

A MUTUAL RECOGNITION MECHANISM FOR TRADE-RELATED DATA AND DOCUMENTS IN ELECTRONIC FORM

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WHY MUTUAL RECOGNITION IS NEEDED

WHY MUTUAL RECOGNITION IS NEEDED: TERRITORIAL ISSUE?

- Paper documents provide a primary basis and medium for sharing information related to trade activities. Relevant stakeholders of trade activities, both public and private sectors, have developed institutional systems and ways to ensure legal admissibility and public recognition of information contained in paper documents. (Notarization is practiced for the legalization of paper documents being exchanged. Courts and insurance companies accept paper documents as evidence based on such legalization to ensure the protection of rights and legitimate interests of citizens and organizations, in case there is a conflict among parties involved)
- However, it is not guaranteed that legal validity of trade-related documents and data in the electronic form created in one jurisdiction would remain valid in another jurisdiction when they are exchanged across different jurisdictions.
- Ensuring the legal validity of e-documents and legal significance of electronic interaction in general is critical at both national level (within the single jurisdiction) and transboundary level (interaction of participants acting under jurisdictions of different states).

WHY MUTUAL RECOGNITION IS NEEDED: TERRITORIAL ISSUE?

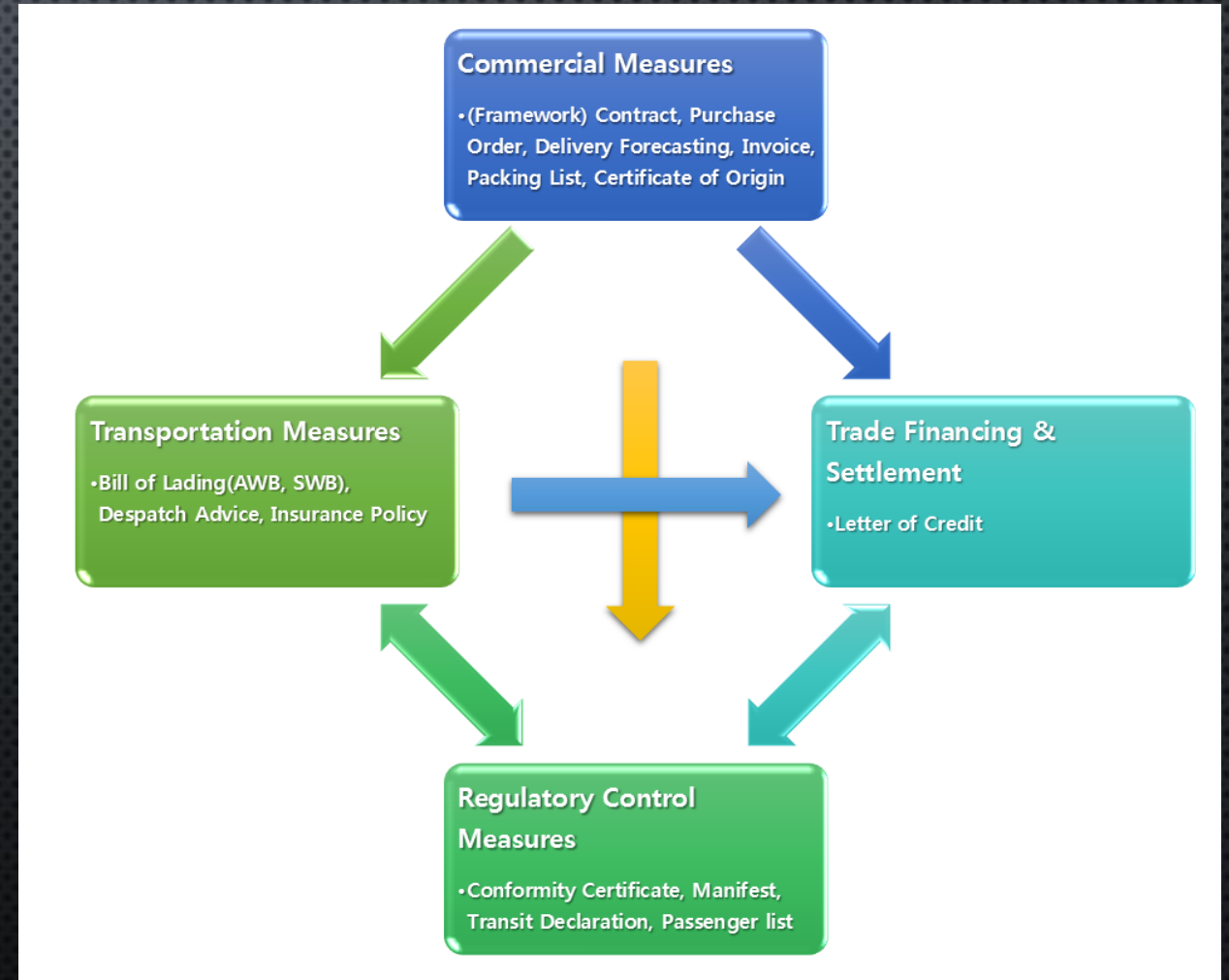
- To make the exchange of trade-related documents and data in an electronic form valid, different jurisdictions should provide a (reciprocal) recognition of the validity of such data and documents whenever they are exchanged across borders.
- **Cross-border paperless trade requires a certain degree of trust.** Some countries have national infrastructures to provide trusted paperless interaction in different spheres: tendering, customs declaration, single window and others. These infrastructures are usually based on national legislation and may apply different technologies. Consequently, economic operators face obstacles when they engage in paperless trade across borders.
- To give the same effect as physical transactions to cross-jurisdictional electronic transactions, **a mutual recognition framework is needed, which can allow parties in different jurisdictions to exchange and recognize valid documents.** A mutual recognition framework may take into account certain aspects, such as identity, authentication, authorization, and others

