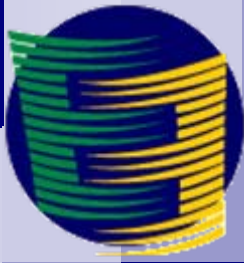


**TASK FORCE ON REGIONAL ELECTRICITY
COOPERATION IN CENTRAL AND SOUTHERN ASIA**



*Model Intergovernmental and
Host Government Agreements*

18 NOVEMBER 2007, KABUL, AFGHANISTAN

Thea Khitarishvili



Structure and objectives of the Model Agreements

- A legal framework for the government-investor relationship
 - Cross-border pipelines in international law
 - Structure of the Model Agreements
- From the First Edition to the Second Edition
 - The origins of the model agreements' project
 - A work in progress: the developments after the First Edition
- Defining key concepts
 - Preamble and Definitions (Article 1 IGA and HGA)
 - Entry into force; Effective Date and Duration (Article 2 IGA - HGA)
 - Authority (Article 3 HGA)
 - Evidence of rights (Article 6 HGA)



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Cross-border pipelines in international law

➤ The role of the pipeline

- Merchant pipelines
- Transportation service pipelines
- Hybrid pipelines

➤ The role of the border

- Border delivery
- Integrated cross-border transit
- Integrated cross-country transit



The Model Agreements package

- Model Agreements (MA) – a guide to best practice
- Model IGA and HGA – a package approach
- Basis of the package approach:
 - IGA and HGAs are interdependent and linked
 - IGA is an international treaty
 - HGAs are State contracts
 - Entry into force of HGAs is conditional on that of the IGA
 - All agreements refer to one identified project with identified project investors



Structure of MA package

Intergovernmental Agreement (“IGA”)

- Treaty model – agreement among States
- Applies not only to transit state, but also to producer and consumer states (at least 2 state parties)
- Umbrella agreement to Host Government Agreements (“HGAs”) and to project agreements
- Deals with horizontal issues



Structure of MA package

Host Government Agreement (“HGA”)

- Agreement between host state and project investor (= State contract)
- Covers commercial terms of the project insofar as these concern the relevant host government
- Deals with vertical issues



