

Implementing
regulatory
reform

REGULATORY REFORM AND BUSINESS ENVIRONMENTS IN SOUTH ASIA: A CALL FOR ACTION

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The enabling environment

- **“Enabling” reforms are aimed at releasing the energies of private entrepreneurs, investors, and innovators so that they participate more fully in broad, sustainable economic and social development.**
- **At the core of wider “enabling” strategy is improvement in the quality of the domestic legal, regulatory, and administrative environment within which businesses operate.**

Most important business environment reforms South Asia, 1990-2005

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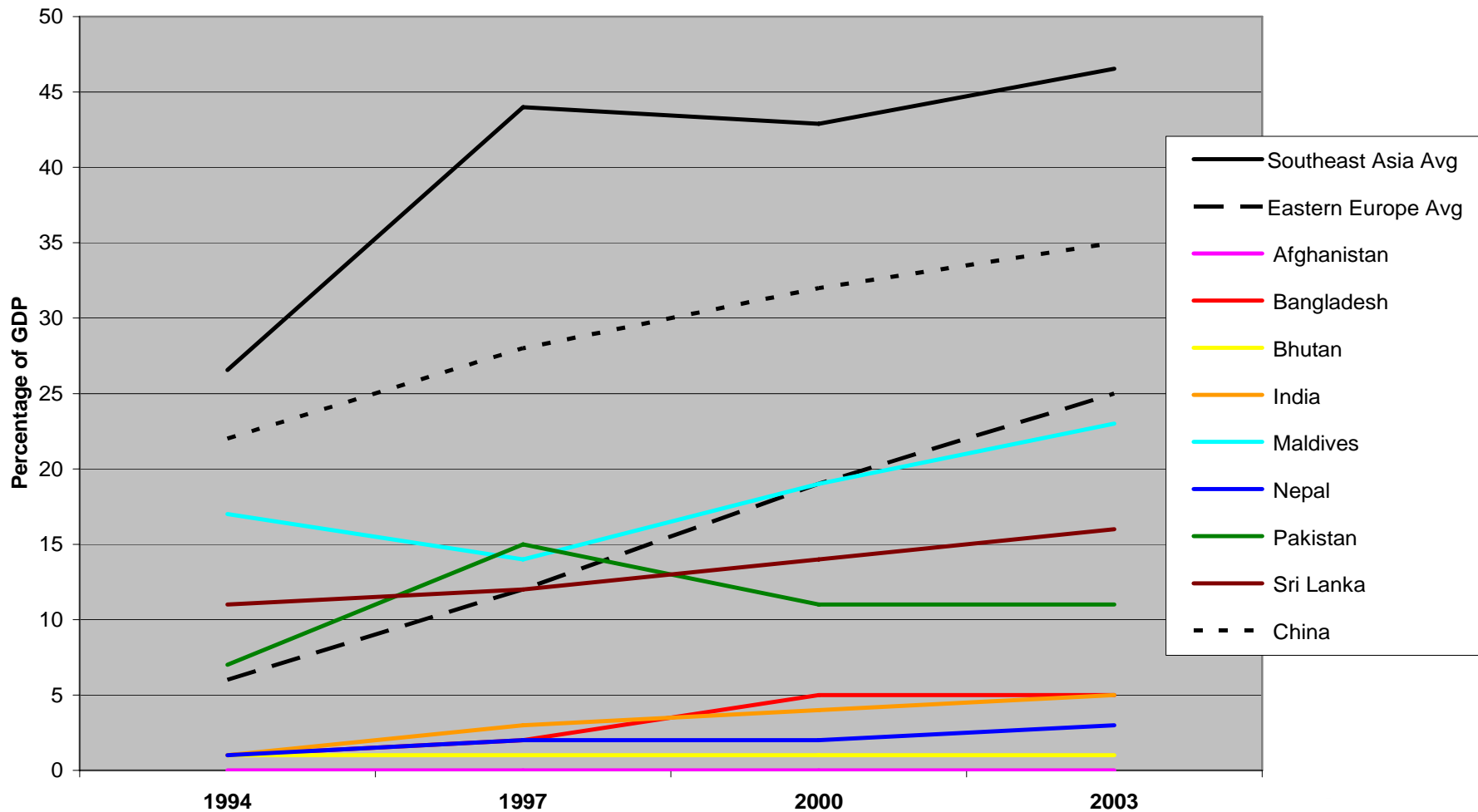
- **Increased market openness -- due to tariff structure reforms and liberalization of import and export controls -
- boosted productivity;**
- **Reduction of overt barriers to foreign investment has increased in investor interest in the region;**
- **Reductions in costly forms of regulation such as licensing in some countries has reduced barriers to entry, regulatory risks, and operating costs;**
- **Privatization although stalled and incomplete in many sectors, and de-monopolization opened new opportunities for private involvement.**

Yet business environment reforms have been timid

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- **Reforms have focussed on the easiest targets – reducing barriers to entry such as border barriers, eliminating overt barriers to FDI, and simplifying red tape and procedures.**
- **No country in the region is effectively addressing the systemic, structural, and institutional problems that impede business environments.**
- **South Asia is lagging behind**

