

# University of Queensland Law Faculty



*Common and Civil Law Dialogue and  
its application to energy law*

Wolfgang Babeck 11 April 2014

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## Overview

### Establishing a windfarm (co-gen) in a civil law country

1. Securing the land
2. Setting up the JV
3. Obtaining finance
4. PPA and Grid Connection
5. Employment Law
6. Litigation



## Barrister and Notary



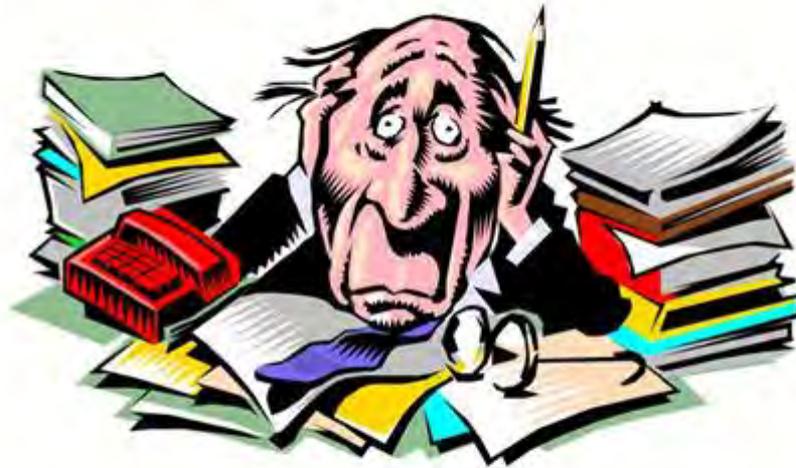
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## Notary



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## Contract Navigation

1. Why are common Law agreements so voluminous?
2. Where to find the purchase price?
3. Navigating through the agreement

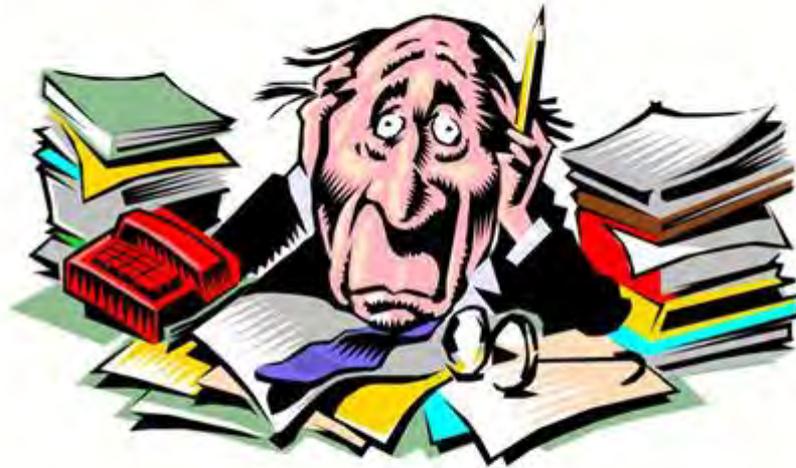
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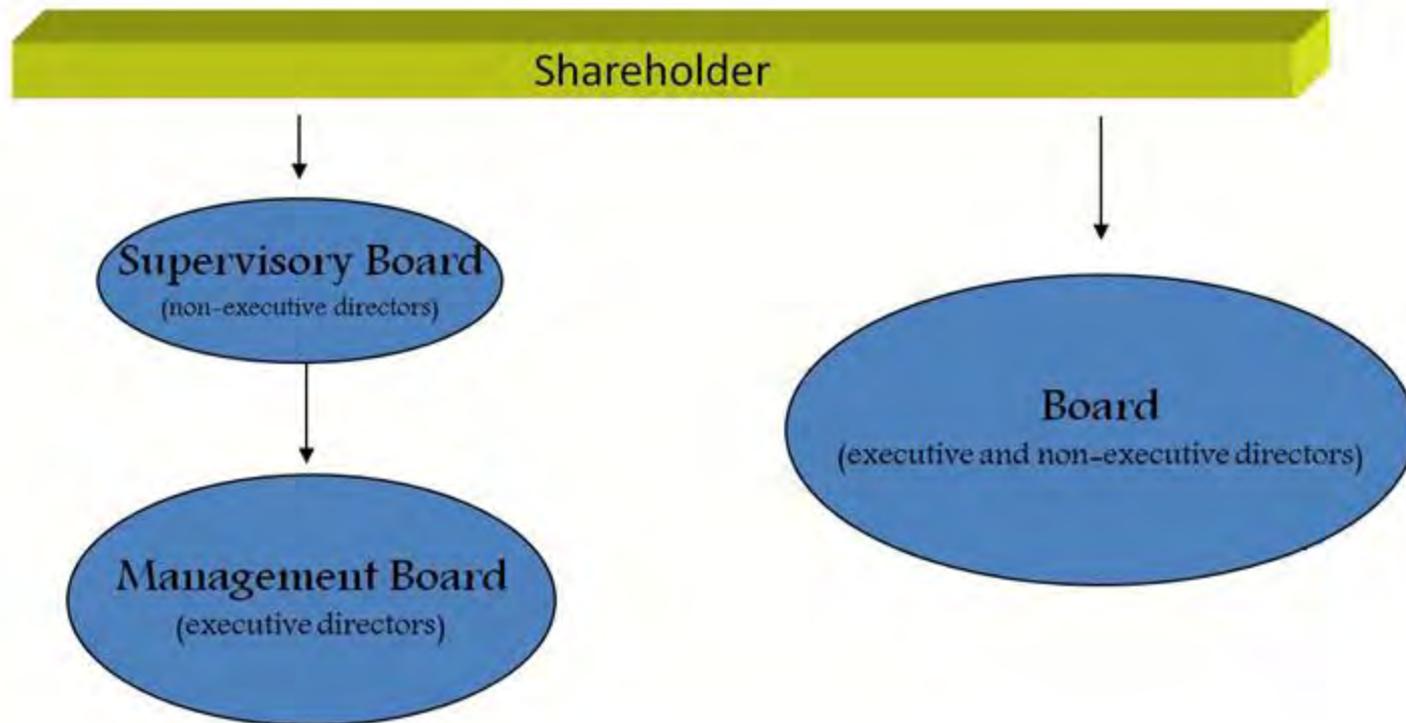
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## **Binding the company**