WHY MUTUAL RECOGNITION IS NEEDED: THE CROSS-FUNCTION OF TRADE DOCUMENTS

- Border-crossing documents and data in 4 major areas
 - **Commercial Transactions**
 - Offer, Counter Offer, Proforma Invoice
 - Framework contract, contract
 - Invoice, Packing List
 - (Self) Test Certificate, Manufacturing Certificate
 - Cargo Insurance (Insurance Policy) and etc.
 - **Trade financing and settlement**
 - Letter of Credit, Bill of Exchange and etc.
 - **Transportation and related services**
 - Cargo/Vessel Status information
 - In-Transit report
 - Bill of Lading, Sea Way Bill, Air Way Bill and etc.
 - **Official control measures**
 - Country/Certificate of Origin
 - Conformity Certificates such as Fumigation Certificate, Safety/Health Certificate and National/International Standard Certificate
 - Import/Export License/Permit and Quota
 - Customs clearance information, Advance Manifest and etc.

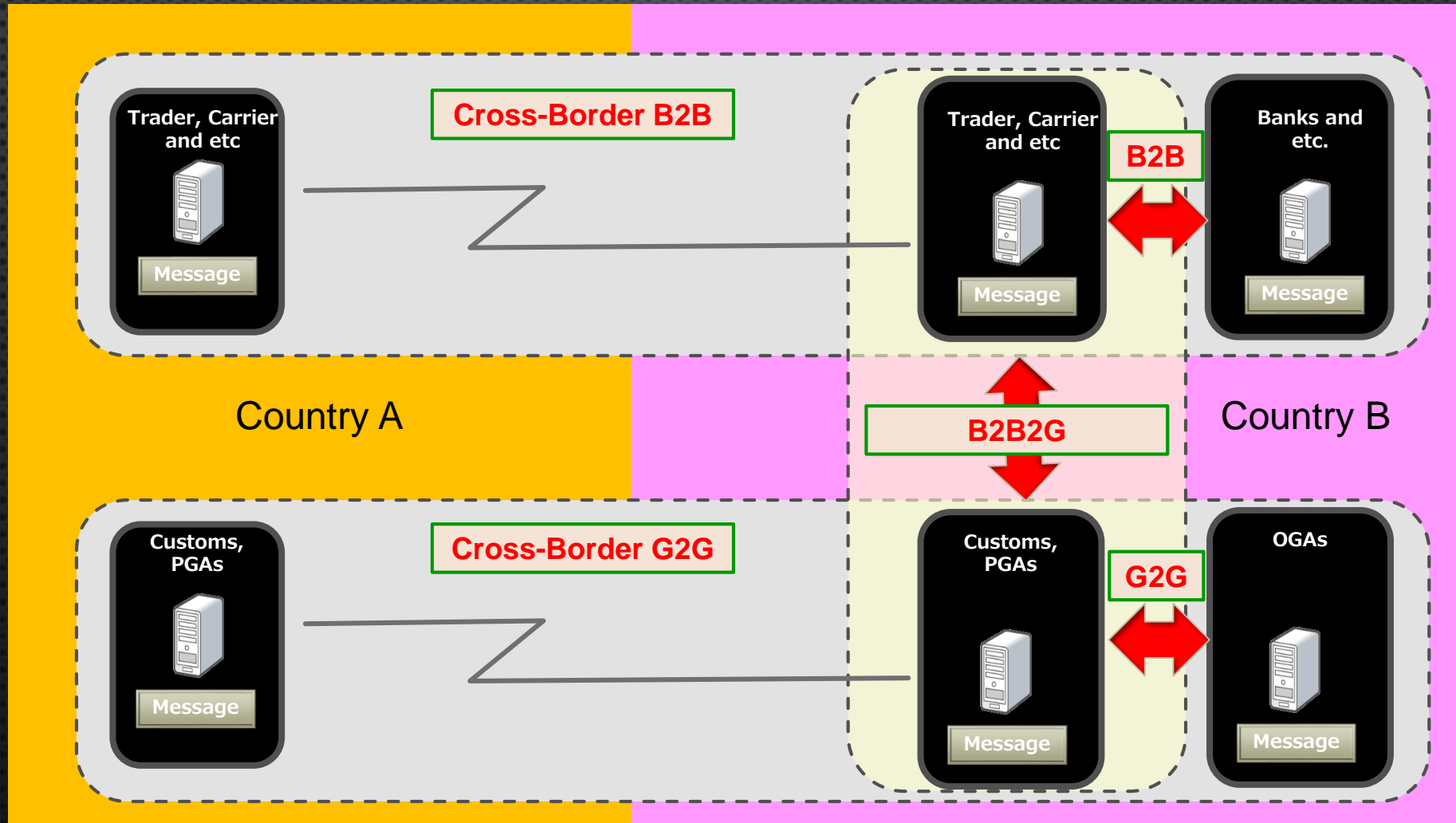
WHY MUTUAL RECOGNITION IS NEEDED: THE CROSS-FUNCTION OF TRADE DOCUMENTS

- 4 major areas of cross-border trade documents and data
 - The trade documents created in a specific work domain are required in other work domain for other purpose.
 - **The cross-function of trade documents** make digitization of trade document more difficult and challenging implies that realization of mutual recognition of electronic messages used in multiple areas is more challenging



WHY MUTUAL RECOGNITION IS NEEDED: THE CROSS-FUNCTION OF TRADE DOCUMENTS

- Challenge to border – crossing B2B data & documents



DEFINITION:

WHAT IS MUTUAL RECOGNITION

DEFINITIONS

- **Mutual recognition** is “**reciprocal recognition of the validity of trade-related data and documents in electronic form exchanged across borders between two or more countries.**” (FA article 3)
- The primary need of mutual recognition is the creation of the opportunity to exchange trade-related data and documents in electronic form across borders between different countries with different technological approaches and under different jurisdictions.
- Mutual recognition based on common principles will provide a smooth, transparent and reliable environment for trade-related data and documents in electronic form exchanged across borders.

DEFINITIONS

- **Mutual Recognition Mechanism**
 - To achieve mutual recognition, a mechanism to ensure a substantial level of integrity, non-repudiation, authentication, confidentiality and legal validity of electronic trade-related data and documents should be designed and implemented.