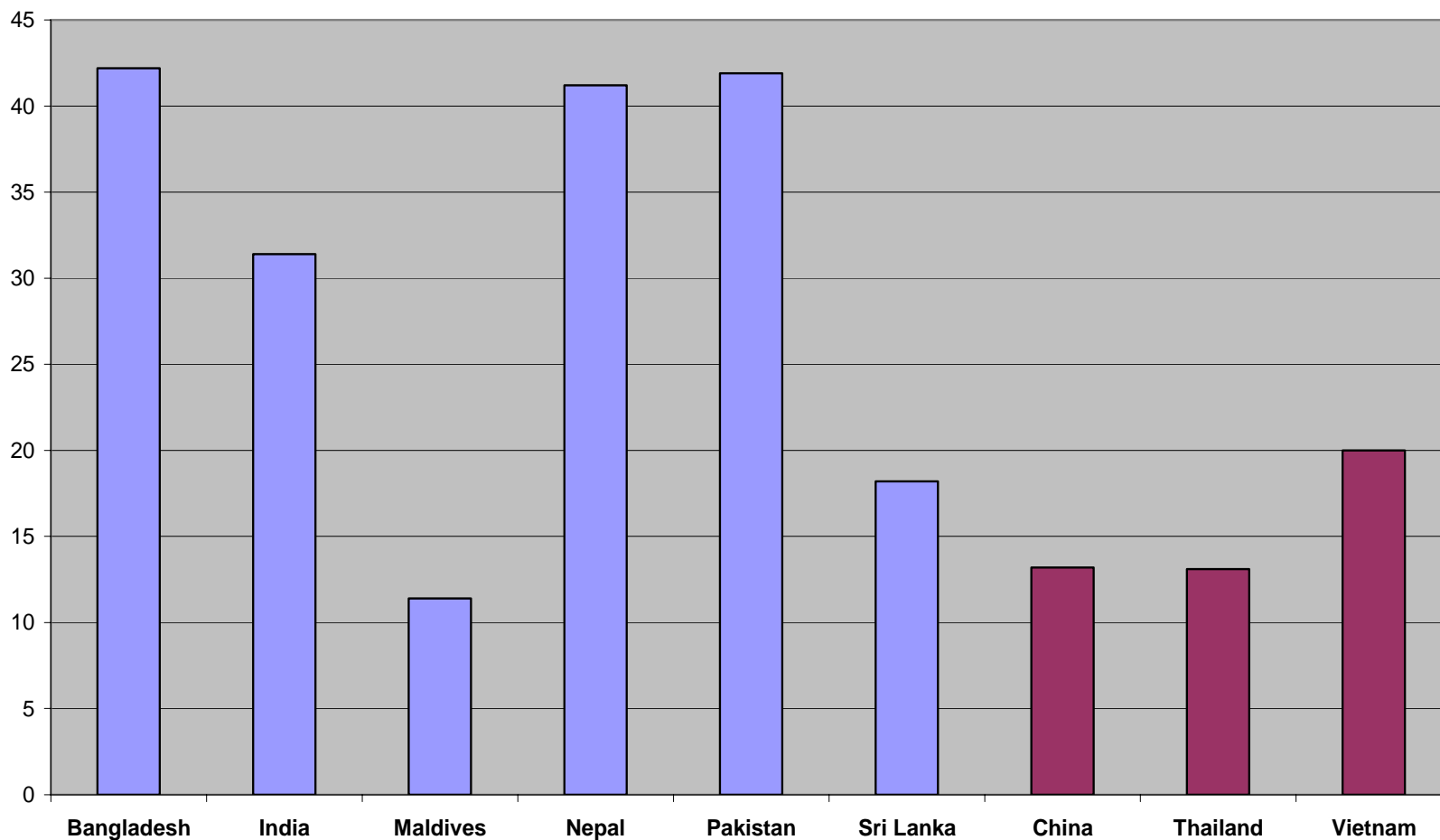
FDI Inward Stock in South Asia



Source: UNCTAD's Major FDI Indicators (www.unctad.org)

Note, Southeast Asia Avg includes Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand & Vietnam;
Eastern Europe Avg includes 19 countries from Albania to Ukraine.