- 1. Where to look**
- 2. Authority in case of several directors**
- 3. Decision making caveats**

## Various Civil Law Countries

## Australia

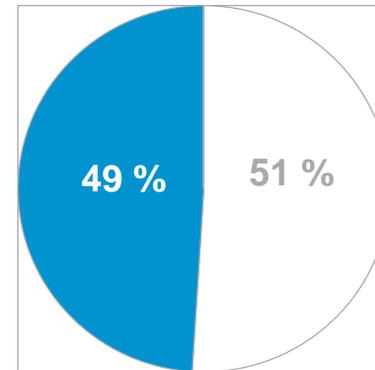


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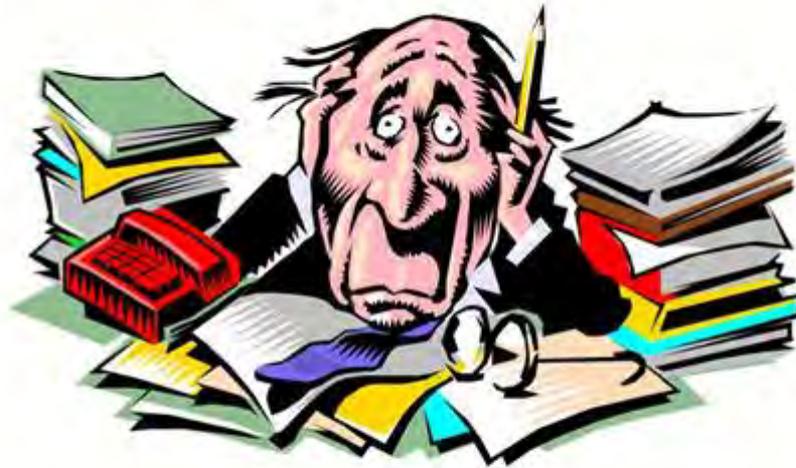
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**JV: 51 % of shares of GmbH (LTD)**



## Notary



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## Differences in a Civil law Pty Ltd

- A Pty Ltd cannot be set up without a larger share capital.
- The Constitution is a public internal document of the company.
- The wording of the Constitution is extremely important
- The competencies of the board are much more restricted than in Australia.
- The directors are not allowed to co-opt other directors.
- The directors of an Australian company cannot determine their own salary.
- Supervisory board with different liability.
- 3/4<sup>th</sup> majority needed to control company
- Procedures highly regulated