 - This mechanism may consist of
 - **a governance** including institutional arrangement and role and responsibility of stakeholders,
 - **a methodology for securing trust** including assessment and technical and legal framework for interoperability and **legal validity**.

CROSS-BORDER MUTUAL RECOGNITION APPROACHES

REVIEWED CROSS-BORDER MRA CASES

- **APEC TEL MRA**

- the APEC Telecommunications and Information Ministers agreed to streamline APEC-wide processes for the testing and type-approval of telecommunications equipment. This landmark arrangement, **the Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment** (APEC TEL MRA), was the first multilateral agreement of its type in the world.
- This arrangement is intended to streamline the Conformity Assessment Procedures for a wide range of telecommunications and telecommunications-related equipment and thereby to facilitate trade among the Parties. It provides for the mutual recognition by the importing Parties of Conformity Assessment Bodies and mutual acceptance of the results of testing and equipment certification procedures undertaken by those bodies in assessing conformity of equipment **to the importing Parties' own Technical Regulations.**

REVIEWED CROSS-BORDER MRA CASES

- **APEC TEL MRA**

- Party: an APEC member economy that agrees to participate in this Arrangement.
- Joint Committee: a committee of the APEC Telecommunications Mutual Recognition Arrangement Taskforce established for the purpose of managing the implementation of the MRA.
- Regulatory Authority: a government entity responsible for telecommunications **requirements** within an Economy.
- Designating Authority: a Government authority appointed by a Party for the purpose of **designating a Conformity Assessment Body** to perform Conformity Assessment Procedures under this Arrangement.
- Accreditation Body: a body that is **responsible for assessing and recognizing the specific competencies of testing laboratories and/or certification bodies** in accordance with international standards.
- Conformity Assessment Body: a body, which may include a third party or a supplier's testing laboratory, or a certification body, that is **designated to perform conformity assessment to an importing Party's Technical Regulations** under this Arrangement.

Economy A

RA
DA
AB
CAB

Economy B

RA
DA
AB
CAB

Economy C

RA
DA
AB
CAB

Economy D

RA
DA
AB
CAB

RA -- Regulatory Authority
DA -- Designating Authority
AB -- Accrediting Body
CAB -- Conformity Assessment Body