Human Poverty Index for Developing Countries 2004



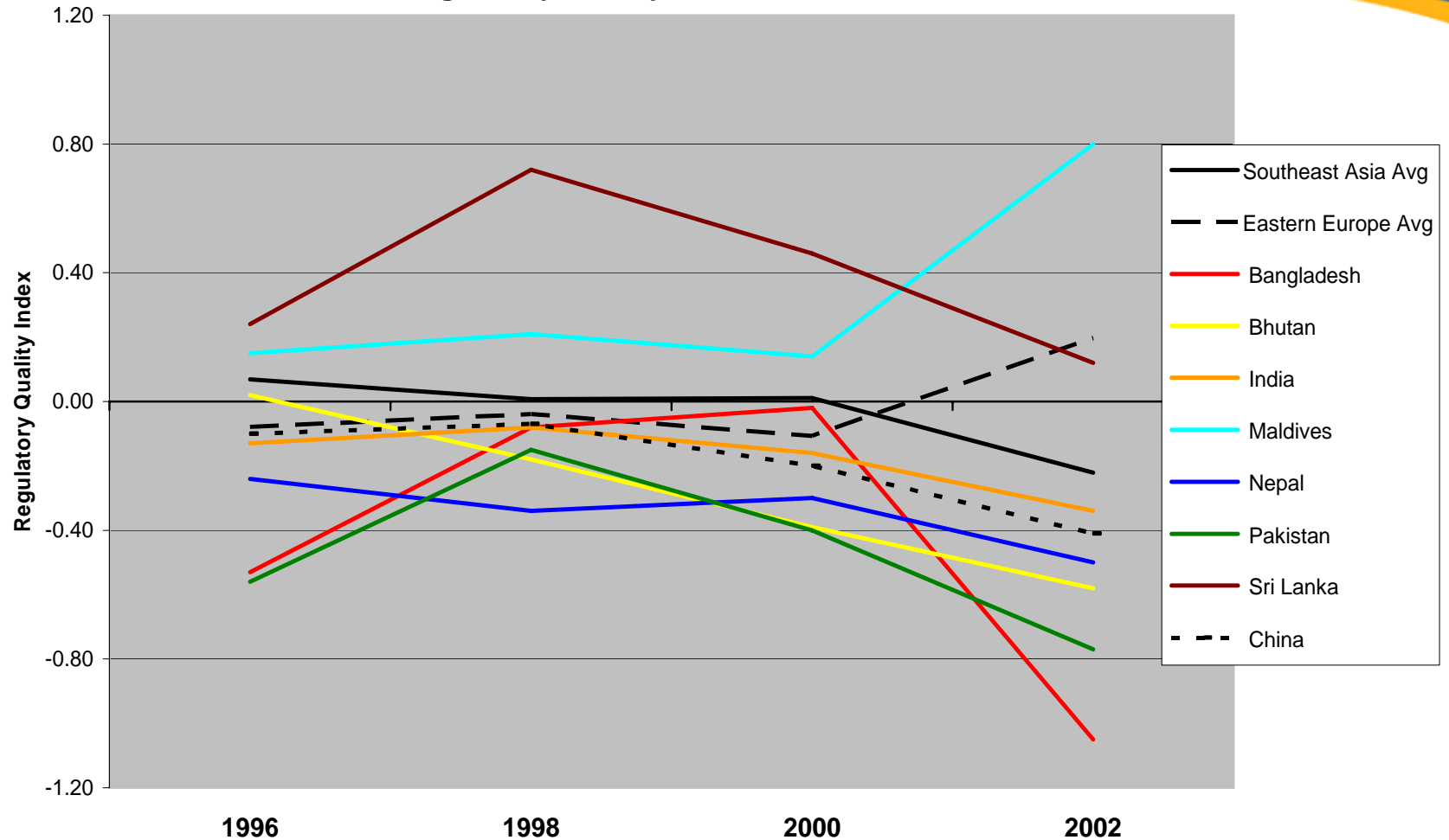
Source: UNDP's Human Development Report 2004
Note: no data available for Afghanistan Bhutan and Korea

Key systemic problems slowing reforms

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- **Lack of commitment to market reforms by political elite**
- **Habits of intervention in the public sector, with a lack of understanding and skills in how to regulate the market**
- **Poor working relations between the public and private sectors**
- **Lack of attention to competition and violation of competition principles in public policy and private sector regulation**
- **Lack of civil service reform, hence weak accountability, poor coordination, little focus on results, corruption, and weak customer orientation in the public sector**
- **Weak due process and property rights protection in the administration and judiciaries**
- **Rigid labor laws**

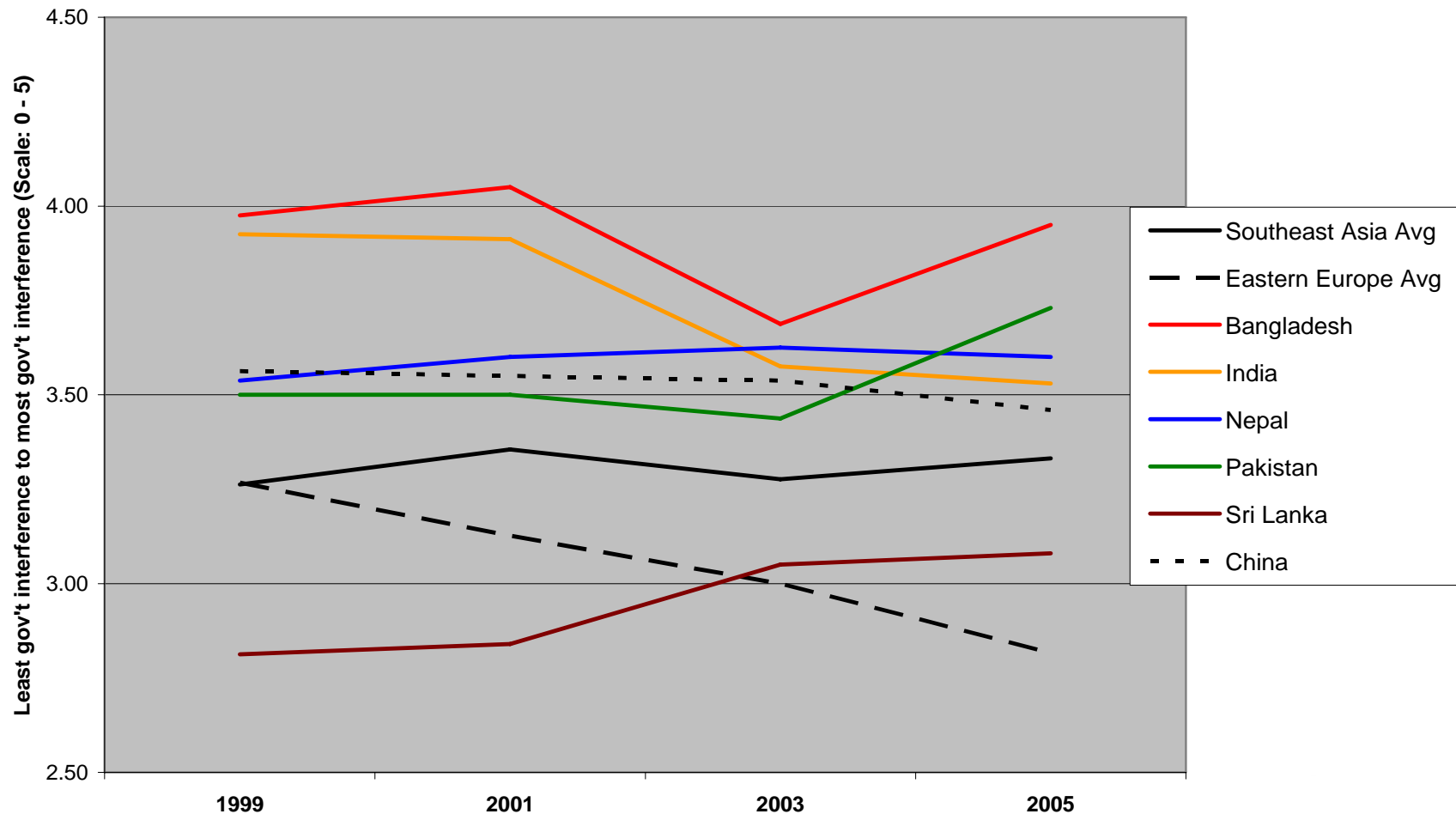
Regulatory Quality in South Asia 1996 - 2002



