

**Minutes of the meeting of the Practice Group Real Estate on 9 September 2011 in Leiden  
during the „Deutschsprachiges Treffen“**

**Participants:** Dr. Reinhard Nacke (Chairperson), FPS Fritze Wicke Seelig, Germany  
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Joost Donkerslot - Teekens Karstens Advocaaten Notarissen, Netherlands  
Geert Janssen - Teekens Karstens Advocaaten Notarissen, Netherlands  
Oskar Plörer - Volgger Grüner & Partner, Italy  
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1. After shortly presenting themselves the participants discussed the different types of notaries existing in different countries.

In some countries like the Netherlands and some parts of Switzerland notaries must undergo a long lasting education. In some other countries like the United States it is quite easy to become a notary.

As different as the education is also the fee structure. In some countries like Germany the fee is dependent from the value of the respective matter. Negotiations over the fee are unless. In most of the other countries the fee is subject to negotiation between the notary and his customer. This brings along the possibility particularly for share deals to conclude the contract in a country where the best price could be achieved. Of course it must be taken into account that the national authorities may not accept deeds of a foreign notary. However, they must have good reason for this because according to the Rom I. Convention Art. 11 a contract can be concluded formally valid if it satisfies the

formal requirements of the law which governs it in substance or of the law of the country where it is concluded. This means that it might even be possible to transfer shares by a simple written document, even if transfer of shares of the respective sort of company normally requires a notarial deed. As a consequence, it may be possible to transfer a piece of land vested in a company from one party to the other without assistance of a notary at all.

The parties may also be able to spare taxes if they do not transfer 100 % of the shares but leave a small percentage with the seller. This for example works in Austria and Germany. In other countries like e. g. Turkey anyway no transfer tax comes into being if shares are transferred, even if the company is owner of some real estate.

2. The participants further discussed the question whether it is possible according to the national laws that the ground on one hand side and the building on it on the other side have different owners. This is for example important if wind turbines are built on rented ground. If they become property of the land owner a problem arises if the financing bank requires from the company operating the park transfer of title as security.
3. The participants finally discussed whether the practice group should have a kind of folder to be distributed by the member firms of the practice group and by other GGI member firms among their clients in order to show the expertise of the GGI firms with regard to real estate matters. Generally this project was supported by the participants. However, it would be necessary to have on it not only the logo of GGI but also the logo of the respective firms distributing the letter in order to make it attractive for the firms to distribute them.

Dr. Reinhard Nacke