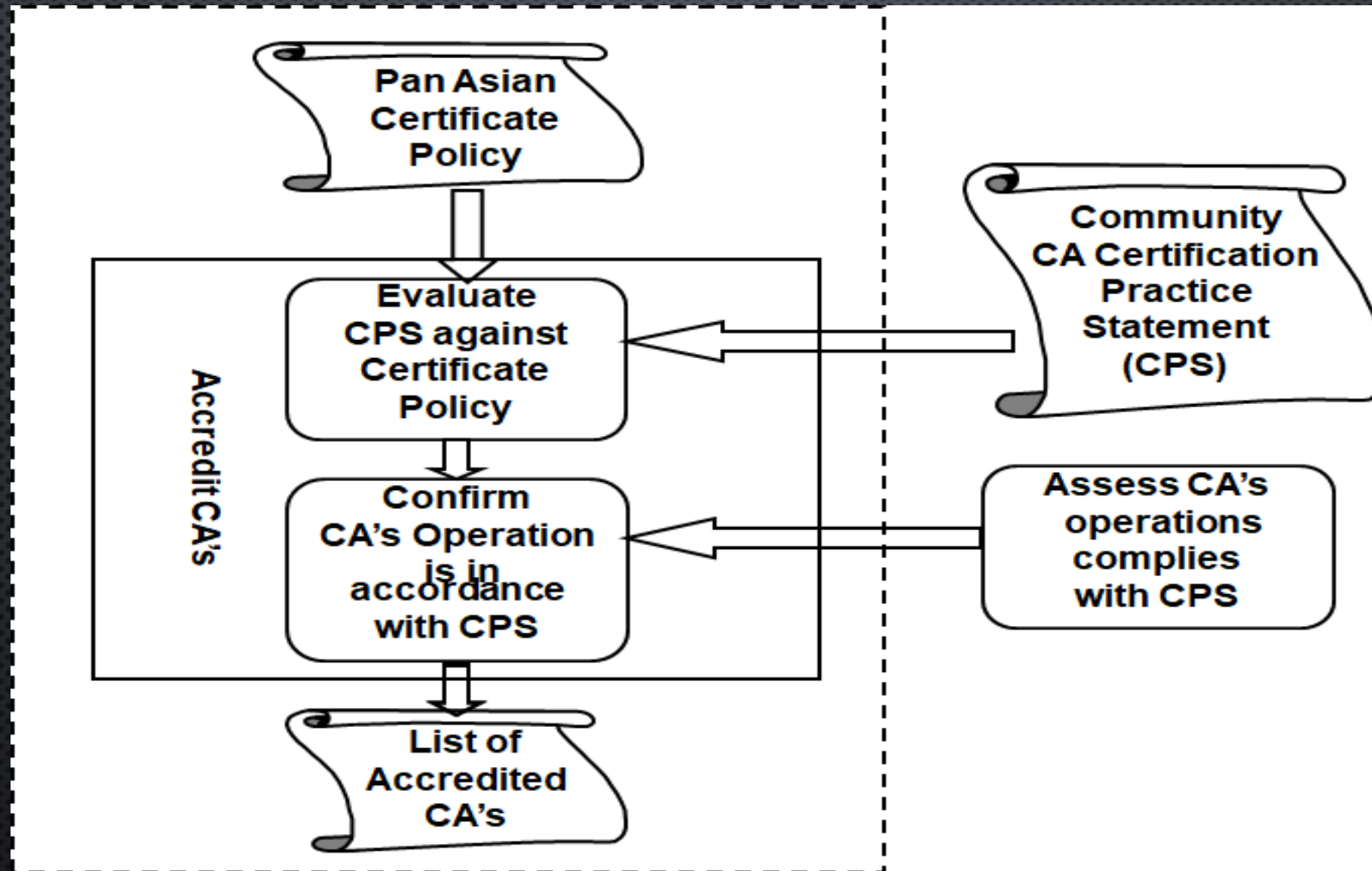
REVIEWED CROSS-BORDER MRA CASES

- ILAC (International laboratory Accreditation Cooperation) MRA
 - In 2000, the 36 ILAC's Full Members consisting of laboratory accreditation bodies from 28 economies worldwide, signed the ILAC Mutual Recognition Arrangement (ILAC MRA) to promote the acceptance of technical test and calibration data for exported goods.
 - The ILAC MRA was then extended to include the accreditation of inspection bodies. Nowadays, ILAC is the international organization for accreditation bodies operating in accordance with ISO/IEC 17011 and involved in the accreditation of conformity assessment bodies (CAB) including calibration laboratories (using ISO/IEC 17025), testing laboratories (using ISO/IEC 17025), medical testing laboratories (using ISO 15189) and inspection bodies (using ISO/IEC 17020).
 - Accreditation bodies are established in many economies with the primary purpose of ensuring that conformity assessment bodies are subject to oversight by an authoritative body. **Accreditation bodies**, that have been **peer evaluated as competent**, sign regional and international arrangements to demonstrate their competence. These **accreditation bodies then assess and accredit conformity assessment bodies** to the relevant standards.