Note: Afghanistan fell below this range with a reg quality index of -3.57 in 2000 & -1.82 in 2002

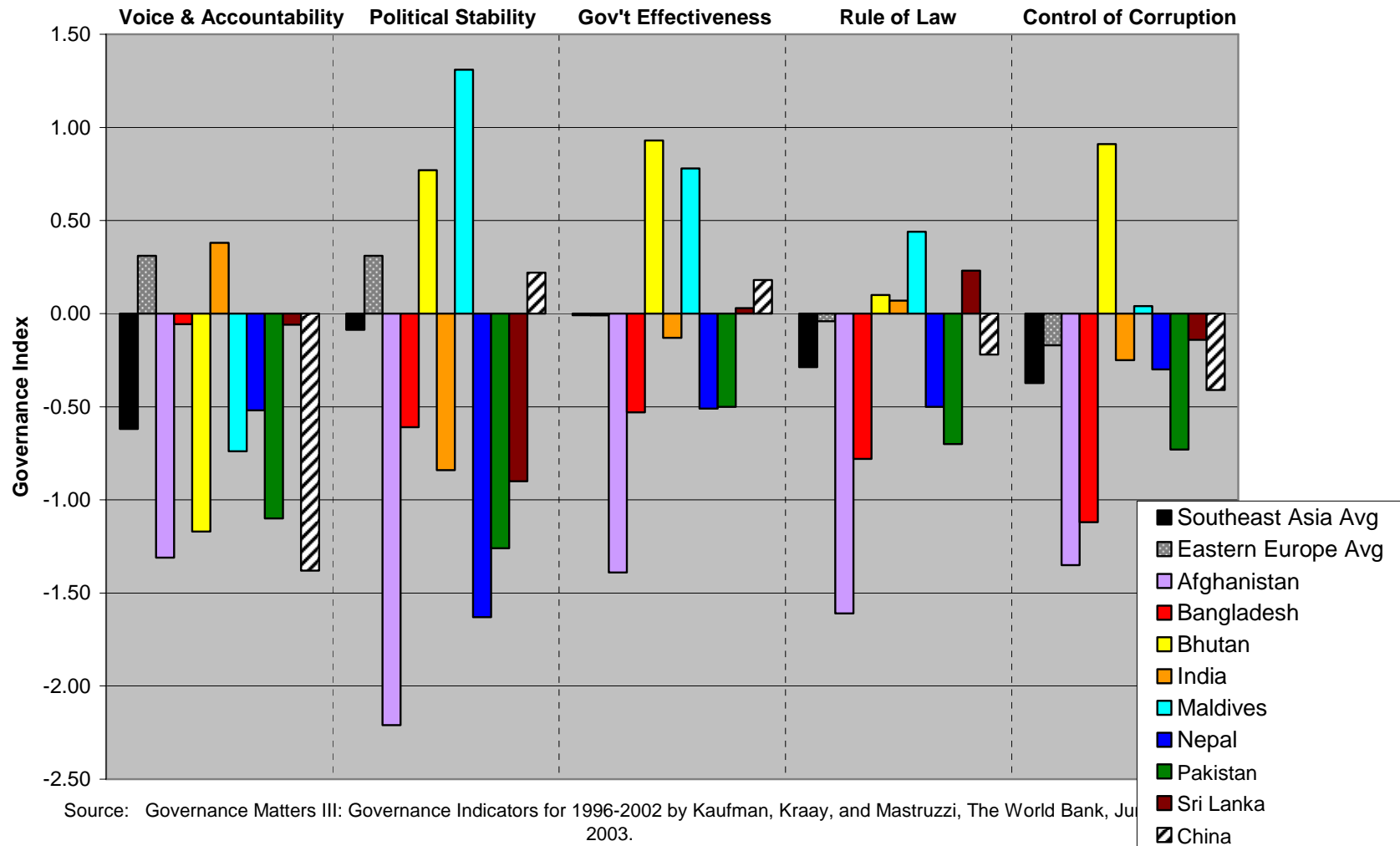
Source: Governance Matters III: Governance Indicators for 1996-2002, Kaufmann, Kraay & Mastruzzi, The World Bank, June 2003.

Index of Economic Freedom



Source: The Heritage Foundation's Index of Economic Freedom 1999-2005 (www.heritage.org)
Southeast Asia average includes Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore & Thailand.

