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CENTRAL ASIA INVEST
BOOSTING SMALL BUSINESS COMPETITIVENESS

OECD
BETTER POLICIES FOR BETTER LIVES

Improving the Legal Environment for Business in Central Asia

Progress report

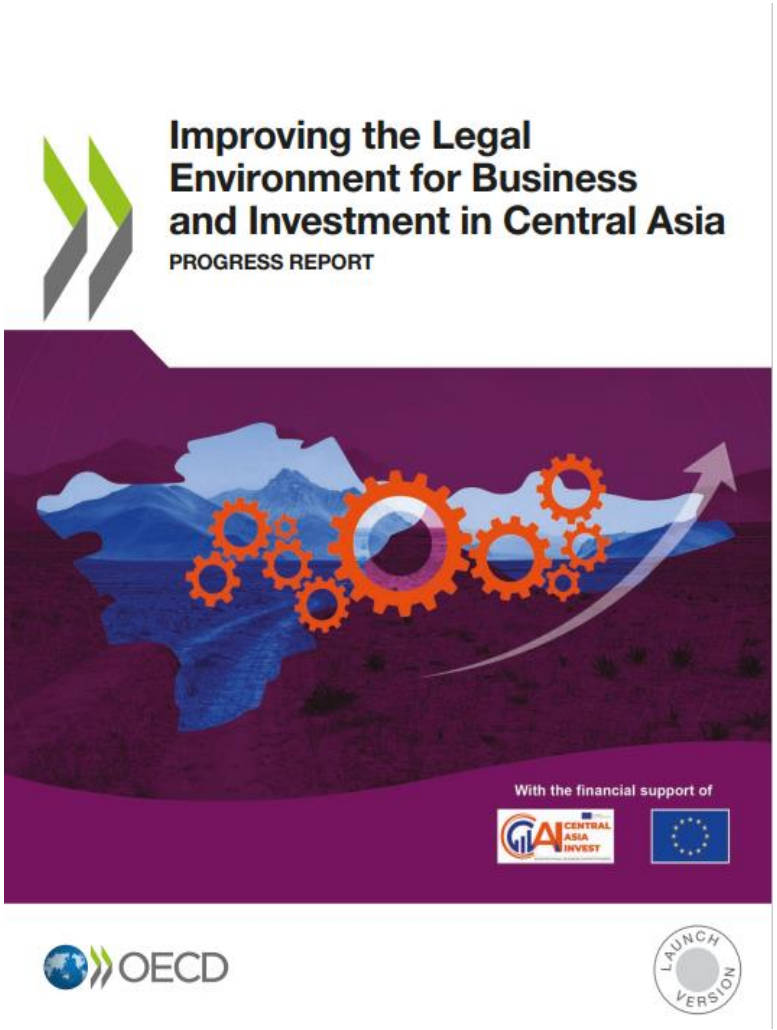
Discussion of findings for Central Asia

Thursday, 1 February 2024
Rixos President Hotel, Astana



OECD Eurasia Competitiveness Programme

The OECD assessed progress made in improving the legal environment for business in Central Asia since 2019-2020



The legal environment for business was assessed along 10 dimensions considered crucial for a healthy business climate.

- Legal and regulatory framework for investment
- Tax administration
- Land legislation
- Registration procedures
- Contract enforcement and dispute settlement
- Operational environment for business
- Trade facilitation
- Expropriation regimes
- Exit mechanisms
- Public-private dialogue

Regional assessment

Despite economic headwinds, the region has made progress in easing the operational environment for firms

Achieved results

- **Streamlined** licence and permit procedures
- Significant **digitalisation** of public services
- Reinforced regional **integration** with the improvement of customs and border procedures

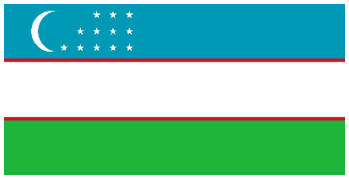
Challenges ahead

- Ensure **predictability** and **consistency** of the application of legislation
- Foster **competition** and SOE reforms
- Extend use of **monitoring and evaluation** and **regulatory impact assessment** for evidence-informed policy-making

Country assessment (1/2)

