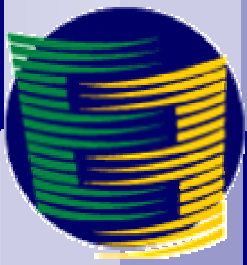


Hydrocarbons Development and Transportation across Borders: Investment, Market Structure, Integration



Energy Charter Model Agreements for Cross-Border Pipelines: A Framework for Cross-Border Energy Infrastructure

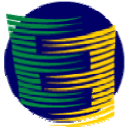
Graham Coop
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Energy Charter Secretariat
graham.coop@encharter.org

19 June 2008, Four Seasons Hotel,
Damascus, Syria



Energy Charter Model Agreements for Cross-Border Pipelines: A Framework for Cross-Border Energy Infrastructure

1. The past
2. The present
3. The future



Energy Charter Model Agreements for Cross-Border Pipelines: A Framework for Cross-Border Energy Infrastructure

1. The past: Cross-border pipelines and the birth of the Model Agreements (*MA*s)
2. The present
3. The future



Cross-border pipeline projects

- 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



Advantages of Model Agreements as a framework for cross-border energy infrastructure

- Neutral starting point for negotiations
 - o Developed by ECS with participation of LATF consisting of lawyers advising banks, governments and industry
 - o Reviewed by Expert Group on Model Agreements consisting of energy and legal experts from ECT member states
 - o Used as starting point in Central Asia, Balkans and elsewhere
- Provide easy access to expert drafting and knowledge in specialist areas
- Regularly updated to reflect changes in energy market practice
- Added value in terms of transparency and security for investment



Pipeline Model Agreements (*PMAs*) Second Edition

- The Pipeline Model Agreements – First Edition (1999-2003)
- The need for a Second Edition
- Review and development of the First Edition by the LATF (2005-2007)
- Second Edition welcomed by the Energy Charter Conference – December 2007



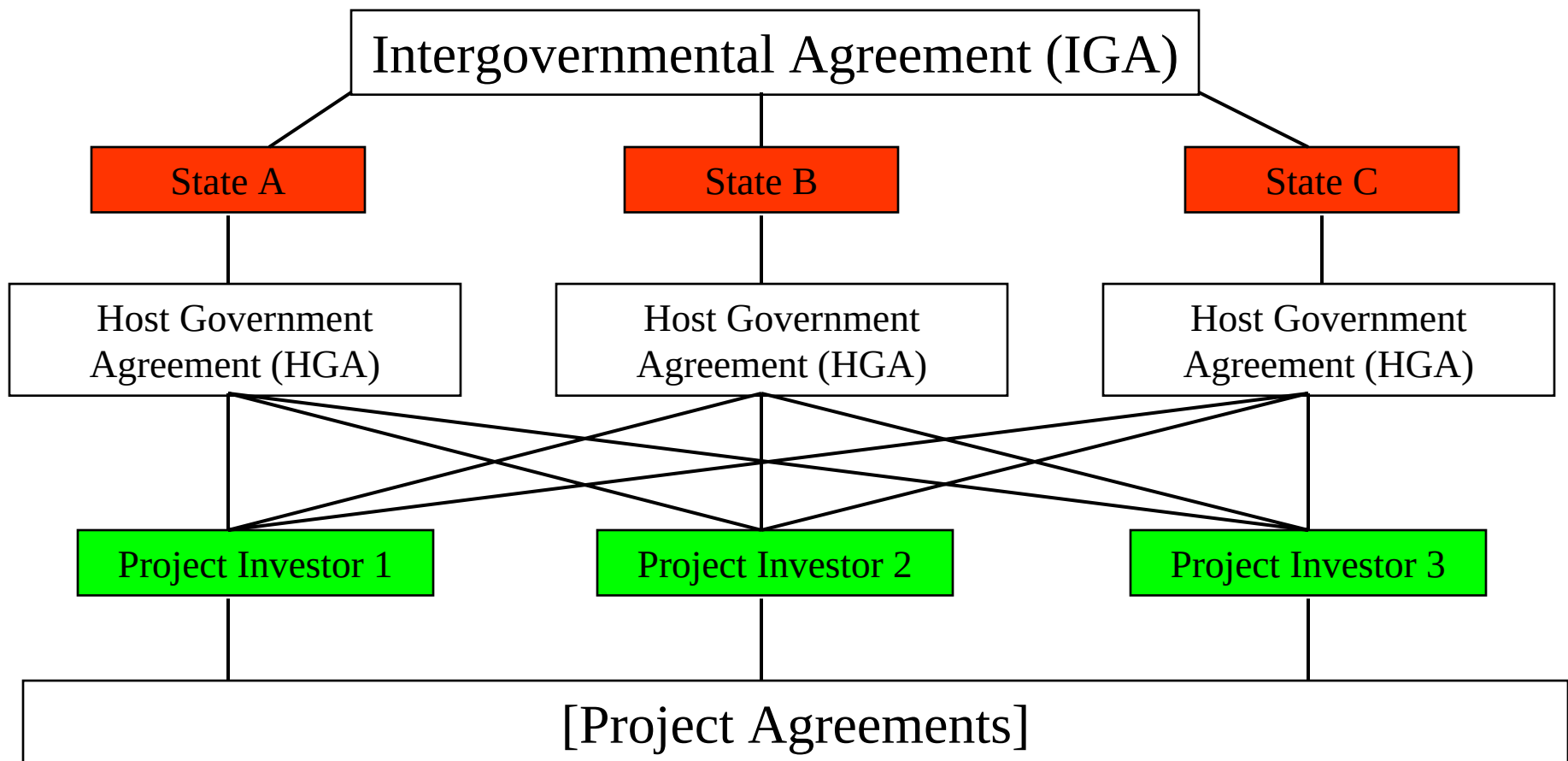
Energy Charter Model Agreements for Cross-Border Pipelines: A Framework for Cross-Border Energy Infrastructure