2002 Governance Indicators for South Asia

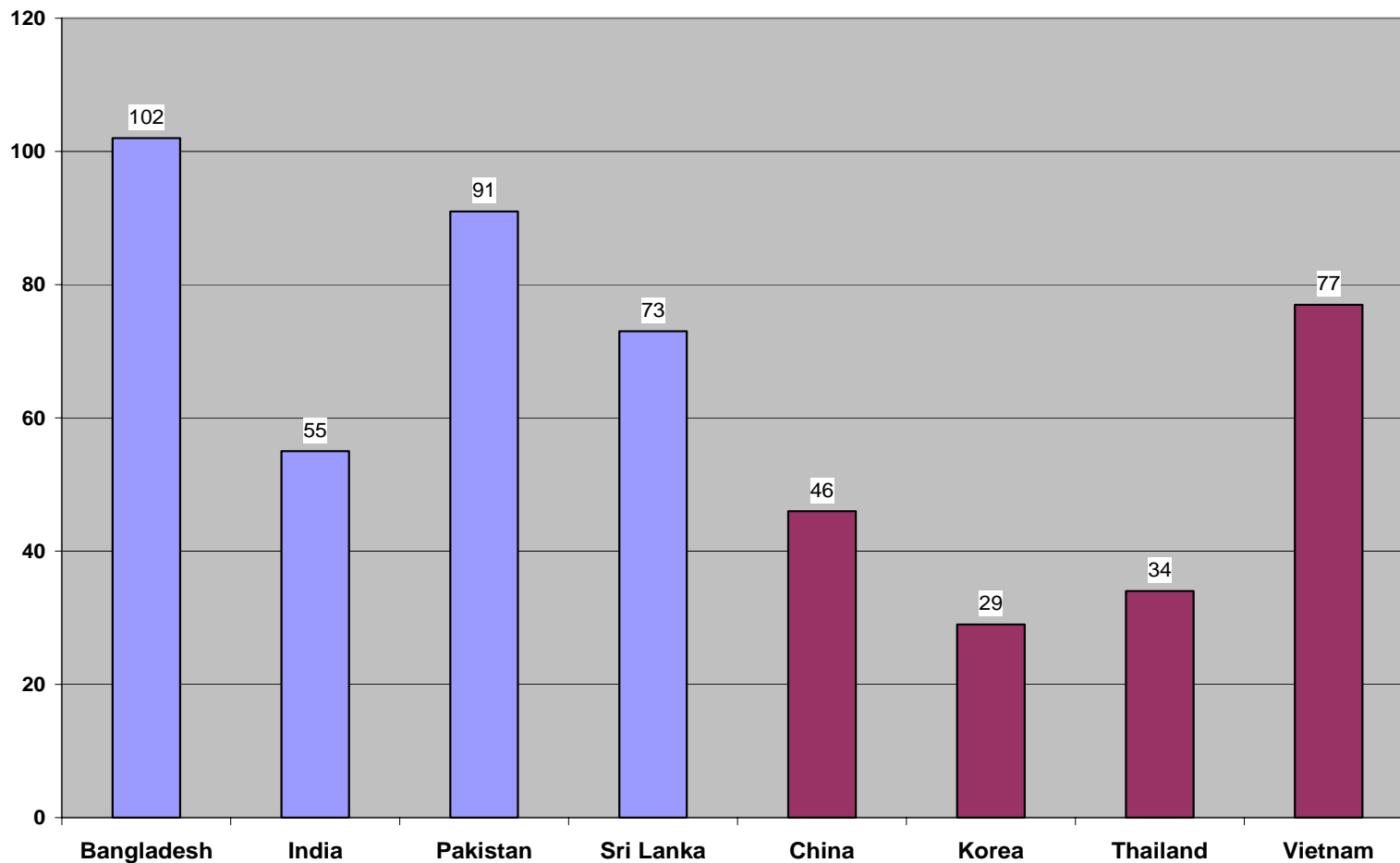


Source: Governance Matters III: Governance Indicators for 1996-2002 by Kaufman, Kraay, and Mastruzzi, The World Bank, July 2003.

Southeast Asia average includes Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand & Vietnam.

Growth Competitiveness Index -- 2004 Rankings

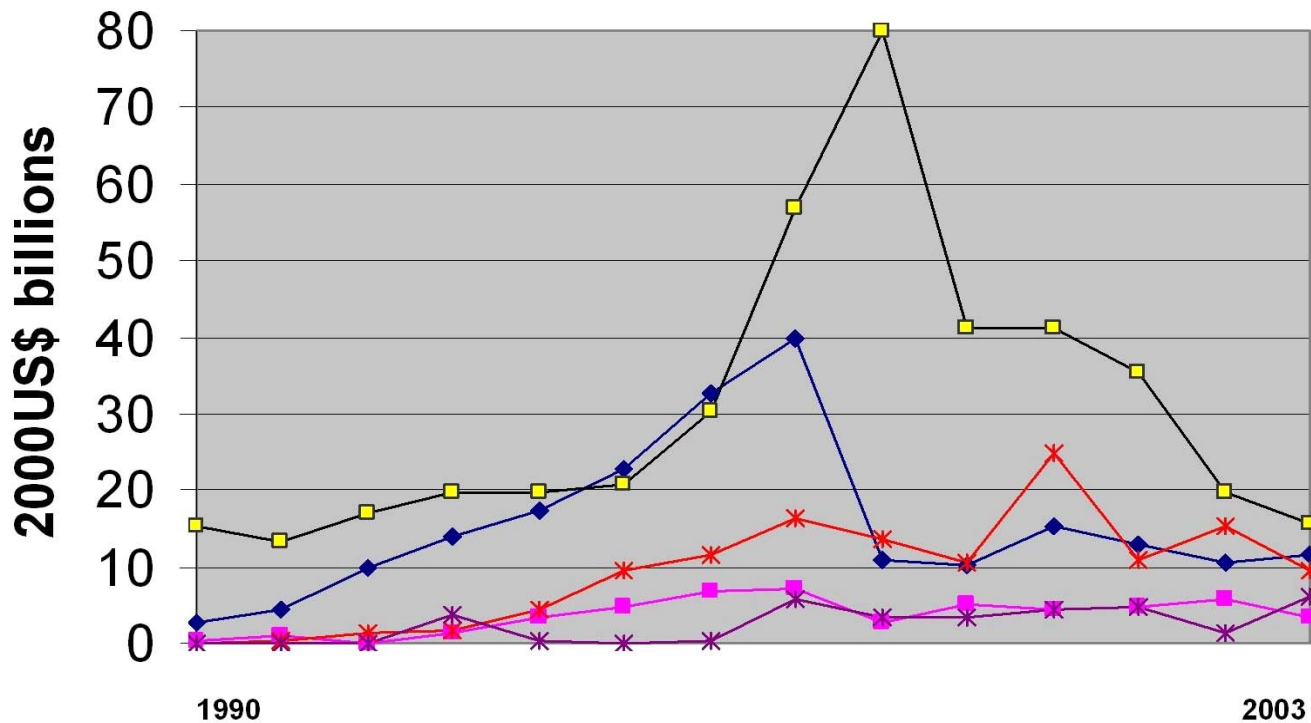
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No ranking available for Afghanistan, Bhutan, Maldives and Nepal

