risks from State-Owned Enterprises", *Takijistan policy notes on public expenditures*, No. 5, World Bank Group, Washington DC, https://openknowledge.worldbank.org/handle/10986/20749. [178]

World Bank/EBRD (2019), *Uzbekistan 2019 Country Profile*, Enterprise Surveys: What Businesses Experience, World Bank Group, Washington DC, https://www.enterprisesurveys.org/content/dam/enterprisesurveys/documents/country/Uzbekistan-2019.pdf. [283]

World Bank/EBRD/EIB (2019), *Uzbekistan 2019: Country Profile*, Enterprise Surveys: What Businesses Experience, World Bank Group, Washington DC, https://www.enterprisesurveys.org/content/dam/enterprisesurveys/documents/country/Uzbekistan-2019.pdf. [293]

World Bank/IFC (2008), *Regulatory Transformation In The Republic Of Korea*, Case Studies On Reform Implementation Experience, World Bank Group, Washington DC, http://regulatoryreform.com/wp- [279]

content/uploads/2014/09/REGULATORY_TRANSFORMATION_IN_THE_REPUBLIC_OF_SOUTH_KOREA1.pdf.

World Justice Project (2020), *Rule of Law Index 2020*, Rule of Law Index, World Justice Project, Washington DC, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf. [303]

World Justice Project (2019), *Kyrgyzstan Country Profile*, Country Profiles, World Justice Project, Washington DC, http://data.worldjusticeproject.org/#/groups/KGZ (accessed on 20 July 2020). [118]

World Justice Project (2019), *WJP Rule of Law Index (database)*, WHO, Geneva, https://www.worldjusticeproject.org/rule-of-law-index/ (accessed on 31 January 2021). [62]

WTO (2021), *Tajikistan Country Profile*, Trade Facilitation Agreement Database, WTO, Geneva, https://tfadatabase.org/members/tajikistan (accessed on 8 July 2020). [190]

WTO (2020), *Members endorse Turkmenistan's WTO observer status*, https://www.wto.org/english/news_e/news20_e/acc_22jul20_e.htm. [201]

WTO/Trade Facilitation Agreement Facility (2019), *Tajikistan Country Profile*, Trade Facilitation Agreement Facility, WTO, Geneva, https://www.tfafacility.org/tajikistan (accessed on 25 July 2019). [193]

Yeliseyeu, A. (2019), "The Eurasian Economic Union: Expectations, Challenges, and Achievements"*, Policy Paper*, The German Marshall Fund of the United States, Washington DC, http://www.gmfus.org/listings/research/type/publication. [140]

IMPROVING THE LEGAL ENVIRONMENT FOR BUSINESS AND INVESTMENT IN CENTRAL ASIA

Weaknesses in the framework conditions for private sector development and foreign direct investment have contributed to over-reliance of Central Asian economies on a narrow range of often volatile drivers for growth, principally the export of commodities and labour. Despite recent reforms by governments across the region – such as streamlining legislation or introducing new digitalisation programmes – the business environment in Central Asia remains challenging. Even where formal settings have improved considerably, uneven implementation and enforcement, as well as frequent policy changes, create a significant gap between *de jure* protections and the *de facto* operational environment for firms. The COVID-19 pandemic has exacerbated this problem and reinforced the need to address long-standing barriers to business development that could help the region transition to a more dynamic, private sector-driven growth model.

This report, part of an ongoing project co-financed by the European Union, focusses on one set of such barriers: the legal and regulatory frameworks for business and investment in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. It presents the findings of an assessment of ten dimensions of the legal environment that are crucial for a healthy business climate: legal and regulatory frameworks for investment; tax regulations; land legislation; registration procedures; contract enforcement and dispute settlement; the operational environment for business; trade facilitation; expropriation regimes; exit mechanisms; and public-private dialogue. The report identifies priority areas for reform identified for each country from among the ten dimensions, most often pertaining to investment, trade and the local operational environment being recurrent themes. It offers specific policy recommendations on these priorities for each of the five countries.

www.oecd.org/eurasia

Co-funded by the
European Union