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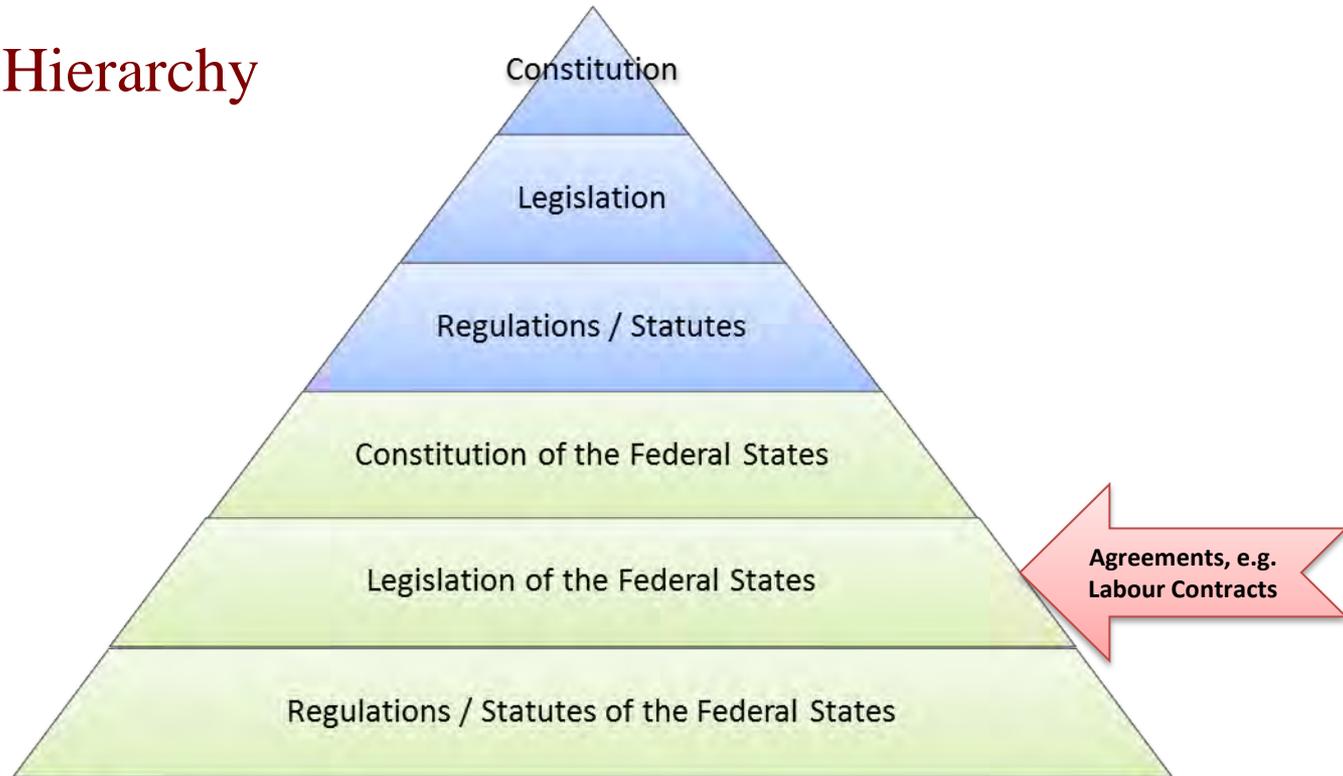
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# Legislation



## Norm Hierarchy



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## EMPLOYMENT LAW

### Australia

### Germany

Protection against unfair dismissal

Lower (1-5 weeks of notice)

High (min. 4 weeks of notice, dismissal for reason only)

Employment for limited time

No limitation

For special reason only, not longer than 3 years

Contractor

Very usual

Rather unusual

Working hours

38 hours per week

40 hours per week

Minimum wage

By law (N.E.S.)