Private investment in infrastructure 1990-2003

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◆ East Asia and Pacific

■ Latin America and Caribbean

* Middle East and North Africa

■ South Asia

* Europe and Central Asia

Investors today are worried about the quality of governance

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- **Deregulation and simplification are good starts, but insufficient principles for market reform. We also need good regulation.**
- **The focus today is not the size of the state, but its role and its effectiveness, that is, its quality.**
- **Conclusion: South Asia needs smart government, not small government.**
- **Better regulation is the guiding principle for reform. the next steps should be building good regulatory regimes, institutions, and a more capable public sector.**

What is better regulation? Five characteristics of modern regulatory systems

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- **Security** (legal security, consistent respect for market solutions, predictable enforcement)
- **Transparency** (clear and simple rules, openness through the entire policy process, less corruption)
- **Legitimacy** (must protect safety, health, environment, consumers, public interests)
- **Efficiency** (low-cost rules, orderly and timely decisions, move swiftly to meet market needs)
- **Expertise** (good regulatory skills and understanding of complex markets and technologies)

Key areas for reform of the business sector

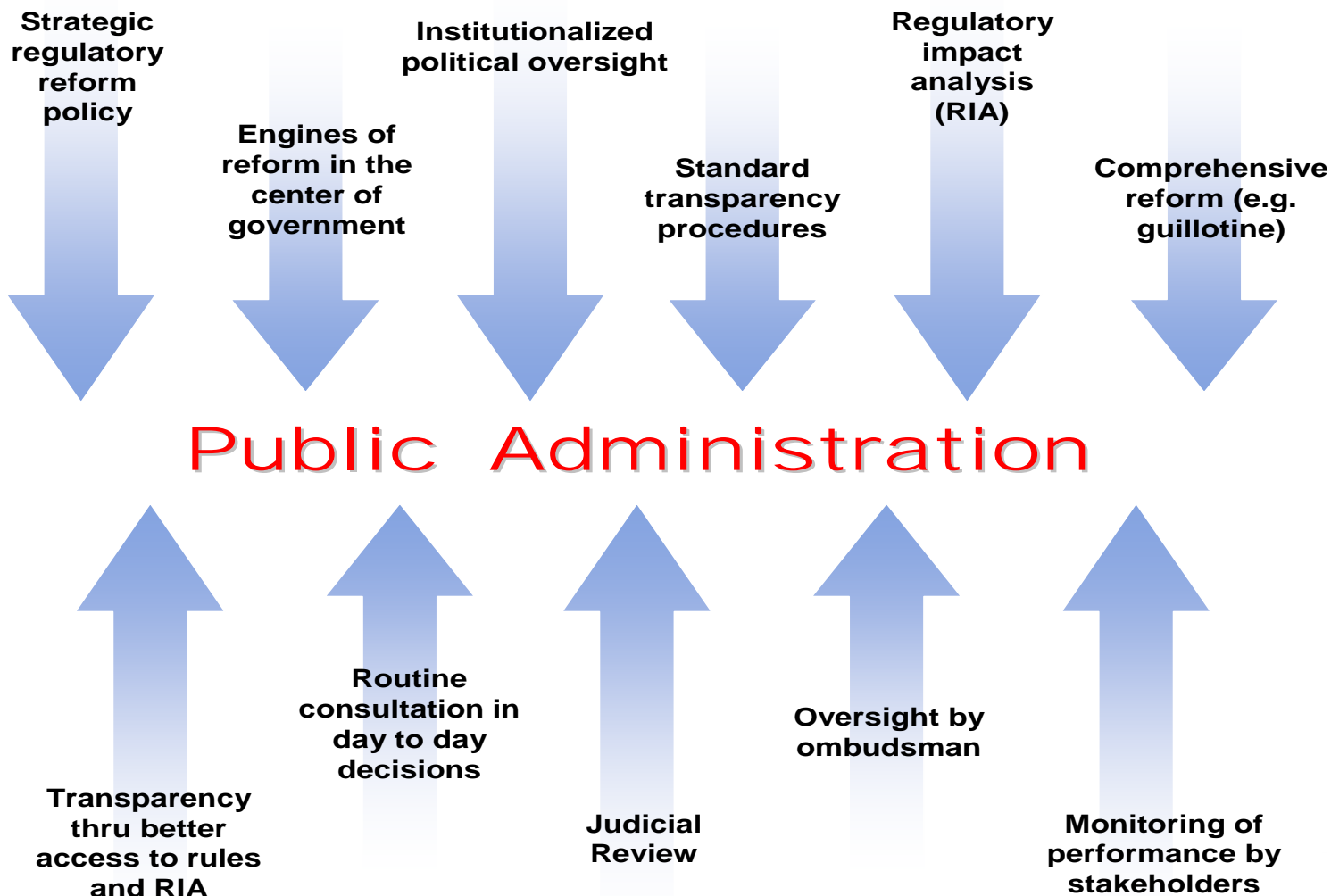
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1. **Quality of the domestic legal and regulatory environment**
2. **Anti-corruption and civil service reform**
3. **Due process: judiciary and appeals**
4. **Local governance reform**
5. **Privatization and liberalization**
6. **The informal sector** The needs of informal firms in business environment reforms have been systematically neglected.
7. **SME access to capital**
8. **Access to labor – labor market rigidities**
9. **SME access to global markets – border issues such as customs**
10. **Competition problems in domestic markets**