1. The past: Cross-border pipelines and the birth of the Model Agreements (MAs)
2. The present: Key features of the MAs
3. The future



Pipeline Model Agreements (PMAs) Second Edition

Structure of the PMAs





Pipeline Model Agreements (*PMAs*)

Second Edition

Key features

- Pipeline Model Agreements – 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



Pipeline Model Agreements (*PMAs*) Second Edition

Intergovernmental Agreement (IGA)

PART I – INTERPRETATION AND SCOPE OF THE AGREEMENT

PART II – GENERAL OBLIGATIONS

PART III – TAXES AND NON-DISCRIMINATION

PART IV – FINAL PROVISIONS



Pipeline Model Agreements (*PMAs*) Second Edition

Host Government Agreement (HGA)

PART I – INTERPRETATION AND SCOPE OF THE AGREEMENT

PART II – GENERAL OBLIGATIONS

PART III – TAXES, IMPORT & EXPORT AND CURRENCY

PART IV – IMPLEMENTATION

PART V – LIABILITY

PART VI – FINAL PROVISIONS



Pipeline Model Agreements (*PMAs*)

Second Edition

Appendices to the PMAs

I. Construction Planning

Part I – Map of Pipeline System

Part II – Land Rights

Part III – Decommissioning Plan

II. Tax Agreements

Part I – Profit Tax Agreement

Part II – Tax Administration Agreement

III. Code of Practice

Part I – Technical Standards

Part II – Environmental and Safety Standards

Part III – Security

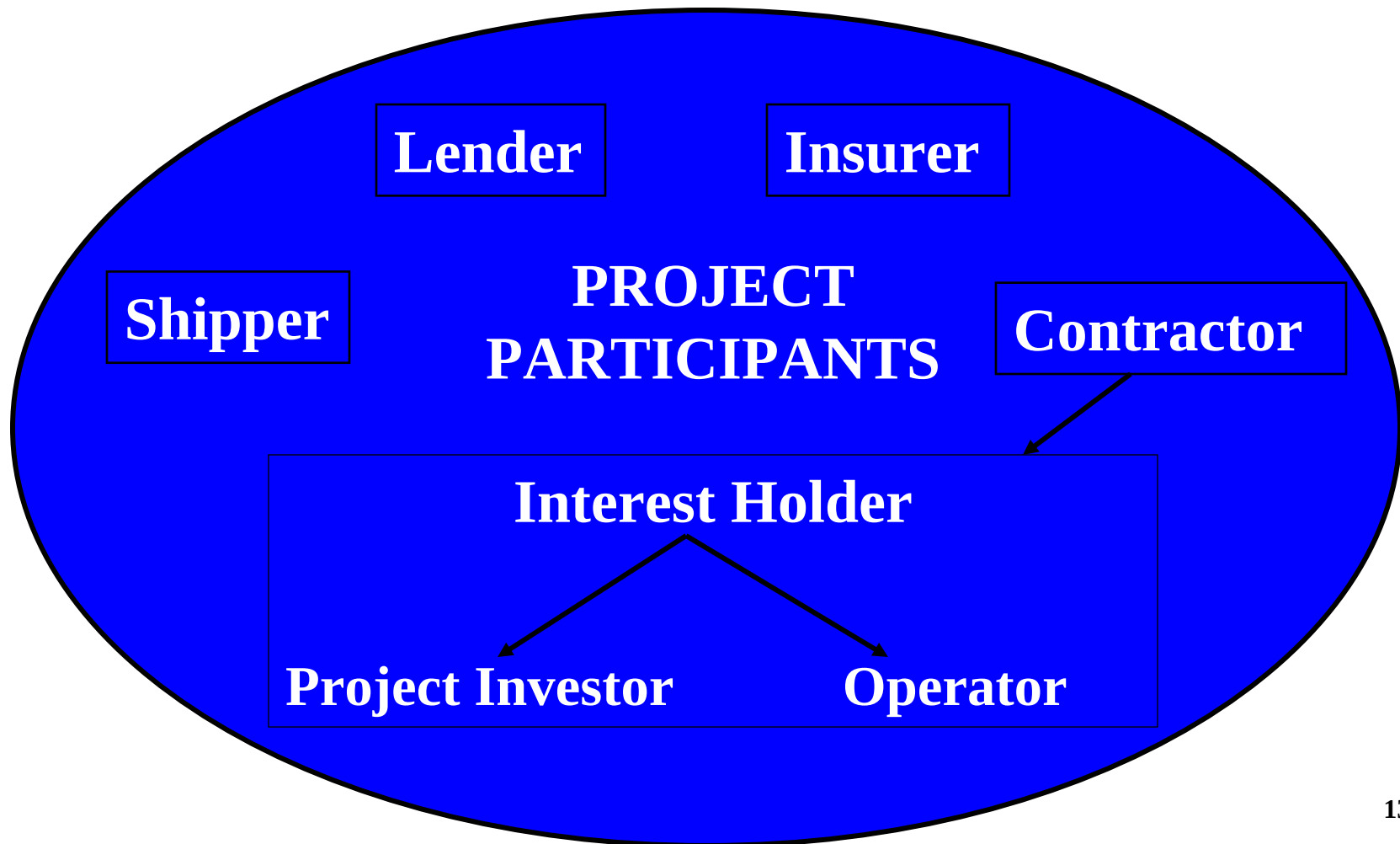
Part IV – Labour Standards

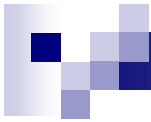


Pipeline Model Agreements (*PMAs*)

Second Edition

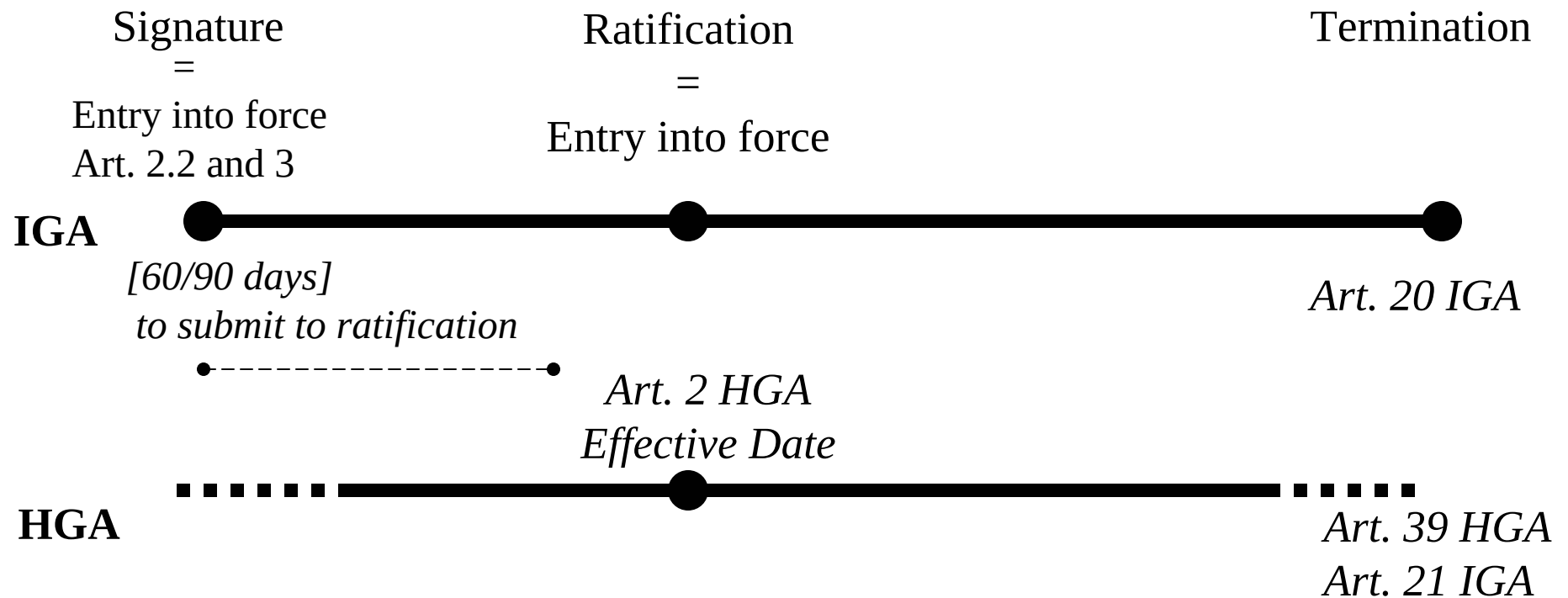
Project Participants and other defined terms