	Achieved results	Way forward
Kyrgyzstan 	• **Reduced administrative burden** through increased digitalisation • **Leveled playing field** thanks to fiscal policy reforms	➢ **Avoid a hasty implementation** of reforms, particularly in relation to taxes ➢ Increase **private sector's involvement** in policy-making ➢ Increase **trust in the judicial system**
Tajikistan 	• **Improved access to legal information** and procedures • **Improved judicial transparency** and pre-trial dispute resolution tools • **Lowered burden** on taxpayers	➢ Clarify the investment framework and **ease restrictions to foreign investors** ➢ Strengthen **judicial independence** ➢ **Harmonise the interpretation** of the Tax Code across government agencies

Country assessment (2/2)

	Achieved results	Way forward
Turkmenistan 	• **Improved access to legal resources online** and through the media • **Eased administrative burden** on firms through the centralisation of services under a one-stop-shop (Tax Committee)	➢ Consider the **creation of an investment promotion agency (IPA)** ➢ **Digitalise** public services ➢ Expand the **array of financial products** available for SMEs
Uzbekistan 	• Improved investment climate with a **review of the law** on investment* providing more clarity to investors • **Increased digitalisation** of government services and procedures • **Reduced regulatory burden** on firms	➢ Further **increase the transparency of public procurement and privatisation** ➢ Increase **market competition** through SOE reform and institutional capacity building ➢ Develop a **client-oriented approach** to tax administration

***** *a new review of the law is currently underway with IFC and OECD support*

Thank you!

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OECD Eurasia Competitiveness Programme

Agenda

- **Overview of 2020 recommendations**
- **Main reform trends and developments since 2020**

Overview of 2020 recommendations

In 2019 and 2020, the OECD identified a need for improved implementation of reforms in three priority areas

	Challenges	2020 Recommendations
1	**Operational environment for firms** Implement consistently and thoroughly the new Entrepreneurial Code (EC)	➔ Raise **public sector capacity** on licensing and permits, especially at the **local level** ➔ **Review and rationalise** licenses and permits (e.g. environmental permits) ➔ Carry-out an **impact assessment** of the EC, online OSS, and streamlined licensing procedures and use outcomes as **basis for a public-private dialogue** on further steps
2	**Contract enforcement** Improve dispute settlement for all businesses operating in the country	➔ Further modernise and guarantee **the independence of the judicial system** ➔ Promote **alternative dispute resolution mechanisms**, continue to expand capacity based on international arbitration best practices, ensure independence of ADR
3	**Trade facilitation** Improve co-ordination of internal and external customs agencies	➔ Improve **horizontal coordination** across and **avoid overlapping** between public institutions ➔ **Train** border officials, and develop **interconnected transit information systems** ➔ **Harmonise** customs documents and requirements with other countries of the region

Agenda

- Overview of 2020 recommendations
- **Main reform trends and developments since 2020**

Operational environment for firms
Our understanding of evolutions

Regulation became more transparent & equitable	But implementation lags & complexities remain
✓ Reforms have focused on **reducing stringency, inspections, and room for arbitrary action**	X The pace of regulatory reforms remains too high
✓ Progress in digitalisation of public services has **eased the administrative burden for firms**	X A **perception of bias in the authorities' approach** when conducting RIAs persists among businesses
✓ The government has focused on ensuring a **coherent implementation** across the country and the different levels of government • Introduction of the **"Registry of Mandatory Requirements"**	X **Business inspections** remain a central issue X The **systematic use of moratoria** on business inspections as a policy tool creates additional complexity

Operational environment for firms
Recommendations

Stabilise business regulation with a focus on analysing the impact on SMEs

→ **Rationalised use of RIAs**

- Carried out on a **regular basis**
- Direct collaboration **with the private sector** (e.g. Atameken)
- Results to be **fed into the policy cycle**

→ **Improved monitoring** of reform implementation

- **Regular trainings** of civil servants
- Development of channels for **firms to report non-implementation**

Raise firms' awareness and ability to cope with regulatory changes

→ **Publicise consultations and regulatory changes** to the private sector

→ Competent authorities should **train and inform firms** on new regulatory requirements

- Outreach programmes
- Targeted and thematic trainings

Operational environment for firms

Case study 1: the SME test in RIA (1/2)

The UK's Small and Micro Business Assessment (SaMBA)



Goal

- Help understand the **impact of a proposal on SMEs** and consider whether the proposal will affect SMEs in a different way to medium and large businesses.