REVIEWED CROSS-BORDER MRA CASES

- **PAA PKI Mutual Recognition Framework**

- Certificate Policy (CP) prepared by the PAA Certificate Policy Authority contains the set of rules that govern the issuance and use of digital certificates, and indicate the applicability of the certificates to the communities within PAA. **It specifies the Audit procedure, Revocation, Records archival and Certificate & CRL (Certificate Revocation List) Profiles, and others.** PAA CP is the basis of the Mutual Recognition of Public Key Infrastructure that forms a part of conditions for periodical assessment of (accredited) CA, and each CA will need to ensure that their CPS complies with this Certificate Policy.
- CA Recognition Agreement is an agreement between PAA Certificate Policy Authority and each Certificate Authority contracted by PAA Service Provider in each economy. Under CA Recognition Agreement, **Certificate Policy Authority recognizes that the applicant CA is a conforming or accredited CA of PAA.**
- **CA and CPS (Certification Practice Statement)** Recognition Procedure defines the procedure to be used by the PAA Certificate Policy Authority to give recognition to the individual Certification Practice Statement (CPS) and Certificate.
 - Terms Of Reference of CPA defines a common PAA Certificate Policy (CP), a procedure for the recognition of CPS of CA against this CP, a procedure for the change management for the CP and the recognition procedure and it also administers the recognition and changes management procedure.
 - **PAA CP defines a set of rules as minimum and common criteria for recognition** for use within the PAA domain and trusted by the PAA members. CPS of a CA seeking recognition by PAA is assessed against this PAA CP. PAA CP sits on top of a CPS that cover different aspects (policy, legal, operational, technical).
 - Recognition procedures of PAA CP cover initial recognition and renewal and revocation of₁₆ recognition.



REVIEWED CROSS-BORDER MRA CASES

- **Authorized Economic Operator MRA**
 - Under the **WCO Safe Framework**, Customs enter into bilateral Mutual Recognition Agreement on AEO(Authorized Economic Operator).
 - The Authorized Economic Operator (AEO) is defined as **a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national customs administration as complying with WCO or equivalent supply chain security standards.**
 - Individual Customs enter into MRA-AEO with its counterpart Customs so that AEO could be recognized by other Customs under MRA.

LESSONS FROM EXISTING CROSS- BORDER MUTUAL RECOGNITION APPROACHES

9 ATTRIBUTES IDENTIFIED

- (1) an international or regional stakeholder which governs the rule or provides principles for cross-border mutual recognition scheme,
- (2) a legal instrument or a guideline set or agreed upon by participants,
- (3) an ownership of recognition requirements,
- (4) mutual or multilateral implementation bodies implementing such scheme or guideline,
- (5) the object of recognition,
- (6) an execution method for recognition,
- (7) a mechanism to maintain trust among participants,
- (8) Official control purpose or private transactions
- (9) technical standards or guidelines.

9 ATTRIBUTES IDENTIFIED

- (1) an international or regional stakeholder which governs the rule or provides principles for cross-border mutual recognition scheme,
(who lead the direction)
 - In most multilateral recognition scheme, **there is a governing body which is responsible for the development of and maintaining recognition scheme.** However, **their role and responsibility are case sensitive.** Some bodies control the details of recognition implementation including execution method and trust mechanism while some bodies merely provide only guidelines or principles for participating members.

9 ATTRIBUTES IDENTIFIED

- (2) a legal instrument or a guideline set or agreed upon by participants,
 - Most mutual recognition scheme has either an international, regional or bilateral agreement or a guideline set or agreed upon by governing body(ies)

9 ATTRIBUTES IDENTIFIED

- (3) an ownership of recognition requirements, (who set the rule?)
 - A stakeholder(s) which has a right to set the mutual recognition criteria and requirements (such as the specific competencies or conformity to security or quality requirements). **The owner does not have to be a stakeholder governing cross-border recognition scheme.**

9 ATTRIBUTES IDENTIFIED

- (4) mutual or multilateral implementation bodies implementing such scheme or guideline,
 - The stakeholders which implement mutual recognition process and system by the agreement or guideline.
 - Implementation body could be the owner of recognition requirements

9 ATTRIBUTES IDENTIFIED

- (5) the (target) object of recognition, (what to recognize?)
 - A mutual recognition can be achieved through direct or indirect recognition method.
 - For example, notarization is one method of direct recognition on a document. In case of APEC TEL MRA, it is a testing laboratory and certification body not the test result report nor a Certificate. By recognizing the issuing body, the documents issued by the certified bodies are being indirectly recognized in the MRA country(ies).

9 ATTRIBUTES IDENTIFIED

- (6) an execution method for recognition,
(how to conduct)
 - The recognition can be made by the different method. A designation and accreditation are the common execution methods
- (7) a mechanism to maintain trust among participants,
(how to maintain)
 - Operating and maintaining the trust is more important than initial implementation of mutual recognition. A mechanism to maintain trust among participants is highly depending on a legal instrument that the mutual recognition is based on.

9 ATTRIBUTES IDENTIFIED

- (8) Official control purpose or private transactions
 - Whether the main purpose is for official control or for private business transactions
- (9) technical standards or guidelines.
 - In some case of mutual recognition scheme provides technical standards and guidelines

POSSIBLE MODELS OF CROSS-BORDER MUTUAL RECOGNITION MECHANISM

CONSIDERATIONS FOR FA MRA

- Governance
 - (1) Whether to govern the Cross-Border Mutual Recognition (CBMR) rule or to provide principles for CBMR scheme and (3) an ownership of recognition requirements
 - (2) Whether to have a strong central legal instrument or to provide a guideline(s)
- Shall the FA establish a central governing rule and hold the ownership of recognition requirements (like the case of PAA MRA) or allow autonomy of the Individual member states for the ownership of recognition requirements (Like the case of APEC TEL MRA)?