Pipeline Model Agreements (PMAs) Second Edition

Entry into force, effective date and duration





Pipeline Model Agreements (*PMAs*)

Second Edition

Key provisions in PMAs

- Taxation
- Land Rights
- Standards
- Change of Law
- Dispute Settlement and Expert Determination



Pipeline Model Agreements (*PMAs*) Second Edition

Taxation

- Article 13 IGA , Article 26 HGA & Appendix II
- Basic principles of taxation regime
 - o No tax on investment
 - o Taxation begins when transportation begins
 - o State take is primarily profit tax
 - o Taxation is territorial
- Legal basis for taxation regime
- Tax agreements



Pipeline Model Agreements (*PMAs*) Second Edition

Land Rights

- Article 6 IGA , Article 14 HGA & Appendix I
- Definitions of Land
- Rights attached to land
- Appendix



Pipeline Model Agreements (*PMAs*)

Second Edition

Standards

- Environmental and safety standards (Art. 10 IGA & Art. 16 HGA)
- Technical standards (Art.10 IGA & Art. 22 HGA)
- Personnel and labour standards (Art.17 & Art. 18 HGA)
- Social impact standards (Art. 21 HGA)
- Appendix III – Code of practice
- Host Government generally entitled to vary standards following due consultation with Project Investors and in line with relevant standards applicable to similar projects

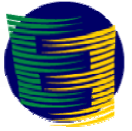


Pipeline Model Agreements (*PMAs*)

Second Edition

Change of Law

- Wide definitions of Change of Law, Costs, Savings
- 90-day cooling-off period
- Then Host Government must choose between reversing Change of Law for Project, and compensating Project Investors
- Exception for Changes of Law reflecting changes in international oil or gas industry standards and for authorised changes to environmental, labour, social impact and technical standards



Pipeline Model Agreements (*PMAs*)

Second Edition

Dispute Settlement and Expert Determination

- State to State disputes (Art. 19 IGA)
 - o Diplomatic channels
 - o International arbitration
- Investor – State disputes (Art. 43 HGA)
 - o International arbitration
 - o Multiparty arbitration
- Expert determination (Art. 44 HGA)
 - o Why expert determination?
 - o Matters referred to an expert



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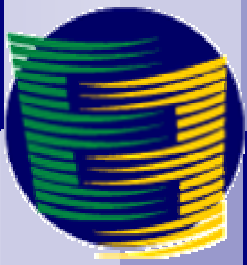
1. The past: Cross-border pipelines and the birth of the Model Agreements (MAs)
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3. The future: Use and development of the MAs in practice



The way forward

- PMAs available on public section of ECS website
- PMAs updated from time to time in consultation with LATF to reflect developments in energy markets
- ECS promotes awareness of MAs throughout its constituency and elsewhere
- ECS adapting PMAs for electricity projects (EMAs) in cooperation with external Consultant and with LATF
- EMAs to be presented to Athens Conference in November 2008

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