Structure of MA package

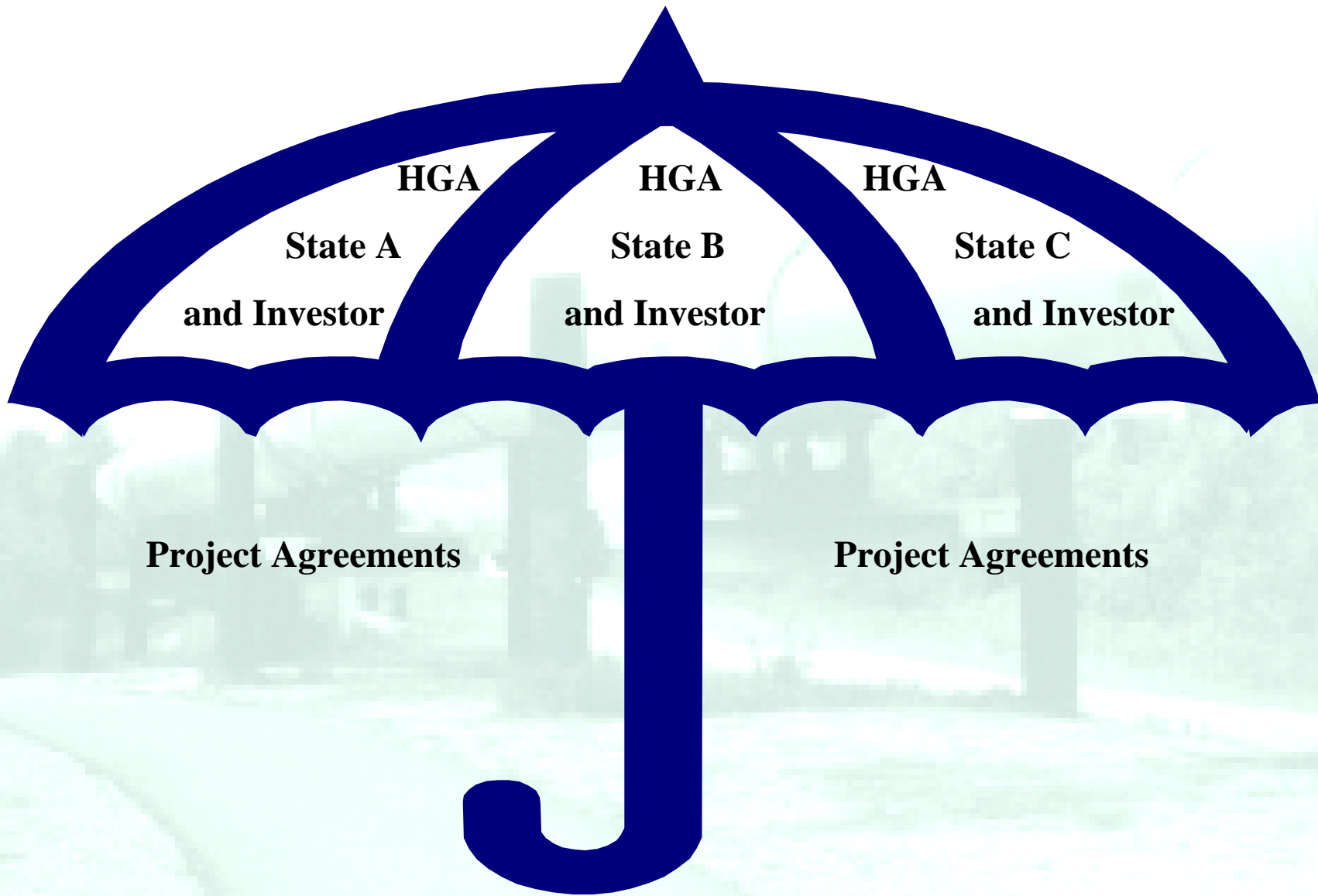
Project Agreements

- Outside scope of the Energy Charter Secretariat's Model Agreements mandate
- Defined in IGA and in HGAs



IGA

States A, B & C





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The origins of the Model Agreements project

Political context - “*Energy Transit: the Multilateral Challenge*”

➤ April 1998 – G8 Summit meeting in Moscow

“(…)governments must play a role in creating the appropriate framework conditions which favour the mobilisation of private capital(…)”

➤ June 1998 – Energy Charter Working Group on Transit

“*consolidate, further elaborate and develop international rules, standards and principles relevant to Energy Transit*”



The origins of the Model Agreements project

The Energy Charter Multilateral Transit Framework

- Working Group on Transit consultation: issues raised
- Proposal from the Republic of Azerbaijan - *“Advancing the development of international rules governing energy transit”*
 - Article 7 ECT
 - Energy Charter Protocol on Transit
 - *“Model project-specific agreements”*
- Development of a concept
 - Intergovernmental Agreement
 - Host Government Agreement
 - Transportation Agreement



From proposal to the First Edition of the Model Agreements

- First Edition of the Model Agreements
 - Finalised in 2003
 - Reviewed by the Expert Group
 - Submitted to the Energy Charter Conference

- Energy Charter Conference, December 2003

“The Conference took positive note of the first edition of both Model Agreements, and authorized the Secretariat to update both the IGA and HGA Models, in consultation with member-countries, in the light of future developments.”



Development of a Second Edition

Objectives of the Second Edition

- Achieve better balance of rights and obligations of state parties and investors
- Ensure the completeness of the agreements
- Clarify the rights and obligations of state parties and project participants



Legal Advisory Task Force

Agip KCO

Allen & Overy LLP

Ashurst

Benfield Group

BHP Billiton

BP

Chadbourne & Parke LLP

Clyde & Co

Denton Wilde Sapte

E-on Gastransport

Ernst & Young

ExxonMobil

Freshfields Bruckhaus Deringer

GE Oil & Gas

Herbert Smith LLP

Latham & Watkins LLP

Lovells LLP

McDermott Will & Emery

Miller Insurance

Norton Rose

Occidental Middle East Development Co

OMV

Premier Oil

Shearman & Sterling LLP

Shell International BV

Skadden, Arps, Slate, Meagher & Flom LLP

TOTAL

White & Case LLP



Development of a Second Edition

Timetable for the Second Edition

- October 2006 – Workshop on Model Agreements
- November 2006 – Status report to the Charter Conference
- June 2007 – Expert Group to review the Second Edition
- 2nd semester 2007 – Recommendation from Expert Group
- December 2007 – submission of the Second Edition to the Charter Conference