CONSIDERATIONS FOR FA MRA

Tight
Governance

Shall the Member States establish a central overseeing body with a strong rule and hold the ownership of recognition requirements (like the case of PAA MRA)

→ Tight Mutual Recognition Agreement under FA

or allow autonomy of the Individual member states for the ownership of recognition requirements (Like the case of AP EC TEL MRA)?

→ Loose Mutual Recognition Arrangement under FA

Mutual Recognition Agreement

Framework Agreement

CONSIDERATIONS FOR FA MRA

Loose
Governance

Shall the Member States establish a central overseeing body with a strong rule and hold the ownership of recognition requirements (like the case of PAA MRA)

→ Tight Mutual Recognition Agreement under FA

or allow autonomy of the Individual member states for the ownership of recognition requirements (Like the case of AP EC TEL MRA)?

→ Loose Mutual Recognition Arrangement under FA

Mutual Recognition Arrangement

Framework Agreement

CONSIDERATIONS FOR FA MRA

- Recognition scheme
 - (5) What to recognize, (4) by who, (6) how to execute and (7) how to maintain the trust
 - Shall the FA define the object of the CBMR as a data or electronic messages or an entity which can generate, exchange or relay a data or electronic messages (or electronic certificate for signature)?
 - Shall the FA appoint an (either regional or national) accrediting body(or bodies) to execute and control CBMR scheme or let individual entity (or its data or electronic messages) be recognized directly without prior-accreditation procedure

CONSIDERATIONS FOR FA MRA



Recognition
Scheme

- **Designation**

‘Designation’

is the mechanism appointing an entity (or entities) by responsible government authority for the purpose of exercising certain authority or implementing certain government policies and regulations

For example, designated entity can either accredit a 3rd party for its cross-border electronic data / documents exchange or perform the exchange by itself

CONSIDERATIONS FOR FA MRA



Recognition
Scheme

- **Accreditation**

‘Accreditation’

is the preferred mechanism for identifying competent bodies to implement certain government policies and regulations and comply with required credentials

For example, accreditation can be given to cross-border electronic data / documents exchange facility(s) or gateway(s) which can prove **their competence**

✕ The accreditation scheme requires hierarchy of **overseeing mechanism (assessing and recognizing)** and the accreditation process determines the technical competence and integrity of organisations that offer paperless trade services or gateway services for cross-border exchange of electronic data and documents