Principle

- The SaMBA is part of a RIA and is **mandatory for larger domestic regulatory proposals** which have an estimated current equivalent annual net direct cost to business of ±£5m.
- The **default option is to exempt small and micro-businesses** from the requirements of the new regulatory measures.

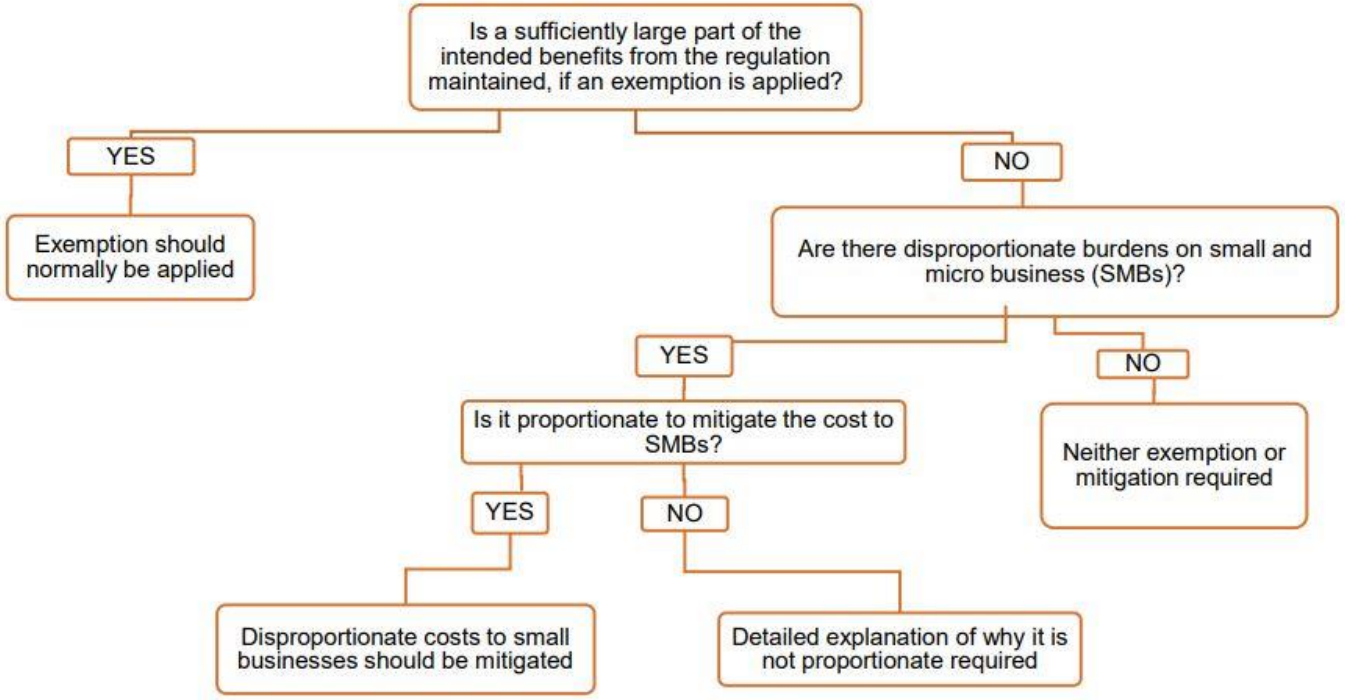
Proportionality

- The **analysis for the assessment should be proportionate** to the scale of the impact of the measure: the level of evidence and analysis should be defined in accordance with the expected impact.

Source: RPC Small and Micro Business Assessment (SaMBA) guidance

Operational environment for firms
Case study 1: the SME test in RIA (2/2)

Figure 1: Flow chart of key stages in a SaMBA



The policy costs of exempting SMEs and how much these exemptions can compromise policy objectives should be evaluated.

Source: [RPC Small and Micro Business Assessment (SaMBA) guidance]

Operational environment for firms

Case study 2: the Netherlands' independent administrative burden scrutiny

The Netherlands has been one of the leading OECD countries with regards to ensuring an independent and robust oversight of regulatory impacts on businesses

- An advisory board at arm's length from government was created to **conduct external quality control of administrative burden reduction** efforts, along with co-ordinating units within each ministry.
- The core tasks of the board include **providing independent scrutiny on new regulatory proposals** for administrative and compliance costs and advising on the potential for non-regulatory alternatives.
- The board **advises ministries in the early stages of the policy process** (i.e. initiation of new regulations and problem identification, review of proposals). It also scrutinises the SME test.
- It does not operate according to a proportionality principle and **assesses the regulatory consequences on business of all primary legislative proposals** and administrative measures and scrutinises ministerial decrees if they have substantial effects on compliance costs.
- Both the government and Parliament can approach the body for advice.