No regulation

Holiday

20 days per year

24 days per year

Sick leave

Payment for 10 days

6 weeks per illness

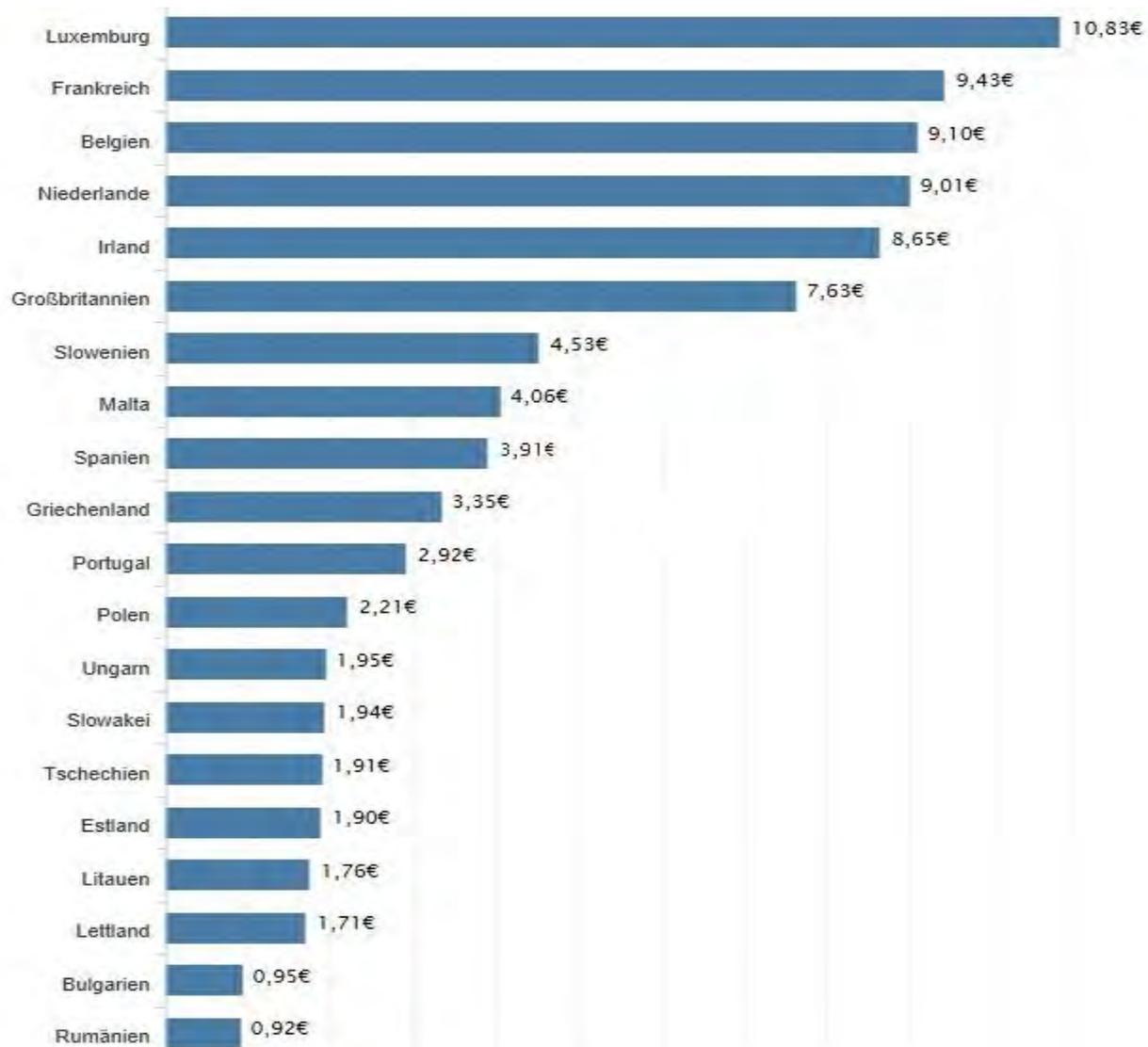
# EMPLOYMENT LAW

## Australia

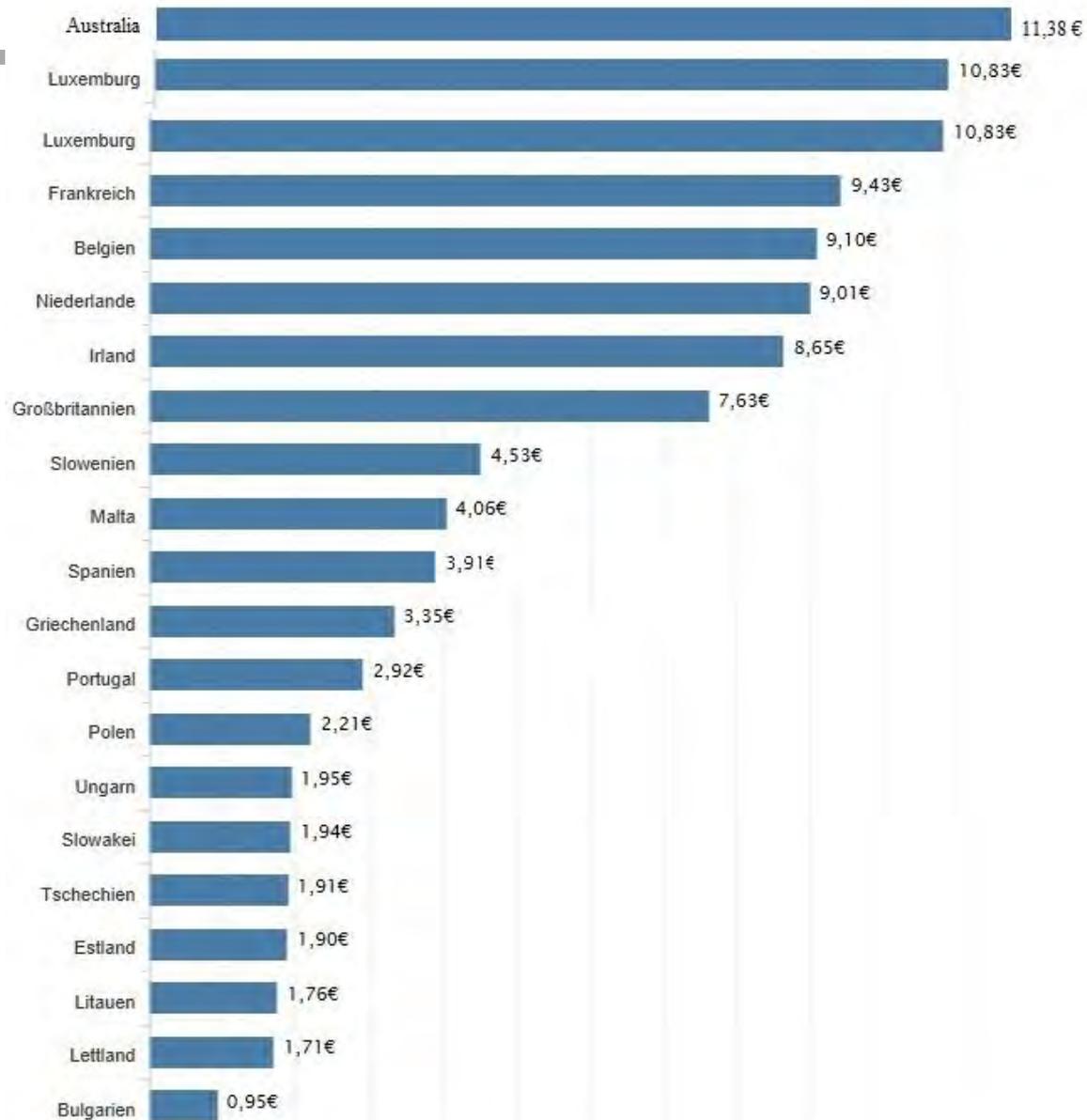
## Germany

Parental leave	18 weeks with minimum wage	14 months with 67 % of the average salary of the last 12 months
Non-competitive	By contract: non-competitive, non-solicitor, costumer non-solicitor	By law; extended up to 2 years <u>with</u> compensation
Transfer of business	No requirement to transfer employees	Transfer of employment relationship
Social insurance	Paid with tax	Paid half by employer, half by employee
Short-time work	Not existing	Special German vehicle
Employee representation	None	Betriebsrat Aufsichtsrat

# Minimum wages in Europe (1/1/2013)



# Minimum wages



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## Litigation

- **Unified civil procedural *code***
- **proceedings initiated are substantially less expensive and time consuming**

	OLG STUTTGART	SUPREME COURT NSW
Duration	—	4 times as long
Documents (estm.)	30	5,000 to 20,000
Judgment writing	6h	37h
Judgments	35%	6%
Costs	17,000	150,000
Injunction	5,000	50 – 80,000

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## Megalitigation

- Length of the discovery
- Number of witnesses
- Length of the trial
- Involvement of decision makers
- Costs

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## The different thinking patterns of Civil and Common law practitioners

### Civil Law

1. Developing abstract principles
2. From abstract to specifics
3. Discovery unwanted
4. Codification concise, often not user friendly

### Common Law

1. Reasoning from case to case
2. From specifics to specifics
3. Discovery as a means to identify the issue
4. Codification voluminous and repetitive



**DIBBSBARKER**