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Preamble

➤ IGA

- State parties as Contracting Parties/signatories?
- Ownership where permitted

➤ HGA

- Date of execution
- Project investors
- Obligations in preamble



Definitions

(Article 1 IGA and HGA)

➤ Parties to the Agreement

- Structure
- State
- Investors

➤ Project

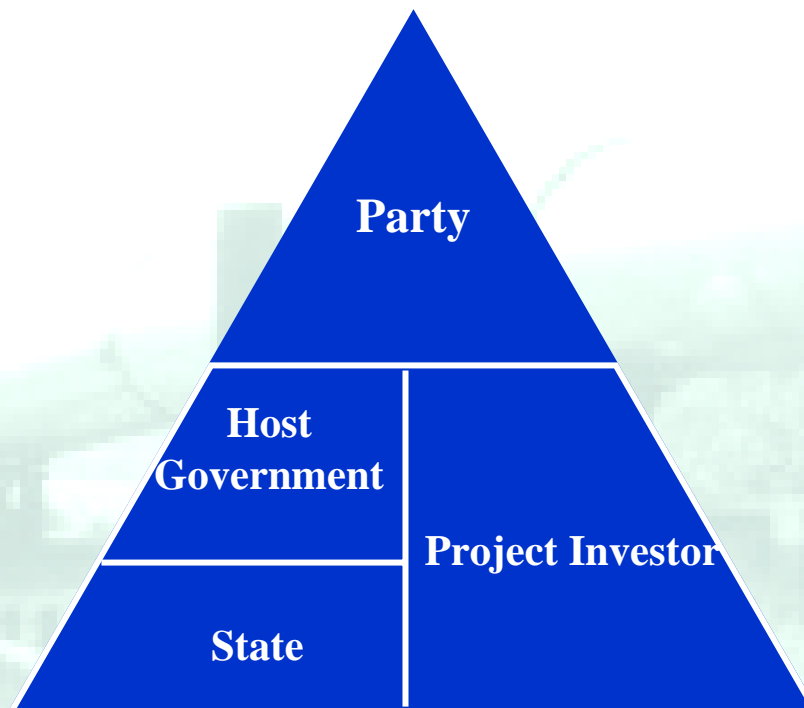
- Project
- Project Activities

➤ Energy Materials

- Petroleum
- Natural Gas

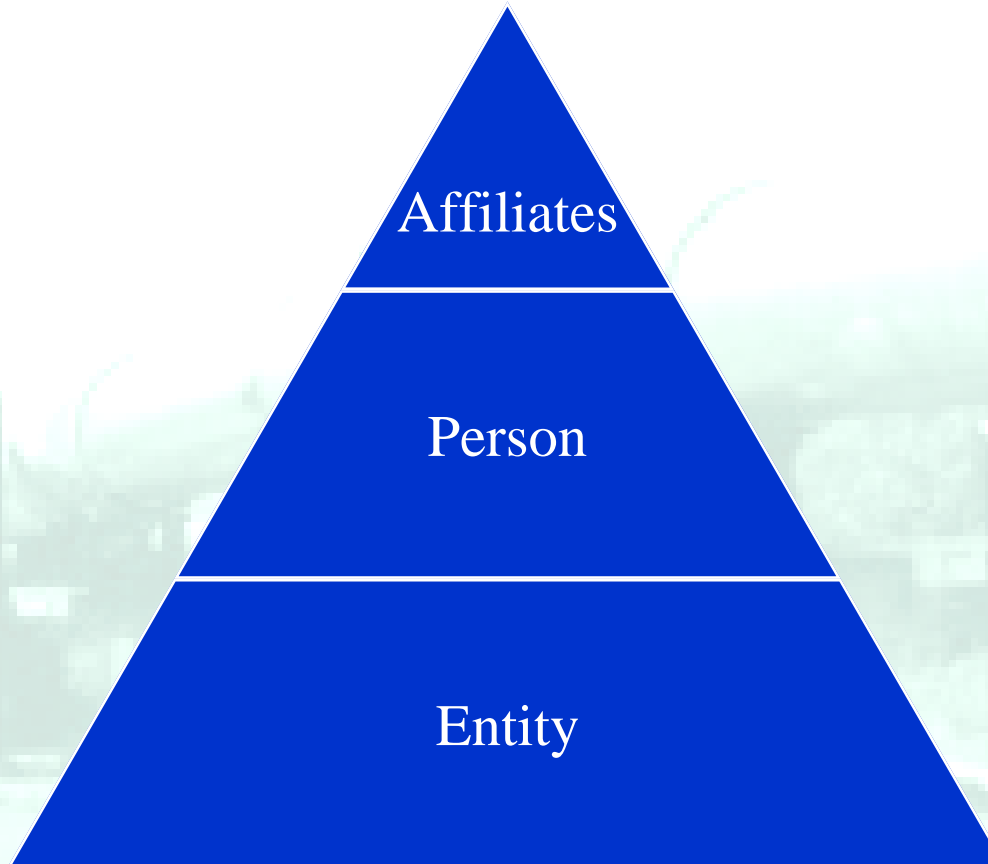


Parties to the HGA



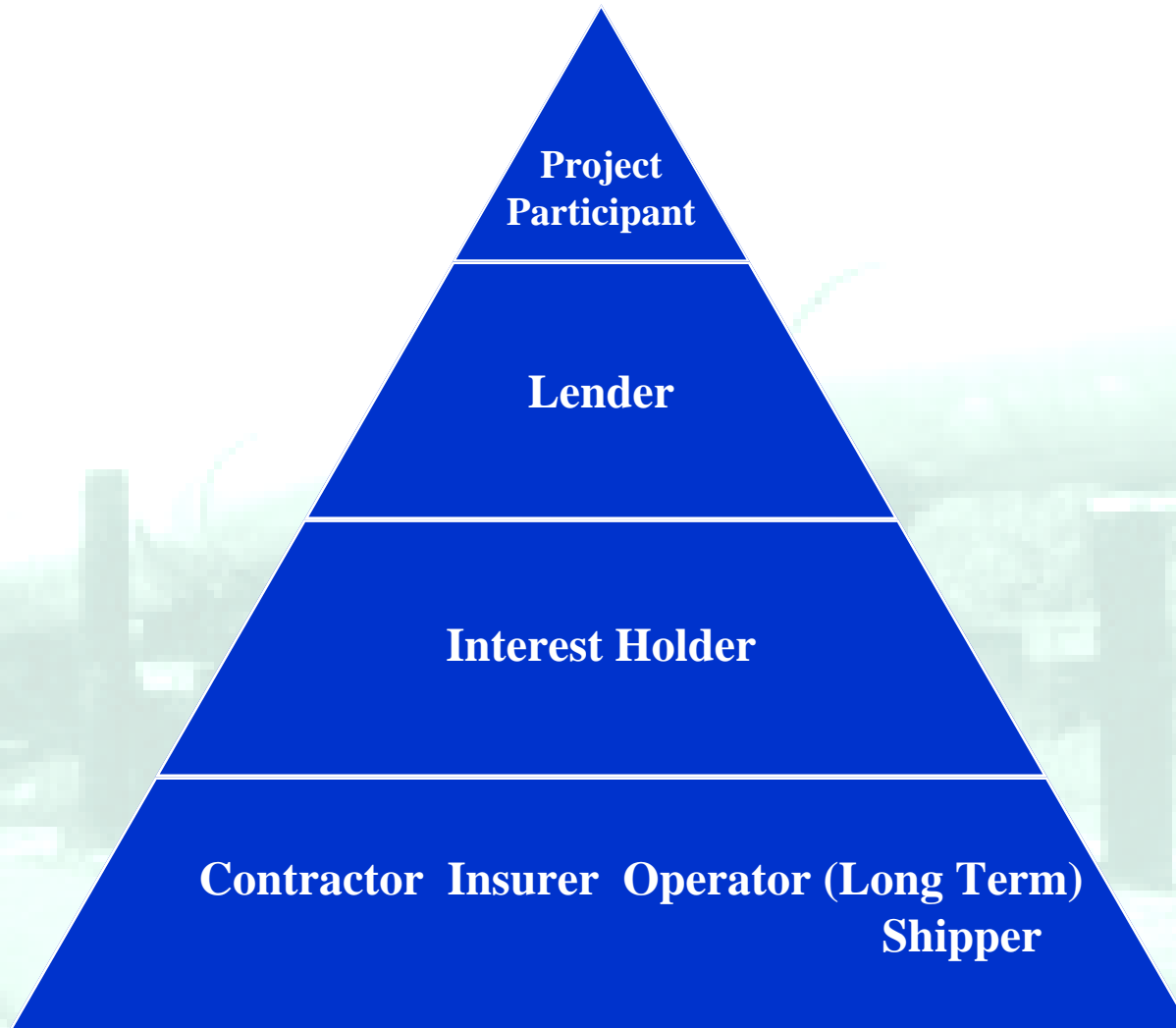


Affiliates





Participants in the Project





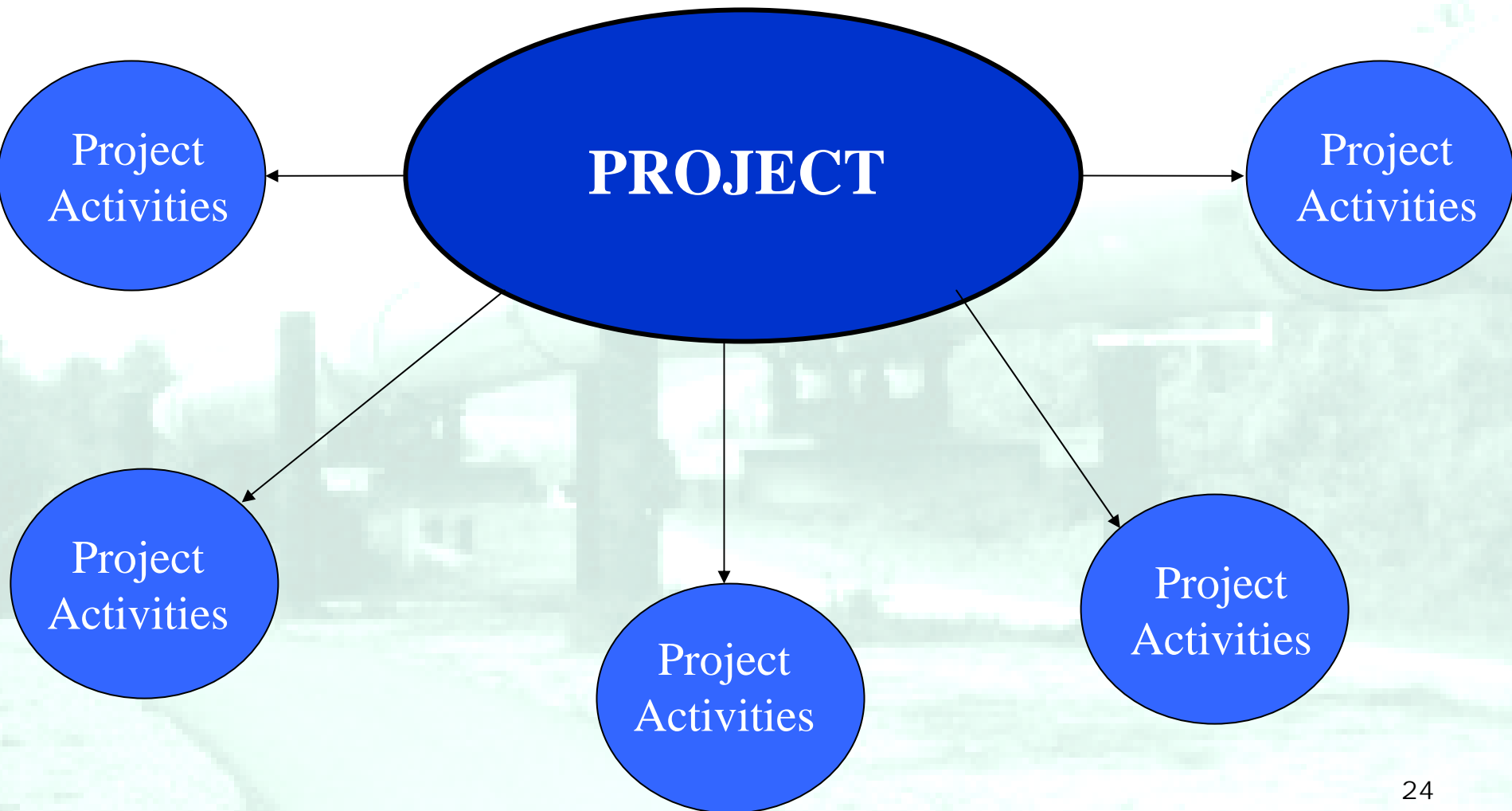
State Authorities and Entities

State Authority

State Entity



Project / Project Activities





Natural Gas and Petroleum

“Natural Gas” shall mean any hydrocarbons or mixture of hydrocarbons consisting essentially of methane in a gaseous state which is extracted from the sub-soil in its natural state, separately or together with liquid hydrocarbons.

