ENERGY EXPORT INFRASTRUCTURE PROJECTS USING THE FRAMEWORK OF THE ENERGY CHARTER TREATY

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Energy Charter Secretariat
Structure

- Energy Charter Treaty
  - Constituency
  - Principles
  - Bodies
- Infrastructure Projects
  - Baku Tbilisi Ceyhan
  - South Caucasus Gas Pipeline
- Model Agreements
  - Host Government
  - Inter Governmental Agreement
- Way Forward
THE ENERGY CHARTER TREATY
1994 - Signature         1998 - In Force

PRINCIPLES
- Investment Protection
- Energy Trade based on WTO Rules
- Freedom of Transit
- Energy Efficiency
- Dispute Settlement

BODIES
- Energy Charter Conference
- Energy Charter Secretariat
- Energy Charter Groups (Trade & Transit Investment / Energy Efficiency)
- Industry Advisory Panel
- Legal Task Force

[Map showing signatories and observers]
Energy Charter Treaty Principles

- Promotion and protection of energy investments
  - non-discrimination (MFN / NT)
- Enhancing energy trade
  - WTO rules
- Facilitation of transit
  - freedom of transit
  - non-discrimination
- Energy Efficiency
- Dispute settlement rules
Investment Protection

- Investment Promotion and Protection
  - Creation of favorable investment climate based on openness, consistency and non-discrimination

- Access to resources
  - National sovereignty over natural resources
  - Rules on exploration and production to be publicly available, transparency and non-discrimination

- Investment protection

- Risk mitigation
Energy Trade and Transit

- Energy trade based on WTO rules
  - Extending to those not yet members of WTO
- Facilitate energy transit based on non-discriminatory and transparent rules
  - Non-discrimination over origin, destination, ownership or pricing
  - No impediment to the creation of new capacity
  - Security of established transit flows
  - Non-interruption of transit flows until dispute is settled
Dispute Settlement

- Dispute settlement mechanisms under the Treaty
  - Disputes between parties to the Treaty
  - Disputes between investors and host governments
  - Transit disputes
  - Trade disputes
  - Competition and environmental disputes

- Use of the dispute settlement mechanisms
  - 14 cases as of February 2007
Energy Charter Treaty Bodies

- Dialogue (producer, consumer and transit states)
  - Energy Charter Conference
  - Group on Investment
  - Group on Trade and Transit
  - Energy Efficiency and Related Environmental Aspects
  - Policy events

- Dialogue between governments and industry
  - Industry Advisory Panel
  - Legal Task Force
Infrastructure Projects
(Baku Tbilisi Ceyhan / South Caucasus Pipeline)

Source: Caspian Energy Development and Export
Model Agreements

- A legal framework for the government-investor relationship
  - Intergovernmental Agreement – international treaty
  - Host Government Agreement – investor/State agreement
  - [Project Agreements – outside scope of Secretariat’s work]

- A work in progress: developments after the 1st Edition
Contractual Structure of a Project

- **Commercial Contracts**
  - Transportation, EPC, Operation and Maintenance.....

- **Project sponsor**
  - financing
  - Shareholder/consortium arrangement

- **Intergovernmental General principles**

- **ECT**
- **IGA**
- **HGA**
  - HGA
  - HGA

*Intergovernmental General principles*
Key Provisions - IGA

- Entry into force
- Cooperation and free flow of energy
- Environmental and safety standards
- Taxes
- Responsibility
- Dispute settlement
- Termination
Key Provisions - HGA

- Authority
- Insurance
- Land Rights
- Personnel
- Labour standards/Training/Technology transfer
- Liability
- Change of law
- Expropriation
Way Forward

- Cooperation within the framework of ECT
- Maximize the use of expertise in the region
  - Establishment of a task force
- Development of model agreements for HVDC interconnections/cross border lines
- Commitment to sustainable and secure regional power trade based on the ECT
- Preparation of a regional ministerial forum
Thank You

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Reserve slides
Investor-State Dispute Settlement

- Consultations (3 months)
  - Domestic courts of host country
  - Previously agreed DS procedure
  - ECT Arbitration
    - ICSID
    - Stockholm
    - Ad-Hoc Arbitration under UNCITRAL rules
      - Application of IIA and International Law
        - Award final and binding
          - Award enforceable