Source: OECD Reviews of Regulatory Reform – Netherlands (2020)

Contract enforcement
Our understanding of evolutions

Judicial and dispute resolution reforms have been advanced in priority by the government

✓ Recent judicial reforms have **strengthened judicial capacity and independence**

✓ **Advancing fair and accessible dispute resolution** for businesses has become a priority for the government

- **A Constitutional Court was re-established**
- New **Administrative Procedure Code** (APC)
- **Presumption of good faith of the taxpayer**
- ***e-Otinish*** online platform and mobile app

But contract enforcement and dispute resolution continue to be perceived as a major challenge for businesses

X Dispute resolution reform risks developing into a **two-tier judicial system**

- AIFC's International Arbitration Centre (IAC) offers arbitration but **is not easily accessible to national entrepreneurs**
- Asymmetry of information

X A **perceived bias in favour of the authorities** in cases of business-state disputes brought to court persists

X The **absence of specialised judges** weakens the protection of **intellectual property rights (IPR)**

Contract enforcement
Recommendations

Improve domestic businesses' awareness of available dispute resolution tools

→ **Develop awareness raising and outreach campaigns** about the availability and functioning of administrative courts and processes for dispute resolution

- Develop **targeted outreach media campaigns**
- **Online or in-person training sessions**, inviting representatives of the competent dispute resolution body

Set-up an effective institutional framework for intellectual property rights enforcement

→ **Developing IP expertise in civil and criminal courts**

- Create specialist IP benches within courts
- Allow courts to call on a third-party institution with IP expertise