Top priority: the capacity to reform

- **Reform usually falters, not because governments do not know what to do, but because they lack the skills and capacities to reform.**
- **Political capacities for building consensus around market reforms are weak**
- **Weak institutions at the center of government to organize, coordinate, and oversee a multi-year, inter-ministerial reform plan, resulting in half-hearted, incomplete, and poorly implemented market reforms that are vulnerable to reversal.**

Checks and balances for regulatory quality in the public administration



A strategy for the business environment

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- **No South Asian country has an explicit regulatory and administrative reform policy. Business environment reforms are scattered through a variety of plans.**
- **Good international practice: every country with an organized, multi-year program of regulatory reform has found it necessary to establish an explicit policy statement on reform at the highest levels of government**
- **The more complete the principles, and the more concrete and accountable the action program, the wider and more effective is reform.**

The OECD Checklist for Regulatory Quality

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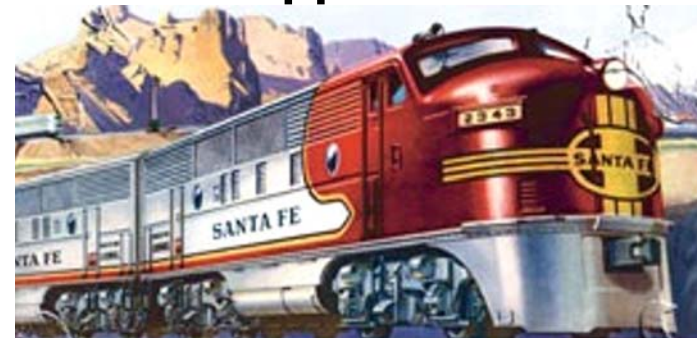
- 1. Is the problem correctly defined?**
- 2. Is government action justified?**
- 3. Is regulation the best form of government action?**
- 4. Is there a legal basis for regulation?**
- 5. What is the appropriate level (or levels) of government for this action?**

The OECD Checklist for Regulatory Quality (cont.)

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- **6. Do the benefits of regulation justify the costs?**
- **7. Is the distribution of effects across society transparent?**
- **8. Is the regulation clear, consistent, comprehensible and accessible to users?**
- **9. Have all interested parties had the opportunity to present their views?**
- **10. How will compliance be achieved?**

- **No South Asian country has a central regulatory reform unit. Economic policy reforms have been mostly top-down, driven by strong prime ministers or Finance Ministers.**
- **A well-organized and monitored reform process, driven by “engines of reform”, is needed. Three steps:**
 - Institutionalize **political will for reform.**
 - Assign operational responsibility for **oversight and management – the engine of reform -- to a ministerial body that is capable of handling an inter-ministerial process and that has clear accountability for results.**
 - Finance an expert technical Secretariat **to support the reforms.**



Two levels of oversight: Ministerial committee and an expert Secretariat

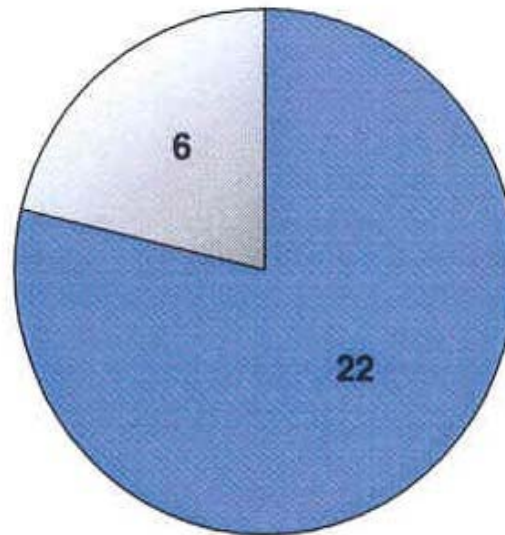
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- **A ministerial-level body for regulatory reform is needed to oversee reforms at the political level and insist on ministerial action.**
- **A dedicated and expert group is needed at the working level, usually as a Secretariat to the ministerial committee**
- **Inter-ministerial coordination must be developed as part of both processes.**

Put a minister in charge of regulatory reform...

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Responses to the question: Is a specific minister accountable for promoting government wide progress on regulatory reform?



Sustain political commitment through good program design...