CONSIDERATIONS FOR FA MRA



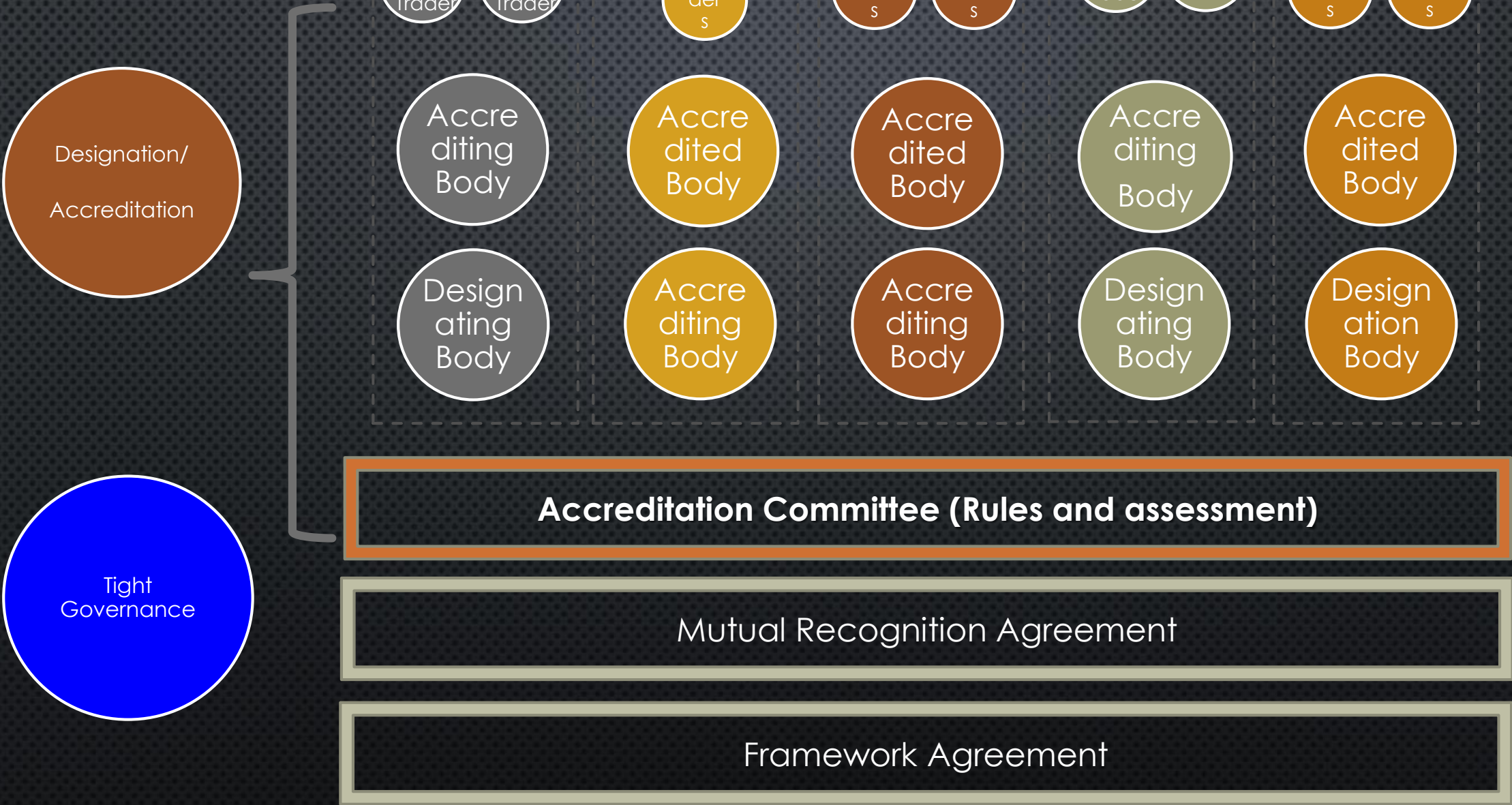
Peer to Peer

- **Peer to Peer Recognition**

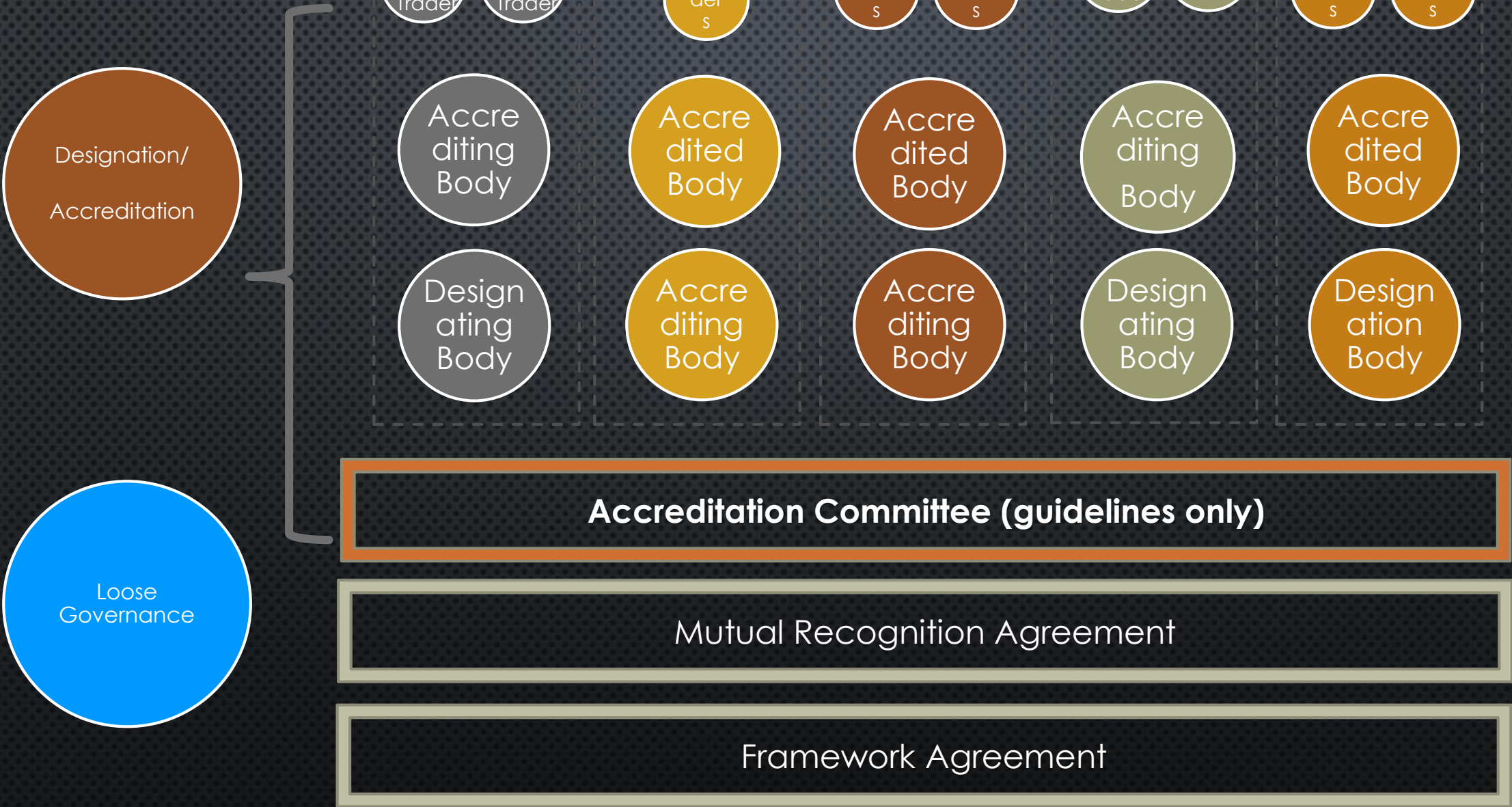
Conventional bilateral agency to agency cooperation mechanism among trusted agencies to exchange electronic data and messages