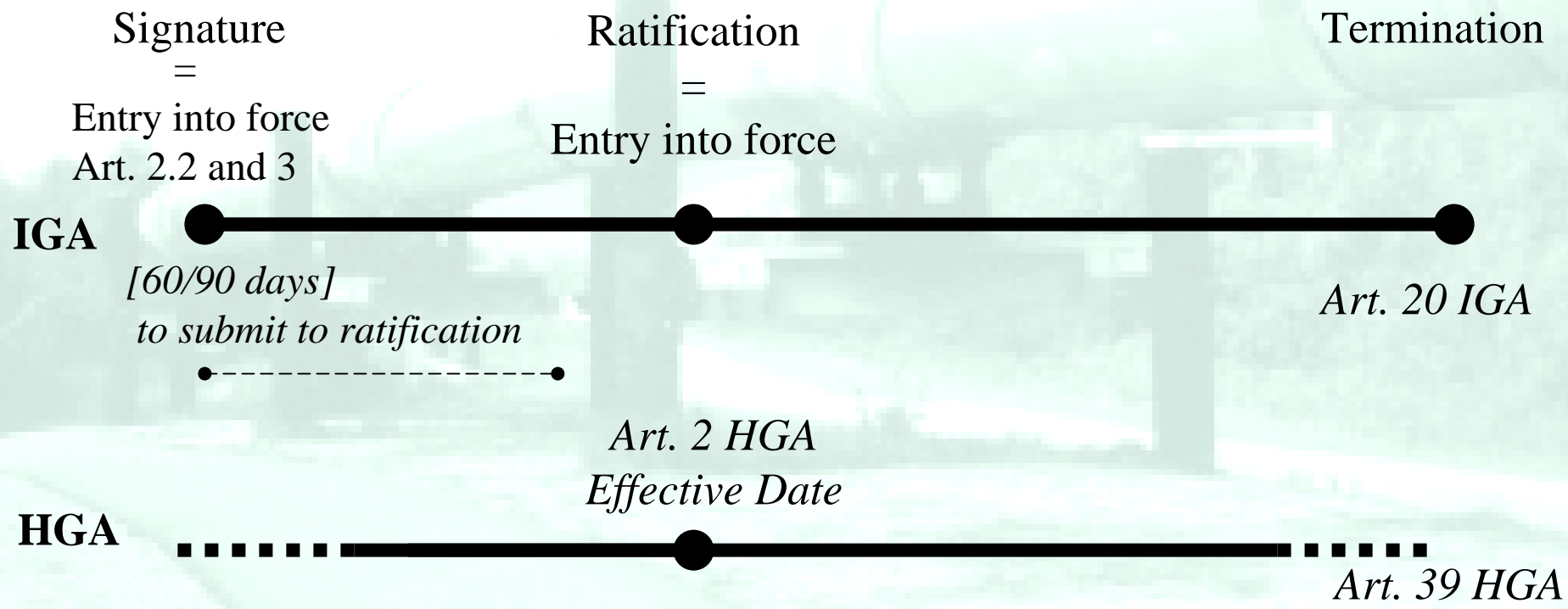
“Petroleum” shall mean any liquid hydrocarbon, including crude oil, condensate, unfinished oils, refined products obtained from the processing of crude oil, and natural gas plant liquids.



Entry into force

Effective date and duration

(Article 2 IGA - HGA)





Authority (Article 3 HGA)

- Authority to commit

(...) legal authority to make all commitments (...)

- Authority to execute and perform

(...) execution and performance of this Agreement is within its powers.”



Evidence of rights (Article 6 HGA)

➤ Why the evidence of rights?

“(...) where necessary to ensure the timely implementation and execution of Project Activities (...)”

➤ Reasonable request

“The Host Government agrees that, if reasonably requested (...), it shall in a timely fashion evidence the grant of rights (...) to facilitate the carrying out of the Project or Project Activities (...).”

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THANK YOU

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