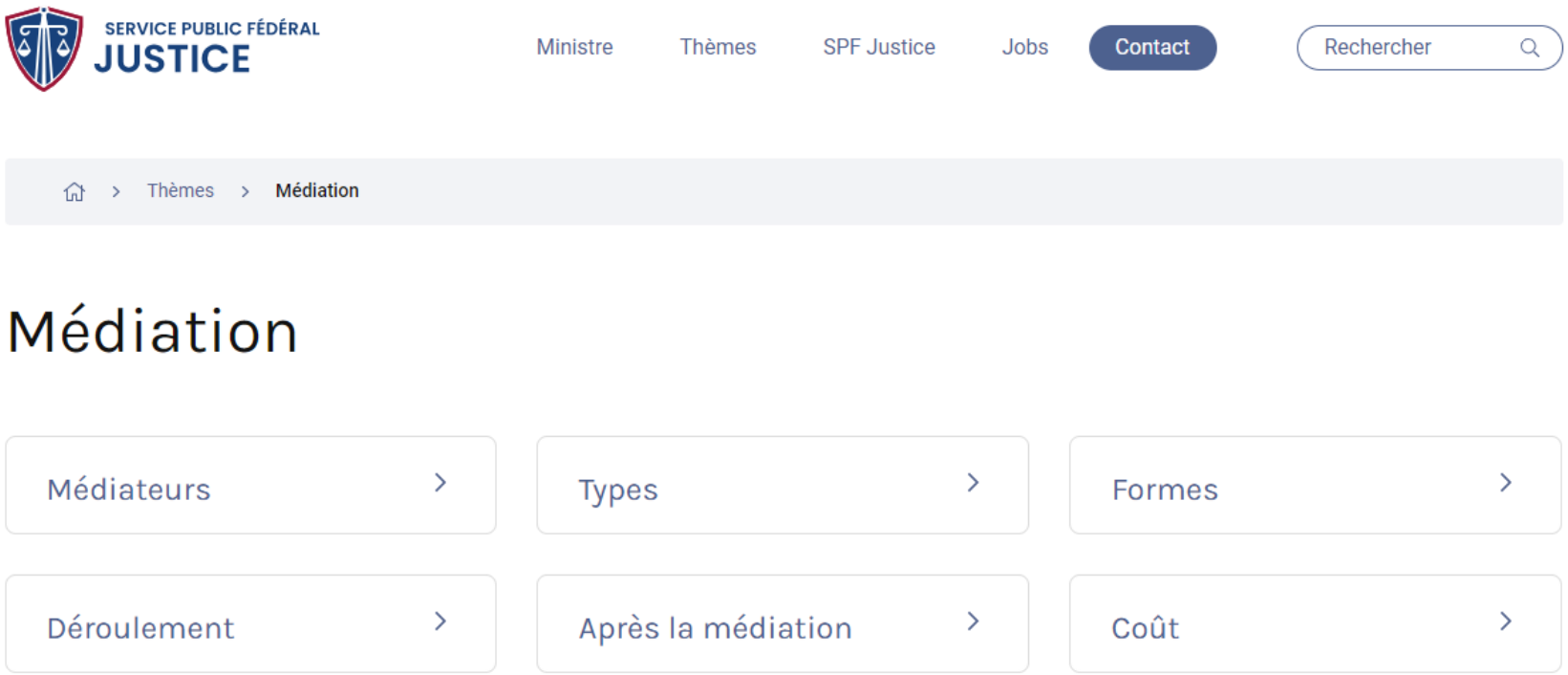
→ **Ensure adequate skills of judges**

- **Appoint judges with a representative level of expertise** in the relevant areas for IPR disputes
- **Mandatory continuing education and training opportunities for judges** dealing with IP matters
- Encourage **exchanges with international IP courts**

Contract enforcement

Case study 3: Promoting alternative dispute resolution tools – the case of Belgium

Belgium's Public Federal Service for Justice (PFSJ) website contains concise and clear information about mediation



Source: *Service Public Fédéral Justice - Médiation*

Trade facilitation
Our understanding of evolutions

The trade regulatory framework improved, especially with digitalisation and for intellectual property rights

- ✓ Constant **performance improvement in the OECD TFIs** since 2017
- ✓ Launch of several **online trade portals and single windows** providing firms e-permits, information, references, and documents related to exports
- ✓ **2021 reforms to the Customs Code**
- ✓ **More protective IPR legal framework** in relation to international trade provides new opportunities for domestic firms to enter global markets

But implementation lags and regulatory barriers to services trade remain

- X **Implementation** and **access to trade related information** remain an issue for businesses
  - **Arbitrary interpretation of Customs Code**
  - **Online pre-declarations** are not always functional, and sometimes **doubled by paper procedures**
  - **Absence of priority procedures**
  - Coexistence of several online trade portals
- X **Regulatory barriers to services trade remain** an impediment for both domestic and international firms
  - Kazakhstan is the **seventh most restrictive of the 50 economies** covered by the OECD Services Trade Restrictiveness Index (STRI)
  - **Logistics and related services sectors** are the most heavily regulated

Trade facilitation
Recommendations

Close the implementation gap and improve access to trade-related information for businesses

→ **Actively involve the trade and business community**

→ **Establish an inter-governmental steering committee,** monitoring implementation of trade decisions

→ **Improve firms' awareness of trade-related information, decisions, and legislation**

- **Improve publication of applicable legislation**
- Develop online and physical **enquiry points**
- Introduce **systematic notice-and-comment procedures**

Rationalise services trade regulation and improve regional cooperation

→ **Continue liberalising services trade regulation**

- **Rationalise regulation** in logistics and related services sectors
- Align it with regional neighbours

→ **Continue advancing effective regional integration**

- Develop **interconnected transit information systems** with other countries in the region
- **Harmonise** customs documents and requirements

Summary of updated recommendations

	Operational environment for firms	Contract enforcement	Trade facilitation
2020 recommendations	*Implement the Entrepreneurial code focusing on consistency and corruption risks*	*Strengthen judicial independence and improve dispute settlement*	*Improve the co-ordination of internal and external customs agencies*
2023 updated recommendations	Stabilise regulation with a focus on analysing the impact on SMEs	Keep improving the quality of the court system by monitoring the implementation of judicial reforms Improve domestic businesses' awareness of and access to available dispute resolution tools	Close the implementation gap and improve access to trade-related information for businesses
	Raise firms' awareness and ability to cope with regulatory changes	Set-up an effective institutional framework for IPR enforcement	Rationalise services trade regulation and improve regional cooperation

Thank you!

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