✂ The **peer to peer recognition process** is to agree upon some level of security and service and access the technical competence and integrity of organisations each other

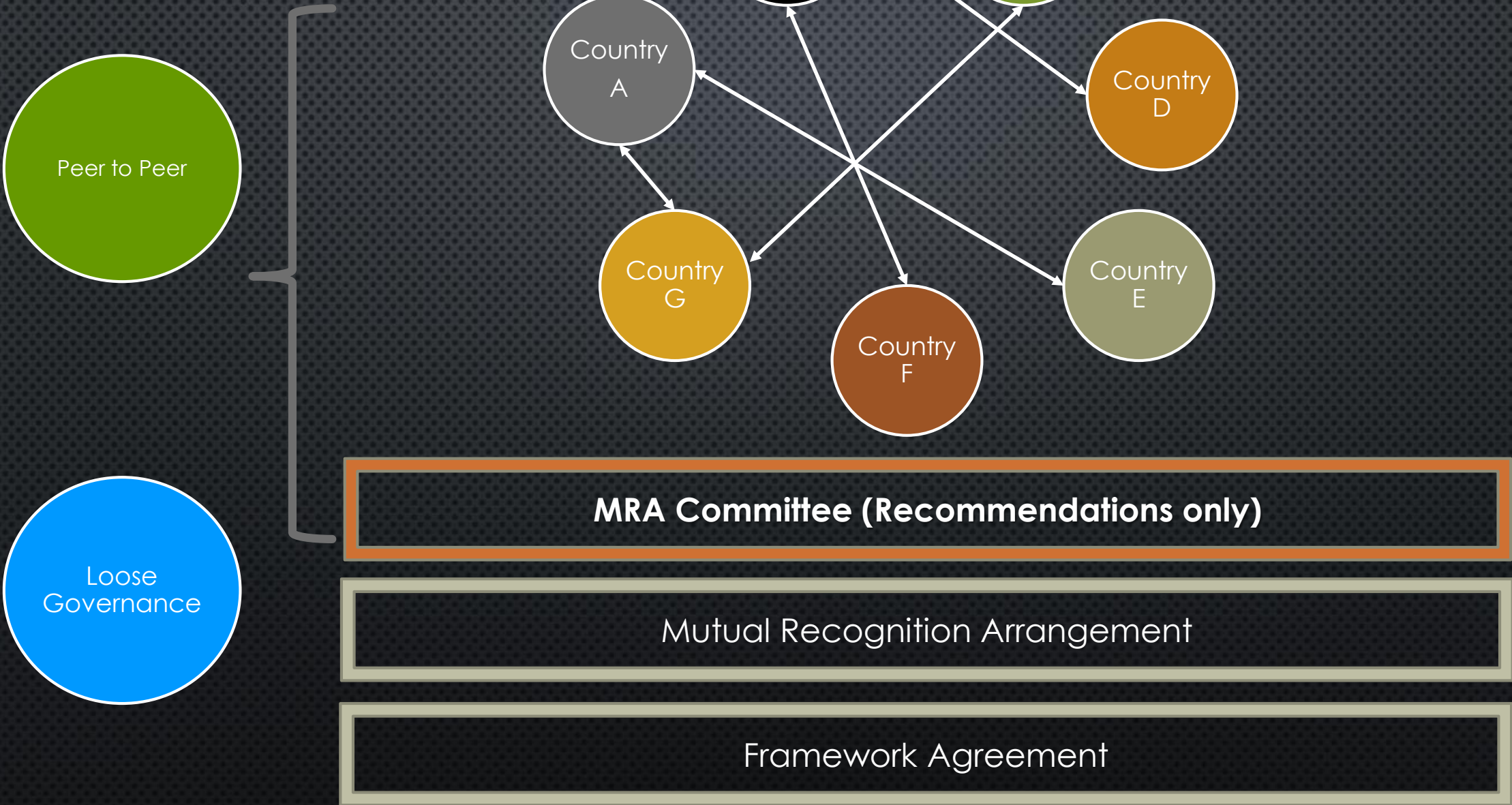
MODEL 1



MODEL 2



MODEL 3



THANK YOU

Sung Heun HA (Rama)