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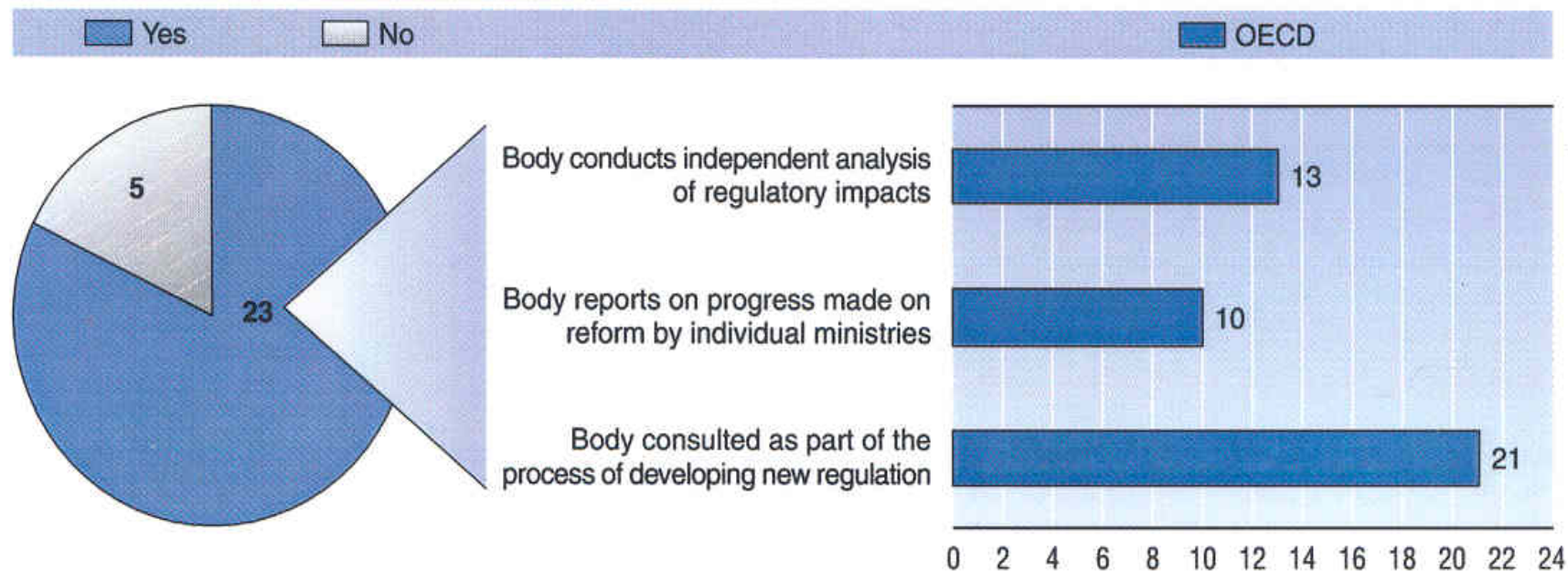
Institutionalize political will by:

- **assigning accountability to a high-ranking Minister or to a committee of the Cabinet or Government;**
- **linking reform goals to the country's development goals and to international commitments such as WTO compliance**
- **ensuring accountability for clear results through setting targets and monitoring progress;**
- **producing visible results early to strengthen the allies of reform;**
- **improving transparency in the policy design; and**
- **engaging a wide range of stakeholders in the planning and monitoring process.**

...backed up by expert oversight of regulatory reform

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Responses to the question: Is there a dedicated body responsible for encouraging and monitoring regulatory reform and regulatory quality in the national administration?



Source: OECD (2000) Responses to the Survey on Regulatory Capacities in OECD Countries, Paris.

Checklist for choosing location of the central reform unit

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- *Have a longer-term agenda and mandate. **Sustained focus and influence over several years.***
- *Have an active inter-ministerial component to **coordinate the parts of the public administration that will have to actually implement reforms.***
- *Be authorized, connected, and accountable for results to the centre of government to **strengthen policy coordination and oversight capacities.***
- *Have strong relations and an active involvement with the private sector, and **include those parts of the government who are champions of private sector development.***
- *Command the resources needed to get the job done, including a **dedicated secretariat with the right skills and financing to move reform forward.***

Open up the regulatory process by building new transparency and consultation mechanisms

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- **Consultation processes between public officials and civil society must be a routine part of decision-making, rather than ad hoc, and must be structured to avoid bias and uneven access by more powerful interests**
- **Centralize a register of formalities accessible by Internet**

Two main regulatory reform tasks

- **Picture the regulatory system as a swimming pool**
- **To create a healthy, clean pool for businesses you must:**
 - **Clean the water in the pool (the regulatory stock)**
 - **Filter new water coming into the pool (the regulatory flow)**



Use reform strategies that attach problems systematically or globally

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- **Countries in transition face an enormous task of reviewing and updating the legacy of laws, rules, and other instruments dating back decades.**
- **Yet updating imposes huge administrative, legal, and political costs, and takes a long time.**
- **Consider the regulatory guillotine for rapid review and updating**

Silence is consent

- **Businesses in South Asia face long delays in uncertainties when they ask for decisions from the public administration**
- **The “silence is consent” rule switches the burden of action : if administrators fail to act within pre-set time limits (usually two weeks to 30 days), the business is automatically granted approval.**

Use RIA to inform policy makers about impacts on the business environment

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- **No South Asian country routinely uses regulatory impact analysis in developing new laws and rules, although Sri Lanka has made the most progress.**
- **One of the most important capacities of a modern regulator is the ability to assess the market impacts of a regulation before it is adopted.**
- **The major tool used around the world to examine the costs and benefits of government decisions is regulatory impact analysis (RIA).**

RIA is an evidence-based process of making regulatory decisions

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RIA is a process of:

- **asking the right questions in a structured format to support a wider and more transparent policy debate.**
- **systematically and consistently examining selected potential impacts arising from government action or non-action,**
- **communicating the information to decision-makers and stakeholders**

Conclusions: A call to action

- **Small reforms are unsustainable with improvement in systemic problems.**
- **More attention to building new, market-oriented regulatory regimes, skills, roles, institutions and capacities for change in South Asia could bring large benefits in stabilizing and sustaining rapid growth.**